

**93.17 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE;
DECEMBER 2019 RULEMAKING, EFFECTIVE DATE OF XXXX, XX, 2020.**

The provisions of C.R.S. 25-8-202(1)(a), (b) and (i), (2) and (6); 25-8-203; 25-8-204; and 25-8-401; 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

A. Revisions to 303(d) List

1. Introduction

This regulation updates Colorado’s List of Water-Quality-Limited Segments Requiring Total Maximum Daily Loads (TMDLs) to reflect additional water quality information available since the regulation was promulgated in 2006. This list was prepared to fulfill section 303(d) of the federal Clean Water Act (Act) which requires that states submit to the U.S. Environmental Protection Agency (EPA) a list of those waters for which technology-based effluent limitations and other required controls are not stringent enough to implement water quality standards.

This regulation also updates Colorado’s Monitoring and Evaluation List (M&E List) to reflect additional water quality information available since the regulation was promulgated in 2012.

2. List Development

a. Listing Methodology

The “Section 303(d) Listing Methodology - 2020 Listing Cycle” contains a description of the listing process, the criteria for listing, and the criteria for determination of TMDL priority. The Listing Methodology was developed through a public process and finalized as a policy at a Water Quality Control Commission (commission) administrative action hearing in March 2019.

This Listing Methodology sets forth the criteria that generally were used to make decisions regarding which waters to include on the 2020 Section 303(d) List and the 2020 M&E List. However, this methodology was not adopted by the commission as a rule. The commission, therefore, has the flexibility to take into account other appropriate factors in making site-specific listing decisions.

b. Information Considered

The commission has considered all existing and readily available information in developing the 2020 Section 303(d) List. In determining whether data and information are existing and readily available, it has taken into account such data and information as the division has utilized in the preparation of those identification processes, calculations and models referenced in 40 CFR §130.7(b)(5)(i), (ii) and (iv) and that credible data and information presented in

a readily usable format and submitted in reports provided to the Water Quality Control Division (division) as referenced in 40 CFR §130.7(ab)(5)(iii). In addition, the commission accepted credible data and information that was submitted in accordance with the listing process schedule, whether submitted by EPA or any other interested party. The division also continues to independently collect and analyze new data on a rotating basin basis as part of its triennial review efforts and will utilize such data and information in making future listing determinations. Existing data which was not brought forward through one of the above mechanisms or otherwise presented to the commission in accordance with the schedule was not treated as "readily available" for purposes of making the 2020 listing decisions. Such information will be considered in the next listing cycle.

c. Data Quality

In the division's "Quality Management Plan 2016 for Surface Water Monitoring and Assessment", the division states that "It is the expressed goal of the division to use only those analytical data that are both reliable and have a defined level of quality."

3. Prioritization

The objective of prioritization is to identify those segments where the division and the public should concentrate their resources. Priorities of High, Medium, and Low were established according to section IV. of the 2020 Section 303(d) Listing Methodology.

The division remains committed to establishing a plan for monitoring and evaluating water bodies on the M&E List prior to the list submission date for the subsequent listing cycle. Further, the commission has committed to determining their appropriate status (as either impaired or fully supporting) within ten years of their placement on the M&E List.

4. Regulation #93 Introductory Language Regarding Pollution and Pollutants

During the 2018 303(d) listing cycle, the division identified inconsistent language between Regulation #93 and the 2018 Listing Methodology. The introduction in Regulation #93.2(2) states:

"Water bodies that are impaired, but it is unclear whether the cause of impairment is attributable to pollutants as opposed to pollution, are also placed on the Monitoring and Evaluation List."

The 2018 303(d) Listing Methodology section II.f stated:

"Before placing impaired waterbody segments into Category 4c, thorough monitoring and assessment needs to be performed on the segment to confirm that no pollutants are contributing to the waterbody's failure to meet water quality standards. If adequate monitoring and assessment is not performed to rule out pollutant(s) as a cause, then the impaired waterbody should be placed on the 303(d) List (Category 5)".

In the 2018 rulemaking hearing for Regulation #93, the commission's approach to a temperature listing was to defer to the regulation language even though it was in conflict with the language in the listing methodology. Based on this approach, the commission moved the existing Lower Dolores segment 02 temperature 303(d) listing to the M&E List because the cause of the impairment had not been determined. The commission then directed the division to propose changes to the regulatory language during the 2020 Regulation #93 rulemaking hearing process to better reflect the current commission policy decision and provide consistency between the regulatory language and the 303(d) Listing Methodology.

In 2018, the EPA partially approved the 2018 303(d) List. The EPA cited the change from the 303(d) List to the M&E List for segment COGULD02 as a reason for this partial approval, instead of full approval. The 2020 Listing Methodology workgroup considered this topic. The division proposed to remove language in Regulation #93.2(2):

“Colorado’s Monitoring and Evaluation List identifies water bodies where there is reason to suspect water quality problems, but there is also uncertainty regarding one or more factors, such as the representative nature of the data. ~~Water bodies that are impaired, but it is unclear whether the cause of impairment is attributable to pollutants as opposed to pollution, are also placed on the Monitoring and Evaluation List.~~ This Monitoring and Evaluation list is a state-only document that is not subject to EPA approval. These segments are included in Section 93.3 with parameters included in the Colorado’s Monitoring and Evaluation column.”

When the removal of this language was discussed in the 2020 Listing Methodology workgroup, there was no opposition to this proposal. The division proposed this change to Regulation #93 during the 2020 Rulemaking Hearing process and the commission adopted this language modification to align Regulation #93 with the most recent policy decisions, as reflected in the Listing Methodology.

5. Temperature Assessments

The 2020 303(d) Listing Methodology requires that the party proposing a temperature listing is responsible for investigating the temperature excursions defined in Regulation #31, Table 1, Footnote 5c. This footnote includes three allowable excursions to exceedances of the temperature standard. These include an air temperature excursion, a low flow excursion, and a winter shoulder season excursion. These excursions require a significant investment in resources to assess. Due to resource limitations, the division deprioritized temperature assessments and no excursions were investigated. Therefore, the commission carried existing temperature 303(d) and M&E listings forward to the 2020 303(d) List. Segment COGULD02 is an exception. This segment was reassessed to address EPA's concerns cited in their partial approval of the 2018 303(d) List.

6. Assessment Values Used for Secondary Water Supply Standards

For the secondary water supply standards of dissolved iron, dissolved manganese and sulfate, the less restrictive of the following two options apply as the numeric

standard: existing quality as of January 1, 2000, or the table value criteria in Regulation #31, Tables II and III. For dissolved iron, the table value standard (TVS) is 300 ug/l. For dissolved manganese, the TVS is 50 ug/l. For sulfate, TVS is 250 mg/l.

For the 2016 303(d) Listing Methodology, the commission included additional language regarding the determination of existing quality from the year 2000 (EQ 2000). This includes a minimum data requirement and the ability to use data collected after the year 2000 when characterizing existing quality from 2000. The utilization of data collected past the year 2000 is contingent upon there being no known new or increased sources of these parameters in the segment being assessed since 2000.

Table 1 summarizes the secondary water supply assessment values used for dissolved iron, manganese, and sulfate for 303(d) or M&E Listing actions:

Table 1. Values Used for the Assessment of Dissolved Iron, Dissolved Manganese, and Sulfate Water Supply Standards.								
Portion ID	Analyte	Category / List	Listing Action	TVS or 2000¹	POR for 2000 Dataset	Sample Size of 2000 Dataset	Value	Units
COLCLC02b_B	Mn-D	M&E	Retain	2000	95-99	34	87.16	ug/L
COLCLC02b_B	SO4	M&E	Retain	2000	95-99	82	1109.5	mg/L
COLCLC04a_A	SO4	M&E	Retain	TVS	N/A	N/A	250	mg/L
COLCLC04a_B	SO4	303(d)	M&E to 303(d)	TVS	N/A	N/A	250	mg/L
COLCLC04a_C	SO4	M&E	Retain	TVS	N/A	N/A	250	mg/L
COLCLC04a_D	SO4	M&E	Retain	TVS	N/A	N/A	250	mg/L
COLCLC10_B	Fe-D	Attaining	M&E Delist	TVS	N/A	N/A	300	ug/L
COLCLC10_B	SO4	Attaining	M&E Delist	2000	95-04	25	590	mg/L
COLCLC14c_B	Mn-D	303(d)	Retain	2000	95-99	59	52.6	ug/L
COLCLC14c_C	Mn-D	303(d)	Retain	2000	95-99	59	52.6	ug/L
COLCLY03c_B	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COLCLY03c_B	SO4	303(d)	Retain	2000	95-99	13	406	mg/L
COLCLY03c_C	SO4	303(d)	Retain	2000	95-99	13	406	mg/L
COLCLY03e_A	SO4	M&E	Retain	2000	95-99	17	720	mg/L
COLCLY06_A	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COLCLY06_A	SO4	M&E	Retain	TVS	N/A	N/A	250	mg/L
COLCWH09b_A	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COLCWH09b_A	SO4	M&E	Retain	TVS	N/A	N/A	250	mg/L
COLCWH13b_B	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COLCWH13b_C	SO4	M&E	Retain	2000	95-99	18	416.8	mg/L

Portion ID	Analyte	Category / List	Listing Action	TVS or 2000 ¹	POR for 2000 Dataset	Sample Size of 2000 Dataset	Value	Units
COLCWH20_B	SO4	303(d)	List	2000	N/A	N/A	N/A	mg/L
COSPBO02a_B	Fe-D	Attaining	M&E Delist	2000	95-09	20	341.5	ug/L
COSPBO02a_D	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COSPBO02a_F	Fe-D	303(d)	Retain	2000	95-09	20	341.5	ug/L
COSPBO02b_E	SO4	M&E	List	TVS	N/A	N/A	250	mg/L
COSPBO02b_F	Mn-D	M&E	List	TVS	N/A	N/A	50	ug/L
COSPBO07b_B	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPBO14_B	Fe-D	303(d)	M&E to 303(d)	TVS	N/A	N/A	300	ug/L
COSPBO14_B	Mn-D	303(d)	M&E to 303(d)	TVS	N/A	N/A	50	ug/L
COSPBO14_D	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPBT04a_A	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPBT04b_A	Mn-D	303(d)	List	2000	95-04	105	79.48	ug/L
COSPBT07_A	Mn-D	Attaining	M&E Delist	TVS	N/A	N/A	50	ug/L
COSPBT08_A	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPBT08_B	SO4	303(d)	Retain	TVS	N/A	N/A	250	mg/L
COSPBT09_A	Mn-D	303(d)	List	2000	95-99	23	89.7	ug/L
COSPCH01_A	Mn-D	303(d)	M&E to 303(d)	2000	95-99	46	86.95	ug/L
COSPCH04a_A	Fe-D	M&E	List	TVS	N/A	N/A	300	ug/L
COSPCH04a_A	Mn-D	M&E	List	TVS	N/A	N/A	50	ug/L
COSPCH04a_B	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPCL02c_B	Mn-D	303(d)	Retain	2000	95-99	165	203.1	ug/L
COSPCL02c_B	Fe-D	303(d)	Retain	2000	95-99	68	442.25	ug/L
COSPCL02c_E	SO4	303(d)	List	TVS	N/A	N/A	250	mg/L
COSPCL02c_E	Fe-D	M&E	List	2000	95-99	68	442.25	ug/L
COSPCL03a_C	Fe-D	Attaining	No Action ³	2000	95-14	29	792	ug/L
COSPCL03a_C	Mn-D	Attaining	No Action ³	2000	95-14	29	174	ug/L
COSPCL03b_A	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L

Table 1. Values Used for the Assessment of Dissolved Iron, Dissolved Manganese, and Sulfate Water Supply Standards.								
Portion ID	Analyte	Category / List	Listing Action	TVS or 2000¹	POR for 2000 Dataset	Sample Size of 2000 Dataset	Value	Units
COSPCL05_B	Mn-D	M&E	List	2000	95-99	67	431	ug/L
COSPCL06_C	Fe-D	Attaining	M&E Delist	2000	95-99	58	9995	ug/L
COSPCL06_C	SO4	303(d)	M&E to 303(d)	TVS	N/A	N/A	250	mg/L
COSPCL09b_A	Mn-D	Attaining	M&E Delist	2000	95-09	14	507.02	ug/L
COSPCL10_A	Mn-D	M&E	List	TVS	N/A	N/A	50	ug/L
COSPCL12a_A	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COSPCL12a_B	SO4	303(d)	M&E to 303(d)	TVS	N/A	N/A	250	mg/L
COSPCL12a_B	Fe-D	303(d)	M&E to 303(d)	TVS	N/A	N/A	300	ug/L
COSPCL12a_B	Mn-D	303(d)	M&E to 303(d)	TVS	N/A	N/A	50	ug/L
COSPCL13a_C	Fe-D	M&E	List	TVS	N/A	N/A	300	ug/L
COSPCL14a_A	Fe-D	M&E	List	2000	95-99	15	397	ug/L
COSPCL14b_A	Fe-D	303(d)	M&E to 303(d)	TVS	N/A	N/A	300	ug/L
COSPCL14b_A	Mn-D	303(d)	M&E to 303(d)	Site Specific Standard	N/A	N/A	244	ug/L
COSPCL15_B	Mn-D	303(d)	List	2000	95-99	31	315	ug/L
COSPCL15_B	Fe-D	M&E	List	TVS	N/A	N/A	300	ug/L
COSPCL15_C	Mn-D	303(d)	List	2000	95-99	31	315	ug/L
COSPCL16a_A	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COSPCL17b_A	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPCP07_B	Fe-D	M&E	Retain	TVS	N/A	N/A	300	ug/L
COSPCP07_B	Mn-D	303(d)	Retain	TVS	N/A	N/A	50	ug/L
COSPCP07_C	Fe-D	M&E	Retain	TVS	N/A	N/A	300	ug/L
COSPCP07_C	Mn-D	303(d)	Retain	TVS	N/A	N/A	50	ug/L
COSPCP09_B	Fe-D	303(d)	List	TVS	N/A	N/A	300	ug/L

Table 1. Values Used for the Assessment of Dissolved Iron, Dissolved Manganese, and Sulfate Water Supply Standards.								
Portion ID	Analyte	Category / List	Listing Action	TVS or 2000¹	POR for 2000 Dataset	Sample Size of 2000 Dataset	Value	Units
COSPCP13a_B	Mn-D	Attaining	303(d) Delist	TVS	N/A	N/A	50	ug/L
COSPCP13a_B	SO4	Attaining	303(d) Delist	2000	95-04	17	2708	mg/L
COSPCP13a_E	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPLA02a_A	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COSPLS01_A	Mn-D	Attaining	303(d) Delist	TVS	N/A	N/A	50	ug/L
COSPLS01_A	SO4	303(d)	M&E to 303(d)	2000	95-99	46	553	mg/L
COSPMS01a_A	Mn-D	Attaining	M&E Delist	2000	95-04	248	240	ug/L
COSPMS01b_A	Mn-D	Attaining	303(d) Delist	TVS	N/A	N/A	50	ug/L
COSPSV04a_B	Mn-D	Attaining	M&E Delist	2000	95-18	28	188.2	ug/L
COSPSV04b_A	Mn-D	303(d)	List	2000	95-99	107	57.6	ug/L
COSPSV04b_B	Fe-D	Attaining	TMDL Delist	TVS	N/A	N/A	300	ug/L
COSPSV04b_B	Mn-D	303(d)	List	2000	95-99	107	57.6	ug/L
COSPSV04b_B	SO4	303(d)	List	TVS	N/A	N/A	250	mg/L
COSPSV05_A	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COSPSV05_B	Mn-D	303(d)	Retain	TVS	N/A	N/A	50	ug/L
COSPSV06_A ²	Mn-D	Attaining	303(d) Delist	N/A	N/A	N/A	N/A	N/A
COSPSV06_C ²	Mn-D	Attaining	303(d) Delist	N/A	N/A	N/A	N/A	N/A
COSPSV06_D ²	Mn-D	Attaining	303(d) Delist	N/A	N/A	N/A	N/A	N/A
COSPUS02c_A	Fe-D	TMDL	Retain	TVS	N/A	N/A	300	ug/L
COSPUS02c_A	Mn-D	TMDL	Retain	2000	95-99	31	235	ug/L
COSPUS02c_C	Fe-D	TMDL	Retain	TVS	N/A	N/A	300	ug/L
COSPUS02c_C	Mn-D	TMDL	Retain	2000	95-99	31	235	ug/L
COSPUS02c_D	Fe-D	TMDL	Retain	TVS	N/A	N/A	300	ug/L
COSPUS02c_D	Mn-D	TMDL	Retain	2000	95-99	31	235	ug/L
COSPUS03_B	Mn-D	303(d)	Retain	2000	95-99	45	170	ug/L

Table 1. Values Used for the Assessment of Dissolved Iron, Dissolved Manganese, and Sulfate Water Supply Standards.

Portion ID	Analyte	Category / List	Listing Action	TVS or 2000 ¹	POR for 2000 Dataset	Sample Size of 2000 Dataset	Value	Units
COSPUS04_E	Mn-D	303(d)	List	2000	95-99	95	100	ug/L
COSPUS05b_B	Mn-D	303(d)	Retain	2000	95-99	153	151.8	ug/L
COSPUS06b_A ⁴	Mn-D	Attaining	No Action ³	2000	95-18	30	62.9	ug/L
COSPUS15_B	SO4	303(d)	List	TVS	N/A	N/A	250	mg/L
COUCBL02a_A	Mn-D	303(d)	Retain	TVS	N/A	N/A	50	ug/L
COUCBL02a_B	Mn-D	303(d)	Retain	TVS	N/A	N/A	50	ug/L
COUCBL06a_B	Mn-D	Attaining	303(d) Delist	2000	95-99	88	665	ug/L
COUCBL06a_C	Mn-D	Attaining	303(d) Delist	2000	95-99	88	665	ug/L
COUCBL12_B	Mn-D	M&E	Retain	2000	95-04	15	199	ug/L
COUCBL12_C	Mn-D	M&E	Retain	2000	95-04	15	199	ug/L
COUCBL20_B	Fe-D	M&E	Retain	2000	N/A	N/A	N/A	ug/L
COUCEA05a_C	Fe-D	303(d)	List	TVS	N/A	N/A	300	ug/L
COUCEA05c_A	Fe-D	303(d)	Retain	TVS	N/A	N/A	300	ug/L
COUCEA10a_B	SO4	303(d)	List	TVS	N/A	N/A	250	mg/L
COUCNP03_A	Fe-D	M&E	Retain	TVS	N/A	N/A	300	ug/L
COUCNP04a_B	Fe-D	M&E	Retain	TVS	N/A	N/A	300	ug/L
COUCNP04a_B	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COUCNP04a_E	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COUCNP04a_F	Fe-D	303(d)	M&E to 303(d)	TVS	N/A	N/A	300	ug/L
COUCNP04a_H	Fe-D	303(d)	Retain	TVS	N/A	N/A	300	ug/L
COUCNP04a_H	Mn-D	303(d)	Retain	TVS	N/A	N/A	50	ug/L
COUCNP04b_B	Mn-D	Attaining	M&E Delist	2000	95-04	19	479	ug/L
COUCNP05b_A	Fe-D	303(d)	M&E to 303(d)	2000	95-04	28	359	ug/L
COUCNP05b_A	Mn-D	Attaining	M&E Delist	2000	95-04	28	109.5	ug/L
COUCUC02_H	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COUCUC05_B	Mn-D	303(d)	List	TVS	N/A	N/A	50	ug/L
COUCUC07b_E	Mn-D	M&E	Retain	TVS	N/A	N/A	50	ug/L
COUCUC07b_E	SO4	303(d)	Retain	TVS	N/A	N/A	250	mg/L

Table 1. Values Used for the Assessment of Dissolved Iron, Dissolved Manganese, and Sulfate Water Supply Standards.								
Portion ID	Analyte	Category / List	Listing Action	TVS or 2000¹	POR for 2000 Dataset	Sample Size of 2000 Dataset	Value	Units
COUCUC07b_D	SO4	M&E	List	TVS	N/A	N/A	250	mg/L
COUCUC07b_D	Mn-D	M&E	List	TVS	N/A	N/A	50	ug/L
COUCUC07b_D	Fe-D	M&E	List	TVS	N/A	N/A	300	ug/L
COUCUC07d_B	Mn-D	303(d)	Retain	TVS	N/A	N/A	50	ug/L
COUCUC07e_A ²	Mn-D	Attaining	303(d) Delist	N/A	N/A	N/A	N/A	N/A
COUCUC10c_A	Fe-D	Attaining	M&E Delist	TVS	N/A	N/A	300	ug/L
COUCUC10c_B	Fe-D	Attaining	303(d) Delist	TVS	N/A	N/A	300	ug/L
COUCUC10c_C	Fe-D	Attaining	303(d) Delist	TVS	N/A	N/A	300	ug/L
COUCUC12_D	Fe-D	Attaining	303(d) Delist	2000	95-18	18	426.25	ug/L
COUCUC12_D	Mn-D	Attaining	303(d) Delist	2000	95-18	12	877.05	ug/L
COUCYA02a_A	Mn-D	Attaining	M&E Delist	2000	95-99	45	128	ug/L
COUCYA03_D	Mn-D	Attaining	M&E Delist	TVS	N/A	N/A	50	ug/L
COUCYA18_B	Fe-D	Attaining	M&E Delist	TVS	N/A	N/A	300	ug/L
COUCYA22_E	Fe-D	303(d)	List	TVS	N/A	N/A	300	ug/L

Footnotes

- 1) Where this column indicates that the appropriate standard is the existing quality as of the year 2000 (as indicated with '2000' in this column), information for the subsequent columns is only reported where 10 or more samples are available.
- 2) The water supply use classification was removed from COSPSV06 and from COUCUC07e during the 2015 and 2019 rulemaking hearings, respectively. Therefore there are no standards to memorialize.
- 3) During the hearing process, it was determined that the 303(d) listing was not appropriate. Assessment values are memorialize for future assessment cycles.
- 4) Assessment value memorialized in this table applies only to the epilimnion.

7. Policy 10-1 Aquatic Life Use Attainment Update

In 2017, the commission updated Policy 10-1, Aquatic Life Use Attainment, Methodology to Determine Use Attainment for Rivers and Streams. Policy 10-1 provides the commission with a methodology for determining if the Aquatic Life Use is attaining

in wadeable streams and rivers. The policy describes a bioassessment Multi-Metric Index (MMI) tool, which provides a direct measurement and characterization of the health of the benthic macroinvertebrate community. The MMI calculates a unitless score that ranges from 0-100. These MMI scores are then compared to biological thresholds, which are located in Table 1 of Policy 10-1.

For the 2017 update of Policy 10-1, the MMI (4.0) tool was updated to provide more precise MMI scores as well as new metrics that describe more detailed attributes of the benthic macroinvertebrate community. The MMI tool was recalibrated with a more robust reference and stressed site dataset. As a result, the MMI scores for reference sites were recalculated, which led to new biotype thresholds. The three biotypes are Biotype 1 (Transition), Biotype 2 (Mountain) and Biotype 3 (Xeric and Plains).

During the 2020 303(d) listing cycle, the division utilized the recalibrated tool to assess MMI scores against the new biotype thresholds. This included newly provided and previously submitted data. These assessments were completed within the South Platte and Upper and Lower Colorado basins.

For the 2020 listing cycle the commission placed 27 new segments on the 303(d) List, removed 18 segments from the 303(d) List, and retained 26 segments on the 303(d) List.

8. Site-specific decisions made by the commission are discussed below

a) COSPCH01 - Dissolved Manganese

Segment COSPCH01 was placed on the M&E List for dissolved manganese at the 2016 Regulation #93 rulemaking. In the current assessment, sampling data shows that Segment COSPCH01 is not in attainment of the water supply standard for dissolved manganese, as the current concentration (101.55 µg/L) exceeds the existing water quality as of January 1, 2000 (86.95 µg/L). Although the division considered the existence of facilities as of January 1, 2000, including Parker Water and Sanitation District's water reclamation facilities, the updated attainment analysis found no evidence of increased sources of dissolved manganese from these facilities between 1999 and 2010. The Division is making no conclusion as to whether such facilities are the source of impairment.

b) COSPUS06b -Total Arsenic

Chatfield Reservoir was placed on the 303(d) List for arsenic, but was assigned a low priority for TMDL development. Statewide, compliance problems are evident, and there is uncertainty regarding the appropriate standard to protect the water supply use for arsenic and the extent to which ambient levels of arsenic are natural/irreversible. Additionally, there has been a delay in the release of the EPA Integrated Risk Information System (IRIS) report for arsenic

that is necessary for standards revisions. Therefore, as it relates to arsenic, the division will focus efforts on evaluating feasibility information and revising the arsenic standards. The division will deprioritize the development of TMDL's for arsenic listings until other work has been accomplished.

c) COUCEA05

In the case of the acute and chronic dissolved metal standards for Eagle River Segments 5a, 5b and 5c the division considered available data and used the approach described in the 2020 303(d) Listing Methodology to determine attainment of water quality standards. The commission approved several listing actions within these segments. This included adding parameters to the 303(d) List, removing parameters from the 303(d) List and changing listing categories from 4a (approved TMDL) to 1 (attaining). Under CERCLA, the EPA determines the nature and extent of contamination (Remedial Investigation), considers cleanup alternatives in a Feasibility Study, and then selects a Final Remedy in a Record of Decision. In the 2013 Focused Feasibility Study, the EPA considered data from 2009 to 2012 and any exceedance of water quality standards resulted in the identification of remediation actions to achieve water quality standards attainment year-round. The 303(d) and CERCLA water quality assessment processes differ slightly and it is possible that they result in differing analysis and conclusions for Eagle River Segment 5. Therefore, some segments that are deemed attaining standards in 303(d) assessment process may still indicate that additional water quality improvements are needed as a part of the Superfund process. In this hearing, the commission decided not to move the upper portion of segment 5a from Category 4a into Category 1 for zinc and instead decided to keep all three of these segments in Category 4a. The commission found that there were factors specific to these circumstances that warranted deviating from the Listing Methodology and exercising best professional judgment. These factors include the unique access constraints associated with a Superfund site designation, such as the fact that only the Hazardous Materials and Waste Management Division is able to collect data from the upper portion of segment 5a, and therefore it is challenging to collect paired data reflecting conditions in the upper portion and the lower portion of this segment on the same day. Another factor was that there was more data available for the lower portion than for the upper portion, and the data for the lower portion demonstrated impairment. The commission was not convinced that if there had been paired data the upper portion would still have been assessed as in attainment. Therefore the commission determined to keep the upper portion of segment 5a in Category 4a for zinc.

d) COUCYA13e_A - Macroinvertebrates

The commission decided to place this segment on the monitoring and evaluation list instead of the 303(d) List for macroinvertebrates because there was only one data point and it was from 2008. While the Listing Methodology indicates that in these circumstances a 303(d) listing is appropriate, in these circumstances the commission determined that a deviation from the Listing Methodology was warranted because when the segment was first evaluated using the prior version of the MMI tool it was considered attaining but when the same data was assessed using the newer version of the MMI tool, it was not in attainment. Therefore, the commission determined that placing this segment on the Monitoring and Evaluation list for macroinvertebrates was warranted in this unique instance.

9. Parties to the rulemaking hearing