

567—72.51(455B) Protected stream designation procedure.

72.51(1) Eligible petitioners. Any state agency, governmental subdivision, association or interested person may petition the commission, according to the rules of this division, to designate a stream as a protected stream. However, if the stream had been the subject of a similar petition filed within the past 2 years, the commission shall not accept a petition except upon a majority vote.

72.51(2) Content of petition. The petition for protected stream designation shall contain the following: (a) names, addresses, and the telephone numbers of the petitioners; (b) location of the stream nominated for designation; (c) reasons why the stream is nominated, each reason being stated in a separate numbered paragraph; and (d) adequate evidence supporting the reasons for nomination. Eleven copies of the petition shall be filed with the department.

72.51(3) Department review of petition. Upon receipt of a petition for designation of a stream as a protected stream, the department shall make an initial determination as to whether the petition complies with 72.51(2) and whether the stream has a sufficient number of environmental amenities listed in 72.51(7) that further investigation is warranted. If the department finds the petition not in compliance with 72.51(7) or that further investigation is not warranted, agency proceedings to designate the nominated stream as protected shall cease and the petitioner shall be notified of the reasons for refusing to accept and act upon the petition. A petitioner aggrieved by the department's decision may appeal the decision within 30 days to an executive committee of at least three commission members.

72.51(4) Notice of initiation of protected stream designation proceedings. Upon department acceptance of a petition nominating a stream for protected stream designation, the department shall do the following:

a. Notice of intended action. Publish a notice of intended action in the Iowa Administrative Bulletin, the content of which identifies the nominated stream and requests public input into the protected stream designation procedure.

b. Commission notification. Notify the commission at the next meeting of the filing of a petition for protected stream designation.

c. Interested agency notification. Notify regional planning commissions, county boards of supervisors, city councils, soil conservation districts through which the nominated stream runs, the fish and wildlife bureaus of the department, the soil conservation and water quality division of the department of agriculture and land stewardship, the department of agriculture and land stewardship and the Iowa geological survey.

d. Countywide notification. Publish notice of the filing of the petition in a newspaper of general circulation for two consecutive weeks in each county in which the nominated stream is located.

72.51(5) Department investigation report. Upon department acceptance of a petition nominating a stream for protected stream designation, the department shall do the following:

a. Investigation. Supervise a field staff investigation of the stream nominated for protected stream status for the purpose of assessing the effect that extending department floodplain regulation would have on the factors listed in 72.51(7);

b. Report. File a report with the commission at a monthly commission meeting held within one year after the notice of intended action was published; the report shall specifically state findings of fact or each reason alleged in the petition in support of a protected stream designation and convey a staff recommendation, including any minority recommendations and recommendations of other governmental bodies and interested persons on whether or not the stream should be regulated;

c. Interagency coordination. Invite the fish and wildlife bureaus of the department, the Iowa geological survey, and any other agency or governmental subdivision expressing an interest in the proceeding to participate in the field investigation and preparation of the report, and request their assessment of whether extension of department jurisdiction over the nominated stream would have either an adverse or beneficial impact on their agency's water resource programs.

72.51(6) Commission determination. After receipt of the director's report and the public has had an opportunity to submit written comments and make an oral presentation, the commission shall make a determination in writing whether or not to designate the stream identified in the petition as a protected stream, except that the commission may continue the proceeding as needed to collect or analyze

additional data. The commission's determination shall be based on the factors listed in 72.51(7), as applied to the nominated stream and its floodplain, and to other relevant streams and floodplains located in the same watershed as the nominated stream, as well as any underground water system hydrologically connected to the nominated stream.

72.51(7) Basis for protected stream designation. Commission determination of whether or not to classify a stream as a protected stream shall be based on the balancing of the costs and benefits of possible floodplain development as it would affect the following factors: (a) maintenance of stream fishery capacity; (b) water quality preservation; (c) wildlife habitat preservation; (d) flood control; (e) floodplain management; (f) existing floodplain developments; (g) soil erosion control; (h) the needs of agriculture and industry; (i) the maintenance and enhancement of public recreational opportunities; (j) the public's health, welfare and safety; (k) compatibility with the state water plan; (l) property and water rights of landowners; (m) other factors relevant to the control, development, protection, allocation, and utilization of the nominated stream and water hydrologically connected to it.

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