

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

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

SCHEDULING ORDER

Pursuant to the Hearing Officer’s December 20, 2023, Order, the Parties submitted a proposed scheduling order for this Matter. Upon consideration of the parties’ proposed scheduling order, the Hearing Officer hereby issues this Scheduling Order. The parties shall adhere to the following schedule and procedures in this matter:

1. Preliminary matters

The parties shall serve each other with all discovery requests and responses, via email, at the addresses shown on the Certificate of Service attached hereto. The parties shall not file discovery requests or responses with the Council or serve the Hearing Officer with copies thereof. All dates contained herein refer to the date on or before an action must be taken. When such dates involve matters to be submitted to the Hearing Officer, it refers to the date of filing, not service. Deadlines set herein which involve the Hearing Officer’s time may only be modified by an express written Order of the Hearing Officer and will only be allowed if the need for modification results from obstacles outside the requesting party’s control.

2. Settlement

In the event the parties settle their dispute before the hearing, the parties are informed that

there will be no change of scheduling until the settlement is reduced to writing, a stipulation is executed by the parties to that effect, and an order on the stipulation is presented to and approved by the Hearing Officer.

3. Amended Pleading

Petitioner may file a motion requesting the Council's consent to amend its pleadings to include the issue of connectivity to surface water no later than **March 4, 2024**. The Department and Basecamp may file a response to Petitioner's motion to amend by **March 26, 2024**.

4. Discovery

The parties shall serve their initial disclosures on the other parties, but not the Council or Hearing Officer, pursuant to W.R.C.P. 26(a)(1) by **April 22, 2024**. Initial disclosures need only consist of:

- (1) the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of the information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment; and
- (2) a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

Pursuant to W.R.C.P. 26(d), a party may not seek discovery from any source until that party has provided the disclosures required by W.R.C.P. 26(a)(1).

Disclosure of experts shall be made according to the procedure of W.R.C.P. 26(a)(2). Petitioner shall designate expert witnesses by **July 15, 2024**. Respondent Basecamp shall designate expert witnesses by **August 15, 2024**. The Department shall designate expert witnesses by **September 16, 2024**. Rebuttal expert testimony will not be permitted absent good cause shown. These deadlines apply to those specially retained expert witnesses, designated pursuant to W.R.C.P. 26(a)(2)(B), from whom an expert report is required. These deadlines also apply to those

witnesses designated pursuant to W.R.C.P. 26(a)(2)(C), who are expected to provide opinion testimony but from whom no report is required. The disclosure of W.R.C.P. 26(a)(2)(C) witnesses shall be accompanied by the summary of the facts or opinions to which the witness is expected to testify and disclose the subject matter on which the witness is expected to present evidence, as specified in W.R.C.P. 26(a)(2)(C).

The discovery cut-off date is **October 29, 2024**. All written discovery requests must be served upon the opposing party **at least 30 days before** the discovery cut-off. No discovery will be permitted beyond the discovery cut-off. All depositions must be completed by the discovery cut-off. The parties have a continuing duty to disclose information and material as it becomes known, even after the deadlines set herein, pursuant to W.R.C.P. 26(e).

Any motion seeking relief due to a discovery dispute must contain a certification that, prior to filing the motion, the movant has in good faith conferred with the opposing person or party to resolve the discovery dispute before seeking intervention by the Hearing Officer and must set forth the opposing person's or party's position on the motion. If the movant has been unable to confer with the opposing person or party to resolve the discovery dispute before seeking court intervention, then the movant must certify a description of all good faith efforts taken by the movant to resolve the discovery dispute. Movant's failure to so certify will result in automatic denial of the motion. Any response to a motion involving a discovery dispute must be filed **within 10 calendar days**. The Hearing Officer may decide any discovery dispute without a hearing, and may consider the failure to respond within the time permitted as a confession of the motion.

5. Dispositive Motions

Summary judgment or other dispositive motions shall be filed by **November 14, 2024**. Responses shall be filed by **December 4, 2024**. Replies shall be filed by **December 19, 2024**.

The Council finds that filing a separate statement of facts pursuant to Rule 56.1 is unhelpful

and directs that no separate statement of facts shall be filed. Any assertion of material fact in any part of a motion or brief shall be supported by pinpoint citation to the evidentiary materials supporting the fact, by paragraph or page, with as much specificity as possible.

The Council will hear and decide all dispositive motions by **January 29, 2025**. The Council will issue a separate order setting a date for a dispositive motions hearing.

6. Prehearing Matters

Pretrial motions and motions in limine shall be filed by **February 5, 2025**. Responses to pretrial motions and motions in limine shall be filed by **February 12, 2025**. The Council will hear and decide all pretrial motions and motions in limine by **February 19, 2025**. The Council will issue a separate order setting a date for a hearing on pretrial motions and motions in limine.

Prehearing memoranda shall be filed by **February 26, 2025**. Prehearing memoranda shall comply with Chapter 2, Section 18 of the Department's Practice and Procedure Rules. Exhibits shall be designated numerically by the Petitioner and alphabetically by Respondents. The Department and Basecamp shall submit a coordinated single exhibit list. The parties shall specify which of the listed witnesses may be called and which will be called. The opposing party is not required to subpoena witnesses who will be called by the other party. Absent good cause shown, exhibits which are not marked and provided to the other party with the prehearing memoranda will not be received at the hearing, nor shall any witness be permitted to testify unless they are identified on the witness list.

A prehearing conference will be held by telephone or video conference on **March 5, 2025**. One hour has been reserved for the prehearing conference.

7. Hearing

This matter is scheduled for hearing to begin on **March 18, 2025**, in Cheyenne, Wyoming, at a place to be designated by the Council. Three days are reserved for the hearing. Petitioner

shall present evidence first, followed by Basecamp, and lastly, the Department. After the hearing is concluded and the evidence is closed, the parties shall file proposed findings of fact and conclusions of law within 30 days of electronic filing of hearing transcript, for the Council's consideration.

DATED this 22th day of February, 2024.

Shane True

[Shane True \(Feb 22, 2024 11:17 MST\)](#)

Vice Chairman Shane True, Hearing Examiner
Environmental Quality Council