Wyoming
Department of Agriculture

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Wyoming Department of Environmental Quality
Water Quality Division
122 West 25th Street
Herschler Building, 4th Floor-West
Cheyenne, Wyoming 82002

Dear John Wagner:

Following are the comments from the Wyoming Department of Agriculture (WDA) on the Wyoming Department of Environmental Quality's (DEQ) Chapter 1, Surface Water Quality Standards.

Our comments are specific to our mission within state government which is to be dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As this proposal will have major impacts upon our agriculture industry, our natural resources and the welfare of our citizens, we believe it's important that we be kept informed of proposed actions and decisions and that we continue to be provided the opportunity to express pertinent issues and concerns.

We support your efforts in the revisions to Chapter 1 and understand the need for keeping Wyoming's surface waters healthy for all who use them. Water is an important resource for agriculture including watering livestock and irrigating crops. The designation of Primary and Secondary Contact Recreation designations with an off-recreation season allowance, as well as Section 27(d) Variances are positive improvements to Chapter 1. We also back the decision of the E.coli Bacteria testing method versus the Fecal Coliform Bacteria method. We ask you to consider the following suggestions to improve Chapter 1, Water Quality Rules and Regulations and Implementation Policies.

Agricultural/Private Landowners
Wyoming's agricultural producers make significant contributions to the state's economy. Streams found on federal, state, and private lands are important water sources for grazing livestock. Livestock are often erroneously blamed for polluting these streams and causing them to be listed on the state's 303(d) list. According to the Medicine Bow National Forest, Revised Land and Resource Management Plan, on page 1–20, "Grazing in riparian areas is closely monitored and livestock grazing is managed so that all grazed riparian areas are in or moving towards fully functional conditions."

Grazing allotments are an economically important tool for ranchers to use to offset private grazing. The benefits exceed beyond the rancher. High intensity, short duration grazing is used in many of the state's forest grazing allotments and according to Chapter 3, Affected Environment and Environmental Consequences from the USDA Forest Planstates " Livestock grazing can be used as a resource management tool to manipulate the range resource toward a desired condition. Livestock grazing, in addition to

providing forage for livestock, can be used to change the seral stage of the plant community, remove decadent plant growth to rejuvenate forage species, reduce fine fuels, or improve the quality of forage for wildlife."

The natural layout of many allotments is not conducive to fencing off riparian areas, and livestock must have access to water. Off-site water on some allotments has been implemented, which can keep livestock out of the streams. This however has not proven to cure E.coli counts to be low enough to meet EPA standards, possibly signifying other contributors to the stream's impairment such as recreation and wildlife.

Seasonal Variances

We suggest implementing a seasonal variance for streams running through summer grazing allotments. This variance acknowledges the possible short term increase in E.coli levels during high intensity, short duration grazing, but recognizes that after livestock are removed, stream conditions will meet the appropriated recreation standards. DEQ may choose to conduct sampling before and after the grazing period to show the stream has met the standards. Spiked levels of E.coli may be a concern in waters where full body contact is a problem, however most streams in Wyoming are too shallow for swimming and other recreational activities, thus not posing a human health concern.

Two current examples, the Upper Tongue River in the Big Horn National Forest and the Crow Creek in the Medicine Bow National Forest, could both use seasonal variances. These two bodies of water run through grazing allotments and experience a temporary increase in E.coli count. As mentioned above, prescribed grazing can benefit watersheds and ecosystems in the long term, but may seasonally increase E.coli levels in the short term until desired resource conditions are met. The long term water quality benefits of a properly managed grazing system far outweigh a temporary increase in E.coli. Both the Upper North Tongue and Crow Creek are showing an upward trend in upland and riparian conditions due to prescribed grazing practices. Once resource goals are met, E.coli counts should decline given the ability of increased vegetation densities and growth to filter contaminates from all species, including wildlife. It is important to consider the management of all resource values and not just that of water quality in managing entire watersheds.

There are numerous best management practices being installed, some of which may exceed DEQ's water quality standard. The net "environmental benefit" from these management practices may be a higher benefit than meeting the numeric E.coli standards. In Chapter 1, E.coli is considered a major indicator of a healthy stream. There are different strains of E.coli. Some are beneficial, while others have the potential to cause human health hazards. We strongly believe in using good science to develop methods to detect between the various strains of E.coli to aid in water quality analyses.

Primary and Secondary Contact Recreation

The designation of water bodies as either Primary or Secondary Contact Recreation status is important to alleviate any heath hazards to humans and animals. We request you define Primary Contact Recreation in the Proposed Rules, page 1 -7, which would be consistent with the definition of Secondary Contact Recreation. Page 44 definition/designation of Primary Contact Recreation states "intended to apply to those waters where there is a reasonable potential for people to engage in full body contact with the water and/or potential to ingest small quantities." This designation by definition eliminates small creeks and streams from being included as a Primary Contact Recreation. There will not be swimming in streams 1 to 2 feet wide and 6 inches deep. Fishing is not a full body contact recreation. Additionally, private landowners should not be held to the same regime when streams or ponds are entirely on private land. There is no

accessibility to these water bodies, and therefore, regardless of the size or classification, a secondary contact recreation designation should be permitted.

Use Attainability Analysis (UAA) Implementation Policy (Chapter 1, Sections 33 - 34)
We support the use of a UAA, to designate a stream either as Primary or Secondary Contact Recreation. page 45, lines 34 – 35, state "All of these, however, must be supported by a Use Attainability Analysis that provides the rationale for the lower classification. We suggest you change the word "classification" to designation. The classification term is used in Section 4, page 1 – 10 of the Proposed Rules Draft. We have specific questions and concerns regarding the Factors Affecting Recreational Use Designation on pages 46 and 48.

Line 8, states "All waters, regardless of flow regime, located within federal, state or local parks and recreation areas will be designated for primary contact recreation." We disagree with ALL WATERS being designated as primary contact recreation. There are many isolated, high elevation streams which have a significantly unlikely chance of a human having full body contact or ingestion of small quantities. Each body of water should be evaluated on an individual basis and not grouped according to ownership. The same situation may occur in municipalities or high density housing areas on page 14. Many draws or streams are bone dry, except during significant rainfall. Children may play in them, but they also play in street gutters all the time after a rainstorm.

Page 48 under Primary Factors states "Water is a lake, reservoir or other still body of water, or is a stream segment supplying water to a lake, reservoir or impoundment, (exclude small stock watering ponds)." A lot of streams are tributaries to other streams, which eventually make their way to lakes and reservoirs. Realistically, some streams should not be set as a Primary Contact Recreation designation. Stream segments may be designated as secondary or listed on the 303(d), but are not contributing to unsafe E.coli Bacteria levels further down the stream or in a lake. A prime example exists in the Medicine Bow National Forest. The North Branch Crow Creek exceeded the E.coli standards designated by DEQ, however the Middle Fork and South Fork Crow Creek fell below the standards. This proves that each segment of each stream should be given a separate designation, and not be grouped so broadly.

Page 48 also states, "Water is a perennial stream known to support game fish." There are many streams which are too warm or too shallow to permit large game fish population. However, small, young fry are able to live in these streams, but will not attract anglers; hence the stream should be designated as secondary contact recreation.

The designation of many water bodies will be relying heavily on Table A. We disagree with this method. Table A could be used as a starting point for DEQ to designate some of the major recreation water bodies as primary, but as tributaries are considered, a UAA should be created. DEQ is relying heavily on citizens to fill out the UAA. These citizens should not have to defend the designation automatically because of DEQ's neglect. Many of these streams are effluent and do not belong on the primary contact list, but will be designated as such. We want to encourage DEQ to inform all Wyoming residents of the E.coli Bacteria count and recreation designation of each water body in their respective areas. Otherwise, residents will not be made aware of their options until the E.coli counts exceed the limits and the water is placed on the 303(d) list, which then takes 3 years to remove.

Final Suggestions

We appreciate being able to review and comment on the Chapter 1 draft. In addition to Chapter 1, we ask you to consider the following ideas for overall water quality sampling, designation, and consideration. The water bodies are tested a minimum of one time per every three years. It only takes this one occurrence to list a water body on the 303(d) list. Ironically it takes three years of sampling to de-list that same water body. We suggest you require three years to list a water body as impaired and three years to de-list.

We live in a state with many older homes with outdated, unapproved septic tanks which to this day may be emitting sewage into streams and rivers. The Tongue River is an example where this occurs. We urge DEQ to address these homes and completely eliminate old or faulty septic systems, which will be crucial in reducing high E.coli counts on waters designated as Primary Contact Recreation.

Finally, DNA sampling can help water quality specialists find the source of contamination. This method may be in its infancy, but Wyoming should be active in its research and use for future years. There are many contributors to E.coli counts, including deer, elk, beaver, other wildlife and even humans. Many of these streams are next to recreation sites and humans are using these exact sites as outdoor toilets. Others are crisscrossing streams and walking through cattle grazing allotments, tracking cattle manure into creeks and streams. Point is, there are many culprits to a stream's impairment. These culprits need to be identified and appropriate management action taken to minimize or eliminate pollution. We want to make sure we try to eliminate these types of pollutants before ranchers and their livestock are unnecessarily blamed for water degradation, and asked to be removed.

Thank you for the opportunity to comment.

Sincerely,

John Etchepare
Director

JE/jw

Cc: Governor's Planning Office
Wyoming Stock Growers Association
Wyoming Wool Growers Association
Rocky Mountain Farmers Union
Wyoming Association of Conservation Districts
Wyoming Farm Bureau Federation
Wyoming State Grazing Board