



# Test-Marketing Environmentalism

By John Harpole

**S**ome local control of hydraulic fracturing ballot initiatives are percolating in Colorado, and they could have serious negative implications for the entire U.S. oil and gas industry if voters approve them in November.

Billions of tax dollars would be lost in Colorado and billions more in oil and gas shareholder value would evaporate. Anecdotal evidence suggests that local-control issues are now on the radar screen of institutional oil and gas investors. And national environmental groups are either directly involved in the Colorado effort, or they're keeping a watchful eye.

U.S. Rep. Jared Polis (D-Colo.), who played an instrumental role in Colorado's status as *avant garde* to the new marijuana industry, is the lead architect of today's oil and gas ballot initiatives.

It's an odd position for an elected representative to take. After all, shouldn't elected officials prefer the more well-informed and deliberative effort of an elected body vs. a vote by a possibly uninformed electorate?

So what is his motivation? Why pursue a ballot initiative rather than a legislative solution?

## 'Fracking tower'

In July 2013, Polis was rudely awakened at his 40-acre weekend retreat in Weld County, Colo., by what he described as a "fracking tower" (drilling rig) rising across the road on a neighbor's property.

For at least a decade, Weld County—a big slice of the Denver-Julesburg Basin—has been one of the top 10 oil, gas and agricultural counties in the U.S. Those industries lived together harmoniously for nearly 100 years until Polis' "awakening."

The core strategy of the Polis ballot initiatives is to press for local, not state, control on critical issues related to drilling.

Even national environmental billionaires like Tom Steyer have taken an interest in the Colorado campaign, prompting the question: Why are national environmental groups suddenly concerned about local control issues in Colorado? Has Colorado become a test market for a new environmental strategy to be employed against the extractive industry?

The local-control faction would like to divide and conquer Colorado. Forty of the 64 counties in Colorado have some oil or gas production. Under a doctrine of local control, the Colorado Oil and Gas Conservation Commission would suddenly defer to individual counties, cities and municipalities on oil and gas issues, even though those entities have had no historic expertise in managing those issues.

Some Colorado counties are more worrisome for oil and gas companies than others.

It is a given that Weld County's citizens would support their local oil and gas producers and related midstream operators. Their contribution to the local tax base and job market is significant. According to investor presentations, during the next five years, five producers have a scheduled collective investment in Weld County, alone, in excess of \$5 billion a year.

But what about the counties that are located in the western half of Colorado, the Piceance Basin, a region that is predominantly owned by the federal government?

What is at risk? A geologist friend estimates that there is more than 200 trillion cubic feet (Tcf) of potential Niobrara Shale natural gas reserves in the Piceance. Most of Garfield County has prospective Niobrara Shale deposits.

But wouldn't the federal government assert its right of pre-eminence?

Under the time-tested doctrine of pre-emption, federal law trumps state law when the laws conflict. But the catch in that legal argument is that the claim of federal pre-emption must be asserted by a current administration. Just five years ago, the Obama administration reversed the objections of the Bush-era public land agencies to Colorado's extensive revision of its state oil and gas regulations by declining to assert federal pre-emption over the management of federal minerals.

By targeting six county commissioner races, national environmentalists could effectively shut down all oil and gas operations in western Colorado.

## Other states

Colorado is not alone in the local-control battle. The New York Supreme Court recently issued a decision that upheld municipalities' right to block hydraulic fracturing. Last year the Pennsylvania Supreme Court issued a similar decision. The Ohio Supreme Court is also considering a similar local control pre-emption case.

Colorado is living through an example where its own elected representative has chosen to side with national environmentalists and pursue an anti-oil and gas ballot initiative despite the crippling effect it will have on the state's economy. ■

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