WHO IS RESPONSIBLE FOR THE POUDRE’S WATER QUALITY?

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FOR

POUDRE RIVER FORUM, FEBRUARY 1, 2019
SUMMARY: WHO IS RESPONSIBLE?

• WHO IS RESPONSIBLE FOR WATER QUALITY?
  • WHO/WHAT ARE THE CAUSES OF ADVERSE WATER QUALITY?
  • WHO HAS A LEGAL OBLIGATION TO DO SOMETHING ABOUT IT?

• BUT THOSE TWO CATEGORIES CURRENTLY ARE NOT INTERCHANGEABLE
  • MANY POLLUTANT DISCHARGES ARE UNREGULATED

• TREND: OVER TIME REGULATORS HAVE TARGETED MORE SOURCES OF DISCHARGE AND ADOPTED MORE STRINGENT REGULATION

• CHOICE: WAIT FOR THE INEVITABLE INCREASE IN REGULATION OR IMPLEMENT PROACTIVE WATER QUALITY IMPROVEMENT ACTIONS?
  • PROACTIVE MEASURES ALLOW FOR GREATER CONTROL OVER THE METHOD, MEANS, AND TIMING
  • CREATES OPPORTUNITIES TO LEVERAGE EFFORTS AND MAXIMIZE IMPACT
FEDERAL WATER POLLUTION CONTROL ACT

• PURPOSE—RESTORE AND MAINTAIN THE CHEMICAL, PHYSICAL, AND BIOLOGICAL INTEGRITY OF THE WATERS OF THE U.S.
  • FIRST ENACTED IN 1948 – MAINLY GRANTS TO STATES AND CITIES
  • MAJOR AMENDMENTS IN THE 60S, 70S, & 80S

• IN 1972, ESTABLISHED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) AND CREATED TWO CATEGORIES OF DISCHARGES:
  • POINT SOURCE (PERMIT): DISCHARGES FROM DOMESTIC, INDUSTRIAL, AND OTHER SOURCES FROM A DISCRETE POINT (E.G., PIPE, DITCH, ETC.)
  • NONPOINT SOURCE (MAINLY VIA BMP): DISCHARGES FROM AGRICULTURE, STORMWATER, AND FAULTY SEPTIC SYSTEMS AND OTHER DIFFUSE SOURCES

• TREND: TARGETED MORE SOURCES OVER TIME
EXAMPLES OF DISCHARGES

Point Source Discharge  Nonpoint Source Discharge
COLORADO WATER QUALITY CONTROL ACT

- ADOPTED IN 1966
  - CREATED WATER QUALITY CONTROL COMMISSION TO ESTABLISH AND IMPLEMENT WATER QUALITY STANDARDS UNDER CWA
    - DID NOT CONSOLIDATE POWER TO REGULATE WATER QUANTITY (I.E., WATER RIGHTS) AND WATER QUALITY IN THE SAME BODY
  - DIRECTIVE THAT WQ REGULATION CANNOT IMPAIR OR LIMIT EXERCISE OF WATER RIGHTS

- ESTABLISHED POLICY THAT WATER QUALITY BE ADVANCED ONLY WITHIN THE CONFINES OF THE PRIOR APPROPRIATION DOCTRINE
  - WATER QUALITY IS SUBORDINATE TO, AND OFTEN IN CONFLICT WITH, THE PRIOR APPROPRIATION DOCTRINE
CURRENT POLICY: WHAT DOES THIS MEAN?

• FEDERAL AND STATE REGULATORS ARE CONSTRAINED IN ACHIEVING WATER QUALITY GOALS
  • MANY POLLUTANT DISCHARGES REMAIN UNREGULATED
  • WATER QUALITY ENFORCEMENT SUBORDINATE TO THE EXERCISE OF WATER RIGHTS

• MUNICIPALITIES MUST WEIGH COMPETING INTERESTS
  • WATER QUALITY VS. QUANTITY (I.E., MAXIMIZE YIELD OF WATER RIGHTS)
  • ECONOMIC GROWTH VS. RATE IMPACTS
EXAMPLE: GREELEY’S WWTP

Process:
1. Classify Use
2. Adopt Standard
3. Establish Controls (i.e., Effluent Limits)
CHOICE: WAIT FOR THE INEVITABLE INCREASE IN REGULATION OR PROACTIVE WQ IMPROVEMENT ACTIONS?

• THE INEVITABLE: IF NECESSARY, REGULATORS WILL LIKELY TARGET MORE SOURCES OF DISCHARGE AND IMPLEMENT MORE STRINGENT REGULATION OVER TIME
  • CURRENT WQCC REGULATION 85 HAS NUTRIENT LIMITATION FOR POINT SOURCES
    • IN 2022, THE COMMISSION WILL EVALUATE THE NEED TO REGULATE NONPOINT SOURCES OF NUTRIENTS
  • IN 2027 IT IS ANTICIPATED THAT VERY STRINGENT NUTRIENT STANDARDS WILL BE ADOPTED IN WQCC REGULATION 31.
    • VOLUNTARY INCENTIVE PROGRAM UNDER REG. 85—RECEIVE ADDITIONAL TIME UNDER COMPLIANCE SCHEDULE TO MEET MORE STRINGENT LIMITS UNDER REG. 31 IN EXCHANGE FOR ADDITIONAL NUTRIENT REMOVAL UNDER REG. 85.
CONCLUSION: OPPORTUNITIES IN PARTNERSHIPS FOR A MORE HOLISTIC WATERSHED APPROACH

• ALLOWS FOR GREATER CONTROL OVER THE METHOD, MEANS, AND TIMING

• CREATES OPPORTUNITIES TO LEVERAGE EFFORTS WITH PARTNERS OR OTHER STAKEHOLDERS TO MAXIMIZE IMPACT

• OPPORTUNITIES INCLUDE:
  • JOINT OR MODIFIED OPERATION AGREEMENTS TO INCREASE FLOWS IN THE RIVER
  • JOINT WETLAND RESTORATION AND BANK STABILIZATION PROJECTS
  • LEGISLATION TO PROTECT DEDICATED FLOWS IN THE RIVER (E.G., RESERVOIR RELEASE BILL)
  • COLLABORATIVE EFFORTS BETWEEN AGRICULTURE AND MUNICIPALITIES TO IMPLEMENT BMPS AND REDUCE NUTRIENTS (E.G., MISSISSIPPI RIVER NUTRIENT DIALOGUES)
  • WATERSHED APPROACH – LARGE-SCALE, COORDINATED STRATEGY FOR THE WATERSHED DEVELOPED AND IMPLEMENTED BY MULTIPLE STAKEHOLDERS
QUESTIONS?