

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

March 7, 2014

**TO:** Philip Doe and Barbera Mills-Bria

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2013-2014 #83, concerning the State's Duties to Protect Natural Resources

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2013-2014 #73, was the subject of a memorandum dated February 19, 2014. Proposed initiative 2013-2014 #73 was withdrawn before the public meeting was held. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the earlier memorandum, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## Purposes

The major purpose of the proposed amendment to the Colorado constitution appears to be to create a right to clean air, clean water, and the preservation of the environment and natural resources.

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The font size should be consistent throughout the initiative. It is standard drafting practice to use 13-point font.
2. It is standard drafting practice to indicate section numbers in bold-face type. See the two examples below.

**SECTION 1.** In the constitution of...

**Section 9. The state's duties under...**

3. Rather than indenting entire subsections (3), (4), (5), and (6), the proponents should simply insert a left tab at the beginning of the first line of each paragraph. Similarly, the proponents should insert a left tab at the beginning of the first line of subsection (2).
4. In subsections (2) and (3), the phrase, "THESE PUBLIC TRUST RESOURCES" is used. In both instances, the word "THESE" is not necessary and should be removed because "PUBLIC TRUST RESOURCES" is a defined term.
5. In the fourth line of subsection (3), a comma is unnecessarily inserted between "IMPAIRMENT" and "AND". It should be removed.
6. It is standard drafting practice to use clear and concise syntax whenever possible. The last sentence of subsection (3) would be clearer if written as follows:

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.

7. In the fifth line of subsection (4), there is a period after the word "CORPORATION". The period should instead be a comma.
8. In the second line of subsection (5), there is an unnecessary comma between "EXECUTING" and "AND". It should be removed.

### **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comment and question:

1. In subsection (4), the proponents deleted the phrase "in an attempt to utilize Public Trust Resources" that appeared in proposed initiative #73. The effect appears be to make "manipulating data, reports, or scientific information for private profit" a crime, independent of any connection to public trust resources. Is that the proponents' intent?