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MEMORANDUM

TO: Chatfield Watershed Authority (CWA) Technical Advisory Committee (TAC)
FROM: Michael Daugherty, Somach Simmons & Dunn (SSD)
SUBJECT: Legal Report – January 2, 2024, TAC Meeting
DATE: December 22, 2023

I attended the Issues Scoping Hearing (ISH) for Regulation #38 (Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin; 5 CCR 1002-38) on November 13, 2022. The hearing was held during the Colorado Water Quality Control Commission's regular November meeting. Five entities presented at the hearing, and thirteen (including the Water Quality Control Division and the U.S. Environmental Protection Agency) submitted written comments.

Below, I summarize some of the relevant positions taken. Importantly, this ISH is the first step in a three-step process for the revision of Regulation #38, and CWA was not required to file anything or take any formal or informal positions during this proceeding, and still may participate as a party in the final rulemaking scheduled for June 2025.

Cherry Creek Basin Water Quality Authority. CCBWQA submitted a letter to the Commission that indicated CCBWQA may propose site-specific total phosphorus and total nitrogen standards for Cherry Creek Reservoir at the June 2023 Regulation #38 rulemaking hearing, with a delayed effective date after 12/31/2027. CCBWQA indicated that it has contracted with Hydros Consulting to develop a site-specific standards methodology and standards proposal that conforms to the Division's Lake Nutrients Criteria methodology.

City of Fort Collins. Fort Collins submitted comments to the Commission that indicated Fort Collins plans to seek site-specific nutrient standards for Halligan Reservoir, among other proposals.

Northern Colorado Water Conservancy District. Northern Water submitted comments to inform the Commission of an issue that potentially should be addressed in Regulation #38 proceeding: temperature standards in transition zones.

Parker Water & Sanitation District. Parker Water submitted comments that recommended the Commission consider site-specific standards for nutrients in the June 2025 rulemaking hearing for Regulation #38. Parker Water anticipates seeking site specific

nutrient standards for total phosphorus, total nitrogen, and chlorophyll a for Rueter-Hess Reservoir.

Water Quality Control Division. The Division submitted a memorandum that established the timeline for Regulation #38 rulemaking proceedings, with the issues formation informational hearing scheduled for November 2024 and the rulemaking hearing scheduled for June 2025. Section 2 of the Division's memorandum discussed site-specific standards, and indicates that "the division's goal is to determine whether [an existing] site-specific standard is still appropriate, needs modification, or should be deleted" and notes that "the division will work with interested parties to develop plans to collect information to facilitate, at a future rulemaking hearing, an evaluation of whether existing site-specific standards are scientifically valid and meet [statutory] requirements."

CWA did not formally participate in the ISH for Regulation #38, as we have not yet determined in which proceeding we plan to propose our site specific standard for total nitrogen. Indeed, we still need to develop a standard and related proposal, and there are several other rulemaking proceedings in which we could include our proposal, including those for Regulations #73 and #31. We plan to discuss with Joni Nuttle early next year the upcoming Regulation #73 rulemaking and whether to include our site specific standard proposal at that time. CWA did indicate to both the Commission and the Division during the lakes nutrients rulemaking proceeding that CWA intends to propose a site-specific total nitrogen standard for Chatfield Reservoir prior to implementation of the table value standard in 2027. Accordingly, both the Commission and the Division are on notice that CWA is currently developing a site-specific total nitrogen standard.

I will continue to monitor the progress toward the final rulemaking hearing for Regulation #38 and coordinate with the CWA TAC regarding when to submit our proposal to the Division and ultimately to the Commission.