Colorado General Assembly, Legislative Council

The Legislative Council takes no position with respect to the merits of the proposals. In listing the "arguments for" and "arguments against," the Council is merely describing the arguments relating to the proposals. The quantity or quality of the "for" or "against" paragraphs listed for the proposals should not be interpreted as an indication of the Legislative Council position.

County Clerks and Elections Office

STATEWIDE ELECTION DAY IS TUESDAY, NOVEMBER 3, 1998

Polling places open from 7 a.m. to 7 p.m.

Early voting begins October 19, 1998

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procedure the person knows will kill the fetus, and kills the fetus before completing the delivery.
(3) No person shall knowingly or intentionally perform a partial-birth abortion thereby killing a human fetus.
(4) Nothing in this section shall prohibit the performance of a medical procedure necessary to prevent the death of a pregnant woman whose life is in immediate danger of termination due to a physical disorder, physical injury, or physical illness, provided that every reasonable effort shall be made to preserve the lives of both the woman and the infant.
(5) Civil remedies for violation of subsection (3) shall be available as follows:
(a) The woman upon whom a partial-birth abortion has been performed; the father of the infant; or the biological grandparents of the infant, or the legal guardian or guardians of either biological parent of the infant, on behalf of either biological parent, if said parent has not attained the age of eighteen (18) years at the time of the abortion, may obtain appropriate relief in a civil action, unless the pregnancy was the result of criminal conduct on the part of the plaintiff or unless the plaintiff consented to the partial-birth abortion.
(b) Such relief shall include:
(I) Money damages for all injuries, psychological and physical, resulting from the violation of subsection (3); and
(II) Statutory damages equal to three times the cost of the partial-birth abortion.
(c) If judgment is rendered in favor of the plaintiff in such action as is described in this subsection, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.
(d) lf judgment is rendered in favor of the defendant in such action as is described in this subsection, and the court determines that the plaintiff's suit be frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.
(6) The following criminal penalties shall apply:
(a) Performance of a partial-birth abortion in violation of subsection (3) shall be a class 5 felony.
(b) A woman upon whom a partial-birth abortion is performed shall not be prosecuted under this section for participating in the partial-birth abortion.
(c) This subsection (6) shall take effect on February 14, 1999.
(7) No part of this section 12-36-140, C.R.S., as enacted by the people of the state of Colorado, may be amended in any manner other than by ballot measure submitted to the people for adoption or rejection at the polls at a general election pursuant to section I of article V of the state constitution.

Amendment 12

PARENTAL NOTIFICATION FOR ABORTION

The proposed amendment to the Colorado Revised Statutes:

- requires a doctor to notify both parents of a minor's requested abortion. These include biological or adoptive parents, as well as court-appointed guardians or foster parents. A minor is defined as a person under 18 years of age;
- defines "abortion," for purposes of this proposal, as any means to terminate the pregnancy of a minor at any time after fertilization;
- makes a doctor wait 48 hours after notification takes place before performing the abortion;
- requires no notice when the person or persons entitled to notice certify in writing that he or she has already been notified, or when the minor declares that she is a victim of child abuse or neglect by the person entitled to be notified and the attending doctor reports the child abuse or neglect;
- punishes doctors who violate the new requirements with up to 18 months in prison and up to $5,000 in fines;
- punishes anyone who counsels a minor to provide false information in order to obtain an abortion with up to three years in prison and up to $100,000 in fines; and
- creates a process whereby a minor may petition a court to dispense with the notification requirements under certain circumstances (called a "judicial bypass"). The proposed judicial bypass process will only go into effect if the law is challenged and a court determines that it cannot be implemented without such a process.

Background

U.S. Supreme Court decisions. The U.S. Supreme Court has decided that a woman has a right to terminate her pregnancy by abortion. However, the Court also found that government may regulate abortions to safeguard the health of the woman, maintain adequate medical standards, and protect potential life. Thus, states are able to place requirements on a woman before she receives an abortion, as long as these requirements do not place a substantial obstacle to obtaining an abortion. The Court has also ruled that parents do not have an absolute right to prohibit pregnant minors from having an abortion. In decisions involving minors, the Court has identified a state's interests in the minor's welfare and a parent's interest in the minor's upbringing as legitimate state concerns.

Other states - judicial bypass. Currently, 17 states have parental notification laws. In two of those states, the law requires notice to a minor's parents, if possible, while 15 states allow judges to waive the notification provisions under certain conditions. This waiver allows a minor to petition a court to request that a judge dispense with the parental notification requirements. In order for the minor to receive a waiver, the judge must decide that the minor is sufficiently mature to decide to have an abortion, or that the notice requirement itself is not in her best interest. In Colorado, the proposed judicial bypass process will go into effect only if the law is challenged and a court determines that it cannot be implemented without such a process. The U.S. Supreme Court has not explicitly ruled that parental notification laws must contain such an alternative.

Medical treatment of minors. Under Colorado law, minors may obtain treatment for alcohol and drug abuse, sexually transmitted diseases and HIV testing, birth control, pregnancy or family planning services, mental health services, routine physical exams, and abortion without parental

notification or consent. These medical procedures are considered private and confidential for both adults and minors, and parents are not held financially responsible for these treatments unless they so agree. In 1996, the state health department reported 955 abortions performed on minors aged 15 to 17, and 78 abortions performed on minors under 15 years of age. Certain medical procedures may not be obtained by minors without parental notification and consent. These include organ transplants or donation of blood, permanent sterilization, execution of a living will for termination of life support, and electroconvulsive treatment.

Arguments For

1) This proposal protects the health of pregnant minors and the parents' right to be informed about matters that affect the well-being of their children. If a minor is getting an abortion, her parents should know about it in advance. Parents may have important information on family medical history that should be reviewed by a doctor prior to performing any medical procedure on their minor child. A minor may not be aware of such essential information or may be reluctant to tell her doctor. Parental notification is already required for certain kinds of medical procedures performed on minors, and abortion should not be treated differently.

2) This proposal may give minors the benefit of parental guidance when faced with pregnancy. The decision whether to have an abortion has physical, psychological, and economic implications. A minor is unlikely to consider all options of her situation with the care and thoughtfulness that some parents may provide. Some parents are better able to ensure that proper medical treatment is provided and to care for the emotional and physical needs of their daughter.

3) This proposal may encourage minors to recognize the consequences and responsibilities of their sexual behavior. Knowledge of this law may persuade minors to take necessary steps to avoid an unwanted pregnancy. As a result, it will help to decrease the pregnancy rate, birth rate, and the number of abortions among minors.

4) This proposal does not require parental consent, only parental notification of the pregnant minor's decision to obtain an abortion. The minor would still be able to make the final decision on whether or not to have an abortion. Notification is not the equivalent of consent, because it is a much less intrusive form of parental involvement and involves no refusal.

Arguments Against

1) This proposal may be detrimental to a minor's health. A minor may risk her life by having an illegal abortion, trying to self-abort, attempting suicide, or bearing a child against her will. The notification and waiting period process may cause a minor to delay an abortion, either by creating a longer decision-making process, by creating parental conflict, or by forcing her to go through a lengthy judicial process. This delay increases the health risk to the pregnant minor, since later abortions involve greater risks.

2) This proposal singles out a medical treatment that requires a heightened need for confidentiality. Abortions should be treated like other sensitive medical services that minors can obtain without parental notification or consent. Minors may already obtain medical treatment for

other sensitive services, such as sexually transmitted diseases, HIV testing, mental health care, contraception, and pregnancy-related care without parental notification or consent. Because the definition of abortion applies at any time after fertilization, this proposal could be interpreted to restrict a minor's access to common methods of contraception such as oral contraceptives ("the pill") or an interuterine device (IUD).

3) This proposal is punitive. Pregnant minors who can confide in their parents often tell their parents, but some pregnant teenagers come from dysfunctional family situations and mandated notification will not improve communications or family relationships. Those who cannot tell their parents may risk being verbally, physically, emotionally or sexually abused. The ability to bypass the parental notification requirements through the courts becomes available only if the law is first challenged and a court determines that such a bypass is required. Otherwise no bypass procedure exists.

4) This proposal interferes with the doctor and patient relationship. Doctors should not be prosecuted for providing care to their patients nor should they be required to give notification for abortions when other kinds of sensitive medical treatment for minors do not need parental notification.

Amendment 12

Parental Notification for Abortion

Title

An amendment to the Colorado Revised Statutes concerning parental notification when an unemancipated minor seeks an abortion, and, in connection therewith, specifying that no abortion shall be performed upon an unemancipated minor until at least 48 hours after written notice of the pending abortion has been delivered to the parent of the minor; identifying exceptions to the notice requirement; defining abortion as the use of any means to terminate the pregnancy of a minor with knowledge that the termination by those means will, with reasonable likelihood, cause the death of that person's unborn offspring at any time after fertilization; establishing criminal penalties for performing an abortion in violation of the requirement to provide notice to the parent and for counseling a minor to furnish a physician with false information to induce the physician to perform an abortion without providing the notice; and establishing a judicial bypass provision, which shall be effective under certain circumstances, pursuant to which a court may determine that giving the notice will not be in the best interests of the minor or that the minor is sufficiently mature to decide whether to have the abortion.

Text

Be it enacted by the people of the state of Colorado:

Title 12. Colorado Revised Statutes is amended by the addition of Article 37.5, to read:

12-37.5-101. SHORT TITLE. This article shall be known and may be cited as the "Colorado Parental Notification Act."

12-37.5-102. LEGISLATIVE DECLARATION. The people of the state of Colorado, pursuant to the powers reserved to them in Article V of the Constitution of the state of Colorado, declare that family life and the preservation of the traditional family unit are of vital importance to the continuation of an orderly society; that the rights of parents to rear and nurture their children during their formative years and to be involved in all decisions of importance affecting such minor children should be protected and encouraged, especially as such parental involvement relates to the pregnancy of an unemancipated minor, recognizing that the decision by any such minor to submit to an abortion may have adverse long-term consequences for her.

The people of the state of Colorado, being mindful of the limitations imposed upon them at the present time by the federal judiciary in the preservation of the parent-child relationship, hereby enact into law the following provisions.

12-37.5-103. DEFINITIONS. As used in this article, unless the context otherwise requires:

(1) "Minor" means a person under eighteen years of age.

(2) "Parent" means the natural or adoptive mother and father of the minor who is pregnant, if they are both living: one parent of the minor if only one is living, or if the other parent cannot be served with notice, as hereinafter provided: or the court-appointed guardian of such minor if she has one or any foster parent to whom the care and custody of such minor shall have been assigned by any agency of the state or county making such placement.

(3) "Abortion" for purposes of this article means the use of any means to terminate the pregnancy of a minor with knowledge that the termination by those means will, with reasonable likelihood, cause the death of that person's unborn offspring at any time after fertilization.

12-37.5-104. NOTIFICATION CONCERNING ABORTION. (1) No abortion shall be performed upon an unemancipated minor until at least 48 hours after written notice of the pending abortion has been delivered in the following manner:

(a) The notice shall be addressed to the parent at the dwelling house or usual place of abode of the parent. Such notice shall be delivered to the parent by:

(I) The attending physician or member of the physician's immediate staff who is over the age of eighteen, or

(II) By the sheriff of the county where the service of notice is made, or by his deputy, or

(III) By any other person over the age of eighteen years who is not related to the minor.

(b) Notice delivered by any person other than the attending physician shall be furnished to and delivered by such person in a sealed envelope marked "Personal and Confidential" and its content shall not in any manner be revealed to the person making such delivery.

(c) Whenever the parent of the minor includes two persons to be notified as provided in this article and such persons reside at the same dwelling house or place of abode, delivery to one such person shall constitute delivery to both, and the 48-hour period shall

commence when delivery is made. Should such persons not reside together and delivery of notice can be made to each of them, notice shall be delivered to both parents, unless the minor shall request that only one parent be notified, which request shall be honored and shall be noted by the physician in the minor's medical record. Whenever the parties are separately served with notice, the 48-hour period shall commence upon delivery of the first notice.

(d) The person delivering such notice, if other than the physician, shall provide to the physician a written return of service at the earliest practical time, as follows:

(I) If served by the sheriff or his deputy, by his certificate with a statement as to date, place and manner of service and the time such delivery was made.

(II) If by any other person, by his affidavit thereof with the same statement.

(III) Return of service shall be maintained by the physician.

(e) (I) In lieu of personal delivery of the notice, the same may be sent by postpaid certified mail, addressed to the parent at the usual place of abode of the parent, with return receipt requested and delivery restricted to the addressee. Delivery shall be conclusively presumed to occur and the 48-hour time period as provided in this article shall commence to run at 12:00 o'clock noon on the next day on which regular mail delivery takes place.

(II) Whenever the parent of the minor includes two persons to be notified as provided in this article and such persons reside at the same dwelling house or place of abode, notice addressed to one parent and mailed as provided in the foregoing subparagraph shall be deemed to be delivery of notice to both such persons. Should such persons not reside together and notice can be mailed to each of them, such notice shall be separately mailed to both parents unless the minor shall request that only one parent shall be notified, which request shall be honored and shall be noted by the physician in the minor's medical record.

(III) Proof of mailing and the delivery or attempted delivery shall be maintained by the physician.

12-37.5-105. NO NOTICE REQUIRED - WHEN. No notice shall be required pursuant to this article if:

(1) The person or persons who are entitled to notice certify in writing that they have been notified.

(2) The pregnant minor declares that she is a victim of child abuse or neglect by the acts or omissions of the person who would be entitled to notice, as such acts or omissions are defined in "The Child Protection Act of 1987", as set forth in title 19, article 3, of the Colorado Revised Statutes, and any amendments thereto, and the attending physician has reported such child abuse or neglect as required by the said act.

12-37.5-106. PENALTIES - DAMAGES - DEFENSES. (1) Any person who performs or attempts to perform an abortion in willful violation of this article

(a) Commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106 C.R.S.; and

(b) Shall be liable for damages proximately caused thereby.

(2) It shall be an affirmative defense to any criminal or civil proceedings if the person establishes that:

(a) The person relied upon facts or information sufficient to convince a reasonable, careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this article were bona fide and true, or
(b) The abortion was performed to prevent the imminent death of the minor child and there was insufficient time to provide the required notice.
(3) Any person who counsels, advises, encourages or conspires to induce or persuade any pregnant minor to furnish any physician with false information, whether oral or written, concerning the minor's age, marital status, or any other fact or circumstance to induce or attempt to induce the physician to perform an abortion upon such minor without providing written notice as required by this article commits a class 5 felony and shall be punished as provided in section 18-1-105, C. R.S.

12-37.5-107. JUDICIAL BYPASS - WHEN OPERATIVE. (1) If section 12-37.5-104 of this article is ever temporarily, preliminarily or permanently restrained or enjoined due to the absence of a judicial bypass provision, the said section shall be enforced as though the following provisions were incorporated as subsection (2) of section 104, provided however that if any such restraining order or injunction is stayed, dissolved or otherwise ceases to have effect, section 104 shall have full force and effect without the addition of the following subsection (2):
(2) (a) If any pregnant minor elects not to allow the notification of any parent, any judge of a court of competent jurisdiction may, upon petition filed by or on behalf of such minor enter an order dispensing with the notice requirements of this article if the judge determines that the giving of such notice will not be in the best interest of the minor, or if the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion. Any such order shall include specific factual findings and legal conclusions in support thereof and a certified copy of such order shall be provided to the attending physician of said minor and the provisions of section 12-37.5-104 (1) and section 1237.5-106 of this article shall not apply to the physician with respect to such minor.
(b) The court, in its discretion, may appoint a guardian ad litem for the minor and also an attorney if said minor is not represented by counsel.
(c) All court proceedings herein shall be confidential and shall be given preference over other pending matters, so that the court may reach a decision without undue delay.
(d) An expedited confidential appeal shall be available to any such minor for whom the court denies an order dispensing with notification as required by this article. Upon the minor's representation as contained in her petition, or otherwise, that no funds are available to her for payment of filing fees, no filing fees shall be required in either the trial court or appellate court.

12-37.5-108. LIMITATIONS. (1) This article shall in no way be construed so as to:
(a) Require any minor to submit to an abortion, or
(b) Prevent any minor from withdrawing her consent previously given to have an abortion, or
(c) Permit anything less than fully informed consent before submitting to an abortion.
(2) This article shall in no way be construed as either ratifying, granting or otherwise establishing an abortion right for minors independently of any other regulation, statute or court decision which may now or hereafter limit or abridge access to abortion by minors.

Amendment 13

UNIFORM REGULATION OF LIVESTOCK OPERATIONS

The proposed amendment to the Colorado Constitution:

- requires uniform laws for regulating all livestock operations that have similar potential impacts on air and water quality;
- defines "livestock" as any animals raised or kept for profit;
- allows the legislature to make certain exceptions to the uniform laws based on the size and type of feeding operation; and
- makes unconstitutional any law or regulation that does not treat livestock operations uniformly.

Background

The commercial livestock industry contributes roughly $2.8 billion to Colorado's economy. Livestock is defined as cattle, sheep, goats, swine, mules, horses, and all other animals raised or kept for profit. Recent growth in the industry, and especially confined feeding facilities for swine, has created concern that the state should establish regulations on animal waste disposal. If the waste from these operations is not properly disposed of, it can pollute the air and water. Currently, the state regulates livestock operators who feed their animals in confined facilities, but does not regulate air emissions and odor from these facilities. This proposal amends the Colorado Constitution to require that state laws and regulations concerning livestock operations be uniform among operations that have a similar potential impact on the environment. The measure could apply to approximately 14,000 animal operations within the state.

Arguments For

1) This proposal ensures that all livestock operations are regulated the same if the impacts to the environment are similar. Regulation of livestock operations should be based on the environmental impacts of those operations rather than the type of animal. Consistent regulations that apply to all livestock operations are a better way to reduce the negative impacts to air and water quality.

2) This proposal provides the legislature with basic guidelines to regulate both large and small livestock facilities while allowing for exceptions. The legislature is allowed to distinguish between confined animal feeding and range feeding operations. Proven scientific information can be used to develop different regulations for the different types of operations.

Arguments Against

1) This measure does not provide any environmental protection. There is a difference in the environmental impacts produced by various types of livestock operations, and therefore, the state and local governments should be permitted to regulate different types of livestock independently. This measure could conflict with another 1998 ballot proposal that would regulate large, commercial hog facilities and the disposal of manure and wastewater from these facilities. Laws that apply to large and small livestock operators alike will impose additional regulatory burdens and could put several smaller livestock operations out of business. Furthermore, the broad requirements of the proposal make it difficult to determine how it will be applied and if it could undermine existing livestock operations.

2) Regulation of livestock operations should be addressed by changing the law or government rules, which can be revised as needed, rather than amending the state constitution, which can only be changed through another vote of the people. This proposal is unnecessary because laws regarding equal protection already ensure that those operations with similar impacts are treated similarly. Furthermore, a constitutional amendment could conflict with any future federal rules regarding confined animal feeding operations. It would be inefficient to have both the state and federal government enforcing laws regarding the same issue.

Amendment 13

Uniform Regulation of Livestock Operations

Title

An amendment to the Colorado Constitution requiring the uniform application of laws to livestock operations, and, in connection therewith, mandating that laws and regulations concerning livestock operations be uniform and based upon the similarity in the potential impact on the environment of the livestock operation; making unconstitutional any state law or regulation that does not treat livestock operations uniformly based upon the similarity in the potential impact on the environment of the livestock operation; allowing the general assembly to make a distinction between livestock feeding on the range and livestock feeding in a concentrated animal feeding operation; permitting the general assembly to make a distinction between concentrated animal feeding operations that are smaller than one thousand animal units and those that are larger than one thousand animal units; specifying that one animal unit be considered to be a cow and all other livestock to be fractions of a cow as determined by the general assembly; and defining livestock as cattle, sheep, goats, swine, mules, poultry, horses, and all other animals raised or kept for profit.

Text

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

Article XVIII of the Colorado Constitution, is amended BY THE ADDITION OF A NEW SECTION to read:

Section 14. Environmental protection - protection of human health and the environment - uniform livestock operations - declaration. (1) We the People of Colorado do hereby find, determine, and declare that animals raised in this state for commercial purposes are vital to the state's economy and our quality of life. However, because of the increased demand for animals used for commercial purposes, the water quality of Colorado's groundwater, rivers, streams, and lakes and the air we breath may be impacted. Therefore, it is the intent of the People of Colorado that this section be interpreted broadly and liberally for furthering the goals of protecting the environment and human health and for the strict and uniform application of laws concerning livestock operations.

(2) Laws and regulations concerning all livestock operations shall be uniform and based upon the similarity in the potential impact on the environment of all such livestock operations. Any state law or regulation which does not treat livestock operations which bear similar potential impacts on the environment in a uniform manner shall be unconstitutional.

(3) For purposes of this section "livestock" means cattle, sheep, goats, swine, mules, poultry, horses, and all other animals raised or kept for profit.

(4) The general assembly may make a distinction between livestock feeding on the range and livestock feeding in a concentrated animal feeding operation. The general assembly may also make a distinction between concentrated animal feeding operations which are smaller than one thousand animal units and those which are larger. One animal unit shall be considered to be a cow and all other livestock shall be considered fractions thereof as determined by the general assembly.

Amendment 14

REGULATION OF COMMERCIAL HOG FACILITIES

The proposed amendment to the Colorado Revised Statutes:

- further regulates the construction and operation of large, commercial hog facilities and the disposal of manure and wastewater from these facilities to minimize odor and water pollution;
- further restricts how manure and wastewater are applied to crops or land;
- requires commercial hog facilities to obtain state permits for discharge of wastewater and
- provides funding for enforcement of permit conditions;
- requires the state to regulate odor from hog facilities;
- prevents new waste application sites and waste storage tanks from being less than one mile from
- neighboring towns, homes, and schools, unless consent is given by nearby property owners and
- local governments; and

- allows local governments to impose regulations for hog facilities that are tougher than those contained in this proposal.

Background

There has been a steady increase in hog production in Colorado since 1990 due, in part, to an influx of large, commercial hog facilities. Although Colorado does not keep records on the number of hog facilities in the state, a majority are located in eastern Colorado. Hog farms with a minimum of 800,000 pounds of swine (approximately 2,000 to 5,000 hogs, depending on the type of facility) would be affected by this proposal. This proposal deals primarily with potential water contamination and odor issues resulting from manure and wastewater produced by large numbers of hogs.

Manure and wastewater produced by hogs are flushed from the area where the hogs are housed into pits called "lagoons" or storage tanks that are required to limit seepage. Manure and wastewater may then be recycled and used by farmers to fertilize crops. However, if too much waste is applied to land, it may seep through the soil and contaminate the ground water. Contaminated water can be dangerous to humans and animals under certain circumstances. Odor from hog waste is emitted from lagoons and sometimes when waste is being sprayed onto land as fertilizer.

Regulation of large hog farms. The federal government has general water quality regulations, but no specific requirements for constructing large hog facilities or for managing the animal waste produced at these facilities. Few federal regulations protecting ground water exist and those that do are not applicable to the ground water in eastern Colorado. The state has regulations for ground water quality, the construction of waste storage lagoons at large hog facilities and the application of waste from these facilities to land in Colorado. However, there is no permit required for these facilities, so the state's ability to enforce water quality regulations is limited. In Colorado, some local governments have adopted zoning regulations pertaining to all livestock feeding operations. There are no federal or state laws regarding odor from any livestock facility. The primary differences between existing state regulations and this proposal are that large hog farms would have to pay a fee to support a state program to ensure compliance with clean water laws; conduct independent water quality monitoring and file quarterly reports with the state and county; and install covers on most existing waste storage lagoons to minimize odor.

The United States Congress is considering legislation that sets standards for using animal waste to fertilize land. In addition, the United States Environmental Protection Agency is developing regulations to minimize water pollution from large confined animal feeding facilities. If the federal regulations take effect, Colorado's existing regulations may need to be adjusted.

Other states' regulation of large hog farms. The laws regulating large hog feeding facilities vary widely among states. Wyoming, Oklahoma, and other states have adopted laws and regulations specific to hog facilities. In South Dakota, counties may adopt zoning regulations, including the requirement that all new hog facilities be located at least four miles from homes or cities. North Carolina and Mississippi put a temporary hold on the construction of most new hog

facilities until applicable statutes or regulations can be implemented. Some states require hog farms to control odor using various methods. No state requires specifically that hog farms cover lagoons.

Arguments For

1) Manure and wastewater produced by hog facilities have the potential to contaminate drinking water. This proposal would minimize that potential by requiring the affected hog facilities to monitor water quality and pay a permit fee to help defray the costs of enforcing water quality laws. In addition, these facilities would have to provide financial assurance such as a bond to ensure the clean-up of any pollution caused during the course of their operations. The costs of compliance with the measure are commensurate with the costs of regulations in other states and part of the normal costs of operating a responsible business.

2) The odor from large hog facilities can be unbearable for nearby residents. Odor problems may arise from waste storage lagoons and the spraying of waste onto crops. To minimize odor, this proposal requires that hog facilities cover storage lagoons and that new hog facilities be at least one mile from a house, school, or city, unless they get consent from the affected parties.

3) Colorado's current resources and regulations regarding hog facilities are inadequate to protect public health and environmental quality. The state must hold hog facilities accountable for the odor and potential ground water contamination they may cause. This proposal gives Colorado the regulatory structure and funding to protect its water resources and the quality of life for its residents.

Arguments Against

1) This proposal may drive some existing hog producers out of business because of the expense of complying with its requirements, such as paying permit fees and installing covers for lagoons. These facilities promote the economic prosperity of the state, particularly in rural areas where jobs with benefits are scarce and where schools and other local government services are funded from a limited tax base. Finally, these hog farms provide an important source of income to other industries such as corn and grain growers who produce food for hogs.

2) This proposal is unnecessary because hog facilities are already required to comply with federal and state water quality regulations. For example, hog facilities must line their lagoons to minimize seepage. By requiring the use of specific odor control measures such as covering lagoons, the proposal limits the use of other methods and new technologies that may be more effective.

3) Hog farms are targeted unfairly by this proposal. No other livestock producer is made to comply with such strict standards. For example, only the affected hog farms would have to contain odors by covering some lagoons and provide quarterly water quality reports to the state and county. This requirement gives an unfair advantage to other livestock industries that do not have to comply with such expensive requirements.

Amendment 14
Regulation of Commercial Hog Facilities

Title

An amendment to the Colorado Revised Statutes concerning regulation of housed commercial swine feeding operations which can house 800,000 or more pounds of swine or which are deemed commercial under local law, and, in connection therewith, conditioning operation, construction, or expansion of a housed commercial swine feeding operation on receipt of an individual discharge permit from the department of public health and environment; directing the water quality control commission to adopt rules regarding the construction, operation, and management of and waste disposal by such operations; providing that such rules shall require that land application of waste from such operations shall not exceed the nutritional requirements of the plants on that land and shall minimize runoff and seepage of such waste; providing that such rules shall require that such operations not be permitted to degrade the physical attributes or value of state trust lands, make immediate reports of spills or contamination to state and county health departments, and monitor land-applied waste from such operations and report thereon to the state health department; authorizing fees on such operations to offset direct and indirect costs of the program; authorizing local governments to impose more restrictive requirements; requiring that such operations employ technology to minimize odor emissions; requiring operations to cover waste impoundments that do not use air or oxygen in their waste treatment method, and to recover, incinerate, or manage odorous gases therefrom; establishing minimum distances between new land waste application sites or impoundments and occupied dwellings, schools, and municipal boundaries; and providing for enforcement of these provisions by the state or any person who may be adversely affected.

Text

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

SECTION 1. Part 5 of article 8 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25-8-501.1. Permit required for point source water pollution control - definitions - housed commercial swine feeding operations - legislative declaration. (1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND, DETERMINE, AND DECLARE THAT THE ADVENT OF LARGE HOUSED COMMERCIAL SWINE FEEDING OPERATIONS IN COLORADO HAS PRESENTED NEW CHALLENGES TO ENSURING THAT THE QUALITY OF THE STATE'S ENVIRONMENT IS PRESERVED AND PROTECTED. AS DISTINGUISHED FROM MORE TRADITIONAL OPERATIONS THAT HISTORICALLY HAVE CHARACTERIZED COLORADO'S LIVESTOCK INDUSTRY, LARGE HOUSED SWINE FEEDING

OPERATIONS USE SIGNIFICANT AMOUNTS OF PROCESS WATER FOR FLUSHING AND DISPOSING OF SWINE WASTE, COMMONLY STORE THIS WASTE IN LARGE IMPOUNDMENTS, AND DISPOSE OF IT THROUGH LAND APPLICATION. THE WASTE STORAGE, HANDLING AND DISPOSAL BY SUCH OPERATIONS ARE PARTICULARLY ODOROUS AND OFFENSIVE. THE PEOPLE FURTHER FIND THAT IT IS NECESSARY TO ENSURE THAT THE STORAGE AND LAND APPLICATION OF WASTE BY HOUSED COMMERCIAL SWINE FEEDING OPERATIONS IS DONE IN A RESPONSIBLE MANNER, SO AS NOT TO ADVERSELY IMPACT COLORADO'S VALUABLE AIR, LAND AND WATER RESOURCES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AGRONOMIC RATE OF APPLICATION" MEANS THE RATE OF APPLICATION OF NUTRIENTS TO PLANTS THAT IS NECESSARY TO SATISFY THE PLANTS' NUTRITIONAL REQUIREMENTS WHILE STRICTLY MINIMIZING THE AMOUNT OF NUTRIENTS THAT RUN OFF TO SURFACE WATERS OR WHICH PASS BELOW THE ROOT ZONE OF THE PLANTS, AS SPECIFIED BY THE MOST CURRENT PUBLISHED FERTILIZER SUGGESTIONS OF THE COLORADO STATE UNIVERSITY COOPERATIVE EXTENSION SERVICE FOR THE PLANTS, OR MOST CLOSELY RELATED PLANT TYPE, TO WHICH THE NUTRIENTS ARE APPLIED.

(b) "HOUSED COMMERCIAL SWINE FEEDING OPERATION" MEANS A HOUSED SWINE FEEDING OPERATION THAT IS CAPABLE OF HOUSING EIGHT HUNDRED THOUSAND POUNDS OR MORE OF LIVE ANIMAL WEIGHT OF SWINE AT ANY ONE TIME OR IS DEEMED A COMMERCIAL OPERATION UNDER LOCAL ZONING OR LAND USE REGULATIONS. TWO OR MORE HOUSED SWINE CONFINED FEEDING OPERATIONS SHALL BE CONSIDERED TO COMPRISE A SINGLE HOUSED COMMERCIAL SWINE FEEDING OPERATION IF THEY ARE UNDER COMMON OR AFFILIATED OWNERSHIP OR MANAGEMENT, AND ARE ADJACENT TO OR UTILIZE A COMMON AREA OR SYSTEM FOR MANURE DISPOSAL, ARE INTEGRATED IN ANY WAY, ARE LOCATED OR DISCHARGE WITHIN THE SAME WATERSHED OR INTO WATERSHEDS THAT ARE HYDROLOGICALLY CONNECTED, OR ARE LOCATED ON OR DISCHARGE ONTO LAND OVERLYING THE SAME GROUNDWATER AQUIFER.

(c) "HOUSED SWINE FEEDING OPERATION" MEANS THE PRACTICE OF RAISING SWINE IN BUILDINGS, OR OTHER ENCLOSED STRUCTURES WHEREIN SWINE OF ANY SIZE ARE FED FOR FORTY-FIVE DAYS OR LONGER IN ANY TWELVE-MONTH PERIOD, AND CROP OR FORAGE GROWTH OR PRODUCTION IS NOT SUSTAINED IN THE AREA OF CONFINEMENT.

(d) "PROCESS WASTEWATER" MEANS ANY PROCESS-GENERATED WASTEWATER USED IN A HOUSED COMMERCIAL SWINE FEEDING OPERATION, INCLUDING WATER USED FOR FEEDING, FLUSHING, OR WASHING, AND ANY WATER OR PRECIPITATION THAT COMES INTO CONTACT WITH ANY MANURE, URINE, OR ANY PRODUCT USED IN OR RESULTING FROM THE PRODUCTION OF SWINE.

(3) NO PERSON SHALL OPERATE, CONSTRUCT, OR EXPAND A HOUSED COMMERCIAL SWINE FEEDING OPERATION WITHOUT FIRST HAVING OBTAINED AN INDIVIDUAL DISCHARGE PERMIT FROM THE DIVISION.

(4) ON OR BEFORE MARCH 31, 1999, THE COMMISSION SHALL PROMULGATE RULES NECESSARY TO ENSURE THE ISSUANCE AND EFFECTIVE ADMINISTRATION AND ENFORCEMENT OF PERMITS UNDER THIS SECTION BY JULY 1, 1999. SUCH RULES SHALL INCORPORATE THE PRECEDING SUBSECTION (3) AND SHALL, AT A MINIMUM, REQUIRE:

(a) THAT THE OWNER OR OPERATOR OF A HOUSED COMMERCIAL SWINE FEEDING OPERATION MUST OBTAIN DIVISION APPROVAL OF CONSTRUCTION, OPERATIONS AND SWINE WASTE MANAGEMENT PLANS THAT, FOR ANY LAND WASTE APPLICATION, INCLUDES A DETAILED AGRONOMIC ANALYSIS. SAID PLANS SHALL EMPLOY THE BEST AVAILABLE WASTE MANAGEMENT PRACTICES, PROVIDE FOR REMEDIATION OF RESIDUAL SOIL AND GROUNDWATER CONTAMINATION, AND ENSURE THAT DISPOSAL OF SOLID OR LIQUID WASTE TO THE SOIL NOT EXCEED AGRONOMIC RATES OF APPLICATION;

(b) THAT APPROPRIATE SETBACKS FOR MAINTAINING WATER QUALITY BE ESTABLISHED FOR LAND WASTE APPLICATION AREAS AND WASTE IMPOUNDMENTS;

(c) THAT WASTE IMPOUNDMENTS OR MANURE STOCK PILES SHALL NOT BE LOCATED WITHIN A ONE-HUNDRED-YEAR FLOODPLAIN UNLESS PROPER FLOOD PROOFING MEASURES ARE DESIGNED AND CONSTRUCTED;

(d) THAT THE OWNER OR OPERATOR OF THE HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL PROVIDE FINANCIAL ASSURANCES FOR THE FINAL CLOSURE OF THE HOUSED COMMERCIAL SWINE FEEDING OPERATION, THE CONDUCT OF ANY NECESSARY POSTCLOSURE ACTIVITIES, THE UNDERTAKING OF ANY CORRECTIVE ACTION MADE NECESSARY BY MIGRATION OF CONTAMINANTS FROM THE HOUSED COMMERCIAL SWINE FEEDING OPERATION INTO THE SOIL AND GROUNDWATER, OR CLEANUP OF ANY SPILL OR BREACH;

(e) THAT THE OWNER OR OPERATOR OF A HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL ENSURE THAT NO SOLID OR LIQUID WASTE GENERATED BY IT SHALL BE APPLIED TO LAND BY ANY PERSON AT A RATE THAT EXCEEDS, IN AMOUNT OR DURATION, THE AGRONOMIC RATE OF APPLICATION; AND

(f) THAT, BECAUSE WASTE STORAGE AND DISPOSAL BY HOUSED COMMERCIAL SWINE FEEDING OPERATIONS POSE PARTICULAR JEOPARDY FOR STATE TRUST LANDS, IN LIGHT OF THE MANDATE IN THE COLORADO CONSTITUTION, ARTICLE IX, SECTION 10, THAT STATE LAND BOARD TRUST LANDS BE HELD IN TRUST AND BE PROTECTED AND ENHANCED TO PROMOTE LONG-TERM PRODUCTIVITY AND SOUND STEWARDSHIP, THE CONSTRUCTION, OPERATIONS AND WASTE MANAGEMENT PLANS APPROVED FOR HOUSED COMMERCIAL SWINE FEEDING OPERATIONS ON SUCH LANDS, SHALL NOT PERMIT THE DEGRADATION OF THE PHYSICAL ATTRIBUTES OR VALUE OF ANY STATE TRUST LANDS.

(5) ANY SPILL OR CONTAMINATION BY A HOUSED COMMERCIAL SWINE FEEDING OPERATION SHALL BE REPORTED IMMEDIATELY TO THE DIVISION AND THE COUNTY HEALTH DEPARTMENT FOR THE COUNTY IN WHICH THE HOUSED COMMERCIAL SWINE FEEDING OPERATION IS CONDUCTED AND, WITHIN TWENTY-FOUR HOURS AFTER THE SPILL OR CONTAMINATION, A WRITTEN REPORT SHALL BE FILED WITH THE DIVISION AND THE COUNTY HEALTH DEPARTMENT FOR THE COUNTY IN WHICH THE HOUSED COMMERCIAL SWINE FEEDING OPERATION IS CONDUCTED.

(6) HOUSED COMMERCIAL SWINE FEEDING OPERATIONS SHALL SUBMIT TO THE DIVISION AND COUNTY HEALTH DEPARTMENT QUARTERLY, COMPREHENSIVE MONITORING REPORTS AND AGRONOMIC ANALYSES THAT DEMONSTRATE THAT THE OPERATION HAS LAND-APPLIED SOLID AND LIQUID WASTE AT NO GREATER THAN AGRONOMIC RATES. THE DIVISION SHALL REQUIRE THE SAMPLING AND MONITORING OF CHEMICAL AND APPROPRIATE BIOLOGICAL PARAMETERS TO PROTECT THE QUALITY AND EXISTING AND FUTURE BENEFICIAL USES OF GROUNDWATER INCLUDING, AT A MINIMUM, NITROGEN, PHOSPHORUS, HEAVY METALS, AND SALTS. AT A MINIMUM, THE MONITORING PROGRAM SHALL INCLUDE QUARTERLY SAMPLES, ANALYSIS AND REPORTING OF THE GROUNDWATER, SOILS WITHIN THE ROOT ZONE AND SOILS BENEATH THE ROOT ZONE WITHIN EACH WASTE APPLICATION SITE, AND SHALL ALSO INCLUDE MONITORING TO ENSURE THAT NO EXCESSIVE SEEPAGE OCCURS FROM ANY WASTE IMPOUNDMENTS.

(7) THE DIVISION SHALL ASSESS A HOUSED COMMERCIAL SWINE FEEDING OPERATION AN ANNUAL PERMIT FEE, NOT TO EXCEED 20 CENTS PER ANIMAL, BASED ON THE OPERATIONS WORKING CAPACITY TO OFFSET DIRECT AND INDIRECT COSTS OF THE PROGRAM. AS USED IN THIS PARAGRAPH (A), "WORKING CAPACITY" MEANS THE NUMBER OF SWINE THAT THE HOUSED COMMERCIAL SWINE FEEDING OPERATION IS CAPABLE OF HOUSING AT ONE TIME.

(8) THE DIVISION SHALL ENFORCE THE PROVISIONS OF THIS SECTION AND SHALL TAKE IMMEDIATE ENFORCEMENT ACTION AGAINST ANY HOUSED COMMERCIAL SWINE FEEDING OPERATION THAT HAS EXCEEDED THE AGRONOMIC RATE LIMIT OF THIS SECTION. IN ADDITION, ANY PERSON WHO MAY BE ADVERSELY AFFECTED BY A HOUSED COMMERCIAL SWINE FEEDING OPERATION MAY ENFORCE THESE PROVISIONS DIRECTLY AGAINST THE OPERATION BY FILING A CIVIL ACTION IN THE DISTRICT COURT IN THE COUNTY IN WHICH THE PERSON RESIDES.

(9) THESE PROVISIONS SHALL NOT PRECLUDE ANY LOCAL GOVERNMENT FROM IMPOSING REQUIREMENTS MORE RESTRICTIVE THAN THOSE CONTAINED IN THIS SECTION.

SECTION 2. 25-8-504, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25-8-504. Agricultural wastes. (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE REQUIREMENT OF PERMITS FOR HOUSED

COMMERCIAL SWINE FEEDING OPERATIONS PURSUANT TO SECTION 25-8-501.1.

SECTION 3. Part 1 of article 7 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25-7-138. Housed commercial swine feeding operations - waste impoundments - odor emissions. (1) ALL NEW OR EXPANDED ANAEROBIC PROCESS WASTEWATER VESSELS AND IMPOUNDMENTS, INCLUDING, BUT NOT LIMITED TO, TREATMENT OR STORAGE LAGOONS, CONSTRUCTED OR UNDER CONSTRUCTION FOR USE IN CONNECTION WITH A HOUSED COMMERCIAL SWINE FEEDING OPERATION AS DEFINED IN SECTION 28-8-501.1(2)(b) SHALL BE COVERED SO AS TO CAPTURE, RECOVER, INCINERATE, OR OTHERWISE MANAGE ODOROUS GASES TO MINIMIZE, TO THE GREATEST EXTENT PRACTICABLE, THE EMISSION OF SUCH GASES INTO THE ATMOSPHERE. AS USED IN SECTION 25-7-138, "ANAEROBIC" MEANS A WASTE TREATMENT METHOD THAT, IN WHOLE OR IN PART, DOES NOT UTILIZE AIR OR OXYGEN. ALL NEW AEROBIC IMPOUNDMENTS SHALL EMPLOY TECHNOLOGIES TO ENSURE MAINTENANCE OF AEROBIC CONDITIONS OR OTHERWISE TO MINIMIZE THE EMISSION OF ODOROUS GASES TO THE GREATEST EXTENT PRACTICABLE. AS USED IN SECTION 25-7-138, "AEROBIC" MEANS A WASTE TREATMENT METHOD THAT UTILIZES AIR OR OXYGEN.

(2) ON OR BEFORE JULY 1, 1999, ALL EXISTING ANAEROBIC PROCESS WASTEWATER VESSELS AND IMPOUNDMENTS, INCLUDING, BUT NOT LIMITED TO, AERATION TANKS AND TREATMENT OR STORAGE LAGOONS, OWNED OR OPERATED FOR USE IN CONNECTION WITH A HOUSED COMMERCIAL SWINE FEEDING OPERATION AS DEFINED IN SECTION 25-8-501.1(2)(b) SHALL BE COVERED SO AS TO CAPTURE, RECOVER, INCINERATE, OR OTHERWISE MANAGE ODOROUS GASES TO MINIMIZE, TO THE GREATEST EXTENT PRACTICABLE, THE EMISSION OF SUCH GASES INTO THE ATMOSPHERE. BY JULY 1, 1999, ALL EXISTING AEROBIC IMPOUNDMENTS SHALL EMPLOY TECHNOLOGIES TO ENSURE MAINTENANCE OF AEROBIC CONDITIONS OR OTHERWISE TO MINIMIZE THE EMISSION OF ODOROUS GASES TO THE GREATEST EXTENT PRACTICABLE.

(3) THE COMMISSION SHALL BY RULES PROMULGATED ON OR BEFORE MARCH 1, 1999, REQUIRE THAT ALL HOUSED COMMERCIAL SWINE FEEDING OPERATIONS, BY JULY 1, 1999, EMPLOY TECHNOLOGY TO MINIMIZE TO THE GREATEST EXTENT PRACTICABLE OFF-SITE ODOR EMISSIONS FROM ALL ASPECTS OF ITS OPERATIONS, INCLUDING ODOR FROM ITS SWINE CONFINEMENT STRUCTURES, MANURE AND COMPOSTING STORAGE SITES, AND ODOR AND AEROSOL DRIFT FROM LAND APPLICATION EQUIPMENT AND SITES.

(4) NO NEW LAND WASTE APPLICATION SITE OR NEW WASTE IMPOUNDMENT USED IN CONNECTION WITH A HOUSED COMMERCIAL SWINE FEEDING OPERATION, SHALL BE LOCATED LESS THAN:

(a) ONE MILE FROM AN OCCUPIED DWELLING WITHOUT THE WRITTEN CONSENT OF THE OWNER OF THE DWELLING;
(b) ONE MILE FROM A PUBLIC OR PRIVATE SCHOOL WITHOUT THE WRITTEN CONSENT OF THE SCHOOL'S BOARD OF TRUSTEES OR BOARD OF DIRECTORS; AND
(c) ONE MILE FROM THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY WITHOUT THE CONSENT OF THE GOVERNING BODY OF THE MUNICIPALITY BY RESOLUTION.
AS USED IN THIS SUBSECTION (4), A NEW LAND WASTE APPLICATION SITE AND NEW WASTE IMPOUNDMENT ARE THOSE THAT WERE NOT IN USE AS OF JUNE 1, 1998.
(5) THE DIVISION SHALL ENFORCE THE PROVISIONS OF THIS SECTION. IN ADDITION, ANY PERSON WHO MAY BE ADVERSELY AFFECTED BY A HOUSED COMMERCIAL SWINE FEEDING OPERATION MAY ENFORCE THESE PROVISIONS DIRECTLY AGAINST THE OPERATION BY FILING A CIVIL ACTION IN THE DISTRICT COURT IN THE COUNTY IN WHICH THE PERSON RESIDES.
SECTION 4. 25-7-109(2)(d) and (8), Colorado Revised Statutes, are amended to read:
25-7-109. Commission to promulgate emission control regulations. (2) Such emission control regulations may include, but shall not be limited to, regulations pertaining to:
(d) Odors, except for livestock feeding operations THAT ARE NOT HOUSED COMMERCIAL SWINE FEEDING OPERATIONS AS DEFINED IN SECTION 25-8-501.1(2)(b);
(8) Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural production such as farming, seasonal crop drying, animal FEEDING OPERATIONS THAT ARE NOT HOUSED COMMERCIAL SWINE FEEDING OPERATIONS AS DEFINED IN SECTION 25-8-501.1(2)(b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602 (j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program), or are participating in the early reduction program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.

Amendment 15

WATER METERS IN THE SAN LUIS VALLEY

The proposed amendment to the Colorado Revised Statutes:

- requires the installation of a water meter on certain wells used for irrigation, mining, industrial, or municipal purposes in the San Luis Valley by April 1, 1999;

- requires the water meters to be installed at the well owner's expense and certified and read by a state employee; and
- prohibits the operation of any affected well that does not have a functioning water meter.

Background

Affected wells in the San Luis Valley. This proposal affects wells that pump water from a specific aquifer in the San Luis Valley of south central Colorado. An aquifer is a body of underground water that, in this case, is connected to the Rio Grande River and its tributaries in the San Luis Valley. Water meters would be required to be installed on wells that use water from this aquifer for irrigation, municipal, commercial, industrial, and mining purposes. This proposal does not apply to wells used for residential or fire fighting purposes, or small commercial and stock wells. Approximately 3,500 wells in the San Luis Valley would be affected by this proposal, and approximately 90 percent of these wells are used for irrigation. Many farmers own between 13 to 18 irrigation wells.

Regulation of water in the San Luis Valley. Colorado law regulates the use of its water based on a priority system. Water users with the most seniority receive their full share of water before water users with less seniority (a junior water right) receive any water. Pumping by some wells in the San Luis Valley can prevent water users on the river system from receiving their full share of water. Water rights on the river system are senior water rights. Most well users in the San Luis Valley have rights that are junior to water users on the river system.

Purpose of a water meter. Water meters on irrigation wells serve a different purpose from water meters on urban water taps. Meters on irrigation wells indicate how much water is pumped in order to protect water rights. Meters on urban taps are used to assess a fee on the water used by the customer.

The state water engineer and regulation of wells. A water user in Colorado must receive a permit from the state water engineer before constructing a well. The state water engineer also enforces the allocation of water to senior and junior water rights and collects and studies data on the state's water supplies. The state water engineer has stopped issuing new well permits for water in this aquifer because there may not be enough water in the aquifer to satisfy well permits that have already been granted. New wells are permitted only to replace existing wells or if a new well does not change the water available to other users.

Arguments For

1) This proposal aids in the administration to protect water rights. Water meters clearly indicate if a well pumps more water than is allowed. Wells that pump more water than allowed can prevent senior water users from obtaining their full share of water or can consume water that could be used by other water users.

2) The readings from water meters will enable the state water engineer to better administer water rights in the San Luis Valley. The state water engineer will use the readings from water meters to understand the impact of pumping from this aquifer on users of the Rio Grande River and its

tributaries. During water shortages, this information will enable the state water engineer to identify wells that prevent senior water rights from receiving their full share and to order those wells to cease pumping.

Arguments Against

1) This proposal is unnecessary because current law and agricultural practices protect water rights in the San Luis Valley. The state water engineer has the authority to monitor wells, irrigation systems, and irrigated lands to ensure that existing wells do not pump more than allowed. He may also shut down or restrict wells that are pumping more water than allowed or do not have a permit. Individuals may bring suit against well owners for excessive pumping and the court may award money to compensate for damages. In addition, more efficient irrigation practices, better management, and cooperation among water users have made water conflicts less likely. Due to these changes, water remains in the aquifer and stream systems for other water users.

2) This proposal imposes a significant financial burden on well owners through meter purchase and reading costs and the potential for crop loss. Each water meter costs between $700 and $1,200 to install. High levels of sand in the San Luis Valley's aquifer damage meters and require frequent meter replacement. Watering schedules are critical and if a water meter fails, crops may die before a replacement can be installed and inspected. This proposal could be bad for the economic well-being of agriculture and the San Luis Valley as a whole. The San Luis Valley is already one of the most economically depressed areas of the state.

3) This proposal is unfair because it imposes unnecessary costs and unreasonable deadlines, and does not apply to all wells that impact rivers. Well owners are not allowed to use other less costly, court-approved methods for measuring well production. Also, this proposal requires well owners to install water meters within five months. This leaves little time for inspection and certification of the approximately 3,500 wells in the area. Because farmers are not allowed to operate a well until the meter is inspected, they may miss the San Luis Valley's short growing season. Furthermore, this proposal does not apply to the 750 large wells in the San Luis Valley's other major aquifer that can also impact other water users and prevent Colorado from delivering enough water to downstream states.

Amendment 15

Water Meters in the San Luis Valley

Title

An amendment to the Colorado Revised Statutes concerning a requirement for the installation of water flow meters on any nonexempt well in the unconfined aquifer in Water Division 3 (which is located in whole or in part in Conejos, Alamosa, Rio Grande, Mineral, Saguache, and Costilla counties) on or before April 1, 1999, and, in connection therewith, requiring that the water flow meters be certified by the state engineer;

requiring the state engineer to read the water flow meters monthly at the well owner's expense; and directing the state engineer to prevent the operation of any well that does not have a functioning water flow meter.

Text

Be It Enacted by the People of the State of Colorado:

37-92-502 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-92-502. Orders as to waste, diversions, distribution of water. (5) (c) ON OR BEFORE APRIL 1, 1999, ANY WELL NOT EXEMPT PURSUANT TO SECTIONS 37-92-601 AND 37-92-602 IN THE UNCONFINED AQUIFER IN WATER DIVISION 3 SHALL BE EQUIPPED WITH A FUNCTIONAL WATER FLOW METER, CERTIFIED BY THE STATE ENGINEER. SUCH WATER FLOW METERS SHALL BE READ MONTHLY BY THE STATE ENGINEER AT THE WELL OWNER'S EXPENSE. THE STATE ENGINEER SHALL PREVENT THE OPERATION OF ANY WELL THAT IS FOUND NOT TO HAVE A FUNCTIONING WATER FLOW METER UNTIL SUCH TIME THAT A FUNCTIONING WATER FLOW METER IS INSTALLED AND CERTIFIED BY THE STATE ENGINEER AT THE WELL OWNER'S EXPENSE. THIS PARAGRAPH (c) WAS ADOPTED BY A VOTE OF THE PEOPLE AT THE GENERAL ELECTION IN 1998.

Amendment 16

PAYMENTS FOR WATER BY THE RIO GRANDE WATER CONSERVATION DISTRICT

The proposed amendment to the Colorado Constitution:

- requires the Rio Grande Water Conservation District to pay $40 per acre-foot for water pumped from beneath state trust land in the San Luis Valley;
- requires that the $40 be divided as follows: $30 to the state's Public School Fund and $10 to school districts in the San Luis Valley;
- requires payment for water that has been pumped from beneath state trust lands since 1987;
- requires only irrigators that use water from the Rio Grande River to pay for the water pumped from beneath state trust lands;
- requires that delinquent payments be assessed an 18 percent annual interest rate; and
- prohibits the Colorado General Assembly from considering these payments when determining the state's aid to public schools in the San Luis Valley.

Background

State trust lands and money for public schools. State trust lands are public lands that primarily generate revenue for public schools. This proposal requires that $30 of the payment for water pumped from beneath state trust lands in the San Luis Valley of south central Colorado be deposited in the Public School Fund, a state fund that earns interest for distribution to public schools statewide. Under current law, the state trust cannot collect money for use of the water beneath its lands in the San Luis Valley because the trust does not own the water. The trust does not own the water because it never developed the water for irrigation, mining, municipal, or other purposes as required by law.

Rio Grande Water Conservation District and water in the San Luis Valley. This proposal requires the Rio Grande Water Conservation District to pay for water that is pumped from beneath state trust lands in the San Luis Valley. The district is a local government entity that oversees the use of the Rio Grande River by funding water conservation efforts and improvements of drainage and irrigation projects, protecting water rights in court, and conducting water resources studies. The district obtained a right to use water from beneath state trust lands when it developed the water with the assistance of the federal government. The water beneath state trust lands is being pumped by the federal government to help Colorado meet its legal obligations to deliver water to New Mexico and Texas, and to supply water to two national wildlife areas. The water pumped by the federal government also benefits some irrigators in the San Luis Valley.

Argument For

1) The state's public schools would benefit from the proposal. Interest from the money paid by the district is projected to generate approximately $400,000 in the first year for public schools statewide. The amount generated would increase by approximately $60,000 annually. These moneys may be used for school operating expenses, such as teacher salaries, text books, and utilities. School districts in the San Luis Valley are anticipated to receive $297,000 annually with a one-time payment of approximately $1.4 million.

Arguments Against

1) The proposal imposes a significant financial burden on water users in the San Luis Valley. The irrigators affected by this proposal will be required to pay approximately $1.2 million annually, with a one-time payment of $5.6 million for water pumped prior to 1998. Irrigators who are unable to pay these costs may be forced out of business. The payment required by the proposal is four times the market rate for irrigation water in the San Luis Valley. Water from state trust lands may become too expensive to use, and the project may stop its pumping. Without these waters, the state may be forced to shut off some irrigators to ensure that enough water remains in the Rio Grande River to meet Colorado's obligation to downstream states. This proposal is bad for the economic well-being of agriculture and the San Luis Valley as a whole. The San Luis Valley is already one of the most economically depressed areas of the state.

2) The proposal is unfair for several reasons. No other water users in Colorado are required to pay to use water that they own. In addition, irrigators must pay the Public School Fund to use water that is not owned by the trust. All other assets that the trust collects revenue from are

owned by the trust. This proposal also requires that only 60 percent of the irrigators who benefit from the water pay for all of the water pumped from beneath state trust lands. The remaining 40 percent of irrigators who benefit from these waters would pay nothing. Also, this measure disproportionately benefits school districts in the San Luis Valley. This is contrary to current state policy that distributes most revenue from state trust lands equally among all school districts in the state.

Amendment 16
Payments for Water by the
Rio Grande Water Conservation District

Title

An amendment to the Colorado Constitution requiring the Rio Grande Water Conservation District, which is located in whole or in part in Conejos, Alamosa, Rio Grande, Mineral, and Saguache counties, to pay fees for all water that has been, is being, or will in the future be pumped from aquifers underlying state trust lands pursuant to Water Decree W-3038 in Water Division 3 (including all or part of Conejos, Alamosa, Rio Grande, Mineral, Saguache, and Costilla counties) for purposes of the "Closed Basin Project", and, in connection therewith, setting such fees at thirty dollars per acre-foot, payable to the state's public school fund, and ten dollars per acre-foot, payable to the school districts in Water Division 3, based upon the State Department of Education's student count for such districts; directing the State Auditor to determine the amounts of such fees payable each year and requiring payment of such amounts within thirty days after such determination, subject to interest at eighteen percent on late payments; requiring the Rio Grande Water Conservation District to assess those irrigators with water rights in the Rio Grande River, in proportion to their water right, an amount equal to the amount of water used and attributable to the water pumped from beneath such state trust lands; and providing that monies paid to the school districts in Water Division 3 shall be in addition to monies made available for public school children and shall not be considered by the general assembly when determining such amount.

Text

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

Amend article XVI of the Colorado Constitution BY THE ADDITION OF A NEW SECTION to read:

Section 9. Closed Basin Project - reimbursement to state school trust people's declaration. (1) THE RIO GRANDE WATER CONSERVATION DISTRICT SHALL PAY TO THE PUBLIC SCHOOL FUND CREATED IN ARTICLE IX OF THIS CONSTITUTION FOR THE WATER USED IN THE CLOSED BASIN PROJECT

WHICH HAS BEEN PUMPED, IS BEING PUMPED, OR WILL BE PUMPED IN THE FUTURE FROM BENEATH STATE TRUST LANDS PURSUANT TO WATER DECREE W-3038 IN WATER DIVISION 3. THE AMOUNT THE DISTRICT SHALL PAY SHALL BE THIRTY DOLLARS PER ACRE-FOOT OF WATER WHICH WATER IS REQUIRED TO MEET THE YEARLY REQUIREMENTS FOUND IN PL 92-514.

(2) IN ADDITION TO THE PAYMENT TO THE PUBLIC SCHOOL FUND, THE DISTRICT SHALL PAY TO THE SCHOOL DISTRICTS IN WATER DIVISION 3 TEN DOLLARS PER ACRE-FOOT OF WATER WHICH WATER IS REQUIRED TO MEET THE YEARLY REQUIREMENTS FOUND IN PL 92-514.

(3) ON JULY 1, 1999, AND ANNUALLY THEREAFTER, THE STATE AUDITOR SHALL DETERMINE THE AMOUNT OF MONIES OWED BY THE DISTRICT TO THE PUBLIC SCHOOL FUND AND SCHOOL DISTRICTS IN WATER DIVISION 3 FOR THE PREVIOUS YEAR. THE DISTRICT SHALL ASSESS THOSE IRRIGATORS WITH WATER RIGHTS IN THE RIO GRANDE RIVER, IN PROPORTION TO THEIR WATER RIGHT, AN AMOUNT EQUAL TO THE AMOUNT OF WATER USED AND ATTRIBUTABLE TO THE WATER WHICH HAS BEEN PUMPED FROM BENEATH SUCH STATE TRUST LANDS. THE AMOUNT OF MONIES OWED BY THE DISTRICT FOR YEARS PRIOR TO 1998, SHALL BE DETERMINED BY THE STATE AUDITOR ON JULY 1, 1999. MONIES OWED SHALL BE DEPOSITED WITH THE STATE TREASURER WITHIN THIRTY DAYS OF THE DETERMINATION OF SUCH AMOUNT BY THE STATE AUDITOR. THE AMOUNT OF MONIES TRANSFERRED TO EACH SCHOOL DISTRICT SHALL BE BASED UPON THE STATE DEPARTMENT OF EDUCATION'S STUDENT COUNT. MONIES NOT DEPOSITED WITHIN THIRTY DAYS SHALL BEAR INTEREST AT THE RATE OF EIGHTEEN PERCENT PER ANNUM.

(4) MONIES PAID TO THE SCHOOL DISTRICTS IN WATER DIVISION 3 SHALL BE IN ADDITION TO AND NOT BE CONSIDERED BY THE GENERAL ASSEMBLY WHEN DETERMINING THE AMOUNT OF MONIES IT MAKES AVAILABLE ANNUALLY FOR PUBLIC SCHOOL CHILDREN.

Amendment 17

INCOME TAX CREDIT FOR EDUCATION

The proposed amendment to the Colorado Constitution:

- creates a state income tax credit for parents of students in private and public schools, and students educated at home;
- directs the legislature to set the amount of the credit within certain guidelines, and allows the credit to vary for different groups;
- sets priorities for who gets the credit;

- pays for the credit with tax money saved when a student leaves the public school system; and
- prohibits the state from using the measure to increase regulations on private schools.

Background

A tax credit. This proposal creates a tax credit which could reduce the amount of state income taxes owed by parents of school-age children. Parents who owe no taxes, or parents who owe less than the amount of the credit, would get a check from the state for the difference; other parents will simply pay less. For parents of students enrolled in private schools, the credit equals at least 80 percent of the cost of educating their child or 50 percent of the average expenditure for a public school student, whichever is less. For parents of other students, the credit is to be set by the legislature.

Priorities for receiving the credit. Money for the credits will come from savings which result when students leave the public school system. The measure defines the order in which parents would get the credit, in case there is not enough money for all parents to receive the credit. The measure prioritizes eligibility for the credits as follows:

- First, parents of students who transfer to a private school from a public school district that scores below average on state tests and special needs students;
- Second, parents of students who transfer from other public schools to private school;
- Third, low-income parents of students presently in private school;
- Fourth, all other parents of students in private school; and
- Fifth, parents of students in public school and parents of children who are taught at home.

All parents in the first categories must be paid before any of the parents in the later categories.

Funding for the credit. This measure requires the state to set aside the savings for each student who leaves the public school system to fund the income tax credit. The legislature will determine the amount of any savings based on the number of students who leave public schools. The state cannot reduce per student funding levels for public schools to pay for the tax credit.

Arguments For

1) This measure targets tax relief where it's needed most. Raising children is expensive, and many parents need financial help to give their children the best education possible. This measure gives priority to families that live in poor-performing school districts and to low-income parents. In addition, the credit is refundable so even the poorest families will benefit. This measure could lower taxes for all parents of school-age children, letting them keep more of their own money to spend as they see fit.

2) This measure is intended to be self-funded, so it won't cost the state more money. The government saves money when a student leaves public school for a private school and that

money should be returned to parents. Parents of students in private schools already pay taxes to support the public schools, but they receive no direct benefit. Also, the measure guarantees that per student funding in public schools will not decline from the current level.

3) This measure may cause public schools to improve because they will need to compete to attract and retain students. Parents will have more financial resources to choose from a variety of options for educating their children. Children deserve the best education possible, regardless of their family's income or the neighborhood in which they live. This measure gives working families many of the same choices and opportunities for their children that higher-income families enjoy. All Coloradans will benefit when all children are well-educated.

Arguments Against

1) This measure lowers taxes for those parents who can already afford to pay for private school, and because the credit covers only a part of tuition costs, it limits the ability of low-income parents to take advantage of the credit. Without knowing how much the credit is worth from one year to the next, parents may have to pay the private school tuition costs in advance and wait for reimbursement (via the credit) later. Some parents might take their children out of public school one year and have to move them back to public school the next year if the credit is too small to offset the cost of a private education. In addition, a parent's eligibility for the credit may change over time, and public school families will not benefit until all private school families get a credit. Parents with students in public school might not get any credit at all if sufficient funds are not available.

2) The measure doesn't guarantee better schools. Public schools may have to hire the same number of teachers with fewer dollars. This measure benefits parents of students at private schools and private schools at the expense of public schools, but most students in Colorado attend public schools. The measure also prohibits any additional regulation or oversight of private schools, even though they will now be indirectly supported by taxpayer dollars. This measure will create an administrative bureaucracy estimated to cost $639,653 in the first year and almost $500,000 every year thereafter.

3) The measure is vague on many important details: how much the credit might be worth and how many parents, if any, will receive a credit; how revenues will be generated and allocated under the proposal; and how the legislature will define "savings" to know the amount of money available for the program. If there are no savings, no credits would be available. Also, this measure could result in the state keeping track of every child in Colorado, but the government already collects too much personal information on families and individuals. To determine eligibility for the tax credit, the state will need to know where each student goes when they leave public school, whether the public school a student leaves is in a below-average public school district, the cost of tuition where the student enrolled after leaving public school, and whether parents with children in private school qualify for the low-income credit.

Amendment 17
Income Tax Credit for Education