

Before the Ground Water Commission, Colorado 1313 Sherman St., Rm 821, Denver, CO 80203	COMMISSION USE ONLY
IN THE MATTER OF A PROPOSAL TO THE COLORADO GROUND WATER COMMISSION FOR RULEMAKING TO AMEND RULES 5.6 AND 5.8 OF THE RULES AND REGULATIONS FOR THE MANAGEMENT AND CONTROL OF DESIGNATED GROUND WATER TO PROVIDE FOR MORE DETAIL AND CLARITY ON THE REQUIREMENTS FOR APPROVAL OF REPLACEMENT PLANS	
<p style="text-align: center;">AMENDED NOTICE OF PUBLIC RULEMAKING HEARING</p>	

I. NATURE OF PUBLIC RULEMAKING PROCEEDING

This is a notice of a public rulemaking hearing before the Colorado Ground Water Commission (“Commission”) for consideration of amendments to the Commission’s Rules and Regulations for the Management and Control of Designated Ground Water, 2 CCR 410-1 (“Designated Basin Rules”, or “Rules”).

The Commission’s Rules and any amendments thereto are promulgated pursuant to sections 37-90-107.5, 37-90-107.6 and 37-90-111(1)(h), C.R.S to carry out the authority and responsibilities of the Commission to supervise and control the exercise and administration of rights acquired to the use of designated ground water. The proceedings will be conducted pursuant to the Commission’s Rules for Procedure for All Hearings before the Colorado Ground Water Commission, 2 CCR 402-3 (“Procedural Rules”).

II. DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED

The purpose of the proposed amendments to Rules 5.6 and 5.8 is to provide for more detail and clarity on the requirements for approval of replacement plans and aquifer storage and recovery plans.

In response to a request by the public at its August 19, 2016 meeting the Commission directed Staff of the Commission (“Staff”) to initiate the informal process to possibly amend Designated Basin Rules 5.6 and 5.8. Staff drafted proposed changes to the rules, solicited written comments from interested parties, and held public (a.k.a. stakeholder) meetings (on January 12, February 1, April 26, and August 8, 2017) to allow interested parties to provide input on the proposed changes. At its August 11, 2017 meeting the Commission authorized Staff and its Hearing Officer to proceed with the formal rulemaking process. The formal rulemaking process was initiated by filing a Notice of Public Rulemaking Hearing with the Secretary of State and

publication in the Colorado Register. The initial notice was filed on November 27, 2017, and published in the Colorado Register on December 10, 2017.

The initial hearing set for June 18 through 22, 2018 was vacated and reset for August 20 through 24, 2018. HB 18-1199, codified under section 37-90-107.6, C.R.S., confirmed specific authority for the Commission to promulgate rules for aquifer storage and recovery plans and became effective on August 8, 2018 and therefore, an Amended Notice of Public Rulemaking Hearing was deemed appropriate, allowing an opportunity for new parties to apply for party status.

Staff's proposed amendments to the rules and proposed Statements of Basis, Specific Statutory Authority, and Purpose for the proposed amendments (the most recent versions of which are dated July 16, 2018); pre-hearing statements and position statements submitted by parties to the case; written comments on the proposed amendments that have been submitted by stakeholders; Orders from the Hearing Officer; and other documents related to the case are available at:

<https://dnrftp.state.co.us/#/DWR/Hearings/Rulemaking%205.6%205.8%2017GW05/>

The proposed Statements of Basis and Purpose and proposed rules are also available upon request to the Commission's Staff (1313 Sherman Street, Room 821, Denver, CO 80203; telephone (303) 866-3581, email contact: keith.vanderhorst@state.co.us). Pursuant to Procedural Rule 6.G.3.d the Commission will consider any alternative proposals related to the proposed amendments.

III. SPECIFIC STATUTORY AUTHORITY

The statutory authority for promulgating the Commission's Rules and any amendments thereto is found at sections 37-90-107.5, 37-90-107.6 and 37-90-111(1)(h), C.R.S.

IV. PARTY STATUS

The Notice of Public Rulemaking Hearing will be published in the Colorado Register on September 10, 2018. Applications for party status will be accepted through October 1, 2018. Applications for party status should be submitted to the Commission's Hearing Officer, Jody Grantham, by email to jody.grantham@state.co.us. The applications will be reviewed in accordance with Rule 6.F of the Procedural Rules. Applications for party status shall set forth the name of the person, persons or agency seeking party status. The application shall also indicate the interest of the person(s) or agency in the proposed rules and a description of the general nature of the evidence or information to be presented in the course of the proceedings. Party status will be determined by the Hearing Officer. Staff of the Commission are automatically a party to the rulemaking proceeding before the Commission pursuant to Rule 4.E.5 of the Procedural Rules. **Parties who have already obtained party status due to previous application remain parties to the procedure and need not make a further request for party status.**

All parties who are presently parties or request formal party status pursuant to this amended notice are placed on further notice that on November 7, 2018, at 10:00 a.m., a settlement conference will be held in Room 318 of the Centennial Building, located at 1313 Sherman St., Denver, Colorado.

V. STATUS CONFERENCE

After October 1, 2018, when party status requests have been received, the Hearing Officer may notify all parties of a date and time for a telephonic status conference to establish any further requirements and timelines for the rulemaking hearing as deemed necessary.

VI. PRE-HEARING CONFERENCE

Prior to the rulemaking hearing the Hearing Officer will hold a prehearing conference. Participation in the pre-hearing conference may be available by telephone at the Hearing Officer's discretion (conference call phone number 303-866-3581 ext. 7610).

Pursuant to Rule 4.F.2 of the Procedural Rules each applicant for party status must submit at the prehearing conference a prehearing statement. **Prehearing statements, along with a detailed position statement, are due from all new parties to this proceeding on October 12, 2018. Any existing party to the procedure, if desired, may file a rebuttal position statement on October 19, 2018.**

VII. RULEMAKING HEARING

Date, Time and Location

DATE: November 26 through 30, 2018

TIME: 9:00 a.m. (or as otherwise directed by the Hearing Officer)

LOCATION: 1313 Sherman Street, Room 318, Denver, CO 80203

Procedures

The Commission's Hearing Officer will conduct the rulemaking hearing. The Hearing Officer may ask questions of any person appearing before him.

Pursuant to Procedural Rule 4.F.2.d the Hearing Officer will consider any alternative proposals related to the proposed amendments.

The Hearing Officer may modify the proposed amendments to the Rules from those published in the Colorado Register.

After the conclusion of the rulemaking hearing, the Hearing Officer will transmit his initial decision to the Commission.

Participation by interested persons other than those with party status

Pursuant to Rule 4.I.1 of the Procedural Rules, at the hearing Staff, parties and interested persons shall be afforded the opportunity to submit written data, views, or arguments, and to present the same orally, unless the Hearing Officer deems it unnecessary. The submittal of such material and summations, either in writing or orally, shall be as directed by the Hearing Officer.

Pursuant to Rule 4.I.4 of the Procedural Rules, the Hearing Officer will make efforts to provide for and solicit the greatest possible public participation in the rulemaking hearing.

Pursuant to Rule 4.I.7 of the Procedural Rules, after receiving evidence presented during the hearing the Hearing Officer may allow interested persons and parties to present oral or written summations of the facts and laws as he deems necessary. The submittal of such material and summations, either in writing or orally, shall be at the discretion of the Hearing Officer.

If alternative amendments are proposed, the Hearing Officer encourages those amendments to be included in the written materials, along with a proposed statement of basis and purpose of the alternative amendments.

Once any written material is submitted, the material becomes part of the Administrative Record and the property of the Commission and will not be returned to the person(s) or agency offering the material.

VIII. ADOPTION OF THE RULE

Procedures

After receiving the Hearing Officer's initial decision, the Commission will consider the initial decision at one of its public meetings, at the date, time and place as noticed in the normal manner for its regular quarterly public meetings.

The Commission may, at its discretion, allow Staff, parties and interested persons to present oral or written summations of the facts and laws and opinions. The Commission may ask questions of any person appearing before them.

The Commission may accept or reject, in full or in part, the initial decision of the Hearing Officer, and may modify the proposed amendments to the Rules in adopting amendments to the rules.

Effective date

The amendments to the rules shall become effective 20 days after publication of the final amended rules, as adopted by the Commission, in the Colorado Register.

IX. ADMINISTRATIVE RECORD

The Administrative Record, including the proposal, applications for party status, prehearing statements, and all other written materials to be considered by the Commission in this rulemaking, will be available for inspection on the Division of Water Resource's ftp site at <https://dnrftp.state.co.us/#/DWR/Hearings/Rulemaking%205.6%205.8%2017GW05/>, and the Commission's website at: <http://water.state.co.us/groundwater/CGWC/Pages/default.aspx> and at the Commission's office at 1313 Sherman Street, Room, Room 821, Denver, CO 80203, during normal business hours (8:00 a.m. -5:00 p.m.).

DATED this 21st day of August, 2018.



Kevin Rein, P.E.
Executive Director
Colorado Ground Water Commission
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Denver, CO 80203