

REBUTTAL STATEMENT OF THE BEAR CREEK WATERSHED ASSOCIATION

IN THE MATTER OF THE RULEMAKING HEARING FOR CONSIDERATION OF REVISIONS AND ADOPTION OF THE 2015 LIST OF WATER-QUALITY-LIMITED SEGMENTS REQUIRING TOTAL MAXIMUM DAILY LOADS AND COLORADO'S MONITORING AND EVALUATION LIST (REGULATION NO. 93)

The Bear Creek Watershed Association (hereinafter "Association") presents its Rebuttal Statement in the above referenced matter. The BCWA is responsible for watershed management, restoration and implementation within the context of a management agency and the Bear Creek Control Regulation (Control Regulation 74, 5 CCR 1002-74). The Association provides summary positions in the form of this rebuttal statement on the proposed changes to Regulation #93 as directly related to the Bear Creek Watershed in the Bear Creek Basin.

Summary Positions.

The Association is disappointed by the lack of consultation or response from the WQCD staff in this listing and hearing process. The Association is concerned that information used by the Division is incomplete, inaccurate, or wrong. There is a lack of supportive evidence provided in the hearing record. The Association contends that all of the 303(d) temperature listings as proposed by the Division are not appropriate, since the data record placed on the state's FTP site were not for the Bear Creek sites. The Association proposes placing the temperature listings for Segments 1a, 1b, and 3 on the M&E list until this data use problem can be resolved.

The Association does not support listing a portion of Segment 1e from Evergreen Lake outlet to Forest Hill Road Bridge for aquatic life. The 2014 MMI score for this site is 56.2, which shows full attainment. The Association is actively working with local land owners to help improve the habitat in this segment and prevent conditions that previously impacted the macroinvertebrates in this segment.

In Segment 1a, the Division is proposing to move the listing segment for temperature upstream to the Yankee Gulch discharge point. There is no reason to use Yankee Gulch, which is a very small tributary, as the break-point for partitioning the segment. The Association temperature records at Golden Willow site and Keys-on-the-Green do not indicate that temperature is the parameter that previously caused reduced MMI scores at Keys-on-the-Green. The Association recommends keeping the portion of the segment from Witter Gulch to Keys-on-the-Green on the M&E list for Temperature. Monitoring of temperature will continue at Golden Willow Road Bridge, Clear Creek County and extend downstream to the Inlet of Evergreen Lake.

The Association does not support the listing for Silver (Ag) in Segment 1b. The silver standards shown in the spreadsheet appears to be calculated incorrectly. Additionally, the median value of all data presented by the Division is 0.0 ug/l. As such, the Association recommends not listing Segment 1b for silver on the 303(d) list.

On an annual basis, Segment 1b is frequently dewatered (<5 cfs flow) by ditch withdrawals, which can be for periods up to 50 days or 15% of the time. The Association has demonstrated temperature spikes on the data probes are associated with this dewatering. As such, part of the temperature problem on Segment 1b can be attributed to senior water rights withdrawals. The Association temperature record (<5 cfs) does show excursions for this segment below the Morrison wastewater discharge. The Association believes a special exclusion may be necessary for this segment because of these water withdrawals. The Association recommends keeping this segment on the M&E list.

The Association is concerned about Cu listing for Segment 1e when the samples were taken from the Harriman Ditch after diversion from Bear Creek Segment 1e. The Association contends that the presented

data is not representative of the segment. The spreadsheet data has an 85th percentile of 0.0 ug/l. The Association recommends not listing Segment 1e for copper. Additional monitoring could be done on the actual segment to determine if there is a copper problem in Segment 1e.

In Segment 2 E. coli, the Association supports the E. coli listing for Segment 2, with a recommendation to change the portion listed to be from Wadsworth to the South Platte River, and not start at Kipling Parkway. The Association monitors E. coli at site 45 below Bear Creek Reservoir. This site has a geometric mean based on monthly sampling of 3 cts/100 ml from 2000-2014. The Lower Bear Creek Watershed Work Group (Groundwork Denver, 2014) has been monitoring E. coli from the Association Site 45 to the confluence with the South Platte River. Their monitoring station BCL5 is upstream of Wadsworth. Their geometric mean for Site BCL5 is 46, based on 8 samples. There is no indication of an E. coli problem on Bear Creek Segment 2 from the outlet of Bear Creek Reservoir to Wadsworth. The Association’s preference is to monitor upstream of Wadsworth and establish a long-term trend at this site, much like has been done at the BCWA Site 45.

The Association’s recommended 303(d) listings for segments in the Bear Creek Watershed are as follows.

Segment	Stream Segment Description	Portion	M&E	303(d) Listing	Priority
1a	Mainstem of Bear Creek from the boundary of the Mt. Evans Wilderness area to the inlet of Evergreen Lake	Bear Creek below the confluence with Yankee-Creek Witter Gulch	Temperature	Temperature	H
1b	Mainstem of Bear Creek from Harriman Ditch to the inlet of Bear Creek Reservoir	All	Temperature	Ag- Temperature	M
1c	Bear Creek Reservoir.	All		Chl-a, phosphorus	H
1e	Mainstem of Bear Creek from the outlet of Evergreen Lake to the Harriman Ditch.	All		Cu- Temperature	H
1e	Mainstem of Bear Creek from the outlet of Evergreen Lake to the Harriman Ditch.	Bear Creek from the outlet of Evergreen Lake to Forest Hill Road Bridge	-	Aquatic Life	H
2	Mainstem of Bear Creek from the outlet of Bear Creek Reservoir to the confluence with the South Platte River.	Below Kipling Parkway (CO 391) Below Wadsworth		E.coli (May-Oct)	H
3	All tributaries to Bear Creek, including all wetlands, from the source to the outlet of Evergreen Lake, Except for specific listings in Segment 7.	All Vance Creek	Temperature	Temperature	H
5	Swede, Kerr, Sawmill, Troublesome, and Cold Springs Gulches, and mainstem of Cub Creek from the source to the confluence with Bear Creek.	Swede/Kerr Gulch		E.coli (May-Oct)	L
6a	Turkey Creek system, including all tributaries and wetlands, from the source to the inlet of Bear Creek Reservoir, except for specific listings in Segment 6b.	Turkey Creek below Parmalee Gulch	Temperature		
6b	Mainstem of North Turkey Creek, from the source to the confluence with Turkey Creek.	All	Temperature		
11	Lakes and reservoirs in the Bear Creek system from the outlet of Evergreen Lake to the confluence with the South Platte River, except as specified in Segments 1c, 10, and 12; includes Soda Lakes.	Harriman Reservoir	As		