

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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RESOLUTION OPPOSING PUBLIC TRUST DOCTRINE INITIATIVES

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

James Eklund
CWCB Director

WHEREAS, water frequently does not naturally exist where and when it is needed in sufficient quantity to sustain human settlement and enterprise in Colorado; and

WHEREAS, as a scarce natural resource, water in Colorado requires a system of allocation and enforcement to meet the needs of Colorado's citizens and the natural environment; and

WHEREAS, Colorado's Constitution states: "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 . . ."; and

WHEREAS, the prior appropriation doctrine was confirmed by the Colorado Supreme Court in *Coffin v. Left Hand Ditch Co.*, 6 Colo. 443 (1882) and evolved to meet the needs of the public through 150 years of court opinions and legislation; and

WHEREAS, Colorado's prior appropriation system has proven itself both successful and flexible in addressing the public's changing demands, beneficial uses, and values regarding Colorado water resources (e.g., instream flow and recreational in-channel diversion water rights); and

WHEREAS, the Colorado Water Conservation Board was established in 1937 as a citizen board that represents each major river basin in the state and is charged with the mission of conserving, developing, protecting and managing Colorado's water for present and future generations; and

WHEREAS, pursuant to Governor Hickenlooper's Executive Order 2013-005, the Colorado Water Conservation Board is working on Colorado's Water Plan – a strategic plan informed by the grassroots Basin Roundtables and Interbasin Compact Committee – to ensure a secure water future for our state and provide a path forward for supplying Coloradans with the water we need while supporting healthy watersheds and the environment, robust recreation and tourism economies, vibrant and sustainable cities, and viable and productive agriculture; and

WHEREAS, the Colorado Water Conservation Board supports Colorado's system of prior appropriation as a fair and orderly system for allocating our state's scarce water resources; and

WHEREAS, the Colorado Instream Flow and Natural Lake Level Program, established in 1973, is the oldest and most robust instream flow program in the nation, preserving the natural environment on over 9,000 miles of stream and over 475 lakes for present and future generations; and

WHEREAS, in addition to the Instream Flow Program, the Colorado Water Conservation Board administers and supports water-related programs that uphold public values including recreation and watershed health, reduce the impacts of flood and drought, protect Colorado's water entitlements, and work in a broad-based public process to meet the state's consumptive and nonconsumptive needs for water; and

WHEREAS, one or more proposed state constitutional initiatives attempt to establish a broad but undefined foundation of the public trust doctrine, with a disregard of Colorado's historical reliance on the prior appropriation doctrine for water allocation and; and

WHEREAS, the adoption of these initiatives could result in takings of private and public water rights that Coloradans rely on for beneficial uses for health and human safety as well as economic benefit; and

WHEREAS, the adoption of these initiatives would result in dramatic reallocation of public and private resources from the constructive development and allocation of Colorado's water resources to protracted litigation in Colorado's courts; and

WHEREAS, the adoption of these initiatives would significantly interfere with the development and implementation of Colorado's Water Plan.

NOW THEREFORE BE IT RESOLVED that the Colorado Water Conservation Board opposes such initiatives as unwise, unnecessary, and disruptive to the fair and responsible allocation and stewardship of Colorado's scarce water resources.

BE IT FURTHER RESOLVED that the Colorado Water Conservation Board authorizes its Director to disseminate and make publicly available this resolution.

CERTIFICATE

I certify that the foregoing is a true and correct copy of a resolution adopted unanimously by the members of the Colorado Water Conservation Board in regular session assembled at Denver, Colorado on this 19th day of March, 2014, at which a quorum was present.



April Montgomery, Chair