



CONNECTING WATER TO LIFE

To: Upper Clear Creek Watershed Association
From: Jessica DiToro, PE, LRE Water
Date: November 28, 2023
Subject: UCCWA December Regulatory Update

Water Quality Control Commission (WQCC)

1. Recently Completed WQCC Activities

- **October 10, 2023**
 - **Regulation #32 Classifications and Numeric Standards for Arkansas River Basin – [RMH](#)**
 1. Discharger Specific Variances for La Junta, Las Animas, Pueblo
 2. Temporary modifications for arsenic
 - **Regulation #36 Classifications and Numeric Standards for Rio Grande Basin – [RMH](#)**
 1. Segments 4a and 7
 2. Temporary modifications for arsenic
 - **FY 2024 Intended Use Plans – [Written Comments Only AAH](#)**
 - **2024 Integrated Report Water Quality Monitoring and Assessment Report – [Written Comments Only AAH](#)**
 - **Regulation #61 Colorado Discharge Permit System Regulations – [Written Comments Only Routine Review Information Hearing](#)**
 - **Regulation #101 Water Quality Civil Penalty Inflation Adjustment Regulation – [Written Comments Only RMH](#)**
 - **Colorado Healthy Rivers Fund – Informational Briefing**
 - **Fee Setting – Informational Briefing**
- **November 13, 2023**
 - **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 Formulation Hearing](#)** This IFH will focus on the proposed changes to the molybdenum standards that Freeport-McMoRan is proposing.
 - **Regulation #38: Classifications and Numeric standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin – [Issues Scoping Hearing](#)**

1. Clear Creek Segments 7a and 7b temperature temporary modifications are being allowed to expire on 12/31/23 (Climax Molybdenum) See page 6 of [WQCD's comments](#).
 2. All segments with arsenic temporary modifications will likely be extended at a RMH in 2024. Extension will likely be for five years (12/31/2029 expiration date). This includes Clear Creek Segments 1, 2a, 2b, 2c, 3a, 5, 6, 9a, 10, 11, 12b, 13a, 13b, 14b, 15, 17b, 18a, 21, and 24. See page 7 of [WQCD's comments](#).
 3. [Public Service Company](#) (PSC) provided an update on the status of the Category 4b Plan implemented to attempt to attain the aquatic life use in Cabin Creek (Clear Creek Segment 3a) and potential next steps. No RMH is being proposed at this time and PSC will provide additional comments at the Regulation 38 IFH in 2025.
 4. [Central Clear Creek Sanitation District](#) (CCCSD) submitted comments on potential steps they may take to address a copper noncompliance at their WWTF. Potential next steps include DSV, re-segmentation, and/or restarting monitoring for copper to reassess stream attainment status. CCCSD has and will continue to coordinate with UCCWA as they work towards confirming their next steps.
 - Regulation #11 Colorado Primary Drinking Water Regulations – [Written Comments Only RMH](#)
Public Comment Informational Hearing and Town Hall – [Informational Briefing](#)
2. [Upcoming WQCC Activities](#)
- 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
 - The WQCC will also report on the approved scopes for the RMHs scheduled for June of 2023 at this meeting.
3. [Other Upcoming WQCC Activities \(Longer Range\)](#)
- January 8, 2024
 - No meeting
 - January 29-30, 2024 (Tentatively Proposed Hybrid at Hyatt Regency Aurora-Denver Conference Center)
 - Joint Meeting with the Colorado Water Conservation Board at Colorado Water Congress
 - February 12, 2024 (Tentatively Proposed Virtual)
 - SB89-181 Briefings – More information to come.
 - Control Regulation #72 Cherry Creek Reservoir Control Regulation – RMH

- **Report recommendations on the City and County of Denver’s Request for Reconsideration, Regulation #93: Colorado’s Section 303(d) List of Impaired Waters and Monitoring and Evaluation List – Informational Briefing**
- **March 11, 2024 (Tentatively Proposed Virtual)**
 - **Nonpoint Source 319 Funding Projects – AAH**
 - **Control Regulation #73 Chatfield Reservoir – Triennial Review Informational Hearing**
 - **Riverwatch – Informational Briefing**
- **April 8, 2024**
 - TBD
- **May 13, 2024 (Tentatively Proposed Hybrid)**
 - **Fee Setting – Informational Briefing**

4. Environmental Justice Outreach Meetings

- No remaining meetings scheduled for 2023

Water Quality Control Division (WQCD)

- 10-Year Water Quality Roadmap Meeting was held on November 16, 2023
 - Recap of September meeting;
 - Update on the arsenic temporary modification and potential extension;
 - Update on activities to revise selenium standards;
 - Update on activities to revise ammonia standards (for mussels);
 - Water Quality Roadmap Policy ([Clean Water Policy 8](#)) Discussion and Breakout Groups; and
 - Meeting materials available [here](#).

Division of Reclamation, Mining, and Safety (DRMS)

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

- **October 18-19, 2023:**
 - [October Packet](#)
 - **A formal public hearing was held for Climax Molybdenum Company: Clear Creek and Grand County: Section 25, T3S, R75W, 6th P.M, 11,877.50 acres, 112(d-3), Molybdenum, Henderson Mine. Board Hearing for consideration of a possible violation, Consideration of Climax Molybdenum Company’s proposal to use real and personal property as a form of financial warranty pursuant to C.R.S. 34-32-117(3)(b). Meeting minutes are not yet available for this meeting.**
- **November 15-16, 2023:**
 - [November Packet](#)
 - No items identified from November 2023 meeting to report.

2. Upcoming DRMS MLRB Meeting:

- **December 13-14, 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/11cxHB5ce76Dp34UYaIWefvqqg9xq_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.