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Meeteetse Conservation District

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Terri A. Lorenzon, Director
Environmental Quality Council

February 14, 2007

Mr. Bill DiRienzo
Wyoming DEQ/WQD and EQC
Herschler Bldg., 4th Floor West
122 W. 25th Street
Cheyenne, WY 82002

RE: Comments on EQC Draft Chapter 1, December 2006 – Surface Water Standards and Implementation Policy

Dear Mr. DiRienzo and Wyoming EQC:

The Meeteetse Conservation District (MCD) appreciates the opportunity to comment on the proposed revisions to Chapter 1 – Water Quality Rules and Regulations and Implementation Policy.

As local government, the Meeteetse Conservation District fully supports the following comments (received by MCD as a draft copy) to be submitted on the behalf of all conservation districts by the Wyoming Association of Conservation Districts, and, as stated by Bobbie Frank, “commends DEQ for addressing several issues affecting the state’s ability to effectively address water quality issues and believes, by in large, that the proposed changes to Chapter 1 will assist in moving the overall effort of protecting Wyoming’s water quality forward. Of particular importance are the changes to recognize that not all of Wyoming’s water bodies are capable of supporting primary contact recreation uses and that secondary contact recreation criteria are needed to reasonably manage water quality to protect human health.”

These comments have been appropriately stated by Bobbie, and rather than attempting to make these comments appear to be of our own wordsmithing the changes to them have been formatting and the global substitution of “MCD” for “WACD”. Please understand that the MCD *has* collaborated and discussed topics of concern with other districts as stated in these comments.

“COMMENT: MCD supports the modification and inclusion of the definitions of “Effluent Dependent” and “Effluent Dominated” water to recognize that there are water resources in the state that are available for use primarily, if not solely, due to discharges that provide environmental benefits that otherwise would not exist.

COMMENT: MCD supports the definitions of “Full Body Contact Water Recreation”, “Primary Contact Recreation” and “Secondary Contact Recreation” as these definitions are critical for correctly classifying waterbodies for recreational uses.

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COMMENT: MCD supports the definition of "Net Environmental Benefit" as it provides recognition that there are effluent dependent and dominated waters in which the elimination of the discharge would either eliminate availability of water for beneficial uses or water would be of higher quality than existed naturally. MCD has worked with local Districts, such as the Powder River CD, who have that exact situation within their District. It is important to recognize that waters can be made available through these discharges that provide multiple environmental and economic benefits, and still not pose a health risk to humans, livestock or wildlife.

COMMENT: MCD supports the use of the term "recreation" in place of "primary contact recreation" for designated uses of Class 2, 3 and 4 waters as some waterbodies will be designated for use as "primary contact recreation" waters and the others as "secondary contact recreation" waters.

COMMENT: MCD again commends DEQ for including "Class 2D" to recognize that there are instances in the State where waters and subsequent fish populations, would not exist without the discharges.

COMMENT: MCD supports the inclusion of "Class 3D" to recognize that there are instances in the State where waters and subsequent aquatic organisms and habitat would be significantly reduced without the discharges.

COMMENT: MCD supports modifying the bacteria standard from fecal coliform to *E. coli*, re-instituting a recreational season, and also the revised uses of primary and secondary contact recreation. First, several local districts have already begun to have samples analyzed for *E. coli* and they are prepared for the transition. There is some question as it relates to listing and delisting of waters and the current requisite that 3 years worth of data indicating use attainment is necessary prior to DEQ being able to proceed with the delisting of a waterbody. For instance, some districts may have a combination of fecal coliform data and *e.coli* data over the three-year time period and have questioned if the fecal data will still be accepted.

MCD feels it is imperative to protect human health on waters where contact recreational activities occur. The proposed uses of primary and secondary will ensure that efforts to address waters impaired due to elevated counts of *e.coli* that pose an elevated risk to human health receive the priority in terms of local watershed efforts and effectively utilize the public funds. MCD is concerned that currently a tremendous amount of time, effort and funds are being spent to lower *E.coli* levels on waters that are not primary contact recreation waters and that pose little to no threat to human health.

In the course of preparing comments, MCD consulted with a number of districts on the appropriateness of the proposed recreational season. Due to the varying factors that exist across the state on when primary contact recreation activities occur, MCD supports the proposed May through September times frame and believes it provides sufficient protection and balance.

COMMENT: MCD supports the proposed Secondary Contact recreation standard for *E. coli* as not to exceed a geometric mean of 630 organisms per 100 milliliters based on a minimum 5 samples obtained during separate 24 hour periods for any 30-day period.

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COMMENT: MCD supports the proposed approach for single-sample maximum concentrations in the interest of public safety. Of particular importance is the language clarifying that single samples shall not be cause for listing a waterbody on the State 303(d) list or development of a TMDL or watershed plan as there is significant, inherent variability in measuring bacteria concentrations.

COMMENT: MCD supports the proposed allowance for variances to the *E. coli* standards to recognize the fact that regardless of implementation efforts, some waters may not ever be able to achieve the *e.coli* standard and subsequently attain designated use support. MCD would however suggest that not all wildlife-induced contamination is "natural" in light of population objectives, etc. However, MCD recognizes that this discussion may well be more appropriately debated in other agency rulemaking processes.

COMMENT: MCD commends DEQ for establishing a means to fairly evaluate water quality within effluent dependent waterbodies.

COMMENT: MCD supports the approach outlined in Section 36 for developing site-specific criteria for effluent dependent waters where it has been demonstrated that such waters create an environmental benefit and the removal of the discharge would result in lower water quality.

DOCUMENT: Implementation Policies for Antidegradation, Mixing Zones, Turbidity, Use Attainability Analysis

COMMENT: MCD supports the consideration of flow as one of the factors in determining a waterbody's ability to support a primary contact recreational use. Many of Wyoming's streams do not exhibit sufficient flows to present a reasonable risk of ingestion of water or immersion in the water as a result of recreational activities. Further comment on this issue will be provided related to the section that defines information necessary in a UAA in petition to remove a primary contact recreation use.

COMMENT: MCD recognizes that in the absence of UAAs, DEQ must create a "default" class and supports the proposal that all of those waters appearing on Table A will be, by default, protected as primary contact recreation until such time that a UAA demonstrating otherwise is developed.

Based on feedback from local people and local districts, there are a good number of waterbodies on Table A that do not have flow sufficient for, nor are they currently used or attractive as recreational waters. MCD, therefore, supports the policy outlining the UAA process as being available to change the designation of waterbodies on Table A from primary contact recreation to secondary contact recreation.

COMMENT: MCD appreciates DEQ's recognition that the UAA process for determining recreation support levels should not be a difficult one and also that a recreational use does not imply access to such water.

COMMENT: As stated earlier in the Implementation policy document, flow is proposed to be, and in MCD's opinion, should be one of the factors considered in determining the recreational use protection. Regardless of the land ownership, public accessibility, and geographic location there are simply some "waters" that truly do not have sufficient water

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to provide primary contact recreation opportunities. Therefore, the first factor that should be considered is actual flow.

The designation of a waterbody for primary or secondary contact recreation use should be based on the actual use of such a water or the potential use for recreational purposes, not on land ownership, proximity to municipalities, high density housing areas, parks, recreation areas, urban areas or any other geographic boundaries.

COMMENT: MCD recognizes that segmentation of streams into multiple primary and secondary designations may be problematic from an administrative standpoint, but appreciates DEQ's recognition that there needs to be a process for segmentation where applicable. There are instances in the State where designated uses attainable in one segment are not attainable in another segment and that different management strategies are required for each.

COMMENT: MCD supports the allowance of the variance. There are simply circumstances in which the *E. coli* standard cannot be reasonably achieved.

COMMENT: MCD would like to thank DEQ for the language on lines 13-17 of page 48, which recognizes that a UAA to determine recreation use support should be completed whenever a stream is proposed to be listed on the state's 303(d) list. This will help ensure that those impaired waters, which are truly primary contact recreation, receive the highest priority for implementation measures. Otherwise, as previously stated the situation does exist where an extreme amount of time, effort, and financial resources are being expended to address impairments due to a listing on "waters" for which little to no primary contact recreation occurs.

COMMENT: MCD would request that the Primary Use Factors be modified based on previously stated comments in regard to a water's actual ability to support primary contact recreation versus land ownership.

MCD appreciates the opportunity to comment on Chapter 1 Water Quality Rules and Regulations. The proposed revisions are very important and needed to ensure practical water quality management. With regard to on-going discussions involving the Agricultural Use Protection Policy, MCD would urge the EQC to separate this component from the remainder of Chapter 1 if further discussion is required prior to approval. This would allow the remaining provisions of Chapter 1 to be implemented which will assist in clearly identifying which set of rules and regulations are to be attained through water quality improvement efforts."

Respectfully submitted,



Steve Jones

Resource Management Coordinator
Meeteetse Conservation District