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Matthew Dvorak  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> St.  
Des Moines, IA 50319  
**Via email: [matthew.dvorak@dnr.iowa.gov](mailto:matthew.dvorak@dnr.iowa.gov)**

Re: Comments on 2018-2020 Triennial Review, Part II: UAAs/Lake Use Designations

Dear Mr. Dvorak,

The following comments are Part II of the Iowa Environmental Council's comments on the Iowa Department of Natural Resources' (IDNR) 2018-2020 Triennial Review process.

## **II. UAAs/Lake Use Designations**

The Iowa Environmental Council agrees with DNR's priority to continue to review and update Use Attainability Analyses (UAAs) to ensure appropriate designations for Iowa streams and ensure water quality is sufficient to support the ways Iowans use Iowa streams. **In addition to the ongoing stream UAA work, IDNR should also review use designations for Iowa's lakes to ensure appropriate use designations are assigned to protect all attainable uses for these waters.** Our concerns about the lack of appropriate use designations for Iowa's lakes are explained below.

### Under the Clean Water Act, Use Designations Must Reflect the Highest Attainable Use

Section 303 of the Clean Water Act requires states to adopt water quality standards that "serve the purposes" of the Act, which includes the Act's interim goal of section 101(a)(2) of the Clean Water Act (CWA). CWA § 101(a)(2) provides:

[I]t 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.

To be consistent with the interim goal of the Act and EPA's implementing water quality standards regulation at 40 CFR Part 131, states must provide water quality that supports these uses, including recreation in and on the water. *See* 40 CFR 131.10(j). EPA has interpreted this requirement to mean that states must protect all waters of the state for primary contact recreation and aquatic life uses, unless a use attainability analysis demonstrates that these uses are not

attainable for a water body or segment.<sup>1</sup> The Clean Water Act and the water quality standards regulation establish a rebuttable presumption that the CWA § 101(a)(2) uses (“fishable/swimmable” uses), including primary contact recreation, *are* attainable and should apply to all waters. Therefore, all lakes in Iowa that are not currently designated for recreational or aquatic life uses should be designated for A1 primary contact recreation and B(LW) aquatic life uses unless a UAA has been conducted that demonstrates that recreational and/or aquatic life uses are not attainable.

### Class A1 Use Designations Are Missing for 22 Lakes IDNR Determined are Recreational Use Lakes

Many Iowa lakes that are capable of supporting primary contact recreation—including several with public beaches—are not currently designated for that use. IDNR should immediately designate all lakes the Department has already identified as recreational use lakes as part of a proposed rule in 2011 to adopt nutrient criteria to protect class A1 recreation uses. As part of that rulemaking, the DNR identified 159 recreational lakes that met at least one of the following three conditions that indicated primary contact recreational uses are attainable:

1. The lake is considered a Significant Publicly Owned Lake (SPOL)
2. The lake has a mean depth of 3 meters (9.84 feet) or greater
3. The lake has a public beach

The proposed numeric criteria for nutrients were never adopted. Nevertheless, existing water quality criteria for protection of recreation uses in Iowa’s water quality standards should apply to all of these lakes. A copy of the 2011 proposed rule is included with these comments (as Appendix A),<sup>2</sup> along with a spreadsheet showing the information that DNR evaluated in compiling the list of recreational lakes (as Appendix B).

While most of the 159 lakes on this list are already designated for A1 recreational uses, *the Council identified 22 lakes that do not currently have a recreational use designation*. Sixteen of the 22 lakes are included in Iowa’s current surface water classification listing, but are not designated for Class A1 uses (or any other recreational use) while the remaining six lakes do not appear in the classification listing at all, and therefore no designated uses are currently assigned to these lakes. (Please see the list below in this document). All 22 water bodies should be immediately designated as Class A1 lakes and protected for primary contact recreational uses.

### Conclusion

Designated uses are an important part of Iowa’s water quality standards. In addition to its efforts to continue to ensure appropriate designations for Iowa streams, IDNR should also review use designations for Iowa’s lakes to ensure appropriate use designations are assigned to protect all attainable uses for these waters. As a first step in this process, IDNR should immediately designate as Class A1 lakes all 22 lakes listed in the attachment below for which the Department

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<sup>1</sup> See US EPA, *Water Quality Standards Handbook*, Ch. 2 “Designation of Uses.” Available online at <https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter2.pdf>.

<sup>2</sup> Environmental Protection Commission [567], Notice of Intended Action, ARC 9371B.

determined primary contact recreation is an attainable use. For all lakes that are not currently included in the Surface Water Classification, DNR should designate those lakes for A1 recreational use and B(LW) aquatic life, pending completion of a Use Attainability Analysis.

Thank you for considering our comments.

Sincerely,

*Clare Kernek*

Clare Kernek  
Staff Attorney  
Iowa Environmental Council

RECREATIONAL LAKES (AS DETERMINED BY DNR) NEEDING CLASS A1 DESIGNATIONS

**Lakes listed in Iowa's Surface Water Classification without Class A1 designation**

Mitchell Lake, Black Hawk Co:	SPOL and mean depth of 14.9 feet
South Prairie Lake, Black Hawk Co:	SPOL
Ave. of the Saints Pond, Bremer Co:	SPOL
Sturchler Pit (Newell Pit), Buena Vista Co:	Public Beach
Newcom/Riggelman N.R.A. Pond, Crawford Co:	mean depth 10 feet
Big Hollow Lake, Des Moines Co:	Public Beach
McPaul B Pond, Fremont Co:	mean depth 15 feet
Percival Lake, Fremont Co:	mean depth 15.5 feet
Moorhead Park Pond, Ida Co:	mean depth 10.1 feet
Fairfield Municipal Reservoir #1, Jefferson Co:	Public Beach
Lake Belva Deer, Keokuk Co:	mean depth 12 feet and Public Beach
Mile Hill Lake, Mills Co:	mean depth 10.4 feet
Fairview Area Impoundment, Sioux Co:	Public Beach
Otter Creek R.A. Pond, Sioux Co:	mean depth 13 feet
Three Mile Lake, Union Co:	mean depth 17.1 feet and Public Beach
Brushy Creek Lake, Webster Co:	SPOL, mean depth 29 feet and public beach

**Lakes not listed in Iowa's Surface Water Classification - need to be added with an A1 use**

Rudd Lake, Floyd Co:	Public Beach
Bluebill Lake, Cerro Gordo Co:	mean depth 20 feet
Sand Lake, Marshall Co:	mean depth 20 feet
Willow Creek Pond, Osceola Co:	mean depth 10 feet
Big Sioux Pond, Sioux Co:	Public Beach
Ottumwa Lagoon, Wapello Co:	SPOL