Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Matthew H. Mead, Governor **Todd Parfitt, Director**

Dan Heilig
Amber Wilson
Wyoming Outdoor Council
262 Lincoln Street
Lander, WY 82520

December 1, 2014

Dear Mr. Heilig and Ms. Wilson,

Thank you for your October 10, 2014 letter regarding the *Categorical Use Attainability Analysis for Recreation* (*Categorical UAA*) and the Wyoming Department of Environmental Quality/Water Quality Division (WDEQ/WQD) decision to re-designate certain streams in the State of Wyoming for secondary contact recreation. You have asked me to withdraw my August 20, 2014 designated use decision based on the *Categorical UAA* and re-open the public comment period supporting that decision. After careful consideration of the issues you have raised, I am declining your request for the reasons provided below.

Categorical UAA Background

As you are aware, WDEQ/WQD first started receiving requests to re-designate primary contact recreation streams based on use attainability analyses (UAAs) in 2007. Between 2007 and 2010, WDEQ/WQD received requests from the South Goshen, Lingle-Fort Laramie, North Platte Valley, Hot Springs, Washakie County, Lower Wind River, and Popo Agie Conservation Districts. Although DEQ processed eleven recreation UAAs in Goshen County in 2010 and 2011, many entities have been awaiting action on their UAA submissions until the State was able to complete the statewide *Categorical UAA.*

Due to the high public interest in appropriately designating recreational uses on Wyoming streams, WDEQ began working in 2009 on what resulted in the *Categorical UAA*. WDEQ/WQD worked with the Conservation Districts, United States Forest Service, National Park Service, Wyoming Department of Transportation, Wyoming State Parks, Bureau of Land Management, Wyoming Game and Fish Department, United States Environmental Protection Agency (USEPA) and numerous other entities to develop the *Categorical UAA*. As early as September 2011, WDEQ/WQD identified the statewide recreation UAA project in surface water quality standards outreach documents that were widely circulated during the revision of Chapter 1 of the Water Quality Rules and Regulations, Wyoming's Surface Water Quality Standards.

Public Outreach and Participation

The *Categorical UAA* and associated designated use decision included an extensive public participation process and involved numerous stakeholders within the State. The formal public comment period for the *Categorical UAA* began with a public notice that was sent to WDEQ/WQD's Water Quality General Info and Rulemaking list-serve on August 6, 2013, and was published in the Casper Star Tribune on August 8, 2013. This notice was also posted on WDEQ/WQD's surface water quality standards webpage and the WQD's Current Events page. As outlined in that public notice, WDEQ/WQD held a public meeting on the *Categorical UAA* in Cheyenne on August 26, 2013, and offered to hold additional public meetings upon request. In August and September of 2013, WDEQ staff attended regional Conservation District meetings in Lyman, Greybull, Casper, Cheyenne, and Wright to discuss the *Categorical UAA*.

Public comments on the initial *Categorical UAA* proposal were accepted until September 30, 2013. WDEQ/WQD reviewed seventeen unique comments, developed a formal response to comments document, and made changes to the UAA based on the comments. The document entitled *Response to Comments for the Comment Period Ending September 30, 2013* and the revised UAA were released through a second public notice on January 28, 2014. The notice was sent to the WDEQ/WQD's Water Quality General Info and Rulemaking list-serve, and was again published in the Casper Star Tribune on January 28, 2014. The public notice and UAA information were also posted on the surface water quality standards webpage and the WQD's Current Events page. News pieces about the *Categorical UAA* have appeared on Wyoming Public Radio (February 5, 2014), in the Livestock Roundup (fall 2012 and fall 2013), and the Pinedale Roundup (February 2014). Comments on the revised *Categorical UAA* were received until March 14, 2014. WDEQ received six unique comments, developed a formal response to comment document, and made minor changes to the UAA based on those comments. The final determination was made on August 20, 2014.

Recreational Use Versus Drinking Water Use

Based on Wyoming Outdoor Council's (WOC's) October 10, 2014 letter, WDEQ/WQD believes there may be some confusion regarding the primary contact recreation designated use and corresponding criteria used to protect primary contact recreation. Section 4 of Wyoming's Water Quality Standards outlines the "recreational use protection involves maintaining a level of water quality which is safe for human contact." Safe for human contact in the case of primary contact recreation generally means protecting individuals who may ingest water while they engage in full body immersion activities such as water skiing, swimming, etc. The primary exceptions to this are instances where small children have easy access to streams, as they may ingest a similar amount of water while engaging in water play from much smaller streams. In addition, Wyoming's recreation designations recognize the seasonality of primary contact recreation and designate all waters for secondary contact recreation from October 1 to April 30.

Wyoming's *E. coli* criteria to protect primary contact recreation are based on USEPA's Ambient Water Quality Criteria for Bacteria – 1986. The criteria are derived from epidemiological studies that evaluated gastrointestinal illness rates of swimmers in lakes with public bathing beaches, specifically Lake Erie at Erie, Pennsylvania and Keystone Lake outside of Tulsa, Oklahoma. To appropriately apply the *E. coli* criteria, streams designated for primary contact recreation should have a similar level of human contact as those used in the development of the primary contract recreation criteria (i.e., swimming lakes).

WOC expressed concern that people may use streams designated for secondary contact recreation for their "water supply," for specific activities such as "bathing and washing, cooking, cleaning pots, pans and eating utensils, brushing teeth, rinsing clothes, and drinking water." These uses are not considered recreational uses, but rather, as WOC describes, they are "water supply" or drinking water uses.

The National Primary Drinking Water Regulations identify levels of contaminants that apply to public water systems to protect public health. The maximum contaminant level for total coliforms, which includes *E. coli*, is fewer than 5% of samples test positive per month.[1] This translates to essentially zero *E. coli*. While these are realistic expectations for treated drinking water, they are not realistic expectations for surface waters. There should be no expectation that untreated water supplies, from any surface water source, are safe for human consumption. This is true regardless of a water's designation for primary or secondary contact recreation. Treatment of raw water is described in WDEQ's description of drinking water designated use (Chapter 1, Section 3(d)) and is highly recommended to backcountry travelers by the Centers for Disease Control, land management agencies, and national recreation organizations.

For example, the Centers for Disease Control has produced guidance for Drinking Water Treatment and Sanitation for Backcountry and Travel Use.[2] The document serves as a guide for "individuals intending to use untreated or poorly treated water as a drinking source." The document describes how to protect yourself from pathogens such as the protozoans *Cryptosporidium* and *Giardia intestinalis*; bacteria such as *Campylobacter*, *Salmonella*, *Shigella*, and *E. coli*; as well as viruses such as enterovirus, hepatitis A, norovirus, and rotavirus by treating the water.

The United States Forest Service has issued guidance on backpacking[3] that states "water from streams or lakes should be considered unsafe to drink until properly treated." The Bureau of Land Management's website on water sources along the Continental Divide Scenic Trail[4] indicates that "It is highly recommended that all water be treated prior to use."

Process for Designating Individual Streams

The *Categorical UAA* is consistent with state and federal regulations on UAAs and federal and state guidance on recreation UAAs. Wyoming's *Categorical UAA* is also more conservative than many site-specific recreation UAAs that have been approved by USEPA. The UAA is based in large part on USEPA and Wyoming's "low flow" factor and demonstrates that streams with mean annual flows less than 6 cfs do not have sufficient water to support primary contact recreation activities such as swimming. The *Categorical UAA* also considers that children may engage in water play in streams of any size. To protect small children who may have significant contact with the water in "low flow" streams, WDEQ/WQD identified areas where children may have easy access to streams and designated all such streams, regardless of flow, for primary contact recreation. This includes streams near towns, schools, and accessible recreation sites. WDEQ/WQD also incorporated site-specific flow and recreation information where it was available and validated the *Categorical UAA* with more than 870 site-specific field surveys of recreational use.

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[1] http://water.epa.gov/drink/contaminants/
[2] http://www.cdc.gov/healthywater/drinking/travel/backcountry_water_treatment.html
[3] http://www.fs.fed.us/r2/recreation/camping/backpacking.pdf
[4] http://www.blm.gov/wy/st/en/programs/nlcs/Continental_Divide/watersrc.html

As outlined in the *Categorical UAA*, the UAA used the best available information to identify waters where primary contact recreation is not an existing or attainable use. However, because the *Categorical UAA* was developed at a state-wide scale, WDEQ/WQD recognized that the designations may not perfectly align on every stream in the State, as discussed in the *Categorical UAA* documentation. As new data and information become available, surface water quality standards, specifically designated uses and criteria to protect designated uses, can be modified if necessary.

Therefore, WDEQ/WQD recommends that WOC notify WDEQ/WQD of instances in which they suspect that designated recreational uses are not reflective of existing uses as they are defined in the Wyoming Surface Water Quality Standards. WOC brought such an example to our meeting on October 23, 2014. WDEQ/WQD recommends that WOC submit this and any other such examples, along with the Recreational Use Designations UAA Worksheet found in the Use Attainability Analysis Implementation Policy[5] to WDEQ/WQD for review. WDEQ/WQD can then use this information to determine whether modification of the designated use is appropriate.

It should also be noted that WDEQ/WQD applies surface water designated uses, as identified in the *Categorical UAA*, to "surface waters of the state," as defined in Chapter 1 of the Water Quality Rules and Regulations, Wyoming Surface Water Quality Standards. Surface waters of the State may or may not coincide with "waters of the United States" under the federal Clean Water Act.

Summary

More than seven years have passed since WDEQ/WQD started receiving requests to modify recreation designated uses from the Conservation Districts, many of which have been incorporated into the *Categorical UAA*. More than three years have passed since WDEQ/WQD first identified the *Categorical UAA* project in surface water quality standards outreach documents, and more than one year has passed since WDEQ/WQD first opened the formal public comment period for the *Categorical UAA.* WDEQ's expectation is that organizations and individuals who are interested in providing comments on agency policies, rules, and decisions engage during the comment periods provided by the agency. Not participating during the public process and then requesting another public comment period undermines the public process and the efforts of those who participated in, and provided comments during those opportunities.

Based on the information included in WOC's October 10, 2014 request, WDEQ/WQD does not believe there is sufficient justification to withdraw the August 20, 2014 decision to designate streams in the State for secondary contact recreation based on the *Categorical UAA* and re-open the public comment period. WDEQ/WQD is committed to appropriately designating uses on surface waters in the State and is willing to work with WOC or any other interested party to identify any areas, on a site-specific basis, where primary contact recreation may be an existing or attainable use.

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5 http://deq.state.wy.us/wqd/watershed/Program%20Documents/3.%20Surface%20Water%20Standards/Guidance%20Docs/Chapter_1_Implementation_Policies_Effective_09242013.pdf

If you have any questions or would like guidance on the specific data necessary for designating recreation uses, please contact Lindsay Patterson on my staff at Lindsay.Patterson@wyo.gov or 307-777-7079.

Sincerely,

Kevin Frederick

KF/LP/rm/14-1078

cc: Todd Parfitt, Director, WDEQ
Dave Ross, Attorney General's Office
Jeremiah Rieman, Governor's Office
Shawn McGrath, Administrator, US EPA Region 8