

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

WATER QUALITY CONTROL COMMISSION

<http://www.colorado.gov/cdphe/wqcc>

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Colorado
Department
of Public Health
and Environment

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

SUBJECT:

For consideration of the permanent adoption of revisions to Upper South Platte Segment 22 in the Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin, Regulation #38 (5 CCR 1002-38), which were adopted on an emergency basis on May 13, 2013.

The revisions to Regulation #38 proposed by the U.S. Fish and Wildlife Service, Rocky Mountain Arsenal National Wildlife Refuge ("Refuge"), along with a proposed statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1. Proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the revisions proposed in Exhibit 1 and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE: Tuesday, March 11, 2014
TIME: 11:00 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246

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.

Interested members of the public that do not have party status are encouraged to submit written submissions prior to the hearing. In order to be distributed to the Commission for review prior to the hearing, such submissions need to be received in the Commission Office or the Colorado Department of Public Health and Environment's (Department's) mail room by February 26, 2014. Written submissions received after this date will be distributed to the Commissioners at the hearing. However, for logistical reasons, the Commission office cannot guarantee that **electronic submissions** received after 1:00 p.m. Monday, March 10, 2014 will be provided to Commissioners. Interested persons wishing to submit comments or other documents after that date and time should bring paper copies to the 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 generally will not be permitted. The Commission requests that all interested persons submit to the Commission any available information that may be relevant in considering the noticed proposals.

PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the organization's name, a contact person, mailing address, phone number, and email address.** Written party status requests are due in the Commission Office on or before:

DATE: Monday, December 23, 2013
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to cdphe.wgcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the mail room of the Colorado Department of Public Health and Environment (Department) no later than this deadline.

ELIMINATION OF MAILING LIST STATUS:

On June 10, 2013, the Water Quality Control Commission approved revisions to the Procedural Rules, Regulation #21 (5 CCR 1002-21), which eliminate mailing list status.

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established:

- (1) A PDF version of a **Proponent's Prehearing Statement** from the Refuge as the proponent of revisions proposed in Exhibit 1 attached to this notice, **including** written testimony and exhibits providing the basis for the proposals, must be emailed to cdphe.wgcc@state.co.us **AND** 14 paper copies of the Proponent's Prehearing Statement **without** written testimony and exhibits must be received in the Department's mail room no later than **January 7, 2014**; and
- (2) A PDF version of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of the Water Quality Control Division or **anyone seeking party status and intending to respond to the proponent's proposal** must be emailed to cdphe.wgcc@state.co.us **AND** 14 paper copies of the Responsive Prehearing Statement **without** exhibits and written testimony must be received in the Department's mail room no later than **January 28, 2014**.

As soon as prehearing statements are posted on the Commission's web site, the Commission office will email a link to the page containing the prehearing statements to proponents, parties and the Attorney General's Office representatives for the Commission and the Division.

Also **note** that the Commission has prepared an **updated version** of a document entitled "Information for Parties to Water Quality Control Commission Rulemaking Hearings". A copy of this document will be emailed to all persons requesting party status. It is also posted on the Commission's web site as Appendix C to the [Public Participation Handbook](#). 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 two-sided copies of all hearing documents on three-hole punch paper.**

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on January 28, 2014 may be submitted by the Refuge, the Division or anyone seeking party status. Any such rebuttal statements must be received in the Commission Office by **February 26, 2014**. A PDF version of written rebuttal statements including exhibits must be emailed to cdphe.wqcc@state.co.us **AND** 14 paper copies without exhibits must be received in the Department's mail room by this deadline. No other written materials will be accepted following this deadline except for good cause shown.

PREHEARING CONFERENCE:

DATE: Tuesday, February 11, 2014
TIME: 1:00 p.m.
PLACE: Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the Commission Office as early as possible.

Any motions regarding the conduct of this rulemaking shall be submitted by Thursday, February 6, 2014, so that they can be considered at the prehearing conference. No motions will be accepted after February 6, 2014, except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202, 25-8-203, 25-8-204 and 25-8-402, 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 5th day of November 2013 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

U.S. FISH AND WILDLIFE SERVICE, ROCKY MOUNTAIN ARSENAL NATIONAL WILDLIFE REFUGE

EXHIBIT 1

REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 3 AND 4 BASIN: UPPER SOUTH PLATTE RIVER	DESIG	CLASSIFICATIONS	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
			PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS µg/l			
Stream Segment Description									
22a. Lakes and reservoirs in watersheds tributary to the South Platte River from the outlet of Chatfield Reservoir to a point immediately below the confluence with Big Dry Creek, except for specific listings in the subbasins of the South Platte River, and in Segments 16b, 17a, 17b, 17c, 22b, and 23.		Aq Life Warm 2 Recreation E Water Supply Agriculture	T=TVS(WL) °C D.O.=5.0 mg/l pH=6.5-9.0 E. Coli=126/100ml	NH ₃ (ac/ch)=TVS Cl ₂ (ac)=0.019 Cl ₂ (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO ₂ =0.5 NO ₃ =10 Cl=250 SO ₄ =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(Tot) Ni(ac/ch)=TVS	Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Fish Ingestion Standards
<u>22b. Lakes and reservoirs located in the Rocky Mountain Arsenal National Wildlife Refuge</u>	<u>UP</u>	<u>Aq Life Warm 2 Recreation E Agriculture</u>	<u>T=TVS(WL) °C D.O.=5.0 mg/l pH=6.5-9.0 E. Coli=126/100ml</u>	<u>NH₃(ac/ch)=TVS Cl₂(ac)=0.019 Cl₂(ch)=0.011 CN=0.005</u>	<u>S=0.002 B=0.75 NO₂=0.5 NO₃=100</u>	<u>As(ac)=340 As(ch)=100 Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS</u>	<u>Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Hg(ch)=0.01(Tot) Ni(ac/ch)=TVS</u>	<u>Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS</u>	

U.S. FISH AND WILDLIFE SERVICE, ROCKY MOUNTAIN ARSENAL
NATIONAL WILDLIFE REFUGE
PROPOSED

38.87 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE JANUARY 13, 2014 RULEMAKING; EFFECTIVE DATE JUNE 30, 2014

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 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

The Commission adopted on a permanent basis the revisions to Regulation # 38, Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin Republican River Basin, Smoky Hill River Basin, which had been adopted on an emergency basis on May 13, 2013.

In that rulemaking, the United States Fish and Wildlife Service, Rocky Mountain Arsenal National Wildlife Refuge ("Refuge") proposed to split Upper South Platte segment 22, and create a new segment, Upper South Platte River segment 22b, that encompasses the lakes and reservoirs on the Refuge property. These lakes are known as Lake Mary, Lake Ladora, Upper Derby Lake, and Lower Derby Lake. The new segment will retain the Aquatic Life Warm 2, Recreation E, and Agriculture uses and standards, but the Water Supply use classification will be removed.

In this proceeding, the Commission removed the DO spawning and aluminum standards that were inadvertently added during the previous action and replaced the chronic arsenic standard of 150 ug/L with 100 ug/L, consistent with the agriculture use. Consistent with Regulation #31.8(2)(b), this segment was designated use-protected as a warm water class 2 stream.

The Refuge provided evidence to the Commission that there is no water supply use from the lakes and that a water supply use is precluded by the 1989 Federal Facilities Agreement for the Arsenal. In addition, consumption of fish from these lakes is precluded by this same Agreement and by 50 C.F.R. § 32.25.