



Colorado Water Stewardship Project
ADVANCING A SUSTAINABLE FUTURE

Update on Proposed Ballot Measures Affecting Colorado's Water Law

**Colorado State Legislature
for the
Water Resources Review Committee**

Floyd Ciruli

August 2015



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Political Environment is Conducive to Ballot Initiatives on Natural Resources and Water

1. Engaged attentive interests with social media, highly polarized, powerful outside interests
2. Relatively easy ballot access, considerable freedom on topics and language
3. Water initiatives
 - Idiosyncratic
 - Enwrapped in other causes
 - Sponsored by significant interests
 - Part of major planning process



Initiative Scan

145 initiatives filed in 2014, 4 survive, only 1 passes

103 – Public Trust Resources	Philip Doe; Barbara Mills-Bria	Court removed
88 – Oil and Gas Operations	Caitlin Leahy; Gregory Diamond	Withdrawn
89 – Local Government Regulation of Environment	Caitlin Leahy; Gregory Diamond	Withdrawn
137 – Fiscal Impact of Ballot Measures	Pat Hamill, Bob Diebel	Withdrawn
121 – Distribution of Oil and Gas Revenue	Jerry Sonnenberg, Frank McNulty	Withdrawn
5 – Definition of Person and Child	Heather Surovik, Gualberto Garcia Jones	On ballot (lost)
135 – Horse Racetrack Limited Gaming Proceeds for K-12 Education	Vickie Armstrong, Bob Hagedorn	On ballot (lost)
48 – Genetically Modified Foods	Larry Cooper; Cheryl Gray	On ballot (lost)
124 – School Board Open Meetings	Jon Caldera; Mike Kraus	On ballot (won)



Nuclear Bomb Masquerading as Protecting the Public's Control of Water



Justice Hobbs

The Public Trust Initiative proposes to: "drop what amounts to a nuclear bomb on Colorado water rights. Masquerading as a measure to protect the public's control of water, it would prevent farmers, cities, families and businesses from making beneficial use of water rights that have vested in them over the past 150 years under Colorado's statutes and Constitution. It would deprive Colorado of its interstate allocation of waters of the Platte, Arkansas, Rio Grande and Colorado rivers by imposing a predominantly non-consumptive water regimen upon the State and its water users, resulting in the free flow of waters across our boundaries for the use of others, devastating Colorado's economy and way of life."

— Justice Hobb's Opinion
In Supreme Court Opinion in Matter of Ballot Title
April 16, 2013



Impact of Initiative 89
Public Trust and Local Control (2014)
Excerpts from Dissenting Opinion of Justice Hobbs

Initiative #89, under the guise of protecting the "environment" proposes to fundamentally change Colorado property law by creating a new constitutional right in Colorado's Bill of Rights. This "common property" right in the "environment" would override existing private and publicly held property rights.

In the context of Initiative #89, this means that state and local governments would regularly be sued from all angles – by the public to enforce their "common property" rights in the environment and by private property owners when their rights are abridged thereby.

Initiative #89 proposes to establish governmental trustee duties over any and all aspects of Colorado's environment, including air, water and "natural and scenic values," which would include minerals, forests, prairie lands and wildlife.



House Bill 15-1057
Fiscal Impact Statement



Senate President
Bill Cadman



House Speaker
Dickey Lee Hullinghorst

A BILL FOR AN ACT
CONCERNING THE PROCESS FOR A STATEWIDE INITIATIVE TO BE PLACED ON A BALLOT.

HOUSE SPONSORSHIP

Court and DelGrosso, Arndt, Kraft-Tharp, Lawrence, Lee, McCann, Rankin, Szabo

SENATE SPONSORSHIP

Sonnenberg and Hodge, Balmer, Cadman, Cooke

(b) THE INITIAL FISCAL IMPACT STATEMENT MUST:

- (1) BE SUBSTANTIALLY SIMILAR IN FORM AND CONTENT TO THE FISCAL NOTES PROVIDED BY THE LEGISLATIVE COUNCIL OF THE GENERAL ASSEMBLY FOR LEGISLATIVE MEASURES PURSUANT TO SECTION 2-2-322, C.R.S.;
- (4) THE DIRECTOR SHALL FURTHER REDUCE THE ABSTRACT TO A TWO-SENTENCE FISCAL IMPACT SUMMARY THAT CONSISTS OF TWO SENTENCES. THE FIRST SENTENCE IS A DESCRIPTION OF THE EFFECT THAT THE MEASURE WILL HAVE ON STATE AND LOCAL REVENUES, AND THE SECOND IS A DESCRIPTION OF THE EFFECT ON STATE AND LOCAL EXPENDITURES.
- (5) THE ABSTRACT AND FISCAL IMPACT SUMMARY FOR A MEASURE MUST BE INCLUDED IN A PETITION SECTION AS PROVIDED IN SECTION 1-40-110(3).



CWSP Partnerships

Denver Chamber of Commerce and Coloradans for Responsible Reform

"University of Colorado predicts job loss of 93,000 and \$12 billion in lost gross domestic product (GDP)."

- Denver Business Journal, March 26, 2014

- Colorado Association of Commerce and Industry
- Colorado Cattlemen's Association
- Colorado Counties, Inc.
- Colorado Farm Bureau
- Colorado Mining Association
- Colorado Municipal League
- Colorado Petroleum Association
- Colorado Rural Electric Association
- Special District Association of Colorado



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Coloradans for Responsible Reform Letter from CFRR, March 27, 2015

It is important to note that a measure paralleling last year's filed Initiative 89 – the anti-growth measure establishing criminal penalties for seemingly any public, private or commercial effort that disturbs any of Colorado's water, air or land – has been resubmitted for the November 2016 ballot. The ensuing six months will reveal whether the measure's sponsors are capable of mobilizing the necessary resources to convert their proposal into a successful petition-gathering effort.

Coloradans for Responsible Reform (CFRR) remains committed to organizing the fight to defeat any ballot measures in 2016 that negatively target individual industries or the broader economic vitality and recover of Colorado.

Kelly Brough, Denver Chamber
Tom Norton, Greeley Mayor
Tamra Ward, Colorado Concern
Ken Salazar, Former U.S. Senator and Interior Secretary
Wellington Webb, former Denver Mayor



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The Public Trust Amendment is Extreme Voters Convinced

Hurt Agriculture

The main users of Colorado water are agriculture, farms and ranches. This amendment could take away their rights to use their water and will hurt agriculture. 80%

Legal Chaos and Loss of Local Control

It would be a mistake to wipe out historical ownership of water and turn it over to the uncertainty of courts, lawyers and lawsuits. 75%

Damage Streambeds, Dangerous

Allowing uncontrolled access to private streams and rivers will damage sensitive streambeds and banks, could lead to dangerous and unsafe conditions, and cause conflict with private owners 75%

Lose Environmental Protection

This amendment will endanger Colorado's environmental protections, which require an amount of water flow in streams and maintaining certain lake levels 66%

Take Water and Property Rights

There are already many limits on private property, but this amendment attacks people's private property rights in their water and land and goes too far. 71%



Challenges of Initiative Process to Water Ownership, Management and Development

- Water is of growing public interest and an agenda item for numerous issue advocacy groups in Colorado and the nation.
- The initiative process has become more politically active than the legislature in terms of broad reaching environmental, local government and water propositions.
- Expect a new round of initiatives in 2016 related to gas, oil and the environment, many of which will attract significant financial and media attention.
- CWC is looked upon by the water community and informed public to be an advocate for a common sense approach to water policy.
- The initiative process requires expertise and significant activity over substantial periods of time within the two-year cycle between elections.
- Managing the initiative process requires allies and partners who provide additional constituencies and financial resources. Agriculture and business communities, along with local government, were especially seen as important allies.



U.S. NEWS

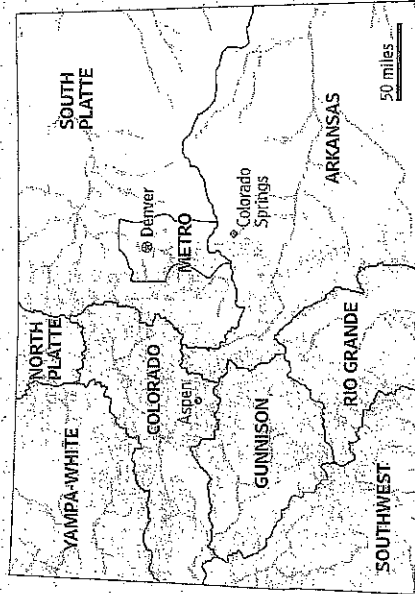
Colorado Takes On Looming Water Shortages

Spreading the Wealth

Faced with a growing population, Colorado is groping with how to deal with big projected water shortfalls.

Projected population trends

WATER BASIN	ESTIMATED POPULATION IN 2050*	PCT. CHANGE FROM 2008
Arkansas	740,000	78%
Colorado	418,000	136
Gunnison	115,000	110
Metro	1,631,000	65
North Platte	700	47
Rio Grande	30,000	60
South Platte	925,000	95
Southwest	119,000	113
Yampa-White	72,000	160



Relative percentages of 2050 net new water needs for each basin with gaps highlighted*

WATER BASIN	WATER SUPPLY ACCOUNTED FOR	GAP
Arkansas	57%	43%
Colorado	60%	40%
Gunnison	75%	25%
Metro	43%	57%
North Platte	91%	9%
Rio Grande	64%	36%
South Platte	42%	58%
Southwest	52%	48%
Yampa-White	22%	78%

of us," said James Eklund, director of the Colorado Water Conservation Board. "That is going to require trade-offs, and people are not going to be able to necessarily use the water they want to use all the time."

Local officials at Wednesday's meeting pleaded with board members to ensure the plan wouldn't ultimately endorse diverting water away from mountain communities in the state. "The Western Slope in Colorado has no more water to give," said Mike Samson, a Garfield County commissioner.

Colorado has long relied on the "prior appropriation" system, which grants water rights to the first person to take water from a river or aquifer no matter where they live.

Known as the Colorado Doctrine, the system has served as the template for much of the West, where water is scarce and cities must transport it from elsewhere. But unlike most other Western states, a water plan was never developed in Colorado, where water rights are viewed as private property.

Colorado's plan notes that the western side of the Continental Divide holds 70% of Colorado's surface water and just 11% of its population. The eastern side consumes 70% of the water.

Over the years, cities such as Denver have built tunnels, pumps and reservoirs to ship and store water from the Rockies. Western

Slope communities often opposed those actions but could do little about them legally. Currently, 24 major tunnels or ditches carry water through mountains to serve the Front Range and eastern plains.

Many Colorado communities also purchase water rights from farmers, leaving agricultural land dry. The state plan notes that nearly one million acres of irrigated farmland could become parched in that manner, given projected population growth.

Some Western Slope officials worry the plan doesn't do enough to dissuade more water-diversion projects. Rachel Richards, a Pitkin County commissioner and former Aspen mayor, noted that nearly 40% of the flow from her county's two rivers is already diverted.

With stream flows often depleted, she said, there is a concern that even with the plan, rural counties dependent on tourism and recreation will still bear the brunt of growth.

"The question has become: Are we willing to take the public reaction out of our rivers so that future population of Colorado can have East Coast backyards?" Ms. Richards asked.

Jim Lochhead, chief executive of Denver Water, which serves a quarter of the state's population, said water-diversion projects do affect state rivers. But he said regulations need to be eased so utilities can store more water.

*Assumes midrange economic development

Sources: Colorado Department of Local Affairs Demography Section (population); Colorado Water Conservation Board

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Thursday, February 26, 2015

It's Colorado's Move on Water Planning – Denver Post

The *Denver Post* published a [quest column on water planning](#), February 21, 2015.

Given the expected changes in the natural environment, the projected growth in residents and competition for water from downstream states, it is in the state's interest to continue our collaborative planning process and arrive at workable solutions.

The full text follows:

Colorado State Water Plan a Top Priority

Colorado's statewide water planning is overdue. California and Texas, the nation's two largest states and users of Colorado headwaters, have moved well ahead of the state in planning and investment.

Both downstream states are facing major shortages. Texas voters, using a rainy day fund, approved a \$2 billion bond with 20 percent reserved for conservation, 10 percent for rural areas and the remaining funds for investments in reservoirs, recycling aquifer recharge and other supply infrastructure. California, which experienced gridlock for more than a decade among its perennial competitors--farmers, environmentalists and municipalities--and a horrendous divide between north and south water users, managed to craft a \$7 billion conservation and infrastructure bond initiative that passed last November by 65 percent with help from serious drought and a very popular Governor Brown.



Colorado, after more than a decade of discussions river basin by river basin, has finally produced a draft plan, making 2015 potentially the year for making progress on water. But the state faces forces similar to California's contentious factions. A continuing division exists among east and west slopes, environmentalists who argue for conservation measures to the exclusion of most other options, and basin parochialists who want to protect only their water and support strategies that send it out of state rather than storing and reusing it.

One of the most useful aspects of Colorado's planning effort has been conducting two scientific studies of the state's water needs and supply. The first took place during Governor Bill Owens' administration (2004) and the second was completed near the end of the Governor Bill Ritter's term (2010). Both studies confirmed a water supply gap up to 600,000 acre-feet by 2050, and that figure assumes a host of projects and programs will be in place within the next few decades--including conservation, storage and reuse.

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Fortunately, Colorado voters have prioritized water supply and conservation and strongly support addressing the supply gap. A statewide voter survey conducted for the Colorado Water Congress in the summer of 2013 as the water planning process was accelerating in preparation of the draft report indicated that voters were strongly supportive of the assumptions and approach of the planning effort. The poll of 600 voters statewide showed Coloradans:

- Strongly support the planning process to address the supply gap – 80%
- Want to avoid the loss of irrigated agriculture in the state – 88%
- Believe meeting the supply gap will require the full range of approaches, including conservation, reuse, water storage and new supply – 87%
- Greatly prefer the cooperative approach that the state's planning process has adopted and recognize that compromise will be necessary. They want the effort to continue – 89%
- Encourage the collaboration among urban and rural and small and large communities – 82%

Colorado voters were generally not supportive of extreme views. When asked if conservation alone would be sufficient to make up the water supply shortage, they strongly disagreed and said it would have to be accompanied by storage. And, nearly 90 percent of voters want Colorado to claim its legal share of water rather than allow it to flow out of state, rejecting the view that any one basin has sole control of its supply and can chose to send it to Nebraska, California or Texas before allowing full use by Coloradans.

The identified water gap will require decisive action by the Governor and Colorado's political leaders. After a decade of study and talk, time is running out. Taking measures to ensure Colorado maintains its strong economy and quality of life can no longer wait, and our downstream competitors have already made their moves.

Posted by Floyd Ciruli at [10:58 AM](#) 

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