

STATE OF COLORADO

Bill Owens, Governor
Dennis E. Ellis, Executive Director

WATER QUALITY CONTROL COMMISSION
<http://www.cdphe.state.co.us/op/wqcc/wqcchom.asp>

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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 revised water quality classifications, standards and designations for multiple segments in the San Juan and Dolores River Basins, Regulation #34 (5 CCR 1002-34) and in the Gunnison and Lower Dolores River Basins, Regulation #35 (5 CCR 1002-35). The revisions to Regulation #34 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. The revisions to Regulation #35 proposed by the 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 2. Revisions to Regulation #34 proposed by the San Juan Citizens Alliance, along with proposed Statement of Basis and Purpose language, are attached to this Notice as Exhibit 3. Revisions to Regulation #34 proposed by the Tri-State Generation and Transmission Association, Inc., along with proposed Statement of Basis and Purpose language, are attached to this Notice as Exhibit 4. Revisions to Regulation #35 proposed by the National Park Service, along with proposed Statement of Basis and Purpose language, are attached to this Notice as Exhibit 5. Revisions to Regulation #35 proposed by Mountain Coal Company, along with proposed Statement of Basis and Purpose language, are attached to this Notice as Exhibit 6.

Please note for warm water aquatic life segments where the Division has proposed revised ammonia standards, in Exhibits 1 and 2 the Division has also proposed five-year temporary modifications for ammonia standards for all such segments with domestic wastewater dischargers. The purpose of these proposed temporary modifications is to be consistent with the Commission's intent to provide adequate time for dischargers to come into compliance with new, more stringent ammonia standards. The five-year temporary modifications are proposed as a starting point for consideration. However, the Division currently lacks information regarding the nature of possible treatment changes that may be needed or the time required to implement such changes for individual dischargers. Therefore, any person who believes that such temporary modifications may be appropriate will need to submit information in this rulemaking that the Commission can use as a factual basis for determining whether site-specific temporary modifications are needed and for determining the appropriate duration of any such temporary modifications.

In these attachments, proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the revisions proposed in Exhibits 1 through 6 and developed in response to those proposed revisions will also be considered.

TRIENNIAL REVIEW PROCESS OVERVIEW:

This Rulemaking Hearing is the third and final step in a three-step process for triennial review of water quality classifications and standards in Colorado. The first step is an Issues Scoping Hearing, which provides an opportunity for early identification of potential issues that may need to be addressed in the next major rulemaking hearing for particular regulations, and for identification of any issues that may need to be addressed in rulemaking prior to that time. The Issues Scoping Hearing for these basins was held in October 2004. The second step in the triennial review process – the Issues Formulation Hearing – results in the

identification of the specific issues to be addressed in the next major rulemaking hearing. The Issues Formulation Hearing for these basins was held in November 2005. The third step is the Rulemaking Hearing,

where any revisions to the water quality classifications and standards are formally adopted. Information regarding triennial reviews of water quality classifications and standards is provided on the Commission's web site at www.cdphe.state.co.us/op/wqcc/wqcchom.asp.

HEARING SCHEDULE:

DATE: Monday, June 12, 2006
TIME: 10:00 a.m.
PLACE: Anasazi Motor Inn
640 South Broadway
Cortez, Colorado

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 any available information that may be relevant in considering the noticed proposals, including information relating to the factors listed in section 31.7(2) of the Basic Standards and Methodologies for Surface Water, 5 CCR 1002-31.

The Commission encourages informal discussions between the parties, the Water Quality Control 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, but at least by the prehearing conference.** To help facilitate discussions, the following contact information is provided:

- Water Quality Control Division: Sarah Johnson; 303-692-3609; sarah.johnson@state.co.us
(Regulation #34) Aimee Konowal; 303-692-3530; aimee.konowal@state.co.us
(Regulation #35) John Hranac; 303-692-3586; john.hranac@state.co.us
- San Juan Citizens Alliance: Chuck Wanner; 970-259-3583; cwanner@frontier.net
- Tri-State Gen. and Trans. Assoc.: Jerry Raisch; 303-443-6151; jwr@vrlaw.com
- National Park Service: Matt Malick; 970-641-2337 x248; Matt_Malick@nps.gov
- Mountain Coal: George Robinson; 303-832-7664;
georgerobinson@r2incorporated.com

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status", will require compliance with section 21.4(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, March 28, 2006

TIME: 5:00 p.m.

Party status or mailing list status requests may be submitted by a fax to 303-691-7702 by this deadline, or by email to diana.glaser@state.co.us, provided that the original and three copies have been mailed by this same date, 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 who wishes to receive hard copies of documents instead of emailed copies should so indicate in your 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 a **Proponent's Prehearing Statement** from **each proponent of revisions proposed in the exhibits attached to this notice**, including written testimony and exhibits providing the basis for the proposal, must be received in the Commission Office no later than **April 4, 2006**; and (2) An original and 13 copies of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to any of the noticed proposals** must be received in the Commission Office no later than **May 2, 2006**. [Note: Although the required number of hard copies of documents must be received in the Commission Office by the specified deadlines, **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 diana.glaser@state.co.us)] In addition, copies of these documents shall 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 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 recently revised a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings**. A copy of this document will be mailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site noted above, under "General Information – Public Participation in Commission Proceedings". Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the new request that all parties submit their hard 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., **May 2, 2006**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

REBUTTAL STATEMENTS:

Written Rebuttal Statements responding to the responsive prehearing statements due on May 2, 2006 may be submitted by anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **May 18, 2006**. 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 shall 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.

PREHEARING CONFERENCE:

DATE: Wednesday, May 24, 2006
TIME: 1:00 p.m.
PLACE: Board Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

PLEASE NOTE: 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.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(a), (b) and (2); 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.

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 ____ day of February 2006 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator