

SUPREME COURT, STATE OF COLORADO
101 West Colfax Avenue, Suite 800
Denver, CO 80202

ORIGINAL PROCEEDING PURSUANT TO
§1-40-107(2), C.R.S. (2007)
Appeal from the Ballot Title Setting Board

Petitioner:

Christopher Howes, Objector,

v.

Respondents:

Richard G. Brown and Gerald L. Barber,
Proponents,

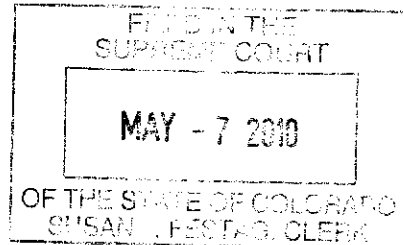
and

Title Board:

William A. Hobbs, Sharon Eubanks, and Geoff
Blue

Attorneys for Petitioner:

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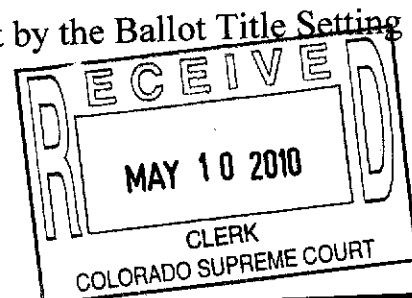
Case Number:

10SA1354

**PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE
SETTING BOARD CONCERNING
PROPOSED INITIATIVE 2009-2010 #91
("Container Fee to Fund Water Preservation and Protection")**

Christopher Howes, a registered elector of Colorado, by and through
undersigned counsel, respectfully petitions this Court under C.R.S. § 1-40-107(2),
to review the title, ballot title, and submission clause set by the Ballot Title Setting

PAID



Board for Proposed Initiative 2009-2010 #91 (“Container Fee to Fund Water Preservation and Protection”).

I. Actions of the Ballot Title Setting Board

The Title Board conducted its initial public meeting and set the title and submission clause for Proposed Initiative 2009-2010 #91 on April 19, 2010. On April 26, 2010, Howes filed a *Motion for Rehearing* under C.R.S. § 1-40-107(1), and the Title Board considered the Motion for Rehearing 48 hours later, on April 28, 2010. The Board denied the *Motion* in part. The Petitioner now seeks review of the Title Board’s decision under C.R.S. § 1-40-107(2).

II. Issues Presented

A. Under C.R.S. § 1-40-105(4), initiative proponents must submit an “amended draft with changes highlighted or otherwise indicated” to the Title Board. The proponents here struck the entire original draft and submitted a wholly new draft. Did the proponents violate the requirement to highlight changes under C.R.S. § 1-40-105(4)?

B. Colorado Revised Statutes § 1-40-106.5 requires that “every constitutional amendment or proposed by initiative ... be limited to a single subject.” Does the initiative violate the single subject requirement by containing the following separate subjects:

1. A new tax on beverage containers;

2. A new requirement that the General Assembly amend the tax through a super majority, rather than merely a majority;
3. A moratorium on changes to existing basin roundtables and interbasin compact committees, including a prohibition on the creation of any new agencies that supersede or are superordinate to the basin roundtables or interbasin compact committees.
4. Authorization for the General Assembly to borrow funds for the purpose of funding litigation involving the Colorado River Compact.

C. Under C.R.S. § 1-40-106 the title and submission clauses must “correctly and fairly express the true intent and meaning” of the ballot measure. Is the ballot title and submission clause incomplete, because it fails to:

1. Identify the new constitutional duties imposed upon the State Treasurer;
2. State that the General Assembly receives new borrowing authority; and
3. State that the initiative only applies to non-alcoholic beverage containers.

III. Supporting Documentation

As required by C.R.S. § 1-40-107(2), attached is a certified copy of the Petition with the titles and submission clause of the proposed constitutional amendment, a certified copy of the *Motion for Rehearing*, and final action by the

Title Board (**collectively Exhibit 1**). The Petitioner has also attached a copy of the transcript of the *Motion for Rehearing* (**Exhibit 2**).

IV. Relief Requested

The Petitioner respectfully requests this Court to reverse the actions of the Title Board with directions to decline to set a title and return the Proposed Initiative to the Proponents. Alternatively, the Petitioner requests this Court to remand the matter to the Title Board and instruct it to set a complete and accurate Ballot Title and Submission Clause.

Respectfully submitted this 7th day of May, 2010.

By: 

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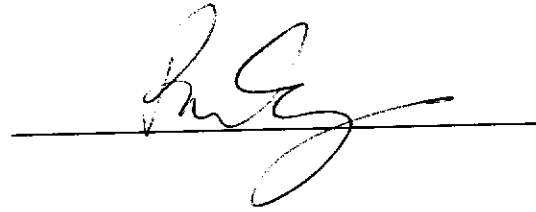
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2010, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2009-2010 #91 ("Container Fee to Fund Water Preservation and Protection")** was placed in the United States mail, postage prepaid, to the following:

Richard G. Brown
9032 East Amherst Drive
Denver, Colorado 80231

Garald L. Barber
9040 Strand Way
Colorado Springs, Colorado 80209

Maurice G. Knaizer, Esq.
Deputy Attorney General
Colorado Department of Law
1525 Sherman Street, 6th Floor
Denver, Colorado 80203

A handwritten signature in black ink, appearing to read 'M. G. Knaizer', is written over a horizontal line.

FILED IN THE
SUPREME COURT

MAY - 7 2010

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

Exhibit 1



STATE OF COLORADO

**DEPARTMENT OF
STATE**

CERTIFICATE

I, **BERNIE BUESCHER**, Secretary of State of the State of Colorado, do hereby certify that:
the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon
of the Title Board on Proposed Initiative "2009-2010 #91".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 4st day of May, 2010.

Bernie Buescher

SECRETARY OF STATE

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

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Colorado Secretary of State

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.

(11) THE STATE TREASURER SHALL WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS SUBSECTION (8) ESTABLISH A PREPAYMENT OPTION PROGRAM FOR OPERATORS OF VENDING MACHINES TO USE AND MAY EXTEND PARTICIPATION IN THE PREPAYMENT OPTION PROGRAM TO OTHER PERSONS WHO ARE RESPONSIBLE FOR THE REMITTING OF FEES WHEN SUCH PARTICIPATION IS JUSTIFIED FOR EFFICIENCY OR TO AVOID AN UNDUE HARDSHIP ON THE PERSON.

(d) THE PERSON WHO REMITS THE FEES AS REQUIRED BY THIS SUBSECTION (8) MAY RECOVER SUCH FEES THROUGH THE PURCHASE PRICE OF THE CONTAINER WHEN IT IS SOLD.

(e) THE PERSON WHO IS RESPONSIBLE FOR THE REMITTING OF FEES SHALL MAINTAIN ACCURATE RECORDS AND SHALL BE SUBJECT TO AUDIT AS SPECIFIED BY THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY MAY ESTABLISH PENALTIES FOR FAILURE BY A PERSON RESPONSIBLE FOR THE REMITTING OF THE FEES TO MAINTAIN ACCURATE RECORDS OR TO REMIT THE PROPER AMOUNT OF FEES IN A TIMELY MANNER.

(9) THE FUND SHALL BE SUBJECT TO AN ANNUAL AUDIT BY THE STATE AUDITOR OR ANY SUCCESSOR OFFICER OF THE STATE OF COLORADO WITH THE SAME RESPONSIBILITIES. THE LEGISLATIVE AUDIT COMMITTEE OF THE GENERAL ASSEMBLY, OR ITS SUCCESSOR COMMITTEE, SHALL OVERSEE THE ACTIVITIES OF THE STATE AUDITOR AND SHALL MAKE AN ANNUAL REPORT ON THE CONDITION OF THE FUND TOGETHER WITH SUCH OTHER FINANCIAL INFORMATION AS DEEMED APPROPRIATE BY THE COMMITTEE TO THE GENERAL ASSEMBLY. THE AUDIT REQUIRED BY THIS SUBSECTION (9) SHALL BE CONDUCTED AND THE REQUIRED REPORT MADE TO THE GENERAL ASSEMBLY NOT LATER THAN SIX MONTHS FOLLOWING THE END OF EACH STATE FISCAL YEAR. THE AUDIT REPORT SHALL BE MAINTAINED ON FILE BY THE STATE AUDITOR FOR SUCH PERIOD OF TIME AS SPECIFIED BY THE GENERAL ASSEMBLY, AND SHALL BE AVAILABLE FOR PUBLIC REVIEW AND INSPECTION FOLLOWING ITS FILING WITH THE GENERAL ASSEMBLY.

(10) THERE IS HEREBY ESTABLISHED A FOUR-YEAR MORATORIUM ON THE AMENDMENT, REPEAL, OR MODIFICATION OF ARTICLE 75 OF TITLE 37, COLORADO REVISED STATUTES, THAT CREATED AND GOVERNS THE BASIN ROUNDTABLES AND THE INTERBASIN COMPACT COMMITTEE AS ARTICLE 75 OF TITLE 37 WAS INCORPORATED IN THE LAWS OF COLORADO AS OF JANUARY 1, 2010. THE PURPOSE FOR THE MORATORIUM IS TO PROVIDE FOR THE STABILITY OF THE FUND, THE EXPRESS USES OF MONEYS IN THE FUND, THE ACCOUNTABILITY FOR THE USE OF ANY MONEYS RECEIVED FROM THE FUND AND TO PROVIDE ADEQUATE TIME FOR THE BASIN ROUNDTABLES AND THE INTERBASIN COMPACT COMMITTEE TO COMPLETE THE TASKS THAT HAVE BEEN ASSIGNED TO THEM UNDER THE PROVISIONS OF ARTICLE 75 OF TITLE 37, COLORADO REVISED STATUTES AND THIS SECTION (5). DURING THE PERIOD OF THIS MORATORIUM, THE GENERAL ASSEMBLY SHALL NOT CREATE NOR EMPOWER ANY OTHER AGENCY TO SUPERSEDE OR BE SUPERORDINATE TO THE BASIN ROUNDTABLES OR THE INTERBASIN COMPACT COMMITTEE. THIS MORATORIUM IS TERMINATED AND THIS SUBSECTION (10) IS REPEALED ON JANUARY 1, 2015.

(11) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION BY THE GOVERNOR AND SHALL BE SELF EXECUTING AND SELF IMPLEMENTING IN ALL RESPECTS.

(12) IF ANY PROVISION OF THIS SECTION IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT ANY OTHER PROVISIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION, AND TO THAT END THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

Proponent Representative 1:

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APR 28 2010 3:33 PM
C.K.

COLORADO TITLE SETTING BOARD
Colorado Secretary of State

In re Title and Ballot Title and Submission Clause for Initiative 2009-2010 #91

MOTION FOR REHEARING

On behalf of Christopher Howes, a registered elector of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title, and submission clause for Initiative 2009-2010 "Container Fee to Fund Water Preservation and Protection," set by the Title Board on April 21, 2010. As grounds, Howes states as follows:

The Title Board does not have jurisdiction to set a title because the proponents made substantial amendments, but did not send a copy of the amended draft to the title board with the changes highlighted or otherwise indicated, as required by C.R.S. § 1-40-105(4).

The proposed initiative violates Colorado's single subject requirement contained in C.R.S. § 1-40-106.5 because it contains the following separate subjects:

1. It creates a new tax on beverage containers.
2. It implements new procedures for amending the tax.
3. It establishes a moratorium on changes to the basin roundtables and the interbasin compact committee.
4. It prohibits the General Assembly from creating any agencies that supersede or are superordinate to the basin roundtables or interbasin compact committees.
5. It authorizes the General Assembly to borrow funds in order to represent the State of Colorado in litigation concerning the Colorado River Compact.


The title set by the Board is misleading, inaccurate, and incomplete for the following reasons:

1. The title refers to the new revenue as a "fee," when in fact the new charges are taxes.
2. The phrase "water for future generations" is a catch phrase.
3. The title fails to describe the new duties of the State Treasurer as an administrator

of the fund.

4. The title fails to state that the initiative authorizes the General Assembly to borrow funds in order to pay for legal representation involving the Colorado River Compact.
5. The title fails to state that the tax does not apply to alcoholic beverage containers.

Respectfully submitted this 28th day of April, 2010.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2010, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Richard G. Brown
9032 East Amherst Drive
Denver, Colorado 80231

Gerald L. Barber
9040 Strand Way
Colorado Springs, Colorado 80209



Ballot Title Setting Board

Proposed Initiative 2009-2010 #91¹

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

State taxes shall be increased \$110.0 million annually by an amendment to the Colorado constitution concerning the imposition of a tax on certain beverage containers to provide moneys for water conservation in Colorado, and, in connection therewith, setting the tax at one cent for every six fluid ounces, exempting from the tax certain fluids and beverages and authorizing the general assembly to create additional exceptions by a two-thirds majority of both houses, requiring the moneys from the tax to be used for purposes related to preserving the availability of water, and placing a four-year moratorium on modifications to state statutes regarding basin roundtables and the interbasin compact committee and its charter.

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

Shall state taxes be increased \$110.0 million annually by an amendment to the Colorado constitution concerning the imposition of a tax on certain beverage containers to provide moneys for water conservation in Colorado, and, in connection therewith, setting the tax at one cent for every six fluid ounces, exempting from the tax certain fluids and beverages and authorizing the general assembly to create additional exceptions by a two-thirds majority of both houses, requiring the moneys from the tax to be used for purposes related to preserving the availability of water, and placing a four-year moratorium on modifications to state statutes regarding basin roundtables and the interbasin compact committee and its charter?

Hearing April 21, 2010:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 9:34 a.m.

Hearing April 30, 2010:

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

Hearing adjourned 4:29 p.m.

¹ Unofficially captioned "Container Fee to Fund Water Preservation and Protection" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.