

NOV 22 2011

Amended

11:15 a.m.

ELECTIONS
SECRETARY OF STATE

- Initiative language - after "review and comment" by Legislative Council and Legislative Legal Services

N. B. - (MODIFICATIONS (in ***bold italic***).

INITIATIVE TO ADOPT THE COLORADO PUBLIC TRUST DOCTRINE

Be it Enacted by the People of the State of Colorado:

Section 5 of article XVI of the constitution of the state of Colorado is amended to read: ***(format)***

Section 5. Water of streams public property - public trust doctrine. ***(format, indexing change)*** (1) 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.

(2) ***(format, indexing change)*** THIS COLORADO PUBLIC TRUST DOCTRINE IS HEREBY ADOPTED, AND IMPLEMENTED, BY THE PEOPLE OF THE STATE OF COLORADO TO PROTECT 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.

(3) 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.

(4) ***(format change, indexing)***~~(A)~~ THE PUBLIC CONFERS THE RIGHT TO THE USE OF ITS WATER, AND THE DIVERSION OF THE WATER UNDER SECTION 6 OF THIS ARTICLE, TO AN APPROPRIATOR FOR A BENEFICIAL USE AS A GRANT FROM THE PEOPLE OF THE STATE OF COLORADO TO THE APPROPRIATOR FOR THE COMMON GOOD.

~~(B)~~ **(indexing change) (a)** THE USE OF THE PUBLIC'S WATER BY THE MANNER OF APPROPRIATION, AS GRANTED IN THIS ARTICLE, IS A USUFRUCT PROPERTY RIGHT ASSOCIATED WITH THE USE OF WATER. USUFRUCT RIGHTS FOR THE USE OF WATER SURVIVE UNDER THE LEGAL CONDITION THAT THE APPROPRIATOR IS AWARE THAT A USUFRUCT RIGHT IS SERVIENT TO THE PUBLIC'S DOMINANT WATER ESTATE AND IS SUBJECT TO TERMS AND CONDITIONS OF THIS COLORADO PUBLIC TRUST DOCTRINE.

~~(C)~~ **(indexing change) (b)** USUFRUCT WATER RIGHTS SHALL NOT CONFER OWNERSHIP TO WATER OTHER THAN USUFRUCT RIGHTS TO THE APPROPRIATOR.

~~(D)~~ **(indexing change) (c)** USUFRUCT WATER RIGHTS, CONFERRED BY THE PUBLIC TO AN APPROPRIATOR FOR USE, MAY BE MANAGED BY THE STATE GOVERNMENT, ACTING AS A STEWARD OF THE PUBLIC'S WATER, SO AS TO PROTECT THE NATURAL ENVIRONMENT AND TO PROTECT THE PUBLIC'S ENJOYMENT AND USE OF WATER.

~~(E)~~ **(indexing change) (d)** A USUFRUCT WATER USER IS IMPRESSED UNDER THE CONDITION THAT NO USE OF WATER HAS DOMINANCE OR PRIORITY OVER NATURAL STREAMS OR PUBLIC HEALTH OR WELL-BEING.

~~(G)~~ **(indexing change) (e)** WATER RIGHTS, HELD BY THE STATE OF COLORADO FOR GOVERNMENT OPERATIONS, SHALL BE HELD IN TRUST FOR THE PUBLIC BY THE STATE OF COLORADO WITH THE STATE ACTING AS THE STEWARD OF THE PUBLIC'S WATER ESTATE. WATER RIGHTS HELD BY THE STATE OF COLORADO SHALL NOT BE TRANSFERRED BY THE STATE OF COLORADO FROM THE PUBLIC ESTATE TO PROPRIETARY INTEREST.

~~(5)-(A)~~ **(format change, indexing change)** ACCESS BY THE PUBLIC ALONG, AND ON, THE WETTED NATURAL PERIMETER OF A STREAM BANK OF A WATER COURSE OF ANY NATURAL STREAM IN COLORADO IS A RIGHT OF THE PUBLIC TO THE USE OF ITS OWN WATER IN CONCERT WITH THE COLORADO PUBLIC TRUST DOCTRINE.

~~(B)~~ **(indexing change) (a)** 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 THE COLORADO PUBLIC TRUST DOCTRINE.

~~(C)~~ **(indexing change) (b)** THE WATER OF A NATURAL STREAM AND ITS STREAMBED, AND THE NATURALLY WETTED LANDS OF THE SHORES OF THE STREAM, SHALL NOT BE SUBJECT TO THE LAW OF TRESPASS AS THE WATER OF NATURAL STREAMS AND THE BANKS OF THEIR STREAM COURSES ARE PUBLIC HIGHWAYS FOR COMMERCE AND PUBLIC USE.

~~(D)~~ **(indexing change) (c)** PUBLIC USE OF WATER, RECOGNIZED AS A RIGHT IN THE COLORADO PUBLIC TRUST DOCTRINE, SHALL NOT BE CONTROLLED IN LAW AS A USUFRUCT BUT SHALL BE A RIGHT OF THE PUBLIC TO PROTECT AND ENJOY ITS OWN WATER.

(6) ENFORCEMENT AND IMPLEMENTATION OF PROVISIONS ~~CONTAINED~~ **(LANGUAGE CHANGE, deletion)** ~~WITHIN~~ **SUBSECTIONS (2) TO (7) OF THIS SECTION (LANGUAGE CHANGE, ADDITION)** OF THE COLORADO PUBLIC TRUST DOCTRINE TO PROTECT THE PUBLIC'S RIGHTS AND INTERESTS IN WATER 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. ANY CITIZEN OF THE STATE OF COLORADO SHALL HAVE STANDING IN JUDICIAL ACTIONS SEEKING TO COMPEL THE STATE OF COLORADO TO ENFORCE THE PROVISIONS OF THIS SECTION.

~~(7) PROVISIONS OF THIS SECTION ARE SELF-ENACTING AND SELF-EXECUTING. (LANGUAGE CHANGE - DELETION)~~

(7) SUBSECTIONS (2) TO (7) OF THIS SECTION ARE SELF-ENACTING AND SELF-EXECUTING, BUT LAWS MAY BE ENACTED SUPPLEMENTARY TO AND IN PURSUANCE OF, BUT NOT CONTRARY TO, THE PROVISIONS THEREOF. (LANGUAGE CHANGE, ADDITION).

PHILLIP DOE

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