



**COLORADO**

**Water Quality  
Control Commission**

Department of Public Health & Environment

**NOTICE OF PUBLIC RULEMAKING HEARING  
BEFORE THE  
COLORADO WATER QUALITY CONTROL COMMISSION**

**SUBJECT:**

For consideration of the petition<sup>1</sup> to review the antidegradation designations for Segments COSPUS15, COSPMS01A, and COSPCL15 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). Pursuant to § 25-8-207(1) and (1)(c) C.R.S., which govern the commission's review of designations, the scope of this rulemaking hearing shall be limited to determining whether the existing antidegradation designations for the three aforementioned segments conform with the provisions of § 25-8-209 C.R.S. and are consistent with the legislative declaration set forth in § 25-8-102, C.R.S. This rulemaking proceeding is not an appeal or a challenge to the validity of the determinations made by the commission in June 2020, as the time for appeal has passed and the commission does not hear appeals of its own actions. The commission will conduct a review of the designations based on the evidence presented in this proceeding. In order to create a record for this proceeding, the parties must submit all evidence and data to support their positions, including previously submitted evidence and data (in 2020, for example), as well as any new data and evidence.

The attachment contains proposed rule language and associated statement of basis and purpose language as presented by the petitioners. Any alternative proposals related to the limited subject of this hearing will also be considered.

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<sup>1</sup> The November 5, 2021, petition was submitted by Western Resource Advocates on behalf of the following: Audubon Rockies, American Rivers, Call to Action Colorado, Candi Cdebaca (Denver City Council), CatholicNetwork, Colorado Businesses for a Liveable Climate, Colorado Latino Forum, Colorado Sunrise Movement, Colorado Trout Unlimited, Conservation Colorado, Cultivando, Denver Trout Unlimited, Paul Kashmann (Denver City Council), Fountain Valley Clean Water Coalition, GreenLatinos, Montbello Neighborhood Improvement Association, NAACP Denver, North Front Range Concerned Citizens, RapidShift Network, South Platte River Keeper, Sunrise Movement Colorado, System Change Not Climate Change, The Green House Connection Center, Unite North Metro Denver, Wall of Women Colorado, and Vasquez Boulevard and Interstate 70 Citizens Advisory Group.



## SCHEDULE OF IMPORTANT DATES

Proponent's prehearing statement due	6/2/22 at 5:00 pm	Additional information below.
Party status requests due	6/15/22 at 5:00 pm	Additional information below.
Responsive prehearing statements due	7/7/22 at 5:00 pm	Additional information below.
Rebuttal statements due	8/3/22 at 5:00 pm	Additional information below.
<b>Prehearing Conference</b> (mandatory for parties)	8/15/22 at 1:00 pm	Via Zoom
<b>Rulemaking Hearing<sup>2</sup></b>	9/12/22 at 9:00 am	Via <a href="#">Zoom</a> Or 4300 Cherry Creek Dr. South Denver, CO 80246

### HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to [cdphe.wgcc@state.co.us](mailto:cdphe.wgcc@state.co.us), provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date and time.

### PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name;
- one contact person;
- a mailing address;
- a phone number; and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

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, along with an explanation of the alleged harm, in their party status request.

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<sup>2</sup> As the situation concerning the COVID-19 pandemic continues to evolve, the Department will assess whether the hearing will be held virtually or in a hybrid virtual/in-person manner, which will be reflected on the agenda.



The commission encourages informal discussions among the parties, the Division, and other interested persons prior to the hearing in an effort to reach consensus or to develop proposed resolutions of issues and/or narrow the issues potentially in dispute. The commission strongly encourages that any multi-party/division proposals for the resolution of issues (including proposed statement of basis and purpose language whenever feasible) be submitted as part of the administrative record as early as possible.

#### PREHEARING AND REBUTTAL STATEMENTS:

Each party must submit a prehearing statement: parties that have proposed revisions attached as exhibits to the notice must submit a proponent's prehearing statement. All other parties must submit a responsive prehearing statement. Proponents may also submit responsive prehearing statements when there are multiple proposals attached to the notice.

Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except by motion for good cause shown.

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 will not be permitted unless authorized by the commission.

#### PREHEARING CONFERENCE:

**Attendance at the prehearing conference is mandatory for all persons requesting party status.** Failure to attend the prehearing conference shall be cause to deny party status or deny opportunity for oral comments at the hearing. The Zoom link to attend the prehearing conference will be provided to all entities that request party status after the deadline to request party status has passed.

#### PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to [cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us) by August 31, 2022.

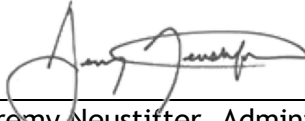
#### SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(a) and (b); 25-8-203; 25-8-204; 25-8-209; 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.



Dated this 22<sup>th</sup> day of February, 2022 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



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Jeremy Neustifter, Administrator



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

**5 CCR 1002-38**

**REGULATION NO. 38  
CLASSIFICATIONS AND NUMERIC STANDARDS  
FOR  
SOUTH PLATTE RIVER BASIN, LARAMIE RIVER BASIN  
REPUBLICAN RIVER BASIN, SMOKY HILL RIVER BASIN**

**APPENDIX 38-1  
Stream Classifications and Water Quality Standards Tables**

Effective \_\_\_\_\_

## Abbreviations and Acronyms

Aq	=	Aquatic
°C	=	degrees Celsius
CL	=	cold lake temperature tier
CLL	=	cold large lake temperature tier
CS-I	=	cold stream temperature tier one
CS-II	=	cold stream temperature tier two
D.O.	=	dissolved oxygen
DM	=	daily maximum temperature
DUWS	=	direct use water supply
E. coli	=	<i>Escherichia coli</i>
EQ	=	existing quality
mg/L	=	milligrams per liter
mg/m <sup>2</sup>	=	milligrams per square meter
mL	=	milliliter
MWAT	=	maximum weekly average temperature
OW	=	outstanding waters
SSE	=	site-specific equation
T	=	total recoverable
t	=	total
tr	=	trout
TVS	=	table value standard
µg/L	=	micrograms per liter
UP	=	use-protected
WS	=	water supply
WS-I	=	warm stream temperature tier one
WS-II	=	warm stream temperature tier two
WS-III	=	warm stream temperature tier three
WL	=	warm lake temperature tier

# REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

## Upper South Platte River Basin

15. Mainstem of the South Platte River from the Burlington Ditch diversion in Denver, Colorado, to a point immediately below the confluence with Big Dry Creek.						
COSPUS15	Classifications	Physical and Biological			Metals (ug/L)	
Designation			DM	MWAT		
					acute	chronic
	Agriculture					
UP-Reviewable	Aq Life Warm 1	Temperature °C	WS-I	WS-I	Arsenic	340
	Recreation E				Arsenic(T)	---
	Water Supply					0.02
		D.O. (mg/L)	varies*	varies*	Cadmium	TVS
		pH	6.0-9.0*	---	Cadmium(T)	5.0
<b>Qualifiers:</b>		pH	6.5 - 9.0	---	Chromium III	---
<b>Other:</b>		chlorophyll a (mg/m2)	---	---	Chromium III(T)	50
Temporary Modification(s):		E. Coli (per 100 mL)	---	126	Chromium VI	TVS
Arsenic(chronic) = hybrid					Copper	---
Expiration Date of 12/31/2024					Copper	TVS*
temperature(DM/MWAT) = current condition*						---
Expiration Date of 12/31/2021						WS
Discharger Specific Variance(s):						1000
Selenium(acute) = TVS: no limit						TVS
Selenium(chronic) = TVS: 24 µg/L						---
Expiration Date of 12/31/2023						TVS/400
*Ammonia(acute) = See section 38.6(4) for site-specific standards.						0.01
*Ammonia(chronic) = See section 38.6(4) for site-specific standards.						150
*Copper(acute) = Copper BLM-based FMB Cu FMB(ac)=26.4 ug/l						TVS
Downstream of the Metro Hite WWTF outfall.						TVS
*Copper(chronic) = Copper BLM-based FMB Cu FMB(ch)= 18.0 ug/l						TVS
Downstream of the Metro Hite WWTF outfall.						varies*
*Uranium(acute) = See 38.5(3) for details.						varies*
*Uranium(chronic) = See 38.5(3) for details.						TVS
*D.O. (mg/L)(acute) = See section 38.6(4) for site-specific standards.						TVS
*D.O. (mg/L)(chronic) = See section 38.6(4) for site-specific standards.						100
*pH(acute) = 6.0 - 9.0 from 64th Ave. downstream 2 miles						TVS
*TempMod: temperature = Adopted 6/8/2009						TVS
*Variance: Selenium = see 38.6(6) for details.						TVS

All metals are dissolved unless otherwise noted.  
T = total recoverable  
t = total  
tr = trout

D.O. = dissolved oxygen  
DM = daily maximum  
MWAT = maximum weekly average temperature  
See 38.6 for further details on applied standards.

# REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

## Clear Creek Basin

15. Mainstem of Clear Creek from Youngfield Street in Wheat Ridge, Colorado, to the confluence with the South Platte River.								
COSPCL15	Classifications	Physical and Biological			Metals (ug/L)			
Designation			DM	MWAT		acute	chronic	
<span style="color: red;">UP-Reviewable</span>	Agriculture							
	Aq Life Warm 1	Temperature °C	WS-II	WS-II	Arsenic	340	---	
	Recreation E		<b>acute</b>	<b>chronic</b>	Arsenic(T)	---	0.02	
	Water Supply	D.O. (mg/L)	---	5.0	Cadmium	TVS	TVS	
		pH	6.5 - 9.0	---	Cadmium(T)	5.0	---	
		chlorophyll a (mg/m2)	---	---	Chromium III	---	TVS	
		E. Coli (per 100 mL)	---	126	Chromium III(T)	50	---	
	<b>Qualifiers:</b>		<b>Inorganic (mg/L)</b>			Chromium VI	TVS	TVS
	<b>Other:</b>			<b>acute</b>	<b>chronic</b>	Copper	TVS	TVS
	Temporary Modification(s):	Ammonia		TVS	TVS	Iron	---	WS
Arsenic(chronic) = hybrid	Boron		---	0.75	Iron(T)	---	1000	
Expiration Date of 12/31/2024	Chloride		---	250	Lead	TVS	TVS	
*Uranium(acute) = See 38.5(3) for details.	Chlorine		0.019	0.011	Lead(T)	50	---	
*Uranium(chronic) = See 38.5(3) for details.	Cyanide		0.005	---	Manganese	TVS	TVS/WS	
	Nitrate		10	---	Mercury(T)	---	0.01	
	Nitrite		---	0.5	Molybdenum(T)	---	150	
	Phosphorus		---	---	Nickel	TVS	TVS	
	Sulfate		---	WS	Nickel(T)	---	100	
	Sulfide		---	0.002	Selenium	TVS	TVS	
					Silver	TVS	TVS	
					Uranium	varies*	varies*	
					Zinc	TVS	TVS	

All metals are dissolved unless otherwise noted.  
T = total recoverable  
t = total  
tr = trout

D.O. = dissolved oxygen  
DM = daily maximum  
MWAT = maximum weekly average temperature  
See 38.6 for further details on applied standards.



# REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

## Middle South Platte River Basin

1a. Mainstem of the South Platte River from a point immediately below the confluence with Big Dry Creek to the confluence with St. Vrain Creek.							
COSPMS01A	Classifications	Physical and Biological			Metals (ug/L)		
Designation		DM	MWAT		acute	chronic	
<b>UP</b> <b>Reviewable</b>	Agriculture						
	Aq Life Warm 1	Temperature °C	WS-I	WS-I	Arsenic	340	---
	Recreation E		<b>acute</b>	<b>chronic</b>	Arsenic(T)	---	0.02
	Water Supply	D.O. (mg/L)	varies*	varies*	Cadmium	TVS	TVS
<b>Qualifiers:</b>  <b>Other:</b>  Temporary Modification(s): Arsenic(chronic) = hybrid Expiration Date of 12/31/2024  *Ammonia(acute) = See section 38.6(4) for site-specific standards. *Ammonia(chronic) = See section 38.6(4) for site-specific standards. *Copper(acute) = Copper BLM-based FMB Cu FMB(ac)=26.4 ug/l *Copper(chronic) = Copper BLM-based FMB Cu FMB(ch)=18.0 ug/l *Uranium(acute) = See 38.5(3) for details. *Uranium(chronic) = See 38.5(3) for details. *D.O. (mg/L)(acute) = See section 38.6(4) for site-specific standards. *D.O. (mg/L)(chronic) = See section 38.6(4) for site-specific standards.		pH	6.5 - 9.0	---	Cadmium(T)	5.0	---
		chlorophyll a (mg/m2)	---	---	Chromium III	---	TVS
		E. Coli (per 100 mL)	---	126	Chromium III(T)	50	---
			<b>Inorganic (mg/L)</b>		Chromium VI	TVS	TVS
					<b>acute</b>	<b>chronic</b>	
		Ammonia	TVS*	TVS*	Copper	---	18.0*
		Boron	---	0.75	Copper	26.4*	---
		Chloride	---	250	Iron	---	WS
		Chlorine	0.019	0.011	Iron(T)	---	1000
		Cyanide	0.005	---	Lead	TVS	TVS
		Nitrate	10	---	Lead(T)	50	---
		Nitrite	---	0.5	Manganese	TVS	TVS/WS
		Phosphorus	---	---	Mercury(T)	---	0.01
		Sulfate	---	WS	Molybdenum(T)	---	150
		Sulfide	---	0.002	Nickel	TVS	TVS
				Nickel(T)	---	100	
				Selenium	TVS	TVS	
				Silver	TVS	TVS	
				Uranium	varies*	varies*	
				Zinc	TVS	TVS	

All metals are dissolved unless otherwise noted.  
T = total recoverable  
t = total  
tr = trout

D.O. = dissolved oxygen  
DM = daily maximum  
MWAT = maximum weekly average temperature  
See 38.6 for further details on applied standards.

## **STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS – FOOTNOTES**

- (A) Whenever a range of standards is listed and referenced to this footnote, the first number in the range is a strictly health-based value, based on the Commission's established methodology for human health-based standards. The second number in the range is a maximum contaminant level, established under the federal Safe Drinking Water Act that has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range. Water bodies will be considered in attainment of this standard, and not included on the Section 303(d) List, so long as the existing ambient quality does not exceed the second number in the range.
  
- (B) Assessment of adequate refuge shall rely on the Cold Large Lake table value temperature criterion and applicable dissolved oxygen standard rather than the site-specific temperature standard.

# ATTACHMENT

## Regulation #38 Petition for Rulemaking: Draft Statement of Basis and Notice Language

### Subject

For consideration of the adoption of revised water quality classifications, standards and designations for revisions for South Platte Segment 15, Middle South Platte Segment 1A, and Clear Creek Segment 15, Regulation #38 (5 CCR 1002-38). The Commission will consider whether to revise a designation of these waters as use protected. A proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached. In these attachments, proposed new language is shown with double-underlining and proposed deletions are shown with strikeouts.

### Specific Statutory Authority

The provisions of sections 25-8-207(1); 25-8-209(2),(4) and (5); 25-8-202(1)(a), (b), and (2); 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 with 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.

### Draft SBP Language

In response to a petition for rulemaking, the commission reviewed the prior designation of South Platte Segment 15, Middle South Platte Segment 1A, and Clear Creek Segment 15 as “Use-protected.” These designations were previously adopted in a June 8, 2020 rulemaking proceeding. Upon review, the Commission found that the prior designation, as explained in the Statement of Basis for the June 8, 2020 rulemaking at 5 CCR 1002-38.101, was erroneous and founded on material assumptions that no longer apply. The commission determined that the Use Protected designations for these segments was not aligned with either the plain language of §25-8-209 or the antidegradation Basic Standards Regulation, 31.8.(2)(b).

In making this determination, the commission found that the June 8, 2020 decision was based on an erroneous assumption that a “misalignment” existed between § 25-8-209(4), C.R.S. 31.8(2)(b)(ii). No misalignment exists, as confirmed at the June 14, 2021 rulemaking. Since the June 8, 2020 designating South Platte Segment 15, Middle South Platte Segment 1A, and Clear Creek Segment 15 as “Use-protected” was not founded in statute or in the Basic Standards, it does not conform with § 25-8-209(2) of the Water Quality Control Act. These segments will be re-designated as “Reviewable” consistent with the legal requirements of Basic Standards and § 25-8-209(5).