

NORTHERN WATER

Water Quality Stakeholders Meeting October 17, 2018

Regulatory Updates:

303(d) Listing Methodology Colorado River and South Platte River Basin Standards **Temperature Standards and 10-Year Roadmap** Water Transfer Rule and Waters of the United States

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303(d) Listing Methodology

- **March 2019 Administrative Action Hearing to update 303(d) Listing Methodology**
 - 303(d) of the Clean Water Act requires states to identify waters where effluent limitations are not stringent enough to attain water quality standards
 - Colorado maintains a 303(d) List of Impaired Waters
 - 303(d) List approved by Water Quality Control Commission every 2 years
 - *Listing Methodology is “a framework for the determination of attainment or nonattainment of assigned water quality standards and designated uses”*
- **Workgroups and Technical Advisory Committees, September-December 2018**
 - Water Quality Control Division and stakeholders
- **Updates:**
 - Assessment of Iron, Manganese and Sulfate
 - Pollutant vs Pollutants
 - Removing temperature excursion allowance for lakes and reservoirs
 - Resegmentation and 303(d) listing assignment

Basin Rulemakings

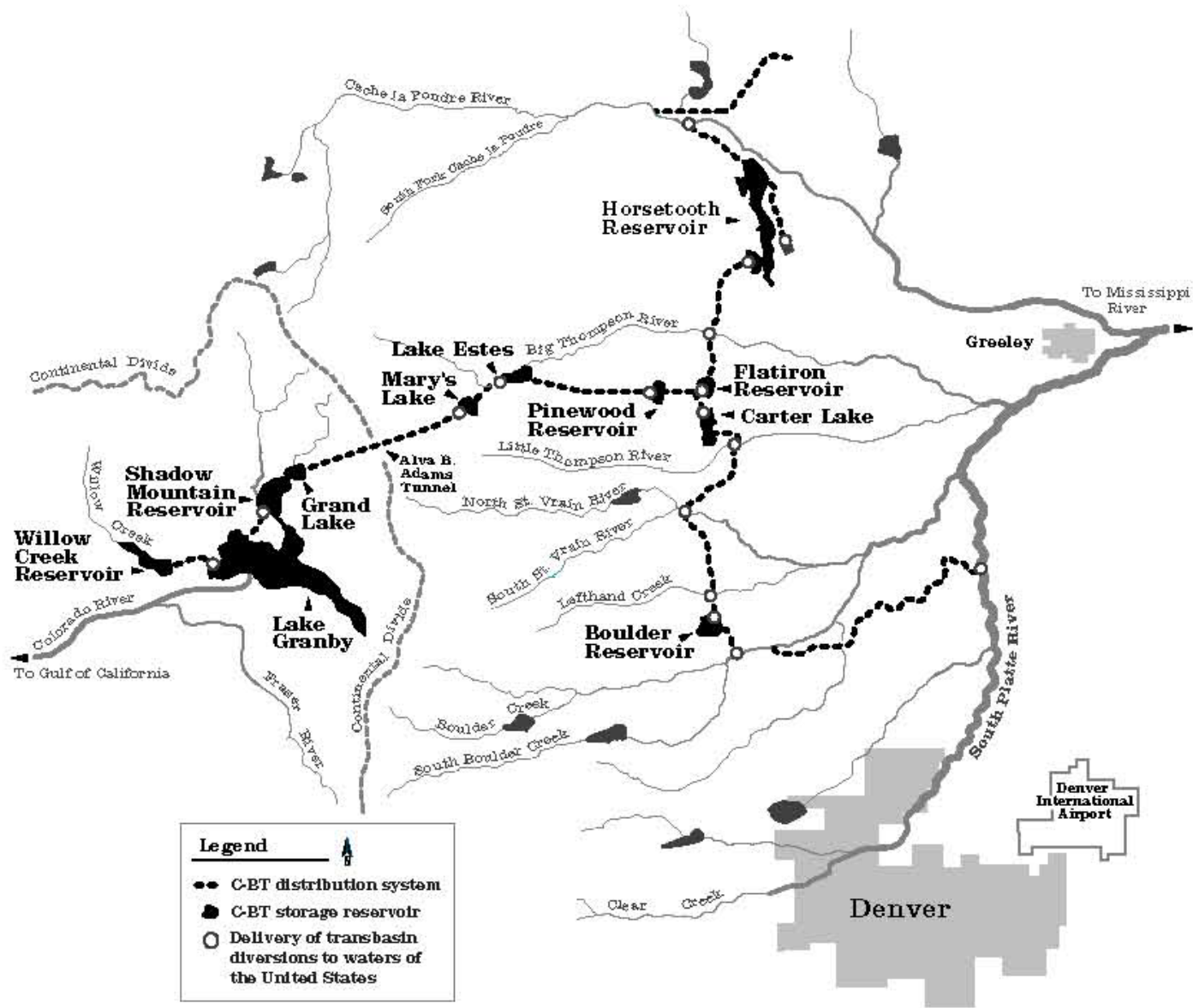
- Basin hearings to designate uses, confirm stream segments, and set water quality standards used for permitting and 303(d) evaluation.
- Colorado River Basin, June 2019
- South Platte River Basin, June 2020
 - Cache la Poudre Temperature Transition Zone Workgroup

401 Certification

- Certification by Water Quality Control Division that a project to be permitted for discharge under 404 complies will meet water quality standards;
- Certification process for Northern Integrated Supply Project underway;
- Collaboration with Water Quality Control Division for clear direction in Regulation 82.

Water Transfers Issue

- Whether water transfers are subject to National Pollutant Discharge Elimination System (“NPDES”) permitting under section 402 of the Clean Water Act. [33 USC § 1342]
- A water transfer counts as a discharge of pollutants under the Clean Water Act only if the two separate bodies of water are meaningfully distinct water bodies.
- Subject to litigation in Vermont, New York, Florida and Oregon US District Courts, and Courts of Appeals in Atlanta and New York City since 1996



Water Transfers

- **Northern Water's system has 27 transfers**
 - **Do not cause water quality problems**
 - **But could not meet all water quality standards of receiving waters all of the time due to natural processes such as snowmelt, thunderstorms, and local geologic conditions**
 - **Subject to fines of \$51,500 per day per violation**
- **Cost to treat JUST ONE transfer to meet standards at all times more than \$300 million**

EPA's Water Transfers Rule

2008 EPA's Water Transfers Rule: –
excludes water transfers that do not add
anything to the water from wastewater
permitting requirements federal Clean
Water Act that typically applies to
municipal, commercial, industrial and
mining dischargers

EPA's Water Transfers Rule

- After 10 years of litigation in the 2nd and 11th circuit courts of appeal, the Second Circuit Court of Appeals held that EPA's interpretation of CWA is reasonable and EPA is entitled to *Chevron* deference in *Catskill Mountain Chapter of Trout Unlimited v. EPA*, 846 F.3d 492 (2nd Cir., 2017); cert denied, 138 S. CT. 1164 -1165 (Feb. 26, 2018).
- The Supreme Court's denial of certiorari resolves the question of whether EPA's Rule complies with the CWA and whether water transfers are subject to NPDES permitting.

Waters of the United States

- EPA released “Waters of the United States,” aka, “Clean Water Rule” in mid-2015.
 - Two groups of states (incl. Colo.) filed suit to block the Rule—litigation is pending and Rule stayed. January 2018, *Nat’l Ass’n of Manufacturers v. Dep’t of Defense* SCOTUS says jurisdiction is in federal district courts.
- EPA and Corps issued a “final” Rule in early 2018 that added an applicability date to maintain the pre-2015 status quo.
 - Ten states (not Colo.) filed a suit challenging the Suspension Rule as violating the Administrative Procedure Act.
- On July 6, 2018, EPA and the Corps issued a supplemental notice of proposed rulemaking to buttress their basis for the eventual repeal of the 2015 WOTUS rule.

QUESTIONS?