



COLORADO

Department of Public
Health & Environment

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BRIEFING MEMO

To: Nutrients Work Group

From: Aimee Konowal
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Date: October 26, 2016

Subject: Regulation #31.17 Headwaters Definition

Summary

The division does not recommend adding a definition to Regulation #31 to clarify the definition of headwaters at this time.

Issue and Background

In the 2013 basin rulemaking for the Arkansas and Rio Grande River Basins, there were arguments made that the interim numeric values for phosphorus could only be applied in headwaters that were shown to be “high quality,” due to the use of that phrase in the statement of basis and purpose for Regulation #31. The hearing record for the 2012 commission action on Regulation #31 included information regarding the number of stream segments and miles on which the standards would apply. Those maps and numbers were calculated on the basis of the standards being applied to headwaters. There was no information regarding how much more limited the application of the standards would be if only applied to “high quality” headwaters. Nor was there any information discussed or on the record regarding the criteria that would be used to evaluate whether a headwater was “high quality” or not. Therefore, in the 2013 basin rulemaking for the Arkansas and Rio Grande River Basins, the commission determined that there was no need for a demonstration that waters are “high quality” headwaters in order to adopt phosphorus standards.

In addition, in the 2013 basin rulemaking for the Arkansas and Rio Grande River Basins, the commission adopted statement of basis and purpose language indicating further consideration was necessary regarding whether it is appropriate to apply the interim numeric values for nutrients to headwaters with an aquatic life use classification but without the full suite of numeric standards to protect aquatic life (i.e., those segments with an aquatic life use classification that do not include an ammonia standard). In the 2014 basin rulemaking hearing for the Upper and Lower Colorado River Basins, the commission considered evidence on this topic and ultimately determined that it was appropriate to apply the nutrients standards on headwaters that have an aquatic life use classification, even if the segment does not have the full suite of aquatic life numeric standards (i.e., no ammonia standard).

Discussion

A new definition of “headwaters” would clarify this policy determination. However, because of EPA’s recent action letter on the Regulation 31 nutrient provisions, the division recommends that a definition of headwaters not be included at this time. Because of the action letter, the division



does not plan to propose total nitrogen interim values after the 2017 and will wait until there are approved standards by EPA.

If a definition is needed in the future, or if the work group or commission believe that a definition should be adopted at this time, the division proposes the following definition:

“HEADWATERS” as used in Section 31.17, means stream segments or portions of stream segments located upstream of (A) all permitted domestic wastewater treatment facilities discharging prior to May 31, 2012, or with preliminary effluent limits requested prior to May 31, 2012, and (B) any non-domestic facility subject to Regulation #85 effluent limits and discharging prior to May 31, 2012. This includes segments or portions of segments with an aquatic life use classification but limited numerical standards.

Proposal

None at this time.

Schedule:	Initial discussion	November 1, 2016
	Comments due	December 23, 2016
	Follow-up	January 12, 2017

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