

SUPREME COURT OF COLORADO

101 West Colfax Avenue, Suite 800
Denver, CO 80202

ORIGINAL PROCEEDING PURSUANT TO
§ 1-40-107(2), C.R.S. (2009)
Appeal from the Ballot Title Board

IN THE MATTER OF THE TITLE, BALLOT
TITLE AND SUBMISSION CLAUSE FOR 2009-
2010 #88

Petitioner:

JOHN GREGORY LEEDE, Objector
vs.

Respondents:

ROBERT HAMEL and JAY P.K. KENNEY,
Proponents

and

Title Board:

WILLIAM A. HOBBS, DANIEL L. CARTIN, and
DANIEL DOMENICO

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FILED IN THE
SUPREME COURT

MAY 21 2010

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

▲ COURT USE ONLY ▲

Case Number: 2010SA131

**PETITIONER'S OPENING BRIEF
(PROPOSED INITIATIVE 2009-2010 #88)**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g). It contains 3,762 words. Further, the undersigned certifies that the brief complies with C.A.R. 28(k). It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

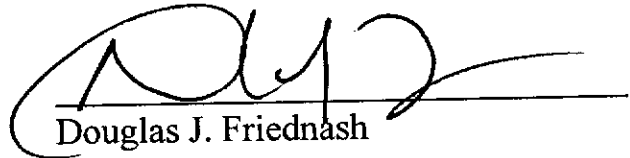

Douglas J. Friednash

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Petitioner John Gregory Leede (the "Petitioner"), a registered elector of the State of Colorado, through his counsel, Greenberg Traurig, LLP, respectfully submits his Opening Brief, pursuant to Colo. Rev. Stat. § 1-40-107(1), and seeks review of the Title Setting Board (the "Title Board") action in setting a title, ballot title, and submission clause for Proposed Initiative 2009-2010 #88 (the "Initiative"). The Initiative concerns the public's ability to use the water of every natural stream within the state without the consent of the owner of the private property.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the title informs voters of the Initiative's true meaning and intent, because it fails to inform voters of its central element of the Initiative: that the measure grants the public the right to use the water of every natural stream *without the consent of the owner of the private property*. In addition, despite fundamental differences between this Initiative and Proposed Initiative 2009-2010 #87, the titles set for both initiatives are identical.

2. Whether the Initiative violates the single subject requirement of the Colo. Const. art. V, § 1(5.5) and the Colo. Rev. Stat. § 1-40-106.5.

STATEMENT OF THE CASE

I. Nature Of The Case, Course Of Proceedings, And Disposition

Robert Hamel and Jay P.K. Kenney (the "Proponents") proposed the Initiative. On April 6, 2010, the directors of the Colorado Legislative Council and the Office of Legislative Legal Services submitted a Memorandum to the Proponents in compliance with Colo. Rev. Stat. § 1-40-105(1). On April 9, 2010, a review and comment hearing on the Initiative was held before designated representatives of the Offices of Legislative Council and Legislative Legal Services to address technical and substantive comments, as well as the representatives' questions concerning the Initiative.

On April 9, 2010, the Proponents submitted a final version of the Initiative to the Secretary of State.

On April 21, 2010, the Title Board held a public hearing in order to establish the Initiative's single subject and to set the Initiative's title and submission clause.

On April 28, 2010, Petitioner filed a Motion for Rehearing alleging that: (1) the Initiative violated the single subject requirement of Colo. Const. art. V, § 1(5.5) and the Colo. Rev. Stat. § 1-40-106.5; (2) the title set for the Initiative failed to express the Initiative's true intent and meaning; and (3) the title set for the Initiative contained an impermissible catch-phrase.

The Motion for Rehearing was heard at the next meeting of the Title Board on April 30, 2010. In response to the Motion for Rehearing and oral argument, the Title Board made certain revisions to the Initiative's ballot title and submission clause. The Motion for Rehearing was otherwise denied by a vote of two to one.

Proponents submitted four initiatives concerning the public's use of every natural stream. *See* Proposed Initiatives 2009-2010 #87-90. Petitioner Leede stated at the Rehearing that the substantive issues and arguments made by him regarding the single subject and misleading ballot title applied to all four initiatives. Title Board Rehearing Proposed Initiative 2009-2010 #87 ("Rehearing Transcript") 3:25-4:4, 7:14-7:17, April 30, 2010, which appears in Appendix D. These arguments are contained in the Rehearing Transcript for Proposed Initiative 2009-2010 #87 and are referenced by Petitioner Leede and the Title Board in the other measures. Therefore, all references herein to the Rehearing Transcript denote the transcript for Proposed Initiative 2009-2010 #87. Petitioner Leede incorporated by reference his comments from the Title Board Rehearing Proposed Initiative 2009-2010 #87 during the Rehearing for this Initiative. Title Board Rehearing Proposed Initiative 2009-2010 #88 2:8-3:3. A copy of the transcript for this Initiative also appears in Appendix D.

This appeal timely followed.

II. Statement Of Facts

The Initiative seeks to add a new section 9 to Article XVI of the Colorado Constitution, a copy of which is attached as Appendix A. The Initiative, in pertinent part, states:

The right to use the water of every natural stream within the state of Colorado includes: (a) the right to float any craft upon any natural stream that is capable of such use; (b) the right, as a necessary incident to that use, to make such contact with the bed or banks of the natural stream below the high water mark that is the minimum possible for the full and safe enjoyment of the public's easement to float; and (c) the right to fish while floating.

See Appendix A.

The title of the Initiative, which is attached as Appendix B, states:

An amendment to the Colorado constitution concerning public use of the water of every natural stream within the state, and, in connection therewith, declaring that the public may float any craft upon any natural stream that is capable of such use, make contact with the bed or banks of the natural stream below the high water mark, and fish while floating, and stating that the measure shall not be construed to allow access to a natural stream by crossing private land without permission, allow the dropping or dragging of an anchor or the intentional broaching of a craft, create a water right, affect any existing water right, or impair the right to appropriate water, or affect title to the bed or banks of any natural stream.

The ballot title and submission clause of the Initiative are identical to the ballot title and submission clause of Proposed Initiative 2009-2010 #87, but these initiatives are substantively different. A copy of the Proposed Initiative 2009-2010 #87 and its ballot title are attached as Appendix C.

SUMMARY OF ARGUMENT

The title, ballot title, and submission clause mislead voters as to the Initiative's true intent and meaning. The true intent of this Initiative is to give the public the right to use waters of every natural stream overlying private property without the consent of the owner. This title is misleading because: (1) it does not notify voters that the measure grants the public the ability to access or use the water of every natural stream within the state without the consent of the private property owner and (2) despite fundamental differences between initiatives, this title is identical to the ballot title and submission clause set for Proposed Initiative 2009-2010 #87.

The Initiative also violates the single subject requirement. The Initiative contains multiple substantive subjects: (1) the right to use the water of every natural stream by floating any craft; (2) the right to trespass onto private property by making contact with the bed and banks of every natural stream; and (3) the right to fish while floating.

ARGUMENT

I. The Initiative's Title Does Not Correctly And Fairly Express The True Intent And Meaning Of The Measure

The importance of setting a clear and accurate ballot title cannot be overstated. The titles drafted by the Title Board appear on the petitions circulated to collect signatures and on the election day ballot when voters consider a

particular measure. The stakes are even higher when a constitutional proposal is presented.

A. Standard of Review

The Title Board is statutorily required to set a title that “shall correctly and fairly express the true intent and meaning” of the initiative. Colo. Rev. Stat. § 1-40-106(3)(b). In addition, in setting a title, the Title 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.” *Id.*

In order to fulfill this duty, the Title Board must unambiguously state the principle or provision sought to be added, amended, or repealed by the proposed measure. It is well established that the Title Board must act with the utmost dedication to the goal of drafting the title, ballot title, and submission clause in a manner that enables voters, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990); *In re Proposed Initiative Concerning “State Personnel System,”* 691 P.2d 1121, 1123 (Colo. 1984). This Court’s duty is to ensure that the title, ballot title, and submission clause fairly reflect the proposed initiative so that the petition signers and voters will not be misled into supporting

or opposing a proposition by reason of the words employed by the Title Board. *In re Proposed Election Reform Act*, 852 P.2d 28, 32 (Colo. 1993). This requirement helps to ensure that voters are not surprised after an election to find that an initiative included a surreptitious, but significant, provision that was obfuscated by other elements of the proposal. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 446-47 (Colo. 2002).

While the ballot title should also be concise, this may not come at the cost of voter confusion or a misleading ballot title. "If a choice is made between brevity and a fair description of the essential features of a proposal, the decision must be made in favor of full disclosure to the registered electors." *In re Proposed Election Reform Act*, 852 P.2d at 32.

Finally, while the Title Board is not required to describe every feature of the proposed measure, eliminating a key feature of an initiative from the title is a fatal defect if that omission may cause confusion and mislead voters about what the initiative actually proposes. *Id.*; see also *In re Title Ballot Title & Submission Clause, & Summary for 1997-1998 #62*, 961 P.2d 1077, 1083 (Colo. 1998); *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #37*, 977 P.2d 845, 846 (Colo. 1999).

B. The Ballot Title and Submission Clause is Misleading

1. *The ballot title and submission clause fail to inform the voters of the true intent and meaning of the Initiative*

Under Colorado law, the public already has certain rights to use the water of every natural stream overlying public land within the state. *See* Colo. Const. art. XVI, § 5. In *People v. Emmert*, 597 P.2d 1025, 1030 (Colo. 1979), this Court held that “the public has no right to the use of waters overlying private lands for recreational purposes without the consent of the owner.” Therefore, as Colorado law exists today, the public has certain rights to use waters overlying public lands, but does not have the right to use waters overlying private lands without the consent of the landowner.

The true intent and consequence of this Initiative is to grant the public a new right: the right to use water of every natural stream overlying private land without the consent of the landowner. However, the subject clause of the ballot title merely states, “An amendment to the Colorado constitution concerning the public use of the water of every natural stream within the state . . .” *See* Appendix B. The subject clause of this Initiative’s title not only fails to inform the voter of this proposed material change in Colorado law, which is the purpose of the Initiative, but its additional language, describing one of the measures other provisions, confuses the voter as to its true meaning and effect.

The history of the proceedings before the Title Board provides a useful starting point for this Court's analysis of whether the title, ballot title, and submission clause fairly reflect the content of the proposed initiative. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d at 241. During the Rehearing, Solicitor General Domenico sought to add such language to the ballot title over the objection of counsel for the Proponents of the measure. The following exchange took place between Solicitor General Domenico and counsel for the Proponents, whom conceded that this was one of the material reasons for the Initiative:

Mr. Domenico: Well, I'm not sure why you would need an amendment to the Constitution stating that people can use other people's land with consent. **I mean, the point of this is to make clear that you don't need consent to do this. That's the material reason for adopting this, I would think.**

Mr. Grueskin: **It is one of the material reasons . . .**

Rehearing Transcript 46:7-15 (emphasis added).

The omission of language from the ballot title's subject clause, that fairly and accurately expresses the true intent of this Initiative, is a fatal defect. *In re Proposed Initiative 2001-02 #43*, 46 P.3d at 442; *see also In re Ballot Title 1997-98 #62*, 961 P.2d at 1082. In order to accurately reflect the true meaning and intent of this Initiative, the subject clause of the ballot title must include language that informs the voter that this Initiative grants the public the right to use the waters of

every natural stream within the state without consent of the owner or without regard to existing private property rights. Without this language, or something similar, the ballot title is impermissibly misleading.

At the Rehearing, Proponents alluded to additional language in the ballot title and submission clause that already addresses this issue. *See* Rehearing Transcript 46:23-47:4. Specifically, the ballot title and submission clause include language from the Initiative text that, “the measure shall not be construed to allow access to a natural stream by crossing private land without permission.”

However, as Solicitor General Domenico stated, the inclusion of this language, without expressing the true intent and meaning of the measure, only exacerbates the problem and voter confusion.¹ This follows because it gives the voters the false impression that they cannot access a natural stream without the permission of a private property owner. However, this provision simply addresses a person’s inability to “cross private land” without permission; it does not address the proposed public’s use of water by floating craft through natural streams, allowing a boat to stop on private property, to tie-off a boat on a tree or other structure on private property, or to even fish a certain private stretch of a river. These are just a few of the many examples of the types of access the public would

¹ Mr. Domenico said, “[a]nd to me, the language later on, if anything, makes it more imperative to make that clear up above.” Rehearing Transcript 49:10-12.

have on private property, without the consent of the owner or regard to the landowner's private property rights, if this measure is adopted.

The reasonable voter will not grasp this nuance. Voters will not understand or appreciate the sweeping change presented by the Initiative. This ballot title violates Colorado law because a general understanding of the effect of a "yes" or "no" vote will be unclear from reading the title. This Court has aptly recognized that "there may be situations, therefore, where the title and submission clause likely would create public confusion or ambiguity about the effect of an Initiative even though they merely repeat the language contained in the Initiative itself." *In re Title, Ballot Title, Submission Clause, & Summary by the Title Board Pertaining to a Proposed Initiative on "Obscenity,"* 877 P.2d 848, 850 (Colo. 1994); *see also In re Title, Ballot Title, Submission Clause, & Summary Adopted April 17, 1996, by Title Setting Board Pertaining to Proposed Initiative Statute Proposed by Arthur Apple & James Meeker,* 920 P.2d 798, 803 (Colo. 1996) (title misleading as to true intent and meaning where the title and summary did not contain any indication that the geographic area affected would have been limited to the six-county Denver metropolitan area; therefore, there was a significant risk that voters statewide would misperceive the scope of the proposed initiative).

2. *This Initiative and Proposed Initiative 2009-2010 #87 have duplicative titles and submission clauses*

This ballot title and submission clause also lead to impermissible voter confusion because they are duplicative of another ballot title and submission clause set by the Title Board in this election. Ballot titles “shall not conflict with those selected for any petition previously filed for the same election.” Colo. Rev. Stat. § 1-40-106(3)(b). If this ballot title, along with the ballot title for Proposed 2009-2010 Initiative #87, is not changed, the voters will have identical ballot titles and submission clauses for two separate and distinct initiatives. Despite fundamental differences between this Initiative and Proposed Initiative 2009-2010 #87, the titles set for both initiatives are identical.

The fundamental difference between these two initiatives is that Proposed Initiative 2009-2010 #87 states that “[t]he right to use the water of every natural stream within the state of Colorado has *historically included* and shall continue to include:” (1) the right to float; (2) the right to make contact with the bed and banks, including the nebulous reference to the public’s “easement to float;” and (3) the right to fish while floating. (emphasis added). This language clearly assumes that the public already has these rights and seeks to reverse longstanding Colorado law, as established in *Emmert*. However, this Initiative does not include this retroactive subject and language. This is a fundamental difference between the two initiatives. However, due to the duplicative ballot titles, the public will not know about the

fundamental difference between these initiatives by merely reading the ballot titles and submission clauses. Clearly, these duplicative titles will lead to impermissible voter confusion.

This Initiative's ballot title is identical to Proposed Initiative 2009-2010 #87. Therefore, pursuant to Colorado law, this Court should invalidate this Initiative's ballot title because these two ballot titles are identical, while the initiatives themselves are substantively different. *See e.g., In re Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment*, 873 P.2d 718, 722 (Colo. 1994) ("What is prohibited are conflicting ballot titles which fail to distinguish between overlapping and conflicting proposals.")

II. The Initiative Violates The Single Subject Requirement

A. Standard of Review

No ballot title may be set for an initiative if the proposed measure contains more than one subject. *See* Colo. Const. art. V, § 1(5.5) & Colo. Rev. Stat. § 1-40-106.5. A ballot title violates this requirement if it has "at least two distinct and separate purposes which are not dependent upon or connected with each other." *In re Title, Ballot Title, & Submission Clause for 2009-2010 #24*, 218 P.3d 350, 352 (Colo. 2009) (citations omitted). It is not proper to simply broaden the subject of a title to give the appearance of a single subject. *In re Title, Ballot Title &*

Submission Clause, for 2007-2008, #17, 172 P.3d 871, 873-74 (Colo. 2007)

(“multiple subjects may be improperly offered as a single subject by stating the subject in broad terms”). “An initiative that joins multiple subjects poses the danger of voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision coiled up in the folds of a complex initiative.” *Id.* at 875.

B. The Initiative has Multiple Subjects

This Initiative contains distinct and separate purposes, which are not dependent upon or connected with each other, as it attempts to apply this proposed constitutional amendment both prospectively and retroactively. This Initiative contains multiple substantive subjects: (1) the right to float; (2) the right to make contact with the bed and banks, including the nebulous reference to the public’s “easement to float;” and (3) the right to fish while floating.

This Initiative embodies an instance where the title has been improperly broadened to hide, among other things, the multiple subjects of the Initiative. Here, the ballot title and submission clause describe the single subject of the Initiative as “the right to use the water of every natural stream within the state.” The Proponents have characterized this Initiative under an overarching and generic theme in order to combine different proposals in the hopes of getting unrelated subjects passed by enlisting support from various advocates of the subjects (*e.g.*, commercial rafters, fisherman, and other outdoor recreational users)--thereby

securing the enactment of subjects that could not be enacted on their merits alone. *See In re Title, Ballot Title, Submission Clause & Summary Adopted April 5, 1995, by the Title Board Pertaining to Proposed Initiative "Public Rights in Waters II,"* 898 P.2d 1076, 1080 (Colo. 1995) (holding that "[t]he common characteristic that the paragraphs all involve 'water' is too general and too broad to constitute a single subject.").

Moreover, this Initiative contains three distinct and separate purposes.

1. The Initiative seeks to grant the public "the right to use the water of every natural stream." The substantive purpose and subject of this Initiative is to allow the public the use the water of every natural stream, including portions overlying private property. In doing so, it would also reverse longstanding common law, which provides that the public has no right to the use of waters overlying private lands for recreational purposes without the consent of the owner. *Emmert*, 597 P.2d at 1030.

2. The Initiative also grants the public the right to trespass onto private property. The Initiative gives the public "[t]he right . . . to make such contact with the bed or banks of the natural stream below the high water mark that is the minimum possible for the full and safe enjoyment of the public's easement to float." This right to make contact with the bed or banks of a natural stream equates to giving the public the right to trespass on private property. The right to trespass

is a completely different subject from the right to use the water of every natural stream.

3. The Initiative also provides the public “[t]he right to fish while floating.” This right to fish would allow the public to fish on waters overlying private property, which may be stocked with fish supplied by the private property owner. This is a purpose distinctly different from the right to float, the right to make contact, and a granted “easement to float” because fishing is a separate activity from floating and contacting the bed and banks.

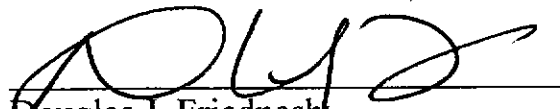
The Initiative sets forth three distinct rights under this broad umbrella, but a voter reading the ballot title cannot ascertain whether the Initiative grants rights beyond the three enumerated subjects or whether the public’s right to use the water of every natural stream contains any restrictions or limitations. Thus, the title does not enable the voter, whether familiar or unfamiliar with the subject matter of this proposal, to determine intelligently whether to support or oppose this proposal.

CONCLUSION

Petitioner Leede respectfully requests that this Court reverse the actions of the Title Board with directions to decline to set a title and return the Initiative to the Proponents for failure to comply with single subject requirements or, in the alternative, that the title be corrected to accurately reflect the true intent and meaning of the Initiative.

Respectfully submitted this 21st day of May, 2010.

GREENBERG TRAURIG, LLP



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Cuneyt A. Akay

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CERTIFICATE OF SERVICE


I hereby certify that on the 21st day of May, 2010, a true and correct copy of the foregoing **PETITIONER'S OPENING BRIEF (PROPOSED INITIATIVE 2009-2010 #88)** was served via overnight delivery to the following:

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APPENDIX A

RECEIVED

APR 09 2010 9:13 AM
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MM

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

Colorado Secretary of State

Article XVI of the Constitution of the State of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

SECTION 9. RIGHTS OF USE – NATURAL STREAMS.

(1) **Purposes and findings.** REASONABLE ACCESS TO COLORADO'S NATURAL STREAMS AND THE LANDS IMMEDIATELY ADJACENT TO THE NATURAL STREAMS IS AN IMPORTANT ELEMENT OF SAFE USE OF STATE WATERS. THE PEOPLE OF COLORADO CONFIRM AND CLARIFY THAT SPECIFIC RIGHTS ARE ASSOCIATED WITH THIS ACCESS AND FURTHER ACKNOWLEDGE THAT THE PUBLIC'S EXERCISE OF SUCH RIGHTS DOES NOT ADVERSELY AFFECT PROPERTY INTERESTS OF LANDOWNERS WHOSE PROPERTIES ARE ADJACENT TO NATURAL STREAMS.

(2) **Rights of use.** THE RIGHT TO USE THE WATER OF EVERY NATURAL STREAM WITHIN THE STATE OF COLORADO INCLUDES:

(a) THE RIGHT TO FLOAT ANY CRAFT UPON ANY NATURAL STREAM THAT IS CAPABLE OF SUCH USE;

(b) THE RIGHT, AS A NECESSARY INCIDENT TO THAT USE, TO MAKE SUCH CONTACT WITH THE BED OR BANKS OF THE NATURAL STREAM BELOW THE HIGH WATER MARK THAT IS THE MINIMUM POSSIBLE FOR THE FULL AND SAFE ENJOYMENT OF THE PUBLIC'S EASEMENT TO FLOAT; AND

(c) THE RIGHT TO FISH WHILE FLOATING.

(3) **Limitations on rights of use.** NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:

(a) ALLOW ACCESS TO A NATURAL STREAM BY CROSSING PRIVATE LAND WITHOUT PERMISSION;

(b) ALLOW THE DROPPING OR DRAGGING OF AN ANCHOR OR THE INTENTIONAL BROACHING OF A CRAFT;

(c) CREATE A WATER RIGHT, AFFECT ANY EXISTING WATER RIGHT, OR IMPAIR THE RIGHT TO APPROPRIATE WATER; OR

(d) AFFECT TITLE TO THE BED OR BANKS OF ANY NATURAL STREAM.

APPENDIX B

Ballot Title Setting Board

Proposed Initiative 2009-2010 #88¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning public use of the water of every natural stream within the state, and, in connection therewith, declaring that the public may float any craft upon any natural stream that is capable of such use, make contact with the bed or banks of the natural stream below the high water mark, and fish while floating, and stating that the measure shall not be construed to allow access to a natural stream by crossing private land without permission, allow the dropping or dragging of an anchor or the intentional broaching of a craft, create a water right, affect any existing water right, or impair the right to appropriate water, or affect title to the bed or banks of any natural stream.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning public use of the water of every natural stream within the state, and, in connection therewith, declaring that the public may float any craft upon any natural stream that is capable of such use, make contact with the bed or banks of the natural stream below the high water mark, and fish while floating, and stating that the measure shall not be construed to allow access to a natural stream by crossing private land without permission, allow the dropping or dragging of an anchor or the intentional broaching of a craft, create a water right, affect any existing water right, or impair the right to appropriate water, or affect title to the bed or banks of any natural stream?

Hearing April 21, 2010:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 6:33 p.m.

Hearing April 30, 2010:

Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 2:57 p.m.

¹ Unofficially captioned "Use of Colorado Water Streams" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

APPENDIX C

Initiative #87 - Final
and
Initiative #87
Final Ballot Title

RECEIVED

APR 09 2010

Colorado Secretary of State

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

Article XVI of the Constitution of the State of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

SECTION 9. RIGHTS OF USE -- NATURAL STREAMS.

(1) **Purposes and findings.** REASONABLE ACCESS TO COLORADO'S NATURAL STREAMS AND THE LANDS IMMEDIATELY ADJACENT TO THE NATURAL STREAMS IS AN IMPORTANT ELEMENT OF SAFE USE OF STATE WATERS. THE PEOPLE OF COLORADO CONFIRM AND CLARIFY THAT SPECIFIC RIGHTS ARE ASSOCIATED WITH THIS ACCESS AND FURTHER ACKNOWLEDGE THAT THE PUBLIC'S EXERCISE OF SUCH RIGHTS DOES NOT ADVERSELY AFFECT PROPERTY INTERESTS OF LANDOWNERS WHOSE PROPERTIES ARE ADJACENT TO NATURAL STREAMS.

(2) **Rights of use.** THE RIGHT TO USE THE WATER OF EVERY NATURAL STREAM WITHIN THE STATE OF COLORADO HISTORICALLY INCLUDED AND SHALL CONTINUE TO INCLUDE:

(a) THE RIGHT TO FLOAT ANY CRAFT UPON ANY NATURAL STREAM THAT IS CAPABLE OF SUCH USE;

(b) THE RIGHT, AS A NECESSARY INCIDENT TO THAT USE, TO MAKE SUCH CONTACT WITH THE BED OR BANKS OF THE NATURAL STREAM BELOW THE HIGH WATER MARK THAT IS THE MINIMUM POSSIBLE FOR THE FULL AND SAFE ENJOYMENT OF THE PUBLIC'S EASEMENT TO FLOAT; AND

(c) THE RIGHT TO FISH WHILE FLOATING.

(3) **Limitations on rights of use.** NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:

(a) ALLOW ACCESS TO A NATURAL STREAM BY CROSSING PRIVATE LAND WITHOUT PERMISSION;

(b) ALLOW THE DROPPING OR DRAGGING OF AN ANCHOR OR THE INTENTIONAL BROACHING OF A CRAFT;

(c) CREATE A WATER RIGHT, AFFECT ANY EXISTING WATER RIGHT, OR IMPAIR THE RIGHT TO APPROPRIATE WATER; OR

(d) AFFECT TITLE TO THE BED OR BANKS OF ANY NATURAL STREAM.

(4) **Definition.** "HIGH WATER MARK" OF A NATURAL STREAM MEANS MEANS THE VISIBLE CHANNEL OF A NATURAL WATERCOURSE WITHIN WHICH WATER FLOWS WITH SUFFICIENT

FREQUENCY SO AS TO PRECLUDE THE ERECTION OR MAINTENANCE OF MAN-MADE IMPROVEMENTS WITHOUT SPECIAL PROVISION FOR PROTECTION AGAINST FLOWS OF WATER IN SUCH CHANNEL OR THE CHANNEL DEFINED BY THE MEAN ANNUAL FLOOD, WHICHEVER IS GREATER.

Ballot Title Setting Board

Proposed Initiative 2009-2010 #87¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning public use of the water of every natural stream within the state, and, in connection therewith, declaring that the public may float any craft upon any natural stream that is capable of such use, make contact with the bed or banks of the natural stream below the high water mark, and fish while floating, and stating that the measure shall not be construed to allow access to a natural stream by crossing private land without permission, allow the dropping or dragging of an anchor or the intentional broaching of a craft, create a water right, affect any existing water right, or impair the right to appropriate water, or affect title to the bed or banks of any natural stream.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning public use of the water of every natural stream within the state, and, in connection therewith, declaring that the public may float any craft upon any natural stream that is capable of such use, make contact with the bed or banks of the natural stream below the high water mark, and fish while floating, and stating that the measure shall not be construed to allow access to a natural stream by crossing private land without permission, allow the dropping or dragging of an anchor or the intentional broaching of a craft, create a water right, affect any existing water right, or impair the right to appropriate water, or affect title to the bed or banks of any natural stream?

Hearing April 21, 2010:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 6:31 p.m.

Hearing April 30, 2010:

Motions for Rehearing granted in part to the extent Board amended titles; denied in all other respects.

Hearing adjourned 2:53 p.m.

¹ Unofficially captioned "Use of Colorado Water Streams" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.