July 18, 2018

Kevin Frederick, Administrator
Department of Environmental Quality
Water Quality Division
Department of Environmental Quality
200 W. 17th St., 4th Floor
Cheyenne, WY 82002

Re: Response to Townsend Creek Petition

Dear Mr. Frederick,

After our phone conversation on July 16, 2018, I went back to review the Use Attainability Analysis (UAA) Implementation Policy. Pursuant to the UAA Implementation Policy, the process to upgrade Townsend Creek to primary contact recreation must be initiated without further documentation of “flow regime.” Section 7(c)(i) of the UAA Implementation Policy states:

“All waters, regardless of flow regime, located within federal, state or local parks and recreation areas will be designated for primary contact recreation. Federal, state or local parks should not be construed to mean all public lands, but rather specifically developed and/or designated recreational use areas such as campgrounds, picnic grounds, trailheads, greenways, etc.” (emphasis added).

This section establishes criteria independent of “flow regime” that, when met, guarantee a stream will be designated for primary contact recreation. As indicated in my previous letter, Townsend Creek meets these criteria because it is within a specifically developed and designated campground on public land, Frye Lake Campground. As evidence of development, Frye Lake Campground has a maintained parking lot, a bathroom, a sign, and several fire rings. Also, it is on the federal public land, the Shoshone National Forest. Finally, Townsend Creek runs right through this campground and is therefore “within [a] federal...recreation [area].” Townsend Creek must be designated for primary contact recreation to comply with the UAA Implementation Policy.

Because Townsend Creek meets the criteria in the UAA Implementation Policy that guarantee primary contact recreation “regardless of flow regime,” a UAA demonstrating “flow regime” is an unnecessary barrier to accurate stream classification. By the terms of
the DEQ’s own binding policy, Townsend Creek should be designated for primary contact.

I understand that proximity to a recreation area is a primary use factor, and the UAA worksheet says, “if any of the [primary use factors] apply, the water should likely be designated for primary contact recreation.” But the worksheet misstates the law. The actual UAA Implementation Policy, developed with public input, subject to EPA approval, and referenced in the Water Quality Rules and Regulations, is unambiguous. Such waters “will” be designated for primary contact recreation. The DEQ must follow its Surface Water Quality Standards, including the UAA Implementation Policy.

Respectfully, I’d also like written confirmation that the DEQ will promptly reject any UAA requesting a downgrade that would force DEQ to violate the UAA Implementation Policy. The UAA process does not allow the DEQ to selectively circumvent the UAA Implementation Policy. The integrity of buffers around campsites, trailheads, picnic grounds, etc. used in the 2016 UAA must be maintained in order to comply with the UAA Implementation Policy.

Thank you for your continued effort refining the 2016 UAA for Recreation.

Sincerely,

Rob Kutchin