Certification of Word Count: 5341

SUPREME COURT STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, CO 80202	FILED IN THE SUPREME COURT JUN - 7 2010 OF THE STATE OF COLORADO SUSAN J. FESTAG, CLERK ▲COURT USE ONLY▲
ORIGINAL PROCEEDING PURSUSANT TO §1-40-107(2), C.R.S. (2009) Appeal from the Ballot Title Setting Board IN THE MATTER OF THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE FOR 2009-2010#91	
Petitioner: Christopher Howes, Objector **Respondents**: Richard G. Brown and Garald L. Barber, Proponents And **Title Board**: William A. Hobbs, Sharon Eubanks, and Geoff Blue	Case No. 2010 SA 135
RESPONDENT ANSWER BRIEF	

Table of Contents

I. STATEMENT OF THE CASE

The proponents, Richard G. Brown and Garald L. Barber, are named respondents in the objector petition filed by Mr. Christopher Howes.

This brief from the proponents is an answer brief in response to the Petitioner's Opening Brief in the Matter of the Title and Ballot Title and Submission Clause and Summary for Proposed Initiative 2009-2010 #91. The petitioner, Mr. Christopher Howes, filed an appeal from the final action of the Title Board through his legal counsel, Scott E. Gessler and Mario D. Nicolais.

The citizen proponents are not attorneys and are not represented by legal counsel and are not qualified to render interpretations or opinions concerning the statutory citations or cases cited by the petitioner. The proponent respondents do not include a Table of Authorities or attempt to make legal arguments or include citations or references to statutes, regulations or case law since to do so would be beyond their competence.

A. Nature of the Case

The petitioner has appealed the final action of the Title Board to set a ballot title, submission clause and summary for Proposed Initiative 2009-2010 #91, Container Fee to Fund Water Preservation and Protection, filed by the proponent respondents.

The petitioner has objected to the final action by the Title Board on three grounds: (1) that the Title Board did not have jurisdiction in the matter; (2) the proposed initiative violates the single subject requirement; and, (3) that the title set by the Title Board is misleading, inaccurate and incomplete.

The petitioner is wrong with respect to each of his objections.

B. Statement of the Facts

The petitioner has incorrectly stated the facts of the case in his Opening Brief.

The proponents filed the original draft of the proposed initiative with the Office of Legislative Council on March 26, 2010. The professional staffs of the Office of Legislative Council and the Office of Legislative Legal Services conducted a review and analysis of the proposal and issued their written comments to the proponents in a memorandum dated April 7, 2010. The memorandum was released to the public at a public hearing held at the State Capitol on April 9, 2010 and was posted on the web site of the General Assembly.

During the public hearing, the proponents and the professional staffs of the Office of Legislative Council and Office of Legislative Legal Services engaged in a dialogue concerning the memorandum and questions, comments and recommendations raised by the professional staff. At the conclusion of the public hearing, the proponents were instructed that should we decide to proceed directly to the Secretary of State for consideration and action by the Title Board we could do so if we submitted the original draft without any changes or if we revised the original draft in response to the technical and substantive issues raised by the professional staff in its memorandum of April 7, 2010. We were also instructed that if we made revisions which were beyond the comments and recommendations prepared by the professional staff that the revised measure would be considered a new proposal and would need to be resubmitted to the Office of Legislative Council for a new analysis before it could be submitted to the Title Board.

Based on the April 7, 2010 memorandum and the dialogue at the public hearing, the draft was revised and filed with the Secretary of State on April 9, 2010 to be calendared for consideration by the Title Board.

It is with respect to the filing with the Secretary of State that the petitioner misstates a salient and critical fact. The petitioner alleges that the revised version filed with the Secretary of State did not highlight, redline or otherwise indicate changes to the original draft. This is a misstatement of the facts. While the petitioner injects the word "redline" in his brief, the statute neither uses that term nor is that restrictively precise. The statute at 1-40-105 (4), Colorado Revised Statutes, which governs filings with the Secretary of State, requires that "an amended draft with changes highlighted or otherwise indicated" together with a copy of an original draft of the revised version must be filed with the Secretary of State. The version submitted to the Secretary of State utilized a common style of strike outs of language which is consistent with the statutory requirement of otherwise indicating changes.

At the Title Board hearing, the petitioner raised this point as an objection. The Board, following a thorough discussion, determined that the strike out method was acceptable and proceeded to set the ballot title.

The petitioner filed a motion requesting a rehearing on April 28, 2010. At the rehearing on April 30, 2010, the petitioner renewed his objection to the format used for the preparation of the revised version. The Title Board reopened its discussion and after further consideration concluded that the method was acceptable and that it had jurisdiction. The Title Board denied the petitioner's motion.

The Title Board considered other matters also raised by the petitioner at the rehearing on April 30, 2010. The Title Board made some changes to its original title and made the changes with the concurrence of the proponents. On other matters, such as the determination that the measure

constituted a single subject, the measure's application to only non-alcoholic beverages and the functions of the State Treasurer, the Title Board did not change its original decisions.

The petitioner subsequently filed his Petition of Review of Final Action of Ballot Title Setting Board Concerning Proposed Initiative 2009-2010 #91 on May 7, 2010. The Supreme Court issued its order on May 7, 2010. The respondents filed their opening brief on May 21, 2010. The petitioner requested a delay on May 21, 2010, which was unopposed by the respondents. The petitioner filed his Opening Brief on May 24, 2010. The Attorney General filed his Notice that he would not be filing briefs on behalf of the Title Board on May 21, 2010.

II. RESPONSE TO PETITIONER'S OBJECTIONS

A. The petitioner's contention that the Title Board did not have jurisdiction is incorrect.

The petitioner's sole argument to support this objection is that the proponents did not submit an amended version of the original draft that was formatted with "redline" changes to the original draft. The petitioner relies on a phantom standard that cannot possibly have been known to the proponents in advance and sets an arbitrary and subjective condition that proponents can never satisfy because it would be constantly changing and applied after the fact.

The analysis prepared by Legislative Council and Legislative Legal Services staff contains many technical points with respect to drafting. For example, the memorandum sets forth standards for using capital letters, such as the use of small caps rather than all caps. The memorandum includes guidelines with respect to inserting left tabs at the beginning of the first line of each new section, subsection, paragraph and sub-paragraph. The memorandum includes guidelines for the preferred uses of commas, and grammatical preferences for common words such as "that" versus "which". One of the technical

distinctions made by the staff was that the word "non-alcohol" should be used in lieu of the word "non-alcoholic." However, the memorandum does not include guidelines or protocols that address what type of formatting would be a preferred form for amending an original draft to prepare it for filing with the Title Board. The proponents are given only the statutory guidance that changes must be highlighted or otherwise indicated.

The amended draft was reorganized as a direct result of comments and recommendations made by Legislative Council and Legislative Legal Services staff, and the use of the common technique of striking out old language that was in the original draft was both a sufficient indication of the changes and also a simplification of the organization making the amended version easier to read and understand.

In the absence of a drafting manual, template or set of examples published by the Legislative Council, Legislative Legal Services or the Secretary of State which can be relied on by citizen proponents as an objective guide to amending original drafts, the argument made by the petitioner could have an unfortunate and unanticipated perverse effect on proposals that have been through the process and have been submitted to the Title Board in good faith by their proponents. Without an objective guide, proponents would be at the mercy of challenges of a hyper-technical nature pitting one form of highlighting against another form of highlighting. This would place the Title Board, and potentially the Supreme Court, in the position of having to determine whether a redline version is superior to a shadow highlight or whether either of them are superior to an underlined version.

The Title Board considered the petitioner's challenge at both the original hearing and also at the rehearing. After considerable discussion, the Title Board determined that the method of using a strike out was appropriate for a measure that was being reorganized. We agree with the determination made by the Title Board and ask the Court to affirm that decision.

B. The petitioner's contention that the measure constitutes more than one subject is incorrect.

The petitioner rightfully asserts that an initiative violates the single subject requirement when it relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other. It is a two-prong test and both tests must be met. The petitioner attempts to support his assertion through a process of deconstruction of the measure and then bolsters his assertion by taking selected words out of context and holding them up as separate and distinct subjects. The petitioner attempts to define these selected words in ways that are inconsistent with their use when read in the context of the entire relevant portion of the measure.

The measure is a comprehensive whole scheme to assess a tax on containers that are filled with non-alcoholic beverages, establishes a separate fund in the State Treasury into which the revenues of that tax are to be deposited, specifies for what exclusive purposes the moneys in the fund can be used, instructs the State Treasurer to transfer the funds to certain entities (the General Assembly, the Interbasin compact committee, and the basin roundtables) to be used exclusively for the purposes set forth in the measure, and establishes accountability for the use of the moneys. Each part of the design is necessary for the entire system to work and the elimination of any one component part renders the entire scheme unusable.

The petitioner attempts to isolate two provisions of the integrated comprehensive design and characterize them as examples of separate and distinct subjects in order to uphold his assertion that the measure does not meet the single subject test. The two provisions that the petitioner attempts to isolate are the provisions that address the use of the basin roundtables as instrumentalities to carry out some of the purposes of the measure and the authority of the General Assembly to use a portion of the fund balance held in reserve to defend the state against any legal actions that might arise under the

Colorado River Compact. The petitioner mischaracterizes these provisions both by artificially isolating them from the comprehensive scheme of which they are an integral part and also by attributing features to them that are not contained in the measure.

The petitioner, in support of his assertion, identifies the provision of the measure that establishes a four-year moratorium on legislative changes to the current statute that governs the Interbasin Compact Committee and the basin roundtables and attempts to characterize this temporary moratorium as not being connected to the beverage tax and thus constituting a separate subject. This is a mischaracterization of the temporary moratorium for the simple reason that if the basin roundtables were not tasked with the responsibility for receiving and distributing the moneys in the fund for the express purposes set forth in the measure, there would be no need for the roundtables to be included in the measure or for the moratorium at all.

The petitioner further mischaracterizes the moratorium by asserting that it alters the fundamental powers of the General Assembly thus preventing it from exercising its constitutional powers on behalf of the people. This assertion is not factually correct. The moratorium would be in place for four years at the end of which it is automatically repealed. However, the General Assembly retains its entire power of referendum to the people for any changes that it might wish to submit as a ballot issue at any one of the four general elections that will be held during the four year moratorium or at a special election called for the purpose of considering changes.

In addition to its referendum powers, the General Assembly is not precluded from enacting any changes to the statutes governing the basin roundtables as long as those changes do not become effective until the moratorium is automatically repealed. Nothing in the measure restrains the General Assembly from repealing the statute that governs the basin roundtables and declining to create a

successor entity and making that repeal effective with date upon which the automatic repeal of the four-year moratorium is effective.

In an attempt to give the appearance of substance to his criticism of the provisions that relate to the basin roundtables, the petitioner asserts that the basin roundtables were created for limited purposes related to assessing water supply needs, proposing needs based projects, making recommendations to the Interbasin compact committee and facilitating communication and dialogue related to water issues. The petitioner asserts that the basin roundtables were not intended to manage, administer, develop or implement. The assertion is not relevant. The basin roundtables have been recipients of state funds and have used those funds to accomplish the tasks for which the basin roundtables were created. The proposed initiative does not change the basic purpose, structure or functions of the basin roundtables. The measure seeks to temporarily use the roundtables as instrumentalities to target the use of the moneys distributed from the fund for the purposes set forth in the measure.

The petitioner then asserts that the measure transforms the basin roundtables into "well-funded, basin-wide water powerhouses." That characterization is wrong. The measure does not change the limited powers of the basin roundtables simply by providing them with moneys generated from the container tax. The measure specifies the uses for which the moneys may be used and it is these specific uses that govern the activities of the recipients of those moneys and for which the recipients are accountable for the proper use of the moneys. A recipient has discretion as to the application of the moneys among the permitted uses and a roundtable will select among the uses that are most important to its water resource needs. The Colorado River Basin Roundtable may be concerned about beetle kill and its effects on the watershed with respect to snowpack accumulation and runoff. The South Platte River Basin Roundtable may be concerned about groundwater depletions from agricultural wells. It is the nature of Colorado's fickle climate that at least some portion of the state is in a drought every year.

The measure provides flexibility for such an affected basin to address drought mitigation as a priority but does not require unaffected basins to address drought conditions that do not exist in that basin.

The petitioner singles out and criticizes the measure's provisions that would allow moneys from the tax to be used for habitat and attempts to leverage that criticism into a conclusion that the roundtables would be become large and powerful land use control entities. Without arguing the merits of the measure, it is appropriate to acknowledge that the importance of habitat in relation to long term water supplies is becoming increasingly evident. For those who are subject to the conditions of the water relationships among the states of Nebraska, Kansas and Colorado, species issues are very important. For communities that rely on fishing, hunting and bird watching, habitat preservation is of economic importance. Nothing in the measure suggests that the roundtables would themselves become land use regulators or direct stewards of the lands. A roundtable may desire to provide moneys to any number of public or private parties engaged in such activities or to the Division of Wildlife for its activities. To assert that the roundtables would become land use regulators is a complete mischaracterization that is built on unfounded speculation.

The petitioner fails to recognize that this assertion cannot be true since the membership of the basin roundtables includes sovereign governments such as municipalities and counties that have their own powers which the measure does not limit or override in any manner. The membership of a basin roundtable is quite diverse and represents a very broad cross-section of knowledgeable people that live within the basin. In addition to the municipalities and counties that are represented on a basin roundtable, there are members who are appointed by the chairpersons of the House Agriculture, Livestock and Natural Resources Committee and the Senate Agriculture and Natural Resources Committee; water conservancy districts; water conservation districts; environmental interests; agricultural interests; recreation interests; domestic water provider interests; industrial interests;

owners of adjudicated water rights; and nonvoting members who represent interests located outside the basin but which have water rights within the basin.

The petitioner asserts that the measure is a "fundamental transformation" of the roundtables thus making it a distinct subject that cannot be included in a measure that also imposes a container tax. The petitioner argues that the connection between the roundtables and the tax is tenuous. The petitioner's characterization both of the nature of the roundtables and also the use of the roundtables as instrumentalities to apply moneys directly to the specific uses set forth in the measure is incorrect.

The container tax is to be imposed to generate revenues which are to be used exclusively for the purposes set forth in the measure. It is true that the basin roundtables will receive approximately 80% of the moneys generated by the tax in proportion to each basin's water supply shortage as projected by the Colorado Water Conservation Board. However, the measure is constructed in such a manner that the uses of the moneys govern and control without regard to the entity that would receive and distribute the moneys. The basin roundtables are designated as the initial instrumentalities to accomplish that purpose during the four year moratorium. In the event that the General Assembly repeals the statute that creates and governs the basin roundtables, the measure is structured so that any successor recipient of the moneys, including the General Assembly itself, would continue to be governed by the express purposes for which the moneys can be used. The use of the moneys is not dependent upon the existence of the basin roundtables beyond the initial implementation phase of the tax.

The petitioner asserts that the provision in the measure that authorizes the General Assembly to use a portion of the moneys to be held in reserve in the fund to defend the State against an action

brought under the Colorado River Compact is a separate and distinct subject in violation of the single subject rule. The petitioner's assertion is wrong.

The petitioner attempts to link the emergency use of the reserve with the purposes for imposing the tax. The petitioner has created an artificial link and his analysis is faulty. The measure requires the creation of a permanent reserve account in the fund which is capped at $6,000,000. The measure would allow the General Assembly to use a maximum of two-thirds of that reserve account for the sole purpose of defending the State against a legal challenge brought under the Colorado River Compact. The measure requires the General Assembly to use the moneys only after enacting a bill that also sets forth a repayment plan to replenish the account. The General Assembly would not be required to pay interest on the moneys. The measure does not specify the terms under which the replenishment would occur.

While the measure does use the word "borrow", that word taken in the context of the entire provision does not mean "incurring debt". The use of the money is more accurately characterized as a cash flow management technique since it does nothing more than allow a limited amount of money that is not otherwise committed to be used for a specific purpose under unique circumstances. The General Assembly would not be indebted to any third party and would not be required to pay interest on the use.

The measure does not require that the General Assembly ever use the authority; it merely provides an option should it be necessary. The petitioner erroneously asserts that the tax proceeds are not used to repay such a "borrowing". The measure quite clearly states that among the uses of the moneys to be appropriated to the Colorado Water Conservation Board are "such amounts as the General Assembly deems appropriate for the administration of the interstate compacts and equal

apportionment decrees for water to which the State is a party." *See* Appendix A at 3. The General Assembly has the authority to use such an appropriation of the container tax revenues to replenish the reserve account by a simple footnote to the annual general appropriations bill or through a supplemental appropriation to the Colorado Water Conservation Board.

The measure provides this option only for a legal action arising under the Colorado River Compact. The State is party to other interstate compacts but the measure does not provide a corresponding authority should a legal action arise under one or more of those compacts. The General Assembly has the authority to use the revenues generated by the container tax for such purposes through appropriations to the Colorado Water Conservation Board or the State Engineer. Nothing in the measure would prohibit a basin roundtable that would be adversely affected by such a legal action from using some of its allocation for the purposes of defending the State.

The implications of a call under the Colorado River Compact are of such a magnitude to the entire state that the proponents included this provision to ensure that the General Assembly had resources that it could quickly apply to defending the State should the need arise. The petitioner misunderstands this provision and has erroneously characterized it as a form of indebtedness.

C. The petitioner's objections to the title set by the Title Board on the grounds that it is misleading, inaccurate and incomplete are without merit.

The petitioner asserts that the Title Board should have included references to four provisions when it set the Title.

1. The petitioner's portrayal of the role of the basin roundtables is inaccurate.

The petitioner is factually incorrect concerning the basin roundtables for the reasons set forth in the preceding discussion of his argument that the measure constitutes more than one subject. Those arguments will not be restated here other than to note that the petitioner has failed to demonstrate that the basin roundtables are granted any powers with respect to land use that their respective members do not currently have and simply misunderstands the limited use of the basin roundtables as instrumentalities to accomplish the immediate purposes of the measure. Such a grant of land use authority and power simply does not exist in the measure.

The petitioner asserts that the voters will lack information or knowledge about the basin roundtables which the petitioner characterizes as being "obscure entities of which few voters have ever heard." The assertion completely overlooks the fact that the statute that created the basin roundtables has been on the books and effective since June 7, 2005. By omitting this crucial information, the petitioner fails to note that the basin roundtables and the Interbasin Compact Committee are created as public bodies for the purposes of the Colorado Open Meetings laws, that the basin roundtables are to serve as forums for education and debate concerning water needs, and that the Interbasin Compact Committee is specifically tasked with the duty to develop a public education, participation and outreach working group. A cursory review of the web sites and meeting agendas established for each of the roundtables together with their work products clearly demonstrates that public participation is actively solicited and the public has full access to all information and materials and has adequate opportunity to participate in all aspects of the activities of the roundtables and committee. The basin roundtables are in fact well known to the public.

2. The petitioner's characterization of the container tax as a "sin tax" is incorrect.

The petitioner's assertion that the measure excludes certain types of beverages and the voters will believe that the container tax is a "sin tax" is illogical and perplexing. There is no rational connection between the exclusions and a characterization of the tax as being a "sin tax." Contrary to the petitioner's assertion, the term "sin tax" is not an "established and specific term of art". The term"sin tax" is a colloquial term rather than a term of art. The tax is an excise tax on the sale or distribution of containers holding non-alcoholic beverages, but there is nothing inherently "sinful" about those non-alcoholic beverages. To make such an assertion valid, it would have to be true that excise taxes imposed on gasoline sales and payrolls would be imposed on the "sins" of driving and working.

The petitioner's contention that the word "beverage" is so associated with alcoholic beverages that the voters would be confused is also illogical and perplexing. Two major trade associations, the American Beverage Association and the Colorado Beverage Association, changed their names to reflect their members' production and sale of a wide variety of non-alcoholic beverages. It cannot be asserted with any credibility that the public associates the word "beverage" solely with alcoholic beverages.

It is true that the measure exempts containers holding alcoholic beverages from the application of the container tax. However, the petitioner fails to note that containers holding dairy products, or that hold medicinal products, or are empty and are shipped out of the State of Colorado, or hold fountain beverages intended for immediate consumption, or are refilled by the purchasing consumer for his or her personal use are also exempted from the application of the tax. To seize on the exemption of alcoholic beverages and assert that somehow the voters will conclude that the container tax is a sin tax but never acknowledging the other exemptions and how the voters might consider them is illogical and inconsistent.

3. The petitioner's contention that the measure creates new debt authority for the General Assembly is incorrect.

The measure authorizes the General Assembly to use up to a maximum of $4,000,000 for the specific limited purpose of defending the State against an action arising under the Colorado River Compact. The petitioner's attempt to characterize this limited purpose use as a general increase in Colorado's outstanding debt is a mischaracterization. The General Assembly may only access the money in the reserve account for the specific purpose for which it is granted and not for any other purpose. The petitioner implies that the use could be for any purpose but the measure quite clearly states that is not the case. The limited use of these moneys is more properly characterized as a short term inter-fund transfer that must be replenished. No indebtedness to any party is created.

4. The petitioner's contention that the measure creates new constitutional duties for the State Treasurer is incorrect.

The petitioner attempts to characterize a ministerial and administrative responsibility of the State Treasurer as a constitutional duty. That characterization is incorrect. The role of the State Treasurer is no more than what would be expected of a custodian of public funds. The measure establishes a special fund in the state treasury into which the revenues generated by the tax are to be deposited. The State Treasurer is designated as the custodian of those moneys and is given a simple responsibility to disburse the moneys in the amounts specified to the identified recipients upon the dates specified in the measure. The Treasurer is not charged with the responsibility of determining whether the recipients will use the funds as intended.

The State Treasurer has other programs under her jurisdiction which are not set forth in the Constitution. For example, the State Treasurer is the administrator of the abandoned property program under which she accepts various forms of property that are escheated to the State. The State Treasurer has the responsibility for attempting to notify the owners of the property that they can secure their

property. Property which cannot be returned to the rightful owners is then liquidated and some of the money is transferred to the Cover Colorado program for use in assisting those who are not able to secure health care coverage. It is an administrative function as is the Treasurer's role in distributing the moneys in the fund.

The argument made by the petitioner is essentially that the State Treasurer will become some sort of guardian against a politically motivated legislature attempting to divert the moneys for some purpose other than what is set forth in the measure. Such a contention is absurd. The measure confers no such responsibility on the State Treasurer. If a General Assembly were to attempt to divert the moneys in the fund for a purpose other than one set forth in the measure, it would not be the responsibility of the State Treasurer to make a determination of the legitimacy of such an attempt.

III. CONCLUSION

The Court should deny the petitioner's challenge and affirm the action taken by the Title Board.

APPENDIX A – Final Text of Initiative 2009-2010 #91

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:

Section 5. Water of streams public property – water preservation and protection. (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) THE PEOPLE OF THE STATE OF COLORADO FIND, DETERMINE, AND DECLARE THAT:

(a) IN ORDER FOR THE WATERS OF THIS STATE TO BE AVAILABLE TO FUTURE GENERATIONS OF COLORADO CITIZENS FOR BOTH CONSUMPTIVE AND NONCONSUMPTIVE USES, IT IS NECESSARY AND PRUDENT TO ESTABLISH A MEANS TO PROTECT AND PRESERVE THE WATERS OF THE STATE; AND

(b) A FEE ON CONTAINERS THAT HOLD NONALCOHOL BEVERAGES FOR HUMAN CONSUMPTION IS RATIONALLY RELATED TO THE PROTECTION AND PRESERVATION OF THE WATERS OF THIS STATE FOR FUTURE GENERATIONS.

(3) THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND, DETERMINE, AND DECLARE THAT:

(a) FOR THE PURPOSES OF THE INITIAL IMPLEMENTATION OF THIS SECTION, THE BASIN ROUNDTABLES ESTABLISHED IN ACCORDANCE WITH ARTICLE 75 OF TITLE 37, COLORADO REVISED STATUTES, INCLUDE THE MOST COMPREHENSIVE REPRESENTATION OF CRITICAL INTERESTS NECESSARY TO DEVELOP AND IMPLEMENT SOUND PLANS AND PROGRAMS FOR THE PRESERVATION AND PROTECTION OF THE WATERS OF THIS STATE CURRENTLY IN EXISTENCE IN THIS STATE AND SHOULD BE TASKED WITH THE RESPONSIBILITY FOR CARRYING OUT THESE PURPOSES; AND

(b) IN ADDITION TO THE BROAD REPRESENTATION OF INTERESTS ON THE BASIN ROUNDTABLES, THE INTERBASIN COMPACT COMMITTEE IS PARTICULARLY WELL SUITED TO REVIEW AND ANALYZE PROPOSALS, INCLUDING THE TRANSFER OF WATER SUPPLIES BETWEEN THE RIVER BASINS, AND TO RECOMMEND THE OPTIMUM BALANCE OF WATER SUPPLY USES AMONG THE BENEFICIAL USES OF WATER RECOGNIZED BY THE STATE OF COLORADO FOR THE MAXIMUM BENEFIT OF THE PEOPLE OF COLORADO.

(4) THERE IS HEREBY CREATED A FUND IN THE STATE TREASURY TO BE KNOWN AS THE WATER FOR FUTURE GENERATIONS FUND WHICH IS REFERRED TO IN THIS SECTION AS THE "FUND." THE FUND SHALL BE ADMINISTERED BY THE STATE TREASURER WHO SHALL DISBURSE THE MONEYS FROM THE FUND AS REQUIRED BY THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION OR STATUTE TO THE CONTRARY, THE MONEYS IN THE FUND, TOGETHER WITH ANY INTEREST OR OTHER EARNINGS ON SUCH MONEYS, ARE CONTINUOUSLY APPROPRIATED FOR THE PURPOSES ESTABLISHED IN THIS SECTION. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SECTION, THE MONEYS IN THE FUND OR ACCRUING TO THE FUND SHALL NOT BE SUBJECT TO ANY FURTHER APPROPRIATION, BUDGETARY, OR FISCAL ACTION BY THE GENERAL ASSEMBLY. THE MONEYS DEPOSITED INTO THE FUND SHALL NOT, EXCEPT AS SPECIFICALLY AUTHORIZED BY THIS SECTION, BE APPROPRIATED, BORROWED, ATTACHED, OR USED FOR ANY PURPOSE OTHER THAN THOSE ESTABLISHED BY THIS SECTION. THE FUND SHALL CONSTITUTE A DISTINCT AND SEPARATE FUND AND THE MONEYS IN THE FUND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS AND SHALL NOT BE CONSIDERED TO BE A PART OF THE GENERAL FUNDS OF THE STATE OF

Final #91

COLORADO. THE MONEYS IN THE FUND ARE PUBLIC FUNDS AND THE STATE TREASURER SHALL APPLY THE SAME INVESTMENT STANDARDS FOR SAFETY AND SECURITY AS ARE APPLICABLE TO OTHER STATE FUNDS.

(5) THE MONEYS DISBURSED FROM THE FUND SHALL BE USED FOR THE FOLLOWING PURPOSES:

(A) THE PROTECTION, ADMINISTRATION, AND DEVELOPMENT OF RENEWABLE SURFACE WATERS AND GROUNDWATER SUPPLIES FOR MAXIMUM UTILIZATION;

(B) THE PLANNING FOR AND IMPLEMENTATION OF DROUGHT MITIGATION STRATEGIES;

(C) THE DEVELOPMENT AND IMPLEMENTATION OF MEASURES DESIGNED TO FOSTER WATER CONSERVATION, THE CURTAILMENT OF WASTEFUL USES OF WATER, AND THE MANAGEMENT OF DEMAND BY WATER USERS;

(D) SUBJECT TO THE WATER LAWS OF THE STATE OF COLORADO, TO MAXIMIZE THE EFFICIENT REUSE OF THE WATERS OF THIS STATE;

(E) THE FULL UTILIZATION OF THE WATER ALLOCATED TO THE STATE OF COLORADO IN ACCORDANCE WITH ANY INTERSTATE COMPACT THAT THE STATE OF COLORADO IS PARTY TO;

(F) THE DEVELOPMENT OF PRACTICES TO FURTHER THE CONJUNCTIVE USES OF SURFACE WATER AND GROUNDWATER;

(G) THE DEVELOPMENT OF WATER STORAGE, WHETHER ABOVE GROUND OR IN THE AQUIFERS, TO OPTIMIZE THE MANAGEMENT OF THE WATER SUPPLIES OF THE STATE OF COLORADO;

(H) THE IMPROVEMENT OF WATER SUPPLY STORAGE, TREATMENT, AND DISTRIBUTION SYSTEMS TO MINIMIZE WATER LOSS;

(I) THE MANAGEMENT AND STEWARDSHIP OF THE WATERSHEDS OF THE STATE OF COLORADO THAT ARE ESSENTIAL TO THE PROTECTION OF THE WATER SUPPLY THAT IS GENERATED BY THE WATERSHEDS INCLUDING HABITAT FOR SPECIES OF ANIMALS, BIRDS AND FISH THAT ARE DEPENDENT UPON THE WATERSHEDS, EROSION MITIGATION AND CONTROL, AND WILDFIRE PREVENTION; AND

(J) MEASURES DESIGNED TO IMPROVE THE QUALITY OF THE WATERS OF THE STATE OF COLORADO INCLUDING MEETING WATER QUALITY MANDATES IMPOSED BY THE STATE OF COLORADO OR THE UNITED STATES.

(6) THE STATE TREASURER SHALL DISBURSE THE MONEYS IN THE FUND IN THE FOLLOWING MANNER:

(a) FIVE PERCENT OF THE MONEYS RECEIVED INTO THE FUND SHALL BE MAINTAINED AS A RESERVE UP TO A MAXIMUM AMOUNT OF SIX MILLION DOLLARS. IN THE EVENT THAT ANY OTHER STATE OR THE UNITED STATES FILES A LEGAL ACTION AGAINST THE STATE OF COLORADO PURSUANT TO THE TERMS OF THE COLORADO RIVER COMPACT, THE GENERAL ASSEMBLY MAY, ACTING BY BILL, BORROW UP TO TWO-THIRDS OF THE MONEYS IN THE RESERVE ACCOUNT TO DEFEND OR OTHERWISE PROVIDE LEGAL REPRESENTATION FOR THE STATE OF COLORADO. THE BILL ENACTED BY THE GENERAL ASSEMBLY TO BORROW FROM THE RESERVE ACCOUNT SHALL INCLUDE A REPAYMENT PLAN FOR THE REPLACEMENT OF ANY BORROWED AMOUNTS BUT THE GENERAL ASSEMBLY NEED NOT PAY ANY INTEREST ON THE MONEYS BORROWED.

(b) AFTER THE REQUIREMENT FOR THE AMOUNT TO BE SET ASIDE INTO THE RESERVE ACCOUNT, TWENTY PERCENT OF THE REMAINING MONEYS SHALL BE TRANSFERRED TO THE GENERAL FUND OF THE STATE OF COLORADO TO BE APPROPRIATED BY THE GENERAL ASSEMBLY AS FOLLOWS:

(I) FOR APPROPRIATION TO THE COLORADO WATER CONSERVATION BOARD, OR ANY SUCCESSOR AGENCY, SUCH AMOUNTS AS THE GENERAL ASSEMBLY DEEMS APPROPRIATE FOR THE ADMINISTRATION OF THE INTERSTATE COMPACTS AND EQUAL APPORTIONMENT DECREES FOR WATER TO WHICH THE STATE IS A PARTY; INVESTIGATING AND PREPARING CONTINGENCY PLANS FOR POTENTIAL ADVERSE EFFECTS ON THE STATE'S WATER SUPPLIES THAT MAY OCCUR AS A RESULT OF SUSTAINED DROUGHTS OR OTHER PRECIPITATION DISRUPTIONS WHETHER SUCH DISRUPTIONS OCCUR AS PART OF NATURAL CLIMATE AND WEATHER PHENOMENA OR AS A RESULT OF CLIMATE CHANGE; INVESTIGATING AND PREPARING PLANS FOR THE REDUCTION OF WILDFIRE RISK THAT MIGHT ADVERSELY AFFECT THE WATERSHEDS FOR THE MAJOR SOURCES OF WATER SUPPLY; INVESTIGATING AND PREPARING PLANS FOR FLOODING THAT MIGHT ADVERSELY AFFECT THE WATER SUPPLIES OF THE STATE OF COLORADO; AND SUCH OTHER RESPONSIBILITIES AS MAY FROM TIME TO TIME BE REQUIRED BY THE GENERAL ASSEMBLY.

(II) FOR APPROPRIATION TO THE STATE ENGINEER OR ANY SUCCESSOR STATE OFFICIAL WITH THE SAME RESPONSIBILITY, AN AMOUNT DEEMED REASONABLY NECESSARY FOR THE PURPOSES OF ADMINISTERING THE WATER LAWS OF THE STATE OF COLORADO INCLUDING THE RIVER BASINS OF THE ARKANSAS RIVER, THE SOUTH PLATTE RIVER, THE COLORADO RIVER, THE BASIN COMPOSED OF THE GUNNISON, UNCOMPAHGRE AND SAN MIGUEL RIVERS, THE RIO GRANDE RIVER, THE BASIN COMPOSED OF THE YAMPA, WHITE, GREEN AND NORTH PLATTE RIVERS, AND THE BASIN COMPOSED OF THE SAN JUAN, RIO PIEDRA, RIO LAS ANIMAS, LOS PIÑOS, LA PLATA AND RIO MANCOS RIVERS.

(IV) FOR APPROPRIATION TO THE STATE TREASURER AN AMOUNT DEEMED REASONABLY NECESSARY FOR THE PROPER ADMINISTRATION OF THE FUND.

(V) FOR APPROPRIATION TO THE STATE AUDITOR AN AMOUNT DEEMED REASONABLY NECESSARY FOR THE PROPER AUDIT OF THE FUND AND ANY REQUIRED AUDIT FUNCTIONS OF MONEYS DISTRIBUTED TO THE BASIN ROUNDTABLES AND THE INTERBASIN COMPACT COMMITTEE.

(VI) ANY MONEYS WHICH ARE NOT EXPENDED PURSUANT TO THE APPROPRIATION MADE BY THE GENERAL ASSEMBLY SHALL REVERT DIRECTLY TO THE FUND.

(VII) THE DISBURSEMENT AND TRANSFER OF THE MONEYS FROM THE FUND TO THE GENERAL FUND SHALL OCCUR NOT LATER THAN APRIL 1 OF EACH CALENDAR YEAR.

(VIII) THE MONEYS TO BE APPROPRIATED BY THE GENERAL ASSEMBLY AS REQUIRED BY THIS SUBSECTION (6) ARE TO BE USED FOR THE PURPOSES SPECIFIED IN THIS SUBSECTION (6) AND ARE NOT TO BE USED BY THE GENERAL ASSEMBLY TO SUPPLANT OR DISPLACE ANY OTHER FUNDS WHICH MAY BE APPROPRIATED, RECEIVED, OR DEDICATED FOR THE SAME PURPOSES.

(c) AFTER THE REQUIREMENT FOR THE AMOUNT TO BE SET ASIDE INTO THE RESERVE ACCOUNT, EIGHTY PERCENT OF THE REMAINING MONEYS SHALL BE DISTRIBUTED AND TRANSFERRED TO THE BASIN ROUNDTABLES AND THE INTERBASIN COMPACT COMMITTEE ESTABLISHED BY ARTICLE 75 OF TITLE 37, COLORADO REVISED STATUTES AS FOLLOWS:

(I) FOR EACH FISCAL YEAR COMMENCING JULY 1, 2011, JULY 1, 2012, AND JULY 1, 2013, AN EQUAL AMOUNT TO EACH OF THE BASIN ROUNDTABLES AND THE INTERBASIN COMPACT COMMITTEE FOR THE PURPOSES SPECIFIED IN ARTICLE 75 OF TITLE 37, COLORADO REVISED STATUTES, UP TO A MAXIMUM OF FIVE HUNDRED THOUSAND DOLLARS EACH FISCAL YEAR FOR EACH ROUNDTABLE AND THE COMMITTEE. THE DISBURSEMENT TO THE ROUNDTABLES AND THE INTERBASIN COMPACT COMMITTEE SHALL OCCUR IN TWO INSTALLMENTS WITH THE FIRST OCCURRING ON JULY 1 OF EACH OF THE NOTED FISCAL YEARS AND THE SECOND ON DECEMBER 1 OF EACH OF THE NOTED FISCAL YEARS.

(II) AFTER THE DISBURSEMENT REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (C) HAS BEEN MADE, ANY MONEYS REMAINING IN THE FUND SHALL BE DISTRIBUTED TO THE BASIN ROUNDTABLES IN PROPORTION TO THE ESTIMATED WATER SUPPLY SHORTAGE THAT EACH BASIN REPRESENTS OF THE STATEWIDE ESTIMATED WATER SHORTAGE AS DETERMINED BY THE MOST CURRENT WATER SUPPLY INITIATIVE STUDY, OR ANY SUCCESSOR STUDY FOR THE SAME OR SIMILAR PURPOSES, CONDUCTED BY THE COLORADO WATER CONSERVATION BOARD. THE MONEYS RECEIVED BY THE ROUNDTABLES SHALL BE USED ONLY FOR THE PURPOSES SPECIFIED IN SUBSECTION (5) OF THIS SECTION.

(7) (a) THERE IS IMPOSED UPON EVERY CONTAINER OF EVERY KIND THAT CONTAINS A NONALCOHOL BEVERAGE, WHICH BEVERAGE MEETS THE CRITERIA ESTABLISHED IN THIS SUBSECTION (7), A FEE OF ONE CENT FOR EACH SIX FLUID OUNCES, OR PART THEREOF, UP TO A MAXIMUM FEE OF FIFTY CENTS ON ANY SINGLE CONTAINER. FOR THE PURPOSES OF THIS SECTION, ONLY CONTAINERS THAT HOLD BEVERAGES THAT MEET THE FOLLOWING CRITERIA SHALL BE SUBJECT TO THE FEE IMPOSED BY THIS SUBSECTION (7):

(I) THE CONTAINER HOLDS A BEVERAGE THAT HAS NO ALCOHOL IN IT;

(II) THE CONTAINER HOLDS A BEVERAGE THAT IS INTENDED FOR CONSUMPTION BY HUMAN BEINGS;

(III) THE CONTAINER IS EITHER FULLY OR PARTIALLY FILLED WITH THE BEVERAGE AND IS SOLD OR DISTRIBUTED WITHIN THE STATE OF COLORADO OR THE CONTAINER WAS FILLED WITH THE BEVERAGE WITHIN THE STATE OF COLORADO BUT IS TO BE SHIPPED OUT OF THE STATE OF COLORADO; AND

(IV) THE CONTAINER IS EITHER SINGLE USE OR REFILLABLE AND EACH REFILLED USE CONSTITUTES A SEPARATE CONDITION TO WHICH THE FEE IS APPLICABLE.

(b) CONTAINERS HOLDING BEVERAGES WHICH MEET THE FOLLOWING CRITERIA ARE EXEMPT FROM THE FEE IMPOSED BY THIS SUBSECTION (7):

(I) CONTAINERS THAT ARE FILLED WITH DAIRY PRODUCTS;

(II) CONTAINERS THAT ARE FILLED OR PARTIALLY FILLED WITH MEDICINES WHETHER SOLD BY PRESCRIPTION OR OVER THE COUNTER;

(III) CONTAINERS THAT ARE FILLED OR PARTIALLY FILLED WITH A FOUNTAIN BEVERAGE AND ARE INTENDED FOR IMMEDIATE CONSUMPTION WHETHER ON OR OFF THE PREMISES WHERE THEY WERE ACQUIRED;

(IV) CONTAINERS WHICH ARE EMPTY AND ARE SHIPPED OUT OF THE STATE OF COLORADO WITHOUT ANY BEVERAGES IN THEM; OR

(V) CONTAINERS WHICH ARE REFILLED BY THE PURCHASING CONSUMER FOR HIS OR HER PERSONAL USE.

(c) THE GENERAL ASSEMBLY, ACTING BY BILL, MAY EXEMPT OTHER CONTAINERS HOLDING OTHER BEVERAGES FROM THE FEE IMPOSED BY THIS SUBSECTION (7) SUBJECT TO THE FOLLOWING CONDITIONS:

(I) THE BILL CONFERRING THE EXEMPTION SHALL BE SUBJECT TO THE REFERENDUM POWERS RESERVED TO THE PEOPLE OF THE STATE OF COLORADO;

(II) THE BILL SHALL NOT CONFER A UNIQUE OR SPECIAL COMPETITIVE ADVANTAGE FOR THE BEVERAGE THAT IS HELD WITHIN THE CONTAINER VIS-À-VIS OTHER REASONABLY SUBSTITUTABLE BEVERAGES WHICH ARE HELD IN CONTAINERS SUBJECT TO THE FEE; AND

(III) THE BILL HAS BEEN ENACTED BY AT LEAST A TWO-THIRDS MAJORITY VOTE OF THE MEMBERS OF BOTH HOUSES OF THE GENERAL ASSEMBLY.

(d)(a) NEITHER THE STATE OF COLORADO NOR ANY POLITICAL SUBDIVISION OF THE STATE OF COLORADO NOR ANY AGENCY OF EITHER SHALL IMPOSE A FEE FOR ANY PURPOSE ON ANY CONTAINER THAT IS SUBJECT TO THE FEE ESTABLISHED BY THIS SUBSECTION (7).

(b) THE FEE ESTABLISHED BY THIS SUBSECTION (7) SHALL NOT SUPERSEDE NOR REPEAL ANY GENERAL OR SPECIAL SALES OR USE TAX IMPOSED BY THE STATE OF COLORADO OR ANY POLITICAL SUBDIVISION OF THE STATE OF COLORADO ON ANY CONTAINER OR ANY BEVERAGE THAT MEETS THE CRITERIA ESTABLISHED BY THIS SUBSECTION (7).

(8) THE FEES SHALL BE REMITTED TO THE STATE TREASURER TO BE DEPOSITED IN THE FUND AS FOLLOWS:

(a) IF THE CONTAINER, WHETHER FILLED IN THE STATE OF COLORADO OR ELSEWHERE, HOLDS A BEVERAGE THAT MEETS THE CRITERIA OF SUBSECTION (7) AND IS SOLD, DISTRIBUTED, OR PROVIDED ANYWHERE IN THE STATE OF COLORADO, THE PERSON SELLING, DISTRIBUTING, OR PROVIDING THE CONTAINER IS RESPONSIBLE FOR REMITTING THE FEE IMPOSED BY SUBSECTION (7) TO THE STATE TREASURER BY THE FIFTEENTH DAY OF EACH CALENDAR MONTH. THE PERSON REMITTING THE FEES MAY RETAIN THREE AND ONE-HALF PERCENT OF THE AGGREGATE FEES REMITTED.

(b) IF THE CONTAINER IS FILLED IN THE STATE OF COLORADO WITH A BEVERAGE THAT MEETS THE CRITERIA IN SUBSECTION (7) AND IS SHIPPED OUTSIDE THE STATE OF COLORADO, THE PERSON RESPONSIBLE FOR FILLING THE CONTAINER IS RESPONSIBLE FOR REMITTING THE FEE IMPOSED BY SUBSECTION (7) TO THE STATE TREASURER BY THE FIFTEENTH DAY OF EACH CALENDAR MONTH. THE PERSON REMITTING THE FEES MAY RETAIN THREE AND ONE-HALF PERCENT OF THE AGGREGATE FEES REMITTED.

(c) (I) IF THE CONTAINER HOLDS A BEVERAGE THAT MEETS THE CRITERIA OF SUBSECTION (7) AND IS SOLD OR DISTRIBUTED IN THE STATE OF COLORADO THROUGH WHAT IS COMMONLY KNOWN AS A VENDING MACHINE, THE VENDOR AT HIS OR HER DISCRETION, MAY, IN LIEU OF REMITTING THE FEES AS REQUIRED BY THIS SUBSECTION (8) PREPAY THE ESTIMATED AGGREGATE FEES THAT WOULD HAVE BEEN COLLECTED ON THE SALES OR DISTRIBUTION THROUGH THE VENDING MACHINE BUT SHALL MAKE A QUARTERLY ADJUSTMENT TO THE PREPAID FEES BASED ON THE ACTUAL SALES OR DISTRIBUTION THROUGH THE VENDING MACHINE. THE VENDOR MAY RETAIN THREE AND ONE-HALF PERCENT OF THE AGGREGATE FEES THAT WERE PREPAID.