UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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JUN - 3 2015

Ref: 8EPR-EP

Todd Parfitt, Director
Wyoming Department of Environmental Quality
Herschler Building 4W
122 W. 25th Street
Cheyenne, WY 82002

Dear Mr. Parfitt:

The U.S. Environmental Protection Agency (EPA) has reviewed the Wyoming Department of Environmental Quality's (WDEQ) water quality standards submission the EPA received on December 5, 2014 regarding adopted designated uses for primary and secondary contact recreation, including the *Categorical Use Attainability Analysis for Recreation*. The EPA acknowledges the five years of work on the UAA by WDEQ and appreciates the significant effort WDEQ has made to address the EPA's comments. However, in order for the EPA to approve any of the recreation designated uses that are consistent with CWA requirements, the state must first hold a public hearing consistent with CWA § 303(c)(1) and the EPA's implementing regulations at 40 CFR Parts 25 and 131. The EPA would like to take this opportunity to clarify the EPA's position regarding the public hearing requirement so that the state has certainty about what steps need to be taken in order to address this procedural issue.

The EPA views the statute and regulations as requiring that states hold public hearings for any change to water quality standards, including any change to a designated use. The EPA recognizes that the state did hold a public meeting and offered the opportunity for additional public meetings and/or presentations. However, this public meeting did not satisfy the requirements of 40 CFR Parts 25 and 131 regarding public hearings. For example, 40 CFR § 25.5(b) requires the hearing notice be publicized at least 45 days prior to the date of the hearing, and 40 CFR § 25.5(f) requires "a transcript, recording or other complete record of public hearing proceedings." Neither of these requirements were satisfied by the state's public meeting. When a public hearing is held as required by 40 CFR Part 131, the public hearing must comply with the requirements of 40 CFR § 25.5 unless state law is more stringent. For public participation requirements addressed in 40 CFR § 25.10(a), 40 CFR § 25.10(b) defers to the state Administrative Procedure Act (APA) where there is a conflict.

In addition to the procedural issues discussed above, the EPA reviewed the scientific basis of the UAA and continues to support WDEQ's approach for identifying streams with insufficient flow to justify the designation of a secondary contact recreation use consistent with 40 CFR § 131.10(g)(2). However, the

EPA may have additional comments based on the public comments received during a public hearing. As noted in our prior comment letters, the EPA suggests that during this hearing process WDEQ specifically reach out to recreational user groups. Feedback from people that live near or recreate in such streams regarding existing and potential uses is critical in designating the appropriate recreation use.

As a general matter, the EPA expects that the burden of proof to rebut the presumption for uses specified in CWA § 101(a)(2) remains with the state. However, the EPA does consider it reasonable for Wyoming to expect the public to assist in providing information sufficient to identify: (1) the location of the stream (e.g., latitude and longitude, object ID provided in web map, road mile marker); and (2) existing or potential recreational activities in the context of the physical condition of the stream. Public commenters may provide any number of pieces of information, and such information could come from user testimony during the hearing, user written comments, photos, flow data, or data from the UAA worksheet in Appendix C of the UAA.

In summary, in order for the EPA to approve any of the recreation designated uses that are consistent with CWA requirements, the state must first hold a public hearing, satisfy the requirements of 40 CFR Part 25, and submit the transcript from the public hearing, information and written comments submitted during the hearing and the state's responses to written and oral comments to enable the EPA's meaningful review of the state's submission. If you have any questions, please contact Tonya Fish on my staff at (303) 312-6832 or fish.tonya@epa.gov.

Sincerely,

Martin Hestmark,
Assistant Regional Administrator
Office of Ecosystems Protection
and Remediation

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