

TO: Nicole Rowan, Water Quality Control Division
FROM: Tri-State Generation and Transmission Association, Inc.
DATE: February 21, 2017
RE: Comments on WQCD Briefing Memo, Regulation #31.17 Headwaters Definition

The Water Quality Control Division has proposed a revised definition of “headwaters” to be included in Regulation #31, Section 31.5. The definition reads (Briefing Memo, pp. 2-3):

“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, (B) cooling tower discharges; and (C) any other 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.

The definition is limited to Section 31.17, the Nutrients provision in Regulation #31. Although the term “headwaters” appears elsewhere in the regulation, the term “headwaters” only appears once in Section 31.17: subsection 31.17(e), Use of Interim Phosphorus and Chlorophyll *a* Values for Standards Adoption. That subsection provides (emphasis added):

Prior to May 31, 2022, the values set forth in subsection (b) and (d) above will be considered for the adoption of water quality standards for specific water bodies in Colorado in the following circumstances.

(i) **Headwaters** 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.

Tri-State believes a definition of “headwaters” in Section 31.5 is not necessary. First, the proposed definition would be limited to one use of the word “headwaters.” Second, the proposed definition would be redundant, as the definition includes the subsections 31.17(e)(i)(A)-(B), which already appear immediately after the one time “headwaters” appears in Section 31.17 (with the addition of cooling towers). When reading the definition in place “headwaters,” the section becomes overly repetitive. Third, while Tri-State appreciates the revision from the previous memo to include cooling towers, the proposal does not include a corresponding revision to Section 31.17(e)(i). If the Division proposes a definition of headwaters in the Regulation #85 rulemaking, it should also include a proposal to add cooling towers in this subsection.

Instead of a definition for headwaters, Tri-State believes that revisions to Section 31.17(e) would accomplish the same goal. For example, the language could be amended to read:

(i) Headwaters (including 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,

(B) cooling tower discharges; and

~~(B)~~(C) any non-domestic facility subject to Regulation #85 effluent limits and discharging prior to May 31, 2012.

Tri-State appreciates the Division’s inclusion of cooling towers in the revised definition, and looks forward to discussing these comments with the Division.