

John W. Graham (WSB # 7-5742)
Geittmann Larson Swift LLP
155 E Pearl
Jackson, WY. 83001
(307) 733-3923
jwg@glslp.com

Daniel F. Heilig (WSB # 5-2872)
9 Juniper Drive
Lander, WY 82520
(307) 206-4144
heilglaw@gmail.com

Attorneys for Petitioner Protect Our Water Jackson Hole

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING**

In the Matter of the Appeal of)
Protect Our Water Jackson Hole)
From Notification of Coverage –)
Permit No. 2022-274)

Docket No. 22-3801

RESPONSE TO MOTION TO DISMISS AS MOOT

The Wyoming Department of Environmental Quality (“*WDEQ*”) and Protect Our Water Jackson Hole’s (“*POWJH*”) analysis of the pending issues is largely similar. Both parties agree that POWJH has requested the Wyoming Environmental Quality Council (the “*Council*”) to both revoke Permit No. 2022-274 (the “*Permit*”) and to provide any other remedies legally available.

As part of that request, POWJH asked the Council to find that Permit No. 2022-274 was issued under an expired general permit. WDEQ has subsequently admitted that this was indeed the case, and revoked Permit No. 2022-274. In revoking the Permit on these grounds, however, the

WDEQ left important questions raised by POWJH regarding future permitting of the site, which the WDEQ has already communicated is occurring, unanswered.

Those issues include, but are not limited to, whether:

- 1) The WDEQ improperly calculated the relevant expected flow rate for the Permit under the applicable regulations;
- 2) The WDEQ, if the flow rate was properly calculated, violated the relevant delegation agreements by issuing a permit that, per its own delegation agreement, should have been issued by Teton County;
- 3) The WDEQ improperly concluded that the Permit was not a Class V injection site;
- 4) The WDEQ improperly concluded the proposed system in the Permit met the required setbacks from surface water and public supply wells; and
- 5) The WDEQ's decision to issue the Permit failed to properly protect Class 1 surface waters.

These issues will all, presumably, be part of a continuing and ongoing dispute as WDEQ reviews a new permit application, which they concede has been submitted, at the same site.

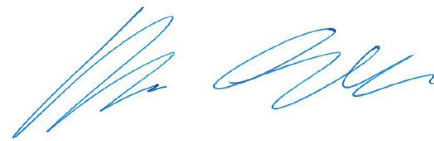
At the same time, however, WDEQ has properly highlighted that the remedies the Council is authorized to provide are far less extensive than those which a District Court reviewing the same decision could provide. For example, in this case, a District Court could require the WDEQ to compel the relevant permittee to remove the already installed portions of the now unpermitted septic system under the Court's authority to "[c]ompel agency action unlawfully withheld or unreasonably delayed," while there is no such corresponding grant of authority at the council level. W.S. § 16-3-114.

As a result, the dispositive question for dismissal is whether the Council can address either the incorrect predicate decisions that led to the Permit being issued or compel the WDEQ to take or withhold additional action now that the Permit has been revoked. POWJH takes no position as

to whether W.S. § 35-11-112 provides any such grant of authority but does concede that this statutory section provides the scope of the Council's authority. Instead, POWJH would request that the Council make an independent determination of its ability to provide further relief as requested by POWJH including a request to address the inaccuracies in the predicate decisions leading to the permit and the Council's authority to compel remediation of infrastructure installed under a now revoked permit.

To the extent the Council concludes it does not have the authority to reach these issues, dismissal is appropriate as POWJH has exhausted its available administrative remedies in front of the Council.

Respectfully submitted this 31st day of March, 2023.



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heilglaw@gmail.com

*Attorneys for Petitioner Protect Our Water
Jackson Hole*

Certificate of Service

Based on the foregoing signature, counsel certifies that a true and correct copy of motion was electronically filed with the Environmental Quality Council and was served on all parties via the Environmental Quality Council's electronic notification.