



COLORADO

Water Quality
Control Commission

Department of Public Health & Environment

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

SUBJECT:

For consideration of the adoption of revisions to Segment COUCNP04a (Sand Creek) on Colorado’s Section 303(d) List of Impaired Waters and Monitoring and Evaluation List, Regulation #93 (5 CCR 1002-93). Revisions to Regulation #93 proposed by Cody Resources, LP, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1.

In these attachments, 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.

SCHEDULE OF IMPORTANT DATES

Party status requests due	05/26/2016 5 pm	Additional information below.
Proponent’s prehearing statement due	06/07/2016 5 pm	Additional information below.
Responsive prehearing statement due	07/01/2016 5 pm	Additional information below.
Rebuttal Statement due	07/26/2016 5 pm	Additional information below.
Last date for submittal of motions	07/28/2016 5 pm	Additional information below.
Notify commission office if participating in prehearing conference by phone	07/29/2016 by noon	Send email to cdphe.wqcc@state.co.us with participant(s) name(s)
Prehearing Conference (mandatory for parties)	08/01/2016 1:00 pm	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
Rulemaking Hearing	08/08/2016 9:00 am	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

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 so indicate, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each party that has proposed revisions must submit a proponent's prehearing statement.

Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except for good cause shown.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status will not be permitted unless authorized by the commission.

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all persons requesting party status. Parties needing to participate by telephone can call 1-857-216-6700 and enter the conference code 425132.

Following the cut-off date for motions, no motions will be accepted, except for good cause shown.

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wqcc@state.co.us by July 27, 2016.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(a), (b) and (2); 25-8-203; 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.

Dated this 12th day of April, 2016 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1
CODY RESOURCES LP/STATE LINE RANCH

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

5 CCR 1002-93

REGULATION #93

COLORADO'S SECTION 303(D) LIST OF IMPAIRED WATERS AND MONITORING AND EVALUATION LIST

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93.3 Water Bodies Requiring TMDLs or Identified for Monitoring and Evaluation

Only those segments where a Clean Water Section 303(d) Impairment has been determined require TMDLs. For these segments, TMDLs are only required for those parameters that are identified as impairments.

WBID	Segment Description	Portion	Colorado's Monitoring & Evaluation Parameter(s)	Clean Water Act Section 303(d) Impairment	303(d) Priority
COUCNP04a	All tributaries to N. Platte River except segments 4b, 6, 7a and 7b	Sand Creek	Sediment	<u>Sediment</u>	<u>H</u>

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CODY RESOURCES LP/STATE LINE RANCH **PROPOSED**

93.16 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE;
AUGUST 8, 2016 RULEMAKING, FINAL ACTION OCTOBER 11, 2016, EFFECTIVE
DATE OF NOVEMBER 30, 2016

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 last updated. This change 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.

2. List Development

a. Listing Methodology

The Section 303(d) Listing Methodology – 2016 Listing Cycle (“Listing Methodology”) provides 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 2015.

This Listing Methodology sets forth the criteria that generally were used to make decisions regarding which waters to include on the 2016 Section 303(d) List and the 2015 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

To determine whether Sand Creek, a portion of segment COUCNP04a, should be included on the 303(d) list rather than the M & E List, the Commission considered existing and readily available data, which includes the data used to prepare the identification processes, calculations and models referenced in 40 CFR §130.7(a)(5)(I, (ii) and (iv), and data that was presented by Cody Resources LP/State Line Ranch.

3. Sand Creek, a Portion of Segment COUCNP04a

Cody Resources LP/Sand Creek Ranch proposed that Sand Creek be listed as impaired for sediment due to impacts to a beneficial use at the Commission's December 2015 303(d) Rulemaking. The Commission, however, placed Sand Creek on the Monitoring & Evaluation List effective March 1, 2016 based on the State Line Ranch's proposal submitted as part of written public comment. While the Commission found the evidence submitted to be persuasive and compelling evidence of impairment, the Commission was reluctant to list the segment as impaired because the proposal was made late in the process and the Division had not had an opportunity to review and evaluate the proposal. In addition, potentially affected parties were not able to participate in the process. This was the first time a segment has been listed for sediment impairing a beneficial use, and so the Commission wanted to proceed thoughtfully to establish precedent about the factors considered in such a decision. The Commission, however, stated that a proposal could be made for a special hearing to consider the sediment listing proposal, State Line Ranch subsequently requested and the Commission granted and scheduled this special hearing.

In support of listing Sand Creek as impaired, State Line Ranch submitted an engineering report prepared by Hydros Consulting. The Commission found the Hydros Report appropriately analyzed the four factors required to find sediment impairment using Policy 98-1, and that Sand Creek Ranch established with clear and convincing evidence:

1. The represented expected condition in terms of sediment deposition for Sand Creek;
2. The actual observed sediment condition for Sand Creek is significantly different than the expected condition;
3. The sediment is attributable to an anthropogenic source, which is Off-Highway Vehicle use at North Sand Hills;
4. There is a beneficial irrigation use at State Line Ranch to which the excess sediment is a deterrent.

The Commission has accordingly updated Colorado's List of Water-Quality-Limited Segments to move Sand Creek, a portion of Segment COUCNP04a, into its 303(d) list from its M & E List.