

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL**

**STATE OF WYOMING**

<b>IN RE THE MATTER OF THE APPEAL</b>	)	
<b>TO PROTECT OUR WATER JACKSON HOLE</b>	)	
<b>PERMIT NO. 2022-274</b>	)	<b>Docket No. 22-3801</b>
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**ORDER GRANTING THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY’S MOTION TO DISMISS PETITION**

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The Department of Environmental Quality’s motion to dismiss was heard by the Environmental Quality Council on May 16, 2023, in Room 100, Hathaway Bldg. 2300 Capitol Avenue, Cheyenne, Wyoming.

Present for the Council was Hearing Officer JD Radakovich, Chairman Steve Lenz, and Council members Marjorie Bedessem, Stan Blake, and John Corra. Council members Ryan Greene and Shane True attended by videoconference.

Present at the hearing representing the Wyoming Department of Environmental Quality (DEQ) was Abigail Boudewyns, Senior Assistant Attorney General from the Wyoming Attorney General’s Office. Present at the hearing representing Protect Our Water Jackson Hole (Petitioner) was John W. Graham from the law firm of Geittmann Larson Swift LLP.

After hearing and considering DEQ’s motion to dismiss and arguments by the parties and otherwise being fully advised, the Council voted 7 to 0 to grant DEQ’s motion to dismiss. The Council finds that the Petitioner’s appeal (Docket No. 22-3801) that is before the Council is now

moot necessitating that it be dismissed—currently, there is no live controversy between DEQ and Petitioner in this matter.

On November 22, 2022, Petitioner filed an appeal with the Council challenging DEQ's issuance of Permit No. 2022-274 (Notification of Coverage) to Mountain Ventures. In the appeal, Petitioner requested a hearing before the Council and requested that the Council reverse and vacate DEQ's decision to issue the permit and provide any other remedies available under law. Following the filing of the appeal, DEQ's water quality administrator determined that the permit had been issued in error. As a result, on December 7, 2022, DEQ revoked Permit No. 2022-274.

DEQ subsequently filed a motion to dismiss Petitioner's appeal asserting that the appeal is moot. DEQ contends that the pending appeal is moot because the permit has already been revoked and no other remedy at law is available to Petitioner in this proceeding. Although Petitioner concedes that the permit no longer exists because it has been revoked, it contends that the Council should still address additional issues such as the underlying factual determinations made by DEQ when it issued the now revoked permit. Petitioner further requests that the Council compel DEQ to take or withhold additional action now that the permit has been revoked such as compelling remediation of any infrastructure installed under the now revoked permit.

The sole question is whether the Council has the statutory authority to consider this appeal although the permit that formed the basis for the appeal is now revoked. When determining whether an administrative body such as the Council has the authority to take some action or consider a matter, the Wyoming Supreme Court has stated that "an administrative body has only the power and authority granted by the constitution or statutes creating the same. Such statutes must be strictly construed 'or any reasonable doubt of existence of any power must be resolved

against the exercise thereof. A doubtful power does not exist.” *US West Commc’ns, Inc. v Wyoming Pub. Serv. Comm’n*, 907 P.2d 343, 346 (Wyo. 1995).

The Council’s relevant statutory powers and duties are found in Wyo. Stat. Ann. § 35-11-112. Under that statute, the Council is required to act as the hearing officer for DEQ and perform, in part, the following:

(iii) Conduct hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the department or any division thereof;

(iv) Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act;

...

(c) Subject to any applicable state or federal law, and subject to the right to appeal, the council may:

(i) Approve, disapprove, repeal, modify or suspend any rule, regulation, standard or order of the director or any division administrator;

(ii) Order that any permit, license, certification or variance be granted, denied, suspended, revoked or modified;

(iii) Affirm, modify or deny the issuance of orders to cease and desist any act or practice in violation of the laws, rules, regulations, standards or orders issued or administered by the department or any division thereof. . . .

Wyo. Stat. Ann. § 35-11-112(a), (c)

Here, Petitioner has asked that the Council to revoke Permit No. 2022-274. Petitioner has not asked the Council to approve, disapprove, repeal, modify, or suspend any rule, regulation, standard, or order of the director or any division administrator and has not asked the Council to affirm, modify, or deny the issuance of an order to cease and desist. Petitioner’s remedy that it

sought was revocation of the permit and any other remedy at law that is available to it in this appeal.

However, because the permit no longer exists, the Council is without authority to grant the relief requested and the matter is now moot. “An issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *CL v. ML*, 2015 WY 80, ¶ 22, 351 P.3d 272, 279 (Wyo. 2015). The Wyoming Supreme Court has set forth basic principles of the mootness doctrine as follows:

Our general law on justiciability provides that courts should not consider issues which have become moot. We do not decide cases when a decision will have no effect or pertains only to matters that might arise in the future. A case is moot when the determination of an issue is sought which, if provided, will have no practical effect on the existing controversy. Therefore, if events occur during the pendency of an appeal that cause a case to become moot or make determination of the issues unnecessary, we will dismiss it.

*Id.* (internal citations omitted).

In this appeal, the only remedy available to the Petitioner in this matter is revocation of the permit. Following the appeal, DEQ revoked the permit. Accordingly, there is no longer any live controversy with respect to which the Council can give meaningful relief.

Even with the permit now revoked, Petitioner contends that the Council should still address underlying factual determinations made by DEQ when it issued the revoked permit, address questions concerning future permitting by DEQ, and require remediation of any infrastructure installed under the now revoked permit. However, those are remedies and actions outside of the Council’s statutory authority. No provision of § 35-11-112 authorizes the Council to take these actions or provide these remedies to Petitioner. Accordingly, because there is nothing left for the Council to decide in this appeal, it is moot and should be dismissed.

**IT IS HEREBY ORDERED** that Protect Our Water Jackson Hole's petition/appeal is dismissed in its entirety.

**ENTERED** this 7 day of <sup>June</sup>~~May~~, 2023.

  
JD Radakovich, Hearing Officer  
Environmental Quality Council