

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
TDD Line (303) 691-7700 (303) 692-3090
Located in Glendale, Colorado
<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

NOTICE OF PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of (1) proposed revisions to Regulation #93, Water-Quality-Limited Segments Requiring Total Maximum Daily Loads (5 CCR 1002-93) and (2) proposed revisions to Regulation #94, Colorado's Monitoring and Evaluation List (5 CCR 1002-94). The revisions to Regulations #93 and #94 proposed by the Water Quality Control Division (the Division) as staff to the Commission, along with proposed Statements of Basis, Specific Statutory Authority, and Purpose, are attached to this Notice as Exhibits 1 and 2, respectively.

Following the Commission's adoption of Colorado's 2006 "Section 303(d) List" as set forth in Regulation #93, the U.S. Environmental Protection Agency partially disapproved Colorado's list and made a determination to list one additional water segment pursuant to section 303(d) of the federal Clean Water Act. The water segment, pollutants and priority rankings established by EPA are set forth in Exhibit 3 to this Notice. This segment is not proposed for listing by the Division in Exhibit 1. In this rulemaking, the Commission will also consider any evidence and argument regarding whether the EPA-listed segment should be added to Colorado's Section 303(d) List. Any person advocating the listing of this segment in Regulation #93 must provide any supporting evidence and argument in accordance with the schedule set forth below.

For any water segments included on the proposed lists set forth in Exhibits 1 and 2, as well as the segment listed in Exhibit 3, this hearing will also consider any alternative proposals that such segments be listed in Regulation #93, in Regulation #94, or not included on either list. This hearing will not consider potential listing of water segments not identified in one of these exhibits.

HEARING SCHEDULE:

DATE: Monday, February 11, 2008
TIME: 10:00 a.m.
PLACE: Florence Sabin Conference Room
 Department of Public Health and Environment
 4300 Cherry Creek Drive South
 Denver, Colorado

PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. Written submissions prior to the hearing are encouraged, so that they can be distributed to

the Commission for review prior to the hearing. **Also, please note the January 3, 2008 deadline set forth below for the submission of evidence regarding the issues to be addressed in this rulemaking hearing.** Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize Commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status or mailing list status (see below) generally will not be permitted.

The Commission encourages informal discussions between the parties, the Water Quality Control Division and other interested persons prior to the hearing, in an effort to reach consensus or to develop proposed resolutions of issues and/or narrow the issues potentially in dispute. The Commission strongly encourages that any multi-party/Division proposals for the resolution of issues (including proposed Statement of Basis and Purpose language whenever feasible) be submitted as part of the administrative record as early as possible. To help facilitate discussions, the following contact information is provided:

- Water Quality Control Division: Dan Beley; 303-692-3606; dan.beley@state.co.us

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status," will require compliance with section 21.4(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). Mailing list status will allow receipt of all party documents (except individual exhibits more than five pages in length). It is not necessary to acquire party status or mailing list status in order to testify or comment. **For each request for party status or mailing list status, please provide the organization's name, a contact person, mailing address, phone number, fax number and email address if available.** Written party status or mailing list status requests are due in the Commission Office on or before:

DATE: Tuesday, November 27, 2007
TIME: 5:00 p.m.

Party status or mailing list status requests may be submitted by a fax to 303-691-7702 by this deadline, or by email to cdphe.wqcc@state.co.us, provided that the original and three copies are mailed by this same date.

PREHEARING STATEMENTS AND EVIDENCE:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established. First, an original and 13 copies of an initial prehearing statement from **the Division as the proponent of revisions proposed in Exhibits 1 and 2 attached to this notice**, including written testimony and exhibits providing the basis for the proposal, must be received in the Commission Office no later than **December 4, 2007**. In addition, **any person advocating the listing of any of the water segment/parameters listed by EPA following Colorado's 2006 listing action**, must submit by this same **December 4, 2007** deadline any evidence and/or argument (as a prehearing statement or otherwise) providing the basis for such listing.

Second, an original and 13 copies of a prehearing statement, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the Division's proposals in Exhibits 1 and 2 or to proposals advocating the listing of the water segment/parameters listed by EPA following Colorado's 2006 listing action** must be received in the Commission Office no later than **January 3, 2008**. **PLEASE NOTE that those requesting mailing list status and any other interested persons shall provide written evidence regarding any of the noticed proposals, if any evidence is to be offered for the hearing, by this same date.** Any data or other information that is submitted following this deadline will be considered in the next listing cycle.

For each deadline, the required number of hard copies of documents must be received in the Commission office by the specified deadline. These requirements are not satisfied by electronic transmission of a facsimile copy or copies. However, **parties are also strongly encouraged to email a**

copy of their written documents to the Commission Office, so that materials received can be posted on the Commission's web site. (Please email to cdphe.wgcc@state.co.us.) In addition, copies of these documents must be mailed or hand-delivered by the specified dates to all persons requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division, in accordance with a list provided by the Commission Office following the party status/ mailing list status deadline. **Alternatively, parties may email documents to those with party status or mailing list status by the specified dates**, except to those that the list distributed by the Commission Office identifies as requesting hard copies.

Also **note** that the Commission has prepared a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings**. A copy of this document will be mailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site noted above, under "General Information – Public Participation in Commission Proceedings". Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit their hard copies of all hearing documents on three-hole punch paper.**

PREHEARING CONFERENCE:

DATE: Tuesday, January 8, 2008
TIME: 2:00 p.m.
PLACE: Sabin Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

Attendance at the prehearing conference is mandatory for all persons requesting party status.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on January 3, 2008 may be submitted by the Division or anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **January 30, 2008**. **No new data or other new factual information will be accepted after January 3, but the rebuttal statements may contain different perspectives regarding what the submitted information shows regarding attainment of standards or the appropriate of listing specific water segments in Regulation #93 or Regulation #94.**

An original and 13 copies of written rebuttal statements must be received in the Commission Office by this deadline. This requirement is not satisfied by electronic transmission of a facsimile copy or copies. However, please also email a copy to cdphe.wgcc@state.co.us. In addition, copies of these documents must be mailed or hand-delivered by that date to all those requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division. No other documentation, exhibits, or other materials will be accepted following this deadline except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(a), (b), and (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-401; C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S. any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the Commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the Commission Office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 15th day of October 2007 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

A handwritten signature in black ink that reads "Paul D. Frohardt". The signature is written in a cursive style with a horizontal line underneath the name.

Paul D. Frohardt, Administrator

EXHIBIT 1

WATER QUALITY CONTROL DIVISION

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION**

5 CCR 1002-93

REGULATION #93

SECTION 303(d) LIST WATER-QUALITY-LIMITED SEGMENTS REQUIRING TMDLS

ADOPTED: March 17, 2004
EFFECTIVE: May 3, 2004
ADOPTED: March 14, 2006
EFFECTIVE: April 30, 2006

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

5 CCR 1002-93

**REGULATION #93 SECTION 303(d) LIST WATER-QUALITY-LIMITED SEGMENTS
REQUIRING TMDLS**

93.1 Authority

These regulations are promulgated pursuant to section 25-8-101 et seq C.R.S. as amended, and in particular, 25-8-202 (1) (a), (b), (i), (2) and (6); 25-8-203 and 25-8-204.

93.2 Purpose

This regulation establishes Colorado's List of Water-Quality-Limited Segments Requiring Total Maximum Daily Loads ("TMDLs"). This list fulfills section 303(d) of the federal Clean Water Act which requires that states submit to the U.S. Environmental Protection Agency a list of those waters for which technology-based effluent limitations and other required controls are not stringent enough to implement water quality standards.

93.3 Water-Quality-Limited Segments Requiring TMDLS

Listings marked with an asterisk (*) are carryover from the 1998 303(d) List. Consequently they are all high priority.

WBID	Segment Description	Portion	Impairment	Priority
COAR	Arkansas River Basin			
COARFO01	Fountain Creek and tributaries above Monument Creek	all	<i>E. coli</i> , <u>Se</u> , <u>Zn</u>	H/L
COARFO02a	Fountain Creek, Monument Creek to Hwy 47	all	<i>E. coli</i>	H
COARFO02b	Fountain Creek from Hwy 47 to the Arkansas River	all	Se	L
<u>COARFO04</u>	<u>All tribs to Fountain Creek, which are not on National Forest or Air Force Academy Land</u>	<u>all</u>	<u><i>E.coli</i></u>	<u>H</u>
COARFO06	Monument Creek from National Forest to Fountain Creek	all	Se	L

WBID	Segment Description	Portion	Impairment	Priority
COARFO07a	Pikeview Reservoir, Willow Springs Ponds #1 and #2	Willow Springs Ponds #1 & #2	<u>Aquatic Life Use</u> <u>(PCE FCA)</u>	M
COARLA01a	Arkansas River, Fountain Creek to Colorado Canal headgate	all	Fe(<u>tr</u> ec), Se, <u>SO₄</u>	L
COARLA01b	Arkansas River, Colorado Canal headgate to John Martin Reservoir	all	Se	L
COARLA01c	Arkansas River, John Martin Reservoir to stateline	all	Se, <u>U</u>	L
COARLA04	Apishapa River, Timpas Creek, Lorencito Canyon	all	Fe(<u>tr</u> ec), Se	L
<u>COARLA05a</u>	<u>Purgatoire River from source to I-25</u>	<u>all</u>	<u>Se</u>	<u>L</u>
<u>COARLA05b</u>	<u>Trinidad Reservoir, Long Canyon Reservoir, and Lake Dorothy</u>	<u>Trinidad Lake</u>	<u>Aquatic Life Use</u> <u>(Hg FCA)</u>	<u>H</u>
COARLA07	Purgatoire River, I-25 to Arkansas River	all	Se	L
COARLA09a	Mainstem of Adobe Creek and Gageby Creek...	all	Se	L
<u>COARLA09b</u>	<u>Apache Creek, Breckenridge Creek, Little Horse Creek, Bob Creek, Wildhorse Creek, Wolf Creek, Big Sandy Creek</u>	<u>all</u>	<u>Se</u>	<u>L</u>
COARLA09c	Rule Creek, Muddy Creek, Caddoa Creek, Clay Creek, Cat Creek...	Chicosa Creek	Fe(<u>T</u> rec), Se	L

WBID	Segment Description	Portion	Impairment	Priority
<u>COARLA10</u>	<u>Two Buttes Res., Two Buttes Pond, Hasty Lake, Holbrook Res., Burchfield Lake, Nee-Skah (Queens) Res., Adobe Creek Res., Neeso Pah Res., Nee Noshah Res., Nee Gronda Res.</u>	<u>Adobe Creek Res., Nee Gronda Res</u>	<u>Se</u>	<u>L</u>
<u>COARLA11</u>	<u>John Martin Reservoir</u>	<u>all</u>	<u>Se</u>	<u>L</u>
<u>COARLA12</u>	<u>Lake Henry, Lake Meredith</u>	<u>all</u>	<u>Se</u>	<u>L</u>
COARMA02	Arkansas River, Pueblo Reservoir to Wildhorse Creek	all	Se	L
COARMA03	Arkansas River, Wildhorse Creek to Fountain Creek	all	Se	L
COARMA04a	Wildhorse Creek	all	Se, <i>E. coli</i>	L/H
COARMA05	St. Charles River and tributaries, source to CF&I diversion	all	Se	L
COARMA06	St. Charles River and tributaries, CF&I diversion to Arkansas River	all	Fe(<u>tree</u>), Se	L
COARMA10	Sixmile Creek	all	Fe(<u>Trec</u>), Se	L
COARMA12	Huerfano River, from Muddy Creek to the Arkansas River	all	Se	L
COARMA13	Cucharas River, source to Walsenburg PWS diversion	all	Se, f. coliform	L/H
<u>COARMA14</u>	<u>Cucharas River, from Walsenburg PWS diversion to the outlet of Cucharas Reservoir</u>	<u>all</u>	<u>Se</u>	<u>L/H</u>
<u>COARMA16</u>	<u>Huajatolla Reservoir, Diagre Reservoir, Walsenburg Lower Town Lake, Horseshoe Lake and Martin Lake (Ohem Lake)</u>	<u>Horseshoe Lake</u>	<u>Aquatic Life Use (Hg FCA)</u>	<u>H</u>
COARMA18a	Boggs Creek	all	Se, Zn	H

WBID	Segment Description	Portion	Impairment	Priority
<u>COARUA02a</u>	<u>Arkansas River, Birdseye Gulch to California Gulch</u>	<u>all</u>	<u>Zn, NO₅</u>	<u>M</u>
COARUA02b	Arkansas River, California Gulch to Lake Fork	all	Cd*, Zn*	H
COARUA02c	Arkansas River, Lake Fork to Lake Creek	all	Zn*, <u>Cd</u>	H
COARUA03	Arkansas River, Lake Creek to Pueblo Reservoir	Lake Creek to <u>Badger Creek all</u>	<u>Zn, Cd</u>	H
COARUA05	Arkansas River tributaries from source to Brown's Creek	Halfmoon Creek	<u>Pb, Cd</u>	H
COARUA07	Evans Gulch from source to Arkansas River	all	Zn	M
<u>CAORUA08b</u>	<u>Iowa Gulch from ASARCO water supply intake to Paddock #1 Ditch (Iowa Ditch)</u>	<u>all</u>	<u>Cd, Pb, Zn</u>	<u>M</u>
<u>COARUA10</u>	<u>Mainstem of Lake Creek and all tributaries, lakes and reservoirs from source to Arkansas River (including Twin Lakes Reservoir)</u>	<u>all</u>	<u>pH, DO, Cu</u>	<u>H</u>
COARUA11	South Fork Lake Creek, source to Lake Creek	all	pH, Al, Cu*, Zn, <u>Cd</u>	H
COARUA12a	Chalk Ck.	below Mary Murphy Mine	<u>Zn, Pb</u>	M
COARUA14b	Tributaries to the Arkansas River, from Pueblo Reservoir to Colorado Canal headgate	Teller Reservoir	Hg*	H
<u>COARUA15</u>	<u>Grape Creek including De Weese Res., Texas, Badger, Hayden, Hamilton, Stout and Big Cottonwood Creeks, Newland Creek</u>	<u>De Weese Reservoir</u>	<u>D.O.</u>	<u>H</u>
<u>COARUA27</u>	<u>Mainstem of Eightmile Creek, including all tributaries, wetlands, lake and reservoirs, from the source to the mouth of Phantom Canyon; Brush Hollow Reservoir</u>	<u>Brush Hollow Reservoir</u>	<u>Aquatic Life Use (Hg FCA), D.O.</u>	<u>H</u>

WBID	Segment Description	Portion	Impairment	Priority
COGU	Gunnison River Basin			
COGULG02	Gunnison River, Uncompaghre River to Colorado River	all	Se*, temperature	H/L
COGULG04a	Tributaries to Gunnison River, Crystal Reservoir to Colorado River	all	Se	H
COGULG04b	Tributaries to Gunnison River, Kannah Creek	Kannah Creek below USGS station 09152000	Se	H
<u>COGULG04c</u>	<u>Red Rock Creek within Black Canyon of the Gunnison National Park</u>	<u>all</u>	<u>Se</u>	<u>H</u>
<u>COGULG07</u>	<u>Surface, Ward, Tongue, Youngs and Kiser Creeks</u>	<u>Surface Creek</u>	<u>Fe(Trec)</u>	<u>H</u>
COGULG09	Fruitgrowers Reservoir	all	D.O.	H
<u>COGUNF03</u>	<u>North Fork of the Gunnison from Black Bridge above Paonia to the confluence within the Gunnison</u>	<u>all</u>	<u>Se</u>	<u>H</u>
COGUNF05	Tributaries to N. Fork Gunnison River, USFS boundary to N. Fork Hubbard, Terror, Minnesota and Leroux Creeks from USFS boundary to N. Fork. Mainstem of Jay Creek and mainstem and tribs of Roatcap Creek to the N. Fork	Leroux Creek, Jay Creek, Big Creek, Short Draw	Se*	H
COGUNF06a	Tributaries to N. Fork of Gunnison River not on USFS property	Cottonwood Creek Big Creek, Short Draw	Se	L H
<u>COGUNF06b</u>	<u>Bear, Reynolds, Bell, McDonald, Cottonwood, Love, Cow, Dever, German and Miller Creeks, Stevens, Big, Stingley and Alum gulch not on USFS property</u>	<u>Cottonwood Creek, Big Gulch</u>	<u>Se</u>	<u>H</u>
COGUSM03a	San Miguel River, Bridal Veil & Ingram Creek to Marshall Creek	below Idarado Mine	Zn*	H
COGUSM03b	San Miguel River, Marshall Creek to S. Fork San Miguel	below Idarado Mine	<u>Cd</u> , Zn*	H

WBID	Segment Description	Portion	Impairment	Priority
COGUSM06a	Ingram Creek, source to San Miguel River	all	Zn	H
COGUSM06b	Marshall Creek, source to San Miguel River	all	<u>Cd, Zn</u> *	H
<u>COGUUG07</u>	<u>Slate River from source to Coal Creek</u>	<u>Below Oh-Be-Joyful Creek</u>	<u>Zn(sculpin)</u>	<u>H</u>
COGUUG08	Slate River, Coal Creek to East River	all	<u>Cd, Zn</u>	H
COGUUG10	Oh-Be-Joyful Creek <u>and tributaries</u> from wilderness to Slate River	all	Cd, <u>Cu, Pb, Zn</u>	H
COGUUG11	Coal Creek from Elk Creek to Crested Butte water supply intake, plus Elk Creek	all	Cd, Pb, Zn	H
COGUUG12	Coal Creek and tributaries from Crested Butte water supply intake to Slate River	Coal Creek	<u>Cd, Zn</u>	H
<u>COGUUG30</u>	<u>Henson Creek mainstem and tribs</u>	<u>all</u>	<u>Cd, Zn</u>	<u>H</u>
COGUUG31	Palmetto Gulch	all	Cd, Zn	M
COGUUN02	Uncompahgre River, source to Red Mountain Creek	all	<u>Cd, Cu, Zn</u>	H
COGUUN03 <u>a</u>	Uncompahgre River, Red Mountain Creek to Montrose	all	Cu, Fe(<u>T</u> rec)	H
COGUUN04b	Uncompahgre River, La Salle Road to Confluence Park	all	Se*	H
COGUUN04c	Uncompahgre River, Confluence Park to Gunnison River	all	Se*	H
<u>COGUUN06a</u>	<u>Red Mountain Creek, source to East Fork Red Mountain Creek</u>	<u>all</u>	<u>Zn(sc)</u>	<u>H</u>
COGUUN09	Canyon Creek, Imogene Creek, Sneffles Creek	all	Zn	M
COGUUN12	Tributaries to Uncompahgre River, South Canal to Gunnison River	all	Se	H

WBID	Segment Description	Portion	Impairment	Priority
COGUUN14	Sweitzer Lake	all	Se*, <u>D.O.</u>	H
<u>COGULD01</u>	<u>Dolores River from Bradfield Ranch to Little Gypsum Valley bridge</u>	<u>all</u>	<u>Fe(Trec)</u>	<u>H</u>
<u>COGULD02</u>	<u>Dolores River from Little Gypsum Valley bridge to Colorado/Utah border</u>	<u>all</u>	<u>Fe(Trec)</u>	<u>H</u>
COLC	Lower Colorado River Basin			
<u>COLCLC01</u>	<u>Colorado River, Roaring Fork to Parachute Creek</u>	<u>all</u>	<u>Se</u>	<u>M</u>
<u>COLCLC02</u>	<u>Colorado River, Parachute Creek to Gunnison River</u>	<u>all</u>	<u>Se</u>	<u>M</u>
COLCLC03	Colorado River, Gunnison River to state line	all	Se	M
<u>COLCLC04a</u>	<u>Tributaries to Colorado River, Roaring Fork to Parachute Creek Exc. specific segments</u>	<u>Mamm Creek</u>	<u>Se</u>	<u>L</u>
<u>COLCLC10</u>	<u>Rifle Creek, including tributaries from County Road 251 to Colorado River</u>	<u>all</u>	<u>Se</u>	<u>L</u>
COLCLC04a	Tributaries to Colorado River, Roaring Fork to Parachute Creek except for specific segments	all	Se	M
COLCLC13a	Tributaries to Colorado River blw Parachute Creek, except named segments	Salt Creek	sediment	L
COLCLC13b	Tributaries to Colorado River from Government Highline Canal Diversion to Salt Creek	tributaries on the north side of the river <u>all</u>	Se	M
<u>COLCLC13b</u>	<u>Tributaries to Colorado River from Government Highline Canal Diversion to Salt Creek</u>	<u>Adobe Creek, Leach Creek</u>	<u>E.coli, Fe(Trec)</u>	<u>H</u>
COLCLC13c	Walker Wildlife Area Ponds	all	Se	M
COLCLC14b	Roan Creek & tribs, Clear Creek to the Colorado River	Dry Fork	Se	L

WBID	Segment Description	Portion	Impairment	Priority
<u>COLCLC19</u>	<u>Lakes and reservoirs tributary to the Colorado River, Parachute Creek to the border</u>	<u>West Pond Orchard Mesa Wildlife Area</u>	<u>Se</u>	<u>H</u>
<u>COLCLY02</u>	<u>Yampa River, Lay Creek to Green River</u>	<u>all</u>	<u>Fe(Trec)</u>	<u>H</u>
<u>COLCLY05</u>	<u>Fortification Creek from North and South Fork to the Yampa River</u>	<u>all</u>	<u>Se</u>	<u>L</u>
<u>COLCLY16</u>	<u>Little Snake River from Power Wash to the Yampa River</u>	<u>all</u>	<u>Fe(Trec)</u>	<u>L</u>
<u>COLCWH09b</u>	<u>Flag Creek and Sulphur Creek</u>	<u>Flag Creek</u> <u>all</u>	<u>Se</u>	<u>L</u>
<u>COLCWH15</u>	<u>Mainstem of Piceance Creek from the source to the Emily Oldhand Diversion to the confluence with the White River</u>	<u>Piceance Creek</u>	<u>Fe(Trec)</u>	<u>M</u>
<u>COLCWH22</u>	<u>Tributaries to White River, Douglas Creek to Colorado/Utah border</u>	<u>West Evacuation Wash, Douglas Creek</u>	<u>sediment</u>	<u>L</u>
CORG	Rio Grande River Basin			
<u>CORGAL02</u>	<u>Alamosa River, from source to confl with Alum Creek</u>	<u>Tribs to lower Iron Ck</u>	<u>pH, Cu, Zn, Fe(Trec)</u>	<u>H</u>
<u>CORGAL03b</u>	<u>Alamosa River, from Wightman Fork to Fern Creek</u>	<u>Above Jasper Creek</u>	<u>Cd</u>	<u>H</u>
<u>CORGAL03d</u>	<u>Alamosa River, from Ranger Creek to Terrace Res.</u>	<u>all</u>	<u>Al</u>	<u>H</u>
<u>CORGAL08</u>	<u>Terrace Reservoir</u>	<u>all</u>	<u>Fe(Trec)</u>	<u>M</u>
<u>CORGAL11</u>	<u>La Jara Creek including tributaries, wetlands, lakes and reservoirs from source to Hot Creek</u>	<u>La Jara Reservoir</u>	<u>D.O.</u>	<u>H</u>
<u>CORGAL13</u>	<u>Hot Creek from source to La Jara Creek</u>	<u>all</u>	<u>Fe(Trec)</u>	<u>H</u>
<u>CORGCB06</u>	<u>San Luis Lake</u>	<u>all</u>	<u>D.O., NH₃, Fe(Trec)</u>	<u>H</u>

WBID	Segment Description	Portion	Impairment	Priority
CORGCB09a	Kerber Creek above Brewery Creek and tributaries, except those in segment 8	all	Ag*, Cd*, Pb, pH	H
CORGCB09b	Kerber Creek, Brewery Creek to San Luis Creek	all	Cd*, Cu*, Zn*	H
CORGRG04	Rio Grande River, Willow Creek to Alamosa County line	Cd, <u>Cu</u> Willow Creek to Wagon Wheel Gap, Zn Willow Creek to Del Norte	Cd*, Zn*, <u>Cu</u>	H
<u>CORGRG05</u>	<u>Rio Grande River, abv Willow Creek to Del Norte</u>	<u>Nelson Creek</u>	<u>Cd, Cu, Pb, Zn, pH</u>	<u>H</u>
CORGRG07	West Willow Creek from Park Regent Mine to confluence with Rio Grande	Willow Creek from confluence of E and W Willow Creek	pH	H
<u>CORGRG09</u>	<u>South Fork of Rio Grande, from source to Rio Grande</u>	<u>Beaver Creek Reservoir</u>	<u>D.O.</u>	<u>H</u>
<u>CORGRG28</u>	<u>Rito Seco, from source to Salazar Reservoir</u>	<u>Upper Rito Seco blw Battle Mtn</u>	<u>E.coli</u>	<u>H</u>
CORGRG30	Culebra Creek, including all tributaries, lakes, and reservoirs from HWY 159 to the Colorado/New Mexico border	Sanchez Reservoir	<u>Aquatic Life Use(Hg* <u>FCA</u>), D.O.</u>	H
COSJ	San Juan River Basin			
COSJDO04	Dolores River, Bear Creek to Bradfield Ranch Bridge	McPhee Reservoir	<u>Aquatic Life Use(Hg* <u>FCA</u>)</u>	H
COSJDO09	Silver Creek from Rico DW diversion to Dolores River	all	Zn, <u>Cd, Pb</u>	H
COSJLP04a	Mancos River and tributaries above HWY 160	E. Mancos River	Cu	H

WBID	Segment Description	Portion	Impairment	Priority
<u>COSJLP04a</u>	<u>Mancos River and tributaries above HWY 160</u>	<u>all</u>	<u>Zn</u>	<u>L</u>
COSJLP11	Narraguinnep, Puett, and Totten Reservoir	Narraguinnep Reservoir_Totten Reservoir	<u>Aquatic Life Use(Hg* FCA)</u>	H
<u>COSJPN03</u>	<u>Vallecito Reservoir</u>	<u>Vallecito Reservoir</u>	<u>Aquatic Life Use (Hg FCA)</u>	<u>H</u>
<u>COSJSJ08</u>	<u>Navajo Reservoir</u>	<u>Navajo Reservoir</u>	<u>Aquatic Life Use (Hg FCA)</u>	<u>H</u>
COSP	South Platte River Basin			
<u>COSPBE02</u>	<u>Bear Creek below Bear Creek Reservoir to South Platte River</u>	<u>all</u>	<u>E.coli</u>	<u>H</u>
COSPBD01	Mainstem of Big Dry Creek, including all tributaries, lakes, reservoirs and wetlands, from the source to the confluence with the South Platte River	all	<i>E. coli</i> , Se	H/L
COSPBO02	Boulder Creek, Indian Peaks Wilderness to South Boulder Creek	below 13 th Street in Boulder	<i>E. coli</i>	H
COSPBO04a	South Boulder Creek and tributaries from source to outlet of Gross Reservoir	Gamble Gulch	Cu, Zn, pH	H
COSPBO07b	Coal Creek, HWY 36 to Boulder Creek	all	<i>E. coli</i>	H
COSPBO10	Boulder Creek, Coal Creek to St. Vrain Creek	all	<i>E. coli</i>	H
<u>COSPBT02</u>	<u>Big Thompson River and tribs. RMNP to Home Supply Canal diversion</u>	<u>Fish Creek below Marys Lake</u>	<u>pH, Cu</u>	<u>H</u>
COSPBT05	Big Thompson River, I-25 to S. Platte River	all	Se, NH ₃	L
COSPBT09	Little Thompson River, Culver Ditch to Big Thompson River	all	<u>Cu, Se, E. coli</u> , <u>Aquatic Life Use</u>	<u>ML/H/M</u>
COSPBT10	Tributaries To the Little Thompson River	Big Hollow	Se	L

WBID	Segment Description	Portion	Impairment	Priority
<u>COSPBT11</u>	<u>Carter Lake</u>	<u>Carter Lake</u>	<u>Aquatic Life Use (Hg FCA)</u>	<u>H</u>
<u>COSPBT12</u>	<u>Lake Loveland, Horseshoe Lake, Boyd Lake</u>	<u>Boyd Lake</u>	<u>Aquatic Life Use (Hg FCA)</u>	<u>H</u>
COSPCH02	Cherry Creek Reservoir	all	chlorophyll a	M
COSPCL02	Mainstem of Clear Creek, I-70 Bridge above Silver Plume to Argo Tunnel	mainstem	Cu*, Pb , Zn*	<u>H</u>
COSPCL03a	Mainstem of S. Clear Creek	all	Zn	M
COSPCL03b	Leavenworth Creek	all	Pb, Zn	M
COSPCL06	West Clear Creek tributaries	Mad Creek	Zn	M
COSPCL09a	Fall River & tributaries, source to Clear Creek	Fall River	Cu	M
COSPCL09b	Trail Creek & tributaries, source to Clear Creek	all	Cd, Cu, Pb, Zn	M
COSPCL11	Clear Creek, Argo Tunnel to Farmers Highline Canal	all	Cd , Pb, Zn*	H
COSPCL13b	N. Clear Creek & tributaries, lowest water supply intake to Clear Creek	Mainstem of N. Clear Creek	Cd*, Fe(trec), Mn*, Zn*, Aquatic Life Use*	M
COSPCL14b	Clear Creek, Denver Water conduit #16 to Youngfield St	all	Aq Life Use, organic sediment	L
COSPCL15	Clear Creek, Youngfield St. to S. Platte River	all	<i>E. coli</i> , Aq Life Use, organic sediment	H/L
COSPCL18a	Ralston Creek and tributaries below Arvada Reservoir	Ralston Creek	<i>E. coli</i>	H
<u>COSPCP10</u>	<u>Cache la Poudre River, Monroe Canal to Shields Street</u>	<u>below confluence with North Fork</u>	<u>pH, Cu, Aquatic Life Use</u>	<u>M</u>
COSPCP12	Cache la Poudre River, Box Elder Creek to S. Platte River	all	Se	L

WBID	Segment Description	Portion	Impairment	Priority
COSPCP12	Cache la Poudre River, Box Elder Creek to S. Platte River	below Eaton Draw	<i>E. coli</i>	H
COSPCP13a	All tributaries to the Cache La Poudre River, including all lakes reservoirs and wetlands, from the North Fork of the Cache La Poudre River to the confluence with the South Platte River	Fossil Creek	Se	L
COSPCP13b	Boxelder Creek from source to the Cache la Poudre River	all	Se	L
COSPCP14	Horsetooth Reservoir	all	D.O., <u>Aquatic Life Use (Hg FCA)</u>	L/H
COSPLS02b	Tributaries to S Platte River, Beaver Creek, Bijou Creek and Kiowa Creek	Beaver Creek	Se, <i>E. coli</i>	L
COSPMS03a	Tributaries to S. Platte River, Big Dry Creek to Weld/Morgan county line	Horse Creek Reservoir	pH	L
COSPMS04	Barr Lake and Milton Reservoir	all	pH	M
<u>COSPSV02</u>	<u>St. Vrain Creek, RMNP to Hygiene Road</u>	<u>all</u>	<u>Cu</u>	<u>H</u>
COSPSV04a	Left Hand Creek, source to Hwy 36	pH, Cu, Zn (Hwy 72 to James Ck); Cu blw James Ck	pH, Cu, Zn	M
COSPSV04b	James Creek, Little James Creek	Little James Creek	Cu, Pb	M
COSPSV06	Tributaries to the St Vrain River	Dry Creek	<i>E. coli</i>	H
COSPSV06	Tributaries to the St Vrain River	all	Se	L
COSPUS02a	Tributaries to S. Platte R, source of S. & M. Forks to Tarryall Creek	Twin Creek	sediment	L
COSPUS03	Tributaries to S.Platte River, Tarryall Creek to N.Fk.S.Platte R	Trout Creek and tributaries on USFS property	sediment*	M
COSPUS04	N. Fk. S. Platte River & Tributaries, source to S.Platte R	Hall Valley area to Geneva Ck	Cu*	H
COSPUS05b	Geneva Creek, Scott Gomer Creek to N. Fork S. Platte River	all	Cu, Zn*	H

WBID	Segment Description	Portion	Impairment	Priority
COSPUS14	S. Platte River, Bowles Ave. to Burlington Ditch	all	E. coli*	H
COSPUS15	S. Platte River, Burlington Ditch to Big Dry Creek	Clear Creek to Fulton Canal diversion and Burlington canal headgate to MWRD-all	E. coli	H
COSPUS16a	Sand Creek	all	Se, <i>E. coli</i>	L/H
COSPUS16c	Tributaries to S. Platte River, Chatfield Reservoir to Big Dry Creek except specific listings	East Toll Gate Creek, West Toll Gate Creek, Toll Gate Creek	Se	L
COSPUS17a	Washington Park Lakes, City Park Lake, Rocky Mountain Lake, Berkley Lake	Berkley Lake	<u>As, Aquatic Life Use (Hg FCA)</u>	H
<u>COSPUS17a</u>	<u>Washington Park Lakes, City Park Lake, Rocky Mountain Lake, Berkley Lake</u>	<u>Rocky Mountain Lake</u>	<u>Aquatic Life Use (Hg FCA)</u>	<u>H</u>
COUC	Upper Colorado River Basin			
<u>COUCBL03</u>	<u>Dillon Reservoir and tribs</u>	<u>Gold Run Gulch below Jessie Mine</u>	<u>Cd, Zn</u>	<u>H</u>
COUCBL06	Snake River and tributaries, source to Dillon Reservoir	Snake R. mainstem, Sts. John Creek	pH, Cd*, Cu*, Pb*, Zn*	H
COUCBL07	Peru Creek, source to Snake River	all	Cd*, Cu*, Pb, Mn, Zn, pH	H
COUCBL12	Illinois Gulch and Fredonia Gulch	Illinois Gulch	Zn	M
GOUCEA05	Eagle River, Belden to Gore Creek	all	Cu, Zn*	H

WBID	Segment Description	Portion	Impairment	Priority
<u>COUCEA05a</u>	<u>Eagle River, Belden to Hwy 24 Bridge</u>	<u>all</u>	<u>Cu, Zn*</u>	<u>H</u>
<u>COUCEA05b</u>	<u>Eagle River, Hwy 24 Bridge to Martin Creek</u>	<u>all</u>	<u>Zn*</u>	<u>H</u>
<u>COUCEA05c</u>	<u>Eagle River, Martin Creek to Gore Creek</u>	<u>all</u>	<u>Zn*</u>	<u>H</u>
COUCEA06	Tributaries to Eagle River, Belden to Lake Creek, except specific segments	Black Gore Creek, adjacent to I-70	sediment	H
<u>COUCEA07b</u>	<u>Cross Creek, source to Eagle River except segment 4 Minturn Middle School to Eagle River</u>	<u>lower portion all</u>	<u>Cu, Zn*</u>	H
COUCNP04	Tribs to the N Platte exc Segs 1, 5, 6, & 7	Illinois River	Fe (Trec)	M
COUCNP07	Government Creek, Spring Creek	Spring Creek	D.O.	M
<u>COUCUC02</u>	<u>Colorado River and tributaries, wetlands, lakes and reservoirs within Arapahoe National Recreation Area</u>	<u>Shadow Mountain Lake</u>	<u>D.O.</u>	<u>H</u>
<u>COUCUC05</u>	<u>Lakes and Reservoirs tributary to the Colorado River from RMNP/ANRA to the Roaring Fork not on National Forest</u>	<u>Wolford Mountain Reservoir</u>	<u>D.O.</u>	<u>H</u>
COUCUC07b	Muddy Creek and tribs	Alkali Slough	Fe (Trec), Se	L
<u>COUCYA08</u>	<u>Elk River source to Yampa River</u>	<u>Elk River below Morin Ditch</u>	<u>E.coli</u>	<u>H</u>
<u>COUCYA13d</u>	<u>Dry Creek and tribs</u>	<u>Hubberson Gulch</u>	<u>Fe(Trec)</u>	<u>M</u>
<u>COUCYA13e</u>	<u>Sage Creek, Grassy Creek and tribs</u>	<u>Sage Creek and Grassy Creek</u>	<u>Fe(Trec), Se</u>	<u>M</u>
COUCYA13d	Dry Creek	Below Seneca sample location 8	Se	L*
COUCYA20	Tributaries to the Yampa River above Elkhead Creek within National Forest	First Creek below Second Creek, Elkhead Creek below First Creek	<i>E. coli</i>	H

93.54 - 93.9 Reserved

93.10 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; MARCH, 2004 RULEMAKING

The provisions of C.R.S. 25-8-202(1)(a), (b) and (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-401; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

A. Introduction

This regulation establishes Colorado's List of Water-Quality-Limited Segments Requiring Total Maximum Daily Loads ("TMDLs"). This list was prepared to fulfill section 303(d) of the federal Clean Water Act ("Act") which requires that states submit to the U.S. Environmental Protection Agency ("EPA") a list of those waters for which technology-based effluent limitations and other required controls are not stringent enough to implement water quality standards.

Once listed, the State is required to prioritize these water bodies or segments (rivers, streams, lakes reservoirs) based on the severity of pollution and other factors. It will then determine the causes of the water quality problem and allocate the responsibility for controlling the pollution. This analysis is called the TMDL Process, and results in the determination of: 1) the amount of a specific pollutant that a segment can receive without exceeding a water quality standard (the TMDL), and 2) the apportionment to the different contributing sources of the pollutant loading (the allocation). The TMDL must include a margin of safety, waste load allocation (for point sources) and a load allocation (for non-point sources and natural background). The TMDL must include upstream loads in the assessment and apportionment process.

B. List Development

1. Listing Methodology

The "Section 303(d) Listing Methodology - 2004 Listing Cycle" contains a description of the listing process, the criteria for listing, and the criteria for determination of TMDL priority. The Listing Methodology was developed through a public process and finalized as a policy at a Water Quality Control Commission administrative action hearing on September 9, 2003.

This Listing Methodology sets forth the criteria that generally were used to make decisions regarding which waters to include on the 2004 Section 303(d) List and the 2004 M&E List. However, this methodology was not adopted by the Commission as a rule. The Commission therefore has the flexibility to take into account other appropriate factors in making site-specific listing decisions.

2. Information Considered

The Commission has considered all existing and readily available information in developing the 2004 Section 303(d) List. In determining whether data and information are existing and readily available, it has taken into account such data and information as the Division has utilized in the preparation of those identification processes, calculations and models referenced in 40 CFR §130.7(a)(5)(i), (ii) and (iv) and that credible data and information presented in a readily usable format and submitted in reports provided to the Division as referenced in 40 CFR §130.7(a)(5)(iii). In addition, the Commission accepted credible data and information that was submitted in accordance with the listing process schedule, whether submitted by EPA or any other interested party. The Division also continues to independently collect and analyze new data on a rotating basin basis as part of its triennial review efforts and will utilize such data and information in making future listing determinations. Existing data which was not brought forward through one of the above mechanisms or otherwise presented to the Commission in accordance with the

schedule was not treated as "readily available" for purposes of making the 2004 listing decisions. Such information will be considered in the next listing cycle.

C. Prioritization

The objective of prioritization is to identify those waterbody segments where the Division and the public should concentrate their resources. Priorities of High, Medium and Low were established according to section IV. of the 2004 Section 303(d) Listing Methodology. Segments/parameters where the Commission determined that an appropriate plan is in place to resolve the uncertainty as specified in section 93.4 have been denoted as "L*". A Low priority may also be assigned to other segments as per section IV.

D. Discussion of Issues Raised in the Hearing

During the course of the hearing, the status of approximately 30 segments was debated. The basis for the Commission's decisions regarding the major issues for these segments is recorded below.

1. Selenium: Several parties questioned whether selenium, where the source is underlying native shale, should be considered a pollutant. The Commission found that selenium, like many other naturally occurring metals in Colorado is a pollutant and is classified as such on EPA's list of priority toxic pollutants (62 FR 42160). If the source of impairment is natural, that is grounds for consideration of an ambient quality-based, site-specific standard as described in Regulation No. 31 at 31.7 1(b)(ii). However, the listing decisions must be made based upon a comparison of the current adopted standard and the ambient condition for the segment. Although parties to the rulemaking submitted testimony questioning the decision to list several specific segments for selenium, such as Lower Colorado River segment 3 and Lower Arkansas River segment 1a, the evidence provided was directed largely at questioning the appropriateness of the current selenium standards. The Commission has determined, based on the evidence submitted, that these segments are not in attainment of the current selenium standards.
2. Segments where there is no new data, but following the 2004 Listing Methodology resulted in a different conclusion than in 2002: The following segments had no new data included in the assessments since the 2002 listing cycle. However, clarification and changes in the 2004 Listing Methodology resulted in the segments moving from the Monitoring and Evaluation List to the 303(d) List. The modifications that resulted in the most changes had to do with more clearly specifying that segments with small datasets where the ambient condition exceeds the standard by more than 50 percent should be listed. The following segments were affected:

Gunnison River Basin: Lower Gunnison segment 27
Uncompahgre segment 2
Lower Colorado River Basin: White River segment 9b
3. Segments with multiple tributaries: Issues were raised regarding what is the appropriate way to handle segments with multiple tributaries where there is evidence of impairment. The Commission found that since segments are generally treated as having consistent uses and characteristics, their impairment should be handled in a similar fashion. Unless either water quality data or other evidence has been presented that shows that the impairment is not present in the entire segment, the entire segment has been listed as impaired. "Other evidence" may include changes in geology within a segment or the confluence with a stream known to be impaired. Nevertheless, it is anticipated that before any TMDL is developed and implemented in "all tributary" segments, work will be performed to determine the causes and locations of the impairment, such that efforts and controls are not inappropriately directed towards individual tributaries that are not truly of concern, and the Section 303(d) List can be modified accordingly. Where other evidence shows that some portions are in exceedance and other portions are not, only the impaired portion needs to be listed. The following segments were listed based on this rationale:

Gunnison River Basin: Lower Gunnison segments 4a and 4b
North Fork segments 5 and 6
Lower Colorado River Basin: Lower Colorado segment 4a

E. Segment- Specific Issues

1. San Juan Basin, Dolores River below McPhee Reservoir: Despite a recent decline in the fish population in this reach, the Commission found that there was not adequate readily available evidence to conclude that there exists an impairment of the aquatic life use due to other than extraordinary events associated with the long-term drought that has existed in southwest Colorado for several years. In view of evolving operations of McPhee Reservoir and varying (and generally declining) hydrologic conditions, the Commission is not able at this time to identify an “expected condition” upon which to base a decision of impairment. Further, even if an impairment caused by other than the extraordinary events associated with the drought were found to exist, the Commission could not conclude based on this record that the decline was due to a “pollutant” as compared to “pollution.” Nevertheless, the Commission encourages cooperation by all interested parties in the implementation of habitat improvement measures that may serve to enhance the quality of the fishery in the reach. The Commission is prepared to revisit the concept of “expected condition” as it applies to this reach should that be warranted by changes in habitat condition. Certainly the achievement of goals set under the 1996 Operating Agreement for McPhee Reservoir may influence the nature of the expected condition. Finally, any evidence of impairment due to pollutants can be brought forth at the next listing hearing.
2. South Platte Basin, Clear Creek, segments 14b and 15: Available data, with specific reference to biological information on fish species collected over time and visual observations of the physical condition of the stream bed, provide an indication of “use-impairment” for Clear Creek Segments 14b and 15 relative to aquatic life. Though organic sediment appears to be a significant contributor to the impairment, the exact interaction of potentially numerous causative factors need to be further explored. No single source or cause of the impairment has been identified to date. Coors Brewing Company has voluntarily come forward with a study plan for segments 14a, 14b and 15 as part of the “pilot study” approach outlined in the section 309 study report recently submitted to the State Legislature. This pilot study would assist in defining the expected condition for these segments in view of existing hydrological/habitat conditions and in fashioning the best approach to remedying the impairment. Should Coors decide to proceed with the pilot study, the Division will identify segments 14b and 15 as “low priority” and refrain from any further TMDL implementation measures until such time as the study results are known and an appropriate approach to rectifying the identified problems is crafted in cooperation with basin stakeholders.
3. Upper Colorado Basin, Blue River segments 6 and 8 (Camp Cr, Jones Gulch, Keystone Cr, and Mozart Creek): The four identified tributaries in these two segments were proposed by the Division to be listed as impaired relative to measured pH levels. The evidence submitted raised questions regarding the representativeness of the data showing a possible standards exceedance, particularly in the absence of data regarding seasonality of pH levels for multiple years. Therefore, the Commission determined that it is more appropriate to include these specific tributaries on the Monitoring and Evaluation List at this time. Keystone Resorts has stated that it will complete a Use Attainability Analysis for Camp Creek and Jones Gulch, and that it is willing to include Keystone Creek and Mozart Creek in this analysis. The Commission believes that it is appropriate to revisit the attainment status of these segments following completion of the UAA. Depending on the results of this analysis, the adoption of site-specific seasonal pH standards is one option that can be considered. Indeed, the Commission notes that the evidence submitted to it showed that nearby snowmaking actually mitigates pH levels in the snow.
4. Uncompahgre River, segment 6b (Red Mountain Creek): The Commission does not believe that an impairment of the aquatic life use of segment 6b relative to a realistic expected condition for this segment has been shown. The Commission found that the aquatic community in segment 6a

is not the appropriate expected condition for this segment. The Commission endorses the Division's proposal not to list at this time, while moving forward to investigate segment 6b and make a recommendation to the Commission regarding the attainable aquatic life use and appropriate numeric standards in the context of the next basin-wide standards and classification rulemaking proceedings. However, it is uncertain at this time whether any future remediation activities in this area will improve the aquatic life use of this segment. In the absence of documentation that the attainable expected condition for this segment is an aquatic life use that is better than the current condition of this segment, it would be inappropriate to identify this segment as impaired.

5. Bear Creek segment 1a: This segment was proposed by the Division and by Trout Unlimited to be included on the Section 303(d) List. The evidence submitted demonstrated adverse impacts to the aquatic life use in this segment during 2002, and documented that the use had started to recover in 2003, although full recovery had not yet occurred. The evidence also demonstrated that the unusual and extreme drought conditions in 2002 were the determinative cause of the adverse impacts to aquatic life. Although there was evidence submitted indicating that ammonia concentrations or elevated temperatures may have adversely affected the aquatic life, the evidence demonstrated that these potentially harmful conditions would not have been present except for the drought. The Commission has concluded that this segment should be included on the Monitoring and Evaluation List for potential aquatic life, ammonia and temperature impairments, and that its status should be reconsidered in future updates of Regulations No. 93 and No. 94. Any evidence of impairment due to pollutants can be brought forth at the next listing hearing.
6. Lower Colorado segment 13b: This is an "all tributaries" segment that was proposed by the Division to be listed in its entirety for selenium. All of the ambient water quality data available in the record for this hearing was from tributaries on the north side of the Colorado River. In addition, there was testimony regarding significant differences in the geology on the north and south sides of the Colorado River in this area. Therefore, the Commission determined that it is appropriate that only the tributaries on the north side of this segment should be listed as impaired for selenium.
7. West Fork of Clear Creek, segment 5: The Commission found that the acute zinc standard in the West Fork of Clear Creek was exceeded more than once in three years. Because the chronic zinc standard is in attainment, and because Climax presented credible biological evidence that the aquatic life use classification is supported, the Commission determined that listing for acute zinc is not warranted in this instance. This segment is included on the Section 303(d) List as impaired for copper.
8. Middle South Platte segment 1: The Division proposed that the portion of this segment from Big Dry Creek to Highway 60 be included on the Section 303(d) List as impaired for dissolved oxygen during the months of August and September. The evidence submitted offered conflicting interpretations of what the available data for this segment show regarding attainment. Because this segment appears to be in compliance with dissolved oxygen standards based on the established convention of looking at the 15th percentile of the available data for the entire segment, the Commission determined that it is more appropriate at this time to include this segment on the Monitoring and Evaluation List for further assessment of dissolved oxygen conditions. The Commission also believes that future clarification of the appropriate methodology for assessing attainment of dissolved oxygen standards, e.g. within specific months of the year, would be helpful.

F. Plans to Resolve Uncertainty

Three parties presented plans to resolve uncertainty for segments that have temporary modifications based on uncertainty [see Regulation No. 31.7(3)(a)(iii)]. These segments will not be subject to the development of a TMDL as long as there is a plan in place that addresses the following:

- (1) There is an appropriate plan in place to remove the uncertainty;
- (2) The plan includes an implementation schedule that will resolve the uncertainty in a time frame consistent with Colorado's timeline for the development of TMDLs; and
- (3) The plan is being implemented in accordance with its terms.

The Commission found that the following segments have adequate plans. It is the Commission's intent to revisit these plans at the next listing cycle to determine if they continue to meet the Commission's intent.

1. Fountain Creek segment 6 (Monument Creek from the National Forest boundary to Fountain Creek): The selenium water quality standard for Fountain Creek segment 6 has a temporary modification for uncertainty pursuant to section 31.7(3)(a)(iii) of the Basic Standards. The City of Colorado Springs submitted an appropriate plan to remove the uncertainty
2. Lower Arkansas segment 1a (Arkansas River from Fountain Creek to the Colorado Canal): The selenium water quality standard for Lower Arkansas segment 1a has a temporary modification for uncertainty pursuant to section 31.7(3)(a)(iii) of the Basic Standards. The City of Pueblo submitted an appropriate plan to remove the uncertainty
3. Upper Yampa segment 13d (Dry Creek): In the 2003 Upper Colorado River rulemaking hearing, the Commission adopted a temporary modification (based on uncertainty) of 60 ug/L for selenium in Dry Creek. This temporary modification was based on five WQCD samples collected in Dry Creek in 2001 and 2002 near its confluence with the Yampa River. The Commission approved Seneca Coal Company's plan to monitor Dry Creek with the objective of determining the source or sources of selenium loading, where the loading is isolated in the lower portion of Dry Creek and to determine whether the loading is due to natural or irreversible man-induced sources.

93.11 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; FEBRUARY, 2006 RULEMAKING, EFFECTIVE DATE OF APRIL 30, 2006

The provisions of C.R.S. 25-8-202(1)(a), (b) and (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-401; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

A. Introduction

This regulation updates Colorado's List of Water-Quality-Limited Segments Requiring Total Maximum Daily Loads ("TMDLs") to reflect additional water quality information available since the Regulation was promulgated in 2004. This list was prepared to fulfill section 303(d) of the federal Clean Water Act ("Act") which requires that states submit to the U.S. Environmental Protection Agency ("EPA") a list of those waters for which technology-based effluent limitations and other required controls are not stringent enough to implement water quality standards.

B. List Development

1. Listing Methodology

The "Section 303(d) Listing Methodology - 2006 Listing Cycle" contains a description of the listing process, the criteria for listing, and the criteria for determination of TMDL priority. The Listing Methodology was developed through a public process and finalized as a policy at a Water Quality Control Commission administrative action hearing on May 9, 2005.

This Listing Methodology sets forth the criteria that generally were used to make decisions regarding which waters to include on the 2006 Section 303(d) List and the 2006 M&E List. However, this methodology was not adopted by the Commission as a rule. The Commission therefore has the flexibility to take into account other appropriate factors in making site-specific listing decisions.

2. Information Considered

The Commission has considered all existing and readily available information in developing the 2006 Section 303(d) List. In determining whether data and information are existing and readily available, it has taken into account such data and information as the Division has utilized in the preparation of those identification processes, calculations and models referenced in 40 CFR §130.7(a)(5)(i), (ii) and (iv) and that credible data and information presented in a readily usable format and submitted in reports provided to the Division as referenced in 40 CFR §130.7(a)(5)(iii). In addition, the Commission accepted credible data and information that was submitted in accordance with the listing process schedule, whether submitted by EPA or any other interested party. The Division also continues to independently collect and analyze new data on a rotating basin basis as part of its triennial review efforts and will utilize such data and information in making future listing determinations. Existing data which was not brought forward through one of the above mechanisms or otherwise presented to the Commission in accordance with the schedule was not treated as "readily available" for purposes of making the 2006 listing decisions. If submitted, such information will be considered in the next listing cycle.

C. Prioritization

The objective of prioritization is to identify those waterbody segments where the Division and the public should concentrate their resources. Priorities of High, Medium and Low were established according to section IV. of the 2006 Section 303(d) Listing Methodology.

D. Temporary Modifications and Plans to Eliminate Uncertainty

Consistent with the recent changes to the Basic Standards and Methodologies for Surface Water (Regulation No. 31) and the Discharge Permit Regulations (Regulation No. 61), the Commission deleted subsection 93.4 "Plans to Eliminate Uncertainty." The Statement of Basis for the June 2005 rulemaking hearing for Regulation No. 31 states:

The Commission recognizes that portions of the temporary modification provisions adopted in this rulemaking may be inconsistent with current provisions in Regulation No. 93. The Commission intends that the provisions adopted in this rulemaking will govern until appropriate revisions will be adopted in the Regulation No. 93 in the next rulemaking hearing reviewing that regulation.

In 2004, this provision was added to Regulation No. 93 to identify those waterbodies where work independent of the TMDL process was proceeding to identify the appropriate underlying standards. In these cases, TMDLs and permit limits were not to be based on the underlying standards until the uncertainty was resolved. The intent was that dischargers should not be forced to comply with underlying standards where there is ongoing work being done to resolve acknowledged uncertainty regarding the appropriateness of those underlying standards.

Dischargers are now protected from complying with underlying standards before the uncertainty is resolved by recent changes in the Basic Standards and the Permit Regulations. Now, for discharges to waters where a temporary modification has been adopted, a permit may contain compliance schedules that recognize this ongoing work and may extend beyond the end of the permit term. The Commission believes it appropriate for dischargers to focus their available resources on addressing uncertainty with respect to appropriate water quality standards, rather than on complying with standards that may change in a short time.

Consistent with this new approach to temporary modifications, the Commission intends that a more thorough consideration will be given to the causes and sources of non-attainment before temporary modifications are proposed. In cases where the appropriate way to address non-attainment of underlying standards is through the TMDL program, not through adoption of temporary modifications, the Commission may assign a higher TMDL priority to such waters.

E. Segment- Specific Issues

Fountain Creek segment 2a: The Division had proposed inclusion of this segment due to non-attainment of the assigned E. coli standard. The Division noted that its proposal erroneously identified the listing as a "low" priority. The Section 303(d) Listing Methodology, 2006 Listing Cycle indicates that TMDLs for waters in non-support of Recreation 1a use classifications be designated as "high" priority. The Commission has therefore adopted a "high" priority designation for this segment.

Fountain Creek segment 2b: This segment is the lowermost of three that comprise the mainstem of Fountain Creek. Both of the upper two segments are included on the List of Impaired Waters for E. coli. The Sierra Club had proposed that this lowermost segment should also be listed for E. coli. The Commission has decided that the Division's analysis of the available data is consistent with the procedures contained in the Section 303(d) Listing Methodology, 2006 Listing Cycle and that the results of that analysis do not support inclusion of this segment on the Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs.

North Fork Gunnison River segment 6: The Division had proposed that this "all tributary" segment be listed in its entirety for non-attainment of the aquatic life use-based chronic selenium standard. The Colorado River Water Conservation District provided evidence that the standard is, in fact, attained at several locations within this segment. It is therefore appropriate that only that portion of the segment for which non-attainment has been documented be included on the list. The Commission has identified the affected portion of the segment as "Cottonwood Creek" and has revised the proposal accordingly.

Uncompahgre River segment 6b (Red Mountain Creek): The Commission had in a February 2004 Rulemaking Hearing determined that there is not adequate data to support a finding of impaired Aquatic Life Use relative to the expected condition. Information offered in the 2006 hearing further reinforces this conclusion by demonstrating that the Commission's classification assumes an extremely limited aquatic life use in this segment. In a rulemaking hearing scheduled for June 12, 2006, the Commission will consider a proposal to delete the aquatic life use classification for this segment. The Commission has therefore opted not to include Red Mountain Creek on the 2006 Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs.

Lower Gunnison segment 2: The Division proposed that this segment be listed for selenium and temperature, with a "high" priority for each. In view of evidence that it may be appropriate to reconsider the cold water aquatic life classification of this segment prior to initiating a TMDL, the Commission chose to change the priority for the temperature listing to "low".

Lower Colorado River segment 3: The Division had initially proposed listing of this segment for ammonia. During discussions with the City of Grand Junction it was noted that during the course of the Division's assessment an error had been made relative to the dataset utilized. The Division subsequently modified its proposal to withdraw this segment from its proposal. The Commission has not included the segment on the 2006 Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs.

Lower Colorado River segment 13a (Salt Creek): Salt Creek was proposed by the Division to be listed for sediment based upon a study of this and other tributary segments performed in conjunction with the BLM and Chadwick and Associates. Mesa County objected to the inclusion of Salt Creek on the Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs, arguing that the assessment protocols used were inconsistent with Commission Policy 98-1, the Implementation Guidance for Determining Sediment Deposition Impacts to Aquatic Life in Streams and Rivers. The assessment performed utilized the same approach embodied in the Sediment Guidance with respect to comparison of the affected reach

to an expected condition. The validity of this comparative, expected condition analysis is not dependent on this being a high gradient, cobble bottom stream. The Commission has determined that the assessment adequately demonstrated non-attainment of the narrative sediment standard and consequent impairment of Salt Creek.

Bear Creek segment 1a: The Division proposed that this segment be retained on the Monitoring and Evaluation list for non-attainment of the assigned aquatic life use classification and for temperature. The evidence submitted demonstrated adverse impacts to trout populations at two stations (Bear Creek cabins and O'Fallon Park) situated in the upper reach of this segment since 2002 and documented that the use continued to recover well into 2004, although full recovery had not yet occurred. This evidence is consistent with the Commission's conclusion in 2004 that the demonstrative cause of adverse impacts to aquatic life was the extreme drought in 2002. The 2006 Listing Methodology states that "Data collected during or immediately after temporary events influencing the waterbody that are not representative of normal conditions shall typically be discounted in making the listing decision." Several parties argued that water quality conditions might have adversely affected the aquatic life. However, there was no evidence submitted demonstrating exceedance of the Mean Average Weekly Temperature criterion during 2004 or 2005, or demonstrating that impairment was otherwise caused by pollutants. The Commission has decided that the Division's interpretation of the available data is consistent with the procedures contained in the Section 303(d) Listing Methodology, 2006 Listing Cycle and has determined that this segment should be retained on the Monitoring and Evaluation List for aquatic life impairments and temperature, and that its status should be reconsidered in future updates of Regulations No. 93 and No. 94.

The fact that impacts to Bear Creek aquatic life continue to appear to be related to the 2002 extreme drought is an adequate and appropriate basis for including this segment on the Monitoring and Evaluation List, rather than the Section 303(d) List. However, the Commission also notes that, even if continuing impacts did not appear to be tied to the drought, where there is no evidence that a numerical standard has been exceeded, the Commission's practice has been to place waters on the Monitoring and Evaluation List if there is not evidence that a use impairment has been caused by a pollutant. The 2006 Listing Methodology states "Water bodies that are impaired but it is unclear whether the cause of impairment is attributable to pollutants as opposed to pollution will be placed on the M&E List." EPA's guidance for such circumstances differs. EPA's guidance says that where there is an impairment but there has not been a demonstration that the impact is not caused by a pollutant, the water segment should be included on the Section 303(d) List. Because this provision appears in EPA guidance only, and the Commission is aware of no specific provisions of the Clean Water Act or EPA regulations that would dictate this result, the Commission believes that it has policy discretion to use different approach – i.e., to refrain from listing unless a pollutant has been identified as the cause of the use impairment.

Clear Creek segment 13b (North Fork Clear Creek): The Division had proposed this segment be retained on the Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs for several parameters and for non-attainment of the assigned aquatic life use classification. The Commission has adopted this proposal, but notes that the segment attains the assigned numeric copper standard. The listing therefore does not include copper. Further, the Commission notes that the Division had proposed a "high" priority for completion of TMDLs for this segment, due to the fact that the North Fork of Clear Creek was included on the 1998 List of Impaired Waters and is therefore subject to provisions of the 1999 Settlement Agreement addressing TMDL development by the Division. The Commission has determined that a "medium" priority will be assigned for TMDL development, while recognizing that the Division remains obligated to completion of TMDLs for this segment by June 30, 2008. If the underlying standards are revised in the 2009 South Platte River basin rulemaking, TMDLs and/or Wasteload Allocations based on the superceded standards should be revisited.

Cache la Poudre segment 14 (Horsetooth Reservoir): The Division proposed inclusion of Horsetooth Reservoir on the Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs due to non-attainment of the dissolved oxygen standard. Data for a ten-year period of record was found to be representative of conditions in the Reservoir. The Commission determined that in this instance it is appropriate to consider data for more than the most recent five years, in view of evidence that the most recent five years include a potentially unrepresentative period of reservoir drawdown. While the available

data do not include samples spaced throughout a 24-hour period, the data are typical of that usually available for lakes and reservoirs. If diel variation were expected, it is likely that any such data would demonstrate a slight depression of dissolved oxygen concentration in the epilimnion during non-daylight hours. However, the area of non-attainment of dissolved oxygen in Horsetooth Reservoir is in the metalimnion, or middle layer of the reservoir. Testimony from Division staff indicated that it is unlikely that diel variation in dissolved oxygen levels would be expected in the metalimnion, since this deeper layer is unlikely to be affected by photosynthesis that occurs in the epilimnion. The Commission interprets the reference in the Listing Methodology to lake and reservoir samples representative of diel variation to apply only in those factual circumstances (e.g. dissolved oxygen in the epilimnion) where such variation would be expected.

The assessments and recommendations by the Division regarding Horsetooth Reservoir were consistent with the Section 303(d) Listing Methodology, 2006 Listing Cycle. However, the Commission notes that this hearing identified a need to provide further clarifications regarding appropriate procedures for assessing compliance with dissolved oxygen standards, particularly for lakes and reservoirs. The Commission encourages the Division to pursue such clarifications in preparation of the 2008 Listing Methodology, including, e.g., addressing variations in attainment status from year-to-year and further clarification of what constitutes representative data.

Evidence regarding the status of aquatic life in Horsetooth Reservoir does not override the fact that the data demonstrate a long term standards exceedance. The Commission's practice has been to list waterbodies on the Section 303(d) List whenever representative data demonstrate non-attainment of a numerical standard, including dissolved oxygen. For other waters listed for non-attainment of dissolved oxygen, the Commission has not required evidence of the cause of the non-attainment. Although the provisions of the 2006 Listing Methodology arguably contain potentially conflicting language on this point, the Commission's practice has not been to apply the provision regarding "water bodies that are impaired but it is unclear whether the cause of impairment is attributable to pollutants" to waters with dissolved oxygen impairments. Moreover, although the Commission was willing to consider listing Horsetooth Reservoir on the M&E List if the cause of the dissolved oxygen impairment was recent reservoir draw downs (i.e., reservoir operations), the evidence did not support this conclusion.

Middle South Platte River segment 03a (Horse Creek Reservoir): The Division proposed that Horse Creek Reservoir be included on the Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs due to non-attainment of the assigned pH standard. The recommendation was based upon a representative dataset including four years of water quality monitoring results. The Commission has determined that inclusion of the Reservoir on the Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs for pH is appropriate and consistent with the Section 303(d) Listing Methodology, 2006 Listing Cycle. Dissolved oxygen data for the same four-year period demonstrate attainment of the dissolved oxygen standard. Although EPA questioned the Division's current practice of averaging dissolved oxygen data within the sampling profile or profiles for a single sampling event, the Commission has determined that this practice is acceptable and appropriate, and consistent with the 2006 Listing Methodology. EPA's proposal that Horse Creek Reservoir be listed for dissolved oxygen is based upon analytical procedures that are inconsistent with the Division's current assessment practice. The Commission has determined that the Reservoir is not impaired with respect to the dissolved oxygen standard.

Upper Colorado River segment 07b (Muddy Creek): The Division had proposed the listing of Muddy Creek for non-attainment of the assigned temperature standard. The Colorado River Water Conservation District objected to the Division's proposal and has provided evidence suggesting that the USGS sampling station (data from which formed the basis for the Division's proposal) is situated such that any temperature data generated is likely not representative. The Commission has therefore included the segment on the 2006 Monitoring and Evaluation List to allow further examination of temperature data from this station.

Upper Yampa River segment 07b: This segment comprises a portion of the Yampa River mainstem. The Division had proposed that this segment be listed for temperature, again based upon USGS monitoring

data. The Colorado River Water Conservation District provided evidence concerning the location of the USGS sampling station below the Steamboat Springs hot springs discharge. Again parties have agreed that such data is likely not representative of instream conditions. The Commission has placed the segment on the 2006 Monitoring and Evaluation List.

Upper Yampa River segment 20 (First Creek, Elkhead Creek): These waters are classified for Recreation Use 1a, and are assigned a numeric E coli standard of 126 org./100 mL. Ambient E. coli levels exceed the assigned numeric standard. The U. S. Forest Service has raised concerns regarding the current assigned Recreation Use and the associated numeric standards. The Commission has included the segment on the 2006 Section 303(d) List of Water-Quality-Limited Segments Requiring TMDLs based upon the current classification and standards. However, it is the intent of the Commission that these issues be examined in the context of the 2008 Upper Colorado surface water standards rulemaking prior to the initiation of the TMDL development process.

PARTIES TO THE RULEMAKING

1. The City of Grand Junction
2. The Colorado Division of Wildlife
3. Evergreen Trout Unlimited and Colorado Trout Unlimited
4. The City of Colorado Springs
5. The City of Black Hawk
6. The Colorado River Water Conservation District
7. Friends of Bear Creek
8. Big Thompson Watershed Forum
9. The Bear Creek Watershed Association
10. The Northern Colorado Water Conservancy District
11. U.S. Environmental Protection Agency, Region 8
12. Evergreen Metropolitan District and West Jefferson County Metropolitan District
13. USDA Forest Service, Medicine Bow-Routt National Forests
14. Colorado Rock Products Association
15. City and County of Broomfield
16. Climax Molybdenum Company
17. The Metro Wastewater Reclamation District
18. Mount Carbon Metropolitan District

PROPOSED

93.12 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; FEBRUARY, 2008 RULEMAKING

The provisions of C.R.S. 25-8-202(1)(a), (b) and (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-401; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

A. Introduction

This regulation updates Colorado's List of Water-Quality-Limited Segments Requiring Total Maximum Daily Loads ("TMDLs") to reflect additional water quality information available since the Regulation was promulgated in 2006. This list was prepared to fulfill section 303(d) of the federal Clean Water Act ("Act") which requires that states submit to the U.S. Environmental Protection Agency ("EPA") a list of those waters for which technology-based effluent limitations and other required controls are not stringent enough to implement water quality standards.

B. List Development

1. Listing Methodology

The "Section 303(d) Listing Methodology - 2008 Listing Cycle" contains a description of the listing process, the criteria for listing, and the criteria for determination of TMDL priority. The Listing Methodology was developed through a public process and finalized as a policy at a Water Quality Control Commission administrative action hearing on May 15, 2007.

This Listing Methodology sets forth the criteria that generally were used to make decisions regarding which waters to include on the 2008 Section 303(d) List and the 2008 M&E List. However, this methodology was not adopted by the Commission as a rule. The Commission therefore has the flexibility to take into account other appropriate factors in making site-specific listing decisions.

2. Information Considered

The Commission has considered all existing and readily available information in developing the 2008 Section 303(d) List. In determining whether data and information are existing and readily available, it has taken into account such data and information as the Division has utilized in the preparation of those identification processes, calculations and models referenced in 40 CFR §130.7(a)(5)(i), (ii) and (iv) and that credible data and information presented in a readily usable format and submitted in reports provided to the Division as referenced in 40 CFR §130.7(a)(5)(iii). In addition, the Commission accepted credible data and information that was submitted in accordance with the listing process schedule, whether submitted by EPA or any other interested party. The Division also continues to independently collect and analyze new data on a rotating basin basis as part of its triennial review efforts and will utilize such data and information in making future listing determinations. Existing data which was not brought forward through one of the above mechanisms or otherwise presented to the Commission in accordance with the schedule was not treated as "readily available" for purposes of making the 2008 listing decisions. Such information will be considered in the next listing cycle.

C. Prioritization

The objective of prioritization is to identify those waterbody segments where the Division and the public should concentrate their resources. Priorities of High, Medium and Low were established according to section IV. of the 2008 Section 303(d) Listing Methodology.

D. Fish Consumption Advisory Listings

Consistent with the 2008 Section 303(d) Listing Methodology, the Division proposed to include 12 segments on the 2008 303(d) List for nonattainment of the aquatic life use due to fish consumption advisories for mercury. The 2008 Section 303(d) Listing Methodology, states:

Fish Consumption Advisories are issued by the Colorado Department of Public Health and Environment (“CDPHE”) in instances where analysis of fish tissue samples provides documentation of a public health risk. Issuance of a FCA by CDPHE indicates impairment of an Aquatic Life Use classification for any waters so classified.

The 2006 303(d) List included three of these reservoirs for impairment due to mercury: one in the Rio Grande basin: Sanchez Reservoir (Rio Grande, segment 30), and two in the San Juan basin: McPhee Reservoir (Dolores, segment 4) and Narraguinnep Reservoir (La Plata, segment 11). These listing were changed by the Commission to specify that the listing was based on non-attainment of the aquatic life. This is consistent with the 2008 Listing Methodology and avoids confusion that there is non-attainment of the mercury standard in the water column.

The Commission has included 12 segments on the 2008 303(d) List for nonattainment of the aquatic life use due to mercury fish consumption advisories for 13 lakes or reservoirs. The Commission also included one listing based on non-attainment of the aquatic life use due to a PCE fish consumption advisory in Willow Springs Ponds, Fountain Creek, segment 7a.

E. Discussion of Issues Raised in the Hearing

F. Segment- Specific Issues

EXHIBIT 2

WATER QUALITY CONTROL DIVISION

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION**

5 CCR 1002-94

REGULATION #94

COLORADO'S MONITORING AND EVALUATION LIST

ADOPTED: March 17, 2004

EFFECTIVE: May 3, 2004

ADOPTED: March 14, 2006

EFFECTIVE: April 30, 2006

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION**

5 CCR 1002-94

REGULATION #94

COLORADO'S MONITORING AND EVALUATION LIST

94.1 Authority

These regulations are promulgated pursuant to section 25-8-101 et seq C.R.S. as amended, and in particular, 25-8-202 (1) (a), (b), (i), (2) and (6); 25-8-203 and 25-8-204.

94.2 Purpose

This regulation establishes Colorado's Monitoring and Evaluation List. This list identifies water bodies where there is reason to suspect water quality problems, but there is also uncertainty regarding one or more factors, such as the representative nature of the data. Water bodies that are impaired, but it is unclear whether the cause of impairment is attributable to pollutants as opposed to pollution, are also placed on the Monitoring and Evaluation List.

94.3 Water Bodies Identified for Monitoring and Evaluation

WBID	Segment Description	Portion	Parameter
COAR	Arkansas River Basin		
COARFO03	Tributaries to Fountain Creek on USFS or AFA lands, Monument Creek to Arkansas River	Fourmile Creek, on USFS Land	sediment
COARFO03	Tributaries to Fountain Creek on USFS or AFA lands, Monument Creek to Arkansas River	Bear Creek on USFS Land	sediment
COARFO03	Tributaries to Fountain Creek on USFS or AFA lands, Monument Creek to Arkansas River	Cheyenne Creek, on USFS Land	sediment

WBID	Segment Description	Portion	Parameter
<u>COARLA01b</u>	<u>Arkansas River, Colorado Canal headgate to John Martin Reservoir</u>	<u>below Purgatoire River</u>	<u>U</u>
<u>COARLA05b</u>	<u>Trinidad Reservoir, Long Canyon Reservoir, and Lake Dorothy</u>	<u>Trinidad Lake</u>	<u>D.O.</u>
COARLA07	Purgatoire River, I-25 to Arkansas River	all	sediment
<u>COARLA09a</u>	<u>Mainstem of Adobe Creek and Gageby Creek...</u>	<u>Horse Creek</u>	<u>Cu</u>
COARLA09c	Rule Creek, Muddy Creek, Caddoa Creek, Clay Creek, Cat Creek...	Rule Creek	Zn
<u>COARLA11</u>	<u>John Martin Reservoir</u>	<u>all</u>	<u>Se</u>
COARMA04a	Wildhorse Creek	all	NO ₂₇ -NO ₃
<u>COARMA06</u>	<u>St Charles River from CF&I diversion canal to the Arkansas River</u>	<u>all</u>	<u>U</u>
<u>COARMA07</u>	<u>Greenhorn Creek, including all tributaries, from source to Greenhorn Highline Diversion Dam; Graneros Creek; North Muddy Creek</u>	<u>Below Greenhorn Creek trailhead</u>	<u>Cu, Zn</u>
<u>COARMA09</u>	<u>Greenhorn Creek, including tributaries, from Greenhorn Highline Diversion Dam to the St. Charles River</u>	<u>all</u>	<u>Se</u>
<u>COARMA14</u>	<u>Cucharas River from the Walsenburg public water supply to the outlet of Cucharas Reservoir</u>	<u>all</u>	<u>E.coli</u>
COARMA18a	Boggs Creek	all	NO ₂₇ -NO ₃₇ -D.O.-U
<u>COARUA05</u>	<u>All tributaries to the Arkansas river including wetlands, lakes and reservoirs from the source to Browns Creek</u>	<u>Turquoise Lake</u>	<u>D.O.</u>
COARUA13	Tributaries of Arkansas River on USFS Land, Browns Creek to Pueblo Reservoir	E. Beaver Creek on USFS Land, below Penrose-Rosemont Reservoir, Middle Beaver Creek	sediment

WBID	Segment Description	Portion	Parameter
COARUA20	Fourmile Creek and tributaries, Cripple Creek to Arkansas River	North Fork Wilson Creek below Independence Mine	As, Cu
<u>COARUA27</u>	<u>Mainstem of Eightmile Creek, including all tributaries, wetlands, lakes and reservoirs, from the source to the mouth of Phantom Canyon; Brush Hollow Reservoir</u>	<u>Brush Hollow Reservoir</u>	<u>pH</u>
COGU	Gunnison River Basin		
COGULD03	Tributaries to Dolores River from Bradfield Ranch to Utah border	Salt Creek	Se
COGULG02	Gunnison River, Uncompaghre River to Colorado River	all	sediment
<u>COGULG04b</u>	<u>All lakes and reservoirs tributary to the Gunnison River and not on national forest lands from the outlet of Crystal Reservoir to the Colorado River</u>	<u>Jatz Bottomlands</u>	<u>Se</u>
COGULG07	Surface, Ward, Tongue, Youngs, and Kiser Creeks not on USFS land	Tongue Creek, Ward Creek	Se
COGULG07	Surface, Ward, Tongue, Youngs, and Kiser Creeks not on USFS land	Surface Creek	Fe (Trec)
COGULG11	Tributaries to the Smith Fork	Lunch Creek	sediment
<u>COGUNF06a</u>	<u>Tributaries to the North Fork of the Gunnison not on USFS lands</u>	<u>Coal Gulch, Hawksnest Creek, Gribble Gulch</u>	<u>Fe(Trec)</u>
<u>COGUNF06b</u>	<u>Bear Creek, Reynolds Creek, Bell Creek, McDonald Creek, Cottonwood Creek, Love Gulch, Cow Creek, Dever Creek, German Creek, Miller Creek, Stevens Gulch, Big Gulch, Stingley Gulch and Alum Gulch not on national forest lands from the source to the North Fork of the Gunnison River</u>	<u>Cottonwood Creek</u>	<u>Fe(Trec)</u>
<u>COGUSM02</u>	<u>Tributaries to the San Miguel River from the source to Leopard Creek</u>	<u>Bilk Creek</u>	<u>Cd</u>
<u>COGUSM03a</u>	<u>San Miguel River from Bridal Veil and Ingram Creeks to Marshall Creek</u>	<u>all</u>	<u>Cd</u>
COGUSM06a	Ingram Creek, source to San Miguel River	all	Cd, Mn

WBID	Segment Description	Portion	Parameter
<u>COGUSM06b</u>	<u>Marshall Creek and tributaries from source to San Miguel River</u>	<u>all</u>	<u>Cu, Pb</u>
COGUSM07a	Howard Fork and tribs	all	Fe(Tree)
COGUSM07b	Waterfall Creek and tributaries, source to Howard Fork	all	Pb
<u>COGUUG07</u>	<u>Slate River from Source to Coal Creek</u>	<u>Below Oh-Be-Joyful Creek</u>	<u>Cd</u>
COGUUG09	Tributaries to Slate River exc in wilderness areas	Redwell Basin	Cd, Cu, Pb, Zn
<u>COGUUG10</u>	<u>Oh-Be-Joyful Creek mainstem and Redwell Basin tribs below wilderness area</u>	<u>all</u>	<u>Cd, Cu, Fe, Pb, Zn</u>
<u>COGUUG16</u>	<u>Ohio Creek and tributaries source to Gunnison River</u>	<u>all</u>	<u>Zn</u>
<u>COGUUG17</u>	<u>Antelope Creek and tributaries source to Gunnison River</u>	<u>all</u>	<u>D.O.</u>
<u>COGUUG18</u>	<u>Tomichi Creek source to Gunnison River</u>	<u>all</u>	<u>E. coli</u>
COGUUG26	Tributaries to Gunnison River between Blue Mesa & Crystal Reservoir on USFS Land	Camp Creek	Cu, Pb
<u>COGUUG29a</u>	<u>Lake Fork of the Gunnison River and tributaries from source to Blue Mesa Reservoir</u>	<u>Deadman Gulch</u>	<u>Cd, Cu, Mn, Zn</u>
<u>COGUUG31</u>	<u>Palmetto Gulch Creek and tributaries</u>	<u>all</u>	<u>Cu</u>
<u>COGUUG32</u>	<u>North Fork of Henson Creek and tributaries from source to Henson Creek</u>	<u>all</u>	<u>Pb, Zn</u>
COGUUN03	Uncompahgre River, Red Mountain Creek to Montrose	all	Zn
<u>COGUUN03b</u>	<u>Ridgway Reservoir</u>	<u>Ridgway Reservoir</u>	<u>D.O.</u>
COGUUN04a	Uncompahgre River, HWY 90 to La Salle Road	all	sediment

WBID	Segment Description	Portion	Parameter
COGUUN04b	Uncompahgre River, La Salle Road to Confluence Park	all	sediment
COGUUN04c	Uncompahgre River, Confluence Park to Gunnison River	all	sediment
COGUUN05	Tributaries of Uncompahgre River, source to Dexter Creek	Corkscrew Gulch	Cd, Cu, Pb, Zn
<u>COGUUN06a</u>	<u>Red Mountain Creek from source to East Fork Red Mountain Creek</u>	<u>all</u>	<u>Cu</u>
<u>COGUUN07</u>	<u>Gray Copper Gulch from source to Red Mountain Creek</u>	<u>all</u>	<u>Fe(Trec)</u>
COGUUN08	Mineral Creek, source to Uncompahgre River	all	Cd, Cu, Zn
COGUUN09	Canyon Creek, Imogene Creek, Sneffles Creek	Canyon Creek	Pb
<u>COGUUN10</u>	<u>All tributaries to the Uncompahgre River from Dexter Creek to the South Canal</u>	<u>Alkali Creek</u>	<u>Se</u>
<u>COGUUN11</u>	<u>Coal, Dallas, Cow, Billy, Onion, Beaton, Beaver and Pleasant Valley Creeks</u>	<u>Billy Creek, Onion Creek</u>	<u>Se</u>
COGUUN15	Portions of Happy Canyon, Horsefly Creek, and Dry Creek	Dry Creek Watershed	sediment
COLC	Lower Colorado River Basin		
COLCLC01	Colorado River, Roaring Fork River to Parachute Creek	all	sediment
COLCLC02	Colorado River, Parachute Creek to Gunnison River	all	sediment
COLCLC04a	Tributaries to Colorado River, Roaring Fork to Parachute Creek Exc. specific segments	Mamm Creek, S. Canyon Creek	Fe (Trec)
<u>COLCLC04a</u>	<u>Tributaries to Colorado River, Roaring Fork to Parachute Creek Exc. specific segments</u>	<u>Alkali Creek</u>	<u>E.coli, Cu, Fe(Trec), Pb, Zn</u>

WBID	Segment Description	Portion	Parameter
<u>COLCLC04a</u>	<u>Tributaries to Colorado River, Roaring Fork to Parachute Creek Exc. specific segments</u>	<u>Indian Wash</u>	<u>D.O., E.coli, Fe(Trec), Se</u>
<u>COLCLC04b</u>	<u>South Canyon Hot Springs</u>	<u>all</u>	<u>D.O., Se</u>
<u>COLCLC09a</u>	<u>Rifle Creek, including tributaries from source to County Road 251</u>	<u>West Rifle Creek</u>	<u>Fe(Trec)</u>
<u>COLCLC10</u>	<u>Rifle Creek, including tributaries from County Road 251 to Colorado River</u>	<u>all</u>	<u>E.coli</u>
<u>COLCLC11h</u>	<u>Parachute Creek from West and East Forks to the confluence with Colorado River</u>	<u>all</u>	<u>Fe(Trec)</u>
<u>COLCLC14b</u>	<u>Roan Creek, including tributaries from Clear Creek to the confluence with the Colorado River</u>	<u>all</u>	<u>E.coli, Fe(Trec)</u>
<u>COLCLC15</u>	<u>Plateau Creek, including tributaries from source to Colorado River</u>	<u>all</u>	<u>Fe(Trec), Se</u>
<u>COLCLC19</u>	<u>Lakes and reservoirs tributary to the Colorado River from Parachute Creek to the Utah border</u>	<u>Maggio Pond, Peters Ponds 1, 2, 3, & 4</u>	<u>Se</u>
<u>COLCLY02</u>	<u>Yampa River, Lay Creek to Green River</u>	<u>all</u>	<u>sediment</u>
<u>COLCLY03c</u>	<u>Milk Creek and tributaries from CR 15 to the Yampa</u>	<u>Stinking Gulch</u>	<u>Cu, Fe(Trec), Se, Zn</u>
<u>COLCLY03e</u>	<u>Good Spring Creek above Wilson Reservoir</u>	<u>all</u>	<u>Se</u>
<u>COLCLY07</u>	<u>Little Bear Creek, including all tributaries from source to Dry Creek</u>	<u>all</u>	<u>Cu, Zn</u>
<u>COLCLY16</u>	<u>Little Snake River, Powder Wash to Yampa</u>	<u>all</u>	<u>sediment, f-eoliform</u>
<u>COLCLY17a</u>	<u>Tributaries to the Little Snake River</u>	<u>all</u>	<u>E.coli, Fe(Trec)</u>
<u>COLCLY18</u>	<u>Slater Creek, including tributaries from source to Little Snake Creek</u>	<u>all</u>	<u>Se</u>
<u>COLCLY22b</u>	<u>Vermillion Creek from Hwy 318 to Green River</u>	<u>all</u>	<u>E.coli, Fe(Trec)</u>

WBID	Segment Description	Portion	Parameter
<u>COCLWH07</u>	<u>Mainstem of the White River from a point above the confluence with Miller Creek to a point immediately above the confluence with Piceance Creek</u>	<u>White River, blw Meeker</u>	<u>Cu</u>
<u>COLCWH09</u>	<u>Tributaries to White River, confluence of N. & S. Forks to Piceance Creek</u>	<u>Flag Creek</u>	<u>pH</u>
<u>COLCWH10b</u>	<u>Mainstem of Big Beaver Creek, Miller Creek, and North Elk Creek, including tributaries, from their boundaries with the National Forest Lands to their confluences with the White River. Mainstem of Coal Creek, including all tributaries from the source to the confluence with the White River</u>	<u>Coal Creek</u>	<u>Se</u>
<u>COLCWH11</u>	<u>Rio Blanco Reservoir</u>	<u>Rio Blanco Reservoir</u>	<u>pH</u>
<u>COLCWH12</u>	<u>Mainstem of the White River from a point abv the confluence with Piceance Creek to a point abv the confluence with Douglas Creek, including Taylor Draw Reservoir</u>	<u>White River, downstream of Piceance Creek</u>	<u>Fe(Trec)</u>
<u>COLCWH13b</u>	<u>Mainstem of Yellow Creek, including all tributaries from the source to the confluence with the White River</u>	<u>Corral Gulch, Stake Springs, Boxelder Gulch, Duck Creek</u>	<u>Fe(Trec), Se</u>
<u>COLCWH16</u>	<u>All tributaries to Piceance Creek, including all wetlands, lakes and reservoirs, from the source to the confluence with the White River</u>	<u>Ryan Gulch</u>	<u>E.coli, Fe(Trec)</u>
<u>COLCWH20</u>	<u>Mainstems of Black Sulphur and Hunter Creeks from their sources to the confluences with Piceance Creek</u>	<u>Black Sulphur Creek</u>	<u>Fe(Trec)</u>
<u>COLCWH22</u>	<u>Tributaries to White River, Douglas Creek to Colorado/Utah border</u>	<u>Soldier Creek, Strawberry Creek</u>	<u>sediment, Cu, Zn</u>
<u>COLCWH23</u>	<u>Mainstem of East Douglas Creek and West Douglas Creek including all tributaries from their sources to the confluence</u>	<u>East Douglas Creek</u>	<u>Fe(Trec)</u>
CORG	Rio Grande River Basin		

WBID	Segment Description	Portion	Parameter
<u>CORGAL02</u>	<u>Alamosa River, from source to confl with Alum Creek</u>	<u>Fe(Trec) Mainstem, pH Upper Tribs</u>	<u>pH, Fe(Trec)</u>
<u>CORGAL03b</u>	<u>Alamosa River, from Wightman Fork to Fern Creek</u>	<u>Above Jasper Creek</u>	<u>Se</u>
<u>CORGAL11</u>	<u>La Jara Creek from source to Hot Creek</u>	<u>La Jara Reservoir</u>	<u>pH, Cu, Se, Zn</u>
<u>CORGAL14</u>	<u>Conejos River including tributaries, wetlands, lakes, and reservoirs from source to Fox Creek</u>	<u>Platoro Reservoir</u>	<u>pH</u>
<u>CORGAL20</u>	<u>Rio Grande, tribs within the Rio Grande Forest</u>	<u>Bitter Creek, Wightman Fork Tribs – pH, Mn</u>	<u>pH, Cu, Fe(Trec), Mn, Zn</u>
<u>CORGCB02</u>	<u>La Garita Creek, source to 38 Rd, Carnero Creek, source to 42 Rd</u>	<u>La Garita Creek</u>	<u>Fe(Trec)</u>
<u>CORGCB05</u>	<u>San Luis Creek, from Piney Creek to San Luis Lake</u>	<u>Lower San Luis Creek</u>	<u>D.O.</u>
<u>CORGCB08</u>	<u>Kerber Creek, source to abv Cocomongo Mill Site, Squirrel Creek from source to abv Bear Creek. Brewery Creek from source to Elkhorn Gulch</u>	<u>Squirrel Creek</u>	<u>Cd, Cu, Zn, Fe(Trec)</u>
<u>CORGRG02</u>	<u>Rio Grande River, source to Willow Creek</u>	<u>S Clear Creek</u>	<u>Fe(Trec)</u>
<u>CORGRG04</u>	<u>Rio Grande River, Willow Creek to Alamosa County line</u>	<u>abv Willow Creek to Wagon Wheel Gap</u>	<u>Pb</u>
<u>CORGRG05</u>	<u>Rio Grande River, abv Willow Creek to Del Norte</u>	<u>Nelson Creek</u>	<u>Mn</u>
<u>CORGRG13</u>	<u>Rio Grande River, Conejos County Road G to Colorado/New Mexico border</u>	<u>all</u>	<u>sediment</u>
<u>CORGRG27</u>	<u>Smith Reservoir</u>	<u>Smith Reservoir</u>	<u>pH</u>
COSJ	San Juan River Basin		
<u>COSHLP03a</u>	<u>All Tributaries to the La Plata River from Hay Gulch to the Southern Ute Indian reservation boundary</u>	<u>Cherry Creek</u>	<u>Fe(Trec)</u>
<u>COSJLP04</u>	<u>Mancos River and tributaries above HWY</u>	<u>E. Mancos River</u>	<u>pH, Zn</u>

WBID	Segment Description	Portion	Parameter
	160		
COSJLP08a	Tributaries to McElmo Creek	Mud Creek, <u>Crow Canyon</u>	Fe(Trec), Se, NO ₃
COSJLP08a	Tributaries to McElmo Creek	Crow Canyon	Fe(Trec), NO₃
COSJLP08a	Tributaries to McElmo Creek	Hartmann Draw, Ritter Draw	Fe(Trec),
COSJPI06a	Tributaries to the Piedra River	Stollsteimer Creek above Southern Ute Boundary	sediment
COSHS03	<u>Little Navajo River, including tributaries from the San Juan-Chama diversion to the San Juan River</u>	<u>all</u>	<u>E.coli</u>
COSJSJ09a	Mainstem Rio Blanco River, wilderness area to Southern Ute Reservation	Lower Rio Blanco R blw Hwy 84	sediment
COSP	South Platte River Basin		
COSPBD01	Mainstem of Big Dry Creek, including all tributaries, lakes, reservoirs and wetlands, from the source to the confluence with the South Platte River.	Big Dry Creek below York Street	Fe(Trec)
COSPBE01a	Mainstem of Bear Creek, Source to Harriman Ditch	below Evergreen Lake	Aquatic Life Use, temperature
COSPBE01c	Bear Creek Reservoir and Soda Lakes	Bear Creek Reservoir	D.O.
COSPBO08	All tributaries to South Boulder Creek, including all lakes, reservoirs and wetlands from South Boulder Road to the confluence with Boulder Creek and all tributaries to Coal Creek, including all lakes, reservoirs and wetlands from Highway 93 to the confluence with Boulder Creek	Rock Creek	E. coli, Fe (trec), Se
COSPBO09	Boulder Creek, S. Boulder Creek to Coal Creek	all	Aquatic Life
COSPBO10	Boulder Creek, Coal Creek to St. Vrain Creek	all	Aquatic Life

WBID	Segment Description	Portion	Parameter
COSPBT02	<u>Big Thompson River and tribs, RMNP to Home Supply Canal diversion</u>	all	Ag, Sulfide
COSPBT04b	Big Thompson River, Greeley-Loveland Canal diversion to CR11H	all	Se
COSPBT09	Little Thompson River, Culver Ditch to Big Thompson River	all	Aquatic Life Use
COSPCH02	Cherry Creek Reservoir	all	D.O.
COSPCP10	Cache La Poudre River, Monroe Canal to Shields St.	below the confluence with the North Fork	Aquatic Life Use
COSPLS001	S. Platte River, Weld/Morgan Co. line to CO/NE line	All	Aquatic Life Use
COSPRES03	N. Fork Republican River source to stateline	all	sediment
COSPSV02	St. Vrain Creek, RMNP to Hygiene Rd.	below Button Rock Reservoir	sediment
COSPSV03	St. Vrain Creek, Hygiene Rd. to S. Platte River	all	Aquatic Life Use, <i>E. coli</i>
COSPUS02a	Tributaries to S. Platte River, source to Tarryall Creek	Salt Creek d/s of N. Fork, on USFS Land	sediment, temperature
COSPUS02a	Tributaries to S. Platte River, source to Tarryall Creek	Twin Creek, on USFS Land	temperature
COSPUS03	Tributaries to S.Platte River, Tarryall Creek to N. Fk. S. Platte River	Pine Creek, on USFS Land	sediment
COSPUS03	Tributaries to S.Platte River, Tarryall Creek to N.Fk.S.Platte R	Sugar Creek, on USFS Land	sediment
COSPUS03	Tributaries to S.Platte River, Tarryall Creek to N.Fk.S.Platte R	Trail Creek, on USFS Land	sediment, temperature
COSPUS03	Tributaries to S.Platte River, Tarryall Creek to N.Fk.S.Platte R	Wigwam Creek, Flying G Ranch to S. Platte River	sediment
COSPUS03	Tributaries to S.Platte River, Tarryall Creek to N.Fk.S.Platte R	Spring Creek and tributaries, on USFS Land	sediment

WBID	Segment Description	Portion	Parameter
COSPUS03	Tributaries to S.Platte River, Tarryall Creek to N.Fk.S.Platte R	Horse Creek, on USFS Land	sediment, temperature
COSPUS04	N. Fk. S. Platte River & Tributaries, source to S.Platte R	N Fk S Platte R, Buffalo Cr to S Platte R	sediment
COSPUS04	N. Fk. S. Platte River & Tributaries, source to S.Platte R	Buffalo Ck, Indian Ck to S Platte R	sediment
COSPUS04	N. Fk. S. Platte River & Tributaries, source to S. Platte R	Kenosha Creek	sediment
COSPUS05a	Geneva Creek above Scott Gomer Creek	all	Cd, Cu, Zn
COSPUS05b	Mainstem Geneva Creek, Scott Gomer Creek to N. Fork S. Platte River	all	sediment
COSPUS06a	S. Platte River, N. Fk. S. Platte River to Chatfield Reservoir	S Platte R, N Fk S Platte to Strontia Spg. Res	sediment
COSPUS11b	Tributaries to W. Plum Creek, not on USFS Land	Spring Creek, Bear Creek	Aquatic Life Use
COUC	Upper Colorado River Basin		
COUCBL03	Dillon Reservoir and tribs	Dillon Reservoir	PO ₄
COUCBL03	Dillon Reservoir and tribs	Gold Run Gulch below Jessie Mine	Cd, Zn
COUCBL03	Dillon Reservoir and tribs	South Branch Swan Rive below Royal Tiger Mine	Zn
COUCBL06	Snake River and tributaries, source to Dillon Reservoir	Camp Creek, Jones Gulch	pH
COUCBL08	Keystone Ck, Chihuahua Ck, N Fk Snake R and all tribs	Keystone Creek, Mozart Creek	pH
<u>COUCEA10</u>	<u>All tributaries to the Eagle River from Lake Creek to the Colorado River</u>	<u>Eby Creek, Gypsum Creek, Bursh Creek</u>	<u>Se</u>
<u>COUCBL</u>	<u>All tributaries to the Blue River, including wetlands, from the outlet of Dillon Reservoir to the outlet of Green Mountain Reservoir</u>	<u>Slate Creek</u>	<u>E.coli</u>

WBID	Segment Description	Portion	Parameter
<u>COUCBL20</u>	<u>Mainstem of Elliott Creek and Spruce Creek including all tributaries and wetlands from their sources to the confluence with the Blue River</u>	<u>Spruce Creek</u>	<u>Fe(Trec)</u>
COUCNP01	Tribs to the N Platte & Encampment Rivers w/in Wilderness Areas	South Fork Big Creek	Cu, <u>E.coli</u>
COUCNP04	<u>All tributaries to N. Platte River except segments 1, 5, 6, 7</u>	Grizzly Creek, Little Grizzly Creek	Aquatic Life Use
<u>COUCNP04</u>	<u>All tributaries to N. Platte River except segments 1, 5, 6, 7</u>	<u>Little Grizzly Creek</u>	<u>E.coli, Fe(Trec)</u>
COUCNP04	<u>All tributaries to N. Platte River except segments 1, 5, 6, 7</u>	Snyder Creek, Parkview Creek Watershed	sediment
<u>COUCNP04</u>	<u>All tributaries to N. Platte River except segments 1, 5, 6, 7</u>	<u>Lake John, North Delaney Lake</u>	<u>pH</u>
<u>COUCNP04</u>	<u>All tributaries to N. Platte River except segments 1, 5, 6, 7</u>	<u>Lake Creek</u>	<u>pH, Fe(Trec)</u>
<u>COUCNP07</u>	<u>Government Creek, State Forest to Canadian River, Spring Creek, source to Illinois River</u>	<u>Spring Creek</u>	<u>pH, D.O.</u>
<u>COUCRF03a</u>	<u>Roaring Fork including all tributaries and wetlands from Hunter Creek to the Colorado River except segments 3b through 10</u>	<u>Capitol Creek</u>	<u>Se</u>
<u>COUCRF03b</u>	<u>Red Canyon Creek including all tributaries and wetlands from the source to the Roaring Fork except Landis Creek from source to Hopkins Ditch Diversion</u>	<u>Landis Creek</u>	<u>Fe(Trec)</u>
<u>COUCRF10</u>	<u>Thompson Creek including all tributaries and wetlands from the source to the Crystal River</u>	<u>Thompson Creek</u>	<u>Fe(Trec)</u>
COUCUC05	Lakes and reservoirs tributary to the Colorado River, RMNP to Roaring Fork River	Wolford Mountain Reservoir	D.O.
COUCUC04	<u>All tributaries to the Yampa River above Elkhead Creek within National Forest</u>	Big Rock Creek, Little Rock Creek	<u>E. coli</u>

WBID	Segment Description	Portion	Parameter
<u>COUCUC06a</u>	<u>All tributaries to the Colorado River including wetlands from the boundary of the Rocky Mountain National Park and Arapahoe National Recreational Area to a point immediately blw the confluence with the Blue River</u>	<u>Muddy Creek abv Wolford Mountain Rsvr</u>	<u>Se</u>
<u>COUCUC06b</u>	<u>Mainstem of unnamed tributary from the headwaters to Willow Creek Reservoir Road</u>	<u>all</u>	<u>D.O.</u>
<u>COUCUC07a</u>	<u>All tribs to the Colorado River, including wetlands from a point abv the confluence with the Blue River to blw confluence with the Roaring Fork, which are not on National Forest Lands</u>	<u>Alkali Slough</u>	<u>Fe(Trec)</u>
COUCUC07b	Muddy Creek and tribs	all	temperature
<u>COUCUC10</u>	<u>Mainstem of the Fraser River, including tributaries and wetlands from the source to the confluence with the Colorado River, except for tribs included in segment 9</u>	<u>all</u>	<u>Cu</u>
COUCYA02a	Yampa River, Bear River and Wheeler Creek to Elkhead Creek	all	temperature
COUCYA2b	Stagecoach Reservoir	all	D.O.
COUCYA03	all tributaries to Yampa River except for specific listings, on USFS land	First Creek in Elkhead Watershed	sediment
COUCYA03	all tributaries to Yampa River except for specific listings, on USFS land	Bushy Creek, Morrison Creek Watershed	sediment

WBID	Segment Description	Portion	Parameter
<u>COUCYA03</u>	<u>all tributaries to Yampa River except for specific listings, on USFS land</u>	<u>Little Morrison Creek</u>	<u>Zn</u>
<u>COUCYA04</u>	<u>Little White Snake Creek, source to Yampa River</u>	<u>all</u>	<u>D.O.</u>
<u>COUCYA08</u>	<u>Elk River including tributaries and wetlands from the source to Yampa River</u>	<u>Lost Dog Creek</u>	<u>Hg</u>
<u>COUCYA13b</u>	<u>Foidel Creek and tributaries, Fish Creek, Middle Creek and tributaries</u>	<u>Fish Creek</u>	<u>E.coli</u>
<u>COUCYA13b</u>	<u>Foidel Creek and tributaries, Fish Creek, Middle Creek and tributaries</u>	<u>Foidel Creek</u>	<u>E. coli</u>
<u>COUCYA13b</u>	<u>Foidel Creek and tributaries, Fish Creek, Middle Creek and tributaries</u>	<u>Middle Creek</u>	<u>E. coli</u>
<u>COUCYA13d</u>	<u>Dry Creek including all tributaries and wetlands from the source to the Yampa River</u>	<u>all</u>	<u>Pb</u>
<u>COUCYA18</u>	<u>Little Snake River including all tributaries and wetlands from forest boundary to Wyoming border</u>	<u>all</u>	<u>Cu</u>
<u>COUCYA19</u>	<u>all tributaries to Little Snake River on USFS lands in Routt County</u>	<u>Oliver Creek</u>	<u>sediment</u>

94.4 - 94.9 Reserved

94.10 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; MARCH, 2004 RULEMAKING

The provisions of C.R.S. 25-8-202(1)(a), (b) (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

A. Introduction

This regulation establishes Colorado's Monitoring and Evaluation List. This list was prepared as part of the effort to identify water bodies for which technology-based effluent limitations and other required controls are not stringent enough to implement water quality standards (those impaired waters requiring TMDLs). Regulation No. 93 is the list of impaired waters which require TMDLs. This regulation is the Monitoring and Evaluation List ("M&E List") that identifies water bodies where there is reason to suspect

water quality problems, but there is also uncertainty regarding one or more listing factors, such as the representative nature of the available data. Water bodies that are impaired but it is unclear whether the cause of impairment is attributable to pollutants as opposed to pollution are also included on the M&E List.

B. List Development

The statement of basis and purpose for Regulation No. 93 contains a description of how the lists were developed.

C. Prioritization and Scheduling

The Division has committed to establishing a plan for monitoring and evaluating these water bodies prior to the list submission date for the subsequent listing cycle. Further, the Commission has committed to determining their appropriate status (as either impaired or fully supporting) within ten years of their placement on the M&E List.

D. Segment-Specific Issues

1. Blue River segment 3: The Commission has included Gold Run Gulch below Jessie Mine (for cadmium and zinc) and the South Branch Swan River below Royal Tiger Mine (for zinc) on the Monitoring and Evaluation List. The Royal Tiger Mine and the Jessie Mine are both part of a CERCLA remediation effort, for which remedial project design is currently out to bid. Therefore, the Commission understands that the conditions in this area affecting water quality will be changing and that it is currently uncertain what uses or water quality can be supported in these waters in the future. The Commission does not intend by including these waters on the Monitoring and Evaluation List to conclude that any actions other than those CERCLA-related activities already underway are necessary or appropriate at this site. The status of those efforts will be reviewed during the next update of this list.
2. Segments proposed for the Section 303(d) List: In several specific instances, the Commission made a determination in this rulemaking hearing that segments proposed by the Division or others for inclusion on the Section 303(d) List should instead be included on the Monitoring and Evaluation List. This applies in particular to Bear Creek segment 1a and Middle South Platte segment 1 in the South Platte Basin and to four named tributaries in Blue River segments 6 and 8 in the Upper Colorado River Basin. In each of these instances, the rationale for the Commission's decision to include these waters on the Monitoring and Evaluation List is set forth in the Statement of Basis and Purpose adopted for Regulation No. 93 as a result of this rulemaking.

94.11 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; FEBRUARY 2006 RULEMAKING, EFFECTIVE APRIL 30, 2006

The provisions of C.R.S. 25-8-202(1)(a), (b) (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

A. Introduction

This regulation updates Colorado's Monitoring and Evaluation List to reflect additional water quality information available since the Regulation was promulgated in 2004.

B. List Development

The statement of basis and purpose for Regulation No. 93 contains a description of how the lists were developed.

C. Prioritization and Scheduling

The Division remains committed to establishing a plan for monitoring and evaluating these water bodies prior to the list submission date for the subsequent listing cycle. Further, the Commission has committed to determining their appropriate status (as either impaired or fully supporting) within ten years of their placement on the M&E List.

D. Segment-Specific Issues

In a number of instances, the Commission chose in this hearing to include on the Monitoring and Evaluation List waters that were initially proposed by the Division, or recommended by other rulemaking participants, for inclusion on the Section 303(d) List, Regulation #93. These waters include Bear Creek segment 1a, Upper Colorado River segment 07b (Muddy Creek), and Upper Yampa River segment 07b. In each instance, the Commission's rationale for these decisions is set forth in the statement of basis and purpose for Regulation #93.

PARTIES TO THE RULEMAKING

1. The City of Grand Junction
2. The Colorado Division of Wildlife
3. Evergreen Trout Unlimited and Colorado Trout Unlimited
4. The City of Colorado Springs
5. The City of Black Hawk
6. The Colorado River Water Conservation District
7. Friends of Bear Creek
8. Big Thompson Watershed Forum
9. The Bear Creek Watershed Association
10. The Northern Colorado Water Conservancy District
11. U.S. Environmental Protection Agency, Region 8
12. Evergreen Metropolitan District and West Jefferson County Metropolitan District
13. USDA Forest Service, Medicine Bow-Routt National Forests
14. Colorado Rock Products Association
15. City and County of Broomfield
16. Climax Molybdenum Company
17. The Metro Wastewater Reclamation District
18. Mount Carbon Metropolitan District

PROPOSED

94.12 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; FEBRUARY, 2008 RULEMAKING

The provisions of C.R.S. 25-8-202(1)(a), (b) (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

A. Introduction

This regulation updates Colorado's Monitoring and Evaluation List to reflect additional water quality information available since the Regulation was promulgated in 2006.

B. List Development

The statement of basis and purpose for Regulation No. 93 contains a description of how the lists were developed.

C. Prioritization and Scheduling

The Division remains committed to establishing a plan for monitoring and evaluating these water bodies prior to the list submission date for the subsequent listing cycle. Further, the Commission has committed to determining their appropriate status (as either impaired or fully supporting) within ten years of their placement on the M&E List.

D. Segment Specific Issues

1. Lower Dolores Segment 3 (COGULD03): The Commission approved resegmentation of Lower Dolores segment 3 at the Regulation 35 Rulemaking Hearing in June 2006. The resegmentation was based on the Division's investigation identifying Salt Creek draining the Sinbad Valley. The Sinbad Valley is identified by the Colorado Geological Survey as a graben or a collapse feature that formed in response to salt migration and dissolution beneath the area. Based on this information the selenium and zinc standards for the new Salt Creek segment were set at ambient conditions.
2. Lower Gunnison Segment 7 (COGULG07): Based on the assessment of the water quality conditions the segment was moved to the 303(d) List.
3. North Fork of the Gunnison Segment 6a (COGUNF06a): New listing based on the assessment of water quality data.

EXHIBIT 3

EPA Listing Action in Response to 2004 Colorado Section 303(d) List

Table 1 **Waterbody, Pollutants, and Priority Rankings to be added to Colorado's Section 303(d) Waterbody List.**

Waterbody	Pollutant	Water Quality Standard Not Met	Priority Ranking
Bear Creek (Bear Creek from Evergreen Lake to Harriman Ditch) Segment COSPBE01	temperature	aquatic life use	low