NORTH FRONT RANGE WATER QUALITY PLANNING ASSOCIATION
257 Johnstown Center Dr.; Unit 206
Johnstown, CO 80534
970-587-8872 – http://www.nfrwqpa.org

DOCUMENT TITLE: Wastewater Utility Service Area Conflicts Policy		
DOCUMENT NUMBER: DOC-0004-001	APPROVED DATE: July 23, 2020	EFFECTIVE DATE: July 23, 2020
AUTHOR(S): NFRWQPA	SUPERSEDES REVISION: Utility Plan Guidance Document Approved 2015	SOURCE OF COPIES: NFRWQPA 257 Johnstown Center Dr.; Unit 206 Johnstown, CO 80534 www.nfrwpqa.org
DOCUMENT FILENAME: WASTEWATER UTILITY SERVICE AREA CONFLICTS POLICY APPROVED JULY 23, 2020.DOCX		

ABSTRACT

This policy provides necessary information and direction to management and operation agencies, utility departments, consultants, planners, or wastewater managers concerning North Front Range Water Quality Planning Association (NFRWQPA, Association) wastewater service area disputes, conflicts resolution policy and process. Colorado state regulations require wastewater utilities have a defined wastewater utility service area (WUSA). NFRWQPA agencies are known as either Management or Operation agencies, or both, as designated in the 208 Areawide Water Quality Management Plan (208 AWQMP). The primary goal of the 208 AWQMP is to provide regional land-use management planning mechanisms for reasonable, feasible, and economical wastewater service to areas designated for development within the South Platte watershed. Utility Plans consider the water quality impact the treatment facility, collection system, service area, and urban development have on receiving waters determining control measures for meeting current and future water quality standards, TMDLs, and classifications. It calculates the potential impact a discharger may have on other dischargers, or stream segments, associated with urbanization of the service area during the 20-year planning horizon. Recommendations in the 208 AWQMP for protecting, maintaining, or restoring impaired waters within the South Platte watershed originates from information provided in agency Utility Plans. Utility Plans and the 208 AWQMP considers water quality impacts the treatment system and the interrelated service area may have on receiving waters. The 208 AWQMP, Utility Plans, and Site Applications collectively overlap to protect, maintain, and restore the environmental watershed quality. This policy provides guidance to resolution for unanticipated conflicts between utilities with the 208 AWQMP and Utility Plans. Conflicts may arise from a variety of issues. Utility Plans provide information for regional planning and collaboration. Utility Plan information incorporated into the 208 AWQMP provides the basis and determination of short and long-term land-use management planning for the region. Figure 1 illustrates the cohesive relationship of the 208 AWQMP, Utility Plans, and site applications.

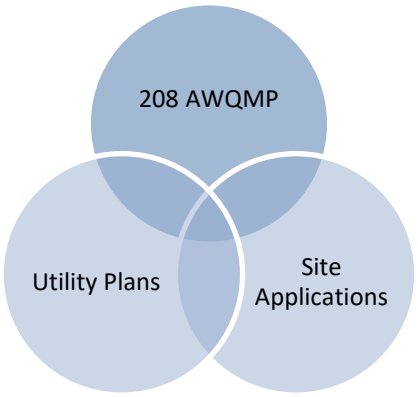

Figure 1Relationship of planning documents

SECTION I. WASTEWATER UTILITY SERVICE AREA CONFLICTS POLICY

1. Per Policy 98-2, management agencies are to provide wastewater service to customers that reside within their current WUSA and in areas defined and adopted within the 208 AWQMP. The Association is a local collaboration effort for providing reasonable, feasible, and economical wastewater service planning to areas designated for development. Association membership utilizes land-use management planning decisions and financial information from each respective Utility Plan. Membership relies on accurate representation of an agency's WUSA in the 208 AWQMP and their Utility Plan for future planning considerations, including sizing of nearby projects.

2. Overlapping service areas cannot be accepted unless an agreement is in place to establish the process for sewage service in the overlapping area. The following NFRWQPA process details wastewater utility service area conflicts policy. The approved service area, before the conflict, must not change until the entities have reasonably attempted to resolve the service area in dispute. Technical support by NFRWQPA staff provided on a request basis only. Conflict resolution not achieved by the entities on a timely basis can take the issue directly to the association membership for a recommendation during a public hearing. NFRWQPA observes the following guidelines for these conflicts:

   A) Each entity shall provide its public hearing meeting minutes in agreeance with the entity's position.
   B) Each entity shall submit a letter certifying the entity's administration or board is in agreeance with the entity's position.
   C) Each body shall make a presentation, not to exceed thirty (30) minutes, outlining the pros and cons for that entity to provide service, including revenue losses or gains and the social-economic impacts of ratepayers. Following the presentation, an opportunity for public comment (limited to five (5) minutes each) followed by questions and discussion from the membership. Entities in conflict are not be allowed to participate in the questions and discussion period except to respond to specific questions from the Association or public.

D) Memebership shall evaluate and recommend the entity that can best provide service based on, but not limited to, the following criteria:

a. Available and current planned treatment systems of the agencies.
   i. Current capacity.
   ii. Planned capacity, sequence, and staging.
   iii. History of discharge (violations).
   iv. The potential impact of effluent discharge on receiving waters.
   v. Environmental impact.
   vi. Location and site information.
   vii. Type of process treatment.
   viii. Flood plain.

b. Available and planned collection systems.
   i. Gravity versus lift stations.
   ii. Current capacity.
   iii. Planned capacity, sequence, and staging.
   iv. Route location relative to water quality.
   v. Consideration of consolidation.

c. Economic strength and reasonableness to provide service.
   i. How long has the area in question been within an agency's WUSA with the expectation by the Association to provide sewerage service?
   ii. How is service to the area funded?
   iii. How are improvements funded?
   iv. Will this deplete reserves?
   v. Long-term and short-term economic analysis.
   vi. Social-economic impacts.

d. Long-term impact on surrounding entities.

e. Requests for wastewater service.

f. Protection of water quality and groundwater.

g. Referrals from affected local land use entities.

h. Among the agencies, consideration of consistency with any applicable intergovernmental agreements or other arrangements between the responsible local governments and existing providers.

NFRWQPA shall approve the entity that is recommended by the majority of the membership. The agencies involved are to uphold and abide by the Association's decision. All agencies affected have to provide new Utility Plans to reflect the preferred service option, including changes to the WUSA or Growth Management Area (GMA), population and loading projections, and updated financials. New Utility Plans shall adhere to the most recently approved Utility Plan Guidance Document and format.

SECTION II. SERVICE AREA CONCEPTS

1. All domestic wastewater treatment facilities are defined as having a design capacity to receive greater than 2,000 gallons per day. Wastewater utility service areas are defined as greater than or equal to 35 acres or having a plant design or lift station capacity receiving

greater than 2,000 gallons per day. Utility Plans require wastewater providers serving WUSAs to provide all minimum information as recommended by the Utility Plan guidance document. The 208 AWQMP is to establish the boundaries between WUSAs to assure that there are no overlaps of service areas. NFRWQPA cannot accept Utility Plans that contain overlapping service areas unless an Intergovernmental Agreement (IGA) or Memorandum of Understanding (MOU) is in place between the entities establishing the process for sewage service in the overlap area. Overlap issues are to be resolved through local planning processes before being submitted to NFRWQPA for acceptance. NFRWQPA determines minimum requirements on a case-by-case basis.

2. Wastewater service providers serving WUSAs must have active discharge permits or Notice of Authorization to produce treated wastewater for reuse per Regulation No. 84. Wastewater service providers with terminated wastewater facilities, permits, or Notice of Authorizations are not shown in the 208 AWQMP. NFRWQPA reviews service areas for terminated or non-discharging wastewater treatment works on a case-by-case basis. However, any facility being re-issued a discharge permit by the Water Quality Control Division will be treated as a new facility and will be requested to complete a Utility Plan before being incorporated into the 208 AWQMP, including newly found un-permitted facilities or proposed new facilities.

A) Growth Management Area & Ultimate Planning Areas

Long-range wastewater service areas are called Growth Management Areas (GMAs) and are equal to a municipality's Ultimate Planning Area. As a result, no GMA can be smaller than an agency's WUSA. The portion of the GMA beyond the urban growth boundary is approved locally within comprehensive plans, Master Plans, Utility Plans, or the area a wastewater provider intends to serve at ultimate development. In some cases, the GMA may represent the total amount of urban area needed for a projected longer-term population or the ultimate build-out of a utility service area.

Since WUSAs and GMAs recognize different localities, the growth density assumptions may also be different for the two areas. Wastewater providers are to provide their density assumptions and flow projections consistent with local comprehensive plans for GMAs.

B) Wastewater Utility Service Area

The WUSA is the portion of the GMA requiring wastewater utility service through the 20-year planning horizon. This area cannot be larger than the identified GMA. The primary goal in establishing WUSAs and Wastewater Utility Plans is to provide reasonable, feasible, and economical wastewater service to an area designated for urban development. Utility Plans should consider the water quality impact the treatment facility, collection system, service area, and urban development have on receiving waters determining control measures for meeting current and future water quality standards, TMDLs, and classifications. While

minimizing the potential impact agencies may have on one another as well as the watershed holistically.

A wastewater utility service area is a defined boundary in which urbanized areas requiring services exist in a planning period of approximately 20-years. Service areas encourage contiguous and orderly development of utility infrastructure. These areas may be the result of municipal boundaries, legal boundaries of sanitation districts, or hydrologic boundaries. The boundaries should be consistent with the local comprehensive plans and the adopted extent of urban development. Entities defining a WUSA assume the responsibility of providing service to that area within a reasonable time frame.

Service area boundaries consider basic water quality principles. These principles include but are not limited to, such factors as gravity systems preferred over lift stations, standard engineering practices, reasonable management, and financial practices, and facility and collection system master planning.

Adequate long-term planning information determines the establishment of a WUSA. Wastewater Utility Plans must address, at a minimum, the following factors for the WUSA over a 20-year planning period.

- The identified service area.
- Population datasets, forecasts, and land use status.
- Collection system requirements.
- Treatment facility requirements.
- Cost of capital improvement projects.
- Sequence and timing of capital improvement projects.
- User rates and tap fees necessary to finance operations and capital improvement projects.
- The entity requesting the amendment must also submit, at a minimum, the following current information:
    - ✓ Population
    - ✓ Peak and average flow
    - ✓ Peak and average loading
    - ✓ Inflow / infiltration
    - ✓ Treatment capacity, hydraulic and organic
    - ✓ CDPS requirements and constraints
    - ✓ Control measures for meeting TMDL waste loads and load allocations, if applicable
    - ✓ Nonpoint source contributions (mining (legacy & abandoned), agriculture, stormwater, BMPs, etc.)
    - ✓ Permitted point source contributions (wastewater, treated reuse, urban stormwater (MS4s), CAFOs, permitted mining (O&G), etc.)

Flexible provisions in the Plan Amendment Process can modify WUSAs. WUSA designations are mapped and maintained as part of the 208 AWQMP online here: https://data-nfrwqpa.hub.arcgis.com/app/6dade190ad8b427cbfacd2545c237be7.

Property may be included within a provider's WUSA or GMA, even though it has not yet been annexed or included in the provider's legal boundaries. However, until that happens, the provider does not have legal jurisdiction over the property. Property within a provider's WUSA or GMA is to be served by that provider. Although, if the property has not been annexed or included, other providers may be able to serve the property. Evaluation of options for service must consist of referrals to the affected local land use entities and consistency with any applicable IGAs or other legal arrangements (MOUs) between the responsible local governments and existing providers.

SECTION III. NFRWQPA AUTHORITY

1. The Clean Water Act and the Colorado Water Quality Control Act.

Section 208 of the Clean Water Act (CWA) creates a network of state, regional, and local management agencies to protect the waters of the United States. It requires governors to identify each area of a state, which, "as a result of urban-industrial concentrations or other factors, has substantial water quality control problems." (33 U.S.C. § 1288(a)). Governors must then designate planning agencies ("208 Planning Agencies") on an areawide basis to address those problems through areawide water quality management plans, which NFRWQPA refers to as the Association's 208 Areawide Water Quality Management Plan (208 AWQMP) (33 U.S.C. § 1288(a)-(b)). The Code of Federal Regulations (C.F.R.) Title 40 part 130.2(l) defines an "areawide agency" as an "agency designated under section 208 of the Act, which has responsibilities for water quality management planning within a specified area of a State. 40 C.F.R. part 130.2(k) further defines management planning as a State or areawide water quality management plan developed and updated following the provisions of sections 205(j), 208, and 303 of the CWA as well as the requirements in 40 C.F.R. part 130.2.

The 208 AWQMP identifies treatment works, including construction priorities and completion schedules, necessary to meet waste treatment needs over a twenty-year period utilizing approved Utility Plans. The 208 AWQMP establishes a regulatory program that provides land-use management planning for the location, modification, and construction of any facilities within the Weld-Larimer county region, which may result in any discharge in the region (33 U.S.C. § 1288(b)(2)(a)). Additionally, the 208 AWQMP includes designated regional management and operating agencies to implement the 208 AWQMP (33 U.S.C. § 1288(c)). Each management or operating agency must have the authority and be financially capable of operating and maintaining new and existing works as well as fulfill their respective responsibilities as required by the 208 AWQMP (33 U.S.C. § 1288(c)(2)(C)). The 208 AWQMP must also identify nonpoint sources of pollution, including agriculture, silviculture, mining, construction activity, and offer recommendations for best management practices to protect ground and surface water quality. Finally, governors or their designees must annually certify to the EPA that NFRWQPA's 208 AWQMP is consistent with any applicable basin plan (33 U.S.C. § 1288(b)(3)).

Separately but relatedly, Section 303 of the CWA requires each state to develop a continuing planning process; this process for Colorado is Regulation No. 23: A Guide to Colorado

Programs for Water Quality Management and Safe Drinking Water: A Continuing Planning Process (33 U.S.C. § 1313(e)(1)-(2)). Regulation No. 23 must incorporate all elements of any regional 208 Plan, effluent limits and compliance schedules, and Total Maximum Daily Loads ("TMDLs"), nonpoint source prevention recommendations, among other requirements (33 U.S.C. § 1313(e)(3); *see also* 40 C.F.R. § 130.5).

Colorado enacted the Water Quality Control Act (WQCA) to administer the requirements of the CWA, including Sections 208 and 303 (C.R.S. § 25-8-101). In turn, 208 Plans are governed by Section 105 of the WQCA and referenced in other sections (C.R.S. §§ 25-8-105, 503, and 702). Section 105 states that regional areawide water quality management plans (i.e., NFRWQPA's 208 AWQMP) may be developed by designated planning agencies or by the Water Quality Control Division (WQCD) (C.R.S. § 25-8-105(1)(a)). The Governor has designated NFRWQPA as a 208 Planning Agency as well as the Northwest Colorado Council of Governments, Pikes Peak Area Council of Governments, and Pueblo Area Council of Governments.

In turn, NFRWQPA depends on management and operating agencies which have the accountability to implement specific requirements and responsibilities of the 208 AWQMP and primarily assure that their assigned point and nonpoint source control programs are accomplished within prescribed time frames ("Policy #98-2"). In Colorado, general-purpose local governments and special districts have been designated as management agencies for point sources and land-use management. Operating agencies are responsible for specific activities for pollution control under the general direction of a management agency. They may include water districts, sanitation districts, industries, and municipalities that maintain point source discharge permits and primarily treat or process wastewater. NFRWQPA identifies management/operating agencies with the 208 AWQMP for approval by the water quality control commission.

There are many mechanisms of authority provided by the approval process of Utility Plans, Regulation No. 22: Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works (Site Applications), the Association's 208 AWQMP, as well as the Colorado Discharge Permit System issuance process.

NFRWQPA denies Utility Plans that are inconsistent with the 208 AWQMP. Utility Plans replace the previous requirement under the Clean Water Act Section 201, known as 201 facility plans. Utility Plans are used by NFRWQPA to aid agencies in obtaining financing as well as support the regional 208 AWQMP by providing information concerning the authority and responsibilities of management and operation agencies. The 208 AWQMP consists of information produced from approved Utility Plans per sections 201, 202, 203, 208, and 303(e) of the Act to contribute to the states continuing planning process (Regulation No. 23) regarding water quality. Denying an agency's Utility Plan, which disagrees with Association's 208 AWQMP, breaches the process to obtain federal funding under the WQCA as well as SRF funds with the state as well as the Site Application process.

Site Applications for domestic wastewater treatment works and related appurtenances via Regulation No. 22 are circulated to appropriate agencies for review and comment on

proposed new treatment plants or expansions, lift stations, or interceptor sewer lines (C.R.S. § 25-8-702; 5 C.C.R. § 1002-22). NFRWQPA must evaluate the applications for consistency with relevant elements of the Association's 208 AWQMP, like service areas, and the applicant's approved Utility Plan (Policy #98-2). If the proposal is not consistent with the 208 AWQMP or stated in the plan or the Utility Plan, the applicant must amend the applicable planning document to allow for the contemplated wastewater facilities (5 C.C.R. § 1002-22.4(2)(e) and 22.6(2); *see also* Policy #98-2). In the case of lift stations and interceptor sewer permit applications, the recommendation of NFRWQPA will be adopted as the Division's recommendation unless the Division is aware of potential adverse impacts on public health and, or water quality, which is not addressed in the application (Policy #98-2).

NFRWQPA and or membership can deny 208 AWQMP amendments. NFRWQPA's 208 AWQMP requires service areas to be consistent with the 208 AWQMP. The document states that "any significant modification of the service area boundaries of an existing Operations Agency or any formation of a new Operations Agency requires an amendment of the Regional Plan." Any proposed service area boundary modification, facility capacity increase or decrease, or unplanned Site Application project requires a 208 AWQMP amendment. Any amendment requires a public notice period and NFRWQPA to hold a public hearing on the proposed amendment (C.R.S. § 25-8-105(1)(b); Policy #98-2). NFRWQPA membership could deny the amendment for various reasons, but the denial must have a rational basis. The basis for denial could include respective treatment capacities, planned treatment capacities, discharge permit compliance histories, the potential impact on receiving waters, local information, and potentially the precedential impact in determining future service area modifications for the planning region.

Under federal law, all point source dischargers must remain in compliance with 208 Plans, which also includes any said requirements within NFRWQPA's 208 AWQMP related to the authority and responsibilities of management and operating agencies identified within. The CWA assures that no permit (CDPS) under section 1342 of this title shall be issued for any point source in conflict with NFRWQPA's 208 AWQMP (33 U.S.C. § 1288(e)). Likewise, per section 208(e) of the Act, no NPDES (i.e., CDPS) permit may be issued, which conflicts with NFRWQPA's 208 AWQMP, which involves the permittee having a current and approved Utility Plan. Supportive, Commission Policy #98-2, states a 208 planning agencies role is to "review discharge permits to assure that discharges to a stream segment are consistent with approved plans, as required by Section 208(e) of the federal Clean Water Act". It is at this time NFRWQPA could seek division denial of a permit.