



ACTION ITEM MEMORANDUM

To: CCBWQA Board of Directors
From: Jane Clary, Technical Manager
Date: October 18, 2023

Subject: Site-specific Standards Letter for Regulation 38 Issues Scoping Hearing

Request: That the CCBWQA Board of Directors direct the Executive Committee to submit a letter to the Water Quality Control Commission notifying them that CCBWQA may propose site-specific total phosphorus and total nitrogen standards for Cherry Creek Reservoir (COSPCH02) at the June 2025 Regulation 38 Rulemaking Hearing. The letter (attached) will be substantively similar to the draft discussed at the Board meeting.

Issue: CCBWQA has been working with Hydros Consulting to develop site-specific nutrient standards for Cherry Creek Reservoir to be submitted to the Colorado Water Quality Control Commission. Hydros previously presented the methodology to both the CCBWQA Board and TAC, prior to meeting with the Water Quality Control Division staff on October 11, 2023 to discuss progress and approach. Representatives of the Division's Standards Unit, EPA, and Colorado Parks and Wildlife attended the meeting along with Christine Hawley (Hydros), Jane Clary (Technical Manager), and Erin Stewart (LRE Water). As result of positive input from the Division staff, CCBWQA staff recommend moving forward with the first step of the Regulation 38 triennial review process, which is submittal of a letter by October 25, 2023 notifying the Commission that CCBWQA may submit a proposal for the 2025 rulemaking hearing, as described in the attached letter. The purpose of this letter is an early "heads up" to the Commission and Division regarding issues that may be "ripe" for inclusion in the rulemaking hearing. There will be additional opportunities to develop and refine CCBWQA's proposal (or to decide not to submit a proposal, if directed by the Board).

Budget: Preparation of the letter is within the Technical Manager's existing budget.

Motion: I move to authorize the Executive Committee to submit a letter to the Water Quality Control Commission notifying them that CCBWQA may propose site-specific total phosphorus and total nitrogen standards for Cherry Creek Reservoir (COSPCH02) at the June 2025 Regulation 38 Rulemaking Hearing. The letter will be substantively similar to the draft discussed at the Board meeting.

Attachment: Draft Letter to Commission

10-18-23 DRAFT FOR DISCUSSION WITH CCBWQA BOARD V.2

October 25, 2023

Via Email: cdphe.wgcc@state.co.us

Ms. Jojo La
Colorado Water Quality Control Commission
4300 Cherry Creek Drive S.
Denver, CO 80246-1530

Re: Issues Scoping Hearing for 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)

Dear Ms. La:

The Cherry Creek Basin Water Quality Authority (CCBWQA) is providing this letter to notify the Water Quality Control Commission (Commission) that it may propose site-specific total phosphorus and total nitrogen standards for Cherry Creek Reservoir (COSPCH02) at the June 2025 Regulation 38 Rulemaking Hearing with a delayed effective date after 12/31/2027.

Background

In Regulation 38, Cherry Creek Reservoir (COSPCH02) has an assigned chlorophyll *a* standard of 18 ug/L. The seasonal mean concentration is measured in the upper three meters of the water column for the months of July through September with an allowed exceedance frequency of once in five years. Additionally, Cherry Creek Reservoir is regulated under Regulation 72, which includes stringent phosphorus control requirements in the basin such as a 0.05 mg/L total phosphorus limit for wastewater treatment plant discharges.

CCBWQA was a party to the April 10, 2023 Rulemaking regarding adoption of Lakes Nutrient Criteria and expressed significant concerns about the applicability of proposed statewide standards to Cherry Creek Reservoir. In this rulemaking, the Commission decided to delay adoption of total phosphorus and total nitrogen standards adopted in Regulation 31.17 (Table V) into basin standards for many lakes, including Cherry Creek Reservoir, until after 12/31/2027. In Section 33.106 (B)(3)(a) Statement of Basis and Purpose of Regulation 38 (5 CCR 1002-38), the Commission stated its intent to consider site-specific nutrient standards for Cherry Creek Reservoir as follows:

The commission may also consider site-specific nutrients standards for the following lake and reservoir segments that have existing nutrient control regulations in future rulemaking hearings if information to support appropriate and protective revisions is developed:

Upper South Platte River: 6b (COSPLUS06b; Chatfield Reservoir)

Cherry Creek: 2 (COSPCH02; Cherry Creek Reservoir)

The commission did not adopt total nitrogen or total phosphorus table value standards for either waterbody in this rulemaking hearing.

Summary of Progress Since April 10, 2023 Lakes Nutrients Rulemaking Hearing

Since the April 2023 Lakes Nutrients Criteria Rulemaking Hearing, CCBWQA contracted with Hydros Consulting to help CCBWQA develop a site-specific standards methodology and standards proposal, utilizing CCBWQA's extensive site-specific data set, supplemented by its reservoir model. Hydros' approach utilizes the methodology developed by the Division and produces site-specific total phosphorus and total nitrogen standards falling between the Commission's 2012 "interim values" and the April 2023 values adopted in Regulation 31. On October 11, 2023, CCBWQA representatives met with representatives of the Water Quality Control Division's Standards Unit (Division), U.S. Environmental Protection Agency and Colorado Parks and Wildlife to review the site-specific standards approach and draft site-specific total phosphorus and total nitrogen standards. CCBWQA's approach was generally favorably received with some suggestions for minor revisions to the methodology. Due to the significant early progress on development of the site-specific standards and positive feedback obtained from the Division to date, CCBWQA anticipates moving forward with proposing site-specific standards in June 2025.

Recommendation

CCBWQA recommends that the Commission consider adoption of site-specific total phosphorus and total nitrogen standards for Cherry Creek Reservoir in the June 2025 Regulation 38 Rulemaking Hearing if proposed by the CCBWQA. CCBWQA anticipates submitting a proposal for site-specific standards that will follow the Division's Lake Nutrients Criteria methodology utilizing site-specific data for the Cherry Creek Reservoir. As currently envisioned, CCBWQA's proposal will likely also continue to propose a delayed effective date of these site-specific standards after 12/31/2027 to allow time for the Division and the broader regulated community to continue to work through implementation issues related to Lake Nutrients Criteria on the same schedule.

Submitted on Behalf of the Cherry Creek Basin Water Quality Authority,

Jane Clary, Technical Manager
Cherry Creek Basin Water Quality Authority