Wyoming Outdoor Council
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DELIVERED BY U.S. MAIL, FAX AND EMAIL

October 10, 2014

Mr. Kevin Frederick, Administrator
Water Quality Division
Department of Environmental Quality
122 West 25th Street, Herschler Building
Cheyenne, WY 82002

Re: Determination Regarding the Categorical Redesignation of Streams in the S tate

Dear Mr. Frederick,

We are writing in regard to your decision dated August 20, 2014 in which a determination has been made that the streams of the state should be designated for either primary orsecondary contact recreation. If the EPA approves the categorical redesignation the vast majority– 87,775 miles (76.1%) – of Wyoming's stream miles will no longer be categorized as attainable for primary contact recreation.

Wyoming has a well-deserved record of environmental protections that meet or exceed federal standards. The Wyoming Department of Environmental Quality has consistently demonstrated its commitment to protecting all of the state's resources and working to contribute to our state's quality of life in ways that protect, conserve and enhance the environment through responsible stewardship. We are concerned that the categorical redesignation at the scale and magnitude evident in this decision might not be consistent with the department's commitment to protect one of our state's most vital resources—its streams.

Collectively, we are concerned that the *Categorical Redesignation of Streams from Primary Contact Recreation to Secondary Contact Recreation* would downgrade waters on public lands that our members, friends, staff, and clients rely on for primary contact recreation. Because of this, we respectfully request that you withdraw the above-captioned August 20, 2014 decision of the Water Quality Division and re-open the public comment period to allow the input and participation of recreational users who would be directly affected by this decision, including those undersigned, listed in Attachment A . We believe that the views of these recreation users have not yet been adequately represented in this process. We realize the timing of ourrequest to participate and to provide comment is not ideal. You and your division have worked hard to come to the determination and we acknowledge your efforts. And yet we believe that there are other voices that should be heard—voices that were not aware of your efforts and thus deprived of their right to comment. We hope that you agree with our request that an opportunity be provided for the inclusion of comments from the recreation community; your determination has broad implications for Wyoming's surface water quality and perhaps an unintended consequence—it may well create significant harm as it relates to recreation on public land.

As you know, the Wyoming Outdoor Council is the state's oldest independent conservation organization, and has a longstanding interest in ensuring that Wyoming's surface waters receive

the highest degree of protection possible under the Clean Water Act. Our partners on this letter include members of recreation groups, outdoor retail businesses, commercial guide services, the general liability insurance industry, conservation organizations, youth camps, and many others who use and enjoy Wyoming's surface waters.

We realize our request to participate and to provide comment is late in coming. Although the Wyoming Outdoor Council routinely receives DEQ's notices directly, in this instance we did not. Neither did any of the undersigned groups. Notably, DEQ's public outreach efforts, which included legal notices in two newspapers, emails to a list serve, and one radio interview, which aired three times, resulted in only five comments and failed to generate a single comment from any recreational user of the state's surface waters or group representing recreational users.

The August 20, 2014 decision substantially raises the permissible levels of E. coli in over two-thirds of the state's surface waters, including thousands of miles of stream segments on public lands administered by the U.S. Forest Service and Bureau of Land Management where people routinely recreate.

Our groups and the members we represent use the lands upon which these waters flow for a variety of recreational and other uses, such as trail running, camping, backpacking, mountain climbing, hunting and fishing, and commercial, educational and research purposes, to name a few. The individuals who engage in these activities, particularly those taking place in remote areas, rely exclusively on natural sources of water, including small creeks and springs, for their water supply. Surface waters—even those with flows substantially less than 6 cubic feet per second—are used for bathing and washing, cooking, cleaning pots, pans and eating utensils, brushing teeth, rinsing clothes, and for drinking water. That is the nature of backcountry recreation. To one degree or another, all of these existing uses present the potential for ingestion of the water, regardless of whether there is full immersion. Ingestion of waters containing E.coli at the higher levels authorized in the Administrator's decision increases the likelihood of gastrointestinal illness.

We note, too, that perhaps some data sets used to create the analysis model were incomplete while other potential data sets were not included. As to the former – there were, for example, no trailheads or dispersed camping sites noted in the data set for Sweetwater County. Similarly, there were only two trailheads identified in Natrona County and no dispersed camping sites. Other potential data sets that perhaps should have been included in the model are streams proximate to areas/sites designated by the WDEQ as very rare or uncommon. Proximity to springs, historic trails, and the Continental Divide trail should likely have been included in the analysis data sets too.

The Clean Water Act requires that water quality necessary to support existing and attainable uses be protected. The CWA further provides that "recreation in and on the water" is presumed attainable unless the state demonstrates through a "use attainability analysis" or UAA, that the use is not attainable. Here, the approach taken by the state to support its sweeping re-designation—resulting in less stringent protections for more than 80,000 stream miles in Wyoming—fails to acknowledge the aforementioned existing uses.

Considering the scope and breadth of the decision, and the use of an UAA process that raises legitimate questions about compliance with the Clean Water Act, we respectfully request that you withdraw your August 20, 2014 decision and re-open the comment period for a minimum of 45 days so that the affected stakeholders—many of whom are just learning about this for the first time—are provided a meaningful opportunity to participate in this process.

Sincerely,

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Cc: Mr. Todd Parfitt, Director, Wyoming Department of Environmental Quality
Mr. Shaun McGrath, Administrator, EPA Region 8

Attachment A

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