SETBACKS FOR OIL AND GAS DEVELOPMENT IN COLORADO

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Overall, Proposition 112 is poorly designed, uses imprecise language, has not been informed by multi-stakeholder dialogue, and would likely have a significant negative impact on the state’s economy.

Colorado is a significant producer of both oil and natural gas, and has a long history of resource development. At the same time, the state is urbanizing and has a rapidly growing economy and population. This combination of factors has created tensions and issues of “social license to operate.”²,³ A new ballot Proposition regarding the planning criteria for new drilling has again brought these discussions to the fore. Similar measures have been put forward over the last few election cycles. This Viewpoint outlines several of the limitations of the current Proposition.

While this is a statewide ballot issue, it could have far reaching consequences as precedent. Natural gas will likely play a critical role in the global energy transition towards a low-carbon future. Consider developing economies, where nearly half the world’s population now suffer from poor quality energy services. These countries are trying to build vibrant economies and livelihoods, in addition to community services for schools and hospitals—energy is foundational for these aspirations. Several are just beginning to benefit from U.S. exports of LNG, or their own indigenous supplies of natural gas and oil.⁴

¹ These are solely the views of the author.
³ https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1006&context=onej
⁴ https://www.foreignaffairs.com/articles/africa/2015-02-16/power-poor
A BAD PROPOSITION

The 2018 Colorado ballot Initiative 97 (after signature gathering called Proposition 112)\(^5\) was placed on the ballot after sufficient verified signatures were presented to the state.\(^6\) The principal text of #112 states: “All new oil and gas development not on federal land must be located at least two thousand five hundred feet from an occupied structure or vulnerable area.” Occupied structures are for any building that requires a certificate of occupancy or is intended for human occupancy, including homes, schools, and hospitals. Vulnerable areas include an eclectic an expansive list such as: playgrounds, sports fields, parks, amphitheaters, public open space, irrigation canals, reservoirs, lakes, streams (including intermittent ones), creeks, and any other area the state identifies as vulnerable. Although hydraulic fracturing is likely the primary target, the measure refers generally to oil and gas development (including “drilling, production, and processing”). Much of the Proposition’s language is vague or imprecise.

To help understand the economic implications: in 2017 Colorado oil and natural gas producers paid $496.7 million in property taxes to nearby local governments and school districts; in addition, severance taxes paid were as high as $264.7 million per year. A complete economic analysis would require accounting for all the societal benefits and costs, in addition to detailed technical geological and mineral rights issues.

While the current limits, only enacted in 2013, discern between use-types: 500 feet from homes and 1000 feet from schools, the new measure does not. For a sense of scale: a 500’ setback includes about 18 acres, a 1000’ about 72 acres; the new measure would encompass about 450 acres. The COGCC estimated that the impact in Colorado’s top five oil and gas producing counties, “94% of non-federal land would be unavailable.”\(^7\) The setback distances in Texas (200’) and Pennsylvania (500’) are significantly less than current Colorado regulations.

The current setback may be waived in certain instances, but the new proposal allows no such flexibility. Additionally, under the current law, the COGCC has the authority to modify setback requirements (2018 State Ballot Information Booklet).\(^8\) Finally, and perhaps most significantly, while the existing rules were formulated and adopted through a “collaborative rule-making process”,\(^9\) Proposition 112 has not benefited from this essential type of dialogue. As a result, both Colorado gubernatorial candidates, along with Governor Hickenlooper, former Governor Ritter, and former Attorney General Salazar, have described the Proposition as “too extreme” and “not right for Colorado” for various reasons, \textit{inter alia}, its negative impacts on jobs, wages, and foregone taxes.\(^10\)

\(^5\) Hereafter called 112.
\(^6\) Documents can be found: https://leg.colorado.gov/content/setback-requirement-oil-and-gas-development
\(^7\) See also: Fleckenstein, W., and Miskimins, J. 2018. “Proposition 112 Impacts on Colorado”. Payne Institute Viewpoint.
\(^8\) http://leg.colorado.gov/bluebook
\(^9\) 2018 Ballot information booklet. Colorado
\(^10\) See e.g., http://westernwire.net/colorado-city-prop-112-too-extreme-civic-and-business-coalition-opposes-ban-on-oil-gas/
RESOURCE-RICH COLORADO

The state is the 5th and 7th largest natural gas and oil producer in the USA.11 Colorado has been at the forefront of developing policies to regulate the oil and natural gas sector, and its existing regulatory approaches have served as a model for many other U.S. states.12 That leadership should continue. An example comes from the development of world-class regulations on methane and volatile organic compounds (VOCs), which were designed over several years in partnership between government, industry, and NGOs.13 Such a long-standing and balanced dialogue provides an important precedent for future discussions.

Proposition 112 is only the latest flashpoint in the ongoing conflict between Colorado communities and the oil and gas industry.14 But, 112 is not-fit-for-purpose as it focuses bluntly on one issue in a complex terrain. Designing any further robust regulations for oil and natural gas in Colorado would require additional research, analysis, and discussion (among community, industry, academic, and political actors). These will need to allow Colorado to continue to profit from the economic benefits of being a resource-rich state, while satisfying its health, environmental, and safety concerns.

Finally, in a recent Op-Ed Bill Ritter from the Center for the New Energy Economy at CSU noted: “For the foreseeable future, we need natural gas to be part of our energy fuel mix.”15 This is true both for addressing climate change, and also global social and economic development. Today’s energy deprivation has serious implications for everything from education and public health, to migration and global security.16

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12 See e.g., https://www.tandfonline.com/doi/full/10.1080/02646811.2016.1216696
14 For a perspective on this tense dialogue see: Schuller, T. 2018. “Accidentally Adamant”
16 See e.g., https://www.sciencedirect.com/science/article/pii/S2214629617303882
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