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QQ Quarterly Board Meeting

Thursday, February 8, 2018

10 AM – 3 PM

Summit County South Branch Library, Discovery Room
103 S Harris St, Breckenridge, CO 80424

AGENDA

- 10 AM Introductions
- 10:15 AM [*Climate Change in the Headwaters: Water & Snow Impacts*](#)
Presentation on new QQ-commissioned study
Stephen Saunders and Tom Easley, Rocky Mountain Climate
Organization
- 11:45 AM Lunch
- 12:30 PM Member updates
- 1:30 PM Legislative updates and discussion of QQ possible positions- *Torie*
- 2:15 PM Oil and gas updates- *Barbara & Torie*
- 2:30 PM Water quality updates— *Lane & Torie*
- 3:00 PM Adjourn

Legislative update

QQ Meeting, Feb. 8, 2018

Updated Feb. 1, 2018

FUNDING Update: One of the central issues for QQ and water-related organizations in the 2018 Legislative Session will be lack of projected severance tax revenue that will affect not only Tier II programs that include water programs, but also general funding for DNR. Declines stem in part from a downturn in oil and gas development and in part from the [BP tax deduction payback case](#). Discussions will continue through the session on alternative funding sources for water projects. The CWCB and others have discussed funding water needs from the General Fund as an alternative to relying on severance and other fluctuating fundind, especially for the Basin Roundtables (WSRA).

The CWCB made some funding decisions at their end-of-January Board meeting. Related to QQ interests, the CWCB Projects Bill will include \$ 7 million for water plan implementation (down from \$10 mil last year). That is broken into \$3 million for supply and demand projects including storage, \$1million for conservation and land use, \$1 million for ag, \$1.5 million for environmental projects, and \$500,000 for education.

The Water Supply Reserve Account would be refilled to \$2 million. The stream management plan and watershed grants will receive \$2 million total. While this is less than other years, Chris Sturm, who manages these grants, said there is a remaining balance from the past years so \$2 million should be adequate.

HB18-1008

Mussel-free Colorado Act

funding CPW's ANS boat inspection program. Reps. Esgar & Arndt; Sens. Donovan & Coram. (WRRC bill)

- Requires motorized boats and sailboats to purchase an Aquatic Nuisance Species (ANS) stamp. The cost to in-state boats is \$25; out-of-state boats cost \$50.
 - o Funding from the stamp goes exclusively to the prevention of ANS (through CPW's boat inspection program)
- Authorizes CPW to charge for decontamination, conveyance, and storage costs when a boat is impounded and quarantined because of ANS detection.
- Includes a legislative declaration that federal agencies, as the owners and managers of reservoirs and infrastructure in the state, need to also contribute substantial funding to ANS prevention to ensure adequate funding, a subject about which QQ has advocated repeatedly as well. The projected income from this new stamp is not enough to fully fund the boat inspection program.
- *NOTE* on 2017 efforts: Last year's ANS-funding bill was joined with an overall funding increase for CPW, which failed based on the CPS funding. This year's bill is only for ANS, was run through the Water Resource Review Committee, and has bipartisan support.

We're optimistic this bill will pass this year. Also NOTE, other iterations of the bill included nonmotorized watercraft, but this version does not.

- **Rationale for QQ position:** Identifying a more sustainable funding solution for the ANS boat inspection program has been a priority for QQ this and past legislative sessions to protect water quality in the headwaters.
- **QQ recommended position: Support**

HB18-1053

Reclaimed water use for marijuana cultivation

Reps. Arndt & Hansen; Sen. Donovan. (WRRRC bill)

- Adds marijuana cultivation as an additional use for reclaimed domestic wastewater, and instructs the Water Quality Control Commission (WQCC) to undertake a rulemaking consistent with the details of the bill. Authorizes the WQCC to establish new categories of water reuse standards, to add additional allowable uses for domestic wastewater, and to recategorize existing uses to a less stringent standard in the rulemaking.
- CDPHE has voiced three primary concerns with the series of reuse bills (more follow this first one) as introduced: 1) point of compliance issues; 2) are they also authorized to make standards more stringent if necessary; and 3) best practices that could be included
- **Rationale for QQ position:** QQ policies call for transmountain diversion water to be reused to extinction and for QQ to work on promoting water conservation statewide. This bill promotes both of these policies.
- **QQ recommended position: Support.**

HB18-1069

Reclaimed water use for toilet flushing

Reps. Arndt & Thurlow; Sen. Coram (NOTE: Not a WRRRC bill, Committee declined)

- Adds toilet flushing as an additional use for domestic wastewater and contains language identical to HB 18-1053 on the WQCC rulemaking.
- **Rationale for QQ position:** QQ policies call for transmountain diversion water to be reused to extinction and for QQ to work on promoting water conservation statewide. This bill promotes both of these policies.
- **QQ recommended position: Support.**

HB18-1071

Regulate oil & gas operations to protect public safety and environment

Rep. Salazar

- The bill seeks to incorporate language from a recent Colorado court of appeals case regarding the general mission of the Colorado Oil and Gas Conservation Commission (COGCC). In creating the COGCC, the General Assembly declared that it is in the public interest to “[f]oster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.” CRS 34-60-102. In *Martinez v. COGCC*, 2017 COA 37, the court found that this language meant that oil and gas development must occur

consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources—in contrast to the COGCC’s standing view that the legislative declaration amounts to a balancing between development and public health, safety, and welfare, including protection of the environment and wildlife resources.

- The bill states that the COGCC shall regulate oil and gas development “*so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environmental and wildlife resources.*”
- **QQ recommended position: Monitor** for potential impact to local authority to regulate or to negatively affect Colo. Supreme Court outcome for *Martinez*

[HB18-1073](#)

Water District Ability Contract Water Assets

Rep. Gray; Sen. Gardner

- We understand that Northern is the main proponent behind this bill. As they prepare to enter bond market, they want to be sure that they have authority to bond for capacity, and not just water.
- The bill authorizes water districts, including water activity enterprises, to enter into contracts for water and the capacity in works and allows the contracts to be based on municipalities' authority to contract for water and sewer facilities. It also specifies that water conservancy districts' contracts can be for municipal and industrial use by the recipient of the water.
- **QQ recommended position: Monitor**

[HB18-1093](#)

Reclaimed water use for edible crops

Rep. Arndt; Sen. Coram (Note: Not WRRC bill)

- Similar to other reclaimed water bills, adds edible crops as an additional use for domestic wastewater and contains language identical to HB 18-1053 on the WQCC rulemaking. Specifies that using reclaimed wastewater for edible crops must comply with federal FDA standards.
- We understand one of the main proponents is Denver Urban Gardens. We’ve also heard one use for this bill is lots of Denver schools are transitioning over to reclaimed water, which means children could be more exposed (i.e. spray each other with water while working in the gardens). Because we’re still trying to understand the additional potential health concerns, we’re recommending monitoring at this point—and would lean towards support unless we hear differently moving forward.
- **QQ recommended position: Monitor.**

[SB18-019](#)

Expanded Duration for Colorado Water Resources and Power Development Authority revolving loans

Sens. Coram & Donovan; Reps. Arndt & Hansen (WRRRC bill)

- Bill would change the statutory 20-year loan term limit for the CO Water and Power Development Authority to “terms that are agreed upon by the Authority and the borrower.”
- **No position recommended.**

[SB18-038](#)

Reclaimed water use for industrial hemp

Sens. Coram & Donovan; Reps. Willet & Esgar (WRRRC Bill)

- Similar to other reclaimed water bills, adds edible crops as an additional use for domestic wastewater and contains language identical to HB 18-1053 on the WQCC rulemaking.
- **Rationale for QQ position:** QQ policies call for transmountain diversion water to be reused to extinction and for QQ to work on promoting water conservation statewide. This bill promotes both of these policies.
- **QQ recommended position: Support.**

[SB18-041](#)

Authorize water use incidental to sand and gravel mines

Sens. Baumgardner & Coram; Reps. Arndt & Saine

- Bill would allow the use of groundwater for uses incidental to open mining, including processing and washing, dust suppression, temporary irrigation for revegetation, and other mitigation efforts.
- QQ recommended position: Monitor

[SB18-048](#)

Protect Act: Local government authority to regulation oil and gas development

Sen. Jones; Rep. Foote

- Current law only allows for local 1041 regulations over an oil and gas development as an area of state interest only if the COGCC has identified the area for designation. Section 3&4 of this bill repeals the COGCC requirement.
- Section 5 & 6 explicitly allows local governments (counties and municipalities in separate parts of statute) to “plan, zone, and refuse to allow oil and gas operations.” The bill goes on to state that oil and gas operators are subject to local government siting requirements.
- **NOTE: Postponed indefinitely**

[SB18-134](#)

Public Utilities Commission Deregulate Nonprofit Water Utilities

Sen. Cooke; Rep. Arndt. Intro'd Jan. 30. Scheduled in Senate Ag. Feb 8

- Bill exempts nonprofit water companies from PUC regulation. This is added to a current statutory “simplified regulatory treatment” for water companies serving fewer than 1,500 people. In contrast, nonprofit water companies would just be exempted. The commission retains the right to entertain a complaint of unjust or unreasonable rates or

practices, and to take remedial action, if the complaint is authorized by specified public officials or other persons.

- This is a new bill—there is still plenty to learn to better understand the motivations behind this bill. It will be discussed in Water Congress on Monday, Feb. 5th and we may have more information at the QQ Meeting on Feb. 8th.
- **QQ recommended position: Monitor.**

[SJR18-003](#)

Water Projects Eligibility Lists

Sen. Baumgardner, Rep. Arndt

- Annual list of water projects eligible for funding under the CO Water & Power Development Authority
- No position recommended.

POSSIBLE OTHER BILL TOPICS for member feedback:

(no positions recommended until bill introduction)

- **Water Plan criteria integrated into DNR processes.** QQ continues to lead discussions on possible legislation that would require DNR to more transparently apply the Water Plan criteria to DNR processes, not just grant applications where it is currently being applied. Those conversations are ongoing and include meetings with DNR, so it is still possible another solution will come forward.
- **Bonding and water quality protection for hard rock mining.** Bill is being formulated by environmental groups in Colorado, and seeks to codify existing practices of DRMS that are not explicit in statute. The three possible elements of the bill include: 1.) eliminating a self-bonding option for hard rock mines; 2.) require bonding for water impacts, adding to land impacts currently in statute; and 3.) stating that perpetual water treatment systems will not be allowed as initial proposed mitigation for a new mine permit.
- **Molybdenum state-commissioned study.** Representative Arndt is looking to put forward a bill that would commission an independent study of suitable molybdenum levels for livestock and humans. This is a response to the recent requested standard change by Climax—which QQ participated in and members have been updated on several times. That rulemaking was continued until November 2019 to allow for additional time to research acceptable statewide molybdenum levels, along with Climax investigating alternatives for avoiding molybdenum spikes in the Blue River.
- **Water quality standards not to harm water rights.** Bill was pulled from WRRRC consideration. Bill would require the Water Quality Control Commission, when setting water quality standards, to make a finding that any standards that are more stringent than federal standards do not harm existing private property rights. Members highlighted significant concerns over this additional requirement, which could make locally-tailored water quality standards, like the Grand Lake clarity standard, more difficult.

- **Sea plane landings.** For the past several years, sea plane pilots have advocated to legalize sea planes landing in Colorado reservoirs, and their efforts have been defeated in large part because of concerns of ANS contamination. Last year, a pilot program proposal for a limited number of reservoirs also failed. This pilot project idea will come forward again this year.
- **Municipal “Flex” bill.** Bill would allow flexibility in place-of-use for municipal water rights that have already calculated historic consumptive use (HCU). This bill was pulled from consideration from WRRRC to address some outstanding issues.
- **Northern mitigation bill.** This bill would be similar to one that failed in the 2017 session. Bill would allow the CWCB to administer a program to shepherd water for environmental purposes (with many additional details not described here). The general concern we shared with the River District last year is that we want to ensure this bill does not preclude other mechanisms for calling water downstream for environmental purposes (like the West Slope efforts for Lower Colorado endangered fish).

SUMMARY OF BILLS OF INTEREST for 2018 (all positions are recommended at this point)

Bill No.	Bill Description	Sponsor	Status	Calendared	Notes	RECOMMENDED position
House bills						
HB18-100	Mussle-free Colorado Act (funding for CPW's ANS boat inspection program)	Reps Esgar & Arndt; Sens. Donovan & Coram	House Ag referred to House Finance		Water Resource Review Committee (WRRC) bill	Support
HB18-105	Reclaimed water use for marijuana cultivation	Reps. Arndt & Hansen; Sen. Donovan	House Ag referred to Approps		WRRC	Support
HB18-106	Reclaimed water use for toilet flushing	Reps. Arndt & Thurlow; Sen. Coram	House Ag referred to Approps			Support
HB18-107	Regulate Oil & Gas Operations to protect public safety and environment	Rep. Salazar	House Health, Ins., Enviro.	Feb. 1		Monitor
HB18-107	Water District Ability to contract for water assets	Rep. Gray; Sen. Gardner	House Ag referred to Finance			Monitor
HB18-109	Reclaimed water use for edible crops	Rep. Arndt; Sen. Coram	House Ag referred to Approps			Monitor
Senate bills						
SB18-019	Expanded duration for CWRPDA revolving loans	Sens. Coram & Donovan; Reps. Arndt & Hansen	Passed Senate; House Ag	Feb. 12	WRRC	No position

SUMMARY OF BILLS OF INTEREST for 2018 (all positions are recommended at this point)

SB18-038	Reclaimed water use on industrial hemp	Sens. Coram & Donovan; Reps. Willet & Esgar	Passed Sen. Ag, to House Approps.		WRRC	Support
SB18-041	Authorize water use incidental to sand & gravel mines	Sens. Baumgardner & Coram; Reps. Arndt & Saine	House Ag	Feb. 12		Monitor
SB18-048	Protect Act: Local authority for oil and gas development explicitly allowed; 1041 does not require COGCC approval	Sen. Jones; Rep. Foote	Senate State Affairs			POSTPONED INDEFINITELY
SB 18-134	Exempting nonprofit water utilities from PUC regulation	Sen. Cooke; Rep. Arndt	Senate Ag	Feb. 8		Monitor
SJR18-003	Water projects eligibility list	Sen. Baumgardner; Rep. Arndt	Passed Senate; Intro'd in House			No position

BEFORE THE OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF
COLORADO

IN THE MATTER OF CHANGES TO THE RULES) CAUSE NO. IR
OF PRACTICE AND PROCEDURE OF THE OIL)
AND GAS CONSERVATION COMMISSION OF THE) DOCKET NO. 171200767
STATE OF COLORADO)
) TYPE: RULEMAKING

PREHEARING STATEMENT OF NORTHWEST COLORADO COUNCIL OF
GOVERNMENTS (NWCCOG)

Northwest Colorado Council of Governments ("NWCCOG"), by and through its Water Quality/Quantity Committee,¹ by and through the undersigned counsel, respectfully submits this Prehearing Statement regarding the Flowline Rulemaking.

NWCCOG generally supports the Colorado Oil and Gas Conservation Commission (COGCC) proposed revisions to flowline rules dated October 31, 2017 ("proposed rule"). The tragic events in Firestone and around the Front Range have elevated the need for strengthened COGCC rules, and this rulemaking is an important step. NWCCOG's recommended revision and those of other local government parties supported by NWCCOG seek to further strengthen the rules and clarify the local government's role in regulating flowlines.

NWCCOG requests 5 minutes to present at the rulemaking hearing.

I. NWCCOG Recommended Revision

The Flowline Regulations (1100 series) should include the following savings provision:

Nothing shall establish, alter, impair, or negate the authority of municipal and county governments to regulate flowlines under local land use authority, and the Commission acknowledges that any such municipal or county regulation does not create an operational conflict with these rules unless the municipal or county regulation materially impedes or destroys the state interest in oil and gas development.

Rationale: The proposed savings provision clarifies that this rule does not prevent local governments from continuing to regulate the impacts of flowlines under their local land use authority.

¹ Membership to NWCCOG/QQ is included as Attachment A to this prehearing response.

II. NWCCOG Agreement with Other Parties

NWCCOG agrees with the recommended revisions of the following local government parties to this rulemaking:

- a. City of Thornton, in particular regarding the abandonment of flowlines;
- b. City and County of Broomfield regarding integrity management, notice to local governments, and adequate financial assurances; and
- c. Affiliated Local Governments regarding pipeline mapping, leak detection best practices, inventorying domestic taps, and the cleanup and containment of spills.

III. Conclusion.

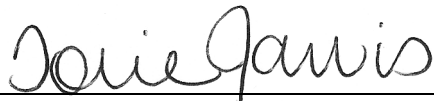
NWCCOG appreciates the effort of the COGCC and the COGCC staff to implement this rulemaking. Our comments will help continue to shape the proposed rule to better complement local government land use efforts and to make the proposed rule more effective tool in fostering open communication between operators and local governments.

IV. Exhibit.

NWCCOG presents the following exhibit, and reserves the right to introduce exhibits as necessary for rebuttal:

EXHIBIT A: Recommended revisions to the COGCC Staff's Final Draft Proposed Flowline Rulemaking, dated October 31, 2017.

Respectfully submitted on this 1st day of December, 2017.



Torie Jarvis, Attorney #46848
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EXHIBIT A

NWCCOG Recommended Revisions to COGCC Staff's Final Draft Proposed Flowline Rulemaking

Recommended deletions are shown in double strikethrough text. Recommended additions are shown in underlined text.

FLOWLINE REGULATIONS (1100 Series)

1110. Relationship to local government regulation

(a) Nothing shall establish, alter, impair, or negate the authority of municipal and county governments to regulate flowlines under local land use authority, and the Commission acknowledges that any such municipal or county regulation does not create an operational conflict with these rules unless the municipal or county regulation materially impedes or destroys the state interest in oil and gas development.

BEFORE THE OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF
COLORADO

IN THE MATTER OF CHANGES TO THE RULES) CAUSE NO. IR
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PREHEARING RESPONSE OF NORTHWEST COLORADO COUNCIL OF
GOVERNMENTS (NWCCOG)

Northwest Colorado Council of Governments ("NWCCOG"), by and through its Water Quality/Quantity Committee, by and through the undersigned counsel, respectfully submits this Prehearing Response regarding the Flowline Rulemaking.

NWCCOG supports two additional elements from local government prehearing statements:

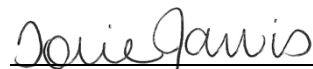
1. Local governments should determine the method of abandonment for flowlines under Rule 1104.

Many local government prehearing statements request Rule 1104 be amended to clarify that local governments, not operators, specify whether flowlines should be abandoned in place or removed. The method of abandonment is primarily a land use decision with health, safety, and environmental impacts. NWCCOG supports this element of prehearing statements by Adams County, the City of Thornton, the Affiliated Local Governments, and La Plata County.

2. Local governments should receive notice related to flowline siting and pipeline integrity.

The proposed rule includes early notification and required reporting to the COGCC regarding flowline registration, pipeline integrity, and abandonment; local governments ought to likewise receive this information. Local governments provide emergency response and make land use decisions that should be informed by the location and integrity of flowlines. NWCCOG supports this element of prehearing statements by Adams County, the City and County of Broomfield, and Fort Collins.

Respectfully submitted on this 15th day of December, 2017.



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CO Supreme Court takes Martinez appeal, reopening debate on oil and gas safety

Kelsey Ray

January 29, 2018

Environment/Energy

No Comments



The Colorado Supreme Court today announced that it will hear the appeal of a controversial case, the outcome of which could have major implications for how the oil and gas industry does business in Colorado.

The case, *Martinez v. Colorado Oil and Gas Conservation Commission*, centers around the question of whether the state is obliged to first and foremost consider the impact of drilling on public health.

In 2013, a group of young plaintiffs, led by 17-year-old Xiuhtzecatl Martinez, petitioned the state oil and gas regulatory agency, known as the COGCC, to prohibit new drilling permits unless it can be scientifically demonstrated that such drilling will not harm human health or Colorado's

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ecological resources or contribute to climate change.

But the COGCC, which is funded largely by the oil and gas industry, says that such a rule would undermine its dual mission: to protect health and safety, and to promote drilling.

COGCC Director Matt Lepore said in 2012, “Those things have to be done in balance.” In other words, concerns about health effects or climate change cannot preclude the mandate to extract Colorado’s fossil fuels. The COGCC did not respond to *The Colorado Independent’s* request for comment. Martinez was unable to respond to this story in time for publication, but it will be updated with his comments.

In a 2016 ruling, Colorado’s Denver District Court sided against the teenagers. Their lawyers appealed, and last May the state Court of Appeals ruled that the COGCC does, in fact, have a responsibility to protect human welfare and the natural environment — even if that responsibility hampers oil and gas extraction.

The COGCC mission, the Court of Appeals argued, “was not intended to require that a balancing test be applied.” Rather, it “mandates that the development of oil and gas in Colorado be regulated subject to the protection of public health, safety, and welfare, including protection of the environment and wildlife resources.”

Despite repeated calls from environmentally-minded Coloradans — and a [request from Governor John Hickenlooper](#) — to let the decision stay, the COGCC called for an appeal of the ruling. State Attorney General Cynthia Coffman [appealed the decision](#) on behalf of the COGCC last summer.

On Monday, the Colorado Supreme Court granted the appeal with a [slightly reframed question](#): “Whether the court of appeals erred in determining that the [COGCC] misinterpreted [its mandate] as requiring a balance between oil and gas development and public health, safety, and welfare.”

The full text of the COGCC’s mandate under Colorado’s Revised Statutes is available [here](#).

Photo: Protesters demand a fracking moratorium in Boulder, CO in 2017. (Ted Wood/The Story Group)

	Martinez v.	Oil And
Cogcc	COGCC	Gas
Xiuhtezcatl		
Martinez		

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MOLYBDENUM RULEMAKING TIMELINE AND SUMMARY

For QQ Meeting, Feb. 8, 2018

The short summary: The Water Quality Control Commission decided in December to delay consideration of a molybdenum standard change until November 2019 (at the request of Climax with support from QQ and other parties). In January, the Commission also extended the current temporary modification for moly. on the Blue River to ensure it remains in place until after the Nov. 2019 hearing. Climax committed to look at some additional considerations for controlling moly. spikes that relate to Climax's operations and treatment options before the Nov. 2019 hearing.

Here is a brief timeline of what's happened (bold is the very short version):

1. Climax's original proposal to change the molybdenum standard was met with skepticism from local governments and public. Climax originally proposed to change the molybdenum standard from 210 mg/L to 9,000 mg/L. QQ, many QQ member local governments including Grand County, Denver Water, and other water users submitted joint responses to Climax's proposal with our concerns after hiring two experts to review their proposal. There were several [statewide stories](#) on these proposals as well.

2. In December, Climax requested to continue the hearing on changing moly standards and extend existing temporary modification for Blue River. WQCC agrees.

After Climax received such skepticism from their earlier proposal to raise the molybdenum water quality standard to something like 43 times its current allowable level statewide, Climax requested the hearing be continued until November 2019 while they continued to search for a workable solution to what they say is a too-low state standard of 210 mg/L.

The WQCC decided to continue its consideration of water supply and agriculture molybdenum standards until November 2019. The Commission also continued the rulemaking until January 8, 2018, for the limited purpose of considering an extension of the temporary modification of the water supply standard in Blue River Segment 14. In January, the Commission voted to extend the current temporary modification on the Blue until 2020, to ensure the temporary modification remains in place through the November 2019 hearing continuation.

2. Climax also commits to important additional considerations as they continue to look at solutions to the statewide molybdenum standard. QQ joined in requesting additional considerations that were included in the Commission's findings. The Commission also accepted Climax's revised plan to resolve the uncertainty associated with the underlying standard of 210 µg/L with some additional considerations. Climax's plan includes publication of the third IMO study, awaiting publication of the ATSDR revised Toxicological Profile for Molybdenum, continued water quality monitoring of effluent and Tenmile Creek, source identification, potential additional monitoring, and updates to stakeholders. Furthermore, in order to resolve the uncertainty as to whether attainment of the underlying standard is feasible, in addition to what is outlined in Climax's plan, Climax will conduct investigations for molybdenum including identification of sources, influent control measures, investigation of potential treatment alternatives and treatment optimization, and available blending. Climax will identify treatment options, source control and water management alternatives, the expected effluent quantity and quality that could be achieved with each alternative, and an estimated cost for each alternative.

3. This conversation may continue in the Legislature. We've heard interest in funding a state study of safe molybdenum levels. While we have not seen any drafts of a proposed bill, we have heard talk that Representative Jeni Arndt (D, Ft. Collins) is interested in directing the Water Quality Control Division to undertake an independent study of safe molybdenum levels.



COLORADO

Water Quality
Control Commission

Department of Public Health & Environment

MEMORANDUM

TO: Parties to the January 2018 Regulation #33 rulemaking hearing; other interested persons

FROM: Trisha Oeth

DATE: January 10, 2018

SUBJECT: Draft Final Action Documents

As you know, the hearing record for this matter has been closed. I attach for your information and review, the final drafts of the proposed revisions to the Classifications and Numeric Standards for Upper Colorado River Basin and North Platte River (Planning Region 12), Regulation #33 (5 CCR 1002-33).

These documents reflect the commission's preliminary final approval decisions, along with the final draft of the accompanying Statement of Basis, Specific Statutory Authority, and Purpose.

If you believe that the enclosed documents do not accurately reflect the commission's preliminary decisions, please let me know at your earliest convenience. If at all possible, please let me know by **January 23, 2018** of any corrections that you believe are needed, so that your suggestions can be included in the materials sent with the commission's March meeting packets. Also, please copy in the other parties to the hearing on any proposed corrections that you may wish to submit. The commission is scheduled to consider final action regarding the issues raised in this rulemaking at its **March 12, 2018** regular meeting.

Should you have any questions regarding the preceding, please feel free to call me at (303) 692-3468.

cc: Water Quality Control Commission

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**Water Quality Control Commission****REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER COLORADO RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12)****5 CCR 1002-33**

....

33.60 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JANUARY 8, 2018 RULEMAKING; FINAL ACTION MARCH 12, 2018 EFFECTIVE DATE JUNE 30, 2018

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

Blue River Segment 14: Temporary Modification of the chronic molybdenum standard for water supply.

Climax Molybdenum Company presented evidence that progress has been made on its plan to eliminate the need for a temporary modification and to resolve uncertainty associated with the underlying molybdenum standard of 210 µg/L on Segment 14.

Three studies sponsored by the International Molybdenum Association (IMOA) on the health effects of molybdenum were completed and full reports were made available for consideration in a hearing originally scheduled for December 12, 2017. The hearing was to consider revisions to both the water supply and agriculture molybdenum standards in Regulations 31 and 33, as well as to resolve the temporary modification to the molybdenum water supply standard on Blue River Segment 14.

At the prehearing conference on November 29, 2017, the Commission hearing chair heard arguments regarding a Climax request to continue the rulemaking hearing. These arguments centered on the Division's position in rebuttal that the Commission should not consider any revisions to the water supply molybdenum standard until the most recent IMOA study was peer-reviewed and published as a technical journal article, and until the Agency of Toxic Substances and Disease Registry (ATSDR) considers the recent IMOA study results in the updated version of its draft toxicological profile for molybdenum. The Division presented evidence at the prehearing conference that ATSDR planned to revisit the draft profile in spring 2018, and that an updated version could be expected in approximately one year.

On December 1, 2017, the Commission issued its Prehearing Order, continuing the consideration of water supply and agriculture molybdenum standards in Regulation 31 and Regulation 33 until November 2019. The Commission also continued the rulemaking until January 8, 2018, for the limited purpose of considering an extension of the temporary modification of the water supply standard in Blue River Segment 14. The Commission established additional filing deadlines for Climax to submit additional information to support the extension of the temporary modification.

In this hearing, the Commission considered the additional information presented by Climax in support of the extension of the temporary modification on Segment 14, and found that nonattainment of the underlying standards was demonstrated, there was predicted non-attainment of a water quality based effluent limit, and there was uncertainty regarding the water quality standard necessary to protect current uses. There is also uncertainty regarding the extent to which existing quality in Blue River Segment 14 is

the result of irreversible human-induced conditions. The Commission accepted Climax's revised plan to resolve the uncertainty associated with the underlying standard of 210 µg/L with some additional considerations. Climax's plan includes publication of the third IMO study, awaiting publication of the ATSDR revised Toxicological Profile for Molybdenum, continued water quality monitoring of effluent and Tenmile Creek, source identification, potential additional monitoring, and updates to stakeholders. Furthermore, in order to resolve the uncertainty as to whether attainment of the underlying standard is feasible, in addition to what is outlined in Climax's plan, Climax will conduct investigations for molybdenum including identification of sources, influent control measures, investigation of potential treatment alternatives and treatment optimization, and available blending. Climax will identify treatment options, source control and water management alternatives, the expected effluent quantity and quality that could be achieved with each alternative, and an estimated cost for each alternative.

Given the continuation of the Commission's consideration of revised molybdenum standards until November 2019, which is after the expiration date of December 31, 2018 of the current temporary modification, the Commission extended the "current conditions" temporary modification in Segment 14 to June 30, 2020. "Current conditions" will preserve the status quo. As expressed by the Commission in a previous rulemaking, "current conditions" recognizes that during the term of the temporary modification, variability in a permitted discharger's effluent quality may occur. See Reg. 31, Section 31.53(V)(B).

The Commission also heard evidence that Climax is committed to continuing to resolve outstanding issues associated with the agriculture standard during the pendency of the continued standards rulemaking.

PARTIES TO THE RULEMAKING HEARING

1. Climax Molybdenum Company
2. Clinton Ditch and Reservoir Company
3. Eagle Park Reservoir Company
4. Eagle River Water and Sanitation District
5. Upper Eagle Regional Water Authority
6. U.S. Environmental Protection Agency
7. Denver Water
8. Copper Mountain Consolidated Metropolitan District
9. Powdr-Copper Mountain, LLC
10. Grand County
11. Northwest Colorado Council of Governments
12. Town of Frisco
13. City of Thornton

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION**

5 CCR 1002-33

**REGULATION NO. 33
CLASSIFICATIONS AND NUMERIC STANDARDS
FOR
UPPER COLORADO RIVER BASIN AND
NORTH PLATTE RIVER (PLANNING REGION 12)**

**APPENDIX 33-1
Stream Classifications and Water Quality Standards Tables**

Effective ~~09/30/2017~~06/30/2018

REGULATION #33 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS Blue River Basin

14. Mainstem of Tenmile Creek, including all tributaries and wetlands from a point immediately above the confluence with West Tenmile Creek to Dillon Reservoir, except for the specific listing in Segment 16.						
COUCBL14	Classifications	Physical and Biological			Metals (ug/L)	
Designation		DM	MWAT		acute	chronic
Reviewable	Agriculture			Temperature °C	---	---
	Aq Life Cold 1	CS-I	CS-I			
	Recreation E	acute	chronic	D.O. (mg/L)	---	6.0
	Water Supply			D.O. (spawning)	---	7.0
Qualifiers:				pH	6.5 - 9.0	---
Other:				chlorophyll a (mg/m ²)	---	150*
Temporary Modification(s):				E. Coli (per 100 mL)	---	126
Arsenic(chronic) = hybrid						
Expiration Date of 12/31/2021						
Molybdenum(chronic) = current conditions						
Expiration Date of 4/31/2018 <u>30/2020</u>						
*chlorophyll a (mg/m ²)(chronic) = applies only above the facilities listed at 33.5(4).						
*Phosphorus(chronic) = applies only above the facilities listed at 33.5(4).						
		Inorganic (mg/L)				
		acute	chronic			
		TVS	TVS	Ammonia	TVS	TVS
		---	0.75	Boron	---	WS
		---	250	Chloride	---	0.01(t)
		0.019	0.011	Chlorine	---	210(T)
		0.005	---	Cyanide	TVS	TVS
		10	---	Nitrate	TVS	TVS
		---	0.05	Nitrite	TVS	TVS(tr)
		---	0.11*	Phosphorus	---	---
		---	WS	Sulfate	TVS	TVS
		---	0.002	Sulfide	---	TVS(sc)
				Aluminum	---	---
				Arsenic	340	0.02(T)
				Beryllium	---	---
				Cadmium	TVS(tr)	TVS
				Chromium III	50(T)	TVS
				Chromium VI	TVS	TVS
				Copper	TVS	TVS
				Iron	---	WS
				Iron	---	1000(T)
				Lead	TVS	TVS
				Manganese	TVS	TVS
				Manganese	---	WS
				Mercury	---	0.01(t)
				Molybdenum	---	210(T)
				Nickel	TVS	TVS
				Selenium	TVS	TVS
				Silver	TVS	TVS(tr)
				Uranium	---	---
				Zinc	TVS	TVS
				Zinc	---	TVS(sc)