

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 repeal of Cheraw Lake Control Regulation, Regulation #75 (5 CCR 1002-75). The deletion of all regulatory language in Regulation #75 is shown in Exhibit 1 with ~~strikeouts~~. Any alternative proposals to retain all or portions of Regulation #75, or to revise all or portions of Regulation #75, will also be considered.

HEARING SCHEDULE:

DATE: Tuesday, March 11, 2014
TIME: 10:00 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, 2014
TIME: 5:00 p.m.

A single copy of the party 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 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 Division as the proponent of proposed repeal of this regulation, **including** written testimony and exhibits providing the basis for the proposal, must be emailed to cdphe.wqcc@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 **anyone seeking party status and intending to respond to the proponent's proposal** must be emailed to cdphe.wqcc@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 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: 2:00 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(1)(c) and (2): and 25-8-205; C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission alternative amendments to the existing regulatory language, 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

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

~~COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT~~
~~WATER QUALITY CONTROL COMMISSION~~

~~5 CCR 1002-75~~

~~REGULATION NO. 75~~

~~CHERAW LAKE CONTROL REGULATION~~

~~75.0 — CHERAW LAKE CONTROL REGULATION~~

~~75.1 — AUTHORITY~~

~~Section 25-8-205, C.R.S.~~

~~75.2 — REGULATION~~

- ~~(1) — There shall be no controlled release of water from Cheraw Lake unless one of the following conditions can be met:~~
- ~~(a) — The salinity of the water released, measured as total dissolved solids (TDS), is less than or equal to 4300 parts per million (ppm); or~~
 - ~~(b) — An adequate quantity of water of less saline nature can be supplied for dilution purposes such that a salinity level of 4300 ppm, measured as TDS, can be maintained in Horse Creek immediately above the first diversion below the confluence with the Cheraw Lake outlet channel.~~
- ~~(2) — The entity effectuating the release from Cheraw Lake shall have the responsibility for monitoring for the purpose of demonstrating compliance with this regulation.~~
- ~~(3) — The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of these regulations, shall not be affected thereby.~~

~~75.3 - 75.9 — RESERVED~~

~~A copy of the map may be obtained by contacting the Water Quality Control Commission, WQCC-A5, 4300 Cherry Creek Dr. S., Denver, CO 80246-1530, or by calling 303-692-3469.~~

~~75.10 — STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE~~

~~The provisions of sections 25-8-202(1)(c) and (2); and 25-8-205; C.R.S., provide the specific statutory authority for adoption of the attached control regulation. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.~~

~~BASIS AND PURPOSE:~~

The purpose of this regulation is to protect the agricultural uses of water in Horse Creek (Otero and Bent Counties) from the highly saline discharges from tributary Cheraw Lake, while also avoiding an unacceptable adverse impact on other downstream water uses, particularly domestic water supplies.

The regulation takes into account the intermittent nature of any discharges from Cheraw Lake, and the possibility that any discharge could be diluted before the water reaches Horse Creek. The regulation does not impose any specific treatment or best management practice requirements. Rather, it provides flexibility regarding the means of compliance, so long as the specific level of salinity can be achieved in Horse Creek.

The saline condition of water in Cheraw Lake appears to be caused by highly alkaline native soils in the area together with routing of irrigation return flows to the lake. Traditionally, topography and the shortage of water in the Arkansas River Basin has prevented the lake from overflowing into Horse Creek. Evaporation losses then contributed to the increase in salinity which has exceeded 17000mg/l (TDS) in the upper layer and 60000mg/l at the bottom of the lake based on samples collected by the Division and the USGS. The excess of water caused by the past "wet" years has caused levels in the lake to rise significantly which, in turn, threatened to cause property damage to State Highway 109 and the Town of Cheraw. This led several parties to effect releases from the lake which have damaged and endangered the agricultural use downstream on Horse Creek. This statement is supported by the EPA "Red Book" criteria for irrigation water and Division and USGS water quality investigations of the Lake and Horse Creek.

The ambient quality of Horse Creek has exceeded 5000 ppm TDS without influence from Cheraw Lake based on the existing water quality database. Since the agricultural use of Horse Creek water was not impaired under those conditions, salinity levels of Horse Creek will be controlled based on the 85th percentile of 65 USGS measurements of specific conductance prior to the 1985 releases from Cheraw Lake. This value was then converted to TDS using a linear regression developed by USGS and Division staff. The calculated TDS standard is 4300 mg/l.

75.11 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JULY, 1997 RULEMAKING

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.