

**RESPONSIVE PREHEARING STATEMENT
GRAND VALLEY DRAINAGE DISTRICT, MESA COUNTY, COLORADO**

CONCERNING REVISIONS TO THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER (REGULATION NO. 31) AND ADOPTION OF A NEW NUTRIENTS MANAGEMENT CONTROL REGULATIONS (REGULATION NO. 85)

I.

STATEMENT OF ISSUES

The Board of Directors of the Grand Valley Drainage District, State of Colorado, (“GVDD”) submits its Prehearing Statement. GVDD is a political subdivision of Colorado, in the Grand Valley, Mesa County. It was created by C.R.S. 37-31-101, *et seq.*

GVDD objects to the entirety of the proposed revisions (collectively referred to herein as “Regs 85 and 31” or “Regs”) for the reasons set forth below. GVDD incorporates herein by this reference the Prehearing Statement of the 521 Drainage Authority, of which the GVDD is a member.

1. Regs 85 and 31 seek to address a problem that DOES NOT EXIST on the Colorado Western Slope.

The Division has guidance (NOT A MANDATE) from the EPA that directs the Division to identify watersheds threatened by elevated phosphorus and nitrogen levels. The Division’s current data fails to identify any watershed on the Western Slope that has dangerously elevated phosphorus and nitrogen levels. The Lower Colorado River basin has an especially low level of both phosphorus and nitrogen. The Division has provided no scientific data to justify adopting Regs 85 and 31 (as currently written) for the Western Slope. Existing data, already collected on an ongoing basis, is gathered at USGS gauging stations and this data fails to indicate problems with phosphorus and nitrogen on the Western Slope.

Before adopting Regs 85 and 31 and applying them to the Western Slope, the Division first should provide evidence of phosphorus and nitrogen impairment of Western Slope watersheds, and this should be done on a basin by basin basis. Before requiring additional point source data gathering, the Division must provide compelling evidence that Western Slope watersheds are phosphorus and nitrogen impaired.

IF Regs 85 and 31 are approved as written, the cost of monitoring alone to GVDD’s rate payers will be prohibitive.

GVDD's Board estimates that it will cost nearly \$924,000 in new equipment, plus \$1,050,000 per year in new personnel and operating costs to monitor the 42 separate washes and drains that flow into the Colorado River in Mesa County,¹ but the current budget, for capital and operating, is only \$1.3 million per year.² See, GVDD Exhibit G. Thus, complying with the Regs will require the GVDD voters to approve an increase of 146 per cent in year one, and a perpetual increase of over 80 %, in order to comply. Given the fiscal conservatism of GVDD's voters, such a TABOR vote has a near zero chance of success.

Summary: The supposed problem being solved by the Regs-- nutrient levels creating algal blooms which use up the dissolved oxygen—do not exist in Western Slope waters in general and in Mesa County in particular. The costs of monitoring this problem that does not exist will vastly increase taxes and rates that our citizens pay. Increased taxes and rates will impair agriculture by significantly increasing the cost of production. Marginalizing what has until now been among the most productive agricultural land in Colorado cannot be a desired outcome of Regs 85 and 31, particularly when farmers in this area have been leaders in the development and implementation of good farming and good agricultural management practices, both of which are stated goals of the Reg 31. How then can the Division justify its blanket, state-wide, 'one-hat-fits-all' "solution?"

In addition, GVDD objects because:

2. The Division implies that the Regulations are mandated by U.S. EPA. But, there is no evidence of such a mandate. Two State Representatives, among others, have requested proof of this 'mandate,' but the Division, and the Governor, provide no such evidence. See, GVDD Exhibits H, I, J, and K.
3. Creating such an onerous regulatory and fiscal burden on a small local government unit like the GVDD violates the Governor's Executive Order prohibiting unfunded mandates. A copy of that Executive Order is attached as GVDD Exhibit E.
4. Without voter approval, the GVDD cannot comply with the Regs and fulfill its statutory duty of maintaining the seeps and drains that flow into the Colorado River in the Grand Valley.

Yet, fulfilling the District's mission is critical to the continued viability of the farming industry in the Grand Valley, with draconian impacts on the entire economic structure of Mesa County if the farms and ranches were to fail.

¹ Budget estimates based on information obtained from the 521 Drainage Authority staff.

² Depending on collections efforts by Mesa County, the total annual revenues for 2012 are expected to be between \$1.3 million and \$1.6 million.

The reason GVDD's mission is VITAL comes from the soil types seen in the Grand Valley: Mancos shale, and other strata that contain very high salt content, including selenium.

Without the GVDD's routine maintenance of the seeps and drains, irrigation waters will seep deeply into the soils, water tables will rise, and the native caustic salts ("alkali" soils) will once again rise to the surface, killing the crops.

It is that simple.

It is just this natural phenomenon that led to the creation of the GVDD in 1915, and led to the national programs of the NRCS and the Bureau of Reclamation, and the local efforts of Mesa County and local towns and cities, to line drains, upgrade historic flood irrigation practices, generally promote movement toward 'xeriscaping,' and support the GVDD and similar efforts.

Thus, the indirect effects of the Regs could very well be to destroy much of the agriculture in the Grand Valley.

5. If adequate scientific evidence suddenly appears, and supports some form of nutrient regulations for flat, slow moving waters in Colorado that are in very urbanized areas, the proposed Regulations do not stop there. Instead, the drafters of the Regs have made critical –but wholly unsupported-- assumptions that such urban area problems, and the biological processes sought to be solved, will apply equally well to fast flowing waters in Western Colorado.

Based on those unjustified and seemingly unchallenged assumptions, the Division proposes that MS4s gather the data to later justify the Regs.

6. It appears that the bureaucracy within the Department of Health, and certainly within the Division, has grown too large with too much tax payer money to spend, resulting in this attempt to create yet another monstrous bureaucracy which will solve a problem that was created by the Regs themselves. The staff of the Division will be stretched to their limits making sense of all the data coming in constantly from the thousands of monitoring points that will result from implementation of Regs 85 and 31. Limiting the number of monitoring points to those necessary to identify point sources of nutrient contamination in river basins that have demonstrably harmful phosphorus and nitrogen loads will better utilize staff and enhance their effectiveness in implementing a modified set of Regs 85 and 31.

7. Throughout any nutrient regulatory process affecting western Colorado, the effects of trans-mountain diversions from the Western Slope of waters with low or no nutrients must be considered.

II.

WRITTEN TESTIMONY

This prehearing statement and exhibits will serve as written testimony for the GVDD.

III.

FURTHER DISCUSSION OF THE SALIENT POINTS

Salient Point A.

The adoption of these Regulations **HAS NOT BEEN MANDATED** by EPA. In fact, the Regs exceed EPA's recommended action of "encouraging" states to address nutrient pollution through a stepped process: first, a prioritization process, second, setting load reduction goals for priority watersheds, and third, once the problem has been clearly identified, reducing loads through strengthened permits.

The first task, to address how best to respond to the EPA, would be for the Division to obtain actual scientific data to prove that reductions of nitrogen and phosphorus will have any beneficial effect for waters such as those running through Mesa County.

We are a farming community, with much nitrogen and phosphorus being used to support our food industries, which are largely exempt. Our anecdotal evidence is that the effect of the Regs will be negligible on nutrient reductions, while passing huge costs onto already struggling local governments. Over 73% of Mesa County is owned by the Federal government. Exhibit P. Much of the water volumes that pass through the GVDD's drains originates in the BLM and National Forest lands lying north of the District's boundaries. The Division needs to address monitoring such Federal waters before they flow into the District's boundary.

The Division has inadequate scientific data to justify adopting revisions to Regulation 31 or to adopt Regulation 85, because the Division has not provided Colorado-specific studies that demonstrate the levels of nutrients that are necessary to cause impairment in fast running mountain waters in areas of relatively low urbanization. The Division is relying upon a number of studies that do not necessarily transfer to Colorado rivers and streams.

To accomplish this first task, the first mission of the Division **MUST** to come to the Western Slope, engage scientists without any bias, and prove that nutrients **HERE** are a problem.

Although it is politically difficult for local experts to say it out loud, we even understand that one consequence of nutrient reduction in this portion of the Colorado River could be to kill or injure the endangered fish that we as a nation spend millions to protect.

We have personal knowledge that one arm of the State Government, the fertilizer division, did not even know about these Regs until GVDD contacted them. Since the nutrients are, obviously,

coming at least in part from the exempt applicators of fertilizer, what does it say about the Division's efforts when it hasn't even obtained the input of the State's nutrient supply experts?

Isn't this yet another example of a government program, with too much staff and tax money, running amok, creating a new program to justify next year's budget? It certainly appears so, given the lack of responses received to date from the Governor and the Division director, the dearth of scientific evidence and the lack of an EPA mandate justifying the Regs.

As a result, it is obvious to GVDD that promulgating these regulations, much less adopting them in such an emergency time-frame is directly prohibited by the Governor's Executive Order 2011-005.

Salient Point B.

In the 1970's, as a locally needed example of 'pork,' Congress passed UMTRCA, the mill tailings program. As with many such things, the only scientific 'review' that there was a problem happened during Congressional hearings-but never by peer reviewed scientific papers. NO matter that the 'problem' being solved—danger from radiation- was totally blown out of proportion, Congress authorized hundreds of millions to clean up the low-level radioactive mill tailings. The program continues today near Moab. There was a real danger for homes and occupied spaces from radon gas, but the cost-effective solution was to vent it, not spend hundreds of millions to remove tailings wherever it was found. In the end, even the Department of Energy allowed tons and miles of tailings to remain in Western Colorado into perpetuity.

We Western Slopers were hard pressed to complain when the federal government spent its hundreds of millions during the 1980s when we really needed the economic infusion. But, these days when the national debt exceeds 14 trillion, GVDD believes that all of us --federal, state and local -- must forswear such 'pork' even though we understand that the Regs 'pork' benefits will mean that Denver will get many more new health department jobs, and the department can force the state-wide hiring of many millions of dollars worth of consultants over the years to come, to generate much data that can be studied in perpetuity.

We ask the question that should have been asked before UMTRCA was passed: Do the Regs address a truly serious problem? Or, will the Regs be similar to the mill tailings program, addressing problems that pale in comparison to others with real consequences, thus diverting public resources from truly needed areas?

Before the Division and the Commission force Regs 85 and 31 on us, these questions must be answered: What exactly will lower levels of nitrogen and phosphorus mean for the Colorado River in Mesa County? What 'aquatic life' is being protected? Improved? Do the endangered fish need such nutrients at current levels? Will this data be used to try to kill the remaining agriculture we have? What costs are we willing to spend to make the water on the Front Range reservoirs clearer? How much TN and TP comes from Federal lands that are unregulated?

These questions need answers NOW.

Salient Point C.

The Division has not demonstrated that there is a state-wide problem with nutrients in rivers and streams, or that Stormwater MS4 Dischargers are significant contributors of nutrients to rivers and streams. The GVDD objects to the Division's approach to place onto the GVDD the burden of determining if there is a problem, and if MS4 stormwater discharges are significant contributors of nutrients to rivers and streams.

We might not object if the Division's efforts were not so catastrophic for the GVDD. Because the effects of these Regs will be to almost certainly guarantee that GVDD cannot maintain its drain works, GVDD must object. That is going to be the first direct effect if the Regs are adopted.

The secondary effects of Regs 85 and 31 will, instead of helping to protect our citizens, cause damage to our citizens living within the boundaries of the GVDD. We do not have the seemingly unlimited resources of the Division. We must live within the mill levy upon which the GVDD relies.

While the GVDD does not have the time or money to prove it, we assert that the subtle negative effects caused by Regs 85 and 31 will most directly hurt those in our community in the lower categories of family income and resources: If Regs 85 and 31 become law, GVDD must seek voter approval for a near doubling of the mill levy, thus dramatically raising the tax burden on our citizens. Unless there are similar large increases in the wages being paid or the prices for cattle and farming produce, the people who will bear the first brunt will be those in the lower income brackets who will pay more for rent, more for food, and more to the ever-increasing governments who mandate ever increasing regulations.

This is not-so-subtle environmental discrimination against those who simply cannot afford it.

If nutrient regulations are implemented in Colorado at all without the science to back them up, at least start with the waters of the State where the Division's Pre-Hearing documents suggest there is a problem that the Regs may help solve: On the South Platte and the Arkansas Rivers.

AFTER sufficient time to evaluate what solutions are realized on those two Rivers, if any, THEN look at each watershed via individual basin standard hearings, then set priorities-as EPA suggests-- based on the nutrient concentrations, benefit to cost ratio, and the assimilative capacities of the receiving waters.

Salient Point D.

The other political and regulatory realities that must be made part of the calculus to decide if Regs 85 and 31 are solving real problems in reasonable ways are:

Trans-mountain diversions, the impacts on GVDD of the Colorado River Compact, BMP's that already reduce the amounts of nutrients in this area, and the

substantial federal involvement in reducing selenium and other elements from leaching out of the ground into the waters of the Gunnison and Colorado Rivers.

Key points that have not been discussed, and therefore, analyzed by the Division:

Historical and continuing efforts to remove high mountain water with pristine quality, so that the urban centers on the Front Range can continue to explode, cause the Western Slope to suffer economically in multiple ways. Until the effects of diversion of Western Slope waters are understood as to their water quality economic and social effects on the under-privileged citizens within the GVDD, Regs 85 and 31 will only exacerbate other unfair government policies. Where is the environmental justice in such a system?

We do not know how many millions of federal dollars have been spent by the federal NRCS programs and the related lining of miles of open ditches and irrigation delivery systems, nor for other efforts to modernize irrigation practices, such as use of low evaporation drip systems, etc.

But, we do believe, because it is obvious, that every time taxes and burdens go up for the farmers and ranchers, their ability to pay a fair wage to migrant and other workers goes down. Worse, Western Colorado suffers today from an economic downturn that we have not seen since the 1980s. Mesa County's unemployment rate is at 20 per cent. Exhibit Q.

GVDD demands that these perhaps unintended, but nevertheless real, burdens on our lowest income level citizens STOP.

Salient Point E.

Despite numerous requests to the Division and the Governor for evidence to the contrary, it appears that these Regulations have NOT been mandated by EPA. The EPA has pushed, pressured, commented, reviewed, recommended, identified concerns, encouraged, but has not MANDATED these Regulations. (GVDD Exhibits A-C.) Exhibit 1 of the Division's Prehearing Statement (History of Colorado's Nutrient Criteria Development Effort) of the Division's Prehearing Statement identifies that EPA identified in 1996 that the US water quality has been impaired by nutrients, and in 1997 EPA began to address nutrient issues. However all of EPA's efforts identified in Exhibit 1 of the Division's Prehearing Statement encourage, or recommend... that states adopt nutrient criteria, but no MANDATE appears.

In a memo dated March 16, 2011 with the subject "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions" (GVDD Exhibit D), EPA is again encouraging states to reduce nutrients, not mandating nutrient reductions. Also, the EPA recognizes in this memo that a blanket wide approach for nutrient reductions is not appropriate. Instead, EPA encourages states to address nutrient pollution through a prioritization process, setting load reduction goals for priority watersheds, and then reduce loads through strengthened permits.

The Division's proposal sets state-wide standards which ignore the wide differences in Colorado's water, the reality that transfers of some of those waters to different river basins create money and biological impacts that Colorado has not yet faced squarely, and thus passes yet another unfunded mandate onto permit holders to do the job that the Division should have already done-before proposing Regs 85 and 31.

How basic can this be? Is it not obvious to a five-year old that if you propose a solution, you must first identify the problem? The Division needs to, within existing resources, collect the data to justify the Division's proposal.

Salient Point F.

If the Division and Commission refuse to first identify what the problem being solved is, the GVDD at least proposes that the Division prioritize watersheds, as shown in Exhibit 17 of the Division's proposal (GVDD Exhibit N). Once priorities have been set, the Division could set load reductions goals for the high priority watersheds via specific studies which demonstrate the impacts that the concentrations have on river quality and aquatic life as related to nutrient impairment.

Trans-mountain diversions need to be considered in this effort, to reduce the environmental injustice that is being foisted on the Western Slope, so that the Front Range can continue to flourish.

Only after specific problems in specific watersheds are identified with reasonable scientific support should the Division move to reduce loads through strengthened permits and encourage non-point sources to participate.

It is clear to the GVDD that promulgation of these regulations is not in compliance with the Governor's Executive Order 2011-005 (GVDD Exhibit E). The Governor's Executive Order states that the no state agency shall promulgate any regulation creating a mandate on local governments unless:

1. The mandate is specifically required by federal or state law;
2. The agency consults with local governments prior to promulgation of the regulation; and
3. The state government provides the funding necessary to pay for the direct costs incurred by local governments in complying with the mandate. (Emphasis Supplied.)

A plain English reading means that ALL three have to be met. Even if the Division suddenly provides proof of an EPA mandate, the Governor has directed that the Division must provide to the GVDD the funding to comply. Why does the Division ignore items 1 and 3? What is the real agenda of the Division?

As noted, EPA has not mandated nutrient regulations be implemented by the Division. The Division has consulted with some local governments prior to promulgation of the regulation, but not enough of them. Most importantly, the Division has not shown that it has the funding to pay GVDD to comply.

There must be another agenda, because nothing makes sense otherwise. Is it time for local governments across Colorado to ask that the Governor or the Legislature sunset the Division, and reconstitute it with personnel who can read Executive Orders and follow them, who can see what horrible impacts they are creating on folks who are already suffering through a devastating economy?

The GVDD will cooperate as its work allows with Division efforts to try to gather modern data, but cannot accept the Division's wholesale takeover of its budget with Regs 85 and 31.

The GVDD has been a party to, and provided letters of concern to the Governor's office in regards to how these regulations will impact the GVDD. These letters started in September 2011 but are still unanswered. GVDD assumes this is due in part because staff in the Governor's Office believes the EPA has mandated the nutrient regulations and they are content to let the rule making process continue. We ask the Governor to check on his staff, because their conclusions are simply wrong. See, GVDD Exhibits H and J. GVDD is also aware and supports the questions asked of the Division by State Representatives Marsha Looper and Ray Scott. These questions are legitimate and the Division should answer these requests BEFORE this process continues. Note that neither the Governor nor Mr. Gunderson have responded to these letters. (GVDD Exhibits I and K).

There is inadequate scientific data to justify adopting revisions to Regulation 31 or to adopt Regulation 85. The Division has not provided Colorado specific studies that demonstrate what levels of nutrients cause what harms to aquatic life or aesthetic concerns or whatever else is driving the Division's efforts. The Division appears to be making assumptions based on 'back East' data that do not necessarily transfer to Colorado rivers and streams in areas with such low urbanization, such as those within the GVDD.

The threshold studies discussed in Exhibit 12 of the Division's Prehearing Statement were not performed in Colorado, and it appears that the Division has not performed any threshold studies in Colorado. Setting nutrient criteria without the appropriate scientific data does not correspond with EPA's guidance documents and violates basic concepts of logic and fairness.

Making matters worse, the Division has not justified the need for the adoption of these regulations STATE-WIDE. To start with, the Division has not shown that elevated nutrient concentrations are present state wide. The Division's Pre-hearing Statement includes figures on pages 6 and 7, which identify the locations and nutrient concentrations that have been monitored in rivers and streams. Based on co-party 521's review of the data available in Exhibit 12 of the Division's Prehearing Statement, it appears this is THE data source for the figures on pages 6 and 7. It does not take a scientist to understand that such data only shows high concentrations that are clustered in the South Platte basin in the vicinity of the Denver metro area and downstream, and in the Arkansas basin in the vicinity of Colorado Springs and Pueblo. These figures also identify a few scattered locations located in Western Colorado, but nowhere in the Division's materials are the Western Colorado examples even analyzed.

Specific reasons for the GVDD’s concerns about the ‘lack of science’ in support of the Division’s Regs 85 and 31 is contained in co-party 521’s Pre-hearing Statement. GVDD repeats it here because it is so important. The data for the lower Colorado River Basin includes the following sampling sites: Colorado River at Cameo and Stateline, and the confluence of Reed Wash with the Colorado River. This data is summarized in the table below. The Median for Reed Wash does exceed both Total Nitrogen and Total Phosphorous proposed standards. However it is important to note that Reed Wash is only influenced by non-point sources and has no point sources discharging into it. Therefore the implementation of these regulations would not influence the water quality of Reed Wash.

Sample Location	Median TP (mg/l)
Reed Wash	0.58
CO River at Cameo	0.04
CO River at State Line	0.12
<i>TP Proposed Interim Std</i>	<i>0.17</i>

Sample Location	Median TN (mg/l)
Reed Wash	3.43
CO River at Cameo	0.38
CO River at State Line	0.89
<i>TN Proposed Interim Std</i>	<i>2.01</i>

Therefore the GVDD believes that if these Regulations are adopted they should only be implemented in priority basins-which do not include the Colorado River in Mesa County at this point, where elevated nutrient concentrations exist, and there is demonstrated benefit for the cost to implement.

Salient Point G.

As co-party 521 makes clear, the Lower Colorado River Basin Management Unit has 18 facilities and 12 are proposed to be exempt from these regulations. As stated in Exhibit 5 of the Division’s Prehearing Statement, the Cost/Benefit Study Results and Conclusions, “Number and size of non-exempt WWTF’s within a Management Unit influences the potential for point source loading of nutrients to downstream waters. In many Management Units, especially on the West[ern] Slope, there are relatively few non-exempt WWTFs ... and these WWTFs tend to be small in terms of effluent volume discharged. As a result, the expected water quality improvements are relatively low.”

Therefore implementation of these regulations in low priority areas will have minimal impacts to water quality improvements, but will have LARGE negative economic and social effects, as noted above.

It seems so basic to the GVDD: Efforts should be focused on areas with the greatest problems and lessons learned from those efforts can be applied in the future.

The Division's Pre-hearing Statement indicates that the Division is looking to receive feedback on limiting the application of Regulation 85 to specific geographical areas. The GVDD believes the Division should prioritize basins under this alternative by considering the nutrient concentrations of both nitrogen and phosphorous, the benefit to cost ratio and the assimilative capacities of the receiving waters on case-by-case analyses.

The GVDD believes that once the Division has demonstrated that a nutrient problem exists, it should focus on the areas that might benefit from Regs 85 and 31. Basins that consist of a majority of exempt facilities, without elevated nutrient concentrations should be considered low priority for Regulation 85, as the Regulation will have minimal impact.

Moreover, until the economic and social impacts of trans-mountain diversions, NRCS and other programs for lining canals and irrigation laterals to improve water quality are added 'to the mix,' EPA's other mandate of promoting environmental justice cannot be understood or implemented.

Salient Point H.

GVDD believes that the following discussion will assist the reader in understanding why Regs 85 and 31 must be at a minimum delayed, and at maximum thrown out and started over.

The use of Best Management Practices in farming by citizens within the GVDD has greatly mitigated environmental impacts on all communities that might be affected by agricultural runoff from farmers and ranchers operating with the GVDD.

GVDD and others in the Grand Valley have been in the forefront of developing best practices in irrigation and have helped develop best management practices in use today.

One current EPA perspective that arose when Congress adopted the Resource Conservation and Recovery Act (RCRA), and since then, was to be alert to governmental actions that disproportionately impacted communities that were being injured before adoption of RCRA. Nowhere within the GVDD are there communities being injured, much less disproportionately, by seepage, drainage and farm water runoff that re-enters the Colorado River in the Grand Valley.

The taxpayers and citizens within GVDD, both farmers and others, employ thousands of persons in the communities protected by RCRA. Imposing additional monitoring and nutrient mitigation requirements where there is no current evidence of environmental degradation resulting from GVDD practices will inevitably increase costs of production.

These increased costs will marginalize Colorado production of fruits, grains, root vegetables, grapes and local meat, making worse the process of outsourcing agricultural production to distant sources, with several undesirable results: lack of ability to monitor environmental degradation in non-U. S. production areas; unemployment among U.S. agricultural workers, many of them members of the communities protected by RCRA, making them direct victims of over-zealous implementation of excessive and unnecessary environmental goals; increased worldwide negative environmental degradation due to the added impact of air transit of fruits, grapes and

vegetables from China, Brazil and other producers of agricultural products in competition with Grand Valley produce. See Exhibit O.

Many of those who would advocate implementation of environmental cleanup beyond what has provable environmental benefits are themselves locavores, *i.e.*, advocates of eating food that is locally produced. While in some areas the locavore ideal is to consume food produced within 100 miles, due to the impossibility of producing food products in the High Rockies, Grand Valley produce has become the standard for quality local produce for the high mountain areas of Colorado, as well as metropolitan Denver. Anything that shuts down local production of food products works against the very goals of the advocates of environmental stewardship and is undesirable.

III.

WHY THE GRAND VALLEY DRAINAGE DISTRICT IS VITAL

Before the Grand Valley Drainage District was established in the early years of the 20th Century, 5 major canal systems and many miles of lateral irrigation ditches were built across the Grand Valley to deliver irrigation water to the lands within the District, and the thousands of ‘dirt poor’ farmers who homesteaded here. As irrigation occurred, the tail water from the fields had nowhere to go but back into the ground, causing the high salt content soils to leach out, creating severe alkali conditions that rendered fields unusable for crop production. Water also seeped from the unlined canals and ditches into the land under crops, orchards and homes, also causing such leaching and loss of agricultural production. In some places the water table was only 3 feet or less under the surface of the ground. The Bureau of Reclamation began funding the construction of a series of open drains to handle the irrigation tail water and subsurface seep conditions. Today, this drainage system consists of over 500 miles of open ditch throughout the Grand Valley in Mesa County.

In September of 1915, the Grand Valley Drainage District was organized as political subdivision of the state of Colorado. The GVDD is authorized by the Colorado State Statutes in Title 37, Article 31. The GVDD is governed by an elected board with three Board of Director members. The district was created to continue and maintain the Bureau’s work to alleviate tail water, seepage and eventually flooding problems in the Grand Valley.

All work done within the district between 1915 and 1922 was done by the Bureau of Reclamation. In 1928, the district began to acquire its own equipment and hire employees to maintain the ditches and drains. In 1923, the funding structure of a property tax mill levy was adopted. GVDD has had a “static budget” since 1992, and is still subject to TABOR, meaning that there can be no tax increase without voter approval. The GVDD populace has not supported a tax mill levy increase. The Board is certain, and other evidence confirms their certainty, that the economically challenged voters of the District cannot afford to raise their taxes yet again.

The GVDD service area includes the lands from Palisade to Loma on the North side of the Colorado River. The north boundary follows the Stub Ditch (a lateral of the Government Highline Canal in the eastern end of the Grand Valley) to Indian Wash (a natural stream, roughly

on the east side of the existing city limits of Grand Junction) then west of there to include all lands downstream of the Grand Valley Canal (owned by the Grand Valley Irrigation Company) to the north bank of the Colorado River. The GVDD maintains 42 (non point source) entry locations on the Colorado River throughout the District where the historic seeps and drains flow into the Colorado River. (GVDD Exhibit F)

Currently, the District employs up to 12 full-time people for operating and maintaining the GVDD's existing 136 miles of open drains and 128 miles of piped drainage facilities. The administration support staff totals 5 people plus 2 fleet service mechanics to take care of the vehicles and equipment. (GVDD Exhibit G). Total employees are 19.

The GVDD has a very limited operating budget; there are no discretionary funds available to fulfill the mandates of Regulations 31 and 85. GVDD is a member of the 521 Drainage Authority. Through an IGA, GVDD depends on the 521 Authority to administer the GVDD's non-standard MS4 Permit.

IV.

ALTERNATIVE PROPOSAL

As noted, the GVDD believes the Division should take a step back and perform the necessary studies in Colorado, and on the Western Slope, to provide the data to potentially justify these regulations.

If the Division will not perform the necessary studies, then the GVDD proposes that the Division follow EPA's framework from the March 16, 2011 Memo and prioritize watersheds, as shown in Exhibit 17 of the Division's proposal. Once priorities have been set, then the Division could set load reductions goals for the high priority watersheds via specific studies which demonstrate problems created by concentrations related to nutrient impairment.

These studies need to take trans-mountain diversions into account. Reduction in water volume is a critical component to the concentrations related to nutrient impairment.

Once that is accomplished for the areas of the State where it is needed, and then the Division could move to reducing loads through strengthened permits and encouraging non-point sources to participate.

Credits and or distribution of cost associated with nutrient load reduction should be passed on to users of water diverted out of the river basins at the same time or before any new regulatory costs and mandates are foisted on the Western Slope, and specifically on GVDD.

SINCE DILUTION IS ONE SOLUTION to nutrient impairment, users that decrease the quantity of flow in the Colorado River basin, as one example, need to be responsible for their share of the costs, both direct and indirect. Pulling the high quality, cold water for the upper reaches of a rivers basin should have **WATER QUALITY** costs associated with it.

The GVDD believes that its alternative approach to implementation of nutrient controls more closely aligns to the approach suggested by the EPA.

The GVDD also proposes that the burden of determining if MS4 stormwater discharges are significant contributors of nutrients, and what problems are created thereby, be placed on the Division.

The GVDD supports the efforts of the Colorado Legislature's House Joint Resolution, 11-1025 and Colorado Senate Bill 12-017 (GVDD Exhibits L and M).

V.

Grand Valley Drainage District

Resolution 2012-001

Resolution Regarding The Proposed Regulation Of Nutrients In State Waters And The Need For More Time To Evaluate If State-Wide Regulations Will Solve Real Problems In Cost Effective Ways.

Whereas, On November 21, 2011, the Colorado Water Quality Control Commission ("Commission") published a notice of rulemaking regarding nutrients regulations proposed by the Colorado Water Quality Control Division ("Division") of the Colorado Department of Public Health and Environment ("Department") with the hearing on the proposed rules to be held on March 12-13, 2012; and

Whereas, The Grand Valley Drainage District (GVDD) questions the need for such sweeping and expensive regulations until the Division provides reasonable evidence that controlling nitrogen and phosphorus ("nutrients") are needed; and

Whereas, the Division has not shown any such evidence, nor has the Division addressed why such nutrient regulations are proposed to apply one set of rules throughout the State, thus imposing tremendous compliance costs throughout the State without any obvious benefits being obtained; and

Whereas, the District acknowledges that in slow moving waters elsewhere in the United States, there is evidence that too much nutrient can lead to algal bloom with adverse consequences on aquatic life and water clarity; and

Whereas, The Division has provided no evidence that the problems with such flat, slow moving waters in other parts of the Country have or will occur in Colorado, and thus the proposed regulations appear to be a 'solution in search of a problem'; and

Whereas, If such nutrient regulations are shown to be needed in Colorado, the Division has done no studies identifying which waters of Colorado may benefit from new nutrient regulations, other than possibly the South Platte and Arkansas Rivers; and

Whereas, The Division has not shown what specific levels of such nutrients may be needed to protect each distinct water body/stream of Colorado, which water bodies and streams vary greatly in terms of point and non-point source inflows, stream gradients, population densities, and the species of aquatic life that vary from place to place within each such water body/stream in the State; and

Whereas, Even without any such scientific identification of a problem, under the proposed change to Regulation 31 and addition of Regulation 85, unless a narrow exception applies, standards for total inorganic nitrogen (TN) and phosphorus (TP) would be effective by, and potentially prior to, 2017; and

Whereas, On May 9, 2011, the Colorado General Assembly recognized some of the concerns that the District shares when it unanimously approved HJR 11-1025 addressing the promulgation of such regulations by the Commission, and

Whereas, The Governor has forbade the Department and the Division from imposing new burdens on local governments through his Executive Order D 2011-005; and

Whereas, It appears that the Division is ignoring Executive Order D 2011-005 because U.S. EPA has issued no mandate for the proposed regulations, much less for the sweeping and hugely expensive subject regulations; and

Whereas, Making matters worse, the Division has supplied no data to support any specific nutrient levels for any waters on the Western Slope, or even showing that there would be any impairment at all of Western Slope waters, given the unique characteristics of Western Slope waters, levels of urbanization and aquatic species; and

Whereas, The GVDD is subject to TABOR and derives its revenue from property taxation only; and

Whereas, The voters of GVDD have shown a history of fiscal conservatism, making any effort to dramatically raise the District's mill levy a waste of time and money; and

Whereas, The costs to comply with the proposed numeric standards would be in the millions of dollars, and therefore catastrophic to the District, requiring it to fail in its primary, statutory mission in the absence of alternative funding being provided to the District; and

Whereas, The GVDD believes there should be a demonstrated need for controlling nutrients at the proposed numeric levels before millions of dollars in public funds are committed; and

Whereas, The GVDD does not object to Department or Division efforts to obtain data through water quality monitoring to study current nutrient levels into rivers or streams into which seep waters, irrigation return tail water and storm water that flows through the District, so long as the funding for such efforts is provided to the District, including efforts to understand the effects on Grand Valley waters due to man-made drainage facilities maintained by GVDD as directed by CRS Title 37, Article 31 and site-specific impacts caused by the discharge of nutrients from such drainage facilities; and

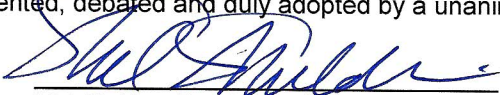
Whereas, Any cost associated with studying to determine if there is a problem regarding nutrient levels in the Colorado River Basin should be provided by those water diverters and their customers who have taken the pristine waters from Colorado's Western Slope high country, thereby increasing the relative nutrient concentrations seen in the Colorado River basin and in Mesa County.

NOW THEREFORE, BE IT RESOLVED, That the GVDD Board of Directors hereby opposes the adoption, application or enforcement of the Division's proposed Regulations 85 and amendments to Regulations 31, in general;

Specifically, the Board objects to any generic numeric standard for total inorganic nitrogen and/or phosphorus unless or until it is demonstrated that such nutrients are a problem in the Grand Valley, what level of nutrients are not a problem, and which species in what reaches of Colorado waters might benefit from such standards;

AND BE IT FURTHER RESOLVED, That the GVDD Board of Directors will support monitoring efforts by testing for nutrients as part of its current or proposed water quality monitoring program to establish existing nutrient levels within the Colorado River into which the GVDD discharges as drainage or storm waters, if funding therefore is provided.

Presented, debated and duly adopted by a unanimous vote of the Board this 19th day of January, 2012.

By: 
Mel Mulder, President, Grand Valley Drainage District

Attest: 
Mark Harris, Secretary, Grand Valley Drainage District

VI.

EXHIBITS

- A. DORA, Regulatory Round Table “Red Tape” Report(1)
- B. DORA, Regulatory Round Table “Red Tape” Report(2)
- C. EPA Region 8, August 9, 2011 Comments on Regulation #31 and #85 Draft Revisions of June 30, 2011
- D. EPA, Memorandum, Working in Partnership with States....March 16, 2011
- E. Colorado Executive Order D2011-005
- F. GVDD District Map
- G. GVDD District Budget
- H. 521Drainage Authority, Letter to Governor Hickenlooper Sept ember 13, 2011
- I. Rep. Marsha Looper, Letter to Mr. Steve H. Gunderson, October 30, 2011
- J. Jim Hickman, Letter to Governor Hickenlooper December 28, 2011
- K. Rep Ray Scott, Letter to Mr. Steve H. Gunderson, January 4, 2012
- L. Colorado House Joint Resolution, 11-1025
- M. Colorado Senate Bill 12-017
- N. Exhibit 17 of the WQCD’s Proposal
- O. The Daily Sentinel, January 15, 2012
- P. Federal lands in Mesa County
- Q. Unemployment in Mesa County

VII.

WITNESSES

1. Mark Harris, Board Member, Grand Valley Drainage District, Co-owner and general manager of AMI and Grand Valley Farms, 859 23 Road, Grand Junction CO 81505. Mr. Harris, as a Board Member and Grand Valley farmer, will present the local agricultural perspective.
2. Any other witnesses that become known between the filing of the prehearing statement and the rulemaking hearing. A supplement will be filed if any other witnesses become known.

Dated this 20th day of January, 2012.

Grand Valley Drainage District



Mark Harris, Board Member

722 23 Road

PO Box 969

Grand Junction, CO 81502-0969

CERTIFICATE OF MAILING

I do hereby certify that the original and 13 copies of this Responsive Prehearing Statement of Grand Valley Drainage District, Grand Junction, Colorado was Hand Delivered to the Water Quality Control Commission at the address listed below this 20 day of January 2012:

Water Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

I do hereby certify that a copy of this Prehearing Statement of the Grand Valley Drainage District, Grand Junction, Colorado was mailed, via first class U.S. Mail, postage prepaid, or emailed to the parties contained in the Party Status List/Mailing List amended January 17, 2012, 01:31PM

