
Wyoming's Response to Comments on Wyoming's Draft Methods for Determining Surface Water Quality Condition and TMDL Prioritization

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WYOMING

Overview

The Wyoming Department of Environmental Quality (WDEQ) recently received comments from 5 entities (see Appendix A) during the comment period for Wyoming's Draft Methods for Determining Surface Water Quality Condition and TMDL Prioritization (hereafter referred to as the "Draft Methods") that ended April 2, 2014. WDEQ would like to thank the various entities for their continued interest and involvement in state surface water quality issues and acknowledges the contribution of each to the review and improvement of this document.

The following entities submitted comments:

Entity	Abbreviation
Petroleum Association of Wyoming	PAW
U.S. Environmental Protection Agency	USEPA
Western Watersheds Project	WWP
Wyoming Association of Conservation Districts	WACD
Wyoming Mining Association	WMA
Coalition of Local Governments ¹	CLG

Response to Comments

Entity: PAW
Comment: PAW stated that for **Section 1.2 303(d) Requirements** that..."PAW requests that WDEQ remove the reference to "Threatened Waters" in the second sentence under this section. The second sentence would then say, "Each state must submit a 303(d) List of impaired waters to the EPA by April 1st of each even numbered year".

Section 303(d)(1)(A) of the Clean Water Act states: "Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) **are not stringent enough to implement any water quality standard applicable to such waters.** The State shall establish a priority ranking for such waters. The State shall establish a priority for such waters, taking into account the severity of the pollution and the uses to be made of such waters".

Further, the Glossary contained in the Clean Water Act provides the following definitions for Impaired and Threatened water bodies and the Threatened and Impaired Waters List:

Impaired waterbody: A waterbody (i.e stream reaches, lakes, waterbody segments) with chronic or recurring monitoring violations of the applicable numeric and/or narrative water quality criteria.

Threatened waterbody: Any waterbody of the United States that currently attains water quality standards, but for which existing and readily available data and information on adverse declining trends indicate that water quality standards will likely be exceeded by the time the next list of impaired or threatened waterbodies is required to be submitted to EPA.

¹ CLG's comments were received beyond the April 2, 2014 deadline for the Draft Methods. These comments are available for review in appendix A, but a formal WDEQ response has not been provided.

303(d) Threatened and Impaired Waters List: Under Section 303(d) of the Clean Water Act (CWA) or Act, states, territories, and authorized tribes are required to develop lists of impaired waters every two years (i.e. Section 303(d) list). The states identify all waters where required pollution controls are not sufficient to attain or maintain applicable water quality standards. States are required to establish priorities for development of TMDLs for waters on the 303(d) List (40C.F.R. §130.7(b)(4)).

Section 303(d)(1)(A) does not say that states must identify and report those waters where applicable water quality standards and uses are currently being met, but may be on a declining water quality trend (i.e. Threatened Waters). As such, there is no legal requirement in Section 303(d) requiring the listing of "Threatened Waters", nor the development of a TMDL for those waters.

Section 5 – Categorization of Surface Waters

Category 1. PAW requests that WDEQ remove references to "Threatened Waters" from this category. PAW requests that the description be revised to say, "Available data and/or information indicate that all designated uses are supported". This change would allow Category 1 to be focused on only those waters where all designated uses are supported. PAW requests that "Threatened Waters" be addressed in a separate sub-category, under Category 2, as described below.

Category 2. PAW requests that Category 2 be divided into two separate sub-categories – 2A and 2B. Category 2A would include the current description under Category 2 and read, "Available data and/or information indicate that at least one designated use is supported while one or more uses are either indeterminate or not assessed".

Category 2B would be added and include the description, "Available data and/or information indicate that at least one or more designated uses is threatened and one or more uses is indeterminate. Waters listed as threatened will not be added to the 303(d) list, but may receive enhanced monitoring to better understand water quality trends."

Category 5. PAW requests that the verbiage "or is threatened" be removed from the first sentence of this category description. The Category 5 description would then read: "Available data and/or information indicated that at least one designated use is not being supported. Category 5 waters are added to Wyoming's 303(d) List of impaired waters requiring TMDLS. Each pollutant/segment combination is considered a separate 303(d) Listing. For example, if the aquatic life other than fish use on a stream segment is impaired due to copper, sediment, and selenium, these three pollutants would be considered three separate 303(d) Listings."

PAW requests that the WDEQ consider having only one listing for a stream segment, no matter how many pollutants are causing the impairment. The 303(d) list would still identify each pollutant causing the impairment and a separate TMDL would be developed for each pollutant/segment combination or listing, as required by Section 303(d) of the Clean Water Act as described under **Section 1.2** of this Policy. This change would shorten the 303(d) List and would better depict the number of water bodies/stream segments that are actually impaired in the State of Wyoming.

In summary, the above proposed changes to **Section 5** would not require the WDEQ to list "Threatened Waters" on the 303(d) list, nor develop a TMDL for those waters. The Clean Water Act does not require "Threatened Waters" to be listed on the 303(d) list, nor

the development of a TMDL for those water designated as "Threatened". These changes would also allow the WDEQ to concentrate resources and TMDL development to waters that are actually "Impaired". The proposed changes would also more clearly depict the number of water bodies, including individual stream segments that are actually impaired, by not including multiple listings of the same water body/stream segment, even though multiple pollutants may be the cause of the impairment.

Section 6 – Guidelines for De-listing Section 303(d) Listed Waters

PAW requests that "Threatened Waters" be removed from the inclusion in this section. For the reasons discussed above, PAW believes that only "non-supporting (i.e. impaired)" waters should be included on the 303(d) list and that development of TMDLs for "Threatened Waters" is neither necessary nor required by Section 303(d) of the Clean Water Act. Adding or keeping "Threatened Waters" on the 303(d) list will strain limited WDEQ resources that must be allocated to TMDL development. In the event that too many waters are retained in the 303(d) list, the WDEQ will leave them exposed to legal challenge, should these TMDLs not be completed in a timely manner. Based on **Section 7 – TMDL Prioritization**, it is likely that "Threatened Waters" would generally have a lower TMDL priority ranking simply because "Impaired Waters" would, in most cases, pose a greater human or environmental health risk. It is also likely that "Threatened Waters" could stay on the 303(d) list for some time, thus inviting legal challenge from third party entities.

Response: The five part categorization system used by WDEQ is advocated by USEPA and is widely used by states. The primary purpose of this system is to consistently translate state level water quality assessment decisions into a standardized format for EPA's national reporting purposes. EPA's categorization system has been used by Wyoming for many years and it has proven to be a simple, yet very effective means for categorizing surface water quality assessment decisions.

[USEPA's Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303\(d\), 305\(b\) and 314 of the Clean Water Act](#) states on page 59 that "states must include threatened segments in Category 5 where appropriate. EPA's regulations implementing CWA section 303(d) includes, [40 CFR 130.7\(b\)](#), states that "Each State shall identify those water quality limited segments still requiring TMDLs within its boundaries..." The definition of "water quality limited segment" at 40 CFR 130.2(j), includes waters "not expected to meet applicable water quality standards," which EPA refers to as "threatened" waters. EPA regulations therefore require that waters with one or more threatened uses be included on Wyoming's 303(d) List. Therefore, the categorization descriptions in Section 5 of the Draft Methods that mention threatened waters will be retained to be consistent with EPA regulations and guidance.

Changing the 303(d) List format to include only one row for each assessed stream segment or waterbody may shorten the 303(d) List. However, this would require that multiple uses, multiple designated use support determinations (non-support and threatened), multiple listing dates, multiple TMDL initiation dates, causes and sources would need to occur together for each assessed stream segment or waterbody. WDEQ used this format within the 303(d) List through the 2008 Integrated 305(b) and 303(d) Report. In 2010, each 303(d) Listing was separated within the 303(d) List to lessen confusion for the public, WDEQ and USEPA.

Entity: PAW

Comment: PAW stated that "The first sentence in the second paragraph of **Section 6** states, "The data requirements for demonstrating that a water has been restored and should be de-

listed are intended to be more stringent than those necessary to add a water to the 303(d) List". PAW disagrees with this fundamental logic. It is PAW's belief that the listing and de-listing criteria and associated data requirements should be equal. This would keep the playing field level. If the criteria to de-list are more stringent than the criteria to list a water body, it appears that this would be a disincentive for stakeholders to restore that water body, due to the higher threshold for de-listing. If the water body is meeting the standards and designated uses, that should be the threshold for de-listing. Requiring water quality above the minimum standards assigned to a particular water class, as a requirement for de-listing, will add an element of confusion to the entire listing/de-listing process. If the listing criteria are the same, it would lessen the possibility of too many waters being listed vs. available WDEQ resources to develop TMDLs, and lessen the opportunities for subsequent legal challenge."

Response: WDEQ uses a conservative approach when delisting waters for pollutants related to recreational, drinking water and fish consumption uses to protect public health. The text on page 19 of the Draft Methods which states... *The data requirements for demonstrating that a water has been restored and should be de-listed are intended to be more stringent than those necessary to add a water to the 303(d) List...* should only refer to waters listed for exceeding recreational, drinking water and fish consumption use criteria. To correct this mistake, the text has been changed to.... *In an effort to protect public health, the data requirements for removing waters listed for exceeding recreational, drinking water and fish consumption use criteria are intended to be greater than those necessary to add a water to the 303(d) List. The data requirements for listing and delisting waters for pollutants on all other uses are equivalent.*

Entity: USEPA

Comment: USEPA stated that "1) For the purposes of the 2014 Integrated Report, the assessment for the recreational use (pages 13-14, Section 4.5) should be based on the 30-day geometric mean *E. coli* concentrations. Pursuant to 40 CFR Section 131.21 (the "Alaska Rule), new and revised standards submitted to EPA after May 30, 2000 do not go into effect for Clean Water Act purposes until approved by EPA. Since the revision to the averaging period has not yet been approved, the 30-day average standard remains in effect.

2) On page 5, paragraph 2, it is stated when data must be received for use in the 2014 Integrated Report, which was July 15, 2013. The newly proposed changes to WDEQ's assessment methodology for recreational use attainment determinations result in data collected under the previous assessment methods and in accordance with WDEQ's requirements that were in effect on July 15, 2013, to no longer be acceptable for consideration in listing decisions. It is the WQU's view that data that were collected in good faith in accordance with the previous assessment methodology and per WDEQ's requirements for data acceptability should be considered for impairment determinations for the 2014 IR cycle. Specifically, The WQU believes that in order to assess for the recreational use (pages 13-14, Section 4.5) samples collected appropriately during a thirty day period as previously required by WDEQ should be considered. The public should be allowed to comment on and be aware of a methodology before it goes into effect if it impacts the usability of the data they are collecting for this purpose."

Response: WDEQ's current version of Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization (Document #13-0352) continues to be used to evaluate all water quality data toward use support determinations. Once the revised Draft Methods is finalized, an effective date will be determined, and all data collected beyond this date will be evaluated using the revised policy.

Entity: USEPA
Comment: USEPA stated that "3) The WQU has concerns regarding the very rigid interpretation of the *E. coli* criteria as described in Section 4.5 (Recreation). EPA's new *E. coli* criteria do not specify a spacing regime for samples to obtain a geometric mean and it is reasonable to require some representative spacing of samples. However, requiring at least 10 days between each sample creates difficulty for those sampling to meet this methodology. This spacing requirement could be considered onerous and possibly prohibitive to implementing the standard. The WQU would encourage adopting less prescriptive method for achieving representative samples and there are likely many other ways to achieve representativeness. However, it is also the WQU's view that 5 samples collected within a time frame less much less than 60 days could potentially be enough for a listing even under this new standard, as long as the samples were representative of the condition."

Response: WDEQ changed the contact recreational use criteria from 30 to 60 days in the most recent (effective September 24th, 2013) revision of Chapter 1 of Wyoming's Water Quality Rules and Regulations (hereafter referred to as Chapter 1). As stated on pages 13 and 14 of the Draft Methods... *Because E. coli concentrations can be highly variable, these criteria are based on a 60 day geometric mean of E. coli samples.* This change in duration was intended to identify waters with chronic bacterial pollution problems, rather than those that have short term or isolated instances of elevated bacteria. WDEQ decided to require a minimum of 5 samples in an effort to reduce resource burden on those collecting samples. However, as stated on page 14 of the Draft Methods, *WDEQ recommends collecting more than five samples when resources allow.* Further, WDEQ decided that these 5 samples must be separated by at least 10 days to be temporally representative of the entire 60 day period.

Entity: WWP
Comment: WWP stated that "Page 6 states that "numeric water quality standards shall be enforced at all times except during period of below low flow" which the document defines as "drought". Drought occurs throughout Wyoming, on average 6 years out of every 10. In other words, drought is the norm not the exception. Merely using "drought" as an exemption of all numeric criteria does not comply with the Clean Water Act regulations."

Response: As stated on pages 6-7 of the draft WY Methods for Determining Surface Water Quality Condition and TMDL Prioritization...*Section 11 of Chapter 1 states that numeric water quality standards shall be enforced at all times except during periods below low flow. For the purpose of designated use support determinations, the periods below low flow described in Section 11 refer to natural low flow conditions caused by drought. Low flow can be demonstrated using methods described in Section 11(i), (ii) and (iii) of Chapter 1. WDEQ often reviews streamflow data before making designated use support determinations using numeric criteria.* As stated in Section 11(c) of Chapter 1, *the narrative water quality standards in Sections 14, 15, 16, 17, 28 and 29(b) of these regulations shall be enforced at all stream-flow conditions.*

[USEPA's Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303\(d\), 305\(b\) and 314 of the Clean Water Act](#) supports this approach, stating on page 36 that... "However, disregarding valid data gathered during extreme conditions (e.g., significant droughts or floods) can be appropriate if applicable state's WQS include a provision specifying that some or all WQC do not apply during certain rare events, such a 7Q10 low (or high) stream flow. Also, data collected at certain times of years could legitimately be disregarded when making use support status determinations based on seasonal WQC – ones that apply only to times of year other than that when these particular data were collected."

Entity: WWP
Comment: WWP stated that "As we have brought up before, the section on turbidity does little to provide direction for listing decisions for turbidity. We have provided turbidity data in the past, none of which was used for listing. This section needs to more clearly define what the DEQ wants for listing than just "weight of evidence".
Response: As is stated on page 7 of the Draft Methods, *WDEQ requires that credible data and a weight of evidence approach be used to make designated use support determinations with turbidity data.* The 10 and 15 NTU increases described in Section 23 of Chapter 1 refer to increases above natural background conditions for a given site and stream. Turbidity is expected to naturally vary spatially and temporally within and between watersheds based on a variety of natural factors; for example, location within a watershed, season, hydrology and geology. Turbidity can increase above natural background concentrations due to physical disturbance such as bank erosion, irrigation return flows and on-channel construction projects. Given the potential for natural variability, studies designed to assess the effects of turbidity on fisheries and drinking water uses must be thorough and include more than turbidity measurements to determine whether fisheries or drinking water designated uses are impacted by suspended sediment. WWP submitted single sample turbidity measurements to WDEQ for the 2012 and 2014 Integrated 305(b) and 303(d) Report cycles. It is unknown whether the observed turbidity measurements were above the expected natural conditions, and if so, whether aquatic communities or drinking water supply designated uses were not supported as a result.

Entity: WWP
Comment: WWP stated that "Temperature is a critical component of fisheries use support but no direction is provided for listing streams for temperature. For instance, we have provided continuous temperature logger data that showed temperature exceedances in multiple years (not fully supporting definition) yet the data was not used for listing. Further clarification is needed on the issue."
Response: Section 25 (a) of Chapter 1 states that....*For Class 1, 2 and 3 waters, pollution attributable to the activities of man shall not change ambient water temperatures to levels which result in harmful acute or chronic effects to aquatic life, or which would not fully support existing and designated uses.* [WY's Methods for Determining Surface Water Quality Condition and TMDL Prioritization](#) (Document #13-0352) states on page 9, **Section 4.2 Fisheries** that...*Evaluations of numeric criteria for non-toxic pollutants may or may not require the use of credible data.* WDEQ has routinely required credible data and other information and a weight of evidence approach when evaluating water temperature, dissolved oxygen and pH data.

WDEQ added clarifying language to page 10, **Section 4.2 Fisheries** of the Draft Methods that states...*Dissolved oxygen, water temperature and pH and can be influenced by a variety of other water quality pollutants, such as sedimentation and nutrient enrichment. Sections 24, 25 and 26 specify that for Class 1, 2 and 3 waters, anthropogenic pollution shall not be present in quantities that would change dissolved oxygen, temperature and pH to levels that would adversely affect aquatic life or impair designated uses. WDEQ uses a weight of evidence approach to determine whether any of these three pollutants are causing an impairment to fisheries or aquatic life other than fish uses and whether the source(s) are anthropogenic or natural. This process includes an evaluation of representative credible data and information.*

WWP's 2012 Integrated 305(b) and 303(d) Report data submission contained only instantaneous water temperature measurements collected during the summer of 2010.

In addition to other credible data, WDEQ requires temperature data to be collected in at least 2 years of a 3 year period to make fisheries designated use support determinations. Therefore the WWP temperature data is insufficient for making designated use support determinations. WWP's 2014 Integrated 305(b) and 303(d) Report data submission contains two years (2012-2013) of instantaneous water temperature data for two study sites; sites include "Upper Coal Creek" and "EF Coal Creek". However, in reviewing these data, WDEQ noted that the sites for each creek were located in significantly different locations between the two years. Indeed, the upper Coal Creek sites and the East Fork Coal Creek sites were separated by approximately 134 feet and 362 feet, respectively. These distance estimates are simple linear distances between the sites and would have been much greater if they were calculated by measuring the distance along the stream channel in such a highly meandering system. The habitats represented by these WWP data certainly represent very different locations along each creek and may also represent different habitat types (i.e. glide, riffle, run or pool or) as well. It is inappropriate to combine data representing multiple site locations using a single site name.

Entity: WWP

Comment: WWP stated that..."In Section 4.5, the DEQ is proposing to require a 60 day geometric mean with each sample separated by a minimum of 10 days. The result is that, in frequent cases, samples will show very high levels of e. coli over a shorter period, say 30 days, that do not support designated recreation use, but when minimized with a geometric mean over 60 days would be fully supporting under the proposed language. While the proposed language is excellent for eliminating listings for e. coli, it does not provide for recreation use support or complying with Section 3(e). For instance, let's say there are 10 samples in a 60 day period, the geomean for the first 30 days is 1670 cfu and the geomean over the full 60 days is 125 cfu, how is the proposed requirement protecting my recreational use (human health) during that first 30 day period? It is not."

Response: WDEQ changed the durations of the primary and secondary contact recreational criteria in Chapter 1 from 30 to 60 days in the most recent revision of Chapter 1 (effective September 24th, 2013). The purpose of extending the duration of these criteria was to increase confidence that waters being added to the 303(d) List for non-support of contact recreation have chronic rather than short term, or episodic *E. coli* pollution issues. WDEQ's expectation is that these revised criteria will greatly increase the accuracy of *E. coli* 303(d) Listing decisions. This increased accuracy will in turn result in the more effective use of resources for watershed restoration efforts.

Whether an exceedance is more likely to occur during a 30 or 60 day period depends on many factors; for example, source(s), periodicity of contamination, climate and hydrology which will be different for each watershed being studied. The last paragraph on Page 14 of the Draft Methods states that... *Section 27(c) of Chapter 1 lists the single sample maximum E. coli concentrations that can be used to post recreational use advisories or to derive single-sample maxima on point source discharges. The single-sample maxima cannot be used to assess recreational designated use support; however, an exceedance of the single-sample maximum (235 organisms per 100 milliliters) for high use swimming areas during the summer recreational season (May 1 - September 30) may be used to post recreational use advisories. High use swimming areas include swimming beaches, public reservoirs and other popular recreational areas. WDEQ does not typically post recreational use advisories on surface waters with moderate, light or infrequent full body contact recreation.* This single sample maximum value allows recreational use advisories to be posted in a timely manner to protect human health. Conversely, use support determinations that occur on a biennial basis for the Integrated Report do not provide sufficient timeliness to notify the public of human health concerns.

Entity: WWP
Comment: WWP stated that "Section 4.9 requires the use of "credible data" for "scenic value" determinations, but the document fails to provide any information as to why "credible data" is needed for "scenic value" determinations or how such data would be used. This does not clarify how to list for "scenic value" but makes it even more murky."
Response: As is stated on page 5 of the draft WY Methods for Determining Surface Water Quality Condition and TMDL Prioritization..."[The Wyoming Environmental Quality Act \(WDEQ, 2012\)](#), Wyoming Statute (W.S.) § 35-11-103(c)(xix), and Section 2(a)(i) of Chapter 1 define credible data as *scientifically valid chemical, physical and biological monitoring data collected under an accepted sampling and analysis plan including quality control, quality assurance procedures and available historical data*. Section 35(b) of Chapter 1 requires that *credible data be collected on each water body, and shall be considered for purposes of characterizing the integrity of the water body including consideration of soil, geology, hydrology, geomorphology, climate, stream succession and the influences of man upon the system. These data in combination with other available and applicable information shall be used through a weight-of-evidence approach to designate uses and determine whether those uses are being attained*. Chapter 1, Section 35(d) requires that *credible data shall be utilized in determining a water body's attainment of designated uses*, although a less than complete set of data may be used to make a decision on designated use support (i.e. attainment) *in instances where numerical standards contained in these rules are exceeded or on ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible* (Chapter 1, Section 35(b))." Because all three of the criteria (Sections 15, 16 and 17 of Chapter 1) that can be used to evaluate the scenic value designated use support are narrative, they require credible data and must be evaluated using a weight of evidence approach. A variety of factors could influence the scenic value of a water, including such things as *odor, color, taste, settleable solids, floating solids, suspended solids, and solid waste*. The data necessary to assess scenic value designated use support will be determined on a case by case basis by WDEQ during SAP development.

Entity: WWP
Comment: WWP stated that "(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;"
Response: Comment noted.

Entity: WACD
Comment: WACD stated for **Page 4; 2. Data Requirements** that..."WACD supports the inclusion of the federal regulatory language pertaining to the type of data and information to be considered."
Response: Comment noted.

Entity: WACD
Comment: WACD stated for **Page 5-6; Credible data** that "WACD supports the modifications to this section and the inclusion of the specific QA/QC requirements and SAP requirements. This information is important to meet the intent and requirements of the credible data statute and rule. WACD would appreciate the opportunity to coordinate with DEQ on the audit provisions within this section specifically as it pertains to Conservation Districts. The WACD will be accelerating field audits of Conservation District programs, utilizing independent 3rd party approach and would like to ensure that we are coordinating with DEQ."
Response: Comments noted.

Entity: WACD
Comment: WACD stated for **Page 5-6; Credible data** that "WACD would suggest that under the SAP required content language the following language be included: "If access to sites located on public land requires crossing private property, permission to access has been obtained." WACD would also suggest that some consideration be given to sampling being done on public lands that is static in nature, i.e. temperature loggers, etc. Will demonstration that authorization to place permanent equipment in streams be required?"
Response: During SAP review, WDEQ will verify, using GIS software, the locations of study sites. For sites that occur on State, National Park Service or private lands, WDEQ requires that entities provide documentation that indicates that permission to sample these sites has been obtained. Entities will also be required to provide maps showing the travel routes used to access each study site during SAP development. When travel routes cross private property where there is no public right of way, the entity must provide verification that landowner access has been granted by each landowner. WDEQ recommends that all entities coordinate with land management agencies prior to collecting data on USFS and BLM lands to ensure that they have obtained the proper authorization. This is particularly important for entities that plan to install in-situ water quality monitoring equipment such as temperature loggers.

Entity: WACD
Comment: WACD stated for **Page 13-14; 4.5 Recreation;** that "WACD supports the modification to a 60 day sampling time frame as modified in Chapter 1 and further supports the requirement include the 10 day sample events. This will help in ensuring that samples are collected over more the contact recreation season. Nearly all Districts have a sampling program that includes more frequent sampling schedules. WACD appreciates the inclusion of language that allows for more robust sampling."
Response: Comments noted.

Entity: WACD
Comment: WACD stated for **Page 17; 5 Categorization of Surface Waters; Category 4C.** that "WACD appreciates the inclusion of new language under this category clarifying the difference between "pollutants" versus "pollution" and the protection of water rights. WACD requests that further discussions on how to address and categorize waters affected due to flow modifications occur in the next year. As this issue has developed, it will be important to evaluate the potential implications statewide and develop an approach that incorporates and accounts for the concerns of water right holders."
Response: WDEQ/WQD has incorporated language into the Draft Methods that reemphasizes and elaborates on how the Clean Water Act, the Wyoming Environmental Quality Act and Wyoming's Water Quality Rules and Regulations are not to interfere with the authority of Wyoming (specifically the Wyoming State Engineers Office and Board of Control) to allocate water for beneficial uses. Furthermore, WDEQ understands that some flow altered systems would not be expected to meet their full designated uses under the existing management of flows. Therefore, WDEQ will be exploring potential changes to policies and rules/regulations to better reflect the designated use expectations of flow altered systems. WDEQ anticipates that stakeholders will be involved in these discussions.

Entity: WMA
Comment: WMA stated that "Page 4, Introduction paragraph: The U.S. Environmental Protection Agency (USEPA) link is incorrect. WMA believes the proper link should be: <http://www2.epa.gov/region8/region-8-water-home-page>."
Response: WDEQ has repaired the broken USEPA hyperlink on page 4, paragraph 1.

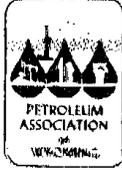
Entity: WMA

Comment: WMA stated that "Page 19 Section 6, Guidelines for De-Listing Section 303(d) Listed Waters: Under the categories (Drinking water, Fisheries Aquatic Life other than fish, etc.), various sections under "Chapter 1" are listed. While it could be assumed that these are referencing Chapter 1 of the WDEQ Water Quality Rules and Regulation, this is not specifically stated. The 2nd paragraph of the section refers to the *general guidelines*. WMA believes clarification is necessary as to what these sections are referring to."

Response: WDEQ has clarified the language on page 19, Section 6 by changing the term Chapter 1 to Chapter 1 of the Wyoming Water Quality Rules and Regulations.

Appendix A

Public Comment on Wyoming's Draft Methods for Determining Surface Water Quality Condition and TMDL Prioritization



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March 31, 2014

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Re: Comments on Draft Document - *Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization*

Dear Mr. Thorp:

The Petroleum Association of Wyoming (PAW) would like to take this opportunity to provide comments to the Wyoming Department of Environmental Quality (WDEQ) Water Quality Division (WQD) concerning the proposed revisions to the draft policy *Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization*. PAW is Wyoming's largest oil and gas trade association. PAW members produce over 90% of the natural gas and 80% of the crude oil in the state and have a vested interest in the policies, rules and regulations administered by the WDEQ.

PAW would like to commend the WDEQ for doing a good job in clearly setting out the listing, de-listing, and TMDL prioritization process in the draft document. PAW also appreciates the WDEQ's efforts toward keeping the document as simple, concise, and reader friendly as possible given the extreme complexities of the Clean Water Act which regulates the restoration and/or maintenance of Wyoming's and the nation's surface water quality.

Section 1.2 303(d) Requirements

PAW requests that WDEQ remove the reference to 'Threatened Waters' in the second sentence under this section. The second sentence would then say, "Each state must submit a 303(d) List of impaired waters to the EPA by April 1st of each even numbered year".

Section 303(d)(1)(A) of the Clean Water Act states: "Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) **are not stringent enough to implement any water quality standard applicable to such waters.** The State shall establish a priority ranking for such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters".

Further, the Glossary contained in the Clean Water Act provides the following definitions for Impaired and Threatened water bodies and the 303(d) Threatened and Impaired Waters List:

Impaired waterbody: A waterbody (i.e., stream reaches, lakes, waterbody segments) with **chronic or recurring monitored violations of the applicable numeric and/or narrative water quality criteria.**

Threatened waterbody: Any waterbody of the United States that currently attains water quality standards, but for which existing and readily available data and information on **adverse declining trends indicate that water quality standards will likely be exceeded** by the time the next list of impaired or threatened waterbodies is required to be submitted to EPA.

303(d) Threatened and Impaired Waters List: Under Section 303(d) of the Clean Water Act (CWA) or Act, states, territories, and authorized tribes are required to **develop lists of impaired waters every two years (i.e., Section 303(d) list).** The states identify all waters where required pollution controls are not sufficient to attain or maintain applicable water quality standards. States are required to establish priorities for development of TMDLs for waters on the 303(d) List (40C.F.R. §130.7(b)(4)).

Section 303(d)(1)(A) **does not say** that states must identify and report those waters where applicable water quality standards and uses are currently being met, but may be on a declining water quality trend (i.e. Threatened Waters). As such, there is no legal requirement in Section 303(d) requiring the listing of 'Threatened Waters', nor the development of a TMDL for those waters.

Section 5 – Categorization of Surface Waters

Category 1. PAW requests that WDEQ remove the reference to 'Threatened Waters' from this category. PAW requests that the description be revised to say, "Available data and/or information indicate that all designated uses are supported". This change would allow Category 1 to be focused on only those waters where all designated uses are fully supported. PAW requests that 'Threatened Waters' be addressed in a separate sub-category, under Category 2, as described below.

Category 2. PAW requests that Category 2 be divided into two separate sub-categories - 2A and 2B. Category 2A would include the current description under Category 2 and read, "Available data and/or information indicate that at least one

designated use is supported while one or more uses are either indeterminate or not assessed".

Category 2B would be added and include the description, "Available data and/or information indicate that at least one or more designated uses is threatened and one or more designated uses is indeterminate. Waters listed as threatened will not be added to the 303(d) list, but may receive enhanced monitoring to better understand water quality trends".

Category 5. PAW requests that the verbiage "or is threatened" be removed from the first sentence of this category description. The Category 5 description would then read: "Available data and/or information indicated that at least one designated use is not being supported. Category 5 waters are added to Wyoming's 303(d) List of impaired waters requiring TMDLs. Each pollutant/segment combination is considered a separate 303(d) Listing. For example, if the aquatic life other than fish use on a stream segment is impaired due to copper, sediment, and selenium, these three pollutants would be considered three separate 303(d) Listings."

PAW requests that the WDEQ consider having only one listing for a stream segment, no matter how many pollutants are causing that impairment. The 303(d) list would still identify each pollutant causing the impairment and a separate TMDL would be developed for each pollutant/segment combination or listing, as required by Section 303(d) of the Clean Water Act and as described under **Section 1.2** of this Policy. This change would shorten the 303(d) list and would better depict the number of water bodies/stream segments that are actually impaired in the State of Wyoming.

In summary, the above proposed changes to **Section 5** would not require the WDEQ to list 'Threatened Waters' on the 303(d) list, nor develop a TMDL for those waters. The Clean Water Act does not require 'Threatened Waters' to be listed on the 303(d) list, nor the development of a TMDL for those waters designated as 'Threatened'. These changes would also allow the WDEQ to concentrate resources and TMDL development to waters that are actually 'Impaired'. The proposed changes would also more clearly depict the actual number of water bodies, including individual stream segments that are actually impaired, by not including multiple listings of the same water body/stream segment, even though multiple pollutants may be the cause of that impairment.

Section 6 – Guidelines for De-listing Section 303(d) Listed Waters

PAW requests that 'Threatened Waters' be removed from inclusion in this section. For the reasons discussed above, PAW believes that only 'non-supporting (i.e. impaired)' waters should be included on the 303(d) list and that development of TMDLs for 'Threatened Waters' is neither necessary nor required by Section 303(d) of the Clean Water Act. Adding or keeping 'Threatened Waters' on the 303(d) list will strain limited WDEQ resources that must then be allocated to TMDL development. In the event that too many waters are retained in the 303(d) list, the WDEQ will leave them exposed to legal challenge, should these TMDLs not be completed in a timely manner. Based on

Section 7 – TMDL Prioritization, it is likely that 'Threatened Waters' would generally have a lower TMDL priority ranking simply because 'Impaired Waters' would, in most cases, pose a greater human or environmental health risk. It is also likely that 'Threatened Waters' could stay on the 303(d) list for some time, thus inviting legal challenge from third party entities.

The first sentence in the second paragraph of **Section 6** states, "The data requirements for demonstrating that a water has been restored and should be de-listed are intended to be more stringent than those necessary to add a water to the 303(d) List". PAW disagrees with this fundamental logic. It is PAW's belief that the listing and de-listing criteria and associated data requirements should be equal. This would keep the playing field level. If the criteria to de-list are more stringent than the criteria to list a water body, it appears that this would be a disincentive for stakeholders to work to restore that water body, due to the higher threshold for de-listing. If the water body is meeting the standards and designated uses, that should be the threshold for de-listing. Requiring water quality above the minimum standards assigned to a particular water class, as a requirement for de-listing, will add an element of confusion to the entire listing/de-listing process. If the listing and de-listing criteria are the same, it would lessen the possibility of too many waters being listed vs. available WDEQ resources to develop TMDLs, and lessen the opportunities for subsequent legal challenge.

PAW appreciates the opportunity to comment on the Draft Policy for *Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization*.

If you have any questions, please do not hesitate to contact me at via e-mail at john@pawyo.org.



John Robitaille
Vice President



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8EPR-EP

April 1, 2014

Richard Thorp
WDEQ-WQD
Herschler Building 4-W
122 W. 25th St.
Cheyenne, WY 82002

Re: Comments on Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization

Dear Mr. Thorp:

The Environmental Protection Agency (EPA) Region 8 Water Quality Unit (WQU) is providing the following comments on the draft Methods for Determining Surface Water Quality Condition and TMDL Prioritization:

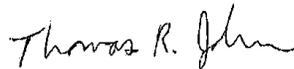
1) For purposes of the 2014 Integrated Report, the assessment for the recreation use (pages 13-14, Section 4.5) should be based on the 30-day geometric mean *E. coli* concentrations. Pursuant to 40 CFR Section 131.21 (the "Alaska Rule"), new and revised standards submitted to EPA after May 30, 2000 do not go into effect for Clean Water Act purposes until approved by EPA. Since the revision to the averaging period has not yet been approved, the 30-day average standard remains in effect.

2) On page 5, paragraph 2, it is stated when data must be received for use in the 2014 Integrated Report, which was July 15, 2013. The newly proposed changes to WDEQ's assessment methodology for recreational use attainment determinations result in data collected under the previous assessment methods and in accordance with WDEQ's requirements that were in effect on July 15, 2013, to no longer be acceptable for consideration in listing decisions. It is the WQU's view that data that were collected in good faith in accordance with the previous assessment methodology and per WDEQ's requirements for data acceptability should be considered for impairment determinations for the 2014 IR cycle. Specifically, the WQU believes that in order to assess for the recreation use (pages 13-14, Section 4.5) samples collected appropriately during a thirty-day period as previously required by WDEQ should be considered. The public should be allowed to comment on and be aware of a methodology before it goes into effect if it impacts the usability of the data they are collecting for this purpose.

3) The WQU has concerns regarding the very rigid interpretation of the *E. coli* criteria as described in Section 4.5 (Recreation). EPA's new *E. coli* criteria do not specify a spacing regime for samples to obtain a geometric mean and it is reasonable to require some representative spacing of samples. However, requiring at least 10 days between each sample creates considerable difficulty for those sampling to meet this methodology. This spacing requirement could be considered onerous and possibly prohibitive to implementing the standard. The WQU would encourage adopting a less prescriptive method for achieving representative samples and there are likely many other ways to achieve representativeness. However, it is also the WQU's view that 5 samples collected within a time frame less much less than 60 days could potentially be enough for a listing even under this new standard, as long as those samples were representative of the condition.

EPA is not required to approve or disapprove the assessment methodology, but we are providing comments since it impacts the listing or delisting of waters, which do require action from EPA. If you have questions regarding these comments, please feel free to call me at 303-312-6226 or email me at johnson.tom@epa.gov.

Sincerely,



Thomas R. Johnson
Environmental Scientist
Ecosystems Protection Program



Printed on Recycled Paper



**Western
Watersheds
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Wyoming Office
PO Box 1160
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Tel: (877) 746-3628
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Email: Wyoming@WesternWatersheds.org
Web site: www.WesternWatersheds.org

Working to protect and restore Western Watersheds

Richard Thorp
DEQ
122 West 25th St, Herschler Building
Cheyenne, WY 82002

April 1, 2014

Dear Richard,

The following are WWP's comments on the proposed Methods for Determining Surface Water Quality Condition and TMDL Prioritization.

Page 6 states that "numeric water quality standards shall be enforced at all times except for during period of below low flow" which the document defines as "drought". Drought occurs throughout Wyoming, on average 6 years out of every 10. In other words, drought is the norm not the exception. Merely using "drought" as an exemption of all numeric criteria does not comply with the Clean Water Act regulations.

As we have brought up before, the section on turbidity does little to provide direction for listing decisions for turbidity. We have provided turbidity data in the past, none of which was used for listing. This section needs to more clearly define what the DEQ wants for listing than just 'weight of evidence'.

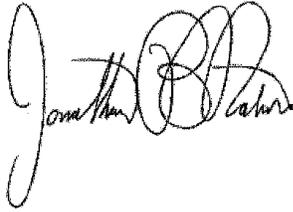
Temperature is a critical component of fisheries use support but no direction is provided for listing streams for temperature. For instance, we have provided continuous temperature logger data that showed temperature exceedances in multiple years (not fully supporting definition) yet the data was not used for listing. Further clarification is needed on this issue.

In Section 4.5, the DEQ is proposing to require a 60 day geometric mean with each sample separated by a minimum of 10 days. The result is that, in frequent cases, samples will show very high levels of e. coli over a shorter period, say 30 days, that do not support designated recreation use, but when minimized with a geometric mean over 60 days would be fully supporting under the proposed language. While the proposed language is excellent at eliminating listings for e. coli, it does not provide for recreation use support or complying with Section 3(e). For instance, let's say there are 10 samples in a 60 day period, the geomean for the first 30 days is 1670 cfu and the geomean over the full 60 days is 125 cfu, how is the proposed requirement protecting my recreational use (human health) during that first 30 day period? It is not.

Section 4.9 requires the use of "credible data" for "scenic value" determinations, but the document fails to provide any information as to why "credible data" is needed for "scenic value" determinations or how such data would be used. This does not clarify how to list for "scenic value" but makes it even more murky.

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

If you would like to discuss these issues further, please contact me,

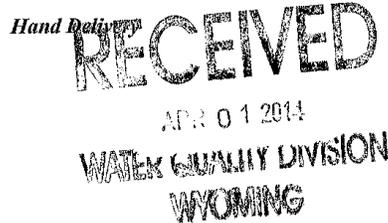
A handwritten signature in black ink, appearing to read "Jonathan B. Ratner". The signature is stylized and cursive.

Jonathan B Ratner
Director – Wyoming Office



Wyoming Association of Conservation Districts
517 E. 19th Street - Cheyenne, WY 82001 - Phone: 307-632-5716 - Fax: 307-638-4099
www.conservewy.com

April 1, 2014



Richard Thorpe
Wyoming Department of Environmental Quality
Herschler Building, 4-W
122 West 25th Street
Cheyenne, WY 82002

RE: Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization; 3/3/2014

Dear Richard,

The Wyoming Association of Conservation Districts appreciates the opportunity to provide comments and input on the above referenced document.

Page 4; 2. Data Requirements

WACD supports the inclusion of the federal regulatory language pertaining to the type of data and information to be considered.

Page 5-6; Credible data

Comment: WACD supports the modifications to this section and the inclusion of the specific QA/QC requirements and SAP requirements. This information is important to meet the intent and requirements of the credible data statute and rule. WACD would appreciate the opportunity to coordinate with DEQ on the audit provisions within this section specifically as it pertains to Conservation Districts. The WACD will be accelerating field audits of Conservation District programs, utilizing independent 3rd party approach and would like to ensure that we are coordinating with DEQ.

WACD would suggest that under the SAP required content language the following language be included: "If access to sites located on public land requires crossing private property, permission to access has been obtained."

WACD would also suggest that some consideration be given to sampling being done on public lands that may include the use of equipment that is static in nature, i.e. temperature loggers, etc. Will demonstration that authorization to place permanent equipment in stream be required?

Page 13-14; 4.5 Recreation;

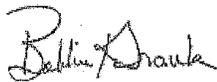
COMMENT: WACD supports the modification to a 60 day sampling time frame as modified in Chapter 1 and further supports the requirement include the 10 day separation of sample events. This will help in ensuring that samples are collected over more the contact recreation season. Nearly all Districts have a

sampling program that includes more frequent sampling schedules. WACD appreciates the inclusion of language that allows for more robust sampling.

Page 17; 5. Categorization of Surface Waters; Category 4C.

COMMENT: WACD appreciates the inclusion of new language under this category clarifying the difference between "pollutants" versus "pollution" and the protection of water rights. WACD requests that further discussions on how to address and categorize waters affected due to flow modifications occur in the next year. As this issue has developed, it will be important to evaluate the potential implications statewide and develop an approach that incorporates and accounts for the concerns of water right holders.

Sincerely,



Bobbie K. Frank
Executive Director

cc: Wyoming's Conservation Districts
WACD Board of Directors
Wyoming Department of Agriculture
Governor's Office



WYOMING MINING
ASSOCIATION

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2601 Central Avenue
Cheyenne, WY 82001

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PO Box 866
Cheyenne, WY 82003

Fax: 307.778.6240

March 20, 2014

RECEIVED

Mr. Richard Thorp
Wyoming Department of Environmental Quality
Water Quality Division
Herschler Building 4-W
122 W. 25th Street
Cheyenne, WY 82002

Re: Comments on Draft Policy Document Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization

The Wyoming Mining Association (WMA) is a statewide trade organization that represents and advocates for 39 mining company members producing bentonite, coal, trona and uranium, as well as one company in the permitting and development process for a rare earth element mine. WMA also represents 129 associate member companies, two railroads and 180 individual members.

WMA appreciates the opportunity to comment on the Wyoming Department of Environmental Quality (WDEQ) Water Quality Division's recently updated draft policy document entitled *Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization*, and offers the following for consideration:

- Page 4, Introduction paragraph: The U.S. Environmental Protection Agency (USEPA) link is incorrect. WMA believes the proper link should be: <http://www2.epa.gov/region8/region-8-water-home-page>.
- Page 19 Section 6, Guidelines for De-listing Section 303(d) Listed Waters: Under the categories (Drinking water, Fisheries, Aquatic Life other than fish, etc.), various sections under "Chapter 1" are listed. While it could be assumed these are referencing Chapter 1 of the WDEQ Water Quality Rules and Regulation, this is not specifically stated. The 2nd paragraph of the section refers to the *general guidelines*. WMA believes clarification is necessary as to what these sections are referring to.

Thank you for your time and consideration of these comments.

WYOMING MINING ASSOCIATION

Marion Loomis
Executive Director

www.wyomingmining.org



COALITION OF LOCAL GOVERNMENTS

925 SAGE AVENUE, SUITE 302
KEMMERER, WY 83101

COUNTY COMMISSIONS AND CONSERVATION DISTRICTS FOR LINCOLN,
SWEETWATER, UINTA, AND SUBLETTE - WYOMING

April 2, 2014

Via email at richard.thorp@wyo.gov

Attn: Richard Thorp
Wyoming Department of Environmental Quality
Water Quality Division
122 W. 25th St.
Herschler Building 4-W
Cheyenne, WY 82002

Re: CLG's Comments Regarding Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization – Document #14-0156

Mr. Thorp:

The Coalition of Local Governments (the Coalition), on behalf of its members, including cooperating agency member Little Snake River Conservation District, appreciates the opportunity to submit these comments regarding Wyoming's draft Methods for Determining Surface Water Quality Condition and TMDL Prioritization (Draft). The Coalition also incorporates those comments submitted by the Wyoming Association of Conservation Districts (WACD) by reference here.

1. Statement of Interest

The Coalition is a voluntary association of local governments organized under the laws of the State of Wyoming to educate, guide, and develop public land policy in the affected counties. Wyo. Stat. §§11-16-103, 11-16-122. Coalition members include Lincoln County, Sweetwater County, Uinta County, Sublette County, Lincoln County Conservation District, Sweetwater Conservation District, Uinta County Conservation District, Sublette County Conservation District, and Little Snake River Conservation District. The Coalition serves many purposes for its members, including the protection of vested rights of individuals and industries dependent on utilizing and conserving existing resources and public lands, the promotion and support of habitat improvement, the support and funding of scientific studies addressing federal land use plans and projects, and providing comments on behalf of members for the educational benefit of those proposing federal land use plans and land use projects.

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Both county and conservation district members of the Coalition have authority to protect the public health and welfare of Wyoming citizens while promoting and protecting public lands and natural resources. Wyo. Stat. §§18-5-102; Wyo. Stat. §§11-16-122. Given this broad statutory charge and wealth of experience in public land matters, the Coalition has enjoyed a long history as a cooperating entity and has coordinated efforts with Wyoming Department of Environmental Quality (WDEQ) BLM, USFWS and other federal, state, and local entities.

2. Background Summary

WDEQ administers the Clean Water Act (CWA) which obligates states to prevent, reduce, and eliminate pollution of water resources while planning for its use. Gathering and evaluating credible data is essential to each of these purposes and WDEQ has implemented a Surface Water Quality Monitoring Program (Program) to collect "scientifically valid water quality monitoring data using established data collection methods and assessing those data in a consistent manner." Program at 1. Data gathered under the Program are then evaluated by the standards contained in Chapter 1 of Wyoming's Water Quality Rules and Regulations (WDEQ, 2013a). The collected and evaluated data is used to determine whether the navigable waters of the state are meeting Section 305's requirements. This credible data standard is based on state law and drives the collection, analysis and application of water data. The over-arching objective is to exclude effects of bias or lack of training. Wyo. Stat. §§35-11-103(xix), 35-11-302(b)(i).

3. Data Requirements

Text: "Much of the data and information used in making designated use support determinations are generated by WDEQ's Surface Water Quality Monitoring Program. . . . In addition, WDEQ routinely reviews water quality data from a variety of other sources, including Wyoming's 34 conservation districts, federal, state and local government agencies, non-profit organizations and the private sector." Doc. # 14-0156 at 4.

Comment: WDEQ's Surface Water Quality Monitoring Program ("Monitoring Program") develops the data by which use determinations are made. See 40 C.F.R. 130.7(b)(1), (b)(2). Thus, it is pivotal that the information collected under the Monitoring Program, including data provided by third parties, is rigorously checked for credibility pursuant to the Wyoming Environmental Quality Act. Wyo. Stat. §35-11-101 et seq.

Section 35 provides that data must be collected using accepted field methods by a person who has received specialized training and has experience in developing a monitoring plan, a quality assurance plan, and experience in employing the methods outlined in those plans. Field methods are the first step to ensuring that data gathered in the field are credible, reliable, scientifically defensible, and free from preconceived bias. Data gathered by persons without specialized training are not reliable unless closely supervised by a person with extensive field experience and specialized training. Thus, DEQ must rigorously review resumes, background, and the general expertise of any third parties that provide

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data that will effect use determinations. It is also extremely important that DEQ recognize that certain nonprofit organizations may be politically motivated in providing water quality data and DEQ must not rely on this data since it is expressly prohibited under the Wyoming Environmental Quality Act.

As documented in the WACD review of data received by WDEQ from Western Watersheds Project (WWP), the data do not conform to the regulatory Sampling Action Plan (SAP). As such, all of the WWP data should be discarded.

Text: "Quality assurance/quality control documentation, including completed data sheets, instrument calibration logs and a detailed description of study design (e.g. map of study site locations, coordinates, photographs and other relevant descriptive information) must accompany all data submissions. WDEQ may also choose to conduct field audits and/or collect additional samples for verification during the QA/QC process. For data collected specifically for use support determinations (i.e., assessments), WDEQ requires a pre-approved sampling and analysis plan (SAP) and a quality assurance project plan (QAPP)." Doc. # 14-0156 at 6.

Comment: Pre-approved SAPs and QAPPs ensure that data is collected in a scientifically defensible fashion. Site locations cannot be identified on a whim or under the bias of a particular issue and data collected from sites that were not identified as part of an SAP will fatally discredit the DEQ's use determinations. Similarly, the DEQ must ensure that data collected reflects the cumulative water quality in a watershed using a "below only" site location method and data submitted under nonconforming procedures cannot be assumed to be credible. Perhaps most importantly, a QAPP must be provided as part of the SAP prior to data collection and used according to the SAP. Specifically, missing data sheets and incomplete study designs that lack narrative descriptions, photographs, and other field notations seriously compromise the integrity and credibility of the data collected.

4. Determining Causes and Sources for 303(d) Listed Waters

Text: "The pollutant causing impairment for each of Wyoming's 303(d) Listed waters is identified during water quality assessments using available data and/or information and a weight of evidence approach. When the available data and/or information identify a pollutant's source(s), it is also added to the 303(d) List. Identifying point sources can usually be accomplished by comparing water quality data above and below an effluent outfall. Non-point sources, however, are typically diffuse and multiple sources can have an additive effect on water quality." Doc. # 14-0156 at 18.

Comment: DEQ appropriately recognizes that causal relationships between water quality data and the source that effects the water quality must be established before any determinations may be made. Data that merely suggests a possible source must

Richard Thorp
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Page 4

be verified by additional monitoring to determine the existence of an actual causal relationship. This is especially important when non-point sources contribute to the overall watershed quality. For example, wildlife may directly produce water quality issues and the data must reflect these outliers. Furthermore, all data used must meet the available data criteria in State law.

Text: "Sources may be added or removed from existing 303(d) Listings as necessary as additional data and/or information become available." Doc. # 14-0156 at 18.

Comment: Causality is an essential piece to any punitive action and DEQ must demonstrate that both the Rotating Basin Probabilistic Survey and the Rotating Basin Targeted Monitoring data show a direct causal relationship between an activity and the pollutant, exceedance, or criteria identified. This may be particularly difficult when evaluating livestock operations that have similar indicators as wildlife species and wild horses in the area (i.e. *E. coli*). Moreover, if DEQ identifies a particular activity as the cause but there are multiple distinct parties doing the same activity, the WDEQ must delineate how it will proceed in these situations. Finally, any new data must also meet credible data standards.

5. Current Methods Are Sufficient

The Coalition supports the Draft to the extent that it does not increase existing regulatory mechanisms. The current framework is stringent enough to balance environmental concerns with natural resource development and human health concerns. Thus, the Draft should avoid substantive alterations in favor of promoting consistent management.

Sincerely,

/s/ Kent Connelly

Kent Connelly, Chairman
Coalition of Local Governments