COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Water Quality Control Commission

5 CCR 1002-39

REGULATION NO. 39

COLORADO RIVER SALINITY STANDARDS

39.1 AUTHORITY

This regulation is promulgated pursuant to section 25-8-101 et seq. C.R.S., as amended, and in particular, sections 25-8-202(2), 25-8-204; and 25-8-207(1)(c), as amended.

39.2 INTRODUCTION

Salinity or total dissolved solids (TDS) occurs at low concentrations in the headwaters of the Colorado River and its tributaries in Colorado; however, salinity concentrations increase downstream. The primary effects of salinity occur in the lower Colorado River basin. This is largely due to the higher levels of salinity and the type of crops grown there. Since total dissolved solids are conservative constituents which affect certain water uses in the lower Colorado River basin, and in order to utilize the most effective control methods, a basin-wide approach for controlling salinity is being followed.

The seven states through which the Colorado River runs formed the Colorado River Basin Salinity Control Forum ("Forum") to coordinate the basin-wide approach. The Forum gathers and reviews information relevant to the complex problem of salinity standards and implementation of controls by the basin states. Colorado, as a member of the Forum, will work with the other basin states and the federal government to manage salinity and its effects through this basin-wide effort.

39.3 WATER QUALITY STANDARDS

Colorado is participating in the multi-state basin-wide approach for salinity management which utilizes state, interstate, and federal authorities and resources. The water quality standard for salinity in the Colorado River basin shall remain the same as adopted in 1976. That is, the water characteristics designed to maintain the following flow-weighted average annual values:

Below Hoover Dam	723 mg/l
Below Parker Dam	747 mg/l
At Imperial Dam	879 mg/l

*The term 'water quality standard' as used in the Colorado Water Quality Control Act, section 25-5-204, C.R.S., is similar to the term criteria as used in the Federal Clean Water Act, 33 U.S.C. Section 303(c).

Should water development projects be completed before control measures are brought on line, temporary increases above the criteria could result and these increases will be in conformance with the standards, provided that, with completion of control measures, salinity would return to or below the criteria level.

Periodic increases above the criteria as a result of unfavorable reservoir conditions or periods of below normal annual river flows also will be in conformance with the standards, provided that, with satisfactory reservoir conditions and when river flows return to normal, concentrations are expected to be at or below the criteria level.

Nothing in this regulation shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774), the Colorado River Storage Project Act (70 Stat. 105), the Colorado River Basin Project Act (82 Stat. 885), the Colorado River Compact, the Upper Colorado River Basin Compact, or the Treaty with the United Mexican States (Treaty Series 994).

39.4 CLASSIFIED USES

The uses of the waters of the Colorado River and its tributaries in Colorado are those as adopted by the Water Quality Control Commission in separate classification actions including any amendments or changes thereto.

39.5 IMPLEMENTATION

As authorized by the Colorado Water Quality Control Act, 25-8-101 et seq., C.R.S., as amended, the Water Quality Control Commission and the Water Quality Control Division will implement the standard in compliance with Sections 208 and 402 of the Clean Water Act. In addition, the triennial report and supplement thereto of the Colorado River Basin Salinity Control Forum concerning the Plan of Implementation for Salinity Control for the Colorado River System have been adopted separately as a policy statement by the Commission. By adopting these as policy statements, the Commission endorses the components of the plan for implementation by entities with the authority to do so.

39.6 PERIODIC REVIEW

These standards shall be reviewed periodically for the purpose of determining whether modifications are necessary consistent with such plans as the Forum may endorse, and so that the basin states may continue to develop their compact-apportioned waters while providing the best practicable water quality in the Colorado River basin.

39.7 STATEMENT OF BASIS AND PURPOSE

A review of the water quality standard for salinity in the Colorado River and the plan of implementation has been held in accordance with the Colorado Water Quality Control Act and the Clean Water Act. The same water quality standard is adopted for salinity--the water characteristics within the Colorado River basin in Colorado appropriate to maintain the numeric levels established at the three downstream check-points. The purpose of water quality standards is to protect the uses of the waters. The narrative criteria adopted by Colorado will adequately protect the uses. It has been the consensus of EPA and the Forum for some time that the numeric levels are appropriate.

The standard rests upon the dual considerations that salinity levels shall be maintained in the lower Colorado River while the upper basin states continue to develop their compact-apportioned share of the Colorado River. These were recognized as necessary companion considerations even before the 1972 amendments to the Federal Water Pollution Control Act were adopted. See, for example, the Conclusions and Recommendations of the Conferees at the Reconvened Seventh Session of the Conference in the Matter of Pollution of the Interstate Waters of the Colorado River, page 3 of Exhibit C to the 1975 Forum proposed Water Quality

Standard for Salinity and Plan of Implementation. The 1975 document was Exhibit A at the hearing.

The points chosen as appropriate for establishing numeric criteria are three key locations in the lower mainstem. The 1975 document affords a clear explanation for the choice of the three locations at pages 55 and 56:

> In order to provide for sound water quality objectives, numeric criteria are to be established at three key stations (i.e., below Hoover, below Parker and at Imperial Dams). The State of Nevada diverts Colorado River mainstem water from Lake Mead for use in the Las Vegas area, and the returns enter the lake just upstream from Hoover Dam. The gaging station below Parker Dam is immediately downstream of the major Lake Havasu diversion for the Metropolitan Water District of Southern California. Also, the Central Arizona Project now under construction will divert from Lake Havasu. The large agricultural areas in the Imperial and Coachella Valleys in California and Yuma area in California are served by diversions at Imperial Dam.

This action repeals the May 1976 adoption of the "Water Quality Standards for Salinity Including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System", dated June 1975 and the "Supplement Including Modifications" to the above-referenced document, August 26, 1975.

The standard adopted reflects the basinwide approach for controlling salinity which has been endorsed by Congress, affected federal agencies, and the Colorado River basin states for several years. The rationale for using the basinwide approach is thoroughly documented in the record.

This approach has been developed by the Colorado River basin states through the Colorado River Salinity Control Forum ("Forum").

Colorado has consistently participated in the basinwide approach for controlling salinity. It continues to do so through the Forum which is now preparing its proposed 1981 update. That will be before the Commission within a few years. Furthermore, the standards continue to be met, and will certainly be achieved for the next several years. Questions or concerns regarding the approach taken can be raised again, if appropriate, as a part of the next update review.

The basinwide approach is followed through the adoption of the water quality standard as a regulation with separate adoption of the 1978 proposed revision by the Forum, the supplement thereto, and the Third Annual Progress Report as statements of the Commission's policy. The linkage between the standard and the policy is found in Section 3.9.5 Separating these two actions better meets the requirements of the Colorado Water Quality Control Act and the Clean Water Act. This approach is the best method to follow to comply with the established water quality management programs of the two acts. While the Commission recognizes the continuing importance of a plan of implementation, applicable federal law does not require such a plan as part of the standard. Also, the form and substance of that document is appropriate as a policy statement rather than as a regulation.

Should any aspect of the plan be amenable for adoption as a regulation, a regulatory hearing may be held to consider adopting such a regulation. The only aspect of the plan of implementation which is now amenable to adoption in a regulatory format is the NPDES policy. That was adopted as a regulation sometine ago by the Commission.

39.8 STATEMENT OF BASIS AND PURPOSE REGARDING AMENDMENT TO SECTION 3.9.5 OF COLORADO RIVER SALINITY STANDARDS

A review of section 3.9.5 in 1982 demonstrated a need for amendment of section 3.9.5 consistent with the most recent triennial review of the Plan of Implementation for Salinity Control for the Colorado River System. Testimony was received by the Commission supporting the multi-state basinwide approach to Salinity Control, and the Commission felt this testimony and other evidence in the record justified the Commission's action. Accordingly, section 3.9.5 was revised to reflect the Commission's most recent adoption of the triennial report by the Colorado River Basin Salinity Control Forum and supplemental report thereto as a policy statement on future triennial reviews without having to revise section 3.9.5 each time.

FISCAL IMPACT STATEMENT REVISION OF SECTION 3.9.5 OF COLORADO RIVER SALINITY STANDARDS

The Fiscal Impacts of this regulation, if any, are not identifiable at this time. There was no testimony that yielded indication of specific or quantitative impacts to identified entities. Concern was expressed by several parties that water rights could be potentially impacted, but it was noted that Senate Bill 10 provides that no provision of the Act shall be interpreted so as to supercede, abrogate, or impair rights to divert water and apply water to beneficial uses in accordance with the provisions of sections 5 and 6 of article XVI of the constitution of the State of Colorado, compacts entered into by the State of Colorado, or the provisions of articles 80 to 93 of title 37, C.R.S. 1973, or Colorado court determinations with respect to the determination and administration of water rights.
As this action is an endorsement of potential future implementation by other entities including the Commission, of components of the Colorado River Basin Salinity Control Forum Plan of Implementation, it is not an action that will have a direct Fiscal Impact. Rather, any impacts that ultimately result will be attributable to the actions of the implementing authorities. These impacts would include the cost of installation and operation of voluntary on-farm improvement measures, the public cost of federal salinity control projects, and potential costs to the private sector if industries volunteer to install and operate equipment for the use of brackish and/or saline waters for industrial purposes.

Thus, with no evidence indicating adverse impacts and in light of the benefits to be preserved and gained throughout the basin, it is concluded that the Commission acted in an economically reasonable and responsible manner in implementing this revision.

39.9 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JULY, 1997 RULEMAKING

The provisions of sections 25-8-202 and 25-8-401, C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the

Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.