

## **ACTION MEMORANDUM**

### **CHATFIELD WATERSHED AUTHORITY**

TO: Chatfield Watershed Authority (CWA) Technical Advisory Committee (TAC)  
FROM: Michael Daugherty, Somach Simmons & Dunn (SSD)  
RE: Regulation 38 Issues Scoping Hearing (ISH)  
DATE: October 24, 2023

#### **SUMMARY OF ACTION REQUESTED:**

The Colorado Water Quality Control Commission (WQCC) is holding an Issues Scoping Hearing for Regulation 38, Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin (5 CCR 1002-38) on November 13, 2023, at 9:00 am. The WQCC Notice of Public Informational Hearing is attached to this memorandum as **Exhibit A**. According to the notice, the ISH “is the first step in a three-step process for triennial review of water quality classifications and standards in Colorado” and “provides an opportunity for early identification of potential issues that may need to be addressed in the next major rulemaking hearing.” I provided this notice to the CWA Board of Directors and indicated that I am planning to attend the ISH on behalf of CWA. TAC should discuss whether CWA should identify any specific issues at the ISH. Otherwise, I will plan to attend and report back regarding what other parties identify. TAC should also begin discussing in what proceedings CWA should propose its site specific total nitrogen (TN) standard, once developed.

#### **PURPOSE / BACKGROUND:**

CWA plans to propose a site-specific TN standard in lieu of the cold water reservoir table value TN standard that the Colorado Water Quality Control Division (WQCD) plans to implement in 2027. Once a standard has been developed, CWA needs to determine when and how to propose the standard to the WQCD. CWA has three primary options, when the WQCC considers revisions to: (1) Regulation 38, (2) Regulation 73, or (3) Regulations 31, 32-38, 85. The WQCD currently plans to implement its table value standards in the next basin-wide hearing for Regulations 31, 32-38, and 85. However, CWA also has the option to propose its site specific TN standard in earlier rulemaking proceedings for Regulation 38 and/or Regulation 73. Making the proposal in a smaller, narrower rulemaking may be more efficient; however, CWA may need to participate in the basin-wide rulemaking proceeding regardless of whether a site specific standard is agreed upon prior to that date, particularly if the WQCD proposes any changes. The next step in the Regulation 38 rulemaking proceeding is scheduled for November 2024, with the final hearing scheduled for June 2025.

#### **PROPOSED MOTION TO TAC:**

TAC should determine whether to present any specific issues at the Regulation 38 ISH. Over the next year, TAC should determine when and how to present its site specific TN standard proposal to the WQCD and WQCC.



## COLORADO

Water Quality  
Control Commission

Department of Public Health & Environment

EXHIBIT A

### NOTICE OF PUBLIC INFORMATIONAL HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

#### SUBJECT:

The Water Quality Control Commission will hold an Issues Scoping Hearing for 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).

#### SCHEDULE OF IMPORTANT DATES:

Written comments due	10/25/2023	Additional submittal information below
Public Hearing	11/13/2022 9:00 a.m.	<a href="#">Remote Via Zoom</a>  Or  Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

#### TRIENNIAL REVIEW PROCESS OVERVIEW:

This Issues Scoping Hearing is the first step in a three-step process for triennial review of water quality classifications and standards in Colorado. The Issues Scoping Hearing provides an opportunity for **early identification of potential issues** that may need to be addressed in the next major rulemaking hearing for particular regulations, and for identification of any issues that may need to be addressed in rulemaking prior to that time. The second step in the triennial review process - the Issues Formulation Hearing - results in the **identification of the specific issues to be addressed** in the next major rulemaking hearing. The Issues Formulation Hearing for this regulation will be held in November 2024. The third step is the Rulemaking Hearing, where any **revisions to the water quality classifications and standards are formally adopted**. The Rulemaking Hearing for this regulation will be held in June 2025. Information regarding triennial reviews of water quality classifications and standards is provided on the Commission's website.



#### ADDITIONAL BACKGROUND INFORMATION:

Information regarding the current quality of waters in the state is provided in the 2022 Integrated Water Quality Monitoring and Assessment Report, which is Colorado's latest report pursuant to section 305(b) of the federal Clean Water Act. In addition, an identification of river basin segments included on Colorado's 2023 Section 303(d) List of Impaired Waters or Colorado's current Monitoring and Evaluation List are set forth in Regulation #93 (5 CCR 1002-93). These documents are also available on the Commission's website.

#### PROCEDURAL MATTERS:

The commission encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations as to (1) issues that potentially need to be addressed in the next major rulemaking hearing for these regulations, and (2) any issues that may need to be addressed in rulemaking prior to that time.

(1) Issues for the next major rulemaking hearing: The Commission is seeking recommendations as to issues to be addressed or changes to be considered in the June 2025 rulemaking hearing for these regulations. Recommendations should be concise and include a brief explanation of why these issues or changes need to be considered in that rulemaking hearing. It also would be helpful to identify additional efforts that are planned or may be needed to develop additional data, develop watershed partnerships or to analyze available options prior to the rulemaking hearing.

(2) Issues to be addressed prior to the June 2025 rulemaking hearing: If there are recommendations as to issues that parties believe need to be addressed in rulemaking **prior** to the June 2025 rulemaking, such recommendations should include a concise summary of the issue or proposed changes, supported by reference to the evidence that would be offered if the commission moved forward to formally consider the recommended regulatory amendments. An explanation should also be included as to why these issues or changes need to be addressed prior to June 2025.

The commission will receive all written submittals electronically. Submittals must be provided as PDF documents and may be emailed to [cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us), provided via an FTP site or otherwise conveyed to the commission office to be received by the deadline. Written comments will be available to the public on the commission's web site.

Those wishing to provide oral testimony at the hearing should contact Jojo La ([jojo.la@state.co.us](mailto:jojo.la@state.co.us) or 303-501-7564) **no later than 5:00 p.m. November 9, 2023** to be included on the schedule for oral testimony.

#### AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1)(f) C.R.S. and section 21.5 B of the "Procedural Rules" (5 CCR 1002-21) provide the authority for this hearing.



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### PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the commission.

Dated this 14<sup>th</sup> day of August 2023 at Denver, Colorado.

### WATER QUALITY CONTROL COMMISSION

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Jojo La, Administrator

