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ELECTIONS

SECRETARY OF STATE

BEFORE THE TITLE BOARD, STATE OF COLORADO

MOTION FOR REHEARING

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE
2007-08 #84

Petitioners, Douglas Kemper and Robert P. Nanfelt, registered electors of the State of Colorado, by and through their counsel, Burns, Figa & Will, P.C., hereby request a rehearing and reconsideration of the title and ballot title and submission clause set by the Title Board (collectively the "Titles") on April 16, 2008 for Initiative 2007-08 #84 (the "Initiative"), which would amend Article XVI to the Colorado Constitution by adding a new Section 9 entitled "Sufficient and sustainable water supply act." Reconsideration is requested for the following reasons:

1. The Initiative and Titles do not conform to the single-subject requirements of article V, section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5.
2. The Titles do not adequately and fairly express the true intent and meaning of the Initiative.

I. The Initiative and Titles Violate the Single Subject Requirement.

The Initiative and Titles violate the single subject requirements of article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5. The single subject requirement dictates that "[n]o measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title." Colo. Const. art. V, § 1(5.5); *see also* C.R.S. § 1-40-106.5(1)(a). An initiative violates the single subject rule when it "relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other." *In re Petition Procedures*, 900 P.2d 104, 109 (Colo. 1995). An initiative encompassing multiple distinct purposes under a broad theme does not satisfy the single subject requirement. *In re Title and Ballot Title and Submission Clause for 2005-2006 #55*, 138 P.3d 273, 278 (Colo. 2006). The Initiative violates the single subject requirement because it: (1) contains at least two distinct purposes; and (2) seeks to connect multiple subjects to satisfy unrelated political objectives.

A. **The Initiative contains two distinct purposes: (1) procedures for ensuring sufficient water supplies for land development approval, and (2) substantive changes to Colorado law protecting agricultural water rights.**

An initiative that broadly imposes both procedural and substantive changes to Colorado law violates the single subject requirement. *In re Title, Ballot Title and Submission Clause for 2003-2004, #32 and #33*, 76 P.3d 460, 461 (Colo. 2003) (finding that an initiative that sought to implement procedural changes to ballot initiative system and prohibit attorneys from participating in the process to determine ballot titles pertained to both procedural and substantive issues and thus contained multiple subjects); *In re Amend TABOR 25*, 900 P.2d 121, 126 (Colo. 1995) (holding that an initiative that proposed to make both procedural and substantive changes to TABOR violated the single subject requirement).

The Initiative seeks to amend Article XVI of the Colorado Constitution by creating a new Section 9 entitled “Sufficient and sustainable water supply act.” On its face, the Initiative appears aimed at ensuring sufficient and sustainable water supplies for approval of land development projects of at least fifty units. However, the express language of subsection 3 (c)(III) of the Initiative has a very different aim - protecting water supply for agricultural uses. Subsection 3(c)(III) of the Initiative requires the State Engineer to provide a letter “**determining if irrigation water priorities for agricultural purposes are reasonably fulfilled and requiring such.**” *Id.* (emphasis added). While it is not clear how the State Engineer’s letter would “require” that such priorities be fulfilled, it seems this would at least be a condition for all land development approvals covered by the measure, requiring a local government to deny all development applications unless the State Engineer makes the unrelated finding that agricultural priorities are reasonably fulfilled. The protection of the use of water for agricultural purposes is a separate and distinct purpose from ensuring sufficient and sustainable water supply is available for land use development projects.

1. The central purpose of the Initiative is to require local governments to make land use decisions according to a specified process.

The central stated purpose of the Initiative is to ensure that future land development has a sufficient and sustainable water supply. Local governments, as political subdivisions of the state, have been delegated the authority to adopt and enforce subdivision regulations. *See, e.g., C.R.S. § 30-28-133* (delegating counties the authority to regulate subdivisions). This authority, however, is limited by the powers granted to the political subdivision by the Constitution or the General Assembly. *Beaver Meadows v. Board of County Commissioners*, 709 P.2d 928, 932 (Colo. 1985).

No matter how local governments currently regulate subdivision approval, the Initiative imposes a new procedural requirement that a local government must abide by when making land use decisions relating to proposed developments of more than fifty housing units. The Initiative requires that a local government make those decisions according to a prescribed set of criteria aimed at ensuring that the applicant can demonstrate that the project’s water supply is sufficient and sustainable to meet the peak water needs of a proposed development. To further this

objective, the Initiative requires the local government to review certain evidence that would allow it to determine that a water supply is sufficient and sustainable to meet the requirements of the proposed development. Initiative Section 3.

2. The Initiative substantively alters the water rights priority system.

The Initiative, however, also makes substantive changes to the water rights priority system by requiring all water priorities for agricultural purposes to be satisfied prior to approval of a proposed development. The prior appropriation system or “Colorado Doctrine” is well established in Colorado law. Article XVI, section 5 of the Colorado Constitution declares that all unappropriated water within Colorado is “the property of the public,” and reserves the use of such water for “the people of the state, subject to appropriation.” Article XVI, section 6 of the Colorado Constitution specifies that the right to use water is governed by the doctrine of prior appropriation. The prior appropriation doctrine is often described as “first in time, first in right.” *Archuleta v. Gomez*, 140 P.3d 281, 284 (Colo. App. 2006). While priority of appropriation gives the better right as between those using the water for the same purpose, in times of shortage, the Constitution provides “those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes.” Colo. Const. Art. XVI, § 6.

To ensure that all priorities are properly determined and then exercised without injury, water courts have exclusive subject matter jurisdiction over “water matters.” C.R.S. § 37-92-203(1). A “water matter” includes any determination regarding the right to use water, such as the quantification of a water right or a change in a previously decreed water right. *Crystal Lakes Water & Sewer Ass’n v. Backlund*, 908 P.2d 534, 540 (Colo. 1996). Accordingly, a water court has the exclusive right to determine the legal right to use water. *Humphrey v. Southwestern Dev. Co.*, 734 P.2d 637, 640 (Colo. 1987). The holder of a water right who suffers injury by a change in the use of a senior water right may seek protection from the injury in the appropriate water court. *Central Colorado Water Conservancy Dist. v. Simpson*, 877 P.2d 335, 343 (Colo. 1994).

By its express language, subsection 3(c)(III) of the Initiative modifies Colorado law by requiring that appropriations for agricultural purposes be given priority over non-agricultural appropriations, including those for domestic use, regardless of their seniority. This mandate contradicts the long-standing prior appropriation doctrine reflected in Sections 5 and 6 of Article XVI of the Colorado Constitution, which bases water rights priorities on the time at which a person first put water to beneficial use. Similarly, it violates the due process rights afforded to persons appearing in a Water Court who have validly changed a water right in a manner that the Court found sufficient to prevent injury to other water rights, only to be denied the ability to use that right by the State Engineer requirement this Initiative would mandate.

Municipalities often purchase senior agricultural water rights to provide water supplies for new growth and development, changing the use of those rights so that the senior priority may supply the new use without injuring junior water rights. Terms and conditions are designed to assure that the senior right will not impact junior rights to a greater extent than it did historically.

A developer or municipality, having acquired senior water rights at great expense and obtained a Court decree finding no injury from changing those water rights to municipal use, could then be prohibited by the Initiative from using those rights to serve new development when more junior priorities for agricultural irrigation use are unfulfilled due to their junior priority.

The Initiative's mandate that the State Engineer require that irrigation water priorities for agricultural purposes to be reasonably fulfilled, as a condition of local government approvals of land use applications, is a radical departure from existing Colorado water law and is unrelated to the Initiative's stated purpose of ensuring sufficient and sustainable water supply for land use development. Accordingly, the Initiative contains at least two separate, distinct and unrelated subjects and purposes which create both procedural and substantive changes to Colorado law.

B. The Initiative impermissibly combines unconnected subjects to serve unrelated political objectives.

The single subject requirement is designed to prevent "log rolling," or "the joining together of multiple subjects into a single initiative in the hope of attracting support from various factions which may have different or even conflicting interests." *Public Rights in Waters II*, 898 P.2d 1076, 1079 (Colo. 1995). Here, the initiative combines two unconnected policy objectives: (1) assuring sufficient water supply for land use development; and (2) protecting agricultural water rights against curtailment.

Assuring sufficient water supplies for land use approvals is the subject of House Bill 08-1141, "Concerning Sufficient Water Supplies for Land Use Approval" ("HB 1141"). In fact, much of the text of the Initiative follows almost verbatim the text of HB 1141 as initially introduced.¹ As suggested by the bill's title, the goal is to require developers to prove there is a sufficient water supply before getting approval for a new development. See John Ingold, "Panel Connects Water, Growth" *The Denver Post*, February 20, 2008, attached hereto as Exhibit A.

By contrast, the second aim of this measure (attempting to protect agricultural water use rights against curtailment) does not appear in HB 1141, but recently has been the subject of a very different legislative and policy examination. The Governor appointed a task force in 2007 to explore "any changes to current water law or policy" that could provide relief to agricultural well users with junior water rights, without injuring holders of senior water rights. Executive Order B-005-07, Creating the South Platte River Basin Task Force. The task force provided its report to the Governor on September 30, 2007, with modest recommendations for legislation, none of it pertaining to land use approval processes. See Letter dated September 30, 2007 from Director Sherman and Commissioner Stulp to Governor Ritter, Senator Fitzgerald, Representative Romanoff and Senator Isgar regarding the South Platte Task Force, available at <http://www.colorado.gov/cs/Satellite/Agriculture-Main/CDAG/1184748122275>, and attached hereto as Exhibit B. Thus, the combining of these separate issues in the Initiative appears to be "for the purpose of enlisting in support of the measure the advocates of each measure, and thus

¹ At this time, HB 1141 has passed the State House of Representatives in a form substantially amended from the original text that was mimicked in the Initiative. The bill remains pending in the State Senate.

securing the enactment of measures that could not be carried upon their merits.” C.R.S. § 1-40-106.5(1)(e)(I). Accordingly, the Initiative improperly includes separate and distinct subjects that are designed to accomplish incongruous policy objectives.

II. The Titles do not Fully Express the Initiative’s True Intent and Meaning.

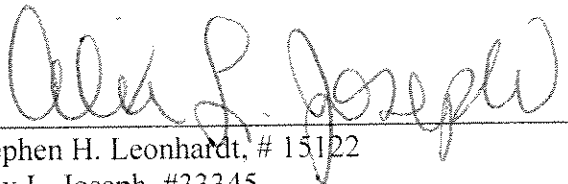
In addition to the separate, distinct and unrelated subjects and purposes contained within the Initiative, the Initiative’s title does not fully express the Initiative’s true intent and meaning. The title should be “a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.” C.R.S. § 1-40-102(10). In setting a title, the Board “shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a ‘yes’ or ‘no’ vote will be unclear.” C.R.S. § 1-40-106(3)(b). The Board’s title for the Initiative fails to meet these standards, in that it does not state: (1) that the State Engineer’s letter must require that irrigation water priorities for agricultural purposes are fulfilled, prior to local government agency approval of a development application; or (2) that the Initiative modifies the prior appropriation doctrine (including the Constitution’s preference for domestic use) by allowing agricultural priorities to trump the use of water for domestic purposes.

A title to an initiative is misleading if it fails to inform voters of the effect of an initiative. *In re Title, Ballot Title and Submission Clause for Proposed Initiatives 2001-2002 #21 and #22*, 44 P.3d 213, 219-20 (Colo. 2002). While the title of the Initiative states that a local government must receive a determination from the State Engineer that agricultural priorities are “reasonably fulfilled,” it does not say that the State Engineer’s letter must require fulfillment of such priorities. The logical consequence of this mandate is that a local land use authority must prohibit development based on any failure to satisfy junior agricultural priorities. Similarly, the titles do not describe the substantive change to Colorado law, including the domestic preference declared in Article XVI, Section 6 of the Colorado Constitution, that would be made in requiring agricultural priorities to be satisfied prior to allowing any land use development. This is precisely the type of surprise that should be prevented in setting an initiative’s title. *See* C.R.S. § 1-40-106(3)(b) (requiring the Board to consider the public confusion that may be caused by misleading titles); *see also In re Title, Ballot Title, Submission Clause, Summary for 2005-2006 #75*, 138 P.3d 267, 271 (Colo. 2006) (setting a clear title is required “to prevent surprise and fraud from being practiced on the voters”). Without stating these effects of the Initiative, it is likely that voters would be surprised by the fact that the Initiative mandates that land use developments must be prohibited by local governments if agricultural irrigation needs are not satisfied.

WHEREFORE, Petitioners, Douglas Kemper and Robert P. Nanfelt, respectfully request a rehearing and reconsideration of the title and ballot title and submission clause set by the Title Board on April 16, 2008 for Initiative 2007-08 #84.

Respectfully submitted this 23rd day of April 2008.

BURNS, FIGA & WILL, P.C.

By: 
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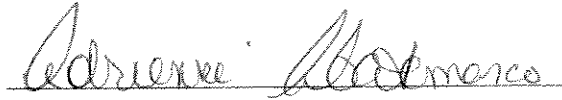
**Attorneys for Petitioners,
Douglas Kemper and Robert P. Nanfelt**

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via U.S. mail on this 23rd day of April 2008, as follows:

Mr. Daniel Hayes
15409 Hwy. 72
Arvada, CO 80007

Dr. Gregory DiLorenzo
4300 Harlan Street
Wheat Ridge, CO 80033



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Panel connects water, growth

Developers would have to prove there's an adequate supply.

By John Ingold
The Denver Post

Article Last Updated: 02/20/2008 01:41:06 AM MST

A bill that would require developers to prove there is a sufficient water supply before getting approval for a new development cleared its first test Tuesday.

The House Local Government Committee passed House Bill 1141, sponsored by Rep. Kathleen Curry, D-Gunnison, with a 7-3 vote. Curry said it is critical for Colorado communities to connect growth with water supply, and she said the drought of recent years exposed how precious water is in the state.

"We do live in an arid environment," she said. "That's a fact of life."

The bill requires developers to submit reports detailing the proposed development's expected water demand and where the development intends to get that water. It then requires local governments to make a determination of whether the water supply is sufficient to cover the development's needs.

Supporters call the bill a common-sense measure.

Capitol Insider

- Read the Post's new blog from the state Capitol, as the new legislative session kicks off.
- View a slideshow of photos from the first legislative session of 2008.

"There is nothing more important in Colorado in the arena of policy making that dealing with water," said Rep. Cherylin Peniston, D-Westminster, who sits on the committee.

Environmental groups also rallied behind the bill.

"It offers a rational approach for cities across the state," said Bart Miller, with Western Resource Advocates.

The Colorado Association of Home Builders opposed the bill.

Rep. Steve King, a Grand Junction Republican who sits on the committee, said he agrees that the issue is important, but he said he thinks Curry's bill needs more consideration.

John Ingold: 303-954-1068 or jingold@denverpost.com

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DEPARTMENT OF
NATURAL
RESOURCES

Bill Ritter, Jr.
Governor

Harris D. Sherman
Executive Director

The Honorable Bill Ritter, Jr.
Governor of Colorado
136 State Capitol
Denver, CO 80203

The Honorable Joan Fitzgerald
President of the Senate
136 State Capitol
Denver, CO 80203

The Honorable Andrew Romanoff
Speaker of the House
136 State Capitol
Denver, CO 80203

The Honorable Jim Isgar
Chair of the Interim Committee on Water Resources.
136 State Capitol
Denver, CO 80203

From Director Sherman and Commissioner Stulp

Date: September 30, 2007

Dear Governor Ritter, President Fitzgerald, Speaker Romanoff and Senator Isgar:

We are writing this letter to you in accordance with the Governor's June 8, 2007 Executive Order creating the South Platte River Basin Task Force.

This letter is sent to you on behalf of all the South Platte Task Force members including Greg Brophy, Steve Bruntz, Kathleen Curry, Harold Evans, Cory Gardner, Arnie Good, Harold Griffith, Ted Harvey, Mary Hodge, Jim Isgar, Joe Kiolbasa, Randy Knutson, Rebecca Love Kourlis, Frank McNulty, Manual Montoya, Jack Pommer, Brandon Shaffer, Hal Simpson, Jerry Sonnenberg, Brad Stromberger, Jim Yahn, and the South

Platte Task Force support team Anne Castle, Alexandra Davis, Jim Hall, Jim Lochhead, Jim Miller and Dick Wolfe

September 6, 2007 was the last meeting of the South Platte Task Force. The Task Force met six times over the past four months. The first two meetings were devoted to gathering public comment, perception, and information regarding the well issues in the South Platte. During the last four of the six meetings, the Task Force deliberated over the issues and a range of proposed recommendations. Materials provided to and reviewed by the Task Force were contemporaneously posted on a Task Force web page on the Colorado Department of Agriculture web site, allowing all interested members of the public access to the documents.

The Members were provided with a significant amount of information to absorb and understand in a short period of time. The Members worked hard and diligently to discuss potential solutions in their effort to achieve the objectives set forth in the Executive Order.

Given that the root of the well problems on the South Platte is simply that there is not enough water in most years to meet all the water demand and decreed appropriations, few people expected a silver bullet to emerge from the Task Force discussions. Further, the various Members' theories regarding potential solutions ranged from those seeking to maintain the current system with no changes whatsoever to those seeking to institute an entirely new paradigm for distribution of water in Colorado. Thus, the idea that the Task Force would reach consensus on any recommendations was not a given. However, the Task Force did agree to ten recommendations out of more than 20 suggested. These are incremental but important recommendations that cumulatively may provide some relief to some well users and may help improve Colorado's water allocation and distribution system.

In addition, there were some recommendations considered that did not garner the 2/3rd support required by the Executive Order that may provide legislators or policy makers food for future thought. For example, there was a recommendation for the creation of a South Platte Water Conservation District. Such a district could provide an entity that would be charged with developing regional solutions. A full list of all the proposals voted upon is attached to this letter.

Because there is no easy solution to the problems faced by well users on the South Platte, some well users may be disappointed that the Task Force did not determine a means by which those with curtailed wells could resume pumping their wells. We believe, however, that the Task Force members strove to provide practical recommendations consistent with the direction to provide some relief to well users without injuring senior water rights.

The following recommendations are hereby made by the South Platte River Basin Task Force to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chair of the Interim Committee on Water Resources.

1. New water storage is a necessary and essential component of resolving the water crisis on the South Platte River. Therefore, the South Platte Task Force recommends the support of the expansion and dredging of existing reservoirs and the construction of new reservoirs including underground storage.

Passed 20/1 (for/against) (Stulp and Harvey absent)

2. The Task Force recommends that continued funding be provided to ensure completion of the South Platte Decision Support System as soon as possible.

Passed 23/0

3. The Task Force recommends that the South Platte Decision Support System team continue its comprehensive study to evaluate the limits of current science and technology to accurately quantify the amount and timing of well pumping depletions to the river, with appropriate peer review, so as to ensure that policy and law is created on the basis of the best modeling possible.

Passed 16/7

4. The Task Force recommends that the Legislature enact legislation that would provide more flexibility for the use of excess augmentation credits, only for replacement of current year depletions caused by past well pumping, with the notice and comment process and expedited review set forth in C.R.S. § 37-83-105. This includes but is not limited to looking at the water loan statute (C.R.S. § 37-83-105) as an appropriate statute within which provide this flexibility.

Passed 17/6

5. The Task Force recognizes that there is increasing pressure being applied to the Water Courts in the State, due to competition for water, recent case law and evolving technology. The Task Force has also received testimony from a number of individuals that the Water Court process is cumbersome, time-consuming and can be extremely expensive.

The study could include consideration of:

- appointment of senior judges as alternate water judges
- permitting the appointment of special masters in water court proceedings – with the possibility that the water court referees could themselves serve in that role
- a requirement that water court referees be professional engineers
- imposition of procedural time requirements in proceedings before the referee, such as application of Rules 16 and 26
- mandatory annual training for water judges and referees both in water law and in the engineering, technological and scientific issues and advancements, in

cooperation with the Law Schools, the Water Bar and the State Engineer's Office

The Task Force recommends that the Governor and/or the General Assembly request the Colorado Supreme Court to undertake and complete within six months a study of the Water Courts in the State and identify possible ways to achieve efficiencies, while still protecting quality outcomes.

Passed 21/2

6. The Task Force recommends that the Legislature and/or the Department of Natural Resources support any South Platte water entity in pursuing a CREP or EQIP program to the same extent that the State has supported other entities, such as the Republican River Water Conservation District, in pursuing CREPs or EQIP in other parts of the state and the Task Force supports encouraging the Colorado Delegation to support amendments to the 2007 Farm Bill to allow use of these programs in the South Platte River Basin.

Passed 17/6

7. Because the South Platte well rules did not go into effect until 1974 and therefore well pumping prior to 1974 did not require augmentation, the Task Force recommends that the Legislature enact legislation providing that augmentation is not required for current depletions caused by pumping prior to 1974.

Passed 17/6

8. The Task Force recommends that the Governor and the Department of Natural Resources encourage Colorado's Congressional Delegation to encourage federal funding of the study to reallocate space in Chatfield Reservoir to allow more storage.

Passed 23/0

9. The Task Force recommends that the Legislature consider legislation that would expand provisions under the water banking act to allow sources of water other than stored water (e.g. changed water rights, underground storage, trans-mountain water) to be put into a water bank and applied to other decreed augmentation plans as an additional water supply.

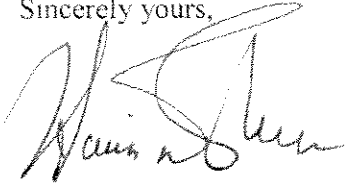
Passed 16/7

10. The Task Force recommends that the Legislature continue to support the Senate Bill 07-122 study regarding "alternative to dry up" of agricultural land for banking, fallowing, interruptible supply, and alternative crops which allows partial dry up.

Passed 20/3

Please let us know if we can provide any further information regarding the South Platte Task Force.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William Sherman".

Director Sherman

A handwritten signature in cursive script, appearing to read "John R. Stulp".

Commissioner Stulp

MEMORANDUM

Date: September 18, 2007

Results of South Platte River Basin Task Force deliberations on the proposed recommendations

Passed recommendations

1. Storage:

New water storage is a necessary and essential component of resolving the water crisis on the South Platte River. Therefore, the South Platte Task Force recommends the support of the expansion and dredging of existing reservoirs and the construction of new reservoirs including underground storage.

Passed 20/1 (Stulp and Harvey absent)

2. SPDSS:

The Task Force recommends that continued funding be provided to ensure completion of the SPDSS as soon as possible.

Passed 23/0 (for/against)

The Task Force recommends that the SPDSS team continue its comprehensive study to evaluate the limits of current science and technology to accurately quantify the amount and timing of well pumping depletions to the river, with appropriate peer review, so as to ensure that policy and law is created on the basis of the best modeling possible.

Passed 16/7 (for/against) (opposition was to "to ensure policy and law is created on the basis of)

3. The Task Force recommends that the Legislature enact legislation that would provide more flexibility for the use of excess augmentation credits, only for replacement of current year depletions caused by past well pumping, with the notice and comment process and expedited review set forth in C.R.S. § 37-83-105. This includes but is not limited to looking at the water loan statute (C.R.S. § 37-83-105) as an appropriate statute within which provide this flexibility.

Passed 17/6

4. The Task Force recognizes that there is increasing pressure being applied to the Water Courts in the State, due to competition for water, recent case law and evolving technology. The Task Force has also received testimony from a number of sources that

the Water Court process is cumbersome, time-consuming and can be extremely expensive.

The study could include consideration of:

- appointment of senior judges as alternate water judges
- permitting the appointment of special masters in water court proceedings – with the possibility that the water court referees could themselves serve in that role
- a requirement that water court referees be professional engineers
- imposition of procedural time requirements in proceedings before the referee, such as application of Rules 16 and 26
- mandatory annual training for water judges and referees both in water law and in the engineering, technological and scientific issues and advancements, in cooperation with the Law Schools, the Water Bar and the State Engineer's Office

The Task Force recommends that the Governor and/or the General Assembly request the Colorado Supreme Court to undertake and complete within six months a study of the Water Courts in the State and identify possible ways to achieve efficiencies, while still protecting quality outcomes.

Passed 21/2

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Passed 17/6

6. Because the South Platte well rules did not go into effect until 1974 and therefore pumping prior to 1974 did not require augmentation, the Task Force recommends that the Legislature enact legislation providing that augmentation is not required for current depletions caused by pumping prior to 1974.

Passed 17/6

7. The Task Force recommends that the Governor and DNR encourage Colorado's Congressional Delegation to encourage federal funding of the study to reallocate space in Chatfield for more storage.

Passed 23/0

8 The Task Force recommends that the Legislature consider legislation that would expand provisions under the water banking act to allow sources of water other than stored water to be put into a water bank (e.g. changed water rights, underground storage, trans-mountain water) and applied to other decreed water plans as an additional water supply.

Passed 16/7

9 The Task Force recommends that the Legislature continue to support the Senate Bill 07-122 study regarding "alternative to dry up" of agricultural land for banking, fallowing, interruptible supply, and alternative crops which allows partial dry up.

Passed 20/3

Failed Recommendations:

1 The Task Force recommends that legislation is needed for a moratorium to permit pumping for 2008 and 2009, at some realistic level, for wells in plans or who have made application for plans.

Failed 3/20 (for/against)

2 The Task Force recommends that the Legislature enact legislation that would allow prepayment of depletions during the winter storage season.

Failed

3 The Task Force recommends that the Legislature empower the SEO to administer aggregated winter depletion replacements in such a way as to prevent injury to senior water rights.

Failed 4/19

4 The Task Force recommends that the South Platte Roundtable explore the idea of whether a South Platte Water Conservation District would be of benefit to the region.

Failed 14/8 (McNulty out of the room)

5 The Task Force recommends that the Legislature enact legislation that would allow the temporary use of fully consumable water in decreed augmentation plans through a SWSP without having to amend the decreed plan.

Failed 13/10

6 The Task Force recommends that the Legislature enact legislation that would remove augmentation obligations for wells that are such a substantial distance from the South Platte River that they have small to no impact on the River.

Failed 3/20

7 The Task Force recommends that the Legislature support by resolution the Yampa River pump-back project.

Failed 10/13

8 The Task Force recommends that legislation is needed to require that objectors plead affirmatively facts showing demonstrable injury suffered by the objector attributable to pumping (as certified by qualified engineers) as part of substantive objections to plans for augmentation. This recommendation is in the spirit of Becky Kourlis' 'amount of process' suggestion. (If 2a is undertaken and the result is a better and more accurate quantification of injury from physical data vs. hypothetical data, much of the legal presumption in regards to injury could and would be eliminated.)

Withdrawn

9. The Task Force recommends that the Legislature enact legislation that would expand the State Engineer's rule making authority to allow water users affected by ground water use rules a reasonable period of time such as five years to file a plan for augmentation and in the interim allow the State Engineer to annually approve a substitute water supply plan if it meets the requirements of the rules.

Failed 12/11

Ideas that were 'tabled':

- Amending 37-80-120 to allow different source of replacement water
- Amending 308(4) to allow wells users more time to operate under SWSPs before augmentation plans are filed with the water court.
- Changing the law on salvage water

- Financial bonding for dry years
- Support for the Central Colorado Project

Burns
Figa &
Will P.C.

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April 23, 2008

By Hand-Delivery

Cesiah Gomez
Office of the Secretary of State
Elections Division
1700 Broadway, Suite 270
Denver, CO 80290

**Re: In Re Title and Ballot Title and Submission Clause Set for Initiative
2007-08 #84**

Dear Ms. Gomez:

Enclosed for filing, please find an original and two copies of a Motion for Rehearing by Petitioners, Douglas Kemper and Robert P. Nanfelt. Kindly date-stamp one of the extra copies and return to the messenger.

Thank you for your attention to this matter.

Sincerely,

BURNS, FIGA & WILL, P.C.

Adrienne Abatemarco

Adrienne Abatemarco
Legal Secretary for Alix Joseph

/Enclosure