

Public Trust Initiatives Summary

Initiative #3 - The Adoption of the Public Trust Doctrine

Modifies Article XVI, Section 5 of the Colorado Constitution.

Key Provisions: THE PUBLIC CONFERS THE RIGHT TO THE USE OF ITS WATER, AND THE DIVERSION OF THE WATER TO AN APPROPRIATOR FOR A BENEFICIAL USE AS A GRANT FROM THE PEOPLE OF COLORADO TO THE APPROPRIATOR FOR THE COMMON GOOD. THIS COLORADO PUBLIC TRUST DOCTRINE PROTECTS THE PUBLIC'S INTERESTS IN THE WATER OF NATURAL STREAMS AND TO INSTRUCT THE STATE OF COLORADO TO DEFEND THE PUBLIC'S WATER OWNERSHIP RIGHTS OF USE AND PUBLIC ENJOYMENT. THIS COLORADO PUBLIC TRUST DOCTRINE PROVIDES THAT THE PUBLIC'S ESTATE IN WATER IN COLORADO HAS A LEGAL AUTHORITY SUPERIOR TO RULES AND TERMS OF CONTRACTS OR PROPERTY LAW. A USUFRUCT RIGHT IS SERVIENT TO THE PUBLIC'S DOMINANT WATER ESTATE. A USUFRUCT WATER USER IS IMPRESSED UNDER THE CONDITION THAT NO USE OF WATER HAS DOMINANCE OR PRIORITY OVER NATURAL STREAM OR PUBLIC HEALTH WELL-BEING.

THE RIGHT OF THE PUBLIC TO THE USE OF THE WATER IN A NATURAL STREAM AND TO THE LANDS OF THE BANKS OF THE STREAMS WITHIN COLORADO SHALL EXTEND TO THE NATURALLY-WETTED HIGH WATER MARK OF THE STREAM AND IS IMPRESSED WITH NAVIGATION SERVITUDE FOR COMMERCE AND PUBLIC USE AS RECOGNIZED IN THIS COLORADO PUBLIC TRUST DOCTRINE.

Status:

Submitted – 5/4/2010

Title Board Hearing – 12/21/2011

Initiative #45 – Limits on Water Diversion

Modifies Article XVI, Section 6 of the Colorado Constitution.

Key Provisions: THE RIGHT TO DIVERT ANY WATERS WITHIN THE STATE OF COLORADO TO BENEFICIAL USES SHALL NEVER BE DENIED, BUT MAY BE LIMITED, OR CURTAILED, SO AS TO PROTECT NATURAL ELEMENTS OF THE PUBLIC'S DOMINANT WATER ESTATE BY HOLDING UNLAWFUL ANY USUFRUCT USE OF WATER CAUSING IRREPARABLE HARM TO THE PUBLIC'S ESTATE. REQUIRES THE WATER USE APPROPRIATOR TO RETURN WATER UNIMPAIRED TO THE PUBLIC, AFTER USE, SO AS TO PROTECT THE NATURAL ENVIRONMENT AND THE PUBLIC'S USE AND ENJOYMENT OF WATERS. THE PUBLIC CONFERS THE PRIVILEGE FOR THE USE AND DIVESION OF ITS WATER TO ANY APPROPRIATOR FOR THE COMMON GOOD. ENFORCEMENT AND IMPLEMENTATION OF USES OF WATER SHALL BE PROTECTIVE OF THE PUBLIC'S RIGHTS AND INTERESTS, ARE MANDATED TO THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES OF COLORADO STATE GOVERNMENT TO ACT, AS STEWARDS, TO PROTECT THE PUBLIC'S INTERESTS IN ITS WATER ESTATE.

Status:

Submitted – 11/17/2011

Review and Comment Hearing – 12/1/2011

Title Board – 12/21/2011