WATER QUALITY CONTROL COMMISSION
STATE OF COLORADO

REBUTTAL STATEMENT OF
CHATFIELD WATERSHED AUTHORITY

IN THE MATTER OF PROPOSED ADOPTION OF REVISIONS TO THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER (REGULATION NO. 31); REVISIONS TO CLASSIFICATIONS AND NUMERIC STANDARDS FOR ARKANSAS RIVER BASIN (REGULATION NO. 32), UPPER COLORADO RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12) (REGULATION NO. 33), SAN JUAN RIVER AND DOLORES RIVER BASINS (REGULATION NO. 34), GUNNISON AND LOWER DOLORES RIVER BASINS (REGULATION NO. 35), RIO GRANDE BASIN (REGULATION NO. 36), LOWER COLORADO RIVER BASIN (REGULATION NO. 37), AND SOUTH PLATTE RIVER BASIN, LARAMIE RIVER BASIN, REPUBLICAN RIVER BASIN, SMOKY HILL RIVER BASIN (REGULATION NO. 38); REVISIONS TO NUTRIENTS MANAGEMENT CONTROL REGULATION (REGULATION NO. 85)

Chatfield Watershed Authority ("CWA"), by and through its undersigned counsel, Somach Simmons & Dunn, P.C., submits this Rebuttal Statement ("Rebuttal") for the above captioned matter to the Colorado Water Quality Control Commission (the "Commission").

I. Introduction

As described in CWA's responsive prehearing statement ("RPHS"), CWA opposes the Colorado Water Quality Control Division's (the "Division") plan to apply the proposed cold-water reservoir table value standard for total nitrogen ("TN") of 380 ug/L to Chatfield Reservoir beginning in 2023. Alternatively, CWA respectfully requests to develop a site-specific TN standard for Chatfield Reservoir pursuant to Section 31.7(1)(b)(iii) of Regulation No. 31. CWA proposes to develop the site-specific standard once CWA has completed work on its revised total maximum daily load ("TMAL"), which is expected to occur in 2026. CWA further requests that the Commission refrain from imposing any TN standard on Chatfield Reservoir prior to the development of an appropriate site-specific standard.

This Rebuttal also responds to responsive prehearing statements filed by the U.S. Environmental Protection Agency ("EPA") and the Plum Creek Water Reclamation Authority ("PCWRA"), both of which address the Division's proposal as it relates to Chatfield Reservoir.

II. Response to EPA

EPA specifically discusses in its responsive prehearing statement ("EPA's RPHS") the Division's proposal for Chatfield Reservoir and requests that the Division reevaluate the

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proposed TN standard because the cold-water reservoir table value TN standard was not calculated from the site-specific chlorophyll a standard currently in place for Chatfield Reservoir. EPA's RPHS, pgs. 4, 21. CWA appreciates EPA pointing out that Chatfield Reservoir already has approved site-specific numeric standards for both chlorophyll a and phosphorus. CWA alleges that the unique conditions of Chatfield Reservoir that supported the development of site-specific standards in 2009 continue to this day and further support CWA's request for a site-specific TN standard for Chatfield Reservoir rather than the Division's proposal to impose a table value standard on Chatfield Reservoir.

EPA also asserts that "[a]ny standard that is adopted as a result of this rulemaking action would be subject to the triennial review requirement," which means that "fine-tuning changes can be made to the standards over time as new scientific information becomes available." EPA's RPHS, pg. 21. However, CWA alleges that it is better to enact a nutrient standard that is supported by the science and data and is realistically attainable while still protective of water quality, even if that means delaying imposition of the standard, rather than imposing a standard that is not scientifically supported, not realistically attainable, and not proven necessary to protect water quality and public uses. CWA is concerned about the public perception of increasing Chatfield Reservoir's TN standard in the future, even if the science and data support such a change, and about imposing significant cost on wastewater providers upstream of Chatfield Reservoir in order to attempt to comply with nutrient standards that may increase in the future.

III. Response to PCRWA

PCWRA alleges in its responsive prehearing statement ("PCWRA's RPHS") that the Division's proposed nitrogen standard for Chatfield Reservoir is unnecessary "because Chatfield Reservoir attains the site-specific chlorophyll a standard, indicating that the aquatic life and recreation uses are currently attained as a result of phosphorus control under Regulation 73." PCWRA's RPHS, pg. 1. PCWRA argues that "the Commission should allow time for stakeholders to propose a site-specific standard." *Id*. at 2. CWA agrees with PCWRA in this regard.

PCWRA recommends deferring "consideration of the Division's proposed total nitrogen standard for Chatfield Reservoir until the next basin hearing in 2025," at which point "the Commission would be in a position to review a site-specific proposal for nitrogen for Chatfield Reservoir." *Id*. at 7. CWA appreciates PCWRA's request for a delayed imposition of a TN standard on Chatfield Reservoir. However, as indicated in CWA's RPHS, CWA has limited resources and is currently tasked with revising its TMAL, which is expected to be completed in 2026. Accordingly, CWA reiterates its request that the Commission delay imposition of a TN standard on Chatfield Reservoir until CWA has the resources to complete its revised TMAL and calculate a site-specific TN standard for Chatfield Reservoir that is supported by available data.

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In addition, PCWRA is a dues-paying member of CWA, and CWA relies on member dues to support its operations and water quality improvement projects. As such, the enormous cost that PCWRA estimates it would incur to comply with the Division's proposal to implement the cold-water reservoir table value standard on Chatfield Reservoir is of particular concern to CWA. Specifically, PCWRA estimates that compliance with the Division's proposed TN standard for Chatfield Reservoir would cost "nearly $207 million in capital costs and over $7.7 million per year in operational costs." *Id*. at 1. CWA agrees with PCWRA that "the current phosphorus standard and chlorophyll a standard for Chatfield Reservoir protect the aquatic life and recreation uses, including the public swim beach" and that the voluntary incentive program described in PCWRA's RPHS provides an existing mechanism to "prevent increases in nitrogen to Chatfield Reservoir between now and the development of an appropriate site-specific standard for nitrogen." *Id*. at 7. As such, CWA appreciates and joins PCWRA's request that the Commission refrain from imposing a TN standard on Chatfield Reservoir until CWA has the resources to develop an appropriate site-specific standard.

IV. Conclusion

CWA continues to request that the Commission reject the Division's proposal to impose the proposed cold-water table value TN standard on Chatfield Reservoir beginning in 2023 and instead allow CWA to develop a site-specific TN standard once CWA has completed work on its revised TMAL. CWA reiterates the concern discussed in CWA's RPHS that Chatfield Reservoir does not fit neatly into the Division's proposed categorization of the state's reservoirs as either warm water or cold water and asserts that the existing site-specific standards for chlorophyll a and phosphorus for Chatfield Reservoir support CWA's request for a delayed site-specific TN standard and also are sufficiently protective of water quality to protect the public uses of the reservoir, as evidenced by CWA's ongoing compliance with its chlorophyll a standard.

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Respectfully submitted this ____ day of February, 2023.

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