



To: CCBWQA Board of Directors
From: Bill Ruzzo, Director and Jane Clary, Technical Manager
Date: December 15, 2022
Subject: Lake Nutrients WQCC Rulemaking Hearing – Delegation of Authority to Board Subcommittee

Request: That the CCBWQA Board form a subcommittee with authority to make time-sensitive decisions related to minor changes to the CCBWQA’s written testimony in submittals for the Lake Nutrients Criteria Rulemaking Hearing (RMH).

Background: As directed by the CCBWQA TAC and Board at their respective November CCBWQA meetings, on November 18th CCBWQA Technical Manager Jane Clary coordinated with Blake Beyea (Water Quality Control Division [WQCD] Standards Unit Manager) to briefly discuss the CCBWQA’s request for a delayed effective date to allow time for development of site-specific standards for Cherry Creek Reservoir. Based on this discussion, the WQCD agreed to provide some additional informal feedback to CCBWQA on the draft RPHS, with initial discussion suggesting that more specificity regarding the site-specific standards approach could be beneficial to CCBWQA’s Responsive Prehearing Statement (RPHS). As part of additional feedback on November 30, the Division staff noted that it may be helpful for CCBWQA to identify unique factors that warrant a delayed effective date. Our understanding is that the WQCD does not oppose a site-specific standard for the reservoir, but it does not currently support our request for a delayed effective date of the Division’s proposed standards.

The next deadline for the RMH is submittal of the RPHS on December 21, 2022. The December 1, 2022 TAC meeting and the December 15th Board meeting will be the last regularly scheduled CCBWQA meetings before the RPHS deadline. At the November Board meeting, the Board approved retracting the CCBWQA’s original RPHS that was submitted in August (prior to the hearing schedule changes). The Board also approved resubmitting a new RPHS documenting that the CCBWQA reviewed the WQCD’s supplemental Proponent’s Prehearing Statement (sPPHS) and that this review did not yield any substantial changes to the CCBWQA’s request for a delayed effective date of the Division’s proposed nutrient standards.

Issue: If additional feedback from WQCD and related discussions identify minor changes to Authority-approved hearing documents that could result in WQCD supporting the Authority’s position, staff¹ would like the ability to make such changes if the timing does not align with regular Board meetings.

Budget: Participation in this RMH effort, specifically coordination with the WQCD staff, is covered under the current CCBWQA regulatory budget for year 2022 and is also included in the approved budget for year 2023.

TAC Recommendation: The TAC’s opinion is that formation of a subcommittee and identification of subcommittee members is a Board decision. The TAC is not opposed to the formation of a subcommittee.

Proposed Motion(s): Adopt attached Resolution No. 2022-12-02 establishing a Regulation 38, 2023 Rulemaking Hearing Subcommittee and delegating authority to the Subcommittee to make non-substantive changes to the Authority’s written statements and other submittals filed with the Water Quality control Commission in connection with the hearing thereon.

Next Steps: Staff will continue to engage with the WQCD as appropriate and as directed by the Board.

¹ For the purpose of this memorandum, staff refers to the Authority’s Technical Manager (Jane Clary), and Authority consultants LRE (Jessica Di Toro and Erin Stewart), and Authority regulatory council Davis Graham and Stubbs (Zach Miller and Andrea Bronson), and Authority Council (Tim Flynn).

RESOLUTION NO. 2022-12-02

CHERRY CREEK BASIN WATER QUALITY AUTHORITY

ARAPAHOE AND DOUGLAS COUNTIES, COLORADO

A RESOLUTION ESTABLISHING A REGULATION 38, 2023 RULE MAKING HEARING SUBCOMMITTEE AND DELEGATING AUTHORITY TO THE SUBCOMMITTEE TO MAKE NON-SUBSTANTIVE CHANGES TO THE AUTHORITY’S WRITTEN STATEMENTS AND OTHER SUBMITTALS FILED WITH THE WATER QUALITY CONTROL COMMISSION IN CONNECTION WITH THE HEARING THEREON

WHEREAS, the Cherry Creek Basin Water Quality Authority (“Authority”) was established pursuant to Section 25-8.5-110, et. seq., C.R.S. for the purpose of preserving and protecting the water quality in the Cherry Creek Reservoir (“Reservoir”) and the Cherry Creek Watershed (“Watershed”); and

WHEREAS, the Authority is authorized by the provisions of Section 25-8.5-110(i)(b) C.R.S. to make and pass resolutions necessary for the governance and management of the affairs of the Authority, for the execution of powers vested in the Authority, and for carrying out the provisions of Article 8.5 of Title 25 of the Colorado Revised Statutes; and

WHEREAS, the Authority is a party to a Colorado Water Quality Control Commission, Regulation 38, Lake Nutrient Standards Rule Making Hearing currently scheduled for April 10, 2023, initiated by the Water Quality Control Division (“Division”) for the purpose of establishing Lake Nutrient Standards for the State; and

WHEREAS, in connection with the hearing, the Authority submitted a Responsive Pre-Hearing Statement in August of 2022 requesting a delayed effective date with respect to any Lake Nutrient Standard established by the Water Quality Control Commission for the Reservoir, to allow the Authority to propose site-specific standards for the Reservoir; and

WHEREAS, the Division has indicated that it does not oppose development of site-specific standards for the Reservoir, but it does not currently support the Authority’s request for a delayed effective date for proposed Lake Nutrient Standards; and

WHEREAS, additional discussions and feedback with the Division could identify minor changes to the Authority’s previously filed Responsive Pre-Hearing Statement that could in result in the Division supporting the Authority’s position, and if that occurs, the Authority Consultants would like the ability to make minor modifications to the

Authority's Responsive Pre-Hearing Statement and other submittals, without prior Board approval, if the timing to do so does not align with regular Authority Board meetings; and

WHEREAS, at the November 17, 2022, the Board of Directors of the Cherry Creek Basin Water Quality Authority ("Board"), authorized withdrawing the Authority's original Responsive Pre-Hearing Statement submitted in August, and approved submitting a new Responsive Pre-Hearing Statement noting that the Authority had reviewed the Division's supplemental Proponents Pre-Hearing Statement and that said review did not yield any substantive changes to the Authority's request for a delayed effective date of the proposed Nutrient Standards.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Cherry Creek Basin Water Quality Authority of Arapahoe and Douglas Counties, Colorado that:

1. Establishment of a Subcommittee. The Authority hereby establishes a Regulation 38 Rule Making Hearing Interim Subcommittee ("Regulation 38 RMH Interim Subcommittee") composed of the following five (5) members of the Authority's Board:

- (a) Joshua Rivero
- (b) Christopher Lewis
- (c) John McCarty
- (d) Bill Ruzzo
- (e) John Woodling

2. Delegation of Authority. The Board hereby authorizes and directs the Regulation 38 RMH Interim Subcommittee to provide guidance to the Authority's Consultants and make decisions with respect to minor changes to the Authority's Responsive Pre-Hearing Statement and related documents including testimony, if the same may result in support from the Division for the Authority's request for a delayed effective date of the proposed Lake Nutrient Standards.

3. Limitation on Authority. The authority of the Regulation 38 RMH Interim Subcommittee is limited to making time sensitive decisions related to minor changes to the Authority's written testimony and other submittals for the Lake Nutrient Standard Rule Making Hearing only so long as such changes are substantively consistent with prior direction provided by the Board and only in those circumstances where time constraints preclude review and approval of such changes by the Board at a duly called meeting.

4. Substantive Changes. Any changes which the Regulation 38 RMH Interim Subcommittee considers substantive or in any way warrant a decision by the Board will be brought back to the Board for final decision.

5. The Regulation 38 RMH Interim Subcommittee shall convene as needed for the purpose of working with the Authority’s consultants and facilitating communications and making minor changes to the Authority’s Regulation 38, Lake Nutrient Standard submittals.

6. The Regulation 38 RMH Interim Subcommittee shall meet as needed and/or as directed by the Board and shall report any findings or recommendations to the full Board.

7. The Regulation 38 RMH Interim Subcommittee shall determine the time, date, and location of its meetings, which shall be open to the public and duly posted.

8. The procedures outlined in this Resolution shall be followed to the extent defined in this Resolution; provided, however, the Regulation 38 RMH Interim Subcommittee shall be empowered to adopt such additional and supplemental rules concerning the conduct of its affairs as seems appropriate from time to time.

9. Should any one or more sections or provisions of this Resolution be determined invalid or unenforceable, such determinations shall not affect, impair, or invalidate the remaining provisions of this Resolution. The intention being that the various sections and provisions hereof are severable.

10. Any, or all Resolutions, or part thereof in conflict or inconsistent with are to the extent such conflict or inconsistency hereby repealed; provided, however, the repeal of any such Resolution or part thereof shall not revive any other Resolution or part thereof, heretofore repealed or superseded.

ADOPTED this _____ day of December 2022.

**CHERRY CREEK BASIN WATER
QUALITY AUTHORITY**

By _____
Joshua Rivero, Chair

Attest:

Christopher Lewis, Vice-Chair