

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
TDD Line (303) 691-7700 (303) 692-3090
Located in Glendale, Colorado
<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

August 21, 2007

Mr. John Ostrowski, President,
Plum Creek Wastewater Authority
4255 North U.S. Highway 85
Castle Rock, Colorado 80108

Re: Chatfield Reservoir Control Regulation No. 73 Triennial Review

Dear Mr. Ostrowski:

I received your letter expressing concerns about the Water Quality Control Division's (Division) reasons for requesting a triennial rulemaking hearing on the Chatfield Reservoir Control Regulation #73, before the Water Quality Control Commission (Commission.) I noted that you have some serious reservations about the need for the triennial rulemaking hearing and significant concerns about the possible outcomes. I would like to address these in my response, and explain the Division's intent in requesting the hearing, the technical work and data analysis that will be undertaken in preparation, the collaboration that will occur with the Chatfield Watershed Authority's Technical Review Committee (TRC) and Board in the months preceding the hearing, and concerns about Division priorities.

The request for the rulemaking hearing on the Chatfield Reservoir control regulation was motivated in large part by two technical issues: frequent non-attainment of the reservoir phosphorus standard, and uncertainties about the relationship linking chlorophyll and phosphorus concentrations in the reservoir. Neither issue is new. The Chatfield Watershed Authority is aware of both issues and has discussed them at Board meetings and in their annual reports to the Commission. Division staff also testified about the non-attainment at the Commission hearing last year. Paul Grundemann had criticized the existing relationship between chlorophyll and phosphorus on a number of occasions while a member of the Commission, and most recently at the July hearing. Given the critical importance of that relationship to determination of, and confidence in the TMAL, I agreed with staff's recommendation that a formal review be undertaken.

At the July Commission hearing, the Division presented the request for a rulemaking hearing on the Chatfield Reservoir control regulation. The Commission agreed with the request, and has scheduled a hearing for November 2008, to address the issues outlined. It is important to note that the Commission in the 2005 triennial review had already directed the Division and the Authority "to work together cooperatively to examine the TMAL and underlying assumptions," and to report to the Commission at the next triennial review, on how this will be accomplished. This directive from the Commission was

Mr. John Ostrowski

August 20, 2007

2

based on initial technical reviews and studies undertaken by the Authority and the Division. The 2008 hearing is a formalization of that desire.

I recognize that there are concerns about the pace of work implied by the hearing date. Consequently, I directed staff to prepare and distribute a work plan and a schedule for completing the tasks that are necessary to have a proposal ready for the hearing. In the spirit of collaboration, the Division staff has met with the Authority Board and with the TRC, and the latter has agreed to dedicate a portion of their monthly meetings for the next 8 months to discuss the work items. I have enclosed a copy of the work plan for your reference. Another goal in developing the work plan is to stimulate discussion. The Division fully expects to hear from and respond to constructive critiques from interested parties.

At the conclusion of the technical review process, the Division must decide whether or not to prepare a proposal for the November 2008 rulemaking hearing. A proposal would be warranted if there was a need to change the water quality standard (to chlorophyll, for example), or if the technical evidence led to a revision of translators linking chlorophyll to an allowable phosphorus load. It is also possible that the review would support the status quo, in which case the Division would withdraw its request for the rulemaking hearing. I would like to emphasize again that the Division has not reached any conclusions regarding the need for, or substance of, any proposals for the rulemaking hearing.

I have heard concerns from several sources, including your letter, about the possibility that our technical review would change wasteload allocations in the control regulation. While it is much too early to speculate about the outcome of the pending technical review, I do believe it is important to dispel the notion that we will act precipitously on such a significant issue. Accordingly, I have concluded that attempting to address wasteload allocations would be too ambitious a goal for the 2008 rulemaking hearing.

In the event that the Division proposes a change in the allowable phosphorus load to the reservoir, that proposal would not revise wasteload allocations at the 2008 rulemaking hearing. Instead, the Division would likely recommend a phased approach in which the Chatfield Watershed Authority would play a central role in reviewing potential modifications to pollutant allocations and assessing technical and economic feasibility of phosphorus control options.

I recognize that any discussion of TMALs leads inevitably to concerns about existing allocations. There is no fixed policy on the handling of such situations, but a closely related issue did surface in a recent hearing for the Dillon Reservoir Control Regulation No. 71. A review of calculations behind phosphorus credits yielded a technical justification for reduction in credits, but the Division recommended no change to credits already incorporated in existing permits. The Commission accepted that recommendation.

I believe that we owe the permitted dischargers in the Chatfield Basin a fair and unbiased review of the technical aspects of the control regulation and an analysis of the consistency of procedures among the different reservoirs with control regulations. The review of Control Regulation No. 73 by the Division, the Commission, the Authority, and the regulated community will hopefully build confidence that the regulation is based on the best and most current information available, and that it is being consistently applied. We would be remiss and subject to criticism if we did not take this position.

Mr. John Ostrowski

August 20, 2007

3

Your letter raised the issue of the costs associated with the review for the rulemaking hearing and the strain they will place on Division and Authority resources. I want to assure you that development of the proposal falls within the Division's duties and responsibilities and is therefore an appropriate allocation of Division resources. The assignment of staff and other resources underscores the importance we assign to this effort.

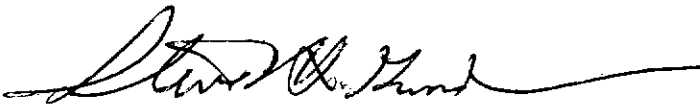
Reservoir control regulations serve multiple purposes; primary among them is the means to embody a TMDL and an associated implementation plan. Each regulation addresses a unique set of circumstances, but all share the common goal to protect and restore water quality. The Division, as staff to the Commission must provide recommendations for modification or update for each triennial review period.

The Division is currently funding two non-point source projects in the Chatfield Basin, but more are likely needed to protect the designated water quality uses in the reservoir. We are anxious to work with communities and counties interested in reducing non-point source pollution. The control of non-point sources rests primarily with the land use management agencies, all of which are members of the Chatfield Authority Board. I encourage them to use their authorities to actively institute practices that will reduce non-point source pollution.

In closing, I sincerely believe that the Division is fulfilling its duties in requesting the rulemaking hearing, and has demonstrated a willingness to collaborate and work with the Chatfield Watershed Authority on the development of the proposal for consideration by the Commission in 2008. We recognize the financial constraints on all of the entities involved, and have balanced these with the need to protect the public health and environment embodied in the evaluation of the impacts to the water quality in Chatfield Reservoir.

I appreciate your concerns and am very willing to discuss them further with you. I welcome your involvement and that of the PCWA Board in the current process for reviewing the control regulation.

Respectfully yours,



Steven H. Gunderson, Director
Water Quality Control Division

Enclosure

C: Jim Martin, Executive Director, CDPHE
Martha Rudolph, Director, Environmental Programs, CDPHE
Brian M. Nazarenius, Chair, WQCC
Ron Redd, Utilities Director, Town of Castle Rock
Jim McGrady, Manager, Castle Pines North metropolitan District
Paul Dannels, Manager, Castle Pines Metropolitan District
Chatfield Watershed Authority
Cherry Creek Watershed Authority
Bear Creek Watershed Authority

Mr. John Ostrowski

August 20, 2007

4

South Metro Water Supply Authority
Chatfield Reservoir Reallocation Group
Douglas County Commissioners
Jefferson County Commissioners
Colorado Wastewater Utilities Council
Town of Castle Rock, Mayor and Council
Ted Lohr, President, Castle Pines North Metro District
Castle Pines Metropolitan District Board of Directors
Larry Moore, Roxborough Park Metropolitan District

Improving the Technical Basis for the Chatfield Reservoir Control Regulation

The Division envisions a process whereby the technical basis for the control regulation is improved incrementally through a sequence of meetings at which concepts and questions are presented and discussed. It is an opportunity for the Division and stakeholders to interact on the technical issues such as the concentration translator, the load translator, and the relative merits of chlorophyll and phosphorus standards. The technical discussions may or may not lead to a consensus, although consensus is the preference of the Division.

The Division's obligation to the Commission is to produce a proposal by the end of June 2008, in advance of the November Rule Making Hearing. The scope of the technical analysis that will comprise the bulk of the proposal is outlined in the Division's Triennial Review Information Hearing memo to the Commission. At the hearing, the Division presented the case for synchronizing changes to regulations 38 and 73. The linkage between these regulations facilitates any regulatory changes found to be desirable and justifiable after evaluation of the current phosphorus standard or consideration of a chlorophyll standard.

The purpose of this review is to restore confidence in the technical basis for the control regulation and to make more transparent the reasoning and the calculations supporting the TMAL. The Division's proposed pathway to improvement is outlined in the table below, which sets a schedule for meetings, discussion topics, and potential outcomes over the next 10-12 months. Given the short timeline, the Division anticipates taking the lead on technical topics, simply as a means of stimulating thoughtful discussion; the Division continues to encourage dialog with interested parties and is interested in exploring alternative technical approaches.

Schedule of topics for discussion at Chatfield TRC meetings

Month	Topic(s)	Potential Outcomes
Sep-07	Technical comparison of standards, targets, and translators in existing control regulations, with consideration of transparency and consistency	Provide information; discuss technical basis.
Oct-07	Appropriateness of existing chlorophyll target: magnitude, frequency, duration (averaging period) considerations	Summary current views on suitability and structure of chlorophyll standard; discuss relative merits of chlorophyll and phosphorus standards
Nov-07	Evaluation and discussion of concentration translator	Discuss WQCD proposal
Dec-07	Assessment of water budget and appropriate concentrations for each flow source as precursor to phosphorus load calculations	Develop common set of monthly flows partitioned by source; discuss
Jan-08	Review and discussion of phosphorus load estimates	Develop common set of monthly loads partitioned by source; discuss
Feb-08	Evaluation and discussion of load translator	Discuss WQCD proposal
Mar-08	Develop hydrologic scenario appropriate for TMAL	Discuss WQCD proposal
Apr-08	Assemble technical components; discuss chlorophyll-phosphorus-load linkages	Provide substance of WQCD proposal to WQCC; discuss
Jun-08	WQCD to finalize proposal	Circulate for comment
Jul-08	Notice due	Notice published
Nov-08	WQCC RMH	Decision on proposal