

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
Martha E. Rudolph, Executive Director

## WATER QUALITY CONTROL COMMISSION

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

4300 Cherry Creek Dr. South  
Denver, Colorado 80246-1530  
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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 stream segmentation of the Lower Colorado River in the Classifications and Numeric Standards for Lower Colorado River Basin, Regulation #37 (5 CCR 1002-37).

The revisions to Regulation #37 proposed by CAM-Colorado, LLC, 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, December 13, 2010  
TIME: 9:00 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, September 28, 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.wgcc@state.co.us](mailto:cdphe.wgcc@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 **CAM-Colorado, LLC, 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 **October 5, 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 **October 26, 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.wgcc@state.co.us](mailto: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 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., **October 26, 2010**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

PREHEARING CONFERENCE:

DATE: Wednesday, November 3, 2010  
TIME: 10:30 a.m.  
PLACE: Board 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 October 26, 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 **December 1, 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 19<sup>th</sup> day of August 2010 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

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Paul D. Frohardt, Administrator

**EXHIBIT 1**  
**CAM-COLORADO LLC and CAM MINING LLC**

**REGULATION #37 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS**

REGION: 3 AND 4  BASIN: <b>LOWER COLORADO RIVER</b>  Stream Segment Description	DESIG	CLASSIFICATIONS	NUMERIC STANDARDS					TEMPORARY MODIFICATIONS AND QUALIFIERS	
			PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS µg/l			
<u>13e. All tributaries to the Colorado River, from the West Salt Creek drainage east to Lewis Wash, and from the Government Highline Canal up-gradient to the base of the Book Cliffs, excluding the main stem of East Salt Creek.</u>	<u>UP</u>	<u>Aq Life Warm 2 Recreation N Agriculture</u>	<u>T=TVS (WS-III)°C</u> <u>D.O.=3.0 mg/l</u> <u>E.Coli=630/100ml</u>	<u>NO<sub>2</sub>=10</u> <u>NO<sub>3</sub>=100</u>	<u>B=5</u>	<u>As(ac)=200 (Trec)</u> <u>Cd(ch)=50 (Trec)</u> <u>CrIII(ch)=1000 (Trec)</u> <u>CrVI(ch)=1000 (Trec)</u>	<u>Cu(ch)=500 (Trec)</u> <u>Pb(ch)=100 (Trec)</u> <u>Hg(ch)=10 (Trec)</u>	<u>Se(ch)=50 (Trec)</u> <u>Zn(ch)=25000 (Trec)</u>	

**CAM-COLORADO LLC and CAM MINING LLC**  
**PROPOSED**

**37.27 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE: DECEMBER 13, 2010 RULEMAKING; FINAL ACTION JANUARY 10, 2011; EFFECTIVE DATE JUNE 30, 2011**

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 determined that a new segment was warranted to separate ephemeral reaches of streams in the Grand Valley downstream of the Book Cliffs, which are currently contained in other segments. As stated within Regulation 37.10(V)(7): *"Some segments [in the lower Colorado Basin] encompass great distances and include a large number of tributaries. Some tributaries are perennial streams which legitimately are aquatic uses. However, within the segment are dry gulches which would not be classified as aquatic life. Subsequent reviews should seek to separate the aquatic classified streams from the non-aquatic dry gulches."*

**Lower Colorado River Basin Re-segmentation – new Segment 13e**

Such a review was conducted and, based on this supporting documentation, the Commission has re-segmented a portion of the Lower Colorado River Basin currently contained within Segment 13a to separate the dry gulches that do not support aquatic life north of the Colorado River from the perennial aquatic streams and portions of streams in Segment 13a that could support aquatic life. The Commission specifically excluded the potentially perennial headwater portions of the streams by limiting the up-gradient extent of Segment 13e at the base of the Book Cliffs. This allows for the uppermost headwater reaches of these streams and portions of streams, including the potentially perennial Munger Creek, to remain in Segment 13a as headwater reaches may have a greater potential to retain perennial flow. This new segment description is as follows:

Segment 13e: All tributaries to the Colorado River, from the West Salt Creek drainage east to Lewis Wash, and from the Government Highline Canal up-gradient to the base of the Book Cliffs, excluding the main stem of East Salt Creek.

This new segment, comprised of ephemeral streams, has Aquatic Life Warm 2, Recreation N, and Agriculture use classifications with water quality criteria for protection of potential livestock watering uses. The Commission noted that information on existing water quality in the segment is virtually unknown, because these washes have no base flows which severely limits the ability to sample.