



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: 8EPR-EP

JUN 17 2013

Peter Butler, Chair
Water Quality Control Commission
4300 Cherry Creek Drive South
Denver, CO 80222-1530

Subject: EPA Action on the WQS Revisions for Upper
South Platte Segment 22b

Dear Mr. Butler:

The U.S. Environmental Protection Agency (EPA) has completed its review of the water quality standards revisions adopted by Colorado's Water Quality Control Commission (Commission) for Upper South Platte segment 22b (Regulation No. 38). The revisions modified the water quality standards applicable to the lakes and reservoirs within the Rocky Mountain Arsenal Wildlife Refuge. The revisions were submitted to EPA Region 8 for approval with a letter dated May 29, 2013. The submission letter included an Opinion of the Attorney General certifying that the standards were duly adopted pursuant to State law. Receipt of the revised standards on May 31, 2013 initiated EPA's review pursuant to Clean Water Act § 303(c). EPA has completed its review of the revisions, and this letter is to notify you of our action.

CLEAN WATER ACT REVIEW REQUIREMENTS

CWA § 303(c)(2) requires States and authorized Indian Tribes to submit new and revised water quality standards to EPA for review. EPA is required to review and approve or disapprove the revised standards pursuant to CWA § 303(c)(3). The Region's goal has been, and will continue to be, to work closely and collaboratively with States and authorized Tribes throughout the standards revision process so that submitted revisions can be approved by EPA.

TODAY'S ACTION

I am pleased to inform you that today the Region is approving, without condition, the water quality standards revisions for Upper South Platte segment 22b. The adopted revisions, and the basis for our action, are summarized below.

The revisions included removal of the water supply use classification and the human health-based numeric standards. The decision to remove the use classification was based on evidence

that water supply is not an existing or anticipated use. For example, evidence was presented that water supply use is precluded by the 1989 Federal Facilities Agreement for the Arsenal. The decision to remove the human-health based numeric standards was based on evidence that there are no exposure pathways that create human health risks.

Because the revisions were adopted using an emergency rulemaking process, they went into effect (under State law) on May 13, 2013 and will remain in effect until the effective date of permanent regulations, or one year, whichever comes first.

The Region has determined that the WQS changes for Upper South Platte segment 22b are consistent with the federal requirements in EPA's water quality standards regulation (40 CFR Part 131). Removal of designated uses that are not existing uses is authorized by 40 CFR Section 131.10(g). Because the remaining numeric standards are protective of the remaining designated uses, as required by 40 CFR Section 131.11(a)(1), EPA likewise concludes that the changes to numeric standards are consistent with EPA requirements. Accordingly, the Region approves the revisions to water quality standards for Upper South Platte segment 22b.

It is important to note that EPA approval of State standards is considered a federal action which may be subject to the Section 7 consultation requirements of the Endangered Species Act (ESA). However, because listed or proposed, endangered or threatened species do not occur in the waters for which revised standards were adopted, and because the revisions relate only to human health protection, EPA today concludes that consultation with the U.S. Fish and Wildlife Service is not required.

CONCLUSION

EPA Region 8 thanks the Commission and the Division for their efforts to review and revise Colorado water quality standards. In the future, if circumstances change (e.g., regarding the absence of human exposure pathways), the need for human health-based standards should be re-evaluated as part of the triennial review process. Questions regarding this letter may be directed to David Moon, the Region's water quality standards coordinator, at 303-312-6833.

Sincerely,



Martin Hestmark
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation

