

Kelly Shaw, Wyo. Bar No. 7-5624
Stacia Berry, Wyo. Bar No. 7-5001
Koch Law, P.C.
121 W. Carlson St. #3
P.O. Box 2660
Cheyenne, WY 82003
Ph: (307) 426-5010
Fax: (307) 426-4927
kshaw@kochlawpc.com
stacia.berry@kochlawpc.com

Christopher Hawks, Wyo. Bar No. 5-2871
Hawks & Associates, LC
199 E. Pearl Ave. #103
P.O. Box 4430
Jackson, WY 83001
Ph: (307) 733-9437
Fax: (866) 220-6681
chris@hawksassociates.net

*Attorneys for Proposed Intervenor
Basecamp Teton WY SPV LLC*

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

**IN THE MATTER OF THE APPEAL)
OF PROTECT OUR WATER)
JACKSON HOLE FROM)
PERMIT NO. 2023-025) **Docket No. 23-3801****

BASECAMP’S MOTION TO INTERVENE

Pursuant to the Department of Environmental Quality Rules of Practice and Procedure, Chapter 2, Section 9, Basecamp Teton WY SPV LLC (“Basecamp”) respectfully moves to intervene in the above-captioned case. Basecamp moves to intervene as a matter of right.

I. INTRODUCTION

Basecamp offers a unique, upscale glamping experience in Teton County. Basecamp’s small glamping community includes eleven geodomes where guests can enjoy Wyoming’s natural

beauty alongside the comfort of modern facilities, beds, and solar-powered heat and air conditioning. Because Basecamp offers a remote, off-grid experience to its guests, it does not have access to a public wastewater system. Instead, to responsibly manage its wastewater, Basecamp plans to use an on-site septic system, as many other properties in rural Wyoming do. Basecamp obtained the necessary permits for its septic system from DEQ. Protect Our Water Jackson Hole (“POWJH”) now seeks to invalidate Basecamp’s permit for its septic system, which would prohibit Basecamp from using the septic system to safely manage wastewater at its development.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 13, 2023, the Department of Environmental Quality (“DEQ”) issued a permit to construct a small wastewater system to Basecamp. Petitioner POWJH timely appealed issuance of Basecamp’s permit on August 11, 2023. The Environmental Quality Council (“Council”) scheduled a pre-hearing scheduling conference for September 19, 2023. On September 29, 2023, the Council ordered the parties (DEQ and POWJH) to file a proposed schedule by November 29, 2023, and required that the schedule provide dates for discovery, identification of expert witnesses and summary of testimony, submission of exhibits, filing of dispositive motions and responses, prehearing disclosure statements, prehearing conference, and the proposed date of the final hearing. On October 10, 2023, POWJH filed a motion to “stay the effectiveness or suspend” Basecamp’s permit during the pendency of this appeal. On October 17, 2023, the Council scheduled a hearing on POWJH’s motion to suspend the permit to take place November 17, 2023. DEQ filed its response to POWJH’s motion to suspend the permit on October 24, 2023. (*See* EQC Docket No. 23-3801).

III. LEGAL STANDARD

The Council's Rules of Practice and Procedure allow intervention where "the movant is adversely affected by the action and has a legal right to intervene, under the standards set out in W.R.C.P. Rule 24." Rules, Wyo. Dep't of Env'tal Quality, Practice and Procedure, Ch. 2, § 9(a). Rule 24 allows two types of intervention: intervention of right and permissive intervention. Wyo. R. Civ. P. 24(a), (b). To intervene by right, a movant must meet four requirements:

- (1) The movant claims an interest related to the property or transaction which is the subject of the case;
- (2) The movant is situated so that the disposition of the case may, as a practical matter, impair or impede the applicant's ability to protect its interest;
- (3) The movant shows that its interest will not be adequately represented by the existing parties; and
- (4) The application for intervention is timely.

Vill. Rd. Coal. v. Teton Cty. Hous. Auth., 2013 WY 38, ¶ 8 (citations omitted). Wyoming's rules for intervention, which the Council's rules incorporate, mirror the federal rule and federal standard. See Rules, Wyo. Dep't of Env'tal Quality, Practice and Procedure, Ch. 2, § 2; compare Wyo. R. Civ. P. 24 with Fed. R. Civ. P. 24. Although the criteria for intervention are mandatory, "Rule 24 is to be construed liberally, . . . and doubts resolved in favor of the proposed intervenor." *Poynor v. Chesapeake Energy Ltd. P'ship (In re Lease Oil Antitrust Litig.)*, 570 F.3d 244, 248 (5th Cir. 2009) (quoting 6 James W. Moore et. al., *Moore's Federal Practice* § 24.03[1][a], at 24-22 (3d ed. 2008)).

IV. ARGUMENT

Basecamp is the holder of the permit under appeal and, as such, has a legal right to appeal as a matter of right. Therefore, Basecamp has a legal right to intervene in this case, and the Council should grant this motion to intervene. Basecamp satisfies all the elements required to intervene in this case as a matter of right: Basecamp has significant interests in the validity of its permit, the Council's disposition of an appeal of its permit directly affects Basecamp's permit and interests, no existing party can adequately represent Basecamp's interest with respect to its permit, and Basecamp's motion to intervene is timely.

A. Basecamp has an interest in its permit, which is the subject of this appeal.

Permittees have a direct, justiciable interest in the permits they hold. *See William F. W. Ranch, LLC v. Tyrrell*, 2009 WY 62, ¶¶ 28, 33. Basecamp currently holds a valid permit issued by DEQ to construct a small wastewater system, and the system is constructed. The permit allows Basecamp to construct a septic system to safely manage wastewater generated at its development in Teton County. Without the permit for its septic system, Basecamp will be forced to find another solution to manage its wastewater. Therefore, it has a direct, tangible interest in the permit it currently holds. As the holder of the permit, Basecamp has an interest in the rights that it grants Basecamp to construct its proposed septic system, thus satisfying the first requirement for it to intervene in this case.

B. The Council's disposition of the permit appeal may adversely affect Basecamp's permit.

The Council's decision to uphold, modify, or vacate Basecamp's permit will materially affect Basecamp's rights and interests. In its appeal, POWJH requests that the Council reverse and vacate Basecamp's permit. POWJH further requests that the Council suspend or stay the

effectiveness of Basecamp's permit. If the Council grants either of POWJH's requests, it will adversely affect Basecamp's interest in the permit; Basecamp will no longer have the legal right to use its already-constructed small wastewater system, which is a direct harm to Basecamp's legal rights. Any modification or revocation of Basecamp's permit will present a perceptible, not speculative, harm. *See Foster's, Inc. v. Laramie*, 718 P.2d 868, 872-73 (Wyo. 1992). On the other hand, if the Council upholds the permit, Basecamp will maintain its legal right to use its properly permitted and already-constructed small wastewater system. The Council's ultimate disposition of this permit, then, will greatly impact Basecamp's interests, satisfying the second requirement for it to intervene in this case.

C. Neither the DEQ nor POWJH can adequately represent Basecamp's interests.

The two parties in this case, DEQ and POWJH, cannot adequately protect Basecamp's interest in its permit. In considering whether a party is adequately represented by the existing parties, courts generally consider whether another party will undoubtedly make all the intervenor's arguments, whether another party is capable and actually willing to make such arguments, and whether the intervenor would offer necessary elements to the proceedings that other parties would neglect. *City of Los Angeles*, 288 F.3d at 398 (citation omitted). In this case, Basecamp's interests will not be adequately advanced by the other parties in the case.

The DEQ will not undoubtedly make all of Basecamp's potential arguments, and the DEQ may not be willing and capable of making all of Basecamp's potential arguments. While the DEQ has an interest in the integrity of its permitting process, it has no direct interest in the actual content of Basecamp's permit, or whether Basecamp continues to hold a permit at all. Essentially, the DEQ is "the administrative agency representing the State of Wyoming's legal interest." *See 2010 WY 20*, ¶ 18 (internal quotation marks and citations omitted). Although the DEQ's interests may

overlap with Basecamp's interests in some respects, Basecamp cannot rely on the DEQ to zealously argue on its behalf. As a state agency, represented by the Office of the Attorney General, the DEQ is limited in the arguments it can make on Basecamp's behalf. *See* Wyo. Stat. § 9-1-603 (establishing the Attorney General as the legal representative of state officials). It is also possible that at some point during this appeal, the interests that currently overlap between the DEQ and Basecamp may diverge, and Basecamp must be permitted to intervene to continue to assert its own interests.

The only other party in this lawsuit, POWJH, is directly adverse to Basecamp. POWJH cannot adequately represent Basecamp's interests or make all the arguments Basecamp would make. Because no existing party in the case can adequately defend Basecamp's interests in its permit, the third element for Basecamp's intervention is satisfied.

D. Basecamp's motion is timely.

Finally, the Council should allow Basecamp to intervene because its motion is timely. In determining whether a motion to intervene is timely, courts consider four factors:

- (1) The length of time the movant knew (or reasonably should have known) of its interest in the case before the motion to intervene was filed;
- (2) The prejudice that the existing parties to the case may suffer as a result of the movant's failure to seek intervention as soon as the movant actually knew (or reasonably should have known) of its interest in the case;
- (3) The prejudice that the movant may suffer if unable to intervene; and
- (4) The existence of unusual circumstances demonstrating that the motion to intervene is timely or untimely.

Vill. Rd. Coal. v. Teton Cty. Hous. Auth., 2013 WY 38, ¶ 9 (citations omitted). Considering these factors, Basecamp's motion to intervene is timely.

First, this appeal is in its early stages; the parties have not yet filed a proposed schedule for discovery, identification of expert witnesses and summary of testimony, submission of exhibits, filing of dispositive motions and responses, prehearing disclosure statements, prehearing conference, and the proposed date of the final hearing; the Council has ordered that schedule filed by November 29, 2023. Basecamp became aware of this appeal sometime after it was filed in August, was notified of the Motion to Suspend Permit on October 11, 2023, and since then, Basecamp has worked diligently to investigate and evaluate the appeal, retain specialized co-counsel, and move to intervene.

Second, Basecamp's intervention will not prejudice the other parties in the case. Basecamp's participation will not delay resolution of this case. No schedule for discovery or motions has yet been set, and no final hearing has been scheduled. By intervening at this early stage, Basecamp can ensure it is able to participate in developing a schedule for the case and final hearing.

Third, Basecamp will suffer significant prejudice if unable to intervene in this case. Basecamp has a procedural due process right to be heard in this case. As the holder of the DEQ permit, Basecamp is entitled to notice and opportunity to be heard on POWJH's appeal of its permit, as well as the pending motion to summarily suspend its permit. *See* Wyo. Stat. § 16-3-113(c). If Basecamp is unable to intervene in this case, and the Council suspends, modifies, or revokes its permit, Basecamp will suffer extreme prejudice. *See Amoco Prod. Co. v. Wyoming State Bd. of Equalization*, 882 P.2d 866, 871 (Wyo. 1994) (holding that denying participation in a contested case violated due process rights).

Fourth, no unusual circumstances demonstrate that Basecamp's motion to intervene is untimely. This case has been pending since only mid-August, and Basecamp has moved expeditiously to intervene here, prompted by POWJH's motion to suspend Basecamp's otherwise validly issued small wastewater permit.

Basecamp's motion to intervene is timely, satisfying the fourth element for Basecamp to intervene in this case. The Council should allow Basecamp to intervene in this case at this early stage to protect Basecamp's interests and due process rights that will otherwise be irreversibly harmed if it is not allowed to intervene.

V. CONCLUSION

Basecamp is the holder of the validly issued DEQ permit under appeal and, as such, its rights interests are directly implicated in this appeal. The Council should grant Basecamp's motion to intervene as a matter of right.

Respectfully submitted this 1st day of November, 2023.

/s/ Kelly Shaw

Kelly Shaw, Wyo. Bar No. 7-5624
Stacia Berry, Wyo. Bar No. 7-5001
KOCH LAW, P.C.
121 W. Carlson St. #3
P.O. Box 2660
Cheyenne, WY 82003
Ph: (307) 426-5010
Fax: (307) 426-4927
kshaw@kochlawpc.com
stacia.berry@kochlawpc.com

Christopher Hawks, Wyo. Bar No. 5-2871
Hawks & Associates, LC
199 E. Pearl Ave. #103
P.O. Box 4430
Jackson, WY 83001
Ph: (307) 733-9437
Fax: (866) 220-6681
chris@hawksassociates.net

*Attorneys for Proposed Intervenor
Basecamp Teton WY SPV LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 2023, a true and correct copy of the foregoing **BASECAMP'S MOTION TO INTERVENE** was filed and served in accordance with Rules of Practice and Procedure, Chapter 2, Section 5(b), by uploading to Docket Entry No. 23-3801 at wyomingeqc.wyo.gov.

/s/ Kelly Shaw
KOCH LAW, P.C.