



ACTION ITEM MEMORANDUM

To: CCBWQA TAC
From: Jessica DiToro, PE, LRE Water and Jane Clary, Wright Water Engineers
Date: January 3, 2023
Subject: Lake Nutrients WQCC Rulemaking Hearing – Draft Rebuttal Statement

Request: That the CCBWQA TAC recommends that the CCBWQA Board of Directors approve the Lake Nutrients Criteria Rulemaking Hearing (RMH) Rebuttal Statement (Rebuttal).

Issue: On December 21st, all parties to the Lake Nutrients Criteria RMH submitted their [Responsive Prehearing Statements \(RPHSs\)](#) to the Water Quality Control Commission (WQCC). Staff reviewed the RPHSs for discussion regarding Cherry Creek Reservoir and/or requests for delayed effective dates/site-specific standards. The only entity that specifically discussed Cherry Creek Reservoir was the EPA. EPA strongly supports the Water Quality Control Division’s proposed approach of apply both TN and TP table value standards to Cherry Creek Reservoir at the April RMH, but requests that the Division rerun these values using the 18 ug/L chlorophyll-a standard rather than the 20 ug/L table value standard.

The next deadline for the RMH is submittal of the Rebuttal on February 15th. This allows for two TAC meetings (January and February) and one Board meeting (January) between the RPHS review and the Rebuttal due date. See Attachment 1 for the RMH schedule overlaid with the CCBWQA meeting schedule. To address this potential timing constraint, at the last CCBWQA Board meeting on December 15th, the Board approved formation of a Regulation 38 Rulemaking Hearing Subcommittee with the delegated authority to make decisions during time-constrained hearing deadlines and/or to make minor edits to hearing documents for the Lake Nutrients Criteria RMH that are substantively consistent with prior direction provided by the Board and TAC.

On December 28th, Technical Manager, Jane Clary, and Tim Flynn met with the Regulation 38 Rulemaking Hearing Subcommittee¹ to discuss the RPHSs and request direction for developing a Rebuttal statement. The direction from the Subcommittee was that developing a Rebuttal is appropriate and that it should: 1) respond to EPA’s RPHS; and 2) include discussion that emphasizes Cherry Creek’s and CCBWQA’s uniqueness (statutory-uniqueness and reservoir/data-uniqueness relative to other Colorado reservoirs). Additionally, the Subcommittee directed Staff to maintain this narrow focus and not to comment on concerns raised by other parties related to the WQCD’s methodology and/or model. Staff has drafted a Rebuttal statement per the Subcommittee’s direction, and it is included as Attachment 2 to this action item memorandum (AIM).

Lastly, on December 28th, Jane Clary, emailed Melynda May (Colorado Parks and Wildlife, CPW) to inquire if CPW would be willing to state in their Rebuttal that they either support or “do not oppose” CCBWQA’s request for a delayed effective date. At the time that this AIM was drafted, CPW was still reviewing RPHSs and has not yet indicated how they will respond to CCBWQA’s request in their Rebuttal.

Budget: Participation in this RMH effort is covered under the current CCBWQA regulatory budget for fiscal year 2023.

¹ Josh Rivero, Topher Lewis, John McCarty, John Woodling and Bill Ruzzo. Member Louis Tovar was absent.

Motion: The CCBWQA TAC recommends that the CCBWQA Board of Directors approve the Lake Nutrients Criteria Rulemaking Hearing Rebuttal Statement, as drafted by Staff, based on the Regulation 38 Rulemaking Hearing Board Subcommittee's direction on December 28, 2022.

Next Steps: Staff will continue to engage with the WQCD, CPW, EPA, and other parties, as appropriate. At the January 19th CCBWQA Board meeting, Staff will present the draft Rebuttal for the Board to vote on. If the Board approves the associated motion, Davis Graham and Stubbs will submit the Rebuttal by February 15th. If the Board does not approve the associated motion, Staff will work to address the Board's concerns with the Rebuttal and bring the updated Rebuttal to the TAC at the February 2nd. Staff will then work with the Regulation 38 Rulemaking Hearing Subcommittee to finalize the Rebuttal for submission.

Attachment 1

Lakes Nutrients Criteria (Regulations 31-38) RMH Schedule + CCBWQA Meeting Schedule		
Event	Date	Activity
Nutrient Town Hall	May 2 nd	Proposed criteria released by WQCD
May TAC	May 5 th	1 st discussion related to draft criteria at TAC level
May Board	May 19 th	1 st discussion related to draft criteria at Board level
June TAC	June 2 nd	2 nd discussion related to draft criteria at TAC level
June Board	June 16 th	2 nd discussion related to draft criteria at Board level
July TAC	July 7 th	3 rd discussion related to draft criteria at TAC level – Motion for Party Status
July Board	July 21 st	3 rd discussion related to draft criteria at Board level – Motion for Party Status
PPHS	August 3 rd	Review WQCD's PPHS
August TAC	August 4 th	4 th discussion related to draft criteria at TAC level – Motion for RPHS
Party Status Requests	August 17 th	Submit Party Status Request
August Board	August 18 th	4 th discussion related to draft criteria at Board level – Motion for RPHS
September TAC	September 1 st	5 th discussion related to draft criteria at TAC level – Discuss Rebuttal
September Board	September 15 th	5 th discussion related to draft criteria at Board level – Motion for Rebuttal if needed
Supplemental PPHS	October 5 th	Review WQCD's Supplemental PPHS
October TAC	October 6 th	6 th discussion related to draft criteria at TAC level – Update on status
October Board	October 20 th	6 th discussion related to draft criteria at Board level – Update on status
November TAC	November 3 rd	7 th discussion related to draft criteria at TAC level – Discuss RPHS
November Board	November 17 th	7 th discussion related to draft criteria at Board level – Motion for RPHS
December TAC	December 1 st	8 th discussion related to draft criteria at TAC level – Discuss Board Subcommittee
December Board	December 15 th	8 th discussion related to draft criteria at Board level – Motion for Board Subcommittee
RPHS	December 21 st	Submit Supplemental RPHS – TBD + Review other parties' RPHSs
January TAC	January 5th	9th discussion related to draft criteria at TAC level – Discuss Rebuttals
January Board	January 19th	9th discussion related to draft criteria at Board level – Motion for Rebuttals(?)
February TAC	February 2nd	10th discussion related to draft criteria at TAC level – Update on status
Rebuttals	February 15th	Submit Rebuttal Statement – TBD + Review other parties' Rebuttals
February Board	February 16th	10th discussion related to draft criteria at Board level – Update on status
Motions	February 22nd	TBD
Complex Outstanding Issues Index	March 1st	Review Index
March TAC	March 2nd	11th discussion related to draft criteria at TAC level – Discuss RMH Presentation
Prehearing Conference	March 7th	Participate (virtually) in conference to maintain Party Status
March Board	March 16th	11th discussion related to draft criteria at Board level – Motion for RMH Presentation
Negotiation Cutoff	March 16th	Final negotiations with WQCD and other parties today
Consolidated Proposal	March 30th	Review Proposal
Cost Benefit Analysis	March 31st	Review Cost Benefit Analysis
Regulatory Analysis	April 5th	Review Regulatory Analysis
April TAC	April 6th	12th discussion related to draft criteria at TAC level – Update on status
RMH	April 10th	Participate (virtually) in RMH
April Board	April 20th	Update on RMH outcome
May TAC	May 4th	Update on RMH outcome

REBUTTAL STATEMENT OF CHERRY CREEK BASIN WATER QUALITY AUTHORITY

IN THE MATTER OF PROPOSED ADOPTION OF REVISIONS TO THE CLASSIFICATIONS AND NUMERIC STANDARDS FOR SOUTH PLATTE RIVER BASIN, LARAMIE RIVER BASIN, REPUBLICAN RIVER BASIN, SMOKY HILL RIVER BASIN, REGULATION #38 (5 CCR 1002-38)

The Cherry Creek Basin Water Quality Authority (“CCBWQA” or the “Authority”), by and through its counsel, Davis Graham & Stubbs LLP, submits this Rebuttal Statement (“Rebuttal”) for the above captioned matter to the Colorado Water Quality Control Commission (“Commission”).

I. EXECUTIVE SUMMARY

The CCBWQA opposes adoption of the Water Quality Control Division’s (“WQCD” or “Division”) proposal to add table value standards for total phosphorus (TP) and total nitrogen (TN) to Cherry Creek Reservoir (COSPCH02) in April 2023. The reservoir already has a more stringent site-specific chlorophyll- α standard of 18 $\mu\text{g/L}$ in Regulation 38, stringent TP limits (0.05 $\mu\text{g/L}$) for dischargers in Regulation 72, robust requirements for stormwater management in Regulation 72 and active nonpoint source pollution abatement projects underway. The CCBWQA has collected long-term data suitable for development of site-specific nutrient standards.

The CCBWQA continues to respectfully request that the Commission consider and adopt a delayed effective date of December 31, 2025, for warm lake TP and TN table value standards in Cherry Creek Reservoir (COSPCH02), to allow time for the CCBWQA to utilize its extensive long-term data, supported by linked watershed and reservoir models if needed, to develop appropriate and protective site-specific standards for the Cherry Creek Reservoir for consideration at the June 2025 Regulation 38 rulemaking hearing..

II. RESPONSE TO EPA’S RESPONSIVE PREHEARING STATEMENT

In EPA’s Responsive Prehearing Statement (RPHS), EPA requested that the Division “reevaluate the proposed standards for Chatfield Reservoir (TN) and Cherry Creek Reservoir (TN and TP). The proposed values were not calculated from the chlorophyll- α standards that have been established as goals for these two water bodies.” Additionally, EPA provided two pages of discussion regarding Cherry Creek Reservoir in its RPHS 9 (pp. 23 & 24 of EPA’s RPHS). In this Rebuttal, CCBWQA is providing additional information in response to EPA’s general statement, as well as specific technical comments.

Overall Response

CCBWQA has two primary responses to EPA’s overarching comment regarding Cherry Creek Reservoir nutrient standards:

1. CCBWQA agrees with EPA that Cherry Creek’s site-specific chlorophyll- α standard warrants corresponding site-specific (or unique) standards for phosphorus and nitrogen.
2. CCBWQA disagrees with EPA that the Division’s statewide methodology should be applied to Cherry Creek Reservoir because the Division’s methodology does not represent site-specific conditions in

Cherry Creek Reservoir as described in the analysis provided in CCBWQAS's RPHS. Adoption of known incorrect standards for the Reservoir is not helpful to CCBWQA in working towards its goal of improving water quality in the Reservoir and could inhibit development of more appropriate standards due to statutory constraints related to CCBWQA's involvement with regulatory processes. *See* C.R.S. 25-8.5-101(2) ("the authority shall expend funds only pertaining to the water quality standards, control regulations, or similar regulations regarding the water quality of Cherry Creek and Cherry Creek reservoir if such expenditures are clearly consistent with improving, protecting, and preserving such water quality.")

Since the submittal of our RPHS, the CCBWQA has completed the following concrete steps towards developing site-specific standards for the Reservoir so that phosphorus and nitrogen standards properly correspond to Cherry Creek Reservoir's site-specific chlorophyll- α standard:

1. Authorized over \$90,000 in the 2023 budget to conduct a technical analysis to develop and propose site-specific standards for TP and TN.
2. Developed a scope of work that outlines the general approach to developing the site-specific standard, including working collaboratively with WQCD and utilizing parts of the WQCD's standards approach that are appropriate for the Reservoir (e.g., growing season averages, allowed once in five-year exceedance).
3. Signed a contract to complete the work with a December 2023 deliverable schedule.
4. Shared the work plan with the WQCD staff and discussed the approach with Colorado Parks and Wildlife.

Additionally, as stated in our RPHS, if the CCBWQA fails to propose appropriate site-specific standards, then CCBWQA's proposed Statement of Basis and Purpose language indicates the Division's Table Value Standards would apply.

Specific Response to Technical Comments Provided by EPA on pp. 23-24

CCBWQA would also like to respond to EPA's comments on pp. 23-24 of their RPHS. We agree with EPA that Cherry Creek Reservoir does not meet its chlorophyll- α standard and that ongoing work is needed to reduce nutrient loading to the Reservoir and improve conditions in the Reservoir. CCBWQA has planned over \$5 million in work for 2023 specifically for this purpose, with examples of CCBWQA's efforts provided in its RPHS. Additionally, CCBWQA would like to clarify and correct several specific statements made by EPA in its RPHS for purposes of the hearing record:

EPA Responsive Comment #4) "*Summer average TN levels in Cherry Creek Reservoir have been comparatively stable over time. By contrast, it is clear that TP has increased to higher concentrations*"

CCBWQA's Response: CCBWQA agrees with EPA that the seasonal average TN concentrations have remained within a similar range over time; however, there is a notable reduction in seasonal variability since 2017 (Figure 1). With regard to TP, CCBWQA recognizes that TP concentrations are higher than they were in the 1990s, along with significant year to year variation in TP. CCBWQA also observes that the average seasonal TP concentration in Cherry Creek Reservoir has been notably lower over the last two years. The seasonal TP was 76.8 $\mu\text{g/L}$ in 2021 and 66.2 $\mu\text{g/L}$ in 2022, which were both below the interim standard criteria of 83 $\mu\text{g/L}$. The seasonal TP concentrations have not been this low since 2002.

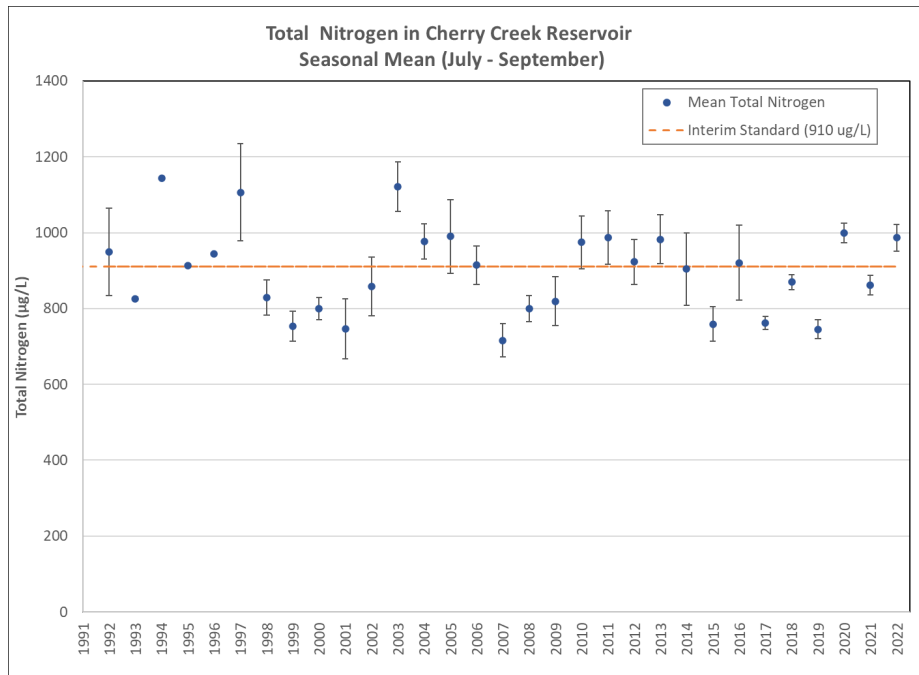


Figure 1. Total Nitrogen in Cherry Creek Reservoir, Seasonal Average, 1992-2022.

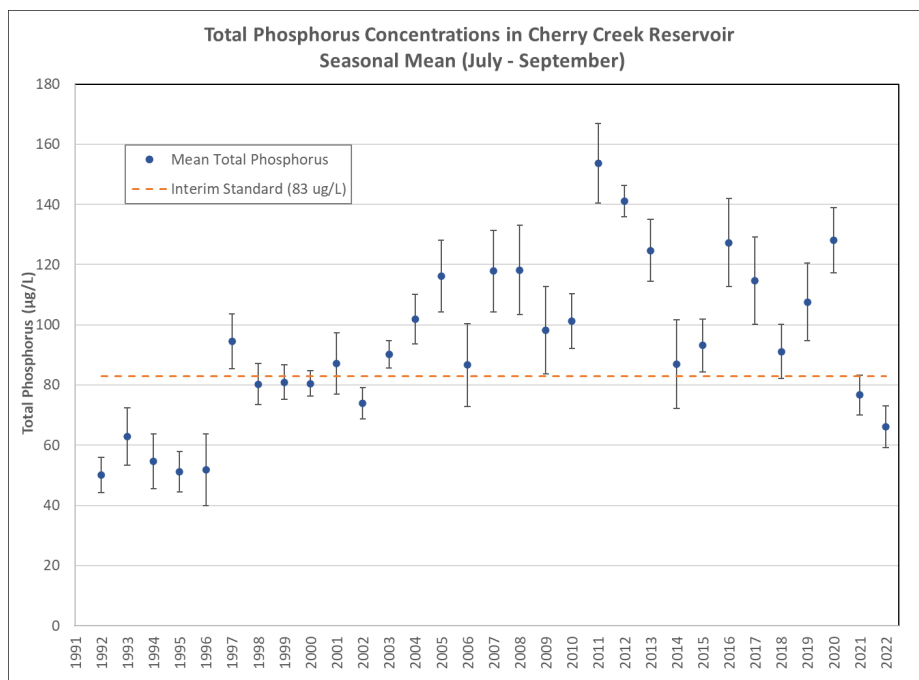


Figure 2. Total Phosphorus in Cherry Creek Reservoir, Seasonal Average, 1992-2022.

EPA Responsive Comment #5) “For example, the 80th percentile concentration was 115 µg/L TP over the most recent 5-year period (2017-2021). By comparison, when a TP standard was first established, the 1985 SBP noted that ‘the adopted standard of 35 µg/L TP (corresponding roughly to 15 µg/L chl a) is higher than the 1982 ambient level of 30 µg/L P but will preserve the quality of the recreational and aquatic uses.’ This comparison shows that TP levels in Cherry Creek Reservoir have increased substantially since 1982.”

CCBWQA’s Response: The most recent two years that the chlorophyll-α standard was met were in 2015 (16.2 µg/L) and 2019 (16.0 µg/L). In 2015, the seasonal TP concentration was 93.2 µg/L and the

seasonal TN concentration was 759.3 µg/L. In 2019, the seasonal TP concentration was 107.6 µg/L and the seasonal TN concentration was 683.8 µg/L. In both of these years when the chlorophyll- α standard was met, the seasonal TN concentration was below the interim TN criteria of 910 µg/L; however, the seasonal TP concentrations were not below the interim TP criteria of 83 µg/L. This provides examples of how the Cherry Creek Reservoir's chlorophyll- α response to nutrients is unique.

EPA Responsive Comment #6) *“That TP has increased over time could potentially be a signal that, under current conditions, the phytoplankton community is more often limited by N during summer (compared to P). This would be consistent with the Cherry Creek Reservoir nutrient enrichment study results.¹ Thus, the data suggest that it would be appropriate to implement a dual control approach (i.e., to reduce the concentrations of both nutrients).² For example: ‘Nutrient enrichments showed response of phytoplankton biomass to N on all dates. In only one case (14 July 2003) was there also a response to P.’ ‘Concentrations of total soluble P (TSP) were high throughout the growing season in the upper water column of Cherry Creek Reservoir; and soluble reactive P (SRP) was consistently detectable.’”*

The Lewis et al. (2008) publication utilized data from a microcosm study completed on only 8 dates in 2003. The CCBWQA has a robust database that includes over 30 years of data. The CCBWQA's Cherry Creek Reservoir dataset demonstrates that even during periods of nitrogen limitation, total algal biovolumes are very high and a significant percentage is composed of cyanobacteria during the summer months. During the last five years (2018-2022), total phytoplankton biovolume averaged almost 3.7M µm³/mL annually and 3.5M µm³/mL seasonally (July through September). Of the total biovolume, cyanobacteria averaged almost 600K µm³/mL (16% of the total) annually and 1.1M µm³/mL (32% of the total) seasonally (July through September).

The Lewis et al. (2008) publication also states:

“One risk of N management could result from an unexpected change in physical conditions that renders N fixation more effective, thus undermining N management. In Cherry Creek Reservoir, for example, greater stability of the water column caused by changes in water management or even climate warming could create more favorable conditions for N fixers.

Cherry Creek Reservoir is an illustration of the importance of nutrient saturation to nutrient management in lakes. Wherever phosphorus saturation is continuous and N fixers are absent, present only sporadically, or of low abundance, suppression of phytoplankton biomass by P management may be feasible in some cases, but quite impractical in others, and typically will involve an initial interval of P suppression that produces no suppression of phytoplankton biomass.”

Cherry Creek Reservoir is a nutrient-enriched environment; therefore, consideration of changes to nutrient dynamics is important to avoid unintended negative impacts. Total inorganic nitrogen (TIN), the form most readily available for uptake by algae, is consistently limited in the Cherry Creek Reservoir during the summer months and during periods of severe cyanobacteria blooms. Ratios of TIN to soluble reactive phosphorus (SRP) demonstrate that Cherry Creek Reservoir has been nitrogen-limited since at least the 1990s, but at the same time, phytoplankton dynamics have shifted. Although the 2003 Lewis study found that conditions in Cherry Creek Reservoir were not conducive to N-fixing species of cyanobacteria³, recent microscopic analysis by Phycotech, Inc. of cyanobacteria responsible for the significant blooms in 2016-2021 confirmed the presence of heterocysts. Heterocysts are differentiated

¹ Lewis, W.M. Jr., J.F. Saunders, and J.H. McCutchan, Jr. 2008. Application of a nutrient-saturation concept to the control of algae growth in lakes. *Lake and Reservoir Management*. 24:41-46. <https://www.tandfonline.com/doi/abs/10.1080/07438140809354049>

² Downing, J.A., S.B. Watson, and E. McCauley. 2001. Predicting cyanobacteria dominance in lakes. *Canadian Journal of Fisheries and Aquatic Sciences*. 58: 1905–1908. <https://cdnsiencepub.com/doi/10.1139/f01-143>

³ Lewis, W.M. Jr., J.F. Saunders, and J.H. McCutchan, Jr. 2004. Studies of Phytoplankton Response to Nutrient Enrichment in Cherry Creek Reservoir, Colorado. Colorado Department of Public Health and Environment, Water Quality Control Division.

cells formed by cyanobacteria specialized for nitrogen-fixation; their presence confirms that nitrogen-fixation by cyanobacteria in Cherry Creek Reservoir is occurring.

Due to the presence of nitrogen-fixing cyanobacteria in Cherry Creek Reservoir that have been responsible for multiple severe blooms requiring closure based on toxin production, CCBWQA continues to believe that the most effective nutrient management strategy for Cherry Creek Reservoir should continue to focus on phosphorus management prior to the implementation of nitrogen controls due to the potential of the unintended consequences described by Lewis et al. (2008).

Lastly, based on review of CCBWQA's long-term data set, we would like to clarify that SRP is not "consistently detectable" as EPA claims, and concentrations are demonstrating a decreasing trend over time. Over the last 5 years (2018-2022), concentrations of SRP were below the detection limit (1 µg/L) during approximately 11% of the monitoring events. When comparing the past five years of SRP data to the historical mean (2002-2017), SRP was below the detection limit (2 µg/L⁴) 4% of the time during the year and 3% during the season (July through September).

III. SUMMARY OF CONCERNS WITH THE ADOPTION OF TABLE VALUE STANDARDS FOR TP & TN IN APRIL 2023

CCBWQA's RPHS describes the reasons that the CCBWQA requests a delayed effective date for the Division's table value standards so that the CCBWQA has time to propose appropriate site-specific standards at the June 2025 Regulation 38 rulemaking hearing. These reasons, which are described further in this RPHS, are briefly re-summarized as follows for convenience:

1. The Cherry Creek Reservoir and watershed are unique and complex systems that are not appropriately represented by the stressor-response relationships in the proposed Table Value Standards.
2. Elevated background TP concentrations in the Cherry Creek Basin and extreme N:P ratios in the Cherry Creek Reservoir are well documented unique conditions that warrant site-specific standards.
3. Significant nutrient controls and reductions for point sources are actively occurring in the basin under Control Regulation 72. This includes wastewater treatment plant discharge limits of 0.05 µg/L of total phosphorus and compliance schedules for nitrogen reduction.
4. Advanced stormwater and nonpoint source controls are being implemented in the basin under Control Regulation 72, with stringent stormwater requirements for developments triggered at thresholds well below the statewide 1-acre disturbance threshold.
5. The CCBWQA is actively working towards site-specific standards and better understanding watershed nutrient loading and reservoir dynamics. A budget, contract and initial work plan are complete with a deliverable schedule.
6. Unique statutory constraints exist for CCBWQA that constrain some types of participation in standards revisions. Particularly if either the site-specific phosphorus or nitrogen standards have higher numeric values than proposed by Division, we have significant concerns about perceived backsliding and constraints related to effective participation in the 2025 Regulation 38 Rulemaking Hearing.

Additional discussion of these themes was provided in CCBWQA's RPHS and is not repeated in this Rebuttal Statement.

⁴ Detection limits prior to 2016 have varied between 2 and 5 µg/L.

IV. SUMMARY OF REQUEST

The CCBWQA continues to respectfully request that the Commission consider and adopt a delayed effective date of December 31, 2025, for warm lake TP and TN table value standards in Cherry Creek Reservoir (COSPCH02), to allow time for the CCBWQA to utilize its extensive long-term data, supported by linked watershed and reservoir models if needed, to develop appropriate and protective site-specific standards for the Cherry Creek Reservoir for consideration at the June 2025 Regulation 38 rulemaking hearing.

V. WITNESSES

The CCBWQA's witnesses were identified in its RPHS and no additional witnesses have been added.

VI. EXHIBITS

The CCBWQA's exhibits were provided in its RPHS. No additional exhibits have been added to this Rebuttal.

VI. RESERVATIONS

The CCBWQA reserves the right to present testimony, witnesses, and exhibits for purposes of the rebuttal statement and at the hearing, to use demonstrative aids at the hearing that contain information provided in any exhibits and testimony supplied by the CCBWQA, to present alternative language to the proposed revisions to Regulation No. 38, to respond to alternate proposals submitted by any party, and to address future changes to any alternate proposals of any party.

Respectfully submitted this 15th day of February 2023.

Davis Graham & Stubbs LLP

By: _____
Andrea M Bronson, Reg. No. 40620
Zach C Miller, Reg. No. 10796

Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
Telephone: (303) 892-9400
Facsimile: (303) 893-1379
andrea.bronson@dgsllaw.com
zach.miller@dgsllaw.com

CERTIFICATE OF SERVICE

I, Andrea Bronson, hereby certify that a true and correct copy of the attached Responsive Prehearing Statement of Cherry Creek Basin Water Quality Authority was served by e-mail transmission on the 21st day of December 2022 on the office of the Water Quality Control Commission, addressed to:

Water Quality Control Commission
Attn: Jeremy Neustifter
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

email: cdphe.wqcc@state.co.us

Andrea Bronson



MEMORANDUM

To: CCBWQA TAC
From: Val Endyk - CCBWQA Administrative Assistant
Date: January 3, 2023
Subject: Change to CCBWQA Land Use Referral Process Letter Update

Issue: This memo is to inform the CCBWQA TAC of the communication sent to local agencies informing them of the change to the Authority's land use referral process adopted by the Board and effective January 1, 2023.

The letter is included in the supplemental packet and can be found here:

https://drive.google.com/file/d/1E8cwTPga7FdQtHt07BEbMmBUwseJmsdT/view?usp=share_link

The communication is being tracked in the spreadsheet linked below:

https://docs.google.com/spreadsheets/d/1gYydi4lxHMHjlrFr0BxTKQu6_VPHKomcAqB7FimpM/edit?usp=sharing



Cherry Creek Basin Water Quality Authority

cherrycreekbasin.org
303.968.9098
manager@ccbwwqa.org

December 16, 2022

Abe Laydon
Douglas County

Bahman Hatami
Governor's Appointee

Bill Ruzzo
Governor's Appointee

Caryn Johnson
Town of Castle Rock

Christopher Lewis - Vice Chair
Governor's Appointee

John McCarty - Secretary
Governor's Appointee

John Woodling
Governor's Appointee

Joshua Rivero - Chair
Town of Parker

Luis Tovar
Special District Representative

Margaret Medellin
Governor's Appointee

Mike Anderson
City of Lone Tree

Nancy Sharpe
Arapahoe County

Roger Hudson
City of Castle Pines

Stephanie Piko
City of Centennial

Steve Sundberg
City of Aurora

Tom Downing
Governor's Appointee

Tom Stahl
City of Greenwood Village

To: Local Land Development Review Agency
From: Cherry Creek Basin Water Quality Authority
Jane Clary, Technical Manager

Re: Change to Cherry Creek Basin Water Quality Authority Land Use Reviews

The Cherry Creek Basin Water Quality Authority has changed its land use review process, effective January 1, 2023.

Historically, the Authority has conducted technical reviews of proposed development plans for compliance with construction-phase and post-construction stormwater quality requirements described in Regulation 72, the Cherry Creek Basin Control Regulation. Since that time, local governments have progressively become more experienced in ways to minimize the discharge of pollutants during and after development activities, as demonstrated by the minimal number of referrals where the Authority did not recommend approval of projects to the local government. Additionally, recent municipal separate storm sewer system (MS4) permits are more explicit regarding requirements for compliance with Regulation 72. For these reasons, the Authority believes that the local government's review is sufficient to ensure compliance with Regulation 72 requirements. In cases where the local government would like additional review or consultation with the Authority, the Authority's Technical Manager will be available to discuss questions or arrange an independent review if needed.

Effective January 1, 2023, local governments will continue to notify the Authority of proposed development plans by email addressed to LandUseReferral@ccbwwqa.org. The Authority will respond by email or other established electronic system with the following statement:

The Cherry Creek Basin Water Quality Authority (Authority) acknowledges notification from [*local agency*] that the proposed development plans for [*development name or project ID*] have been or will be reviewed by the [*local agency*] for compliance with the applicable Regulation 72 construction and post-construction requirements. Based on the Authority's current policy, the Authority will no longer routinely conduct a technical review and instead the Authority will defer to the [*local agency's*] review and ultimate determination that the proposed development plans comply with Regulation 72.

If a technical review of the proposed development plan is needed, please contact LandUseReferral@ccbwwqa.org. The review may include consultation with the Authority's Technical Manager to address specific questions or to conduct a more detailed Land Use Review, if warranted.

We welcome input from local agencies if refinements to this process are needed as experience is gained with this revised referral process. **Additionally, we request a reply email confirming your receipt of this email and understanding of the new land use review process for the Authority.**