



Colorado Nutrient Coalition

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Wastewater * Stormwater * Water Conservation * Agriculture * Home Builders

March 7, 2011

To: Steve Gunderson, Director, Water Quality Control Division

From: Nancy Keller, Coordinator, Colorado Nutrient Coalition

Subject: Additional Comments on Draft Interim Numeric Values, Protected Water Supply Proposal and Control Regulation

The Colorado Nutrient Coalition (CNC) appreciated the opportunity in the course of the February 14, 2011 meeting to both hear your explanations of the proposal as well as to ask a lot of questions. We very much support continuing the dialogue in order to provide an opportunity for in-depth review of the need and scientific basis for various components of the draft proposal. We look forward to the March, April, May and July work group meetings where we trust there will be ample time to assure an in-depth analysis. We hope this letter will assist in defining the topics for future work group meetings. After we have had a chance to digest this and others letters, we may follow up with a separate set of suggestions for a future agenda.

The CNC had provided comments on February 11, 2011 and incorporates them by reference in this letter. While we understand the February 14 meeting was centrally focused on the template or form of the new regulation and changes to Reg. 31, we continue to be concerned that the major issues raised in our correspondence have not yet been addressed. For example, the water supply designations and related in-lake chlorophyll a targets have not been vetted from a technical, attainability and economic need basis. This Public Water Supply Chlorophyll a value needs a future meeting for further presentation of the scientific support. Given its importance, this should occur at one of the earlier meetings.

Other concerns, generally, are that the proposed Reg 31 approach is much different from what we originally believed it would look like and no longer applies only to high quality waters. The control regulation continues to include restrictive TIN reduction requirements that have not been required by EPA in other states. While we have been supportive of a flexible regulatory approach that defers the technical disputes that arose with the Division's original nutrient criteria proposal (e.g., justification for universal application of TN restrictions in fresh waters) the approach as currently structured fails to address central issues the Coalition has repeatedly brought to the attention of the Division. The bottom line is that all POTWs are discharging at concentrations that should be causing huge algae blooms every year and everywhere, but no long list of mixing zones or areas below POTWs has been shown for areas throughout the state. A future agenda item should include clear justification for imposing not only total phosphorus but also total nitrogen to all dischargers as immediate BNR and then subsequently as deferred water quality standards.

As noted in the February 11 letter, at # 3, Reg 31 is not sufficiently specific and could apply to waters downstream of dischargers. It is open-ended because of the broad Protected Water Supply Lakes and Reservoirs decision criteria and because (per 31.17 (5)(c)) of the "other unique circumstances where adoption of numerical standards is necessary" because the provisions of Regulation #85 will not result in adequate control of such pollution. The Public Water Supply criteria for assignment of the chlorophyll a value must be an agenda item as is the "other unique circumstances" decision criteria.

The Division's proposal for monitoring is solely to determine the effectiveness of BNR, but not to derive site specific standards. That implies that the intent of the Division is that following BNR effectiveness monitoring, the "other unique circumstances" provision will justify both total phosphorus and total nitrogen values as well as chlorophyll a as segment specific standards, despite the CNC's concerns that these values are too simplistic and stringent for all ecoregions and geography of the state.

Accordingly, CNC urges that a specific statement be added that clearly states that the primary initial purpose of the proposed monitoring is to collect data to be used for deriving more region-specific values to be used for site-specific standards setting. If this assurance cannot be given, we may suggest revisiting the request for peer review of the proposed nutrient values to ensure they are appropriate statewide.

For further clarity, the nutrients values must be clearly limited: they are not applicable for interpreting narrative criteria, for basin based standards setting except for high quality waters above dischargers as an antidegradation based approach, determining 303d listing or setting TMDL targets. CNC provides later in this letter specific regulatory language for an explicit state policy on interpreting narrative standards relevant to nutrients. This should also be a separate agenda item.

Without minimizing or waiving any of the issues raised in the February 11, 2011 letter, and in response to the Division's request for alternative language proposals at the February 14, 2011 workgroup meeting, this CNC letter focuses on alternative proposed language on a few subjects (well, at least it started out that way).

To avoid premature application of the proposed numeric nutrient values, it is essential that the rule (particularly Reg #31 nutrient values) explain how it will and will not be applied. Given EPA's position (most recently to Illinois) that states must now implement narrative criteria approaches for nutrient regulation (absent numeric criteria), the rule must specify that the interim nutrient values will not be used for implementation of narrative criteria. The following four paragraphs are suggested:

1. The rule should specifically state that the numeric values are not to be used for narrative criteria interpretation and that any application of either TP or TN criteria downstream of or influenced by any wastewater discharge will be based on a site-specific assessment of the degree to which nutrients are the cause of an impairment and only regulate the pollutant or pollutants as necessary to address the impairment.

2. Remove the 5 µg/l chlorophyll a target from the protected waters section and remove any reference to increased drinking water treatment costs as a basis for impairment determination. Once designations are made, the appropriate chlorophyll a target may be selected for the water body based on a sound scientific assessment and consideration of what is actually attainable. This may include cost allocation discussions.
3. Modify the averaging period for the instream fixed algal growth level (i.e., 150 mg/m²) to a growing season average and establish a percentage of the stream segment that must exceed this level to be considered impaired, or follow the Montana measurement protocol. Explain that where natural conditions exceed this amount (e.g., nutrient levels below the proposed criteria cause the level of plant growth to be exceeded), such conditions are not considered use impairments. Follow Montana's approach of not using this aesthetics based value on other than cobble streambeds.
4. Add a new section to the rules, discussed below, explaining how the narrative criteria will be implemented for the next 10 years.

The following specific amendments to the regulations are suggested (additions are shown in ALL CAPS). These suggestions are offered in the spirit of moving the discussion forward, and the CNC may need to offer refinements as a result of discussions with the Division, EPA, and other stakeholders in the workgroup process:

REGULATION 31.17

(4) Interim Chlorophyll a Values

Delete under PWSR the 5 ug/l value and its footnote. The Division has not provided data or analysis appropriate to Colorado proving that this value is appropriate for Colorado. Further discussion of any such chlorophyll a value is needed.

(5) Use of Interim Phosphorus and Chlorophyll a Values for Standards Adoption

Prior to May 31, 2022, the values set forth in subsections (2) and (4) above will not be used for the adoption of water quality standards (NOR INTERPRETATION OF NARRATIVE STANDARDS FOR 303d LISTING, PERMITTING OR TMDL ACTIONS) for specific water bodies in Colorado except in the following circumstances:

(5)(b) Protected Water Supply Lakes and Reservoirs

(iii) A. should be retained consistent with prior discussions with the workgroup

(iii) B thru (iii) E should be struck as a significant expansion of the ranges of waterbodies to be addressed.

However, further discussion based upon the map of such likely reservoirs and lakes and the potential chlorophyll a standards should occur first. Such discussion must include the conduct of TMDLs, the resources for doing them, the timing for their completion, the state funding needed for expedited completion, and the state funding necessary for implementation of nonpoint source controls to effectively reduce sources of not only nutrients but also carbon. A new discussion on use of trading costs of treatment needs to occur.

(5)(c) Other unique circumstances where the Commission has determined that adoption of numerical standards is necessary to address existing or potential nutrient pollution because the provisions of Regulation #85 DID NOT result in adequate control of such pollution, AS DEMONSTRATED BY AN ADAPTIVE MANAGEMENT APPROACH. SUCH APPROACH IMPLEMENTS A LEVEL OF TECHNOLOGY AND MEASURES WHETHER INDICATORS OF HARM TO A USE REMAIN AND WHETHER THOSE INDICATORS ARE SIGNIFICANTLY RELATED TO THE POINT SOURCE(S) SUCH THAT MORE STRINGENT TECHNOLOGY TREATMENT IS JUSTIFIED CONSIDERING ALL OTHER SOURCES, HABITAT LIMITATIONS, AND THE CRITERIA OF 25-8-204.

(6) Use of Interim Nitrogen Values for Standards Adoption

- (a) Prior to May 31, 2017, the values set forth in subsection (3) above will not be used for the adoption of water quality standards (NOR INTERPRETATION OF NARRATIVE STANDARDS FOR 303d LISTING, PERMITTING, OR TMDL ACTIONS) for specific water bodies in Colorado.
- (b) After May 31, 2017 and prior to May 31, 2022, the values set forth in subsection (3) above will not be used for the adoption of water quality standards (NOR INTERPRETATION OF NARRATIVE STANDARDS FOR 303d LISTING, PERMITTING, OR TMDL ACTIONS) for specific water bodies in Colorado except in the circumstances identified in subsection (5) above.

NEW SECTION 31.17 (7) 6 31.17(9)

(7) THE EXPLICIT STATE POLICY FOR INTERPRETING ANY NARRATIVE STANDARD THAT MAY BE RELATED TO NUTRIENTS IS:

NARRATIVE CRITERIA COMPLIANCE IS EVALUATED BASED ON SITE-SPECIFIC CONDITIONS AND THE IMPACT THAT A POLLUTANT HAS ON DESIGNATED USES AT A SPECIFIC LOCATION. IMPLEMENTATION OF NARRATIVE CRITERIA FOR POLLUTANT REGULATION, IN GENERAL, REQUIRES BOTH RECEIVING WATER IMPACT INFORMATION AND DEMONSTRATION OF A CLEAR CAUSAL CONNECTION BETWEEN THE IMPACTED USE AND THE POLLUTANT OF CONCERN BASED ON SITE-SPECIFIC ANALYSES. WHERE MULTIPLE SOURCES IMPACT A USE, A DETERMINATION OF THE MAGNITUDE OF THE CONTRIBUTION TO THE DOCUMENTED IMPAIRMENT IS ALSO CONSIDERED IN EVALUATING WHETHER A POLLUTANT SOURCE SHOULD BE CONSIDERED THE CAUSE OF A NARRATIVE CRITERIA VIOLATION. NARRATIVE CRITERIA COMPLIANCE MUST OCCUR THROUGH THE TMDL PROCESS DUE TO THE MULTIPLE SOURCES OF NUTRIENTS THAT MAY AFFECT A WATER BODY. PRIOR TO THE COMPLETION OF THE TMDL PROCESS, AS DISCUSSED BELOW, COMPLIANCE WITH REGULATION 85 IS PRESUMPTIVE COMPLIANCE WITH NARRATIVE CRITERIA FOR SOURCES SUBJECT TO THAT RULE.

THE DIVISION WILL FOLLOW AN ADAPTIVE MANAGEMENT APPROACH TO PROTECTION OF THE USES FROM EXCESSIVE NUTRIENTS. THIS APPROACH IS APPROPRIATE BECAUSE OF THE UNCERTAINTY OF APPROPRIATE NUTRIENT STANDARDS FOR THE MULTITUDE OF ECOREGIONS AND WATERSHEDS IN COLORADO, INCLUDING SIGNIFICANT NUMBERS OF MAN-MADE RESERVOIRS. IN ADDITION, SIGNIFICANT WATER QUALITY DATA COLLECTION BY DISCHARGERS AND OTHERS ON SEGMENTS THROUGHOUT THE STATE WILL OCCUR FROM 2013-2018. THE COMMISSION WILL USE THOSE DATA TO DERIVE SCIENTIFICALLY DEFENSIBLE NUMERIC STANDARDS IN THOSE SEGMENTS AND TO CONSIDER WHETHER THE INTERIM NUTRIENT VALUES ARE APPROPRIATE TO PROTECT THE DESIGNATED USES OF COLORADO WATERS.

ADAPTIVE MANAGEMENT IS THE PROCESS BY WHICH NEW INFORMATION ABOUT THE HEALTH OF THE WATERSHED IS INCORPORATED INTO THE WATERSHED MANAGEMENT PLAN. ADAPTIVE MANAGEMENT IS A CHALLENGING BLEND OF SCIENTIFIC RESEARCH, MONITORING, AND PRACTICAL MANAGEMENT THAT ALLOWS FOR EXPERIMENTATION AND PROVIDES THE OPPORTUNITY TO "LEARN BY DOING." IT IS A NECESSARY AND USEFUL TOOL BECAUSE OF THE UNCERTAINTY ABOUT HOW ECOSYSTEMS FUNCTION AND HOW MANAGEMENT AFFECTS ECOSYSTEMS. ADAPTIVE MANAGEMENT REQUIRES EXPLICIT CONSIDERATION OF HYPOTHESES ABOUT ECOSYSTEM STRUCTURE AND FUNCTION, DEFINED MANAGEMENT GOALS AND ACTIONS, AND ANTICIPATED ECOSYSTEM RESPONSE.

FOR WASTEWATER PLANT POINT SOURCES, WHERE IT IS DOCUMENTED THAT EXCESSIVE PLANT GROWTH EXISTS, INITIAL WATER QUALITY STANDARD BASED EFFLUENT LIMITS TO ACHIEVE THE NARRATIVE CRITERIA SHALL BE THOSE LIMITS REQUIRED IN REGULATION #85. SUBSEQUENT TO INSTALLATION OF SUCH TECHNOLOGY, FURTHER MONITORING SHALL DETERMINE WHETHER ADDITIONAL POINT SOURCE REDUCTION IS BOTH NECESSARY AND EFFECTIVE (I.E., NOT BE OVERWHELMED BY NONPOINT SOURCE LOADING CAUSING SATURATION LEVELS TO REMAIN). WHERE NONPOINT SOURCE LOADING WOULD MAKE FURTHER POINT SOURCE REDUCTION INEFFECTIVE, THE EFFLUENT LIMITS OF REGULATION 85 SHALL REMAIN THE PERMIT LIMITATIONS, UNTIL THE WATER QUALITY CONTROL COMMISSION EFFECTIVELY ADDRESSES NONPOINT SOURCE LOADING.

WHERE A TMDL OR APPROVED CATEGORY 4(B) DEMONSTRATION PLAN IS COMPLETED TO ENSURE NARRATIVE OR OTHER CRITERIA COMPLIANCE, OR WHERE A CONTROL REGULATION HAS BEEN ESTABLISHED TO ENSURE PROTECTION OF THE USE FROM EXCESSIVE PLANT GROWTH, OR WHERE SIMILAR SITE-SPECIFIC ANALYSIS ESTABLISHES THAT NUTRIENT CONTROLS ARE NECESSARY TO PROTECT DESIGNATED USES AND/OR TO MEET RELATED WATER QUALITY STANDARDS, THE RESULTS OF THAT ANALYSIS MAY BE SUBSTITUTED FOR THE REGULATION #85 REQUIREMENTS.

(8) THE ABOVE INTERIM PHOSPHORUS, NITROGEN, AND CHLOROPHYLL A VALUES MAY BE USED AFTER MAY 31, 2022 FOR THE ADOPTION IN BASIN HEARINGS OF SEGMENT SPECIFIC STANDARDS, ONLY AFTER CONSIDERING SITE-SPECIFIC DATA COLLECTED (INCLUDING DATA ON WHICH NUTRIENT IS LIMITING) THAT CLEARLY DEMONSTRATES THAT APPLICATION OF THESE VALUES AS STANDARDS IS REQUIRED TO ASSURE USE PROTECTION ASSESSMENT OF OTHER FACTORS THAT MAY BE IMPACTING USE ATTAINMENT AND CURRENT METHODS OF ANALYSIS, INCLUDING MECHANISTIC MODELING.

(STATEMENT OF BASIS AND PURPOSE SHOULD BE: THE INTERIM VALUES SHALL BE SUBJECT TO REVIEW IN SUBSEQUENT TRIENNIAL REVIEWS PRIOR TO MAY 31, 2022 AND MAY BE FURTHER CATEGORIZED BY ECOREGION OR OTHER DESCRIPTIONS MORE SUITABLE FOR THE DIVERSITY OF THE GEOGRAPHY OF THE STATE.)

(9) MONITORING PROGRAMS TO DERIVE ADDITIONAL DATA ARE AS PROVIDED IN REGULATION 85.

REGULATION 85

85.4 Definitions, should be revised to include the following definition for Small Communities:

"Small Community" shall mean a community with a population of less than 5,000.

85.5 SPECIFIC LIMITATIONS FOR DISCHARGERS OF NUTRIENTS

A future agenda item for more discussion of what is BNR as distinct from Enhanced BNR or Limits of Technology must occur. The EPA-funded Chesapeake Bay office maintains a Scientific and Technical Committee that came up with the following definitions:

BNR is 8 mg/l of total nitrogen and 2 mg/L of total phosphorus on an annual average basis.

ENR is 4 mg/l of total nitrogen and 0.3 mg/L of total phosphorus on an annual average basis.

LOT is not as specifically designated. But according to a national engineering firm would generally be considered to be 3 mg/L total nitrogen and 0.1 mg/L total phosphorus on an annual average basis.

CNC currently supports 1 mg/l Total Phosphorus and 10 mg/l TIN as the benchmark or performance standard for BNR with the expectation that some plants will do better and some could be worse depending upon the current plant systems and feasibility of changes. Alternatively, the performance standard could be defined as an 85% removal from existing conditions. This needs further discussion.

CNC urges a delayed effective date for TIN, subject to POTW planning processes preserving the

opportunity to install treatment capacity for TIN upon necessity.

CNC urges that the averaging be only a calendar year average. This is consistent with other states.

Finally, CNC urges that the trigger for treatment plant changes to BNR be upon upgrading or expanding unless monitoring data confirms DO sags, pH noncompliance, excessive algae beyond the 150 mg/m² aesthetic standard, or otherwise demonstrates one or more nutrients are causing or have the reasonable potential to cause excessive algae. As a related matter, the compliance schedule for installation of treatment should authorize up to 20 years, depending upon state and local level bonding and funding capacity limitations.

Additional suggested language to be considered:

85.5(1)(a)(i) -- Small and/or Disadvantaged Communities should be amended by the following addition

(A)(III) ANY DWWTW OWNED BY A SMALL COMMUNITY.

(C) THE NUMERIC LIMITS DISCUSSED IN SUBSECTIONS (A) AND (B) ABOVE WILL NOT BE INCLUDED IN PRELIMINARY EFFLUENT LIMITATION FOR SITE LOCATION AND DESIGN APPROVALS OR IN EFFLUENT LIMITATIONS IN CDPS PERMITS FOR THE NOTED ENTITIES AFTER MAY 31, 2022 UNTIL AFTER THE DIVISION DEMONSTRATES THAT THE DISCHARGES FROM SUCH FACILITIES ARE CAUSING UNDESIRABLE PLANT GROWTH IN THE RECEIVING WATER. FURTHER, SMALL AND DISADVANTAGED COMMUNITIES FACILITY SHALL BE EXEMPT WHERE THE RECEIVING WATER IMMEDIATELY UPSTREAM OF THE DISCHARGE IS IN NON-ATTAINMENT AS A RESULT OF UPSTREAM NON-POINT SOURCES.

85.5(3)(B). EXCEPTIONS. [Clarification Needed Regarding How A Reasonable Potential Determination Would Be Made. For Example, Does Any Discharge With Nutrient Concentrations Greater Than Those Listed In Section 31.17 Automatically Constitute A "Reasonable Potential To Cause Or Contribute To Ambient Nutrient Concentrations" Regardless Of Upstream Nutrient Concentrations, And Hence End Of Pipe Limitations Would Apply As Set Forth In The Control Reg?]

85.5(3)(C), VARIANCES. ADD THE FOLLOWING LISTS AS CIRCUMSTANCES THAT ARE PRESUMED NOT TO BEAR A REASONABLE RELATIONSHIP TO THE ASSOCIATED ECONOMIC, ENVIRONMENTAL, OR ENERGY IMPACTS:

A. THE FACILITY DISCHARGES TO AN EPHEMERAL STREAM OR DRAINAGE

B. THE RATIO OF THE RECEIVING WATER TO THE VOLUME OF THE APPLICANT'S DISCHARGE DURING ANNUAL LOW FLOW IS GREATER THAN 20:1

C. ANY OF THE CRITERIA FOR VARIANCES LISTED IN 40 CFR 131.10G ARE PRESENT

D. THE DISCHARGE OF NUTRIENT FROM A FACILITY HAS NOT BEEN DEMONSTRATED TO RESULT IN UNDESIRABLE PLANT GROWTH IMMEDIATELY DOWNSTREAM OF THE POINT OF DISCHARGE

85.6 MONITORING REQUIREMENTS

(1) The Commission has determined that monitoring OF nutrient conditions is a necessary component of this control regulation. Data will be gathered to, FIRST, evaluate the effectiveness of this control regulation and to support quantification of point AND NONPOINT sources and eventual implementation of appropriate and necessary source controls CONSIDERING THE RELATIVE LOADING OF NONPOINT TO POINT SOURCES. SECOND, THE DATA WILL BE USED TO SUPPORT DEVELOPMENT OF SITE SPECIFIC STANDARDS. THIRD, THE DATA WILL BE USED TO RE-EVALUATE THE BASIS FOR THE INTERIM NUTRIENT VALUES.

(2)

(b)

(ii)

(B) Parameters: At a minimum, samples shall be analyzed for total nitrogen (total Kjeldahl nitrogen plus nitrate-nitrite, or the components to calculate total nitrogen) and total phosphorus (or the components to calculate total phosphorus) AND CHLOROPHYLL-A.

(C)

(D) OPTIONAL SAMPLING: ADDITIONAL SAMPLING CONSISTENT WITH AN APPROVED SAMPLING PLAN SUITABLE FOR IDENTIFICATION OF CONFOUNDING FACTORS AND CONSISTENT WITH EPA'S USING STRESSOR-RESPONSE RELATIONSHIPS TO DERIVE NUMERIC NUTRIENT CRITERIA (EPA 820 S-10-001 NOV 2010)

(E) WATERSHED BASED MONITORING MAY BE USED TO SAMPLE REPRESENTATIVE POINT SOURCES (AND NONPOINT) RATHER THAN ALL POINT SOURCES ON A SEGMENT. COOPERATIVE AGREEMENTS TO POOL FINANCIAL RESOURCES AND EXPERTISE ALONG WITH A SAMPLING PLAN SHALL BE SUBMITTED TO THE WATER QUALITY CONTROL DIVISION FOR APPROVAL.

(iv) Timing: Entities shall commence data collection no later than March 1, 2013 to provide time to allow for coordination with proximate point source facilities, nonpoint sources, and other known monitoring efforts, as well as to allow for the purchase of equipment and requisite training. Where a gage is selected by more than one discharger, dischargers may share the responsibility for sampling, analysis, and reporting. COMPLIANCE MAY BE SHOWN THROUGH CONTRACTUAL ARRANGMENTS WITH WATERSHED RELATED ENTITIES SUCH AS WATER CONSERVANCY DISTRICTS, BASIN AUTHORITIES, COUNTIES OR OTHERS. (STATEMENT OF

BASIS AND PURPOSE: MONITORING IS URGED TO BEGIN AS SOON AS POSSIBLE BUT THE REQUIREMENT IS DELAYED TO MARCH 2013 TO ENABLE BUDGETS, COORDINATION WITH OTHERS, AND TRIAL SAMPLING DESIGNED TO PROVIDE THE MOST RELIABLE DATA RESULTS. CARE SHOULD BE GIVEN TO ASSURE DATA QUALITY OBJECTIVES AND PROCEDURES ARE ATTAINED TO ASSURE DATA IS USEFUL. OPTIONAL DATA SHOULD BE COLLECTED IN SUBSEQUENT YEARS CONSISTENT WITH A DATA MONITORING PLAN BY PROFESSIONALS IN SUCH DATA COLLECTION.)

(v) SMALL AND DISADVANTAGED COMMUNITIES SHALL NOT BE REQUIRED TO CONDUCT EFFLUENT OR STREAM NUTRIENT MONITORING IN ANY OF THE FOLLOWING INSTANCES:

(A) THE FACILITY DISCHARGES TO AN EPHEMERAL STREAM OR DRAINAGE, OR IRRIGATION DITCH,

(B) THE RATIO OF THE VOLUME OF THE RECEIVING WATER TO THE VOLUME OF THE APPLICANT'S DISCHARGE DURING ANNUAL LOW FLOW IS GREATER THAN 20:1, OR

(C) THE DISCHARGE FROM THE FACILITY DOES NOT RESULT IN A SIGNIFICANT INCREASE IN UNDESIRABLE AQUATIC PLANT GROWTH IMMEDIATELY DOWNSTREAM FROM THE POINT OF DISCHARGE

New Section (conceptual), point of insertion to be determined.

THE REQUIREMENTS SET FORTH IN THIS REGULATION SHALL BE IMPLEMENTED ON A BASIN PRIORITIZATION BASIS. THE DIVISION SHALL RANK THE RIVER BASINS BASED ON POTENTIAL FOR IN-STATE AND OUT-OF-STATE NUTRIENT IMPACTS. ONCE SUCH RANKING IS COMPLETE, THE REQUIREMENTS SHALL BE IMPLEMENTED IN THE ORDER OF PRIORITY, BEGINNING WITH THE HIGHEST PRIORITY BASIN. THE REQUIREMENT SHALL NOT BE IMPLEMENTED IN THOSE RIVER BASINS WITH LOW POTENTIAL FOR IN-STATE AND OUT-OF-STATE IMPACTS