



CONNECTING WATER TO LIFE

To: Upper Clear Creek Watershed Association
From: Jessica DiToro, PE, LRE Water
Date: May 30, 2023
Subject: UCCWA June Regulatory Update

Water Quality Control Commission (WQCC)

1. Recently Completed WQCC Activities

- **April 10-11, 2023 (Tentative Proposed Hybrid)**
 - [Lake Nutrients Criteria and Control Regulation #85 RMH and Voluntary Incentive Program Policy 17-1 AAH](#) – See #3 below for additional information
 - **Regulation #41 Basic Standards for Ground Water** – [Triennial Review Informational Hearing](#)
 - **Regulation #42 Site-Specific Water Quality Classifications and Standards for Ground Water** – [Triennial Review Informational Hearing](#)
 - **Regulation #65 Regulations Controlling Discharges to Storm Sewers** – [Triennial Review Informational Hearing](#)
 - **Control Regulation #72 Cherry Creek Reservoir Control Regulation** – [Routine Review Informational Hearing](#)
- **May 8, 2023 (Tentative Proposed Hybrid)**
 - **Regulation #81 Confined Animal Feeding Operations Control Regulation** – Triennial Review Informational Hearing
 - **Regulation #93 Colorado's Section 303(d) List of Impaired Waters and Monitoring and Evaluation List** – [RMH](#)
 - Focus was on the Upper and Lower Colorado River Basins (Regulations 33 and 37)

2. [Upcoming WQCC Activities](#)

- **June 12, 2023 (Tentative Proposed Virtual)**
 - **Clean Water Policy #8: 2027 10-Year Water Quality Roadmap** – Informational Briefing
 - **River Watch** – Informational Briefing
- **July 10, 2023**
 - No meeting
- **August 14, 2023 (Tentatively Proposed Hybrid)**
 - **Regulation #86 Graywater Control Regulation** – RMH
 - **Regulation #11 Colorado Primary Drinking Water Regulations** – Routine Review Information Hearing
 - **Regulation #11 Colorado Primary Drinking Water Regulations: Lead and Copper Rule Revisions** – RMH
 - **Regulation #84 401 Certification Regulation** – Routine Review Information Hearing

- **Cherry Creek Basin Watershed Authority Annual Report** – Informational Briefing
 - **Chatfield Watershed Authority Annual Report** – Informational Briefing
 - **Bear Creek Watershed Authority Annual Report** – Informational Briefing
 - **September 11, 2023**
 - No meeting – WQCC Annual Planning Work Session
 - **October 10, 2023 (Tentative Proposed Virtual)**
 - **Regulation #32 Classifications and Numeric Standards for Arkansas River Basin** – RMH
 1. Discharger Specific Variances for La Junta, Las Animas, Pueblo
 - **Regulation #36 Classifications and Numeric Standards for Rio Grande Basin** – RMH
 - **FY 2024 Intended Use Plans** – Administrative Action Hearing
 - **Integrated Report**
 - **Regulation #61 Colorado Discharge Permit System Regulations** – Routine Review Information Hearing
 - **Regulation #101 Water Quality Civil Penalty Inflation Adjustment Regulation** – [Written Comments Only RMH](#)
 - **Colorado Healthy Rivers Fund** – Informational Briefing
 - **November 13, 2023 (Tentatively Proposed Hybrid)**
 - **Regulation #86 Graywater Control Regulation** – RMH
 - **Regulations #32 Classifications and Numeric Standards for Arkansas River Basin** – Issues Formulation Hearing
 - **Regulations #36: Classifications and Numeric Standards for Rio Grande Basin** – Issues Formulation Hearing
 - **Regulation #33: Classifications and Numeric standards for Upper Colorado River Basin and North Platte River (Planning Region 12)** – Issues Formulation Hearing
 - **Regulation #37: Classifications and Numeric standards for Lower Colorado River Basin** – Issues Formulation Hearing
 - **Regulation #31: The Basic Standards and Methodologies for Surface Water** – Issues Scoping Hearing
 - **Regulation #38: Classifications and Numeric standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin** – Issues Scoping Hearing
 - **Public Comment Informational Hearing and Town Hall** – Informational Briefing
 - **December 4, 2023 (Tentatively Proposed Hybrid, in Grand Junction)**
 - **Total Maximum Daily Load Assessment for Colorado River tributaries in the Grand Valley (COLCLC13b)** – [Adjudicatory Hearing](#)
 - **Regulation #39 Colorado River Salinity Standards** – Triennial Review Information Hearing
 - **Colorado River Watch** – Informational Briefing
- 3. April 10, 2023 – Regulations #31 through #38 Lake Nutrients Criteria** – RMH
- All RMH-related documents can be found [here](#).

- Since the last UCCWA Regulatory update in February:
 - [Rebuttal statements](#) were submitted on February 15, 2023.
 - The [SEO CWCB Consultation Report](#) was released.
 - The [WQCD Cost Benefit Analysis](#) was released.
 - The [WQCD Regulatory Analysis](#) was released.
 - A surrebuttal deadline was added and [surrebuttals were submitted](#) by many parties on March 30, 2023.
 - The WQCD released their consolidated proposal on April 4, 2023. The proposal removed the TP and TN standards from all lakes and reservoirs downstream of qualified dischargers. Chlorophyll a standards remained for all lakes and reservoirs. The proposed language in the Regulations' Statement of Basis and Purpose states that the standards will be implemented in 2027 after further stakeholder engagement regarding the feasibility of meeting the limits that will result from the implementation of the TP and TN standards.
 - The RMH was held on April 10-12, 2023. **The WQCC ultimately adopted the WQCD's consolidated proposal.**

4. Environmental Justice Outreach Meetings

- For more information please click [here](#).
 - July 12, 2023 5:00PM-6:30PM – Hybrid
 - November 13, 2023 5:00PM-6:30PM – Hybrid

Water Quality Control Division (WQCD)

- No recent WQCD activities in April or May 2023
- The next [10-Year Water Quality Roadmap Meeting](#) will be held on June 7, 2023.

Division of Reclamation, Mining, and Safety (DRMS)

1. Recently Completed DRMS Mined Land Reclamation Board (MLRB) Activities

- **April 19-20, 2023:**
 - [April Packet](#)
 - **Enforcement Hearing:** Jefferson County – Section 25, T2S, R71W, 6th P.M, 76.22 acres, 112(d-2), Uranium, Schwartzwalder Mine. Consideration of a possible violation, permit revocation, finding the financial warranty subject to forfeiture and/or finding the financial warranty has been impaired for failure to maintain the financial warranty in good standing for the entire life of the permit and for failure to comply with the conditions of an order, permit or regulation. Michael Cunningham
 - Meeting minutes are not yet available, but I believe that this Enforcement Hearing was bumped to the May 17-18 meeting.
- **May 17-18, 2023:**
 - [May Packet](#)
 - **Board Action:** Clear Creek County – Section 1, T3S, R74W, 6th P.M, 0.92 acres, Surface, SSG Mining. Reconsideration of the Division's approval of

the permit application to extend the Financial Warranty due date in accordance with Rule 4.1(2). Peter Hays

- Meeting minutes are not yet available, it is unclear what the outcome of this Board Action item was.
- **Enforcement Hearing:** Jefferson County – Section 25, T2S, R71W, 6th P.M, 76.22 acres, 112(d-2), Uranium, Schwartzwalder Mine. Consideration of a possible violation, permit revocation, finding the financial warranty subject to forfeiture and/or finding the financial warranty has been impaired for failure to maintain the financial warranty in good standing for the entire life of the permit and for failure to comply with the conditions of an order, permit or regulation. Russ Means and Michael Cunningham
 - Meeting minutes are not yet available, it is unclear what the outcome of this Enforcement Hearing was.

2. Upcoming DRMS MLRB Meeting:

- **June 21-22, 2023**

3. Additional information:

- [Meeting Schedule](#)
- [“Current Meeting” Packet](#)
- [Meeting Minute Archives](#)
- [Meeting Packet Archives](#)

In the Colorado water quality world there are four types of hearings¹:

1. Water Quality Control Commission (WQCC) Rulemaking Hearing (RMH) Proceedings:
 - RMH proceedings are where formal WQCC rules (e.g., Regulations 31-38²) are approved³.
 - Currently upcoming/ongoing WQCC RMHs can be found at the following webpage: <https://cdphe.colorado.gov/wqcc-rulemaking-proceedings>
 - Recently completed WQCC RMHs can be found at the following webpage: <https://cdphe.colorado.gov/completed-wqcc-hearings>
 - If you would like older RMHs that are no longer available on the Recently Completed Webpage, call me. These take some effort to dig up.

2. Administrative Action Hearings (AAH):
 - AAHs are where documents that are not formal rules (i.e., WQCC policies⁴, 208 water quality management plans, nonpoint source management programs, etc.) are approved.
 - Ongoing and recently completed AAHs can be found at the following webpages: <https://cdphe.colorado.gov/wqcc-public-informational-hearings>
https://drive.google.com/drive/folders/1vWZlpzixW4Y0_CJ2adoFY2ldcoZ7Wwh3

3. Public Information Hearings (IH):
 - Public IHs are informal WQCC hearings that do not result in any formal action by the WQCC. Some examples of public IHs include issues scoping hearings⁵ (ISH) and issues formulation hearings⁵ (IFH).
 - With respect to Control Regulations (i.e., Regulations 71-74 and 81-86²), the WQCC will first hold an IH to receive staff input and public comment. Depending on the outcome of the IH, the WQCC will decide if a formal RMH is needed.
 - Upcoming and recently completed IHs can be found at the following webpages: <https://cdphe.colorado.gov/wqcc-public-informational-hearings>
https://drive.google.com/drive/folders/1vWZlpzixW4Y0_CJ2adoFY2ldcoZ7Wwh3

4. Adjudicatory Hearings:

¹ WQCC Hearings: <https://cdphe.colorado.gov/wqcc-hearings>

² WQCC Regulations: <https://cdphe.colorado.gov/water-quality-control-commission-regulations>

³ From Regulation 21, p. 3, a RMH may be conducted through written comments only: “The Commission may determine that receipt of only written comments on a published proposal, and any substantive written response(s) to such comments or issues raised in such comments, is sufficient public participation to establish an adequate record for Commission deliberation and decision-making. If the proponent of a proposal disagrees with any written comments submitted, the proponent shall submit a written response in accordance with the deadline established in the rulemaking proceeding notice. An opportunity shall be provided to other interested persons to submit written responses to comments in accordance with a deadline established in the rulemaking proceeding notice.”

⁴ WQCC Policies: <https://cdphe.colorado.gov/wqcc-policies>

⁵ “For surface water quality classifications and standards which are organized by river basin and for the Basic Standards and Methodologies for Surface Water, the Commission has established a three-step triennial review process. The Issues Scoping Hearing is the first step in the process. In short, the Issues Scoping Hearing 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 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 third step is the Rulemaking Hearing, where any revisions to the water quality classifications and standards are formally adopted. The timing of the three steps is as follows: (1) the Issues Scoping Hearing is held in October of Year 1; (2) the Issues Formulation Hearing is held in November of Year 2; and (3) the Rulemaking Hearing is held in June of Year 3. More complete descriptions of these three steps in the triennial review process for surface water quality classifications and standards are posted on the Commission’s web site, under the section entitled ‘Water Quality Standards’.” Public Participation Handbook, p. 4-5.

- Adjudicatory hearings are quasi-judicial proceedings by the WQCC or the Water Quality Control Division (WQCD) to review specific types of decisions by the WQCD with respect to individual regulated entities⁶. The procedures for these hearings are spelled out in WQCC Regulation 21⁷ (Procedural Rules).
- Ongoing and recently completed WQCC adjudicatory hearings can be found at the following webpage: <https://cdphe.colorado.gov/wqcc-adjudicatory-hearings>

Anyone can sign up to receive notice of any of the described upcoming hearings at the following WQCC webpage. The link below will send you to a google form where you can “pick your own adventure” and choose exactly what regulations, policies, etc. you would like to be notified about:

https://docs.google.com/forms/d/e/1FAIpQLSeKpmSyDnGrMZFPGBqHxMmWvKEzp-xktDqpoAD_q0jX4Qrtnw/viewform

For additional information on the above hearings, please reference the WQCC’s Public Participation Website and Public Participation Handbook (February 2017):

Website: <https://cdphe.colorado.gov/wqcc-public-participation>

Handbook:

https://drive.google.com/file/d/166i2sWZ8c-59MLp7kDHqOWTDbCo_TQGS/view

WQCC regulatory actions schedules are available on the WQCC’s website at the following locations:

1. The WQCC Long-Range Schedule – Usually covers the upcoming two to three years of hearings in detail, and is updated regularly. The Long-Range Schedule can be found at the following link⁸:
<https://drive.google.com/file/d/14UKyKRF4mIVdM8bmeJNuLXVuKUIA2RT2/view>⁹
2. The Index of WQCC Regulations and Policies – Usually covers the upcoming two to three years of Regulatory and Policy hearings. Also includes the date of last WQCC action. The Index of WQCC Regulations and Policies can be found at the following link¹⁰:
https://drive.google.com/file/d/11cxHB5ce76Dp34UYalWefvqgg9xq_wL1/view⁹

⁶ This is not to be confused with a permit adjudication which is an administrative hearing requested by a Colorado Discharge Permit Systems (CDPS) permittee or other stakeholder, to challenge the terms and conditions of an issued permit, challenge permit denials, or challenge other permitting actions. These hearings are held by the Office of Administrative Courts, not the WQCC.

⁷ Regulation 21: <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=7100&fileName=5%20CCR%201002-21>

⁸ Please note that as of the date of this memorandum, the WQCC Long-Range Schedule was last updated in November 2020.

⁹ Main website for access: <https://cdphe.colorado.gov/wqcc-meetings>

¹⁰ Please note that as of the date of this memorandum, the Index of WQCC Regulations and Policies was last updated in December of 2021.