REFERENDUM A: A VISION FOR THE FUTURE

by Governor Bill Owens

W

ater - the lack of it, the fights over it, the need for it - has defined the American West. And, throughout the centuries, the value of water hasn't been really appreciated until it's scarce. And, in the last several years, Colorado has seen the effects of severe drought. Last year, Nature challenged us with the worst drought in centuries.

Some may have forgotten how tough this drought is on the people and the economy of Colorado. I haven't.

Last summer, many ranchers sold off their herds early, at a devastating financial loss. Others, who held onto their herds, paid top dollar to bring hay from the Midwest to feed their livestock. The nation saw the plight of our farmers, whose crops withered and died.

Our tourism industry suffered - and none more than the rafting companies. The only rapids many of these good people saw last year was the rapid loss of bookings - and cash. The effects of this drought are deep.

Continued on page 3

46TH ANNUAL CWC CONVENTION
JANUARY 29 & 30, 2004
HOLIDAY INN - NORTHGLENN

colorado WATER RIGHTS

...to assist in or contribute to the protection, conservation and development of water in the state of Colorado

TABOR, GALLAGHER, AND AMENDMENT 23

by J. Evan Goulding

n February 9, 2003, the Denver Post Editorial began with the following statement: "Colorado is hurtling toward a fiscal train wreck. But critics of the education-funding Amendment 23, passed in 2000 are foolish to think they can avoid the crash by tinkering with that amendment alone."

"The metaphorical locomotive of state finance is racing along two tracks. The left track is Amendment 23. The right track is the 1992 Taxpayer's Bill of Rights. Between the two tracks is a giant hydraulic jack - the 1982 Gallagher Amendment - that is steadily forcing those rails further apart. Bringing the left rail back into alignment while the right rail still veers off the roadbed won't avoid the train wreck. Coloradans need a package of reforms to deal with the unintended consequences of this triad of constitutional mandates - whose interactions weren't foreseen by the voters who approved them in three separate elections."

The Colorado General Assembly learned the hard way the reality of the Post's editorial. In the 2003 legislative session, the legislature dealt with the bleakest picture of the state's financial condition that anyone can remember. A major budget gap of $869 million had to be met in the FY 2003-2004 budget in order to present a balanced budget, as required by the constitution. Not only were there no reserves to be used, but major cuts were made in many state programs.

If budget cuts were spread evenly across the state's 20 departments, each agency would have endured a 14.4 percent cut. By not cutting K-12 and Medicaid funding, the cuts would be 36.6 percent in each remaining department. According to Tom Dunn, the state legislature's top economic advisor, the recession has not bottomed out yet, although yesterday's newspapers indicated that state revenues for the previous year were 78 mil-

Continued on page 9
Meeting scheduled for Oct. 24 to present proposed 2004 State Infrastructure Amendment

The Colorado Water Congress and a dozen other statewide and regional organizations have scheduled a meeting on Friday, October 24, to present details of a proposed State Constitutional Amendment that would allow Colorado, for the first time, to take advantage of general obligation ("G.O.") bonds to finance highway, water and other infrastructure projects.

The proposed Amendment is an outgrowth of a resolution adopted by delegates to the Colorado Water Convention 18 months ago. It was brought before the convention by the Colorado Water Congress because G.O. bonds have the potential of making taxpayer dollars go farther in building essential infrastructure. Forty-five other states now use those financing mechanisms.

The meeting, called the Infrastructure for Millennium III International Forum, will be at the Radisson Hotel Denver Southeast, at 1-225 S. Parker Road in Aurora. It will begin at 8:30 a.m. and wrap up about 2:00 p.m. A registration fee of $45 will be charged to cover hotel bills.

State Rep. Bob Briggs of Westminster, who was a delegate to the 2001 convention, plans to introduce a resolution that could place the Amendment before the voters as early as November of 2004. He introduced a preliminary version of the resolution, HCR 03-1009, too late in the 2003 session of the State House to be considered for passage.

Rep. Briggs said that the 2003 bill is being reworked by legislative drafters, and the October 24 meeting will be part of the review process.

"Although this is a work in progress, currently I am proposing that the State have the capacity to issue bonds in an amount limited by a small percentage of the actual valuation of all taxable property in Colorado. Nothing is final in that regard, but as an example, if the limit was 5 percent, G.O. bonds totaling more than $12 billion could have been issued in 2003."

"The bonds could be used for nearly any state infrastructure needs, including but not limited to transportation, education, water, corrections and utilities. And, I will include a provision that requires long term geographic equity for bond-financed projects."

Rep. Briggs will present the details of the proposed amendment. Among other presenters will be former U.S. Senator Hank Brown; State Highway Executive Director Tom Norton; Walt Imhoff, Managing Director of Hanifen, Imhoff, a division of Stifel, Nicolaus & Co., Inc.; Dee P. Wisor, Manager of the Public Finance Department of Sherman & Howard, L.L.C.; and a widely-known authority on water infrastructure needs who has been invited at press time.

The luncheon session will feature a panel of state legislators assembled by Rep. Briggs for a discussion of features of the amendment.

Another highlight of the program will be presentation of the 2003 Colorado Infrastructure Report Card by Steve Fisher, of the Colorado Section of the American Society of Civil Engineers. The Report Card is part of a national project of the ASCE to make specific policy recommendations to decision-makers. It includes roads and bridges, transit, aviation, schools, drinking water, wastewater, dams, solid waste, hazardous waste, navigable waterways, and energy projects needs—many of them unfunded.

In addition to CWC, sponsors of the forum include the Colorado Farm Bureau, Metropolitan Denver Water Authority, Associated General Contractors of Colorado, Colorado Building & Construction Trades Council, American Council of Engineering Companies of Colorado, Colorado Cattlemen’s Assn., Rocky Mountain Farmers Union, Wholesale Florists of Colorado, Tri-State Generation & Transmission, Bear Creek Water & Sanitation District, and Platte Canyon Water & Sanitation District. More are pending.

To register, send a check ($45 each) and names, addresses and phone numbers of registrants to:


ASPINALL AWARD NOMINATIONS & WATER LAW SCHOLARSHIPS

If interested, the following forms for your completion and return to the Colorado Water Congress office are available:

1. Nomination form for the 2005 Wayne N. Aspinall Water Leader of the Year Award.
2. Ed Bohren, W.D. Farr, John R. Fetcher, Frank Milenksi and Bart Woodward Scholarship (for an active member of the agricultural community) for 2004 — Colorado Water Law Seminar.
3. Glenn G. Saunders and John U. Carlson (for either a law student or an active member of a Colorado law firm) Legal Scholarship for 2004 — Colorado Water Law Seminar.
5. Larry D. Simpson, Ralph Atkins and John R. Fetcher (for either an engineering student or a non-partner of an engineering firm) Engineering Scholarship for 2004 — Colorado Water Law Seminar.

The Wayne N. Aspinall Award nomination form is due at the CWC office by August 1, 2004. The scholarship nominations are due at the CWC offices by July 1, 2004. If you are interested in any of the above forms, please contact the Colorado Water Congress at their website www.cowatercongress.org or at 1580 Logan St., Suite 400, Denver, CO 80203. E-mail address: watercongress@cowatercongress.org, phone (303) 857-0012, fax (303) 857-0001.

Opinions expressed by the authors are not necessarily those of the officers, members, or aid staff of the Colorado Water Congress.

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E-MAIL REQUEST

The Colorado Water Congress is updating files to send out publications, where possible, by e-mail. If you would like to receive your CWC publications by e-mail instead of direct mail (saving much time, labor, paper and postage), please provide us with your e-mail address, mail to: 1580 Logan St., Ste. 400, Denver, CO 80203.

Or, send us your name, organization, and e-mail address to macravey@cowatercongress.org.

Then, we can copy your e-mail address directly to our database. Thank you.

Colorado Water Rights
Owens: Referendum A, cont.

Continued from page 1

lingering - and, for many Coloradans, devastating. The threat of continued drought and increased demands on Colorado's water is critical to our prosperity, our environment and our quality of life.

At its heart, Referendum A is about saving Colorado's water and saving Colorado's future. Referred to the November ballot by a bi-partisan majority of state legislators, Referendum A allows communities to combat drought and water shortages by accessing funds for three important components of a comprehensive water policy: conservation; improvement and repair of existing facilities; and, new storage capacity.

Meeting the State's water needs for future generations requires planning, initiative and new partnerships. Water storage must benefit not one but multiple users, including drinking water, irrigation, hydro power, recreation and the environment. Historic legislation passed by the Colorado General Assembly last session fosters these partnerships by allowing statewide water banking, temporary instream flows, interruptible supply contracts between, for example, agricultural entities and municipalities, and temporary changes of use of water rights.

But to be effective, many of these measures require financing. Today, some municipalities can use their rate base to help pay for bonds for infrastructure projects. But smaller communities and private entities, such as agriculture, recreational interests, and environmental interests lack the revenues required to repay project costs. With the passage of Referendum A, cooperative projects between diverse interests can be financed for the very first time.

Critics have argued that Referendum A will somehow undo environmental standards or benefit one region of the state over another. But, that's simply false.

Referendum A is aimed specifically at financing water storage projects. Financing is an economic issue - not a political one. Referendum A simply allows entities with revenue streams to plan within Colorado's water law and federal laws to finance infrastructure. The complex array of state and federal laws that govern environmental compliance and permitting remain firmly in place. These laws assure that projects will protect or mitigate for impacts on wetlands and threatened and endangered species. Only projects that meet or surpass these demanding requirements will be eligible for funding under Referendum A.

Existing laws, such as federal permitting requirements, counties' 1041 authority and SB 03-115, provide for mitigation to the basin of origin where trans-basin diversion projects are proposed. Project financing is an economic decision. No lender, including the CWCB, finances a project without iron-clad assurances that all applicable federal and state laws are met and a revenue stream is in place to repay the project. In addition, Referendum A provides for up to $100 million for the environment, recreation and economic mitigation.

A rigorous investigation of our water supply will help identify water storage projects that will benefit for financing under Referendum A. The Colorado Water Conservation Board (CWCB) has embarked on the Statewide Water Supply Initiative (SWSI) to help local communities identify future water needs and ways to meet those needs over the next three decades. With over 80 public meetings scheduled in every major river basin in Colorado, the SWSI will identify projects needed to assure that water supplies are adequate throughout Colorado. Scheduled for completion in November of 2004, this grass-roots effort will identify many potential projects across the State. This process will be complete prior to the CWCB's recommendations to the Governor for financing under Referendum A.

The bottom line for voters in November is this: Colorado wants to store more of Colorado's water to benefit all Coloradans - the answer is absolutely yes. Vote yes on A.
CWC BOARD MEETING
AUGUST 20, 2003

Speaking to the CWC Board – Representative Diane Hoppe. The others who are seated (L to R): Senator John Andrews, Representative Matt Smith, Representative John Salazar, Ag Commissioner Don Ament, Senator Jack Taylor, Senator Jim Iggar and Eagle County Commissioner Tom Stone.

Board members are: Ed Pokorney, Peter Binney, Bob Burr, Eric Wilkinson, Jack Odor, Ralph Curtis (standing), Mark Kolesher, (CWC stuff Mary Stirling - standing) and Andy Colostino.

Board members are: Jim Speak, Ken Crandall, Ed Cooley, David Merritt, Anne Beierle, Dan Birch, Joe Drew and Marc Catlin.

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AUGUST 20, 2003

Water lobby supports Ref. A

The Colorado Water Congress kicked off Wednesday to endorse Referendum A, the water amendment that would allow the state to issue $3.5 billion in revenue bonds for water resource projects.

Supporters said the bill is a powerful funding tool that will allow the state to continue water storage projects. "The best thing about Referendum A is a day in the future for people who are here now," Representative Diane Hoppe, said. "This is a chance to do something for Colorado.

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Supporters said the bill does not direct the Water Conservation Board to ensure that all water projects are environmentally sound.

The bill would allow the state to issue $3.5 billion in revenue bonds for projects, such as dams and new reservoirs. Projects would need to be approved by the Colorado Water Conservation Board and under the governor. Gov. Bill Owens is a proponent of the initiative.

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**Legislative Colorado River Tour**

**Committee Members to Attend:** Senators Enzi, Iglesias, and Tipton, Representatives Hoppie, Miller, White, Rippy, and Salazar

**Other Members to Attend:** Representative Frank Weddig

**Staff to Attend:** David Benison, Scott Grosscup

**Tuesday, August 26**

**Water Resources Along US Highway 285, Taylor Park Reservoir, Gunnison White Water Park, reception at Dos Rios Gold Course**

8:00 a.m. Meet at the west side of the Capitol, next to the Civil War monument, and depart for Gunnison via U.S. Hwy 285. The following presentations will be made on the bus while driving:
- Denver Water Distribution System near US Hwy 285 - Sara Duncan, Denver Water
- Upper Arkansas River Issues - Terry Scanga, Upper Arkansas River Water Conservancy District

11:00 a.m. Pick up Kathleen Curry and Dennis Steckel, Upper Gunnison River Conservancy District, at Monarch Pass visitor center (left side of Hwy 50) for presentation on the bus concerning water issues in the Tonichi Creek

12:00 p.m. Lunch on the bus

1:00 p.m. Arrive at Gunnison County Courthouse, 200 East Virginia Ave

1:15 p.m. Depart for tour of Taylor Reservoir for presentation on the bus concerning use and operation of the Taylor Park Reservoir and issues affecting it.

2:15 p.m. Arrive at Taylor Reservoir for brief stop before returning to Gunnison

3:45 p.m. Arrive at Gunnison White Water Park for presentation on application for recreation in-channel diversion

4:45 p.m. Check-in at Holiday Inn Express, 400 E. Tomichi Ave, Gunnison.

6:00 p.m. Depart for Dinner Reception at Dos Rios Gold Course

9:00 p.m. Return to Hotel

**Wednesday, August 27**

**Briefings on the operation of the Aspden Unit and environmental issues; Black Canyon of the Gunnison reserved water rights, water supply issues in the Upper Gunnison River Basin, drought impacts in the San Luis Valley, Basin ranch acquisition, Closed Basin Project and irrigation facilities, dinner reception at the Inn at the Rio Grande Creek**

Breakfast Available in the hotel restaurant. Legislators may charge their breakfast to their rooms.

8:30 a.m. Depart the Holiday Inn Hotel for Conundrum National Recreation Area (Blue Mesa Reservoir) for meeting at the Multi-Purpose Room in the Elk Creek Visitor Center. From Gunnison, drive 15 miles west on US Hwy 50, turn left (south) off of Hwy 50, Visitor Center is at the first stop sign.

9:00 a.m. Arrive at Visitor Center for briefings on:
- Operation of Aspden Unit and Environmental Issues - Chris Treese, Colorado River Water Conservation District (30 minutes);
- Status of Black Canyon of the Gunnison Reserved Water Rights Litigation - John McClow, Attorney for Upper Gunnison River Water Conservancy District (30 minutes); and

11:00 a.m. Depart for Alamosa, Colorado. Drive east on Hwy 50 toward Alamosa, approximately 7 miles east of Gunnison, turn right (south) onto State Hwy 114. From Gunnison to the top of Cocheta Pass is approximately 37 miles or 50 minutes driving time.

12:30 p.m. Pick up Jim Coleman at the top of Cocheta Pass for presentation on the bus concerning the drought's impact on Sagache Creek and other water issues. Meet at pull off on east side of pass (right side of road)

1:00 p.m. Arrive for lunch at the Coleman Ranch, Sagache Colorado. 22600 County Road 46

1:30 p.m. One mile west of Sagache on Hwy 114, turn right (south) onto County Road 46, look for sign to Coleman Ranch on left near old mill.

2:00 p.m. Depart Coleman Ranch for Moffat, Colorado

2:30 p.m. Arrive at Moffat School parking lot and pick up Steve Chanev, Superintendent of Great Sand Dunes National Monument and Preserve, for presentation on the bus concerning the acquisition of the Baca Ranch. Drive south on Hwy 17 approximately 16 miles (25 minutes) to Hooper, Colorado.

3:15 p.m. Arrive at Hooper, Colorado and pick up Ray Wright, President of Rio Grande River Water Conservation District (RGRWCD) and Alan Davey, Engineer for RGRWCD for presentation on the bus concerning the Closed Basin Project and other water issues.

5:00 p.m. Check-in at Inn at Rio Grande, 333 Santa Fe, Alamosa

6:00 p.m. Dinner reception at the Inn at Rio Grande, 333 Santa Fe, Alamosa, hosted by the Rio Grande River Water Conservation District.

8:30 p.m. Reception ends.

**Thursday, August 28 - Presentations on the Closed Basin Project, Rio Grande River Compact, Subdistricts of the Rio Grande River Water Conservation District, Lower Arkansas River Valley water issues**

**Breakfast**

Available in the hotel. Legislators may charge their breakfast to their rooms.

8:00 a.m. Air tour of the San Louis Valley - hosted by Representative John Salazar and friends.

9:00 a.m. Return to the banquet room at Inn at Rio Grande, 333 Santa Fe, Alamosa, for presentations on the following topics:
- Closed Basin Project - Ella Mae Herrera, U.S. Bureau of Reclamation
- Update on Rio Grande River Compact and Other Issues Affecting Water Division 3 - Steve Vandiver, Water Division 3 Engineer, Division of Water Resources, and
- Proposed Subdistrict of the Rio Grande River Water Conservation District - Ray Wright, President of RGRWCD, and Alan Davey, RGRWCD Engineer

12:00 p.m. Lunch at Inn at Rio Grande, 333 Santa Fe, Alamosa.

1:00 p.m. Depart for Rocky Ford, Colorado

**Directions:** From Alamosa, drive east approximately 75 miles on U.S. Hwy 160 to Walsenburg, Colorado, cross I-25 to State Hwy 10, from Walsenburg, drive east on Hwy 10 approximately 70 miles east to Rocky Ford.

4:00 p.m. Arrive at Rocky Ford City Council Chambers, 203 South Main St., Rocky Ford, Colorado for presentation on:
- Lower Arkansas Valley Water Conservancy District and water supply issues - Board of the LAVWCD
- Proposed Arkansas Valley Pipeline - Kevin Karney, Otero County Commissioner, Chuck Hanagan, City of Swink, James Broderick, General Manager of Southeastern Colorado Water Conservancy District

6:30 p.m. Check-in at Holiday Inn Express, 27994, US Highway 50, La Junta

7:15 p.m. Dinner at El Capitan Restaurant, 501 N. Main St., Rocky Ford, Sponsored by City of Aurora

9:00 p.m. Return to hotel

**Friday, August 28 - Water transfers and revegetation issues in the Lower Arkansas River, Highline Canal, lunch in Pueblo, return to Denver.**

**Breakfast**

Arkansas Valley Range Project, 17850 Road J, Rocky Ford, Colorado

8:15 a.m. Depart hotel for Rocky Ford

8:30 a.m. Arrive for breakfast at the Arkansas Valley Range Project, 17850 Road J, Rocky Ford for presentations on:
- Water transfers and revegetation issues - Jerry Knapp, Arkansas Valley Range Project
- Interpolatable Water Supply Agreements - Dan Heinrich, Superintendent Highline Canal Company

10:15 a.m. Depart for tour of lands affected by water transfers and the Highline Canal

**Directions:** Drive south on State Hwy 71 to Hwy 96, west on Hwy 96 to Hwy 167, go south on 167 to Highline Canal near Fowler, Co, intersect with Hwy 50 and drive to Pueblo.

1:00 p.m. Lunch at the Pueblo Country Club, sponsored by Robert Rawlings, Publisher of the Pueblo Chieftain

2:30 p.m. Depart for Denver

5:00 p.m. Arrive at Capitol

**Colorado Water Rights**
Legislative Colorado River Tour

by Senator Lewis H. Entz

On August 26, 27, 28 and 29, 2003 a number of the members of the Colorado legislature's Water Review Committee participated in a tour of the Upper Gunnison River Basin, San Luis Valley, and the Arkansas River Basin (both Upper and Lower) within the state. This tour had an opportunity to develop an in-depth understanding of the various river basins, the associated interstate compacts and laws governing the operation of key water facilities and critical water issues facing the state of Colorado. Besides nine legislators (Senators Entz, Jorg, and Tapia, Representatives Hoppe, Miller, Rippy, Salazar, Weddig, and White) there were state officials and other interested parties participating in the tour.

The sequence of events are noted on page 5.
CWC Summer Convention in Steamboat Springs
August 21 - 22, 2003

A legislative caucus included (l to r): Senator Jim Igors, Representative John Salazar, Senator Jack Taylor and Senator Lewis H. Entz.

The Friday General Session had a stimulating panel on "Strategies for the Future" with Ray Christensen of the Farm Bureau at the microphone.

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Dr. Dan Tyler, author of the Silver Fox of the Rockies, Delphus E. Carpenter, delivered an inspirational and informative Friday Luncheon address.

It was a very intense conversation that included (l to r): Mark Pifer, Rod Kuharich, Bill Brown and John Fetcher.

Another huddle outside the session included (l to r): Eagle County Commissioner Tom Shiozaki, Club 79 President Reeves Brown, River District Board member T. Wright Dickinson, and DNR Assistant Director Kent Holtesinger.

Summer convention opening general session was packed.

Mayor Paul Tauer of Auran gave a spirited and thoughtful luncheon address.

Audience was very attentive.

Colorado Water Rights
As these developments became clear, my reaction, along with many of you, was, "How did we get into this situation?" and, "How did it happen so quickly?"

A number of factors have come together, in what has been called a "perfect storm," and a perfect storm it was. One that raised on your neighbor's hay, and not on yours, but in this regard, it refers to the convergence of all the elements that can possibly come together, to create the most serious consequences possible. And that is pretty much what has happened. It is not accurate, nor is it fair, to lay the state's current fiscal condition entirely at the feet of TABOR, Gallagher, or Amendment 23, but we can talk about the situation without examining these constitutional provisions.

TABOR, as you all know, was enacted in 1992, with the stated purpose of limiting the size and growth of government. In addition to requiring voter approval for any tax rate increases or the creation of public debt, TABOR limits governmental revenues based upon a formula for growth. If the state, or any local government, receives more money than the formula allows, it must refund the excess. TABOR applied the formula each year to the revenue base from the immediately prior year. If revenues from the prior year exceeded the allowable base, then it is the lower, retained-revenue figure on which the formula is applied.

If the state experiences a negative revenue growth year, or growth at a rate lower than the formula allows, then the next year's formula is applied to that lower figure. In only 5 of the 11 years since 1992 has the state enjoyed sufficient revenue growth to trigger the refund mechanism, and $3.2 billion that would otherwise have been available for local services and infrastructure, was returned to taxpayers. But in the other 6 years, that "population plus inflation" formula was not even reached. In those years, the next year's revenue base was determined as the formula was applied to a dollar amount that was lower than the official TABOR limit, and thus, the base for the following year. The result was, even though population and inflation, we assume, services and needs were growing steadily. Even if Colorado's economy booms, resulting in revenue increases, the requirement to use the "lower of actual or formula" means that refunds will begin to flow long before the state has grown enough to exceed the TABOR limit.

Second, the "lower of" provision in the allowable growth formula results in a permanent ratcheting-down of the trend line in budget growth, below even the minimal trend of population plus inflation. In a majority of years since the adoption of TABOR, the budget trend line has fallen below the population formula of growth and inflation. This represents ground that, unless TABOR is changed, can never be made up, regardless of how strongly the economy may rebound in the future.

The result of these factors is that in just one decade, Colorado, which a generation or two ago was among states at 47th in state & local spending as a percentage of private personal income, TABOR has not merely restrained growth; it has caused government to shrink.

The Gallagher Amendment, passed by the voters in 1982, sought to limit the growth in property taxes, remove certain classes of business and agriculture from the state's funded trust funds to meet current cash flow needs. If TABOR allows that, then the next year's formula is reduced by the amount of the annual refunds rose, and people began to believe that the good times would never end, the General Assembly and the Governor adopted three successive tax cuts during the year 1999 and 2000.

They lowered the state income tax from 5% to 4.75% and then again to 4.63%. The state sales tax was also reduced from 3% to 2.9%. During the five years of excess revenues, these taxes would have been reapplied receipts were refunded to taxpayers. TABOR would not allow those funds to be spent, invested, or reserved for future needs. But were it not for these permanent tax rate cuts, in any year when the state did not reach its TABOR revenue limit, this last revenue would have been available for state programs. Colorado's property tax rates are now among the lowest in the United States.

Colorado Water Rights

Continued from page 1

million dollars less under projections than expected. Even so, the budget shortfall may still get worse, requiring even greater cuts in future years. Transportation funding is being affected, major state health and safety programs are being cut back or unfunded, and money is being taken from dedicated trust funds to meet current cash flow needs. For instance, the state's controlled maintenance trust fund has been transferred to meet the 3 percent TABOR emergency reserve requirement of five months' worth of current revenues.

As these developments became clear, my reaction, along with many of you, was, "How did we get into this situation?" and, "How did it happen so quickly?"

A number of factors have come together, in what has been called a "perfect storm." I always thought a perfect storm is one that raised on your neighbor's hay, and not on yours, but in this regard, it refers to the convergence of all the elements that can possibly come together, to create the most serious consequences possible. And that is pretty much what has happened. It is not accurate, nor is it fair, to lay the state's current fiscal condition entirely at the feet of TABOR, Gallagher, or Amendment 23, but we can talk about the situation without examining these constitutional provisions.

TABOR, as you all know, was enacted in 1992, with the stated purpose of limiting the size and growth of government. In addition to requiring voter approval for any tax rate increases or the creation of public debt, TABOR limits governmental revenues based upon a formula for growth. If the state, or any local government, receives more money than the formula allows, it must refund the excess. TABOR applied the formula each year to the revenue base from the immediately prior year. If revenues from the prior year exceed the allowable base, then it is the lower, retained-revenue figure on which the formula is applied.

If the state experiences a negative revenue growth year, or growth at a rate lower than the formula allows, then the next year's formula is applied to that lower figure. In only 5 of the 11 years since 1992 has the state enjoyed sufficient revenue growth to trigger the refund mechanism, and $3.2 billion that would otherwise have been available for local services and infrastructure, was returned to taxpayers. But in the other 6 years, that "population plus inflation" formula was not even reached. In those years, the next year's revenue base was determined as the formula was applied to a dollar amount that was lower than the official TABOR limit, and thus, the base for the following year. The result was, even though population and inflation, we assume, services and needs were growing steadily. Even if Colorado's economy booms, resulting in revenue increases, the requirement to use the "lower of actual or formula" means that refunds will begin to flow long before the state has grown enough to exceed the TABOR limit.

Second, the "lower of" provision in the allowable growth formula results in a permanent ratcheting-down of the trend line in budget growth, below even the minimal trend of population plus inflation. In a majority of years since the adoption of TABOR, the budget trend line has fallen below the population formula of growth and inflation. This represents ground that, unless TABOR is changed, can never be made up, regardless of how strongly the economy may rebound in the future.

The result of these factors is that in just one decade, Colorado, which a generation or two ago was among states at 47th in state & local spending as a percentage of private personal income, TABOR has not merely restrained growth; it has caused government to shrink.

The Gallagher Amendment, passed by the voters in 1982, sought to limit the growth in property taxes, remove certain classes of business and agriculture from the state's funded trust funds to meet current cash flow needs. If TABOR allows that, then the next year's formula is reduced by the amount of the annual refunds rose, and people began to believe that the good times would never end, the General Assembly and the Governor adopted three successive tax cuts during the year 1999 and 2000.

They lowered the state income tax from 5% to 4.75% and then again to 4.63%. The state sales tax was also reduced from 3% to 2.9%. During the five years of excess revenues, these taxes would have been reapplied receipts were refunded to taxpayers. TABOR would not allow those funds to be spent, invested, or reserved for future needs. But were it not for these permanent tax rate cuts, in any year when the state did not reach its TABOR revenue limit, this last revenue would have been available for state programs. Colorado's property tax rates are now among the lowest in the United States.

Colorado Water Rights
Goulding: Tabor, Gallagher, etc., cont.

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01-02 and FY 02-03.

Proponents of the tax cuts contend that they would help the state economy grow, as this money was allowed to circulate in private hands. However, there is no evidence to support this, since the national recession began in March 2001, one year and two years after the tax cuts and the refunds hit the street. It should be noted that by the time the tax cuts were enacted, Colorado already had one of the lowest state and local tax structures in the nation.

In any case, today, were it not for the three cuts, the state would now be receiving an additional approximately half-billion dollars in revenue per year. Under TABOR, reversing any tax reduction adopted by statute must be submitted to a vote of the people.

Another "squeeze factor" is the State Corrections Department Budget.

The state's incarceration rate grew from less than 100 people per 100,000 population, to almost 400 per 100,000 between 1984 and 2002. For a century, Colorado's prison population rarely grew, to the tune of about 185 million in annual lost revenues through no action of Colorado elected officials. And the state's higher education budget was significantly reduced as a result, to the tune of about 185 million in annual lost revenues, which cannot be restored without a statewide vote of the people.

As one examines each of the contributing factors other than the economy, it is clear that it is governmental actions, governmental structures, and voters' decisions - that have pushed the state over the edge, not merely economic factors.

To make meaningful changes will require wise, courageous and far-thinking leaders, coupled with an informed and courageous population.

The point of all of this is that:

(1) Amendment 23 imposes a funding requirement that guarantees a certain amount for education, which in case of a declining pot, magnifies the cuts for all the agencies, and removes flexibility from lawmakers in allocating the cuts;

(2) Due to the workings of TABOR, every cut that is now being made becomes the base for future revenue and expenditures. In other words, when the economy turns around and sales tax revenues increase, the state will not be able to keep or spend the revenues above the drastically reduced rates that flow from this budget-cutting period. Budget analysts are predicting that with all the budget cuts being made now, it is likely that another $800 million cut will be necessary next year, and perhaps as much as another billion dollars in the following year. Each of these successive cuts becomes the new base. In a very real sense, the worst of times becomes the new definition for the best of times. The question is, how much can the state's maintenance and infrastructure needs be scaled back, and how do we recover from the reductions?

(3) The Gallagher amendment has wrestled residential property tax assessment rates down from 22 percent of actual value in 1982, to less than 8 percent in 2003. This rate cannot go back up without a statewide vote, thanks to TABOR.

The result has been to force an increasing tax load onto business and industry. It has also effectively cut property tax revenues for school districts, which has forced the state budget to make up the differences, where possible, from School Finance Act funds.

As pointed out in a recently released study, "Ten Years of TABOR, A Study of Colorado's Taxpayer's Bill of Rights," by the Bell Policy Center, "While most states operate with some tax or spending limits, TABOR is the most restrictive limitation in the country...TABOR's revenue limit and weakening provisions have limited the overall growth of government, but not all programs have been impacted equally."

Many special district and other local governments have escaped the harshest impacts of TABOR by "de-Brucing," or operating as enterprises. The state government got a free ride for a few years because of a robust economy.

More and more people are starting to realize that the convergence of these conditions and limitations is going to result in some very long-term and very painful consequences for Colorado. Those who can remember the tax refunds given by the legislature in 1977-78 will remember that it effectively gutted the state's reserves just as we started into an economic slide. It took nearly twenty years to get anywhere near back to the point where we could deal with the critical needs of a deteriorating infrastructure that could not meet simple growth-related needs. That slide was nowhere near as deep nor as long as the current slide already been, with some more hard times ahead.

One of the most serious victims will be the very type of economic development that we expect to bring us back to prosperity. Companies considering whether to relocate to Colorado, or to stay here, are faced with some unattractive consequences of our comundrum:

- A loss of prominence of the state's higher education system, especially in research, high tech and other incubator disciplines is just one loss that will be sharply felt, and we are already seeing top scientists looking elsewhere because of the drastic economic future caused by the shrinking higher education budget.

- The membership of the Colorado Transportation Commission recently stated that the goal of the Commission is to keep 60 percent of the state's highways at an acceptable level, but that with projected revenues from the state budget, it is estimated that within ten years less than ten percent will be rated acceptable.

- Not only this, but many local government are trying to keep essential service delivery at acceptable levels by shifting fees rather than taxes to fund many services, with the resultant costs being increasingly shifted to business.

Economic developers and companies looking to relocate are quick to recognize these not-so-subtle tax shifts and look elsewhere.

The harsh realities of the state's budget situation are pushing public policy considerations toward another set of converging actions:

1. Regaining revenue and spending bases by simply letting the "growth plus inflation" formula of TABOR operate over time will never happen. In fact, projections by the Bell Policy Group show that as the economy recovers, with even the current reduced tax rates, state revenues will exceed the level of the ratcheted down TABOR limits by fiscal year 2005, and within the following two years over four hundred million dollars will have been refunded. Even with projected increases in revenue, because of the fact that the base has been ratcheted down by over two billion dollars, there will exist a two-billion dollar annual shortfall between acceptable revenue, including the growth plus inflation formula, which will only be recovered through a statewide vote to allow taxpayers to reset the limits, a very daunting task for policy makers and decision makers.

2. If serious consideration is to be given to restructuring the TABOR/Gallagher/Amendment 3 trend of limits and structures, so that they take...
Senator Dave Owen (R-Greeley), Senate Sponsor of SB03-073 provided the Keynote address at the Workshop.

The panel of speakers provided the diversity of views - Ralph Curtis (Moderator), Steve Sims of AG's staff, Ronnie Speearing of Moses, Wittmeyer, Harrison & Woodruff and Mike Shimmin of Vranesh & Raisch.

Audience was very attentive during the discussions.

Mike Shimmin discusses the issues with Representative Bob McCluskey (R-Ft. Collins).

Commissioner of Agriculture Don Ament provided an inspirational luncheon address.

Attorney General Ken Salazar led off the presentation on "Colorado Water Law History."

Classmates took time to exchange views.

The seminar class was listening with their full attention.

The class did smile and laugh during presentations.
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least work together and make more sense, several statewide ballot questions will be required, because of the “single subject” rule that is in the Constitution.

3. In the meantime, there are several groups already formed, who have caught on to the fact that tax and budget policy no longer rests with elected representatives, but at the ballot box and in the constitution. They are planning to begin soon to gather petition signatures for ballot campaigns to get voter approval for Amendment 23-like guarantees of funding of their own interests.

If all of these efforts start to come together at the same time, it may seem like a constitutional crisis as well as a budget crisis.

Join me for a minute in projecting a sequence of events in the relatively near future:

1. The economy will strengthen. There are already signs, small and feeble though they be, that this will actually happen.

2. State revenues will begin to recover, sales tax first, followed by corporate income tax and individual income tax.

3. Refunds will begin to flow, as state revenues exceed the ratcheted down TABOR revenue base. The revenue base will grow only at the rate of the “growth-plus-inflation” formula. However, a budget that was reduced from approximately seven billion dollars annually down to approximately five billion will never return to previous levels.

4. Funding for K-12 education, higher education, Medicaid and corrections will continue to grow without regard for TABOR limits, thus further depressing general funds.

5. Many of the trust fund transfers, and moves to fee-based, cash funding of state programs, believed to be temporary reactions to the current budget “crisis,” will not be restored by the legislature, and jobs and services temporarily cut will become permanent cuts.

The adoption of TABOR by the voters in 1992 was probably even more influential in defining the shape of Colorado’s future than anyone other than the clairvoyant Doug Bruce could have predicted. The next four to six years may be equally influential.

There are groups of every kind discussing and debating whether changes can, and should be made to TABOR, Gallagher and Amendment 23. The real debate, however, should involve the very fundamental questions of the role of government; the level of service we want, and what the state of Colorado will be like given the various answers to those questions.

We, the people, have to decide what we want from our dearly beloved state to be, and to exert our collective will in a smart, forward thinking and statesmanlike way, but exert we must. What do we want, and what are we willing to put up with?

Do we want a state that is 47th in state and local spending as a percentage of personal income? HELL YES, we do! But at the expense of our transportation system? At the expense of honoring promises to military veterans? To administer water rights? To get litigation into court in a reasonable time? At the expense of losing significant parts of the Department of Agriculture?

As this debate goes on, what are the options?

1. Do nothing. Admit that TABOR and Gallagher are perfect, and let time and the growth formula work their magic. But be aware that the state will never catch up. The growth formula will barely keep up with funding of education, Medicaid and corrections. The level of service we are at will be the way it will be; cash funding, fee funding and privatization will continue, although programs that do not lend themselves to such direction will languish and die. In the meantime, the Gallagher Amendment continues to run businesses out of the state and shift funding burdens for education from local jurisdictions to state funding.

2. Elect wiser legislators. But why? The legislators we have are perfectly fine, but with the hand-typing morass of constitutional limitations, they have virtually no discretion in many of these vital running issues, so changing the faces will not change the results.

3. Repeat TABOR, Gallagher, and Amendment 23, turn the authority back to elected officials, and hold their feet to the fire to exercise their best judgment. No matter how great you think this would be, it ain’t gonna happen. First, it would take about fifty ballot questions to do that, given the single subject limitation in the Constitution. And second, there are dedicated, committed constituencies who will rally immense opposition to attempts to repeal each of these provisions.

4. Seek to identify meaningful revisions to change some or all of these provisions.

There are many in Colorado who still champion TABOR, and think that not one thing should be changed, and their votes may carry the day. There are increasing numbers, however, who are starting to think that a few things need to be changed, to return some balance to the system, and to return some semblance of meaningful decision-making power to elected officials.

To make meaningful changes will require wise, courageous and far-thinking leaders, coupled with an informed and courageous population. And, oh yes, perhaps the pain will need to get quite a bit more intense before the will to change gets strong enough. But don’t worry, I predict that the pain will definitely get much more intense.

Mr. Goulding of the Special Districts Association delivered this paper on August 22nd at CWC Summer Convention.

1 Much of the following statistical analysis comes for an Issues Brief of Colorado Fiscal Policy Institute, Jim Zelenski, Senior Fiscal Policy Analyst (June 2003); various Issues Briefs of Colorado Legislative Council; and Ten Years of TABOR, A Study of Colorado’s Taxpayer’s Bill of Rights (2003), by the Bell Policy Center.

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