

STATE OF COLORADO

Bill Ritter, Jr., Governor
Ned Colonge, M.D., Interim Executive Director

WATER QUALITY CONTROL COMMISSION

<http://www.cdphe.state.co.us/op/wqcc/index.html>

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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 adoption of revisions to segment 16g of the Upper South Platte River 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).

The revisions to Regulation #38 proposed by Centennial Water and Sanitation District, 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: Monday, April 12, 2010
TIME: 10:00 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 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. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior 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 or mailing list status (see below) generally will not be permitted. The Commission requests that all interested persons submit to the Commission Office any available information that may be relevant in considering the noticed proposals.

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status," will require compliance with section 21.3(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, February 2, 2010
TIME: 5:00 p.m.

A single copy of the party status or mailing list status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the Commission Office no later than this deadline. PLEASE NOTE that, as indicated below, parties will have the option of distributing materials to other parties electronically, except in instances where a party has requested receiving hard copies of documents. Therefore, **anyone requesting party or mailing list status that wishes to receive hard copies of documents instead of emailed copies should so indicate in the party status/ mailing list status request so that this information can be included on the list distributed by the Commission Office.**

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established: (1) An original and 13 copies of **Proponent's Prehearing Statement** from **Centennial Water and Sanitation District, as proponent of the revisions proposed in Exhibit 1 attached to this notice**, including written testimony and exhibits providing the basis for the proposals, must be received in the Commission Office no later than **February 10, 2010**; and (2) an original and 13 copies 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 proposals** must be received in the Commission Office no later than **March 2, 2010**.

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.wqcc@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 the 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 or emailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site at <http://www.cdphe.state.co.us/op/wgcc/PublicParticipation/HBappC.pdf>. 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.**

MAILING LIST STATUS COMMENTS:

Those requesting mailing list status shall provide written testimony, if any testimony is to be offered for the hearing, by the above deadline for responsive prehearing statements – i.e., **March 2, 2010**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

PREHEARING CONFERENCE:

DATE: Wednesday, March 10, 2010
TIME: 10:30 a.m.
PLACE: Snow 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. 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.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on March 2, 2010 may be submitted by anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **March 30, 2010**. An original and 13 copies of written rebuttal statements must be received in the Commission Office by this deadline, and submission of an emailed copy as noted above is strongly encouraged. 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. **Alternatively, parties may email documents to those with party status or mailing list status by this deadline**, except to those that the list distributed by the Commission Office identifies as requesting hard copies. No other written materials will be accepted following this deadline except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(b); 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 15th day of December 2009 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Paul D. Frohardt, Administrator

EXHIBIT 1
CENTENNIAL WATER AND SANITATION DISTRICT
 (Proposal reflects revisions from December 2009 temporary modifications rulemaking hearing)

REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 3 AND 4 BASIN: UPPER SOUTH PLATTE RIVER Stream Segment Description	DESIG	CLASSIFICATIONS	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
			PHYSICAL and BIOLOGICAL	INORGANIC mg/l	METALS µg/l				
16g. Marcy Gulch , including wetlands, from the source to the confluence with the South Platte.	UP	Aq Life Warm 2 Recreation E Agriculture	T = TVS (WS-II) °C D.O. = 5.0 mg/l pH=6.5-9.0 E. Coli=126/100 ml	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 =100	As(ch)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrII(ac/ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	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	Temporary modification: Cu (ac/ch) = TVSx2.4 below the Centennial Wastewater Treatment Facility outfall. (Type iii). Expiration date of 12/31/2014 T=current conditions (Type iii). Expiration date of 12/31/2014. <u>Se(ac/ch) = current conditions</u> (Type iii). Expiration Date of 12/31/2015

38.76 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE: APRIL 12, 2010 RULEMAKING; FINAL ACTION APRIL 12, 2010; EFFECTIVE DATE JUNE 30, 2010

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

Pursuant to Regulation 31.7(3)(a)(iii), the Commission may grant a temporary modification where there is significant uncertainty regarding the appropriate long-term underlying standard. The Commission found that significant uncertainty exists as to the selenium standard necessary to protect the aquatic life use. This uncertainty is expected to be resolved when EPA revises its 304(a) criteria and issues implementation guidance for selenium. The Commission also found that ambient selenium levels in Marcy Gulch exceed the existing underlying standard and that time is needed to determine whether this is the result of natural or irreversible human-induced conditions. In view of the uncertainty and its anticipated resolution, the Commission adopted a temporary modification of current conditions (Type iii) with an expiration date of 12/31/15 for segment 16g of the Upper South Platte River.