COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, Colorado 80203	
Appeal From: 11th Judicial District, Fremont County Case Number: 2018CV030069 The Honorable Lynette M. Wenner	
Plaintiff/Appellant: ROGER HILL v. **Defendants/Appellees:** MARK EVERETT WARSEWA LINDA JOSEPH, and STATE OF COLORADO	
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BRIEF OF *AMICI CURIAE* COLORADO WATER CONGRESS, CITY OF COLORADO SPRINGS, AND UPPER ARKANSAS WATER CONSERVANCY DISTRICT SUPPORTING APPELLEES

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

The brief complies with the applicable word limit set forth in C.A.R. 29(d).

☒ It does not exceed 4,750 words. This brief contains 4,594 words.

☒ The amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).

☒ I acknowledge that our brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

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S/ Stephen H. Leonhardt
Stephen H. Leonhardt

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STATEMENT OF ISSUE

This *amici curiae* brief addresses the following issue raised in the appeal of this matter: Whether the district court correctly dismissed Hill's First Amended Complaint for lack of standing and failure to state a plausible claim for relief.

IDENTITY AND INTEREST AS *AMICI CURIAE*

The Colorado Water Congress ("CWC"), a non-profit organization established in 1958, is the leading voice of Colorado's water community. CWC has about 350 member organizations representing the diverse interests and opinions of water users throughout Colorado's nine major river basins, including those who use water for municipal, agricultural, industrial, recreational, commercial, and other water uses. CWC advocates for state and federal policies that support high-quality sustainable water supplies through protection of water rights, conservation, planning, management, and infrastructure investments.

The City of Colorado Springs, acting by and through its enterprise Colorado Springs Utilities ("Colorado Springs"), is a member of the CWC and owns and operates an extensive diversion and storage system that provides roughly 25 billion gallons of water annually to more than 470,000 customers in the City of Colorado Springs and surrounding communities. Colorado Springs currently obtains its water supply from water rights sourced from the Arkansas River Basin, the Colorado River

Basin, and the South Platte River Basin. This water is conveyed through four major pipelines and many smaller pipelines with diversion infrastructure located within the banks and beds of rivers on property it owns or has rights to use. Colorado Springs also operates exchanges and plans for augmentation pursuant to Colorado law that reduce flows in the Arkansas River. The transfer of ownership of the bed and banks of the Arkansas River and other rivers from which Colorado Springs derives its water supply could impair its ability to fully utilize its water rights and safely and effectively operate its water system.

The Upper Arkansas Water Conservancy District ("UAWCD") is also a CWC member, and is a Colorado statutory water conservancy district. UAWCD's territory includes approximately 125 miles of the Arkansas River, including the segment at issue in this case. UAWCD works to increase the water supply available within the Upper Arkansas Valley, and is authorized by statute to construct reservoirs, canals, and other improvements to supply water for beneficial use within its boundaries. *See* C.R.S. §§ 37-45-118(1)(C) and 37-45-103(10). UAWCD has participated in projects within the banks of the Arkansas River. Moreover, UAWCD constituents have agricultural and municipal diversion infrastructure located within the banks of the Arkansas River. Some of UAWCD's revenue comes from an *ad valorem* property tax, from which State-owned property is exempt. C.R.S. § 39-3-105. Thus,

transferring ownership of the bed and banks of the Arkansas River to the State of Colorado would exempt many acres of land that have historically been subject to that property tax. This would create a hardship to UAWCD and all other local government entities that derive revenue from the property tax on land within the banks of the Arkansas River.

CWC and its members support Colorado's system of property rights in the use of water, which is grounded in the Colorado Constitution. CWC's participation as *amicus curiae* provides this Court with a statewide perspective on that system's importance, and Colorado Springs' and UAWCD's participation provides this Court with municipal and regional water suppliers' perspectives. The Colorado Supreme Court has held that the State constitution "simply and firmly establishes the right of appropriation" for water in Colorado, and has refused to apply a public trust doctrine to Colorado's waters. *People v. Emmert*, 597 P.2d 1025, 1028-29 (Colo. 1979). Because Colorado's appropriation system provides for security, stability, and predictability of water rights, CWC has consistently opposed efforts to impose a public trust doctrine with respect to Colorado's water and streams.

In this case, Hill claims a right to access the riverbed of the Arkansas River crossing land owned by Warsewa and Joseph (the "Homeowners") in Fremont County. Hill's claimed right of access is premised solely on the public trust doctrine,

which the Colorado Supreme Court rejected in *Emmert* and which, if established in this case, would threaten property rights to the use of water under the Colorado Constitution. In some states that have recognized public rights under the public trust doctrine, those public rights have been interpreted to supersede other vested property rights in the use of water and the beds and banks of streams. *See, e.g., National Audubon Society v. Superior Court,* 658 P.2d 709, 717 (Cal. 1983) (holding that California may reconsider vested municipal water rights on public trust grounds). As discussed in Section I.A.4 below, a public trust in Colorado's waters would pose threats to existing water supplies, water rights and related property interests.

For these reasons, *Amici* support the Appellees in asking the Court to affirm the district court's dismissal of Hill's complaint. Because Hill's claimed interest is premised on the public trust doctrine, which is contrary to Colorado's Constitution and statutory law, Hill lacks standing to litigate title to the riverbed and his complaint fails to state a plausible claim for relief.

SUMMARY OF THE ARGUMENT

The District Court properly dismissed Hill's complaint for lack of standing and for failure to state a plausible claim for relief. Hill alleges that he has a right to access, wade upon, and fish the riverbed of the Arkansas River crossing the Homeowners' Fremont County property. Hill's Complaint sought a declaration and

determination that the State of Colorado owns the disputed riverbed "in trust for the public" based on alleged navigability at statehood in 1876. The legal basis for Hill's claimed right is the public trust doctrine. This common law doctrine posits that navigable waters and the underlying streambeds owned by the state must remain available for public access and use. That doctrine is contrary to Colorado law and, if recognized in this case, would threaten established property rights and water use rights recognized by the Colorado Constitution. Thus, the doctrine provides no legally protected interest and no plausible basis for relief.

The existence of a public trust is a question of state law. Though other states may recognize a public trust over water, Colorado has repeatedly rejected efforts to impose a public trust over all rivers and streams in the state (including any that could later be found navigable). Colorado's Constitution declares that the waters of all natural streams, including those allegedly navigable, are subject to appropriation for beneficial use, displacing any contrary common law principles. A public trust doctrine is inconsistent with the Colorado Constitution's protections for water use rights, and the Colorado Supreme Court has consistently interpreted the state Constitution to preclude the public trust doctrine and any resulting public access rights such as Hill asserts. Because Hill's claimed interest is premised on the public trust doctrine, which is contrary to Colorado law, the District Court properly

concluded that Hill lacks standing to litigate title to the riverbed based on navigability, and that his complaint fails to state a plausible claim for relief. Accordingly, this court should affirm the District Court's dismissal of Hill's complaint.

ARGUMENT SUPPORTING AFFIRMANCE

I. THE DISTRICT COURT PROPERLY DISMISSED HILL'S COMPLAINT FOR LACK OF STANDING.

The district court properly decided that Hill lacks standing, having failed to show any legally protected interest in the disputed riverbed property. In particular, the theory upon which Hill asserts an interest is contrary to Colorado law.

A. Hill's asserted interest in the Arkansas River bed is solely premised upon the public trust doctrine, which is contrary to Colorado law.

Hill's complaint sought a declaration that the Arkansas River was navigable at the time of statehood and, thus, that portions of the riverbed must be declared public lands owned by the state of Colorado "in trust for the public." *See* Opening Br. p. 6; First Amended Compl. ¶2 (CF, p. 55). Attempting to establish standing, Hill now characterizes his claimed right of access as a "public easement." To support that claim, Hill asserts that the Tenth Circuit, prior to remand, "found that 'the state holds . . . title in trust for the public, subject to an easement for public uses such as fishing.'" Opening Br. p. 18 (citing *Hill v. Warsewa*, 947 F. 3d 1305, 1306-07 (10th

Cir. 2020)). Hill mischaracterizes this quote from the Tenth Circuit's opinion, as the Court's statement simply summarized Hill's claims. Rather than determining title, the Tenth Circuit stated that "[t]he other parties and amici may ultimately be correct that Colorado law does not actually afford Mr. Hill the right to fish that he asserts . . .." *Hill*, 947 F.3d at 1311. As discussed below, Hill's asserted right to access and fish upon the Homeowners' property is predicated only upon the public trust doctrine, which is contrary to Colorado law.

1. The public trust doctrine is a matter of state law, and states have the authority to accept, reject or define any public trust over waters within their borders.

The United States Supreme Court has repeatedly confirmed that state law, not federal law, determines the scope of a state's ownership and control of riverbed lands within its borders. *See Shively v. Bowlby*, 152 U.S. 1, 58 (1894) (holding that title and control of lands underlying "navigable rivers" must be determined under Oregon law) (quotes added); *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co*., 429 U.S. 363, 371, 377-78 (1977) (holding that the equal footing doctrine provides no federal obligation or restraint to supersede the state's disposition of navigable streambed property according to state law).

More recently, in *PPL Montana*, the U.S. Supreme Court held that "the States retain residual power to determine the scope of the public trust over waters within

their borders . . ..". *PPL Montana, LLC v. Montana,* 565 U.S. 576, 604 (2012). Specifically, the Court held that:

> [u]pon statehood, the State gains title within its borders to the beds of waters then navigable . . .. **It may allocate and govern those lands according to state law** subject only to "the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce.

Id. at 591 (citation omitted) (emphasis added). As such, Colorado law dictates whether, and to what extent, Hill may claim a right to access, fish, and wade upon riverbeds underlying any navigable waterways.

Hill cites several cases in which other states have recognized a public trust in navigable waters within their borders. *See* Opening Br. p. 15, n. 4. Notably, Hill cites *Kramer v. City of Lake Oswego*, 395 P. 3d 592 (Or. App. 2017), which declares that "[c]ases from other jurisdictions are of limited use because . . . the scope of the public-trust doctrine is a matter of individual state law." *Id.* at 608. Consistent with the U.S. Supreme Court's holdings, all of the cases cited by Hill apply state law or state constitutional provisions to recognize the public trust doctrine within their respective states. Hill cites no Colorado cases supporting the establishment of a public trust in this state because none exist. As discussed below, the Colorado Supreme Court has consistently rejected arguments for a public trust over water as contrary to Colorado's Constitution. *See Emmert*, 597 P.2d at 1026. Accordingly,

the cases that Hill cites do not establish a public right of access under Colorado law in or to any Colorado streambed property.

2. The Colorado Constitution establishes the right of prior appropriation and abrogates common law rights in all natural streams, both allegedly navigable and non-navigable.

Hill asserts that "Colorado retains the common law rule with respect to public access to state-owned navigable riverbeds," conferring a public right to access, fish and wade upon the beds of navigable rivers. Opening Br. p. 14-15. To support this contention, Hill relies on *Illinois Cent. R. Co. v. Illinois*, 146 U.S. 387 (1892), which applied Illinois law on the public trust doctrine with respect to navigable waterways within that state. *See PPL Montana,* 565 U.S. at 603-04 (finding that *Illinois Central* "was 'necessarily a statement of Illinois law'."). As discussed above, state law governs the scope of a state's ownership and control of riverbed lands within its borders. In Colorado, the appropriation doctrine has governed the public's right to use water since statehood.

The Colorado Constitution guarantees the public's right to appropriate water for beneficial use. Two sections of the Colorado Constitution expressly define the public's rights in all natural streams within the state, both navigable and non-navigable, and abrogate the common law regarding such rights. The first of these provisions, Article XVI, § 5, states that:

> The water of every natural stream, not heretofore appropriated, within the State of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

The next section provides that the "right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied." *Id.* at § 6. The plain language of these provisions applies broadly to "every natural stream" within the state, and does not exclude any streams alleged to be navigable. Accordingly, Colorado's appropriation system, as established by these two provisions, applies to all waterways within the state and dedicates these waters to appropriation for beneficial use.[1]

[1]Both the Colorado Supreme Court and the U.S. Supreme Court have recognized the non-navigability of Colorado's natural streams, including the Arkansas River. The Colorado Supreme Court has declared that "the natural streams of this state are, in fact, nonnavigable within its territorial limits." *See Stockman v. Leddy*, 129 P. 220, 222 (Colo. 1912), overruled on other grounds by *U.S. v. City and County of Denver*, 656 P.2d 1 (Colo. 1982). Reflecting this general understanding, the Colorado Supreme Court ruled that the United States could grant title to a private owner for lands beside and beneath the non-navigable Arkansas River. *Hanlon v. Hobson*, 51 P. 433, 435 (Colo. 1897) (upholding a deed to lands on the Arkansas River in Pueblo and rejecting an argument that such waters belong to the public). Similarly, the U.S. Supreme Court has declared the entire Arkansas River within Colorado non-navigable. *Colo. v. Kansas*, 320 U.S. 383, 384 (1943). Though these cases confirm the understanding that Colorado waters, including the Arkansas River, are non-navigable, the Constitutionally-established appropriation system applies to all waters, irrespective of their navigability.

The Colorado Supreme Court upheld this interpretation in *Emmert*, decisively rejecting the establishment of any public trust in state waterways. In *Emmert,* the defendants claimed that Article XVI, Section 5 "establishes the public right to recreational use of *all waters* in the state," a claim that the Colorado Supreme Court rejected, holding instead that Section 5 "was primarily intended to preserve the historical appropriation system of water rights upon which the irrigation economy in Colorado was founded, *rather than to assure public access to waters for purposes other than appropriation*." 597 P.2d at 1027-28 (emphasis added). Because these Constitutional provisions apply to all natural streams in the state, the Court's holding in *Emmert* confirms that all waters, both allegedly navigable and non-navigable, are subject to appropriation for beneficial use. This holding "simply and firmly establishes the right of appropriation in this state," *id.* at 1028, and confirms that the appropriation system established by the Colorado Constitution supersedes any common law right permitting public access to such waters.

3. Colorado courts have rejected calls to recognize a public trust in the state's natural streams.

Colorado courts have consistently rejected arguments asserting public easements or a public trust in the state's natural streams. For instance, the Colorado Supreme Court found a statute providing public access for fishing to be unconstitutional. *See Hartman v. Tresise,* 84 P. 685, 687 (Colo. 1905). In *Hartman,*

the court held that "neither in [Art. XVI, sec. 5], nor in any other, clause of our Constitution, nor any act of Congress, is the right of fishery in the natural streams of this state, or an easement over the public domain for its enjoyment" recognized, and to acknowledge such a right would contradict both the Constitution and the landowner's "exclusive right of fishery" within the streambed. *Id.* at 686-87 (Colo. 1905). Years later, in *Emmert,* the Colorado Supreme Court again rejected the call to recognize a public trust or easement in Colorado waters, reasoning that such claims were inconsistent with Article XVI of the Colorado Constitution, which applies to all natural streams in Colorado. 597 P.2d at 1028-30. Most recently, in *City of Longmont v. Colo. Oil & Gas Ass'n*, 369 P.3d 573, 586 (Colo. 2016), the Supreme Court confirmed again that Colorado law does not recognize any form of public trust doctrine.

As Colorado Supreme Court Justice Hobbs explained, Colorado has "wholly replaced" the common law of water by making all surface water and groundwater "a public resource dedicated to the establishment and exercise of water use rights created in accordance with applicable law. The 'Colorado Doctrine' arose from the 'imperative necessity' of water scarcity in the western region, and . . . created a property-rights-based allocation and administration system that promotes multiple use of a finite resource for beneficial purposes." *Kemper v. Hamilton*, 274 P.3d 562,

573–74 (Colo. 2012) (Hobbs, J., dissenting); *see also Crippen v. White*, 64 P. 184, 186 (Colo. 1901) (common law abrogated and "has never been recognized as controlling in the matter of water rights"); *Bd. of Cty. Comm'rs. v. Park County Sportsmen's Ranch, LLP*, 45 P.3d. 693, 705-06 (Colo. 2002) (holding that "Colorado [water] law differs fundamentally from the English common law that it replaced," establishing "[a] new law of custom and usage in regard to water use rights and land ownership."). Colorado established this legal regime within a federal system that allows state law to determine "whether the public effectively has an easement over [lands beneath navigable waters] for public trust purposes, . . . whether private landowners have always held the lands, or whether some other regime is effective." *Kemper*, 274 P.3d at 572 (citing *PPL Montana*, 132 S. Ct. at 1234-35). While Justice Hobbs gave this explanation in a dissent regarding the single subject requirement for ballot initiatives,[2] he accurately explains Colorado water law and its history, and his analysis of how a public trust doctrine diverges from Colorado law is authoritative.

[2] The proposed initiative sought to adopt the public trust doctrine by constitutional amendment in 2012, "to protect the public's interests in the water of natural streams" in Colorado. However, this initiative failed to garner sufficient signatures to qualify for the ballot, as have other similar proposals. Thus, Colorado has not amended its constitution as would be needed to adopt a public trust doctrine.

4. Implementing a public trust doctrine in Colorado would adversely impact existing water rights and related property interests.

As explained above, Colorado law does not support Hill's claim for access to the bed of the Arkansas River. Recognizing a public trust in Colorado's waters and streambeds, as Hill urges, would adversely impact both existing water use rights and land ownership. *See Kemper*, 274 P.3d at 572 (Hobbs, J., dissenting) (concluding that implementing a public trust doctrine in Colorado would amount to dropping "a nuclear bomb on Colorado water rights and land rights.").

The public trust doctrine is inconsistent with, and would undermine, the prior appropriation system established by Colorado's Constitution. The California Supreme Court, which has adopted a common law public trust doctrine, has recognized the conflict between these two doctrines and the impact of a public trust on appropriated water rights. *See National Audubon,* 658 P.2d at 712, 727. Because California imposes "public interest" and "reasonable use" limitations on appropriated water rights, the California Supreme Court held that the public trust doctrine required reconsideration of water rights Los Angeles held and used for over 40 years. *Id.* at 726-29. A system with such imposed limits "has never been the law in Colorado's 'pure' prior appropriation system." *Kemper*, 274 P. 3d at 573

(discussing and distinguishing *National Audubon* to explain why a public trust doctrine is inconsistent with Colorado's Constitution).

In Justice Hobbs' assessment, adopting a public trust doctrine in Colorado would:

- "subordinate all existing water rights in Colorado created over the past 150 years to a newly created dominant water estate";
- "vest in the public possessory rights to the beds and banks of the stream now owned by local public entities and private landowners in Colorado"; and
- "vest a recreational easement in the public across all private property in Colorado through which . . . water runs," abrogating private property owners' right to prohibit trespass across their land.

Id. at 571–72.

If the public trust doctrine is recognized in Colorado, even as a basis for standing to litigate title and access, municipal water suppliers would likely be involved in disputes, and potentially litigation, with members of the public over the extent of the public's right to access and use the suppliers' streambed property. Unfettered public access to a supplier's property could result in injury to members of the public and damage to the suppliers' infrastructure. Suppliers may also face

legal challenges to use of their water rights based on assertions that operation of the water rights is subordinate to, and may negatively impact, the public's right to access and fish within Colorado's rivers. Such challenges may leave suppliers without sufficient water supplies to serve their customers.

B. Hill lacks standing to litigate title to the Arkansas River bed.

1. Because Colorado has no public trust doctrine, Mr. Hill has no right to access the streambed in question and, thus, cannot assert a legally protected interest that gives rise to a claim for standing.

Under Colorado law, plaintiffs seeking to demonstrate standing must have suffered an injury-in-fact to a legally protected interest. *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977). To demonstrate a legally protected interest under *Wimberly*, plaintiffs must have "a claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). "If a person suffers no injury in fact, or suffers injury in fact, *but not from the violation of a legal right, no relief can be afforded*, and the case should be dismissed for lack of standing." *Wimberly*, 570 P.2d at 539. (emphasis added). As discussed below, and in the State's Answer Brief, the District Court correctly concluded that Hill failed to demonstrate a legally protected right to access the disputed riverbed and, thus, cannot establish standing.

Hill's Opening Brief characterizes his claimed right to access the riverbed crossing the Homeowners' property as a "public easement." Opening Br. p. 18. First, that asserted right is predicated upon the State's title to such land, an interest that the State does not claim. *Amici* adopt the State's argument that, because Hill asserts the rights of a third party rather than his own title interest, Hill lacks standing. Moreover, Hill's alleged right to access the disputed riverbed is based only upon the public trust doctrine, which the Colorado Supreme Court has rejected as contrary to the state Constitution. *See Emmert,* 597 P.2d at 1027-28. Hill's claimed right of access has no basis under Colorado law, thus defeating his claim to have a legally protected interest in the riverbed.

Arguing that an interest in a public easement confers a legally protected interest for standing purposes, Hill asserts that Colorado courts "have reached the merits of claims . . . where private parties request a declaration of rights with respect to public easements," citing *Turnbaugh v. Chapman*, 68 P.3d 570 (Colo. App. 2003). Opening Br., p. 18. However, *Turnbaugh* did not involve questions of standing, as the plaintiffs sought a determination that a recorded, county-owned easement was available for public use and that they could use that easement to access their own property. 68 P.3d at 572. In contrast, Hill requests that the court declare the existence of a public easement, the grounds for which are contrary to Colorado law. *See, e.g.,*

Emmert, 597 P.2d at 1027-28. Rather than pleading a legally protected right to access the disputed riverbed, Hill claims a right of access not recognized in Colorado.

Hill cites the Tenth Circuit's decision in *Hill*, Opening Br. at 18, to substantiate his claim to have a legally protected interest in real property; however, his reliance on that decision is misplaced. In determining that Hill asserted his own rights, not just Colorado's, and therefore met the limited requirement for prudential standing under federal law, the Tenth Circuit analogized that Hill "is . . . like the purported holder of an easement he alleges was granted . . .." 947 F.3d at 1310–11. The Tenth Circuit's determination that Hill had prudential standing in federal court has no bearing on whether Hill's interest is legally protected under Colorado law. While Hill asserts that his claimed interest "must be taken as true for the purposes of this appeal," Opening Br. p. 20, Colorado's law of standing requires the Court to examine the legal validity of that interest under Colorado law, rather than assume the truth of legal conclusions stated in his Complaint. *See Denver Post Corp. v. Ritter,* 255 P.3d 1083, 1088 (Colo. 2011) (stating that court is "not required to accept as true legal conclusions that are couched as factual allegations"). Because Hill's claimed interest in the disputed riverbed is predicated upon the existence of a public trust, which has been rejected under Colorado law, that interest is neither valid nor

legally protected. This Court cannot ignore these fatal flaws in determining whether Hill has standing to bring the claims he asserts.

Because Colorado has rejected the public trust doctrine, neither the Colorado Constitution nor any other provision of Colorado law affords Hill the right to access riverbeds in waterways crossing private property. Accordingly, Hill's claim for relief does not arise under the constitution, Colorado common law, a statute, or a regulation, as required by *Wimberly,* 570 P.2d at 539, and Hill cannot establish a legally protected right to access the disputed property. Thus, the District Court properly dismissed his complaint for lack of standing.

2. Hill's claimed right to use the riverbed is a generalized grievance shared by all members of the public.

Amici concur in the arguments briefed by the State of Colorado regarding Hill's assertion of a generalized grievance. Hill's claimed right of access is based upon an alleged public easement over the bed of the Arkansas River crossing the Homeowners' property. Such an easement would afford all members of the public the right to access the disputed lands and, accordingly, Hill's asserted injury would be shared by all individuals. Because the claimed injury is not specific to Hill, Hill asserts only a generalized grievance, insufficient to support a claim for standing.

II. HILL'S COMPLAINT FAILS TO STATE A PLAUSIBLE CLAIM FOR RELIEF BECAUSE IT IS PREMISED ON THE PUBLIC TRUST DOCTRINE, WHICH IS CONTRARY TO COLORADO LAW.

As discussed above, the appropriation system established under the Colorado Constitution is inconsistent with the existence of a public trust in Colorado's waters, and Colorado courts have consistently rejected attempts to impose the public trust doctrine in this state. Because the public trust doctrine upon which Hill's claims are premised is contrary to Colorado law, and for the reasons set forth in the Homeowners' Answer Brief, Hill's complaint fails to state a plausible claim for relief and, therefore, was properly dismissed.

CONCLUSION

For the reasons stated above, and those put forth by the State and the Homeowners in their briefs, the District Court's dismissal order should be affirmed.

Respectfully submitted this 21st day of January, 2021.

BURNS, FIGA & WILL, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of January, 2020, a true and correct copy of the foregoing **BRIEF OF *AMICI CURIAE* COLORADO WATER CONGRESS, CITY OF COLORADO SPRINGS, AND UPPER ARKANSAS WATER CONSERVANCY DISTRICT SUPPORTING APPELLEES** was served via Colorado Courts E-Filing as follows:

SERVED VIA COLORADO COURT E-FILING		
Roger Hill	Plaintiff-Appellant	Alexander N. Hood (Towards Justice)
Linda Joseph	Defendant-Appellee	Kirk B. Holleyman (Kirk Holleyman PC)
Mark Everett Warsewa	Defendant-Appellee	Kirk B. Holleyman (Kirk Holleyman PC)
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