

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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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 the Drinking Water Revolving Fund Rules, Regulation #52 (5 CCR 1002-52). The revisions to Regulation #52 proposed by the Water Quality Control Division (Division) as staff to the Commission, 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 14, 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 April 2, 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. Friday, April 11, 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: Tuesday, January 28, 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 revisions proposed in Exhibit 1 attached to this notice, **including** written testimony and exhibits providing the basis for the proposals, 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 **February 4, 2014**; and
- (2) A PDF version 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 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 **February 25, 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 February 25, 2014 may be submitted by the Division or anyone seeking party status. Any such rebuttal statements must be received in the Commission Office by **April 2, 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, March 10, 2014
TIME: 3:30 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, March 6, 2014, so that they can be considered at the prehearing conference. No motions will be accepted after March 6, 2014, except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(g) and (o) and section 37-95-107.8(4), 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 10th day of December 2013 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

5 CCR 1002-52

REGULATION NO. 52

DRINKING WATER REVOLVING FUND RULES

52.1 AUTHORITY

In Senate Bill 95-083, the Colorado General Assembly created the Drinking Water Revolving Fund to provide financial assistance to certain drinking water projects in the State of Colorado. The fund is held and administered by the Colorado Water Resources and Power Development Authority (~~the~~ Authority), which is authorized to issue bonds to finance the program. Moneys in the fund may be used to provide financial assistance to projects included on a Project Eligibility List, which is part of the annual Intended Use Plan (IUP). Codified at sections 37-95-103 and 37-95-107.8, C.R.S., the statutes direct the Water Quality Control Commission (Commission) to submit additions and modifications to the Project Eligibility List annually for adoption by the General Assembly by Joint Resolution signed by the Governor. This regulation complies with 40 CFR part 35, subpart I, and provides for the Commission's approval of the Intended Use Plan including additions and modifications to the Project Eligibility List and the ~~Priority/Fundable Projected Loan~~ List.

The 1996 amendments to the federal Safe Drinking Water Act (SDWA) include authorization of a state revolving fund program similar to that included in the Clean Water Act for wastewater projects. The Drinking Water Revolving Fund established by Senate Bill 95-083 meets the requirements of the SDWA concerning revolving fund financing programs and allows for federal funding of Colorado's revolving fund financing program.

Section 25 1.5-203, C.R.S., also provides authority for this regulation.

52.2 DEFINITIONS

Section ~~11.35~~ of the Colorado Primary Drinking Water Regulations 5 CCR 100~~23~~-11, contains additional definitions that apply to this rule.

- (1) "Beneficial Use" - The use of water treatment plant ~~sludge residuals~~ to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land or to be used in commercial construction or industrial applications, and that meet the requirements of the state Biosolids Regulations.
- (2) "Consolidation and Regionalization Project" - A proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the Water Quality Control Division (Division) to guarantee the facilities will consolidate.

- (3) ~~"Emergencies" - Situations or occurrences of a serious nature, developing suddenly and unexpectedly that cause a treatment facilities to be in noncompliance with drinking water standards and require immediate action.~~
- (4) (3) "Governmental Agencies" - Departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts, municipal corporations, counties, cities and other political subdivisions, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.
- (5) (4) "Health Hazard" - A situation where the Division has identified a waterborne disease outbreak, primary maximum contaminant level (MCL) violation, violation of the Surface Water Treatment Rule (SWTR), or a treatment technique violation, or significant deficiencies from an approved sanitary survey as defined in the Colorado Primary Drinking Water Regulations. Funding for these projects must result in compliance with existing standards and regulations.
- (a) ~~An acute health hazard includes violations of Surface Water Treatment Rule (SWTR) treatment technique requirement, bacteriological standards, and nitrite/nitrate levels. Acute contaminant health effects can occur immediately or within a short period of time.~~
- (b) ~~A chronic health hazard includes violations of all MCLs (other than those listed as acute) and treatment technique requirements. Chronic contaminant health effects occur after years of exposure.~~
- (c) ~~A potential health hazard is a situation where a public water system has periodically exceeded an MCL, has levels greater than 50 percent of an MCL on a regular basis, or has short term problems meeting a treatment technique requirement.~~
- (6) ~~"Other Future Needs" - Those needs in situations where a facility is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair in order to maintain compliance or further the public health protection goals of the SDWA.~~
- (7) ~~"Operational Means" - Temporary managerial or technical steps to protect public health during the time period when the public water system is out of compliance, e.g., boil order or bottled water.~~
- (8) (5) "Pollution" - The man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.
- (9) (6) "Project Eligibility List" - The list of projects eligible for financial assistance from the Authority through the Drinking Water Revolving Fund (DWRF), as adopted and ~~from time to time~~ modified in accordance with Section 37-95-107.8(4), C.R.S. ~~The list shall consist of projects that address public health and SDWA compliance issues in the State of Colorado, and shall include only those domestic drinking water supply projects eligible for financial assistance through a state revolving fund pursuant to the terms of the SDWA.~~
- (7) "Projected Loan List" – The list of projects that has been partially scored in accordance with the criteria described in the Intended Use Plan. This list represents those projects that are reasonably anticipated to receive a binding commitment for a loan in the DWRF program. Projects may be moved from the Project Eligibility List to the Projected Loan List at any time during the year.
- (10) (8) "Public Water System" - (PWS) A system for the provision to the public of piped water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals daily at least 60 days per year. Such term includes:

- (a) Any collection, treatment, storage, and distribution facilities under control of the supplier operator of such system and used primarily in connection with such system; and
- (b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

~~(14)~~ (9) "Source Water Protection" - Structural or nonstructural source water protection activities done in addition to area delineation and contaminant assessment.

(10) "Sustainability Projects" - Projects and/or planning methodologies that promote sustainable drinking water systems through effective utility management and capacity development to improve the technical, financial, and managerial capacities of public water systems, as well as those that promote the conservation of natural resources, alternative approaches such as natural or "green" systems, innovative approaches and technologies, and the full life-cycle costs on infrastructure investments.

~~(12)~~ (11) "Treatment Facilities" - Any devices or systems used in the collection, storage, treatment, transmission, diversion, or distribution of water intended for drinking water purposes.

~~(13)~~ (12) "Water Conservation" - Any structural or nonstructural water conservation measure that achieves a reduction in water consumption for a PWS or a publicly owned treatment works. Structural measures shall include installation of interior low-flow plumbing fixtures that are distributed and/or installed by a governmental agency or that are funded in whole or in part by the governmental agency and water meters that are funded and owned by the governmental agency. Nonstructural measures shall include but are not necessarily limited to: incentives for previously installed low-flow fixtures, leak detection or infiltration/inflow programs, public awareness, public education, and incentive water service charges.

~~(14)~~ (13) "Water Treatment Plant Sludge Residuals" - The accumulated solids, sludge, backwash water, and brine resulting from treatment of water for domestic use.

(14) "Waterborne Disease Outbreak" - The significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

52.3 PURPOSE AND GENERAL POLICIES

- (1) The purpose of the DWRF is to provide financial assistance to governmental agencies for the construction of water projects ~~treatment facilities~~ for health and compliance purposes as defined above.
- (2) An annual Intended Use Plan (IUP) is required by the SDWA to provide information about how the state will assist communities with their drinking water needs. Included in the IUP is the Project Eligibility List, which is a comprehensive list identifying governmental agencies with drinking water project needs, and the ~~Priority / Fundable~~ Projected Loan List, identifying prioritized PWS projects that are eligible for financial assistance from the DWRF. The project priority system is intended to establish priorities for the DWRF to protect and improve the health, safety, quality and reliability of drinking water supplies in Colorado. It is the policy of the Commission to maintain and improve the existing high quality standards for drinking water in the State by providing accessibility to the DWRF.
- (3) It is also the policy of the Commission to encourage consolidation and regionalization of drinking water systems and to promote source water protection and water conservation where practicable.

- (4) It is the policy of the Commission to promote beneficial use of sludge water treatment plant residuals created by treatment processes of a PWS.
- (5) Any applicant for financial assistance from the DWRF must comply with policies and procedures and other requirements of the Authority.
- (6) Each year, after a public notice and comment period, the Commission will schedule a public hearing for approval of the IUP. After considering all pertinent comments, the Commission shall approve the IUP and adopt additions and modifications to the Project Eligibility List no later than December 31st of each year. The Division will establish a date each year for finalizing its proposal to the Commission for the IUP and Projected Loan List. After that date, any requests for changes must be transmitted directly to the Commission.
- (7) The Commission may amend the Project Eligibility List at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health or environment. In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility List, public notice and opportunity for comment on the proposed inclusion shall be provided.
- (8) All loan project proponents shall submit applications by deadlines established in the annual IUP. If it is determined that the DWRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, projects will be funded per section 52.6.

52.4 INTENDED USE PLAN PROCEDURES

The Division, in cooperation with the Division of Local Government (DLG) and the Authority, shall develop an annual IUP.

The IUP shall include:

- (1) The Project Eligibility List and ~~Priority / Fundable~~ Projected Loan List of projects.
- (2) Descriptions of:
 - (a) Criteria and method used for distribution of funds
 - (b) Financial status of the DWRF program
 - (c) Short and long term goals of the DWRF program
 - (d) Amounts transferred between the DWRF and the Water Pollution Control Revolving Fund
 - (e) Set-aside activities and the percentage of the capitalization grant to be used
 - (f) How a state disadvantaged community program will be defined and utilized, if applicable; and
- (3) Any other material that may be required by the SDWA.

52.5 PROCEDURES FOR IDENTIFYING PROJECTS AND ESTABLISHING THE PROJECT ELIGIBILITY LIST PROJECT ELIGIBILITY LIST AND PRIORITY / FUNDABLE LIST PROCEDURES

- (1) The Project Eligibility List is the comprehensive list of projects showing current and future needs of PWS improvements. Each year the Division shall, (after consultation with interested persons and entities, including the DLG and the Authority,) review, update, and compile additions and modifications to the Project Eligibility List. ~~and recommend such additions and modifications to the Commission for final agency action at a public hearing. The list shall be forwarded to the General Assembly each year on or before January 15; once approved by the General Assembly, the Authority is able to provide assistance to the governmental agencies with projects on the Project Eligibility List.~~

This Project Eligibility List shall be included in the IUP as an Appendix and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing.

(2) Eligible Project Criteria

The Project Eligibility List shall be comprised of four project types, which were developed to emphasize public health, drinking water quality, and compliance for Colorado PWSs. Projects on the Project Eligibility List will be classified by type A, B, C, or D below. No consideration will be given to governmental agencies that have violations caused by poor operation and maintenance procedures or are under an administrative order for violating reporting requirements. All loan projects shall submit applications by deadlines established in the annual IUP.

- (a) Type A includes the correction of a documented public health hazard as defined in the DWRF Rules.
- (b) Type B includes those projects where the system is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair, in order to maintain compliance or further the public health protection goals of the SDWA.
- (c) Type C includes those projects that will prevent or correct inadequate supply, storage and distribution issues. This also includes systems whose existing demand has exceeded current treatment plant design capacity.
- (d) Type D includes those projects that implement source water protection activities or water conservation and efficiency infrastructure applications.

Note: The Project Types are determined based on the annual eligibility survey process to identify and quantify drinking water infrastructure needs across the state. This information is in no way related to project prioritization.

~~As required by federal regulations, all projects, except projects funded on an emergency basis, shall be prioritized before receiving assistance from the DWRF. The Priority / Fundable List includes projects from the Project Eligibility List that are ready for funding and have been prioritized by the Division based on information provided by the PWS. The Priority / Fundable List shall include:~~

- ~~(a) — The name of the public water system;~~
- ~~(b) — Priority points and rank assigned to the project;~~
- ~~(c) — A description of the project;~~
- ~~(d) — The expected terms of the financial assistance; and~~

- ~~(e) — Population of the PWSs service area~~
- ~~(3) — Projects on the Priority / Fundable List will be financed in priority order; however, exceptions for funding out of priority order shall be allowed due to one or more of the following reasons:~~
 - ~~(a) — Certain governmental agencies are not ready to proceed with the project;~~
 - ~~(b) — Certain governmental agencies do not wish to participate in the DWRF, or they have received funding from other sources;~~
 - ~~(c) — Certain governmental agencies (on the list) had an emergency situation occur during the funding year; or~~
 - ~~(d) — Certain governmental agencies are not approved for funding because of technical, financial, or managerial deficiencies. (The Division will attempt to work with the governmental entity to resolve the issue through the capacity development program.)~~

52.6 PROCEDURES FOR ESTABLISHING THE PROJECTED LOAN LIST AND DISTRIBUTING FUNDS PRIORITY SYSTEM

- ~~(1) The Projected Loan List shall be included in the IUP and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing. At minimum, the Projected Loan List shall identify:~~
 - ~~(a) Name of the public water system~~
 - ~~(b) Priority points and rank to the assigned project~~
 - ~~(c) Project title and description~~
 - ~~(d) Population of the PWS service area~~
 - ~~(e) Amount of financial assistance requested~~
 - ~~(f) Subsidy rate index~~
 - ~~(g) Whether the project is within the fundable range~~

~~All PWSs with identified water quality problems related to health and compliance issues may be included in one of the categories listed below.~~
- ~~(2) The Division shall rank each project on the Projected Loan List based on the priority score of each project, and projects shall be funded in priority order. Detailed scoring mechanisms shall be established in the IUP based on the following parameters: All PWS projects that fall into one of the categories listed below and have a pre-planning, planning, or pre-design document that describes a project to correct the water quality problem shall be prioritized as ready for funding on the Priority / Fundable List.~~
 - ~~(a) Drinking water quality and public health~~
 - ~~(b) Affordability~~
 - ~~(c) Compliance with the Colorado Primary Drinking Water Regulations~~
 - ~~(d) Source water protection and conservation~~

- (e) Sustainability
 - (f) Readiness to proceed
- (3) Funding for the projects under each category shall result in the PWSs complying with existing regulatory requirements. Projects on the Projected Loan List will be financed in priority order; however, exceptions for funding out of priority order shall be allowed for one or more of the following reasons:
- (a) Certain governmental agencies are not ready to proceed with the project;
 - (b) Certain governmental agencies do not wish to participate in the DWRF, or they have received funding from other sources;
 - (c) Certain governmental agencies had an emergency situation occur during the funding year; or
 - (d) Certain governmental agencies are not approved for funding because of technical, financial, or managerial deficiencies. (The Division will attempt to work with the governmental entity to resolve the issue through the capacity development program.)
- (4) The Division shall identify the subsidy rate (if applicable) for each project on the Projected Loan List as identified in the Intended Use Plan.

Eligible Project Criteria

Categories were developed to emphasize the most immediate public health and compliance issues. Projects on the Project Eligibility List will be classified by category 1, 2, 3, 4, 5 or 6 below, with "1" being the highest priority. Once a planning document is received, projects within each category will be further prioritized by the assignment of points from the priority point listings under each category. No consideration will be given to governmental agencies that have violations caused by poor operation and maintenance procedures or are under an administrative order for violating reporting requirements.

If it is determined that the DWRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, Category 1 projects will be funded prior to Category 2 projects, which will be funded prior to Category 3 projects, which will be funded prior to Category 4 projects, which will be funded prior to Category 5 projects, which will be funded prior to Category 6 projects – until all funds are obligated. Within each category, the following criteria will be used to further prioritize the projects:

- (5) Categories By Priority Ranking
- (a) 1 – Acute Health Hazard. The Division has identified continuous violation of an acute maximum contaminant level (MCL) or a surface water treatment rule (SWTR) treatment technique requirement.
 - (b) 2 – Chronic (long term) Health Hazard... The Division has identified a continuous violation of an MCL or an SWTR treatment technique requirement for a chronic contaminant.
 - (c) 3 – Potential Acute Health Hazard. The PWS has periodically exceeded an acute MCL, has levels greater than 50 percent of an acute MCL on a regular basis, or has short term problems meeting an SWTR treatment technique requirement that can be controlled temporarily by operational means.

- (d) ~~4 – Potential Chronic Health Hazard.~~ The PWS has periodically exceeded a chronic MCL, has levels greater than 50 percent of a chronic MCL on a regular basis, or has short term problems meeting other treatment technique requirements.
- (e) ~~5 – Other Future Needs.~~ The PWS is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair, in order to maintain compliance or further the public health protection goals of the SDWA.
- (f) ~~6 – Economic Stimulus.~~ Projects that seek funding only under the American Recovery and Reinvestment Act of 2009 and that were not already on the Project Eligibility List as of January 1, 2009. Categories 1-5 will be given consideration prior to funding of Category 6 projects.

(6) ~~Priority Point Assignments within Each Category~~

Once a pre-planning, planning, or pre-design document is received, projects within each category will be prioritized by the assignment of points from the following:

- (a) ~~Population.~~ Points shall be assigned to PWSs based on the following schedule of population served by the project, with emphasis given to small communities:

25 to 1,000	20 points
1,001 to 3,300	15 points
3,301 to 10,000	10 points
Over 10,000	5 points

- (b) ~~Financial Need.~~ Points shall be assigned to PWSs in accordance with the following "financial need criteria:"

- (i) ~~Ability to pay (annual water service fee as a % of median household income):~~

over 3%	20 points
over 2%; up to 3%	15 points
over 1%; up to 2%	10 points

- (ii) ~~Local burden (total project cost per equivalent residential tap):~~

Over \$5,000	20 points
Over \$3,500	15 points
Over \$2,000	10 points

- (c) ~~Consolidation.~~ Fifteen points shall be assigned to a PWS if the project includes consolidating two or more PWSs.
- (d) ~~Water Conservation.~~ Five points shall be assigned to a PWS if the PWS implements a water conservation measure.
- (e) ~~Source Water Protection.~~ Two points shall be assigned to a PWS if the governmental agency implements source water protection measures.
- (f) ~~Beneficial Use of Sludge.~~ Two points shall be assigned to a PWS if the governmental agency intends to utilize water treatment plant sludge for a beneficial use as defined herein.

- (g) ~~Health Risk.~~ To further clarify the ranking of PWS projects, the Division shall assign up to twenty points for a PWSs health risks. Determination of the health risk will be made based upon the type and level of contaminant present within categories.

52.7 DISADVANTAGED COMMUNITIES PROCEDURES

Under the SDWA, states are authorized to provide loans at or below market interest rates, including interest free loans, at terms not to exceed 30 years. ~~to establish Disadvantaged Communities Programs. The following procedures describe the approval and amendment process for Colorado's annual IUP as it relates to the administration of its Disadvantaged Communities Program. The Division, Authority and the DLG may recommend Program changes based on actual program implementation and the results of periodic reviews conducted hereunder. Approval of any and all changes in the IUP is subject to final agency action by the Commission.~~

- (1) ~~The DWRF may provide additional loan subsidies for governmental agencies that are determined to be "disadvantaged." The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG. The DWRF may provide additional loan subsidies for governmental entities that are determined to be "disadvantaged." The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG. Subsidies, such as extended loan repayment terms and reduced interest rates at or above zero percent, are not subject to the thirty percent cap of the federal capitalization grant.~~
- (2) While compiling projects on the Priority / Fundable Projected Loan List (utilizing the procedures listed in Section 52.56 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with program definition/criteria.
- (3) ~~The Division, the Authority, and the DLG will conduct periodic reviews, as appropriate, of the Disadvantaged Communities Program. The reviews may result in recommended program changes relative to the nature of available subsidies to be incorporated into the IUP. In conducting such reviews and preparing recommendations, the following factors may be examined:~~
- (a) ~~The overall financial condition of the communities participating in the program, including but not limited to:~~
- (i) ~~The total drinking water utility system fee and tax burden upon rate payers;~~
- (ii) ~~Post project drinking water utility charges;~~
- (iii) ~~Drinking water utility indebtedness;~~
- (iv) ~~Median household income.~~
- (b) ~~The impact of the subsidy upon the continued financial viability of the DWRF.~~
- (c) ~~The merit of utilizing all financial assistance options allowed under the SDWA to ensure a safe drinking water supply for all citizens.~~
- (4) ~~Upon receipt of comment from the Division, Authority and/or DLG, the Commission shall render final agency action upon the Disadvantaged Communities Program provisions of the IUP.~~

52.8 PLANNING AND DESIGN GRANTS EMERGENCY PROCEDURES

- (1) ~~The Division may provide Planning and Design Grant assistance as outlined and approved in the IUP according to Section 52.4. The Commission may amend the project eligibility and Priority / Fundable Lists at any time throughout the year to include PWS projects that it determines and declares to be emergency projects needed to prevent or address threats to public health.~~
- (2) ~~In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility or Priority / Fundable Lists, public notice and opportunity for comment on the proposed inclusions shall be provided.~~

52.9-10 RESERVED

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WATER QUALITY CONTROL DIVISION PROPOSED

52.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE (APRIL 14, 2014 RULEMAKING; EFFECTIVE DATE MAY 30, 2014)

Sections 25-8-202(1)(g) and (o); and Section 37-95-107.8(4), 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 took action to modify Regulation #52 by: removing the criteria for determining the priority assigned and including it in the Intended Use Plan (IUP); eliminating the categories and developing new criteria for determining a project's priority; establishing a Project Loan List that includes all projects that can be reasonably anticipated to receive a loan; and adding/deleting/revising definitions and updating other provisions. The Commission adopted these revisions for three principal reasons:

1. To provide a new emphasis on funding water projects based on a more holistic approach for addressing health and compliance consistent with subsection 52.3(1) of this regulation, while maintaining the current emphasis on providing funding opportunities for smaller, less financially capable communities; and
2. To improve the function and transparency of the Drinking Water Revolving Fund loan process; and
3. To better align the administration of the Drinking Water Revolving Fund program with the Water Pollution Control Revolving Fund program.

The Commission's action to modify Regulation #52 will require revisions to the process for prioritizing projects, and the Commission is aware of the approach the Division, Authority, and DLG have developed to revise the project prioritization system for inclusion in the annual IUP. While the revised system will be proposed for consideration in a draft IUP, the Commission understands and appreciates that the Division, Authority, and DLG have conducted significant outreach to inform stakeholders of the draft approach that will be included in the IUP.

Specific modifications to Regulation #52 on a section-by-section basis are described below.

Section 52.2 – Definitions – Several new definitions were added to define terms used in the previous regulation, as well as terms added to the regulation. Several existing definitions were deleted as the terms were no longer used in the regulation. The Commission also revised existing definitions to clarify their intent or to make them consistent with the definition in other regulations or statute.

Section 52.3 – Purpose – This section was modified to add General Policies to the heading to indicate that the Commission will promote regionalization and the use of beneficial use of residuals generated by water treatment technologies. Further, this section now clarifies the procedural processes for the Project Eligibility List and IUP.

Section 52.5 – Procedures for Identifying Projects and Establishing the Project Eligibility List – The Commission renamed this section to delineate differences between the Project Eligibility List and Projected Loan List. This section lays out the broad approach to identify projects and to develop the Project Eligibility List. Project types were added that will be used to quantify types of projects listed on the Project Eligibility List. The Commission understands that these project types will not be used for the prioritization of funding.

Section 52.6 – Procedures for Establishing the Projected Loan List and Distributing Funds – The Commission renamed this section to describe the process for developing the Projected Loan List and how funds will be disbursed. Further, the Commission deleted the previous concept of project categories that had been used to prioritize projects and replaced it with a new project priority system to be established in the annual IUP. This eliminates the previous approach of prioritizing projects based on category first, and then priority score within the respective category. Project proponents will have to provide information under the six identified factors in subsection 52.6(2) to allow for the required priority scoring. These factors are based on drinking water quality and public health, affordability indicators, Colorado Primary Drinking Water Regulations compliance, source protection and conservation, sustainability, and readiness to proceed that, taken together, will result in projects being funded that will help attain the protection of public health and other goals identified by the Division and the Commission. These factors will serve as a general guide for the Division, Authority, and DLG to establish specific criteria in the IUP upon which all projects will be evaluated and scored.

The Commission also established conditions under which the Division will identify projects that are within the fundable range based on a combination of readiness to proceed and priority score. This will allow the Division, Authority, and DLG to focus the bulk of their efforts on projects that are most likely to proceed during the coming year.

Section 52.7 - Disadvantaged Communities – The Commission revised section 52.7 to delete the requirement for periodic review of the disadvantaged community program, as the Commission finds that provision of funding to disadvantaged communities is an important aspect of the DWRF program, and that such funding should be provided when authorized. In addition, “Procedures” was deleted from the heading.

Section 52.8 – Emergency Procedures-The Commission renamed the “Emergency Procedures” section to “Planning and Design Grants” since emergency procedures are outlined in the annual IUP. The Commission used this section to authorized funding of planning and design grants when such funding is available and approved in the IUP.