

STATE OF COLORADO

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Executive Director and Chief Medical Officer

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 permanent adoption of revisions to classifications and water quality standards for lower Arkansas segment 2a in the Classifications and Numeric Standards for Arkansas River Basin, Regulation #32 (5 CCR 1002-32), which were adopted on an emergency basis on June 13, 2011. The revisions to Regulation #32 proposed by the Town of Kit Carson, along with 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 subject of this hearing will also be considered.

During the Commission's consideration of whether to approve this notice of rulemaking, the Commission determined that there is not a likelihood of significant controversy during the rulemaking process. Therefore, the Commission has chosen to pursue an alternative rulemaking process consistent with section 24-4-103(4)(a) C.R.S.; and section 21.3(C)(6) of the Procedural Rules. Questions or comments regarding this process are welcome.

It is the goal of the Commission to complete this rulemaking without oral testimony.

PARTY STATUS:

Pursuant to section 21.3(D) of the Commission's Procedural Rules, there shall be no party status for this rulemaking proceeding.

WRITTEN COMMENTS AND REBUTTAL STATEMENTS:

Initial written comments and evidence with respect to the proposed amendments are due in the Commission Office by September 27, 2011. In addition, any written rebuttal statements must be received in the Commission Office by November 2, 2011.

Anyone providing written comments and evidence or rebuttal statements should provide an original plus twenty-five copies to the Commission Office. Anyone for whom the expense of providing these copies presents an economic hardship should contact the Commission Office to make alternative arrangements. Those who wish to receive the written comments and rebuttal statements from other members of the public should so indicate in a cover letter with their submission of written comments.

RULEMAKING DELIBERATION SCHEDULE:

DATE: Monday, November 14, 2011
TIME: 11:45 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

At this time and place, the Commission will conduct its deliberations, based on the written comments and evidence submitted.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(a) and (b); 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 fully explain the basis for their claim in the written comments submitted. 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 20th day of July 2011 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1 TOWN OF KIT CARSON

STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 7	Desig	Classifications	NUMERIC STANDARDS							TEMPORARY MODIFICATIONS AND QUALIFIERS
BASIN: LOWER ARKANSAS RIVER			PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l				
Stream Segment Description										
2a. All tributaries to the Arkansas River, including wetlands, all lakes and reservoirs, from the Colorado Canal headgate to the Colorado/Kansas border except for specific listings in segments 2b, 2c, 3 through 13, and Middle Arkansas Basin listings.	UP	Aq Life Warm 2 Recreation N Agriculture	D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100 ml	CN=0.2 NO ₂ =10 NO ₃ =100	B=0.75	As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)=10(Trec) CrIII(ch)=100(Trec)	CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec)	Ni(ch)=200(Trec) Se(ch)=20(Trec) Zn(ch)=2000(Trec)		
2b. King Arroyo.	UP	Aq Life Warm 2 Recreation E Agriculture	D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100 ml	CN=0.2 NO ₂ =10 NO ₃ =100	B=5.0	As(ch)=200(Trec) Cd(ch)=50(Trec) CrIII(ch)=1000(Trec)	CrVI(ch)=1000(Trec) Cu(ch)=500(Trec) Pb(ch)=100(Trec)	Hg(ch)=10.0(tot) Se(ch)=50(Trec) Zn(ch)=25000(Trec)	Livestock Watering Only.	
2c. <u>Mainstem of Wildhorse Creek, including all tributaries, from a point immediately below US Highway 287 in Kit Carson to the confluence with Big Sandy Creek.</u>	<u>UP</u>	<u>Aq Life Warm 2 Recreation N Agriculture</u>	<u>D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=630/100 ml</u>	<u>CN=0.2 NO₂=10 NO₃=100</u>	<u>B=0.75</u>	<u>As(ch)=100(Trec) Be(ch)=100(Trec) Cd(ch)= 50(Trec) CrIII(ch)=100(Trec)</u>	<u>CrVI(ch)=100(Trec) Cu(ch)=200(Trec) Pb(ch)=100(Trec)</u>	<u>Ni(ch)=200(Trec) Se(ch)= 50(Trec) Zn(ch)=2000(Trec)</u>		
3a. Mainstem of the Apishapa River, including all wetlands, tributaries, lakes and reservoirs, from the source to I-25, except for specific listings in segments 3b and 3c.		Aq Life Cold 1 Recreation E Water Supply Agriculture	D.O. = 6.0 mg/l D.O. (sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100 ml	NH ₃ (ac/ch)=TV S CL ₂ (ac)=0.019 CL ₂ (ch)=0.011 CN=0.005 S=0.002	B=0.75 NO ₂ =0.05 NO ₃ =10 Cl=250 SO ₄ =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis)	Hg(ch)=0.01(tot) Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS		

PROPOSED **TOWN OF KIT CARSON**

32.49 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE NOVEMBER 14, 2011 RULEMAKING; EFFECTIVE DATE JANUARY 1, 2012

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 Town of Kit Carson proposed adoption of standards for selenium and cadmium and resegmentation of Lower Arkansas segment 2a in order to be able to construct and operate new water and wastewater facilities, which are being financed through State Revolving Loan funds. The purpose of constructing the new facilities is to resolve chronic noncompliance issues.

Wildhorse Creek is an ephemeral stream with no diversions in the lower portion to which Kit Carson discharges. No crops, hay meadows, or other forage is irrigated within this portion of lower Wildhorse Creek. Therefore, the current chronic selenium standard of 20ug/L (based on protecting forage crops) is more protective than necessary to support attainment of the designated uses for this stream reach. Likewise, no beans, beets, turnips or lettuce (the crops sensitive to cadmium) are irrigated with water from this reach, so the cadmium standard is also more protective than necessary. Therefore, the Commission has determined that resegmentation and adoption of these selenium and cadmium standards is appropriate under these specific circumstances.