

**RESPONSIVE PREHEARING STATEMENT OF 5-2-1 DRAINAGE AUTHORITY,
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 FACTUAL AND LEGAL CLAIM

The Board of the 5-2-1 Drainage Authority, State of Colorado (“Authority”) pursuant to Regulation #21 (5 CCR 1002-21), section 21.3.E.2, submits it’s Prehearing Statement.

- (a) There is inadequate scientific data to justify adopting revisions to Regulation 31 or to adopt Regulation 85;
- (b) The proposed Regulations make critical assumptions to justify the need for the Regulations that are not supported by the available data;
- (c) The proposed Regulations unlawfully and unfairly impose the burden of characterizing MS4 nutrient discharges, sampling, and monitoring on MS4 Dischargers, without a justifiable ‘problem’ having been scientifically established;
- (d) Transferring such a regulatory and fiscal burden on MS4 Dischargers violates the Governor’s Executive Order prohibiting unfunded mandates; and
- (e) The Water Quality Control Division (Division) implies that the Regulations are mandated by U.S. EPA, but the evidence of such a mandate is lacking, despite requests of the Division to provide it.

II. WRITTEN TESTIMONY

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

III. SUMMARY OF POSITION

There is 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. The Division is relying upon a number of studies that do not necessarily transfer to Colorado rivers and streams.

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 Authority does not agree with the Divisions approach to place the burden of determining if MS4 stormwater discharges are significant contributors of nutrients to rivers and streams on the permit holders.

The implementation of these Regulations has not been mandated by EPA and exceeds their recommended action. EPA has been encouraging states to address nutrient pollution through a prioritization process, setting load reduction goals for priority watersheds, and then reduce loads through strengthened permits. Promulgating these regulations is also not in compliance with the Governors Executive Order 2011-005.

If nutrient regulations are implemented in Colorado, the Authority believes they should be applied on a watershed basis, via individual basin standard hearings, and not a state wide blanket approach. The basins should be prioritized based on the nutrient concentrations, benefit to cost ratio, and the assimilative capacities of the receiving waters.

IV. INTRODUCTION

The Authority is a regional stormwater organization in Western Colorado, which holds MS4 stormwater permits for Mesa County, City of Grand Junction, Town of Palisade, and the Grand Valley Drainage District (Contracting Parties). The City of Fruita is also a contracting party but has not been required to have an MS4 permit. The boundaries of the Authority include urbanizing land and are surrounded by land owned by the Federal Government. Most of the stormwater that drains through the Authority originates on Federal Land.

The Authority has *not* formed a stormwater utility and receives all funding by contributions from the Contracting Parties general tax fund dollars. The Authority has a very limited operating budget; there are no discretionary funds available to fulfill the mandates of Regulations 31 and 85.

V. LACK OF SCIENTIFIC DATA TO DETERMINE IMPAIRMENT IN COLORADO WATERS

There is 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 necessary to cause impairment. The Division is relying upon a number of studies that do not necessarily transfer to Colorado rivers and streams. 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. The Authority believes the Division lacks the scientific data to determine what concentrations of nutrients in rivers and stream corresponds with impairment due to nutrients. As discussed below in Section VI, setting

nutrient criteria without the appropriate scientific data does not correspond with EPA’s guidance documents.

Also the Division has not justified the need for the adoption of these regulations *state wide*, because 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 the Authority’s review of the data available in Exhibit 12 of the Divisions Prehearing Statement, it appears this is the data source for the figures on pages 6 and 7 of the Divisions Prehearing Statement. These figures identify that high concentrations 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.

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 (See Exhibit C). 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
TP Proposed Interim Std	0.17

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

Therefore the Authority believes that if these Regulations are adopted they should only be implemented in priority basins, where elevated nutrient concentrations exist, and there is demonstrated benefit for the cost to implement. Further discussion is provided in Section VIII, below.

VI. REGULATIONS NOT MANDATED BY EPA

These Regulations have not been mandated by EPA. Exhibit 1 of the Division’s Prehearing Statement (History of Colorado’s Nutrient Criteria Development Effort) of the Divisions 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 Divisions Prehearing Statement encourage or recommend that states adopt nutrient criteria.

Most recently through 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" (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, and transfers the unfunded mandate onto permit holders to collect the data to justify the Division's proposal. If the Division and Commission refuse to first identify what the problem being solved is, the Authority at least proposes that the Division prioritize watersheds, as shown in Exhibit 17 of the Divisions proposal. Once priorities have been set, and then the Division could set load reductions goals for the high priority watersheds via specific studies which demonstrate concentrations related to nutrient impairment. Once that is accomplished for the areas of the State where it is needed, and then the Division should move to reducing loads through strengthened permits and encouraging non-point sources to participate.

It seems clear from the guidance from the EPA, that such an alternative approach to implementation of nutrient Controls more closely aligns to the approach suggested by the EPA, and it makes scientific sense.

VII. COMPLAINT WITH GOVERNORS EXECUTIVE ORDER 2011-005

The Authority believes that promulgation of these regulations is not in compliance with the Governors Executive Order 2011-005 (Exhibit E). The Governors 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.

As noted, EPA has not mandated nutrient regulations be implemented by the Division. The Division has consulted with local governments prior to promulgation of the regulation but the division will not be able to provide the funding necessary to pay for the direct costs incurred by local governments. These regulations are mandating that local

governments (MS4 Dischargers) pay for the costs to collect data that will determine if MS4's are significant contributors of nutrients, and the Division will utilize for future regulation issues.

The Authority has provided letters of concern to the Governor's office in regards to how these regulations will impact the Authority.

VIII. NUTRIENT IMPLEMENTATION GEOGRAPHIC ALTERNATIVE

As noted above in Section V above, the Authority is concerned with the Division's Proposal, in regards to its statewide blanket approach. The Authority believes the available data demonstrates that if the regulations are implemented, they should be implemented on high priority basins.

As discussed above in Section VI, the Authority at least proposes that the Division prioritize watersheds, as shown in Exhibit 17 of the Divisions proposal. Once priorities have been set, and then the Division could set load reductions goals for the high priority watersheds via specific studies which demonstrate concentrations related to nutrient impairment. Once that is accomplished for the areas of the State where it is needed, and then the Division should move to reducing loads through strengthened permits and encouraging non-point sources to participate.

Exhibit 17 of the Divisions pre-hearing statement lists the Management Units (MU's) that were studied in the Cost/Benefit Study of the Impacts of Potential Nutrient Controls for Colorado Point Sources Discharges, and prioritizes the MU's based on select factors. The Authority believes that the data shown in this table also supports Geographic Implementation of these regulations. The Lower Colorado River Basin MU has 18 facilities and 12 are proposed to be exempt from these regulations (See Exhibits A and B). As stated in Exhibit 5 of the Divisions Prehearing Statement, the Cost/Benefit Study Results and Conclusions, "Number and size of non-exempt WWTF's within a Manageable Unit influences the potential for point source loading of nutrients to downstream waters. In many Manageable 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. Efforts should be focused on areas with the greatest problem and lessons learned from those efforts.

The Division's Prehearing Statement indicates that the Division is looking to receive feedback on limiting the application of Regulation 85 to specific geographical areas. The Authority believes the Division should prioritize basins under this alternative by considering the nutrient concentrations both nitrogen and phosphorous, benefit to cost ratio, and the assimilative capacities of the receiving waters. The Authority believes that once the Division has demonstrated that a nutrient problem exists, they should focus on

the areas that will benefit from Regulations 85. Basins that consist of a majority of exempt facilities, and do not have elevated nutrient concentrations should be considered low priority for Regulation 85, as the Regulation will have minimal impact.

IX. POINT SOURCE DATA COLLECTION – MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGERS

The Authority agrees with the Division that identifying the significance of nutrient contributions with regards to MS4 stormwater discharges into streams and rivers requires further study. Perhaps such studies will identify a problem to be solved. Until that time, transferring the financial burden for the study to dischargers is an excessive hardship.

Critical to our plea, note that the water quality data shown on the tables in Section V above identify that nutrients in the Colorado River do not exceed the proposed standards, where our MS4 stormwater discharges.

If Regulation 85 is implemented as currently proposed, the cost for the data collection is estimated at \$25,000. If the Commission requires stormwater monitoring in the future, it will cost \$66,000 in capital to set up 3 monitoring stations, and \$75,000 in annual operating costs to collect samples and analyze data from 3 monitoring stations. The current Authority operating budget without the new regulations is \$241,750. The data collection effort will require a 10% increase the operating budget. The future monitoring will require a 37% increase to the annual operating budget.

These new regulations will dramatically affect the Authority's annual operating budget. As stated in the introduction, the Authority is funded by contributions from contracting parties' general fund, not stormwater fees. These new regulations will take money from other necessary government services.

X. ALTERNATIVE PROPOSAL

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

If the Division will not perform the necessary studies, then the Authority proposes that the Division follow EPA's framework from the March 16, 2011 Memo and prioritize watersheds, as shown in Exhibit 17 of the Divisions proposal. Once priorities have been set, and then the Division could set load reductions goals for the high priority watersheds via specific studies which demonstrate concentrations related to nutrient impairment. Once that is accomplished for the areas of the State where it is needed, and then the Division should move to reducing loads through strengthened permits and encouraging non-point sources to participate.

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

The Authority 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.

XI. Exhibits

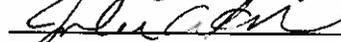
- A. Map showing all facilities within COL_05
- B. Map showing all non-exempt facilities within COL_05
- C. Map showing location current of sampling points
- D. EPA Memo
- E. Governor's Executive Order 2011-005

XII. Witnesses

- 1. Julie Constan, Mesa County Senior Engineer
- 2. Any other witnesses endorsed or described by any other party
- 3. 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.
- 4. Any witness necessary for rebuttal.

Dated this 17th day of January, 2012.

521 Drainage Authority



Julie Constan, P.E.

Sr. Engineer

P.O. Box 20,000

Grand Junction, CO 81502

CERTIFICATE OF MAILING

I do hereby certify that the original and 13 copies of this Responsive Prehearing Statement of 5-2-1 Drainage Authority, Colorado was mailed, via Federal Express, to the Water Quality Control Commission at the address listed below this 17th 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 5-2-1 Drainage Authority, 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.



Handwritten signature of Julie Ann, written in cursive over a horizontal line.

Exhibit A

Exhibit A - Wastewater Facilities in COL-05

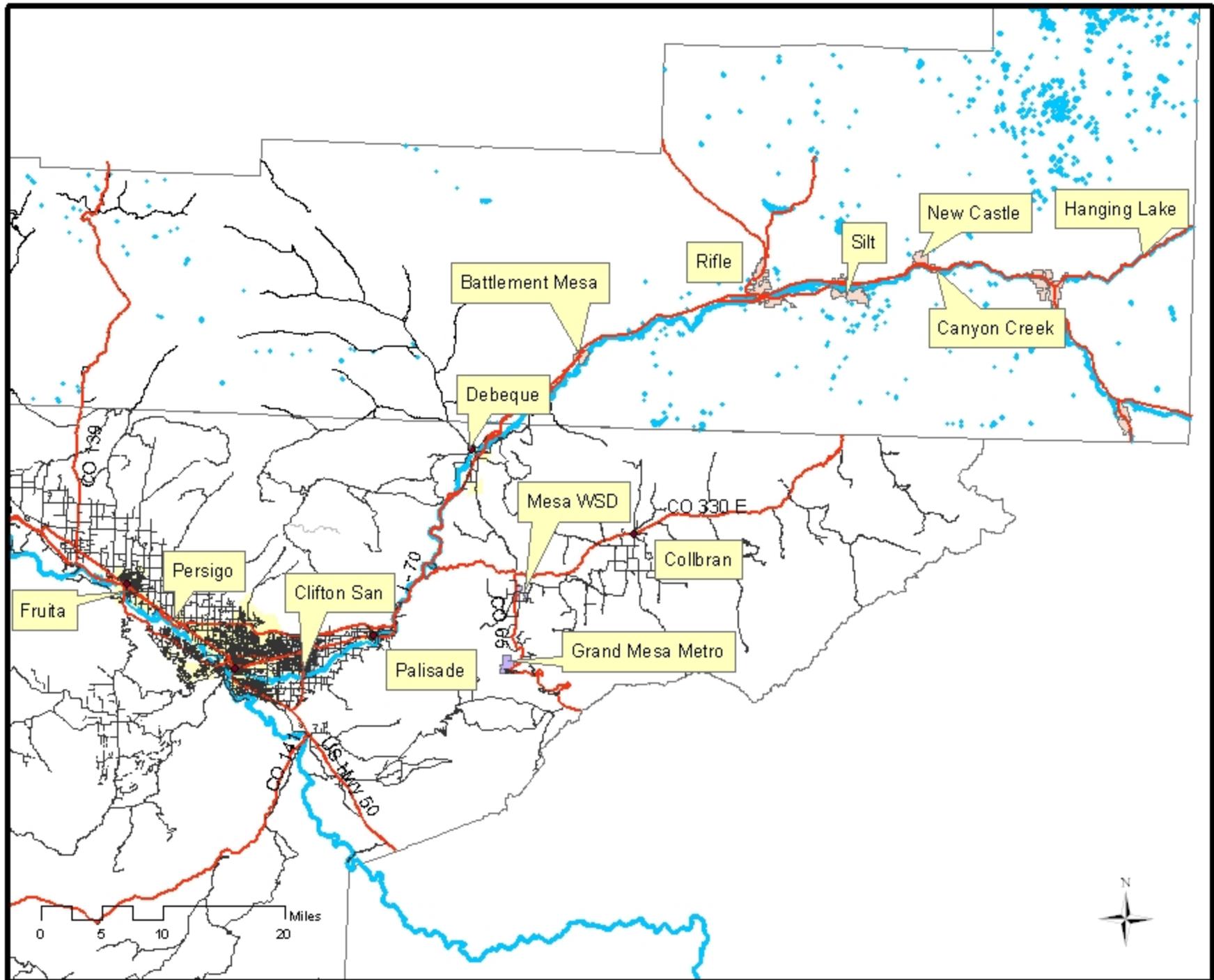
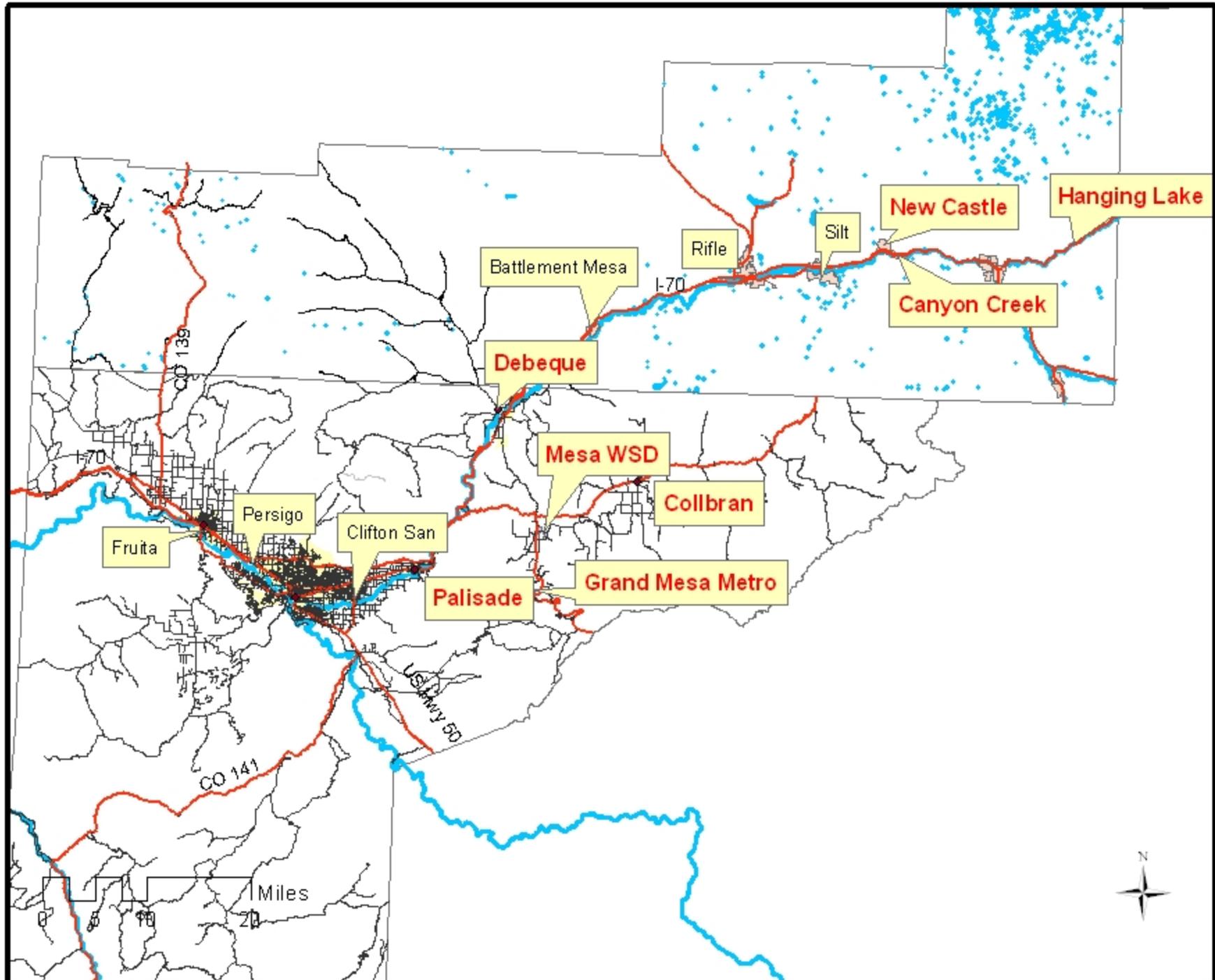


Exhibit B

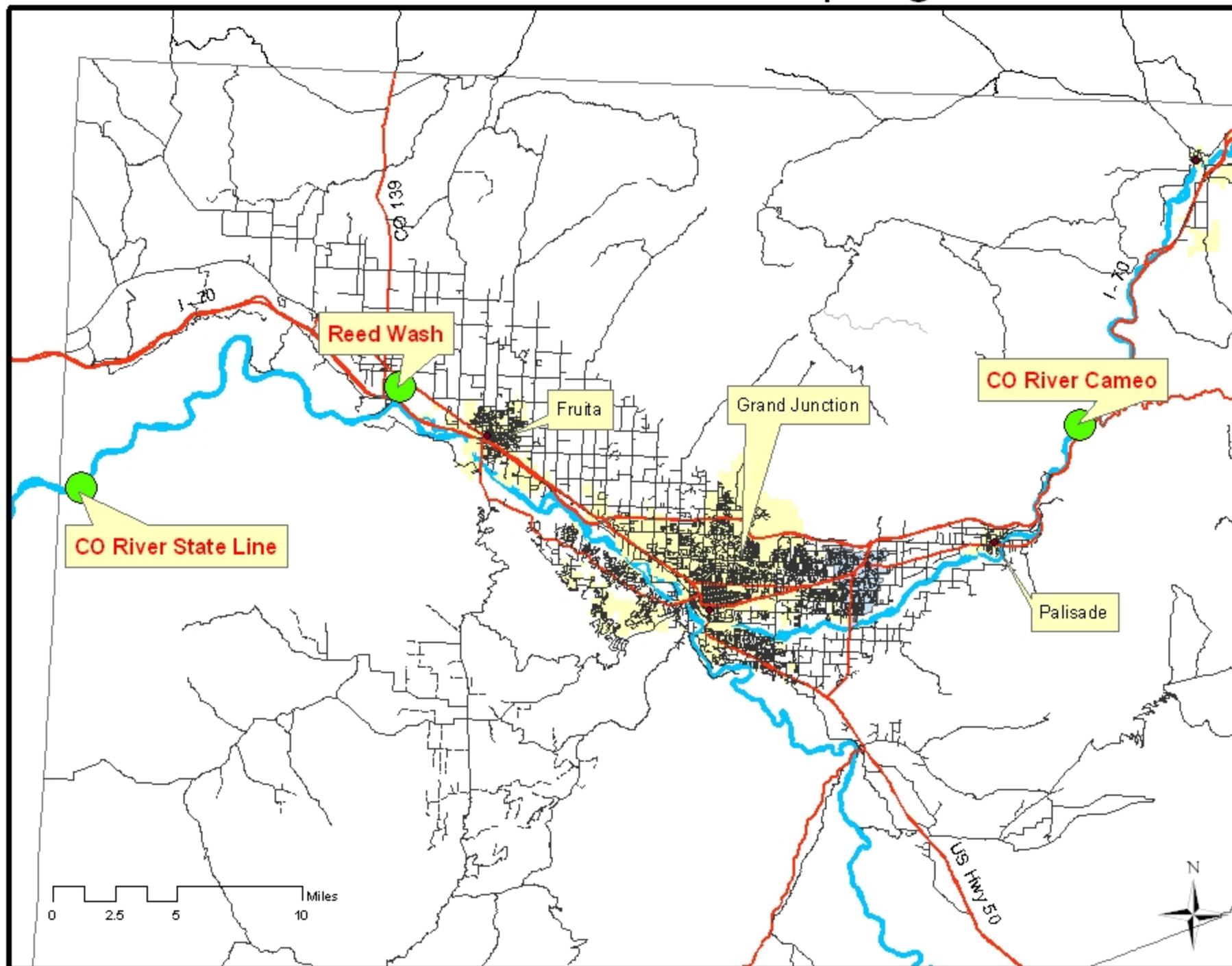
Exhibit B - Exempt Wastewater Facilities in COL-05



Exempt Facilities in Red

Exhibit C

Exhibit C - Location of Sampling Points



Sampling Points - Green Dots

Exhibit D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 16 2011

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions

FROM: Nancy K. Stoner
Acting Assistant Administrator

A handwritten signature in black ink, appearing to read "Nancy K. Stoner", written over the printed name.

TO: Regional Administrators, Regions 1-10

This memorandum reaffirms EPA's commitment to partnering with states and collaborating with stakeholders to make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to our nation's waters. The memorandum synthesizes key principles that are guiding and that have guided Agency technical assistance and collaboration with states and urges the Regions to place new emphasis on working with states to achieve near-term reductions in nutrient loadings.

Over the last 50 years, as you know, the amount of nitrogen and phosphorus pollution entering our waters has escalated dramatically. The degradation of drinking and environmental water quality associated with excess levels of nitrogen and phosphorus in our nation's water has been studied and documented extensively, including in a recent joint report by a Task Group of senior state and EPA water quality and drinking water officials and managers.¹ As the Task Group report outlines, with U.S. population growth, nitrogen and phosphorus pollution from urban stormwater runoff, municipal wastewater discharges, air deposition, and agricultural livestock activities and row crop runoff is expected to grow as well. Nitrogen and phosphorus pollution has the potential to become one of the costliest and the most challenging environmental problems we face. A few examples of this trend include the following:

- 1) 50 percent of U.S. streams have medium to high levels of nitrogen and phosphorus.
- 2) 78 percent of assessed coastal waters exhibit eutrophication.
- 3) Nitrate drinking water violations have doubled in eight years.

¹ *An Urgent Call to Action: Report of the State-EPA Nutrients Innovations Task Group*, August 2009.

4) A 2010 USGS report on nutrients in ground and surface water reported that nitrates exceeded background concentrations in 64% of shallow monitoring wells in agriculture and urban areas, and exceeded EPA's Maximum Contaminant Levels for nitrates in 7% or 2,388 of sampled domestic wells.²

5) Algal blooms are steadily on the rise; related toxins have potentially serious health and ecological effects.

States, EPA and stakeholders, working in partnership, must make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to our nation's waters. While EPA has a number of regulatory tools at its disposal, our resources can best be employed by catalyzing and supporting action by states that want to protect their waters from nitrogen and phosphorus pollution. Where states are willing to step forward, we can most effectively encourage progress through on-the-ground technical assistance and dialogue with state officials and stakeholders, coupled with cooperative efforts with agencies like USDA with expertise and financial resources to spur improvement in best practices by agriculture and other important sectors.

States need room to innovate and respond to local water quality needs, so a one-size-fits-all solution to nitrogen and phosphorus pollution is neither desirable nor necessary. Nonetheless, our prior work with states points toward a framework of key elements that state programs should incorporate to maximize progress. Thus, the Office of Water is providing the attached "Recommended Elements of a State Nutrients Framework" as a tool to guide ongoing collaboration between EPA Regions and states in their joint effort to make progress on reducing nitrogen and phosphorus pollution. I am asking that each Region use this framework as the basis for discussions with interested and willing states. The goal of these discussions should be to tailor the framework to particular state circumstances, taking into account existing tools and innovative approaches, available resources, and the need to engage all sectors and parties in order to achieve effective and sustained progress.

While the Framework recognizes the need to provide flexibility in key areas, EPA believes that certain minimum building blocks are necessary for effective programs to manage nitrogen and phosphorus pollution. Of most importance is prioritizing watersheds on a state-wide basis, setting load-reduction goals for these watersheds based on available water quality information, and then reducing loadings through a combination of strengthened permits for point-sources and reduction measures for nonpoint sources and other point sources of stormwater not designated for regulation. Our experience in almost 40 years of Clean Water Act implementation demonstrates that motivated states, using tools available under federal and state law and relying on good science and local expertise, can mobilize local governments and stakeholders to achieve significant results.

It has long been EPA's position that numeric nutrient criteria targeted at different categories of water bodies and informed by scientific understanding of the relationship between nutrient loadings and water quality impairment are ultimately necessary for effective state

² *Nutrients in the Nation's Streams and Groundwater: National Findings and Implications*, US Geological Survey, 2010.

programs. Our support for numeric standards has been expressed on several occasions, including a June 1998 National Strategy for Development of Regional Nutrient Criteria, a November 2001 national action plan for the development and establishment of numeric nutrient criteria, and a May 2007 memo from the Assistant Administrator for Water calling for accelerated progress towards the development of numeric nutrient water quality standards. As explained in that memo, numeric standards will facilitate more effective program implementation and are more efficient than site-specific application of narrative water quality standards. We believe that a substantial body of scientific data, augmented by state-specific water quality information, can be brought to bear to develop such criteria in a technically sound and cost-effective manner.

EPA's focus for nonpoint runoff of nitrogen and phosphorus pollution is on promoting proven land stewardship practices that improve water quality. EPA recognizes that the best approaches will entail States, federal agencies, conservation districts, private landowners and other stakeholders working collaboratively to develop watershed-scale plans that target the most effective practices to the acres that need it most. In addition, our efforts promote innovative approaches to accelerate implementation of agricultural practices, including through targeted stewardship incentives, certainty agreements for producers that adopt a suite of practices, and nutrient credit trading markets. We encourage federal and state agencies to work with NGOs and private sector partners to leverage resources and target those resources where they will yield the greatest outcomes. We should actively apply approaches that are succeeding in watersheds across the country.

USDA and State Departments of Agriculture are vital partners in this effort. If we are to make real progress, it is imperative that EPA and USDA continue to work together but also strengthen and broaden partnerships at both the national and state level. The key elements to success in BMP implementation continue to be sound watershed and on-farm conservation planning, sound technical assistance, appropriate and targeted financial assistance and effective monitoring. Important opportunities for collaboration include EPA monitoring support for USDA's Mississippi River Basin Initiative as well as broader efforts to use EPA section 319 funds (and other funds, as available) in coordination with USDA programs to engage creatively in work with communities and watersheds to achieve improvements in water quality.

Accordingly the attached framework envisions that as states develop numeric nutrient criteria and related schedules, they will also develop watershed scale plans for targeting adoption of the most effective agricultural practices and other appropriate loading reduction measures in areas where they are most needed. The timetable reflected in a State's criteria development schedule can be a flexible one provided the state is making meaningful near-term reductions in nutrient loadings to state waters while numeric criteria are being developed.

The attached framework is offered as a planning tool, intended to initiate conversation with states, tribes, other partners and stakeholders on how best to proceed to achieve near- and long-term reductions in nitrogen and phosphorus pollution in our nation's waters. We hope that the framework will encourage development and implementation of effective state strategies for managing nitrogen and phosphorus pollution. EPA will support states that follow the framework but, at the same time, will retain all its authorities under the Clean Water Act.

With your hard work, in partnership with the states, USDA and other partners and stakeholders, I am confident we can make meaningful and measurable near-term reductions in nitrogen and phosphorus pollution. As part of an ongoing collaborative process, I look forward to receiving feedback from each Region, interested states and tribes, and stakeholders.

Attachment

Cc: Directors, State Water Programs
Directors, Great Water Body Programs
Directors, Authorized Tribal Water Quality Standards Programs
Interstate Water Pollution Control Administrators

Recommended Elements of a State Framework for Managing Nitrogen and Phosphorus Pollution

1. Prioritize watersheds on a statewide basis for nitrogen and phosphorus loading reductions

- A. Use best available information to estimate Nitrogen (N) & Phosphorus (P) loadings delivered to rivers, streams, lakes, reservoirs, etc. in all major watersheds across the state on a Hydrologic Unit Code (HUC) 8 watershed scale or smaller watershed (or a comparable basis.)
- B. Identify major watersheds that individually or collectively account for a substantial portion of loads (e.g. 80 percent) delivered from urban and/or agriculture sources to waters in a state or directly delivered to multi-jurisdictional waters.
- C. Within each major watershed that has been identified as accounting for the substantial portion of the load, identify targeted/priority sub-watersheds on a HUC 12 or similar scale to implement targeted N & P load reduction activities. Prioritization of sub-watersheds should reflect an evaluation of receiving water problems, public and private drinking water supply impacts, N & P loadings, opportunity to address high-risk N & P problems, or other related factors.

2. Set watershed load reduction goals based upon best available information

Establish numeric goals for loading reductions for each targeted/priority sub-watershed (HUC 12 or similar scale) that will collectively reduce the majority of N & P loads from the HUC 8 major watersheds. Goals should be based upon best available physical, chemical, biological, and treatment/control information from local, state, and federal monitoring, guidance, and assistance activities including implementation of agriculture conservation practices, source water assessment evaluations, watershed planning activities, water quality assessment activities, Total Maximum Daily Loads (TMDL) implementation, and National Pollutant Discharge Elimination System (NPDES) permitting reviews.

3. Ensure effectiveness of point source permits in targeted/priority sub-watersheds for:

- A. Municipal and Industrial Wastewater Treatment Facilities that contribute to significant measurable N & P loadings;
- B. All Concentrated Animal Feeding Operations (CAFOs) that discharge or propose to discharge; and/or
- C. Urban Stormwater sources that discharge into N & P- impaired waters or are otherwise identified as a significant source.

4. Agricultural Areas

In partnership with Federal and State Agricultural partners, NGOs, private sector partners, landowners, and other stakeholders, develop watershed-scale plans that target the most effective practices where they are needed most. Look for opportunities to include innovative approaches, such as targeted stewardship incentives, certainty agreements, and N & P markets, to accelerate adoption of agricultural conservation practices. Also, incorporate lessons learned from other successful agricultural initiatives in other parts of the country.

5. Storm water and Septic systems

Identify how the State will use state, county and local government tools to assure N and P reductions from developed communities not covered by the Municipal Separate Storm Sewer Systems (MS4) program, including an evaluation of minimum criteria for septic systems, use of low impact development/ green infrastructure approaches, and/or limits on phosphorus in detergents and lawn fertilizers.

6. Accountability and verification measures

- A. Identify where and how each of the tools identified in sections 3, 4 and 5 will be used within targeted/priority sub-watersheds to assure reductions will occur.
- B. Verify that load reduction practices are in place.
- C. To assess/demonstrate progress in implementing and maintaining management activities and achieving load reductions goals: establish a baseline of existing N & P loads and current Best Management Practices (BMP) implementation in each targeted/priority sub-watershed, conduct ongoing sampling and analysis to provide regular seasonal measurements of N & P loads leaving the watershed, and provide a description and confirmation of the degree of additional BMP implementation and maintenance activities.

7. Annual public reporting of implementation activities and biannual reporting of load reductions and environmental impacts associated with each management activity in targeted watersheds

- A. Establish a process to annually report for each targeted/priority sub-watershed: status, challenges, and progress toward meeting N & P loading reduction goals, as well as specific activities the state has implemented to reduce N & P loads such as: reducing identified practices that result in excess N & P runoff and documenting and verifying implementation and maintenance of source-specific best management practices.
- B. Share annual report publically on the state's website with request for comments and feedback for an adaptive management approach to improve implementation, strengthen collaborative local, county, state, and federal partnerships, and identify additional opportunities for accelerating cost-effective N & P load reductions.

8. Develop work plan and schedule for numeric criteria development

Establish a work plan and phased schedule for N and P criteria development for classes of waters (e.g., lakes and reservoirs, or rivers and streams). The work plan and schedule should contain interim milestones including but not limited to data collection, data analysis, criteria proposal, and criteria adoption consistent with the Clean Water Act. A reasonable timetable would include developing numeric N and P criteria for at least one class of waters within the state (e.g., lakes and reservoirs, or rivers and streams) within 3-5 years (reflecting water quality and permit review cycles), and completion of criteria development in accordance with a robust, state-specific workplan and phased schedule.

Exhibit E

D 2011-005

EXECUTIVE ORDER

Establishing a Policy to Enhance the Relationship between State and Local Government

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order directing state agencies to take specific steps to enhance relations with local government.

I. Background and Purpose

For many years state government has imposed an ever-increasing number of legal requirements on local governments, without regard to the costs such requirements impose on already-strained local budgets, and without providing additional funding to enable local governments to comply. Local governments continue to face difficulties such as funding, complexity, and delay in securing flexibility and approvals regarding state requirements.

Local governments should have more flexibility to design solutions to problems without excessive interference or oversight, or unnecessary regulation, from state government. In addition, local governments should not be expected to implement laws and regulations without the funding necessary to do so. In order to assist local governments in effectively complying with such requirements, this Executive Order gives direction to state agencies on consulting and working with local governments before imposing new regulations or other obligations.

II. Directive and Scope

A. To the extent authorized by law, 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.

B. Each agency, prior to the formal promulgation of regulations containing the proposed mandate, shall provide to the Director of the Governor's Office of State Planning and Budgeting a description of the nature and extent of the agency's consultation with representatives of the local governments that would be affected by the proposed mandate, the nature of their concerns, any written communications or comments submitted to the agency by such units of local government, and the agency's reasoning supporting the need to issue the regulation containing the mandate.

C. Each agency shall develop a process to actively solicit the meaningful and timely input of elected officials and other representatives of local governments into the development of regulatory proposals affecting local government. Each agency shall implement its process as soon as practicable and post the process on its website.

D. Each agency that is permitted by law to grant temporary or permanent waivers of statutory or regulatory requirements shall adopt rules for granting waivers if a local government can demonstrate that the requirements conflict with other regulations or statutes, or are unduly burdensome. Each State agency shall prepare and publish on its website a policy describing the circumstances in which temporary or permanent waivers will be granted, and the criteria required for obtaining a waiver.

E. Each agency shall consider any application by a local government for a waiver of statutory or regulatory requirements in light of the goal of increasing opportunities for local governments to exercise flexibility in seeking to comply with statutory or regulatory requirements.

F. To the fullest extent practicable and as permitted by law, each agency shall render a decision on an application for waiver within 90 days of receipt of such application by the agency. If the application for waiver is not granted, the agency shall provide the applicant local government with timely written notice of its decision and the reasons for its decision.

G. The executive director of each agency shall be responsible for ensuring implementation of, and compliance with, this Executive Order.

H. Executive agency means any authority of the State of Colorado that is an “agency” pursuant to C.R.S. § 24-3-101.

III. No Creation of Rights

This Executive Order is intended only to improve intergovernmental operations, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the State of Colorado, its agencies, officers, employees, or any other person. This Executive Order shall not be used as a basis for legal challenge to statutes, regulations, or other actions or to any inaction of any state agency subject to it.

IV. Duration

This Executive Order shall remain in full force and effect until modified or rescinded by future Executive Order of the Governor. This Executive Order supersedes Executive Order D 0007 94.

GIVEN under my hand and the

Executive Seal of the State of

Colorado this eleventh day of

January, 2011.

John W. Hickenlooper

Governor