

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203 ORIGINAL PROCEEDING PURSUANT TO C.R.S. § 1-40-107(2) Appeal from the Title Board</p>	
<p>IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE 2015-2016 #4 <b>Petitioner:</b> DOUGLAS KEMPER, as Registered Elector of the State of Colorado; v. <b>Title Board:</b> SUZANNE STAIERT, JASON GELENDER, and DAVID BLAKE; and <b>Respondents:</b> PHILLIP T. DOE and BARBARA MILLS-BRIA</p>	<p>▲ COURT USE ONLY ▲</p>
<p><b>Attorneys for Petitioner:</b> Name: Stephen H. Leonhardt (#15122) Alix L. Joseph (#33345) Steven M. Nagy (#38955) Address: BURNS, FIGA &amp; WILL, P.C. 6400 South Fiddler's Green Circle Suite 1000 Greenwood Village, CO 80111 Phone: (303) 796-2626 Fax: (303) 796-2777 Emails: sleonhardt@bflaw.com ajoseph@bflaw.com snagy@bflaw.com</p>	<p>Case No:</p>
<p><b>PETITION FOR REVIEW</b></p>	

Douglas Kemper (“Petitioner”), by and through his counsel, Burns, Figa & Will, P.C., respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2) to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title and submission clause for proposed Initiative 2015-2016 #4, which was submitted to appear on the November 2016 ballot. Mr. Kemper is a registered elector of the State of Colorado, and is the Executive Director of the Colorado Water Congress.

#### **I. ACTION OF THE BALLOT TITLE BOARD**

The Ballot Title Setting Board (the “Board”) conducted a public meeting pursuant to C.R.S. § 1-40-106(1) on December 17, 2014, at which time it designated and fixed a title, ballot title and submission clause (collectively the “Title”) for Initiative 2013-2014 #89. Petitioner, a registered elector of the State of Colorado, filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1) on December 24, 2014. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Board on January 7, 2015. At the rehearing, the Board, by majority vote, modified the Title and otherwise denied Petitioner’s objections. Petitioner hereby seeks review of the final action of the Board pursuant to C.R.S. § 1-40-107(2) with regard to the issues set forth below.

## **II. ADVISORY LIST OF ISSUES PRESENTED**

A. Whether the Board incorrectly determined that Initiative 2015-2016 #4 is limited to a single subject<sup>1</sup>, as required by article V, section 1(5.5) of the Colorado Constitution and C.R.S. § 1-40-106.5, in light of the multiple objectives of this measure to:

1. Impose obligations for regulation to protect the environment;
2. Create a common property interest in natural resources, including water and minerals, to mandate preservation of these resources; and
3. Require referral for prosecution of any criminal offenses involved in manipulating data to profit from specified resources.

B. Whether the Board's title and ballot title and submission clause ("Title") for Initiative 2015-2016 #4 are misleading and likely to create confusion among the voters, and are unfair and does not fairly express the true intent of the Initiative because:

1. The Title improperly omits any mention of the creation and declaration of "common property" rights in specified resources, which

---

<sup>1</sup> The Board identified the measure's subject in the Title as "common ownership by all Coloradoans of public trust resources."

is a material feature of the Initiative that must be disclosed in the Title;

2. The Title improperly omits mention that the Initiative's retroactive effect deals with commercial dealings as well as public actions.

3. The "concerning" phrase is misleading in that it uses the Initiative's specially-defined phrase, "public trust resources," to conceal the multiple subjects contained therein.

### **III. SUPPORTING DOCUMENTATION**

As required by C.R.S. § 1-40-107(2), a certified copy of Initiative 2015-2016 #4 and a certified copy of the Motion for Rehearing and the Board's rulings thereon, with the corresponding title, ballot title and submission clause, are submitted herewith.

### **IV. RELIEF REQUESTED**

The Petitioner respectfully requests this Court to find that the Title Board lacked jurisdiction to set the Title because the measure contains multiple subjects or, in the alternative, order the Board to revise the Title as specified above to reflect the true meaning and intent of Initiative 2015-2016 #4 and to avoid voter confusion.

Respectfully submitted this 14<sup>th</sup> day of January 2015.

BURNS, FIGA & WILL, P.C.

*Original Signature on File  
at BURNS, FIGA & WILL, P.C.*

By:     /s/ Stephen H. Leonhardt      
Stephen H. Leonhardt  
Alix L. Joseph

**Attorneys for Petitioner,  
Douglas Kemper**

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct copy of the foregoing PETITION FOR REVIEW was served via ICCES on this 14<sup>th</sup> day of January 2015, as follows:

LeeAnn Morrill, Esq.  
Sueanna P. Johnson, Esq.  
Assistant Attorneys General  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203  
leeann.morrill@state.co.us  
sueanna.johnson@state.co.us

Served via email and U.S. Mail to the following:

Phillip T. Doe  
7140 S. Depew  
Littleton, CO 80128  
ptdoe@comcast.net

Barbara Mills-Bria  
1831 S. Welch Cir.  
Lakewood, CO 80228  
bmillsbria@msn.com

*Original Signature on File  
at BURNS, FIGA & WILL, P.C.*

*/s/ Nancy Vatter* \_\_\_\_\_



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **SCOTT GESSLER**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2015-2016 #4 'Public Trust Resources'".....



..... **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 8<sup>th</sup> day of January, 2015.



A blue ink signature of Scott Gessler.

SECRETARY OF STATE

RECEIVED S WARD

NOV 25 2014 9:08AM

2015-2016 #4

Colorado Secretary of State

Be it Enacted by the People of the State of Colorado

**SECTION 1.** In the constitution of the state of Colorado, add section 9 to article XVI as follows:

**Section 9. The state's duties under the public trust doctrine to secure the rights of the people to protect natural resources.** (1) THE PEOPLE OF COLORADO HAVE AN INALIENABLE RIGHT TO CLEAN AIR, CLEAN WATER, INCLUDING GROUND AND SURFACE WATER, AND THE PRESERVATION OF THE ENVIRONMENT AND NATURAL RESOURCES, REFERRED TO IN THIS SECTION AS "PUBLIC TRUST RESOURCES," ON WHICH WE ALL DEPEND AND THAT PROVIDE FOR THE HEALTH, SAFETY, AND HAPPINESS OF ALL NATURAL PERSONS, INCLUDING FUTURE GENERATIONS. PUBLIC TRUST RESOURCES ARE THE COMMON PROPERTY OF ALL THE PEOPLE, INCLUDING GENERATIONS YET TO COME. AS TRUSTEE OF THESE RESOURCES, THE STATE SHALL CONSERVE AND MAINTAIN THEM FOR THE BENEFIT OF ALL THE PEOPLE.

(2) THE STATE GOVERNMENT AND ITS AGENTS, AS TRUSTEES, SHALL PROTECT PUBLIC TRUST RESOURCES AGAINST SUBSTANTIAL IMPAIRMENT, INCLUDING POLLUTION FROM EXTERNAL SOURCES. IN SATISFYING THE STATE'S TRUST RESPONSIBILITIES, THE PRECAUTIONARY PRINCIPLE SHALL ALWAYS BE APPLIED: IF AN ACTION OR POLICY HAS A SUSPECTED RISK OF SUBSTANTIALLY IMPAIRING PUBLIC TRUST RESOURCES, IN THE ABSENCE OF SCIENTIFIC CONSENSUS THAT THE ACTION OR POLICY IS HARMFUL, THE BURDEN OF PROOF THAT IT IS NOT HARMFUL FALLS ON THOSE PROPOSING TO TAKE THE ACTION. THE STATE SHALL SEEK NATURAL RESOURCE DAMAGES FROM THOSE ENTITIES THAT CAUSE SUBSTANTIAL IMPAIRMENT OF PUBLIC TRUST RESOURCES AND USE SUCH FUNDS TO REMEDIATE THE HARM.

(3) ANY COLORADO CITIZEN, AS A BENEFICIARY OF PUBLIC TRUST RESOURCES, MAY PETITION A COURT OF COMPETENT JURISDICTION TO DEFEND AND PRESERVE SUCH RESOURCES AGAINST SUBSTANTIAL IMPAIRMENT AND TO ENSURE THAT THE STATE IS MEETING ITS OBLIGATIONS TO PRUDENTLY MANAGE SUCH RESOURCES AS A TRUSTEE. REMEDIES MAY BE GRANTED IN BOTH LAW AND EQUITY. IF A COURT FINDS THAT THE STATE HAS NOT FULFILLED ITS DUTIES AS TRUSTEE, CITIZENS ARE ENTITLED TO RECOVER ALL COSTS OF LITIGATION, INCLUDING EXPERT AND ATTORNEY FEES.

(4) THE FIDUCIARY DUTY OF THE STATE AS TRUSTEE REQUIRES IT TO USE THE BEST SCIENCE AVAILABLE IN ANY PROCESS OR PROCEEDING



IN WHICH PUBLIC TRUST RESOURCES MAY BE AFFECTED. ANY PERSON, CORPORATION, OR OTHER ENTITY FOUND TO BE MANIPULATING DATA, REPORTS, OR SCIENTIFIC INFORMATION IN AN ATTEMPT TO UTILIZE PUBLIC TRUST RESOURCES FOR PRIVATE PROFIT SHALL BE REFERRED FOR PROSECUTION FOR ANY CRIMINAL OFFENSES THAT MAY APPLY IN ADDITION TO OTHER PENALTIES THE STATE MAY IMPOSE, INCLUDING LOSS OF CHARTER TO OPERATE IN THE STATE.

(5) THIS SECTION IS SELF-ENACTING AND SELF-EXECUTING AND SHALL APPLY TO A PUBLIC ACTION OR COMMERCIAL DEALING THAT WOULD VIOLATE IT, REGARDLESS OF THE DATE OF ANY APPLICABLE LOCAL, STATE, OR FEDERAL PERMITS.

(6) LAWS MAY BE ENACTED TO ENHANCE, BUT CANNOT BE CONTRARY TO, THE PROVISIONS OF THIS SECTION.

PHILLIP T. DOE  
7140 S. DEPEW  
LITTLETON, CO 80128  
303 973 7774  
ptdoe@comcast.net

BARBARA MILLS-BRIA  
1831 S. WELCH CIR  
LAKEWOOD, CO 80228  
303 929 4213  
bmillsbria@msn.com

## Ballot Title Setting Board

### Proposed Initiative 2015-2016 #4<sup>1</sup>

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

An amendment to the Colorado constitution concerning public ownership of natural and environmental resources, and, in connection therewith, creating a public trust in those resources, which include clean air, clean water, and the preservation of the environment and natural resources; requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against any substantial impairment, regardless of any prior federal, state, or local approval and to seek natural resource damages from anyone who substantially impairs them and using damages obtained to remediate the impairment; allowing Colorado citizens to file enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and requiring the manipulation of data, reports, or scientific information in an attempt to use public trust resources for private profit to be referred for prosecution for any applicable criminal offense.

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 ownership of natural and environmental resources, and, in connection therewith, creating a public trust in those resources, which include clean air, clean water, and the preservation of the environment and natural resources; requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against any substantial impairment, regardless of any prior federal, state, or local approval and to seek natural resource damages from anyone who substantially impairs them and using damages obtained to remediate the impairment; allowing Colorado citizens to file

---

<sup>1</sup>Unofficially captioned “**Public Trust Resources**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and requiring the manipulation of data, reports, or scientific information in an attempt to use public trust resources for private profit to be referred for prosecution for any applicable criminal offense?

*Hearing December 17, 2014:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 1:45 p.m.*

RECEIVED

DEC 24 2014

Colorado Secretary of State

S.WARD TUSAM

BEFORE THE TITLE BOARD, STATE OF COLORADO

MOTION FOR REHEARING

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE  
2015-2016 #4

Petitioner, Douglas Kemper, a registered elector of the State of Colorado, by and through his counsel, Burns, Figa & Will, P.C., hereby requests a rehearing and reconsideration of the title and ballot title and submission clause (collectively the "Titles") set by the Title Board on December 17, 2014, for Initiative 2015-2016 #4 (the "Initiative"), which would amend the Colorado constitution.

**I. Grounds for Reconsideration**

Reconsideration is requested for the following reasons:

1. The Initiative and Titles do not conform to the single-subject requirements of art. V, section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5.
2. The Title Board's chosen subject phrase is too broad and vague and would cause public confusion regarding the effect of a "yes/no" vote on the Initiative in violation of C.R.S. § 1-40-106.
3. The Titles are misleading and do not express the true intent of the Initiative.

The Initiative violates the single-subject requirements of the Colo. Const. art. V, § 1(5.5) and C.R.S. § 1-40-106.5, by having these three separate, distinct, and unrelated subjects veiled by the overly broad term "concerning public ownership of natural and environmental resources":

1. Imposing obligations for regulation to protect the environment.
2. Creating a common property interest in natural resources, including water and minerals, to mandate preservation of these resources.
3. Requiring referral for prosecution of any criminal offenses involved in manipulating data to profit from specified resources.

These subjects are not necessarily and properly connected. Thus, the Title Board should not set titles for the Initiative.

**II. The Initiative is so broad that it is impossible to define a single subject or to set a title that accurately reflects the true purposes of the measure.**

The Title Board must examine an initiative's central theme "to determine whether it contains incongruous or hidden purposes or bundles incongruous measures under a broad theme." *Gonzalez-Estay v. Lamm*, 138 P.3d 273, 279 (Colo. 2006). An initiative does not satisfy the single-subject requirement if its provisions contain separate and unconnected purposes, despite the proponents' efforts to unite them under the same general area of the law. *In re Title, Ballot Title, and Submission Clause, and Summary for 1999-2000 # 200A*, 992 P.2d 27, 30 (Colo. 2000). The Colorado Supreme Court has held that "water" was too broad a theme to satisfy the single-subject requirement, *Public Rights in Water II*, 898 P.2d 1076, 1080 (Colo. 1995). Similarly, it has held that "environmental conservation" was too broad to contain a single subject. *In re Title, Ballot Title and Submission Clause, for 2007-2008 #17*, 172 P.3d 871, 875-76 (Colo. 2007). "Public ownership of natural and environmental resources" is too broad to reflect the separate subjects and purposes contained in the Initiative. The proponents' use of the defined phrase "Public Trust Resources," to combine the separate issues of environmental protection and natural resource preservation, does not unite the two into a single subject.

The Initiative contains at least these three subjects:

**A. Imposing obligations for regulation to protect the environment.**

State agencies currently regulate many aspects of the environment including air and water quality. *See e.g.*, Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101 *et seq.*; Colorado Water Quality Control Act, C.R.S. § 25-8-101 *et seq.* The initiative would create an inalienable constitutional right to clean air and clean water. (Initiative, Sec. (1)). The Initiative would impose new obligations of protection for these resources, such as require the State to have the person proposing to take an action to prove that the action is not harmful. (*Id.*, Sec. (2)). This change in standards for regulation is not necessarily and properly connected with either creating common ownership of natural resources or requiring criminal prosecution referral for data manipulation.

**B. Creation of a common property interest in natural resources, including water.**

Section (1) defines "Public Trust Resources," which appears to include clean air, clean water and environment and natural resources. It then declares that Public Trust Resources are the common property of the people. As in 2013-2014 #89, the term "common property" is undefined in the initiative. As Justice Hobbs noted in *In re Title, Ballot Title, and Submission Clause for 2013-2014 #89*, 328 P.3d 172, 183 (Colo. 2014)(dissenting), the ordinary meaning of "common property" is: "1: land in which all members of the community hold equal rights; 2: land or other property in which a person other than the owner holds certain rights in common with the owner. Webster's Third New International Dictionary 459 (1971)." Thus, common property is distinct from the traditional "bundle of sticks" property rights held by private property owners. *See id.* at 182.

Similarly, the Initiative does not define the term “natural resources.” Black’s Law Dictionary defines “natural resource” as “any material from nature having potential economic value or providing for the sustenance of life, such as timber, minerals, oil, water, and wildlife.” (9th ed. 2009). It is well settled in Colorado law that mineral rights are subject to private ownership and may be sold independent of the overlying property. *See e.g., Mitchell v. Espinosa*, 243 P.2d 412, 416 (Colo. 1952) (holding the deed created a reservation for oil and gas); *Calvat v. Juhan*, 206 P.2d 600, 603 (Colo. 1949) (holding that a reservation of oil, gas, and mineral rights precluded possession of the severed mineral estate by the surface possessor). Declaring that these mineral resources are the common property of all the people would be a dramatic change to Colorado law. Declaring all natural resources (including mineral rights) to be common property is not necessarily and properly connected to either protecting the environment or requiring prosecution for impairment of natural resources.

As part of the common ownership of the so-called Public Trust Resources, Section (2) of the Initiative imposes upon State government a trusteeship over these resources (including water and minerals) to protect against substantial impairments. The Initiative’s designation of “Public Trust Resources” and corresponding trustee obligations would impose a public trust over all the State’s natural resources, including water rights. In its traditional common law form, the public trust doctrine declared that the State holds its navigable waters and lands underneath them in trust for the people. *See Ill. Cent. RR. Co. v. Illinois*, 146 U.S. 387, 452 (1892). However, Colorado has never adopted a public trust doctrine or applied such a doctrine to water rights within the State due to the express protection of private property rights in water use contained in art. XVI of the Colorado Constitution. *People v. Emmert*, 597 P.2d 1025, 1029-30 (Colo. 1979) (holding Colo. Const. art. XVI, § 5 does not impose a public trust but protects private property rights in appropriation of Colorado waters and ownership of adjoining lands).

By adopting a broad form of the public trust doctrine for all natural resources, the Initiative would enact a constitutional provision in conflict with property rights in these resources, including water rights under the prior appropriation doctrine. This sweeping change would subrogate State-recognized appropriative water rights to new “common property” rights to be managed for preservation by the State government. The Initiative would effectively dismantle water rights and water laws that have been held intact as a property rights regime based on Colorado’s constitutional, statutory, and case law for more than 150 years. While the Court has held that an initiative may propose adoption of a public trust doctrine in water, it must do so as a single subject that stands on its own. *See Kemper v. Hamilton*, 274 P.3d 562 (Colo. 2012); *MacRavey v. Hufford*, 917 P.2d 1277 (Colo. 1996); *Public Rights in Water II*, 898 P.2d 1076 (Colo. 1995); and *MacRavey v. Swingle*, 877 P.2d 321 (Colo. 1994). The Initiative inappropriately connects a public trust and common ownership of water and other resources with regulation of the environment and prosecution of data manipulation.

### **C. Requiring referral for prosecution of data manipulation.**

Section (4) of the Initiative requires the State, in exercising its fiduciary duty as trustee of so-called Public Trust Resources, to use the “best science available in any process or proceeding

in which public trust resources may be affected.” The Section then departs from its discussion of the State’s fiduciary duty, however, by requiring that any person found to be manipulating data, reports or scientific information in an attempt to utilize Public Trust Resources for private profit be referred for prosecution for any criminal offenses that may apply.

This requirement to refer for criminal prosecution is particularly surreptitious given the retroactive nature of the Initiative. Section (5) of the Initiative provides that the newly-created process and proceeding requirements of Section (4) shall apply to any public action or commercial dealing “regardless of the date of any applicable local, state, or federal permits.” Thus, a person acting in accordance with a valid permit, could still be subject to criminal prosecution for actions taken in reliance on that permit or for earlier actions in obtaining the permit. The requirement to refer such actions for criminal prosecution is not necessarily connected with either of the other subjects within the Initiative.

### **III. The Initiative contains multiple subjects that would cause voter surprise.**

Even where two or more facets of an initiative are related, they must not be so different as to confuse the voters, or to enact one issue surreptitiously disguised by another. Multiple subjects within an initiative set up the kind of “logrolling” that the voters intended to prevent when adopting the 1994 single-subject constitutional requirement. *In re Title, Ballot Title, Submission Clause for 2009-2010 # 91*, 235 P.3d 1071, 1079 (Colo. 2010). A proposed initiative violates the single-subject rule if its text “relate[s] to more than one subject” and has “at least two distinct and separate purposes which are not dependent upon or connected with each other.” *Public Rights in Water II*, 898 P.2d at 1078-79 (citing the single-subject test of *People ex rel. Elder v. Sours*, 31 Colo. 369, 403 (1903), to analyze ballot initiatives). The Title Board should examine an “initiative’s central theme to determine whether it contains hidden purposes under a broad theme.” *In re 2007-2008, #17*, 172 P.3d at 875 (internal citations omitted).

Sections 1 and 4 of the Initiative present this danger of voter surprise and fraud posed by logrolling three distinct purposes hidden under a broad theme of preserving the environment and natural resources. The Initiative’s structure seeks to disguise these separate aims by lumping together environmental protection and preservation of natural resources as “Public Trust Resources,” declaring all of these resources to be “common property,” and then tying criminal prosecution to the State’s fiduciary duties to protect these resources against impairment. However, creating a common property right to the environment that eviscerates private property interests is not dependent upon or connected with the regulation of activities that effect the environment. Moreover, neither of these purposes is dependent upon or connected with requiring criminal prosecution of unspecified actions. Voters would be surprised at the breadth of the Initiative and its reordering of property rights and incursion into criminal law, all under the guise of environment protection. Accordingly, the Title Board should decline to set a title.

### **IV. The Titles are misleading and do not express the true intent of the Initiative.**

An initiative’s ballot title and submission clause must “correctly and fairly express the true intent and meaning” of the measure. C.R.S. § 1-40-106(3)(b). The title should clearly

express the initiative's single subject. *In re Title, Ballot Title, and Submission Clause for 2009-2010 # 45*, 234 P.3d 642, 647-48 (Colo. 2010). In setting titles, the Board "shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a 'yes/for' or 'no/against' vote will be unclear." C.R.S. § 1-40-106(3)(b).

The Initiative's title was set as follows:

An amendment to the Colorado constitution concerning public ownership of natural and environmental resources, and, in connection therewith, creating a public trust in those resources, which include clean air, clean water, and the preservation of the environment and natural resources; requiring the State, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against any substantial impairment, regardless of any prior federal, state, or local approval, to seek natural resource damages from anyone who substantially impairs them, and using damages obtained to remediate the impairment; allowing Colorado citizens to file enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and requiring the manipulation of data reports or scientific information in an attempt to use public trust resources for private profit to be referred for prosecution for any applicable criminal offense.

As drafted, the Titles are misleading because:

1. The "concerning" phrase expresses two separate subjects of public ownership in natural resources and in environmental resources, contrary to the single-subject requirement. Moreover, the phrase "environmental resources" does not appear in the Initiative and is, therefore, inaccurate in the Titles.
2. The Titles improperly omit any mention of the creation of "common property" rights in specified resources. This common property right is a material feature of the Initiative that must be disclosed in the Titles.
3. The Titles are unclear and misleading in using the phrase "public trust resources" without disclosing the Initiative's unique definition of that phrase.
4. The phrases involving "natural resource damages" and "referred for prosecution" are not clear and are misleading in their current form.


For these reasons, the Titles do not conform to the statutory requirements of C.R.S. § 1-40-106(3)(b).



WHEREFORE, Petitioner Douglas Kemper respectfully requests a rehearing and reconsideration of the title, ballot title and submission clause set by the Title Board on December 17, 2014, for Initiative 2015-2016 #4.

Respectfully submitted this 24<sup>th</sup> day of December 2014.

BURNS, FIGA & WILL, P.C.

By:   
Stephen H. Leonhardt, #15122  
Alix L. Joseph, #33345  
D. Alexander Wenzel, #45007  
6400 S. Fiddlers Green Circle, Suite 1000  
Greenwood Village, CO 80111

Attorneys for Petitioner  
Douglas Kemper

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION FOR REHEARING was served via email and U.S. Mail on this 24<sup>th</sup> day of December 2014, as follows:

Phillip I. Doe  
7140 S. Depew  
Littleton, CO 80128  
ptdoe@comcast.net

Barbara Mills-Bria  
1831 S. Welch Circle  
Lakewood, CO 80228  
bmillsbria@msn.com

  
Nancy Vatter

## Ballot Title Setting Board

### Proposed Initiative 2015-2016 #4<sup>1</sup>

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

An amendment to the Colorado constitution concerning common ownership by all Coloradans of public trust resources, and, in connection therewith, defining public trust resources as clean air, clean water, and the preservation of the environment and natural resources; regardless of any prior federal, state, or local approval, requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against any substantial impairment, to seek natural resource damages from anyone who substantially impairs them and to use damages obtained to remediate the impairment; regardless of any prior federal, state, or local approval, allowing Colorado citizens to file enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and requiring referral for prosecution of any criminal offense involving the manipulation of data, reports, or scientific information in an attempt to use public trust resources for private profit.

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 common ownership by all Coloradans of public trust resources, and, in connection therewith, defining public trust resources as clean air, clean water, and the preservation of the environment and natural resources; regardless of any prior federal, state, or local approval, requiring the state, as trustee, to conserve and maintain public trust resources by using the best science available to protect them against any substantial impairment, to seek natural resource damages from anyone who substantially impairs them and to use damages obtained to remediate the impairment; regardless of any prior federal, state, or local

---

<sup>1</sup>Unofficially captioned “**Public Trust Resources**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

approval, allowing Colorado citizens to file enforcement actions in court; requiring anyone who is proposing an action or policy that might substantially impair public trust resources to prove that the action or policy is not harmful; and requiring referral for prosecution of any criminal offense involving the manipulation of data, reports, or scientific information in an attempt to use public trust resources for private profit?

*Hearing December 17, 2014:*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 1:45 p.m.*

*Rehearing January 7, 2015:*

*Motion for rehearing denied except to the extent that the Board made changes to the titles.*

*Hearing adjourned 2:25 p.m.*