

Rights of Nature Resolution Discussion

Water Focus

Background

Many Colorado local governments have been asked to adopt a “Rights of Nature” Resolution. A Rights of Nature Resolution is not a law or ordinance but attempts to secure a broad variety of rights for ecosystems, species, and rivers, and calls for the local government to be the trustee charged with protecting those resources.

The Town of Nederland passed a Rights of Nature resolution (2021) and a related Guardian appointment Resolution (2023). The “guardians” are to help defend those rights. In 2024, the Nederland town council repealed both Resolutions due to the belief the Rights of Nature resolution was being used against the town in Colorado water court and could jeopardize the town’s water security.

Other Colorado municipalities have adopted Rights of Nature resolutions, including Ridgeway, Crestone and Grand Lake.

Alternatively, and shortly following Nederland’s adoption, the Town of Lyons considered a Rights of Nature Resolution that would have included “rights” and “guardians” much like Nederland. After much discussion internally and in consultation with its local water conservancy district, Lyons decided instead for a resolution “In support of protecting the...watershed and [its] ecosystem”, that affirms the Town’s recognition that water/nature should possess certain conditions.

Concerns related to water and water rights.

- The legal status of a Resolution, as compared to Ordinances or state law, is undefined. Local governments may exercise only certain defined powers delegated by state law, and they are generally not authorized to impose laws on other local, state, or federal governments, individuals outside their city or town, or water rights, with limited exceptions. Attempts to do so could raise constitutional questions and lead to litigation about exceeding municipal authority.
- A Rights of Nature Resolution may permit any citizen of the municipality to sue to enforce the specified rights, which could result in increased litigation and costs, either against the local government acting as trustee or against individuals accused of violating the rights in question.
- A Rights of Nature Resolution, even if nonbinding, may invite unintended litigation by non-citizens and outside organizations either in Colorado’s water courts or in other legal processes.

- Supporters of a Resolution may misrepresent the potential legal, financial, and political impact of a Resolution on water infrastructure planning and investment.
- Others may use Resolutions in legal filings and political statements and materials (websites, media releases) to claim the Resolutions show support for unrelated projects.
- Others may cite the Resolutions to claim that local government planning is flawed, funding isn't available, or the project will be a financial burden.
- National organizations may use the Resolution to take a position against locally owned water rights and infrastructure needs in courts or in the media.
- Often times the language in these Resolutions is broad, and therefore can trigger legal or other unintended consequences.

Considerations

- Municipal needs around water are often complex and, from time to time, in conflict with each other. Embracing this complexity and conflict via a resolution can be a responsible course of action.
- The Town of Lyons approach of collaboration with watershed-wide natural resource and water organizations can be effective.
- Threading the needle of municipal authority, desire to protect the resources, and making goal statements vs. legal threats/conclusions can be challenging.
- In light of continual pressure on limited water supplies, "doing something" is a sensible response. Care must be taken to do what is within a local government's authority, consistent with water law, and allow for a municipality to have options on planning for its future.
- Chose words carefully and avoid broad statements that are left to interpretation.