

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

WATER QUALITY CONTROL COMMISSION

<http://www.cdphe.state.co.us/op/wqcc/index.html>

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**Colorado Department
of Public Health
and Environment**

NOTICE OF PUBLIC RULEMAKING PROCEEDING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to the Classifications and Numeric Standards for San Juan River and Dolores River Basins, Regulation #34 (5 CCR 1002-34), to add "Type iii" to the ammonia temporary modification for segment 8c of La Plata River, Mancos River, McElmo Creek, and San Juan River in Montezuma County and Dolores County. The revision to Regulation #34 proposed by the Water Quality Control Division, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, is attached to this notice as Exhibit 1. In this attachment, proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

During the Commission's consideration of whether to approve this notice of rulemaking, the Commission determined that there is not a likelihood of significant controversy during the rulemaking process. Therefore, the Commission has chosen to pursue an alternative rulemaking process consistent with section 24-4-103(4)(a) C.R.S.; and section 21.3(C)(6) of the Procedural Rules. Questions or comments regarding this process are welcome.

It is the goal of the Commission to complete this rulemaking without oral testimony.

PARTY STATUS:

Pursuant to section 21.3(D) of the Commission's Procedural Rules, there shall be no party status for this rulemaking proceeding.

WRITTEN COMMENTS AND REBUTTAL STATEMENTS:

Initial written comments and evidence with respect to the proposed amendments are due in the Commission Office by January 6, 2010. In addition, any written rebuttal statements must be received in the Commission Office by January 27, 2010.

Anyone providing written comments and evidence or rebuttal statements should provide an original plus twenty-five copies to the Commission Office. Anyone for whom the expense of providing these copies presents an economic hardship should contact the Commission Office to make alternative arrangements. Those who wish to receive the written comments and rebuttal statements from other

members of the public should so indicate in a cover letter with their submission of written comments.

RULEMAKING DELIBERATION SCHEDULE:

DATE: Monday, February 8, 2010
TIME: 9:00 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

At this time and place, the Commission will conduct its deliberations, based on the written comments and evidence submitted.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(b); 25-8-204; 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 fully explain the basis for their claim in the written comments submitted. 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 13th day of November 2009 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1 - WQCD PROPOSAL

34.6(4)

STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 9 BASIN: LA PLATA RIVER, MANCOS RIVER, McELMO CREEK, AND SAN JUAN RIVER IN MONTEZUMA COUNTY AND DOLORES COUNTY	Desig	Classification	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
			PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS ug/l			
Stream Segment Description									
8c. Unnamed tributary to Ritter Draw.	UP	Aq Life Warm 2 Recreation E Agriculture	D.O. = 5.0 mg/l pH=6.5-9.0 E.Coli=126/100ml	NH ₃ (ac/ch)=TVS Cl ₂ (ac)=0.019 Cl ₂ (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO ₂ =0.05	As(ac)=340 As(ch)=100(Trec) Cd(ac/ch)=TVS CrIII(ac/ch)=TVS CrVI(c/ch)=TVS	Cu(ac/ch)=TVS Fe(ch)=1000(Trec) Mn(ac/ch)=TVS Pb(ac/ch)=TVS Hg(ch)=0.01(tot)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary Modification: NH3=existing quality. <u>Type iii</u> Expiration date 12/31/2013.

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PROPOSED

34.34 STATEMENT OF BASIN SPECIFIC STATUTORY AUTHORITY AND PURPOSE, FEBRUARY 8, 2010 RULEMAKING REGARDING TEMPORARY MODIFICATION FOR RITTER DRAW, EFFECTIVE DATE MARCH 30, 2010

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission added "Type iii" to the temporary modification of the ammonia standard for an unnamed tributary of Ritter Draw (La Plata River, Mancos River, McElmo Creek and San Juan River in Montezuma and Dolores County, segment 8c) in recognition that there is uncertainty regarding the appropriate underlying standard. A review of the hearing record shows that when this temporary modification was originally adopted (2006) testimony was presented that identified uncertainty regarding the aquatic life use. At that time, the type of temporary modification was not identified for each temporary modification. The Commission's current action is intended to recognize that time is needed to resolve the uncertainty about the appropriate standard before compliance is required.