

INITIATIVE FOR
THE COLORADO PUBLIC TRUST DOCTRINE

Be it enacted by the People of the State of Colorado, Section 5 of the constitution of the state of Colorado is amended to read:

ARTICLE XVI MINING AND IRRIGATION

Section 5. Waters of streams public property. (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 OBLIGE THE ADOPTION AND IMPLEMENTATION OF THE PUBLIC TRUST DOCTRINE TO PROTECT THE PUBLIC'S INTERESTS IN WATERS. SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION IS THE AUTHORITY USED BY THE PEOPLE IN PLACING PUBLIC TRUST DOCTRINE ELEMENTS INTO COLORADO AS STATE DOCTRINE.

(3) THE USE OF THE PUBLIC'S WATERS BY THE MANNER OF APPROPRIATION AS GRANTED IN THIS ARTICLE, AND THE PROPERTY RIGHT ASSOCIATED WITH THE USE OF WATER HELD BY AN APPROPRIATOR, EXIST WITH THE KNOWLEDGE THAT THE WATER USE RIGHT OF AN APPROPRIATOR IS A USUFRUCT PROPERTY RIGHT SERVIENT TO THE PUBLIC'S DOMINANT WATER ESTATE.

- (a) THE PUBLIC CONFERS THE RIGHT TO THE USE OF ITS WATER, AND THE DIVERSION OF THE SAME, UNDER SECTION 6 OF THIS ARTICLE, TO APPROPRIATORS FOR BENEFICIAL USE AS A GRANT FOR THE COMMON GOOD.
- (b) WATER USE USUFRUCT RIGHTS SHALL NOT CONFER OWNERSHIP TO WATER OTHER THAN USE USUFRUCT RIGHTS TO THE APPROPRIATOR.
- (c) USUFRUCT PROPERTY RIGHTS CONFERRED BY THE PUBLIC TO A USER MAY BE MANAGED BY THE PUBLIC SO AS TO PROTECT THE NATURAL ENVIRONMENT, OR TO PROTECT THE PUBLIC'S ENJOYMENT AND USE OF WATERS.
 - (I) USUFRUCT WATER USE PROPERTY RIGHTS ARE HELD SUBJECT TO THE PUBLIC TRUST.
 - (II) AN ESTATE IN WATER IN COLORADO RETAINS AN AUTHORITY SUPERIOR TO RULES AND TERMS OF CONTRACTS OR PROPERTY LAW.
- (d) A USUFRUCT WATER PROPERTY RIGHT SHALL REQUIRE THE WATER USE APPROPRIATOR TO RETURN WATER UNIMPAIRED TO THE PUBLIC AFTER USE. NO ACTIVITY OF COMMERCE SHALL HAVE PRIORITY OVER NATURAL STREAM WELLBEING.

(4) WATER USE RIGHTS HELD BY THE STATE OF COLORADO FOR GOVERNMENT OPERATIONS SHALL BE HELD IN TRUST FOR THE PUBLIC AS AN ELEMENT OF THE PUBLIC'S WATER ESTATE.

(5) PUBLIC ACCESS TO THE WATER OF ANY NATURAL STREAM IN COLORADO IS A TRUST ASPECT WITHIN THE PUBLIC TRUST DOCTRINE ENABLING THE PUBLIC'S RIGHT TO THE USE OF ITS OWN WATERS.

- (a) THE RIGHT OF THE PUBLIC TO THE USE OF THE WATERS OF A NATURAL STREAM WITHIN COLORADO SHALL EXTEND TO THE HIGH WATER MARK OF THE STREAM.
 - (b) NEITHER THE WATERS OF A NATURAL STREAM, NOR THE STREAMBED THEREOF, NOR THE WETTED PARAMETER LANDS INCIDENT THERETO, SHALL BE SUBJECT TO LAWS OF TRESPASS AS THE WATERS OF NATURAL STREAMS, AND THE STREAMCOURSES THEREOF, ARE RENOWNED AS TO HAVING BEEN FOREVER PUBLIC HIGHWAYS FOR COMMERCE AND PUBLIC USE.
 - (c) PUBLIC USES OF WATERS IN NATURAL STREAMS WITHIN COLORADO SHALL NOT BE A USUFRUCT SUBJECT TO CONDITIONS OF APPROPRIATION, BUT SHALL BE A RIGHT OF THE PUBLIC IN THE USE OF, AND IN THE ENJOYMENT OF, THE PUBLIC'S OWN WATER.
- (6) ENFORCEMENT AND IMPLEMENTATION OF PROVISIONS CONTAINED WITHIN THE PUBLIC TRUST DOCTRINE ELEMENTS TO PROTECT THE PUBLIC'S RIGHTS AND INTERESTS AS HEREIN ANNOUNCED SHALL BE ACCOMPLISHED WITHIN THE EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCHES OF COLORADO STATE GOVERNMENT. ANY PERSON OF THE STATE OF COLORADO SHALL HAVE STANDING IN JUDICIAL ACTIONS TO BRING AN ACTION ENABLING THE PROVISIONS OF THIS SECTION.
- (7) PROVISIONS OF THIS SECTION ARE SELF-ENACTING AND SELF-EXECUTING.

SUBMITTED TO THE COLORADO OFFICE OF LEGISLATIVE COUNSEL;

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