

Abigail Boudewyns, WSB No. 7-5223
Senior Assistant Attorney General
Wyoming Attorney General’s Office
109 State Capitol
Cheyenne, WY 82002
Ph: (307) 777-6946
Fax: (307) 777-3542
abigail.boudewyns@wyo.gov

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

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

**DEPARTMENT’S NOTICE OF RELATED DISTRICT COURT FILING AND RESPONSE TO
PETITIONER’S MOTION FOR LEAVE TO FILE AMENDED PETITION FOR REVIEW**

The Wyoming Department of Environmental Quality (Department), through the Attorney General’s Office, requests that the Environmental Quality Council (Council) deny Protect Our Water Jackson Hole’s (Petitioner’s) Motion for Leave to File Amended Petition for Review. The Council should deny Petitioner’s request to file an amended petition because the claims Petitioner seeks to add are futile.

The Department also provides notice to the Council that subsequent to filing its *Motion for Leave to File Amended Petition for Review* on March 4, 2024, Petitioner filed a declaratory judgment action in district court regarding its delegation claim under Wyo. Stat. Ann. § 35-11-304, and associated delegation agreement. *See* Attachment A. As such, the Department asks this Council grant its outstanding Motion to Dismiss.

BACKGROUND

This matter involves the Department's issuance of an individual permit to construct a septic system to Basecamp Teton WY SPV LLC (Basecamp) on July 13, 2023. *See* Attachment B. In issuing Permit No. 2023-025 (Permit), the Department determined the proposed septic system meets minimum applicable construction and design standards imposed by Wyoming statutes and Department regulations. *Id.*

On August 11, 2023, Petitioner filed an appeal of the Department's decision to issue the Permit pursuant to Wyo. Stat. § 35-11-801(d). Pet'r's Appeal of Notification of Coverage – Permit No. 2023-025, ¶1. In its appeal, Petitioner failed to plead any issues pertaining to the claims it seeks to add at this time – including the Department's perceived lack of authority to issue the Permit pursuant to Wyo. Stat. § 35-11-304(a) and the associated delegation agreement between Teton County and the Department. *Id.*

Petitioner first raised arguments pertaining to the delegation agreement and the Department's perceived lack of authority to issue the permit in its Motion to Suspend Permit, two months after filing its appeal. At that time the Department made both Petitioner and the Council aware of Petitioner's failure to plead claims related to the Delegation Agreement. Dep't's Resp. Opposing Mot. to Suspend Permit, 10 (October 24, 2023). Despite that notification, Petitioner continued to inappropriately raise those claims in its Reply to Department's Response Opposing Motion to Suspend Permit, and during the November 17, 2023, Council hearing on Basecamp's Motion to Intervene. On November 29, 2023, over a month after the notice, the Department filed its Motion to Dismiss claims related to the Delegation Agreement, which the Council has not yet decided.

In December of 2023, the Council ordered the parties to file a joint proposed scheduling order. *See* Council's Order for Proposed Schedule. In developing the joint proposed scheduling order, the Department notified Petitioner that it had also failed to plead claims related to surface water connectivity even though Petitioner had started referencing those claims in other filings. Without the Department consenting to the amended pleadings, the parties agreed in their January 30, 2024, Stipulated Proposed Scheduling Order to set a date by which Petitioner could request leave from the Council to amend its pleadings to include only the claim of surface water connectivity. On March 4, 2024, Petitioner filed a motion requesting leave to amend its pleadings to include both the delegation agreement and surface water connectivity claims.

ARGUMENT

Petitioner requests permission from this Council to amend its pleadings for two reasons: 1) to include its delegation agreement claims that the Department has already moved to dismiss, and 2) to include a new claim that issuance of the permit to construct the septic system is a violation of the Department's Chapter 2, Section 5, rules pertaining to surface water discharge permitting. *See* Pet'r's Mot. For Leave to File Amended Pet. for Review. The Council should deny Petitioner's request to amend, however, because both amended claims are futile.

Rule 15 of the Wyoming Rules of Civil Procedure relates to amended pleadings. Under that Rule, Petitioner may only amend its pleadings at this time with the Council's leave or the other parties' consent. Neither the Department nor Basecamp have consented

to Petitioner’s amended petition. The Council, like a court, is vested with broad discretion to determine whether to allow amendment to pleadings. *Halling v. Yovanovich*, 391 P.3d 611, 619 (Wyo. 2017). The test to be applied when determining whether to grant a motion to amend is:

In the absence of any apparent or declared reasons – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies [. . .], undue prejudice [. . .], futility of the amendment [. . .] the leave sought should, as the rules require, be ‘freely given.’

Id. (citing *Voss v. Goodman*, 203 P.3d 415, 420 (Wyo. 2009)). Any of the factors stated above, including futility of the amendment, can be used as a reason to deny a motion to amend. *Id.* (citing *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993)). “A proposed amendment is futile if the complaint, as amended, would be subject to dismissal for any reason, including that the amendment would not survive a motion for summary judgment.” *Id.* at 620. (quoting *Watson v. Beckel*, 242 F.3d 1237, 1239-40 (10th Cir. 2001)).

Both of the claims Petitioner seeks to add are futile. The Council lacks jurisdiction to consider Petitioner’s delegation claims, and the Petitioner’s surface water connectivity claim has no relevance in this appeal of the permit to construct the septic system. Both claims are ripe for dismissal and are therefore futile.

A. The Council lacks jurisdiction to determine the delegation agreement claim.

With respect to the delegation agreement claim, the Department renews, and hereby incorporates, the arguments made in its November 29, 2023, Motion to Dismiss and subsequent Reply. The Council does not have jurisdiction to determine its own jurisdiction with respect to the delegation issues arising under Wyo. Stat. Ann. § 35-11-304. As such,

Petitioner's attempt to amend its pleadings to include the delegation agreement claim is futile because the Council does not have jurisdiction to hear the claim.

B. The Council cannot provide relief to Petitioner's surface water permitting claims because they are not relevant to the current appeal.

The Permit to construct the septic system at issue in this matter is separate and distinct from any surface water permitting issues. The Department of Environmental Quality operates several distinct permitting programs to carry out its statutory duties under the Wyoming Environmental Quality Act. Petitioner filed an appeal of the Department's decision to grant an individual permit to construct under Chapter 3 of its Water Quality Rules. Petitioner now requests to amend its petition to allege violations under Chapter 2 of the Department's Water Quality Rules, relating to permitting of surface water discharges. This surface water permitting claim is futile because the Council cannot provide the requested relief.

The Environmental Quality Council is the administrative body that acts as hearing examiner for cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the Department of Environmental Quality. Wyo. Stat. Ann. § 35-11-112. State statute describes the limited remedies the Council may grant Petitioner. 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 [. . .] 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 [. . .].

Wyo. Stat. Ann. § 35-11-112(c). The Council's authority does not include making permitting decisions in the first instance. Its role is reviewing the Department's permitting decisions if those decisions are appealed.

The relief sought by Petitioner in both its original and amended petition is reversal and vacation of the Department's decision to issue the Permit. The issue of an alleged surface water discharge, by law, has no bearing on a decision to issue a permit to construct. Even if the Council found that the permitted septic system discharged into surface waters of the state, the Council would have no statutory authority to deny the permit to construct. Further, the Council could not, through this present action, conduct a hearing on whether a second permit is needed without any prior determination by the Department. As such, Petitioner's proposed amended petition is futile and should be denied by the Council.

1. The need for a surface water permit does not negate a properly granted permit to construct.

Through its amended petition, Petitioner attempts to litigate through this appeal of an individual permit to construct the recent Supreme Court holding in *County of Maui, Hawaii v. Hawaii Wildlife Fund*, related to functional equivalent of a discharge to surface water. *See* 140 S. Ct. 1462 (2020). However, Petitioner, and the Department, must still follow the State statutory and regulatory permitting regimes regarding surface water discharges.

As recently as a few months ago, the Tenth Circuit further developed the case law stemming from the *Maui* case and rearticulated the Supreme Court’s caution against decisions that “create serious risk [. . .] of undermining state regulation of groundwater.” *Stone v. High Mountain Mining Company, LLC*, 89 F.4th 1246, 1261 (10th Cir. 2024) (quoting *Maui v. Hawaii Wildlife Fund*, at 1477). Further, the Tenth Circuit specifically stated that the burden for proving a functional equivalent of a direct discharge must stay with Petitioners and cannot be inappropriately shifted to the other party to prove that the groundwater was not the functional equivalent of a direct discharge. *Id.* at 1260. As such, Petitioner must bring its claims through the Wyoming Environmental Quality Act statutory processes for alleging violations of surface water standards. Petitioner also may not shift the burden of determining a functional equivalent discharge to surface water, or the lack thereof, onto the Department through the small wastewater permit to construct process.

Under Wyoming’s permitting regimes, the issue of surface water discharges have no bearing on the contested case to determine whether the Department properly granted the individual small wastewater Permit in accordance with the law. The small wastewater Permit being appealed in this matter is a permit to construct a small wastewater system in compliance with the Department’s minimum applicable construction and design standards. *See* Attachment B. Under the Department’s minimum construction standards, potential surface water violations have no bearing on the Department’s permitting decision to grant an individual permit to construct a small wastewater system. *See* Chapter 3, Department’s Water Quality Rules. Whereas Chapter 3 explicitly allows the Department to deny a general permit if it determines that the “installation, construction, modification, or

operation of the facility would not be protective of surface water standards,” no similar provision of law applies to individual permits. *See* Chapter 3, Section 11 of the Department’s Water Quality Rules. In fact, the Permit specifically states that “this permit does not imply that [the Water Quality Division] guarantees or ensures that the permitted facility, when constructed, will meet applicable discharge permit conditions or other effluent or operational requirements. Compliance with discharge standards remains the responsibility of the permittee.” Attachment B.

The Permit on appeal is solely for determining that the septic system complies with the Chapter 3 rules. If a septic system was found to be the functional equivalent of a discharge into a surface water of the state, the Department could and would address that through its surface water discharge permitting process. Ultimately, Wyo. Stat. Ann. § 35-11-301(a)(i) prohibits discharges of pollutants into waters of the state without a permit.

Finally, State agencies are bound to their rules. *Painter v. Abels*, 998 P.2d 931, 938 (Wyo. 2000) (further stating “Administrative rules and regulations have the force and effect of law.”). Failure of an agency to “strictly follow its own rules and regulations” may result in reversal of the agency’s action. *Id.* The Council, even if it found surface water connectivity could not deny Basecamp’s individual permit to construct based on surface water connectivity because it is not a lawful reason to deny a permit. To provide Petitioner with the remedy it seeks through the amended complaint would be unlawful agency action. As such, Petitioner’s amended complaint is subject to dismissal and is futile.

2. The Department has not decided whether Basecamp requires a surface water permit and, therefore, the Council cannot hold a contested case on the issue.

Petitioner may not attempt to litigate whether a second permit is required by Basecamp through the Department's decision to grant Basecamp a permit to construct a small wastewater system. These two permitting regimes are entirely separate, with the latter being beyond the scope of the appeal currently before the Council. Petitioner must bring allegations of violations of Chapter 2 of the Department's Water Quality Rules through the proper channels within the Department for investigation and a final Department decision before attempting to bring such claims before the Council. The Department has taken no final action with respect to any allegations of surface water violations by Basecamp upon which the Council could review and conduct a contested case.

Pursuant to the Environmental Quality Act, the Director of the Department of Environmental Quality, not the Council, is the enforcer of the Environmental Quality Act in the first instance. *See* Wyo. Stat. Ann. § 35-11-109. The Director shall "investigate violations of this act or regulations adopted hereunder and prepare and present enforcement cases before the [C]ouncil" and "take such enforcement action as set out in articles 6 and 7 of this Act." Wyo. Stat. Ann. § 35-11-109(a)(vii). Article 7 of the Act requires the Director of the Department to investigate violations of the Act if the Department has cause to believe that persons are violating the Act. Wyo. Stat. Ann. § 35-11-701(a). If the results of the investigation indicate a violation of the Act exists, the Department shall promptly eliminate the source or cause of the violation. Wyo. Stat. Ann. § 35-11-701(c). Article 7

specifically allows for the filing of a written complaint alleging a violation. Wyo. Stat. Ann. § 35-11-701(a).

Chapter 1, Section 8, of the Department's Practice and Procedure Rules further states that, "where authorized by the Wyoming Environmental Quality Act, appeals to the council from final actions of the Administrators or Director shall be made within thirty (30) days of notification of such action." In this instance, there has been no final agency action resulting from an investigation of surface water violations pursuant to Article 7 of the Environmental Quality Act.

Petitioner must follow the statutory process in bringing forward its allegations of noncompliance with the Environmental Quality Act. Without any investigation or enforcement action taken by the Department, this attempt to bring surface water violations straight to the Council is beyond the statutory relief the Council may provide the Petitioner. The Council may only affirm, amend, or deny action previously taken by the Department. *See* Wyo. Stat. Ann. § 35-11-112(c). Petitioner's alleged violations of the Department's Chapter 2 *Permit Regulations for Discharges to Wyoming Surface Waters* must be taken to the Department for investigation and resolution before bringing them to the Council. Wyo. Stat. Ann. § 35-11-701. As such, Petitioner's attempt to litigate surface water violations before the Council without a prior investigation or decision rendered by the Department is subject to dismissal and renders the proposed amended petition futile.

CONCLUSION

The Departments requests that the Council deny Petitioner's Motion for Leave to File Amended Petition for Review due to the futility of the claims contained in the proposed amended petition. The Department also requests that the Council grant its previous Motion to Dismiss.

Submitted this 22nd day of March 2024.

/s/ Abigail Boudewyns
Abigail Boudewyns, WSB No. 7-5223
Senior Asst. Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
Phone: (307) 777-7895
abigail.boudewyns@wyo.gov

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

FILED 4:10pm
MAR 05 2024

DISTRICT COURT
9TH JUDICIAL DISTRICT
TETON COUNTY WYOMING

Kevin E. Regan
Protect Our Water Jackson Hole
250 E. Broadway Avenue
PO Box 316
Jackson, WY 83001
Phone: (206) 601-5180
kevin@protectourwaterjrh.org
(Pro Hac Vice application forthcoming)

Attorneys for Plaintiff Protect Our Water Jackson Hole

**IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT**

PROTECT OUR WATER JACKSON HOLE,
a Wyoming nonprofit corporation,

Plaintiff

v.

WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY and
BASECAMP TETON WY SPV, a Wyoming
limited liability company,

Defendants.

Civil No. 2024-CV-0019048

COMPLAINT FOR DECLARATORY JUDGMENT

Comes now Protect Our Water Jackson Hole (“**POWJH**” or “**Plaintiff**”), by and through its undersigned attorneys, and submits a Complaint for Declaratory Judgment, as follows:

THE PARTIES

- 1) Plaintiff is a Wyoming nonprofit corporation with its principal place of business in Teton County, Wyoming.
- 2) Defendant Wyoming Department of Environmental Quality is a duly constituted department of the State of Wyoming.
- 3) Defendant Basecamp Teton WY SPV is a Wyoming limited liability company with its principal place of business in Teton County, Wyoming.

JURISDICTION AND VENUE

- 4) This Court has personal jurisdiction over all parties pursuant to Wyo. Stat. § 5-1-107.
- 5) Venue is appropriate in this Court under § 1-5-104 and § 1-5-105.
- 6) This Court has subject matter jurisdiction pursuant to § 1-37-102.

FACTUAL AND PROCEDURAL BACKGROUND

- 7) This action stems from a Permit to Construct for a septic system issued by the Wyoming Department of Environmental Quality (“*DEQ*”) to Basecamp WY SPV, LLC (“*Basecamp*”) with the permit number 2023-025 and a date of July 13, 2023 (the “*Septic Permit*”).
- 8) The Septic Permit authorized construction and use of a septic system on a parcel of land in Teton County, owned by the State of Wyoming.
- 9) The Septic Permit is part of, for lack of a better term, a “glamping” operation off the Teton Village Road run by Basecamp pursuant to a permit Temporary Use Permit 033345, issued by the Wyoming Office of State Lands and Investment to Basecamp Hospitality LLC.
- 10) Basecamp’s development has been controversial due to Basecamp’s repeated attempt to duck and avoid reasonable and standard regulation by Teton County such as compliance with zoning, building, and fire codes, as well as the potential environmental and scenic resource impacts that are occurring because of Basecamp’s refusal to comply with local regulations.
- 11) Among the many legal challenges filed as a result of Basecamp’s attempt to avoid local regulation was a prior lawsuit by POWJH, Civil No. 18806, highlighting that Basecamp’s original septic permit was invalid because DEQ issued the permit under an expired general permit.
- 12) The DEQ ultimately conceded POWJH’s arguments in Civil No. 18806 were correct and withdrew that prior permit.
- 13) The DEQ then began a new permitting process for the Basecamp development and ultimately issued the

current Septic Permit.

- 14) The DEQ has, once again, however, not paid sufficient attention to its own governing statutes and rules and issued a facially invalid permit because DEQ has delegated *all* of its small wastewater facility permitting authority within Teton County to Teton County.
- 15) POWJH initially raised this issue of delegation and DEQ's lack of authority to issue the Septic Permit in proceedings before the Environmental Quality Council ("*EQC*"), after filing the *Appeal of Notification of Coverage* attached as Exhibit A, and asked that the EQC issue an injunction staying the effectiveness of the Septic Permit given the obvious and facial deficiencies in the Septic Permit.
- 16) The EQC, without addressing any of the merits, determined it did not have the authority to issue an injunction staying the effectiveness of the permit in an *Order Denying Motion to Suspend Permit*, attached as Exhibit B.
- 17) As the EQC has determined that it has no authority to issue a stay, and exhaustion of administrative remedies is not required when irreparable harm would occur absent District Court intervention, POWJH is now asking the District Court to consider POWJH's declaratory judgment action, despite the pendency of an administrative appeal.
- 18) Additionally, declaratory judgment is appropriate, regardless of the pendency of an agency appeal, if a "party's 'desired relief concerns the validity and construction of agency regulations, or if it concerns the constitutionality or interpretation of a statute upon which the administrative action is, or is to be, based, [a declaratory judgment action] should be entertained.'" *Thomas Gilcrease Found. for Gilcrease Hoback One Charitable Tr. v. Cavallaro*, 2017 WY 67, ¶ 13 (formatting original).
- 19) Based on both the irreparable harm that will occur via environmental contamination if Basecamp is allowed to operate a facially invalid septic permit during the pendency of the EQC hearings, and the fact that state statute plainly prohibited the DEQ from even issuing this Septic Permit in the first instance, declaratory judgment is appropriate despite the pending administrative review of agency action.
- 20) POWJH has standing to make this request as POWJH has expended (1) approximately \$164,000 for water quality monitoring in Fish Creek between 2014 and 2022; (2) approximately \$88,000 for stakeholder involvement in an attempt to improve water quality in Fish Creek between 2015 and 2019; and (3) approximately \$250,000 in funding for the Teton County Water Quality Master Plan process, which includes water quality recommendations for Fish Creek, all of which is included in a standing affidavit filed with the EQC and reproduced here as Exhibit C.

THE LEGAL FRAMEWORK FOR SEPTIC PERMITS

- 21) W.S. § 35-11-301 prohibits all construction and operation of septic systems without a permit.
- 22) The DEQ's authority to issue individual permits, like the type granted to Basecamp and satisfy the W.S. § 35-11-301 permit requirement, is governed by Chapter 3 of the Water Quality Rules, and the Septic Permit explicitly states that it was issued Pursuant to Chapter 3, Section 4. *See* attached Exhibit D.
- 23) Chapter 3 of the Water Quality Rules explicitly provides, however, in Section 2(b)(xi) that Chapter 3 does not apply to permit applications when that permit application is governed by a municipal delegation agreement.
- 24) In this case, there is a valid delegation agreement conferring all authority to permit "small wastewater facilities" in Teton County to Teton County (the "*Delegation Agreement*"). *See* attached Exhibit E.
- 25) As a result, the DEQ has no authority to issue any permit for a "small wastewater facility" in Teton County, and all such applications must go to the County under the applicable rules and regulations.
- 26) More specifically, W.S. § 35-11-301(a) provides that "[n]o person, except when authorized by a permit issued pursuant to the provisions of this act, shall . . . [c]onstruct, install, modify or operate any sewerage system [or] disposal system."
- 27) "Sewerage system" is then defined as "pipelines, conduits, storm sewers, pumping stations, force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal." W.S. § 35-11-103(c)(iii).
- 28) "Disposal system" is defined as "a system for disposing of wastes, either by surface or underground methods, including sewerage systems, treatment works, disposal wells, and absorption fields." W.S. § 35-11-103(c)(v).
- 29) Accordingly, the construction of a septic system, such as the one at issue here, which includes pipelines and an absorption field used to dispose of waste, is only allowed with a permit issued under the Environmental Quality Act.
- 30) Having established that a permit is necessary to install a septic system, the Environmental Quality Act then designates the administrator of the Water Quality Division [(the "*WQD*")]) the authority to establish standards for the issuance of "permits for construction, installation, modification or operation of any . . . sewerage system [or] disposal system." W.S. § 35-11-102.
- 31) This authority is limited, however, by W.S. § 35-11-304 which commands that "the administrator of the water quality division, with the approval of the director, *shall delegate to municipalities, water and sewer*

districts or counties which apply the authority to enforce and administer within their boundaries the provisions of W.S. 35-11-301(a)(iii) and (v).” (emphasis added).

- 32) As a result of these related statutory sections, Wyoming has created a framework where all septic systems require permitting, and the Water Quality Division must administer those permits, except in a case where a municipality or other government agency properly requests that authority be delegated.
- 33) If there is a delegation request, however, that authority *must*, based on the compulsory language of the statute, be delegated from the Water Quality Division to the municipal authority.
- 34) The Wyoming Water Quality Rules acknowledge this statutory framework in Chapter 3. This Chapter provides the basis for issuing individual septic permits but also explicitly acknowledges that it cannot be the basis for a permit for “[f]acilities permitted by a municipality, water and sewer district, or county delegated authority under W.S. § 35-11-304.”
- 35) Accordingly, both the Wyoming statutes and Water Quality Rules, Chapter 3 are clear. Individual permits for septic systems can be issued by DEQ, except when there is a valid delegation agreement in place, in which case the permits must be issued by the relevant delegated authority. And, in this case, there is a valid delegation agreement in place.
- 36) The DEQ and Teton County have a Delegation Agreement where the DEQ “delegates and [Teton County] accepts the authority and responsibility to enforce and administer the provisions of W.S. 35-11-301(a)(iii) for small wastewater facilities, as defined in W.S. 35-11-103(c)(ix)” within Teton County’s territorial boundaries. Exhibit E at 2.
- 37) As a result of this agreement, the DEQ does not have any authority to issue permits for “small wastewater facilities,” as defined in W.S. § 35-11-103(c)(ix), located within Teton County. Instead, only Teton County can issue such permits.
- 38) Indeed, in the DEQ’s response to comments for this permit, the DEQ explicitly found that Basecamp’s proposed septic system was a “small wastewater facility” as defined in W.S. 35-11-103(c)(ix). Exhibit F at 2-1; 2-4.
- 39) As a result of this factual determination by the DEQ, both the relevant Wyoming statutes, regulations, and delegation agreement are clear that authority to grant or deny Basecamp’s application, in the first instance, is vested in Teton County.
- 40) In fact, Chapter 3 explicitly prohibits DEQ from issuing a permit for a small wastewater facility in Teton County, because that chapter does not apply to “[f]acilities permitted by a municipality, water and sewer district, or county delegated authority under W.S. § 35-11-304.”

- 41) As this analysis shows, The DEQ has no authority to grant permits for “small wastewater facilities” in Teton County and, based upon DEQ’s own determination that this was a “small wastewater facility” the challenged permit should have never been issued.

COUNT I: REQUEST FOR DECLARATORY JUDGMENT

- 42) The foregoing paragraphs of this Complaint are hereby reincorporated and made a part hereof by reference.
- 43) Pursuant to W.S. § 1-37-101 *et. seq.*, POWJH seeks declaratory judgment regarding the legal meaning of the provisions Wyoming Environmental Quality Act, W.S. § 35-11-101 *et. seq.*, and the associated regulations contained in the DEQ’s Water Quality Rules, Chapter 3, in light of the foregoing discussion of the applicable statutory sections.
- 44) Specifically, POWJH requests a declaratory judgment stating that when the DEQ delegates authority to issue small wastewater permits to a municipality, the DEQ has no authority to issue small wastewater permits within that municipality, and all small wastewater permits in the municipality must be issued by the municipality.
- 45) Pursuant to W.S. § 1-37-101 *et. seq.*, POWJH seeks declaratory judgment regarding the legal impact of the plain and unambiguous language of the Delegation Agreement, in light of the foregoing discussion of the applicable statutory sections and the language of the Delegation Agreement.
- 46) Specifically, POWJH requests a declaratory judgment stating that the language in the Delegation Agreement, including the statement that “[b]y execution of this Agreement, WQD delegates and [Teton County] accepts authority and responsibility to enforce and administer the provisions of W.S. 35-11-301(a)(iii) for small wastewater facilities,” divests the DEQ of authority to issue small wastewater permits while the delegation agreement is in place, in Teton County, and confers sole authority to issue wastewater permits in Teton County to Teton County, while the agreement is in place.

COUNT II: REQUEST FOR INJUNCTIVE RELIEF

- 47) The foregoing paragraphs of this Complaint are hereby reincorporated and made a part hereof by reference.
- 48) Pursuant to W.S. § 1-28-102, “[w]hen it appears by the petition that the plaintiff is entitled to relief consisting of restraining the commission or continuance of some act the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when during the litigation it appears that the defendant is doing, threatens to do, or is procuring to be done some act in violation of the plaintiff’s rights respecting the subject of the action and tending to render the judgment

ineffectual, a temporary order may be granted restraining the act.”

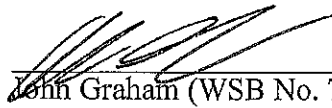
- 49) In operationalizing this injunction statute, the Wyoming Supreme Court has stated that injunctions should issue when there is:
- a. A substantial likelihood the party requesting the injunction will prevail on the merits; and
 - b. There is a potential harm that is irreparable and which has no adequate remedy at law.
- 50) Plaintiff has a substantial likelihood of prevailing on the merits because the relevant statutes and the delegation agreement establish, as a matter of law and with no further need for discovery, that the DEQ did not have authority to issue a septic permit.
- 51) Plaintiff has previously submitted, both in public comment to the DEQ and in its appeal to the EQC, an expert report, attached here as Exhibit G, highlighting that there is 1) already evidence from studies conducted prior to the permitting process by third-party scientists of water connectivity between the Septic Permit site and Fish Creek, 2) already evidence from studies conducted by third-party scientists prior to the permitting process that raised mound leachfield systems, such as the system here, leak contaminants into the ground water when operated in the vicinity of Fish Creek, and 3) already evidence from studies conducted by third-party scientists prior to the permitting process that Fish Creek is already impaired by the exact same contaminants that will leak from this septic system.
- 52) This report shows there is potential irreparable harm in the form of environmental pollution and contamination that cannot be remediated, regardless of any damage award.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff POWJH respectfully requests the Court grant the following relief:

- A) Issue a preliminary injunction, pursuant to W.S. § 1-28-102, staying the effectiveness of the Septic Permit during the pendency of this Declaratory Judgment action;
- B) Declare, as a matter of law, that the DEQ, generally, cannot issue small wastewater septic permits in a municipality when it has already delegated that authority to a municipality and, specifically, that all small wastewater septic permits in Teton County need to be issued by Teton County pursuant to the existing Delegation Agreement;
- C) Award of costs, including attorney’s fees, to Plaintiff POWJH, pursuant to W.S. § 1-37-112; and
- D) Award any other relief that the Court deems just and equitable or that continued proceedings reveal Plaintiff is entitled to.

Respectfully submitted this 5th day of March, 2024.



John Graham (WSB No. 7-5742)
GEITTMANN LARSON SWIFT LLP
155 East Pearl Street, Suite 200
PO Box 1226
Jackson, WY 83001
Phone: (307) 733-3923
Email: jwg@glsllp.com

Kevin E. Regan (OR No. 044825; CA No. 262335;
WA No. 44565)
PROTECT OUR WATER JACKSON HOLE
250 E. Broadway Avenue
PO Box 316
Jackson, WY 83001
Phone: (206) 601-5180
Email: kevin@protectourwaterjh.org
(Pro Hac Vice application forthcoming)

**Attorneys for Petitioner
Protect Our Water Jackson Hole**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL OF THE STATE OF WYOMING

FILED

AUG 11 2023

ENVIRONMENTAL QUALITY COUNCIL STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF PROTECT OUR WATER JACKSON HOLE FROM PERMIT TO CONSTRUCT--- PERMIT NO. 2023-025

} } Docket No. _____

APPEAL OF NOTIFICATION OF COVERAGE - Permit No. 2023-025

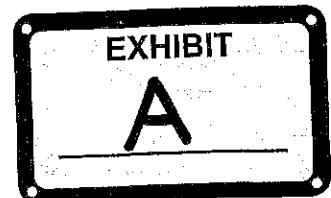
Protect Our Water Jackson Hole (Petitioner), by and through its undersigned attorneys, submits this Notice of Appeal and Petition challenging the PERMIT TO CONSTRUCT issued to Basecamp Teton WY SPV LLC, Permit No. 2023-025 (Reference Permit Numbers: 2022-090), Teton County, issued by the Department of Environmental Quality/Water Quality Division dated July 13, 2023, for failure to comply with the Wyoming Environmental Quality Act and the DEQ's water quality rules and regulations.

I. Name and Address of Petitioner and Petitioner's Attorneys.

Protect Our Water Jackson Hole P.O. Box 1014 Wilson, WY 83014

Petitioner is represented in this matter by: (1) John Graham, a partner at Geittmann Larson Swift LLP, 155 East Pearl Street, Suite 200, PO Box 1226 Jackson, WY 83001, and (2) Kevin E. Regan, Protect Our Water Jackson Hole's staff Law and Policy Advisor (an attorney who is licensed to practice law in another state and who is associated with an attorney licensed to practice law in the State of Wyoming), 250 E. Broadway Avenue, PO Box 316, Jackson, WY 83001. Correspondence and information related to this Petition should be served on the undersigned counsel at the address shown above.

II. Action Upon Which Hearing is Requested. Petitioner hereby appeals the issuance of the PERMIT TO CONSTRUCT issued to Basecamp Teton WY SPV LLC, Permit No. 2023-025 (Reference Permit Numbers: 2022-090), Teton County, issued by the Department of Environmental Quality/Water Quality Division dated July 13, 2023. That permit was authorized



by Jennifer Zygmunt, Administrator, Wyoming Department of Environmental Quality/Water Quality Division. Notification of the draft permit was published by email notification and on the DEQ's website on May 3, 2023.

III. Statement of Facts and Specific Allegations.

Petitioner has standing to appeal this decision

1. W.S. § 35-11-801(d) provides that “[a]ny aggrieved party may appeal the authorization as provided in this act.”
2. W.S. § 35-11-112(a)(iv) authorizes the Environmental Quality Council (EQC) to “[c]onduct 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.”
3. W.S. § 35-11-112(c)(ii) authorizes the EQC to “[o]rder that any permit, license, certification or variance be granted, denied, suspended, revoked or modified.”
4. Protect Our Water Jackson Hole (POWJH) is a 501(c)(3) tax exempt, non-profit corporation registered in the State of Wyoming. Its mission is to serve as a powerful advocate for the protection of ground and surface waters in Teton County, Wyoming.
5. POWJH and its predecessor organization, Friends of Fish Creek, have invested heavily in efforts to restore and protect water quality in Fish Creek and its tributaries.
6. The operation of the onsite wastewater system contested herein will discharge pollutants — including *E. coli* and nutrients— to Fish Creek and its tributaries, diminishing the use and enjoyment that Petitioners and its members and supporters enjoy and appreciate.
7. The DEQ/WQD has determined that Fish Creek is impaired by concentrations of *E. coli* that exceed the quality standards for primary contact recreation contained in WQRR Chapter 1.
8. DEQ has indicated that several lines of evidence show that Fish Creek is impaired for nutrients and that DEQ is engaged in a process to list Fish Creek as impaired for nutrients, including

phosphorus, nitrogen, and related compounds. For example, see video footage of DEQ presentation at Fish Creek Watershed Management Planning Public Stakeholder Meeting on June 7, 2023 in Wilson, WY at: <https://jhcleanwater.org/initiatives/fish-creek-watershed-management/> (at 1:00:30; 1:01:26)

9. High concentrations of *E. coli* that exceed applicable water quality standards, and high nutrient levels that have impaired ecosystem health, have diminished and negatively affected Petitioners' use and enjoyment of Fish Creek.

10. POWJH submitted comments during the public opportunity for the above-referenced permit, including written comments and exhibits submitted on June 2, 2023, Attachment A (comments excluding attachments), supplemental comments and exhibits on June 9, 2023, Attachment B (supplemental comments excluding attachments), and oral comments from POWJH staff and Board of Directors members at a public meeting regarding Permit No. 2023-025 on June 9, 2023, Attachment C (DEQ transcript).

11. POWJH's members and supporters are adversely affected by the above-referenced permit and by the activities authorized thereunder, including but not limited to the construction and operation of a raised mound, pressure dosed commercial septic system in the headwaters of Fish Creek, a DEQ-designated Class 1 surface water that is heavily used year-round by Teton County residents and visitors alike for a variety of recreational, scenic, and aesthetic purposes.

The Temporary Use Permit

12. The Office of State Lands and Investments ("OSLI") issued a Temporary Use Permit (TUP-03345) to Utah-based Mountain Ventures/Basecamp Hospitality, LLC ("Basecamp" or "Applicant") on June 24, 2022, authorizing Basecamp to construct and operate "11 low-impact accommodations for single and multi-night vacation rental." Attachment D.

13. According to Basecamp's proposal to the OSLI, its development will include a "shower house trailers, a welcome center, retail/rental space, food offering, sauna, storage and maintenance shed, and small staff living quarters."

14. The TUP authorizes a number of other "improvements" on the site, including a septic system and leach field. Engineering drawings obtained by Petitioner show that a Public Water Supply well is planned on the property.
15. This complex of eleven geodesic domes and three prefabricated wood frame buildings is identified as Teton Village Resort on plans submitted by Basecamp to DEQ, apparently a reference to Teton Village which lies a few miles to the north on Highway 390, the Teton Village Road.
16. Paragraph 8 of the TUP's General Conditions expressly requires Basecamp Hospitality, LLC, as the permittee, to "observe all state, federal and local laws and regulations."
17. The TUP issued by the OSLI granted the permittee the right to temporary occupancy and use of a small portion of land (OSLI Site 9) on a state trust section but expressly did not grant the permittee unfettered rights to construct and operate its geodesic dome hotel complex without permits required by federal, state and local regulations.
18. Basecamp began construction on the site soon after receiving the TUP, which included clearing and grading several acres and the partial installation of a raised-mound commercial wastewater system without first obtaining necessary permits and authorizations from the State of Wyoming and Teton County.
19. DEQ later determined the already-constructed sand mound leach field failed to meet the necessary setback requirements from surface water, and that sand mound will be removed and rebuilt.

The Permit to Construct Permit No. 2023-025

20. DEQ issued a Permit to Construct to Basecamp Teton WY SPV LLC on July 13, 2023, Attachment E, authorizing Basecamp to construct and operate "to install a sand mound septic system with an approximately 156' X 16' sand mound, fed by two 1500-gallon septic tanks and two 1000-gallon pumping chambers, HDPE water and sewer lines, pump house for the well, miscellaneous fittings, and appurtenances, according to the procedures and conditions of the permit.
21. The conditions of the permit includes the following condition: "Prior to installing the

aeration devices, the permittee shall consult with the Northeast District Engineer on septic tank aeration devices for approval. Prior to operating the system, the permittee shall submit updated plans and specifications to address aeration, septic tank insulation, and replacement leach field labeling.”

22. The Statement of Basis for the permit notes that the application was reviewed for compliance with “Chapters 3, 11, 12, and 25 of the Wyoming Water Quality Rules.”

The Applicant failed to demonstrate it meets required setbacks

23. DEQ states that the proposed system constitutes a “small wastewater system” that distributes 2,000 gallons or less of domestic sewage. DEQ Response to Comments Permit #2023-025 dated July 13, 2023, Attachment F, at Responses 1-13, 2-1, and 2-4.

24. DEQ stated that Chapter 2, Section 7, Table 4 provides the minimum horizontal setbacks. In particular, such table requires a 50-foot setback from a surface water or spring, including “seasonal and intermittent,” to the absorption system. Attachment F at Responses 2-5.

25. DEQ further stated that “[t]he proposed system meets or exceeds the minimum horizontal setback distances provided in Chapter 25, Section 7, Table 4” because there is “65 ft between the nearest surface water* and the absorption system.” Attachment F at Responses 2-5. DEQ further stated “*The separation distance from the absorption system to surface water (including wetlands) is based on the US Army Corps of Engineers Wetland Delineation for the site as shown on the design plans.” *Id.* (emphasis added)

26. DEQ further stated “[t]he system meets required setback distances to be protective of seasonally high groundwater and wetlands as delineated by the US Army Corps of Engineers.” Attachment F at Response 2-7.

27. DEQ further stated: “In the permit application, Basecamp’s engineer supplied information and offset distances for review. Basecamp provided information from a US Army Corp of Engineers wetland delineation for the site. The US Army Corp of Engineers wetland delineation

for the site allowed DEQ to determine the small wastewater facility will meet the necessary setback requirements from surface water.” Attachment F at Response 3-2 (emphasis added). DEQ has not stated that it reviewed a wetland delineation or other documentation from the U.S. Army Corps of Engineers (“ACOE”).

28. Based on information and belief, DEQ’s own written Response to comments, and telephone communications with the ACOE, the ACOE did not in fact conduct a wetlands delineation or jurisdictional determination. The DEQ’s own response to comments make clear that DEQ relied on information provided by Applicant, Attachment G, rather than information provided by the ACOE or an official ACOE document. Thus, it appears that DEQ based its determination of the setback distance to surface water on incorrect or incomplete information.

29. POWJH and its environmental consultant conducted site visits on: (1) November 16, 2022, Attachment H (WY State Land Site 9 - Aquatic Resources and Water Quality Impact Assessment by Alder Environmental) and (2) June 5, 2023, see Attachment I (June 5, 2023 photo of proximity of geodesic dome to open water) and Attachment J (June 5, 2023 photo of potential groundwater in installed septic tank). POWJH’s environmental consultant created a diagram, Attachment K (Aquatic Resources Connectivity Map), that depicts wetland boundaries and shows encroachments into wetlands, as well as grading that impermissibly occurred outside the boundary of the Site 9 boundary.

30. Further, under Teton County’s Small Wastewater Facility Regulations, Attachment L, a proposed soil absorption system site must include room for an additional system. Under 9-3-4(e): “The site must include area for both the proposed soil absorption system and a future replacement soil absorption system. Both the proposed and replacement soil absorption systems shall be sized to receive one-hundred (100%) percent of the wastewater flow.” Attachment L at page 18.

31. Applicant has not shown that the future replacement site meets Teton County’s Small Wastewater Facility Regulations. In light of the uncertain status of the purported ACOE delineation on Applicant’s map, Attachment G, it is unclear whether or not Applicant is violating the setback requirements from surface water for the future replacement site.

Violations of surface and groundwater quality standards

32. Basecamp's wastewater facility is under construction in the headwaters of Fish Creek, a DEQ-designated Class 1 surface water. Pursuant to Chapter 1, Appendix A, the entire Fish Creek drainage is designated Class 1, along with all adjacent wetlands.
33. A number of studies and reports show a hydrologic connection between ground and surface water in the Fish Creek drainage.
34. The regulatory objective for Class 1 surface waters is to protect and maintain water quality that existed at the time of designation. Chapter 1, Section 4 and Section 7
35. Studies of septic system function in Teton County demonstrate the limitations of septic systems due to the cold weather, which inhibits biological activity, and high groundwater levels. Attachment M (Teton Conservation District, Teton County Septic System Effluent Monitoring Study Report, August 2022).
36. The DEQ's July 13, 2023, authorization to permit the construction of the wastewater facility without proper safeguards and best management practices violates DEQ Water Quality Rules Chapter 1 by failing to protect Class 1 surface waters and adjacent wetlands in the Fish Creek drainage. DEQ has failed to demonstrate that the proposed system will not discharge pollutants into groundwater, as well as connected surface waters.
37. The commercial septic system authorized by DEQ in Permit No. 2023-025 will introduce a variety of pollutants into ground and surface water and adjacent wetlands in the headwaters of Fish Creek, including *E. coli*, further exacerbating an existing *E. coli* impairment documented in the DEQ's combined 305(b)/303(d) water quality assessment (2020). The system will also introduce nutrient pollution, including nitrogen, phosphorus, and related compounds, exacerbating an anticipated nutrient impairment, as indicated by DEQ on June 7, 2023 at a public meeting.
38. The DEQ's decision allowing a discharge of *E. coli* and other dangerous pathogens into a tributary of Fish Creek is a violation of the Wyoming Environmental Quality Act and is unlawful agency action within the meaning of W.S. § 16-3-114(c) allowing a discharge of *E. coli*, other dangerous pathogens, and nutrient pollutions into a tributary of Fish Creek is a violation of the

Wyoming Environmental Quality Act and is unlawful agency action within the meaning of W.S. § 16-3-114(c). Neither DEQ nor the Applicant has demonstrated that the proposed septic system will not violate groundwater quality standards, including Chapter 8 of DEQ's water quality rules.

***DEQ failed to appropriately consider alternatives and thus failed to require
Best Management Practices***

39. Section 7(c) of Chapter One of DEQ water quality rules states that for Class 1 waters, "best management practices will maintain existing quality and water uses." The term "Best Management Practices" is specifically defined in Chapter 1 as: "a practice or combination of practices that after problem assessment, examination of alternative practices, and in some cases public participation, are determined to be the most technologically and economically feasible means of managing, preventing or reducing nonpoint source pollution." Chapter 1, Section 2(b)(v)(emphasis added).

40. Here, DEQ only considered two alternatives: (1) the option of a storage tank and removal and (2) the option to connect to an existing sewer line.

41. DEQ failed to consider an appropriate range of alternatives, including requiring alternative septic treatment technologies, including advanced treatment. See Exhibit A at page 6; Exhibit B at page 3 (POWJH Supplemental Comments describing advanced technology including recirculating vertical flow wetland). Indeed, the Environmental Protection Agency ("EPA") notes that "many [septic] configurations include additional treatment components following or in place of the septic tank, which provide advanced treatment solutions." See <https://www.epa.gov/septic/advanced-technology-onsite-treatment-wastewater-products-approved-state> (EPA describing advanced treatment and providing links to various states' advanced treatment methods).

***The monitoring program is inadequate to ensure detection and knowledge of migration and
behavior of the pollution or wastes***

42. Under Chapter 3 of DEQ's rules, "[a]s determined by the Administrator, whenever a facility may cause, threaten, or allow the discharge of any pollution or wastes into Waters of the State or may alter the physical, chemical, radiological, biological or bacteriological properties of any Waters of the State, the permittee shall develop and implement an environmental monitoring program.

Chapter 3, Section 14(a).

43. DEQ water quality rules further explain, in relevant part: “[a]n environmental monitoring program shall be adequate to ensure detection and knowledge of migration and behavior of the pollution or wastes.” *Id.* at Section 14(b) (emphasis added). Thus, while the requirement of monitoring is discretionary, once a decision to require monitoring is made, it is mandatory that such monitoring be adequate to ensure detection and knowledge of migration and behavior of the pollution or wastes.

44. Here, the monitoring wells proposed by the Applicant and accepted by DEQ are inadequate to ensure detection and knowledge of migration and behavior of the pollution or wastes because the wells: (1) not located properly up-gradient (i.e. a baseline) and down-gradient and (2) located too far from the leach field. Exhibit A at 7-8, Exhibit B at 3.

A stay pending appeal is appropriate

45. The Council has broad authority to issue temporary relief, including to stay Permit No. 2023-025. The Council’s authority includes the ability to “approve, disapprove, repeal, modify or suspend any . . . order of the Director or any division Administrator” and “order that any permit, license, certification or variance be granted, denied, suspended, revoked or modified.” Wyo. Stat. Ann. § 35-11-112(c).

46. A stay pending resolution of this appeal would allow Petitioner to protect the status quo until the deficiencies in Permit No. 2023-025 can be addressed by DEQ.

47. Here, the ultimate relief of proper analysis can be accomplished relatively quickly. Accordingly, preserving the status quo pending resolution of the appeal will not prejudice WDEQ or any other interested party, and will help prevent any harm or risk of harm to public health, welfare or the environment.

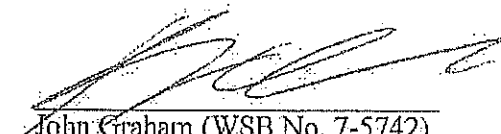
Request for Hearing

48. Petitioner hereby requests a hearing before the Environmental Quality Council and requests that the Council reverse and vacate the DEQ’s decision to issue Permit No. 2023-025.

Request for Additional Relief

49. Petitioner further requests such relief as they are entitled to by law or regulation. Petitioner specifically requests relief including: (1) a stay of construction and operation of the septic facility; and (2) in the event that the permit is not reversed and vacated, the requirement of monitoring adequate to ensure detection and knowledge of migration and behavior of the pollution or wastes.

Respectfully submitted this 11th day of August, 2023.



John Graham (WSB No. 7-5742)
GEITMANN LARSON SWIFT LLP
155 East Pearl Street, Suite 200
PO Box 1226
Jackson, WY 83001
Phone: (307) 733-3923
Email: jwg@glslip.com

Kevin E. Regan (OR No. 044825; CA No. 262335;
WA No. 44565)
PROTECT OUR WATER JACKSON HOLE
250 E. Broadway Avenue
PO Box 316
Jackson, WY 83001
Phone: (206) 601-5180
Email: kevin@protectourwaterjh.org

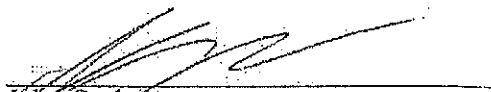
**Attorneys for Petitioner
Protect Our Water Jackson Hole**

CERTIFICATE OF SERVICE

I certify that on the 11th day of August, 2023, I served a true and correct copy of the foregoing by depositing the same in the U.S. Mail, Certified, Return Receipt Requested, postage prepaid and addressed to:

Todd Parfitt, Director
Department of Environmental Quality
200 West 17th St.
Cheyenne, WY 82002

Basecamp Teton WY SPV LLC
LEGALINC CORPORATE SERVICES INC.
5830 E 2nd St Ste 8
Casper, WY 82609 USA


John Graham

Motion to Suspend Air Permit CT-4631 Pending Resolution of Protestants' Appeal, *In the Matter of: Basin Electric Power Cooperative Dry Fork Station, Air Permit CT-4631, EQC Docket No. 07-2801*). In that case, several non-permittees appealed DEQ's decision to grant an air quality permit to Basin Electric. As part of the appeal, the non-permittees also requested the Council to stay or suspend the permit during the appeal. The Council ultimately concluded that it had no such legal authority and stated the following in its order:

Both Basin Electric and DEQ argued this Council has no statutory authority to suspend the air quality permit. Both argue that Protestants Motion to Suspend is merely an effort to "stay" the issuance of the permit and construction of the project. This Council agrees with the legal interpretation of Basin Electric's response and DEQ's response in that the effect of suspending the permit in this case is equivalent to "staying" the issuance of the permit. A permit "suspension" is the outcome of a contested case proceeding in which an existing permit is suspended as a consequence of a finding that the permittee has violated the terms of its permit. A "suspension" is not the temporary cessation or delay granted at the request of a third party. This Council does not have the authority to suspend a permit on the grounds that an appeal is pending. . .

Id. at ¶ 16, pp. 7-8 (underline in original). Although the Council issued that decision in 2008, the Council still agrees with it.

In support of its motion, Protect Our Water relies on *In the Matter of: Petitioner Big Horn LLC Permit No: WYW0027731, EQC Docket No. 21-3601*. However, *Big Horn* is different than this case. In *Big Horn*, the Council's hearing officer granted the stay because both parties agreed to it, including Big Horn, the permit holder (Big Horn actually requested the stay), the stay only applied to the renewed permit (the old permit was still in effect), and the Council did not conclude that it had the authority to suspend or stay a permit during an ongoing appeal when requested by a non-permittee—that issue was never before the Council.

Protect Our Water suggests that the Council's rules provide it with the legal authority to suspend or stay a permit during an appeal because the Council has adopted and incorporated Rule 65 of the Wyoming Rules of Civil Procedure into its rules. The Council disagrees—the Council

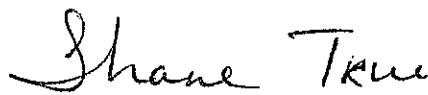

has not specifically adopted or incorporated Rule 65 into its rules. *See* DEQ rules, Practice and Procedure, Chapter 2, Sections 2, 26. Accordingly, Rule 65 does not apply to appeals before the Council.

Protect Our Water also suggests that Wyo. Stat. Ann. § 35-11-112(c)(ii) grants the Council the authority to suspend or stay the Basecamp permit during the appeal. Again, the Council disagrees. That statute does not provide the Council with the legal authority to suspend or stay the Basecamp permit during the ongoing appeal and before the final contested case. This conclusion and interpretation is consistent with the Council's 2008 decision in Basin Electric.

Accordingly, the Council concludes that it does not have the legal authority to suspend or stay the Basecamp permit during the pendency of Protect Our Water's ongoing appeal.

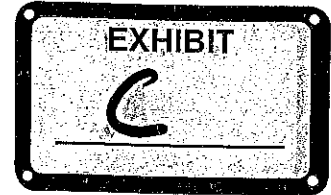
IT IS HEREBY ORDERED that Protect Our Water Jackson Hole's motion to suspend permit is denied.

DATED this 12 day of January, 2024


Vice Chairman Shane True, Hearing Examiner
Environmental Quality Council 

Filed: 11/8/2023 2:30:58 PM WEQC

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



In the Matter of the Appeal of)
 Protect Our Water Jackson Hole)
 From Permit to Construct –)
 Permit No. 2023-025)

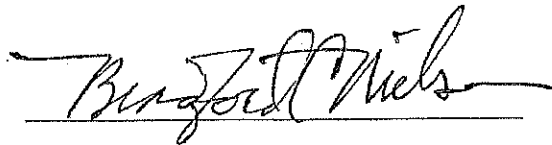
Docket No. 23-3801

AFFIDAVIT IN SUPPORT OF MOTION TO SUSPEND PERMIT

Bradford Nielson hereby testifies under oath as follows:

- 1) I am over 18 years of age and otherwise competent to make this declaration. I have personal knowledge of the facts set forth herein.
- 2) I am Chair of the Board of Protect Our Water Jackson Hole (POWJH), which is a 501(c)(3) tax exempt, non-profit corporation registered in the State of Wyoming. Its mission is to serve as a powerful advocate for the protection of ground and surface waters in Teton County, Wyoming.
- 3) POWJH and its predecessor organization, Friends of Fish Creek, have invested heavily in efforts to restore and protect water quality in Fish Creek and its tributaries. For example, POWJH has invested hundreds of thousands of dollars in initiatives to improve water quality in the Fish Creek watershed, including funding for education and outreach, advocacy by POWJH staff. Specific expenditure outlays include: (1) approximately \$164,000 for water quality monitoring focusing on the Fish Creek watershed between 2014 and 2022; (2) approximately \$88,000 for stakeholder involvement in an attempt to improve water quality in the Fish Creek watershed between 2015-2019; and (3) a \$250,000 contribution to funding for the Water Quality Master Plan process that is underway in Teton County and has important implications for the Fish Creek watershed.
- 4) POWJH has filed this appeal to challenge the Permit to Construct issued to Basecamp Teton WY SPV LLC, Permit No. 2023-025 (Reference Permit Numbers: 2022-090), Teton County, issued by the Department of Environmental Quality/Water Quality Division dated July 13, 2023 (the "Permit").
- 5) The operation of the onsite wastewater system authorized by the Permit will discharge pollutants—including *E. coli* and nutrients—to Fish Creek and its tributaries, diminishing the use and enjoyment that POWJH and its supporters enjoy and appreciate, and undermining POWJH's previous efforts at mitigating pollutants entering Fish Creek.

- 6) The DEQ/WQD has determined that Fish Creek is impaired by concentrations of *E. coli* that exceed the quality standards for primary contact recreation contained in WQRR Chapter 1.
- 7) DEQ has also indicated that several lines of evidence show that Fish Creek is impaired for nutrients and that DEQ is engaged in a process to list Fish Creek as impaired for nutrients, including phosphorus, nitrogen, and related compounds. For example, see video footage of a DEQ presentation at Fish Creek Watershed Management Planning Public Stakeholder Meeting on June 7, 2023 in Wilson, WY at: <https://jhcleanwater.org/initiatives/fish-creek-watershed-management/> (at 1:00:30; 1:01:26)
- 8) High concentrations of *E. coli* that exceed applicable water quality standards, and high nutrient levels that have impaired ecosystem health, have diminished and negatively affected POWJH's use and enjoyment of Fish Creek.
- 9) POWJH and its supporters are adversely affected by the above-referenced permit and by the activities authorized thereunder, including but not limited to the construction and operation of a raised mound, pressure dosed commercial septic system in the headwaters of Fish Creek, a DEQ-designated Class 1 surface water that is heavily used by POWJH supporters for a variety of recreational, scenic, and aesthetic purposes.
- 10) Because the Permit will increase the levels of *E. coli* and nutrient pollutions in the Fish Creek watershed, it will increase the costs of POWJH's efforts to maintain and restore water quality in the area.



Bradford Nielson

THE STATE OF WYOMING)

) SS

COUNTY OF TETON)

Subscribed and sworn to before me by Bradford Nielson this 8th day of November, 2023.

Witness my hand and official seal.

Gail A. Wells

Notary Public

My Commission Expires: *May 29, 2029*

GAIL A. WELLS
Notary Public - State of Wyoming
Commission ID # 162776
My Commission Expires
May 29, 2029

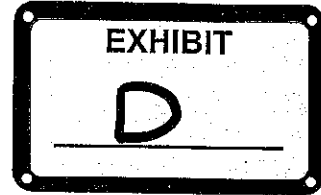
Filed: 08/11/2023 WEQC

Wyoming Department of Environmental Quality
Water Quality Division
PERMIT TO CONSTRUCT

PERMIT NO. 2023-025

Reference Permit Numbers: 2022-090

RE: Basecamp Teton WY SPV LLC
Teton County,
NE¼SE¼, Section 36, Township 42 North, Range 117 West;
Lat: 43.55969, Long: -110.82297



This permit hereby authorizes the permittee Basecamp Teton WY SPV LLC, % Oscar Covarrubias, 333 E. Main, Lehi, UT, 84043 to install a sand mound septic system with an approximately 156' X 16' sand mound, fed by two (2) 1500-gallon septic tanks and two (2) 1000-gallon pumping chambers, HDPE water and sewer lines, pump house for the well, miscellaneous fittings, and appurtenances, according to the procedures and conditions of this permit. The facility is located at the legal description and latitude/longitude listed above, Teton County, in the State of Wyoming. The permittee shall complete all construction, installation, or modification allowed by this permit by April 17, 2028.

The issuance of this permit confirms that the Wyoming Department of Environmental Quality (DEQ) Water Quality Division (WQD) has evaluated the application submitted by the permittee and determined that it meets minimum applicable construction and design standards. The compliance with construction standards and the operation and maintenance of the facility to meet the engineer's design are the responsibility of the permittee, owner, and operator.

Granting this permit does not imply that WQD guarantees or ensures that the permitted facility, when constructed, will meet applicable discharge permit conditions or other effluent or operational requirements. Compliance with discharge standards remains the responsibility of the permittee.

Nothing in this permit constitutes an endorsement by WQD of the construction or the design of the facility described herein. This permit verifies only that the submitted application meets the design and construction standards imposed by Wyoming statutes, rules and regulations. The DEQ assumes no liability for, and does not in any way guarantee or warrant the performance or operation of the permitted facility. The permittee, owner and operator are solely responsible for any liability arising from the construction or operation of the permitted facility. By issuing this permit, the State of Wyoming does not waive its sovereign immunity.

The permittee shall allow DEQ personnel and their invitees to enter the premises where the facility is located, or where records are kept under the conditions of this permit, and collect resource data as defined by Wyoming Statute § 6-3-414, inspect and photograph the facility, collect samples for analysis, review records, and perform any other function authorized by law or regulation. The permittee shall secure and maintain such access for the duration of the permit.

If the facility is located on property not owned by the permittee, the permittee shall also secure and maintain from the landowner upon whose property the facility is located permission for DEQ personnel and their invitees to enter the premises where a regulated facility is located, or where records are kept under the conditions of this permit, and collect resource data as defined by Wyoming Statute § 6-3-414, inspect and photograph the facility, collect samples for analysis, review records, and perform any other function authorized by law. The permittee

shall secure and maintain such access for the duration of the permit.

If the facility cannot be directly accessed using public roads, the permittee shall also secure and maintain permission for DEQ personnel and their invitees to enter and cross all properties necessary to access the facility. The permittee shall secure and maintain such access for the duration of the permit.

The permittee shall maintain in its records documentation that demonstrates that the permittee has secured permission for DEQ personnel and their invitees to access the permitted facility, including (i) permission to access the land where the facility is located, (ii) permission to collect resource data as defined by Wyoming Statute § 6-3-414, and (iii) permission to enter and cross all properties necessary to access the facility if the facility cannot be directly accessed from a public road. The permittee shall also maintain in its records a current map of the access route(s) to the facility and contact information for the owners or agents of all properties that must be crossed to access the facility. The permittee shall ensure that the documentation, map, and contact information are current at all times. The permittee shall provide the documentation, map, and contact information to DEQ personnel upon request. On closure of a facility, the permittee shall maintain such records for a period of five (5) years.

Nothing in this permit precludes the institution of any legal action or other proceeding to enforce any applicable provision of law or rules and regulations. It is the duty of the permittee, owner and operator to comply with all applicable federal, state and local laws or regulations in the exercise of its activities authorized by this permit.

The issuance of this permit does not convey any property rights in either real or personal property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

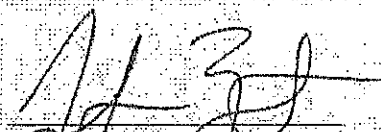
The permittee shall construct and operate the permitted facility in accordance with the statements, representations, procedures, terms and conditions of the permit application, supporting documents and permit. This permit does not relieve the permittee from any duty to obtain any other permit or authorization that may be required by any provision of federal, state or local laws.

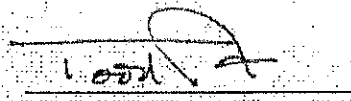
In carrying out its activities authorized by this permit, the permittee, owner and operator shall comply with all of the following permit conditions:

- 1 of 11. The permittee will immediately notify WQD of any changes or modifications that are not consistent with the terms and conditions of this permit. Submit oral or written notice to Bradley E. Ellis, PE, Northeast District Engineer, bradley.ellis@wyo.gov, 444 West Collins Dr., Casper, WY 82601; 307-473-3469, in accordance with the provisions of Section 4, Chapter 3, Wyoming Water Quality Rules.
- 2 of 11. The permittee will submit a Certificate of Completion signed by the engineer of record or the owner to the engineer listed above within sixty (60) days of completing the construction of the authorized facility. A form titled "Certificate of Completion" is available on the WQD Construction Permitting website.
- 3 of 11. Prior to installing the aeration devices, the permittee shall consult with the Northeast District Engineer on septic tank aeration devices for approval. Prior to operating the system, the permittee shall submit updated plans and specifications to address aeration, septic tank insulation, and replacement leach field labeling.
- 4 of 11. DEQ bases the review and approval of this permit upon the items identified in the attached "Statement of Basis".
- 5 of 11. The permittee shall construct the on-site monitoring wells to the requirements of DEQ Water Quality Rules Chapter 26 and supply DEQ with documentation of well construction.

- 6 of 11. Prior to operating the system, the permittee shall conduct a septic tank leakage test under the greatest anticipated hydraulic potential; the test shall last for no less than eight (8) hours. The test must confirm leakage is no more than 5% of design flow. The permittee shall provide results to the WQD Northeast District Engineer within 10 days of conducting the test.
- 7 of 11. Prior to operating the system, the permittee shall collect water quality samples from monitoring wells on the site, the drinking water well on the site, and the surface water pond on the site to establish background water quality. The permittee shall submit samples to an EPA or State Certified testing laboratory to test (i) monitoring wells and drinking water wells for fecal coliform, nitrates, chloride, pH and ammonia, and (ii) surface water for fecal coliform, nitrates, pH, ammonia, and phosphorus. The permittee shall provide sample results to the WQD Northeast District Engineer within 10 days of receiving the results.
- 8 of 11. On a quarterly basis, the permittee shall provide WQD with well and effluent pump flows from monthly reports showing (i) total effluent volume per month and (ii) average daily effluent volume. Quarterly reports are to be submitted to the WQD Northeast District Engineer within thirty days of the close of the quarter.
- 9 of 11. On a quarterly basis, the permittee shall collect water quality samples for fecal coliform, nitrates, chloride, pH and ammonia from the monitoring wells on the site and shall report results to the WQD Northeast District Engineer within thirty days of the close of the quarter. The permittee shall include copies of lab testing results from an EPA or State Certified testing laboratory.
- 10 of 11. The permittee will maintain copies of all reporting records.
- 11 of 11. The permittee is responsible for properly installing, operating, maintaining, and removing all necessary monitoring equipment.

AUTHORIZED BY:


 Jennifer Zygmunt, Administrator
 Water Quality Division


 Todd Parfitt, Director
 Department of Environmental Quality

July 13, 2023
 Date of Issuance

STATEMENT OF BASIS

1. Permit Number: **2023-025**
2. Application reviewed for compliance with the following regulations:
Chapters 3, 11, 12, and 25 of the Wyoming Water Quality Rules.
3. Does the permit comply with all the applicable regulations identified above?

Yes

4. If a Chapter 3, Section 4 groundwater review, and Section 14 review are required, indicate how WQD will determine that the permittee will protect groundwater quality.

The WQD Administrator has determined Chapter 3, Section 14 environmental monitoring requirements shall be included. The environmental monitoring requirements are listed as permit conditions 5 through 11.

5. Documentation of Statement of Basis: The archive file for this permit includes adequate documentation of all sections of this Statement of Basis.

CERTIFICATION

DEQ issued this permit based upon a review of the application package submitted in accordance with the requirements of Chapter 3, Section 4, Wyoming Water Quality Rules. Bradley E. Ellis, PE, Northeast District Engineer, completed this review on April 17, 2023. DEQ recommends issuing this permit based upon the statements, representations and procedures presented in the permit application and supporting documents, permit conditions, and the items identified in this "Statement of Basis."

XC: Robert Rouselle, PE, Ensign Engineering and Land Surveying, email rrouselle@ensigneng.com
Jenifer Scoggin, Director, Office of State Lands and Investments, email jenifer.scoggin@wyo.gov



Matthew H. Mead, Governor

Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's
environment for the benefit of current and future generations.*



Todd Parfitt, Director

January 25, 2018

Ted Van Holland
Teton County Sanitarian
PO Box 3594
Jackson, WY 83001



Re: Delegation Agreement Transmittal

Dear Ted,

Enclosed is one fully executed agreement with complete signatures. Please contact our office at 307-777-7781 if you have any questions.

Sincerely,

Rich Cripe, P.E.
Water and Wastewater Program Manager
Water Quality Division

Enclosure

cc: James Brough, WQD NW District Engineer

RC/gjt/18-0053

DELEGATION AGREEMENT

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

TETON COUNTY, WYOMING

Article I. Authority

1. Pursuant to the authority of W.S. 35-11-304(a), the State of Wyoming, acting through the Administrator of the Water Quality Division, hereafter "WQD", and the Director of the Department of Environmental Quality, hereafter "DEQ", and Teton County, a duly organized county of the State of Wyoming, a local governmental entity, hereafter "Entity", enter into the following Delegation Agreement, hereafter "Agreement".

Article II. Introduction and Purpose

2. This Agreement is authorized by W.S. 35-11-304, which provides that, to the extent requested by a municipality, the water and sewer district or county, the Administrator of the Water Quality Division, with the approval of the Director of the Department of Environmental Quality, shall delegate the authority to enforce and administer the provisions of W.S. 35-11-301(a)(iii) to local governmental entities, subject to certain conditions.

This Agreement provides for local assumption of such authority and for promulgation of local regulations consistent with the standards and provisions of the Wyoming Environmental Quality Act (Act) and applicable standards and regulations promulgated pursuant to the Act.

3. The purpose of this Agreement is to foster state-local cooperation and conformity in the regulation of small wastewater facilities and to provide uniform and effective application of the provisions of the Wyoming Environmental Quality Act relating to the construction and operation of these facilities.
4. Under this Agreement, the enforcement and administration of permitting and inspection of small wastewater facilities are delegated to qualifying local governmental entities that have complied with the requirements of W.S. 35-11-304, applicable Wyoming Water Quality Rules and Regulations, and the terms of the Wyoming Administrative Procedure Act, W.S. 16-3-101, et seq.

Article III. Requirements for the Agreement

5. The State, by the WQD Administrator, and the Entity, by the Teton County Board of Commissioners, affirm that they will comply with all of the provisions of this Agreement, all applicable standards and Wyoming Water Quality Rules and Regulations, regulations promulgated by the entity, and that they will continue to meet all the conditions and requirements specified in this Agreement.

- (a) The WQD Administrator shall be responsible for administering this Agreement on behalf of the State of Wyoming. The Delegated Local Official shall administer this Agreement on behalf of the Entity, in accordance with W.S. 35-11-304(a)(ii).
- (b) WQD has and shall continue to have authority to carry out this Agreement, and shall expend sufficient funds to effectively implement the delegation and oversight activities contemplated in W.S. 35-11-304(a).

Article IV. Terms of the Agreement

6. By execution of this Agreement, WQD delegates and the Entity accepts the authority and responsibility to enforce and administer the provisions of W.S. 35-11-301(a)(iii) for small wastewater facilities, as defined in W.S. 35-11-103(c)(ix). This delegation includes the authority to develop necessary rules, regulations, standards, and permit systems, to review and approve construction plans, conduct inspections, issue permits, to enforce against violations, and to develop rules governing the review and appeal of any decision made by the Entity.

This Agreement does not include authority or responsibility to enforce and administer any other provisions of W.S. 35-11-302(a)(iii), including wastewater systems with design flows greater than two thousand (2,000) gallons of domestic sewage per day or any system that discharges non-domestic wastewater.

To determine if a proposed small wastewater system exceeds the authority delegated to the Entity, refer to Attachment G.

- (a) The Entity agrees to enforce and administer the permit program for the facilities identified above, for the areas within its boundaries. The boundaries are identified on the map included in Attachment A, incorporated into this Agreement by this reference.
- (b) The Entity hereby designates the County Sanitarian as the "Delegated Local Official" who is authorized to enforce and administer the permitting program delegated herein. The authorizing resolution from the Entity is included in Attachment B, incorporated into this Agreement by this reference.
- (c) The names of the individual(s) authorized to issue permits and their qualifications are included in Attachment C, incorporated into this Agreement by this reference.
- (d) The Entity has established rules, regulations, and standards for the issuance of permits required under W.S. 35-11-301(a)(iii), that are at least as stringent as those promulgated by the State under W.S. 35-11-302(a)(iii). The local rules include the process by which an aggrieved party may seek a review of the Entity's action. Such standards and rules, as promulgated, are found in Attachment D, incorporated into this Agreement by this reference.

- (e) The local Entity has developed and adopted permitting procedures consistent with those established in current rules and regulations of the State. The procedures, as adopted by the Entity are also included in Attachment D incorporated into this Agreement by this reference.
- (f) The Delegated Local Official shall establish and maintain an adequate system of records and information for each project permit, inspection, and enforcement action. The records and information system to be used by the local agency is described in Attachment E, incorporated into this Agreement by this reference.
- (g) The Entity agrees to submit status reports to the Administrator annually, no later than the last business day of the calendar year. The Administrator will review the status report and may conduct an on-site program evaluation of the local program to assess the Entity's compliance with the terms of this agreement. Upon request and reasonable notice, the Administrator may during business hours inspect the records and procedures of the Entity with regard to the review, issuance, inspection and enforcement of the permit program.
- (h) When an applicant's septic system falls under the regulatory authority of the WQD Underground Injection Control (UIC) Class V Well Program, the entity shall instruct the applicant to submit a completed WQD UIC application to the WQD UIC Program for review and approval. If the Entity wishes to do so, the Entity may request a concurrent review of the application from the WQD UIC program. Any comments on the application or material generated from the application may be submitted to the WQD UIC program for review and consideration up until the end of the state required public comment period (for Class V Individual permits only).

Article V. Other Conditions of the Delegation

- 7. No permit shall be issued for any facility that would result in non-compliance with an approved Water Quality Management Plan prepared under Sections 208 or 201 of the Federal Clean Water Act.
- 8. Upon approval of this Agreement, the Entity will promptly proceed to assume the responsibility to implement this Agreement and to hire, train and organize personnel as necessary. WQD will provide technical and other assistance as requested in order to ensure a smooth transition period.
- 9. The Entity will commence performing the functions delegated by this Agreement upon the date of execution and continue until such time as the delegation is suspended or revoked or until the Entity provides ninety (90) days' notice of intent to terminate the Agreement.
- 10. This Agreement may be amended at any time by the written agreement of both parties.

Article VI. Changes in State or Entity Standards

11. The State may from time to time revise and promulgate new or revised construction and/or operation standards and administrative procedures. If necessary in order to meet the requirements of W.S. 35-11-304(a), the Entity shall make such changes as may be accomplished by rule-making within six (6) months of notice by the State. Such changes shall be made in conformity with the requirements of W.S. 16-3-101, et.seq.
12. The State and Entity shall provide such other with copies of any changes to their respective laws, rules, and regulations and standards that pertain to the administration and enforcement of this agreement.

Article VII. Inspection

13. The Delegated Local Official shall provide for the inspection of all facilities during construction to ensure the facilities have been constructed according to approved plans and specifications. The Delegated Local Official may also conduct periodic operation inspections of facilities permitted under the authority of this Agreement and may implement procedures for inspection and the reporting of inspection in conformity with W.S. 35-11-109(a)(vi). The Delegated Local Official will be the point of contact and inspection authority in dealing with permittees concerning operations and compliance with the permitting and operation standards covered by this Agreement.
14. For oversight purposes, the WQD may designate authorized representatives to enter and inspect the construction and/or operation of the facilities described in this Agreement. Said inspections shall be conducted in conformity with W.S. 35-11-109 (a)(vi). The Entity shall receive reasonable notice of such inspection and may participate in this inspection.

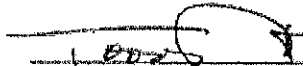
Article VIII. Enforcement

15. The Entity shall be the primary enforcement authority concerning local compliance with the requirements of the construction and permitting management activities delegated by this Agreement. A legal opinion or a copy of local regulations demonstrating that the Entity has necessary authority to enforce compliance at the local level is attached, Attachment F.
 - (a) Should the local governmental entity and the State fail to agree regarding the propriety of any enforcement action or inaction, the WQD may take any action necessary to comply with the terms of the Wyoming Environmental Quality Act and applicable standards and regulations. The Agreement does not limit the State's authority to enforcement against other violations of State law.
 - (b) Through periodic reports, the local governmental entity shall notify the WQD of all violations of applicable laws, regulations or orders and all actions taken with respect to such violations.


Article IX. Revocation, Suspension or Termination

- 16. This Agreement may be voluntarily terminated by the Entity upon ninety (90) days written notice. Additionally, the administrator, with the approval of the director, may revoke or temporarily suspend this Delegation Agreement if the Entity fails to perform its delegated duties or has otherwise violated the terms of this Agreement. The administrator shall immediately notify the Delegated Local Official in writing of any revocation or suspension of the permitting authority. Such administrative action is subject to review by the Environmental Quality Council if the Entity so requests within twenty (20) days or notice of the State's action. Unless a revocation or suspension is appealed to the Council, it becomes effective twenty (20) days after the receipt of such notice.
- 17. The Entity may not assign any of its functions or authority delegated by this Agreement without prior written consent of the administrator.
- 18. The parties to this Agreement have read and understand all of its provision. This Agreement is effective upon execution this 25th day of January, 2018 and shall remain in effect until terminated as provided above.

Department of Environmental Quality


 Todd Parfitt
 Director, Department of Environmental Quality

1/25/18
 Date


 Kevin Frederick
 Administrator, Water Quality Division

1-25-18
 Date

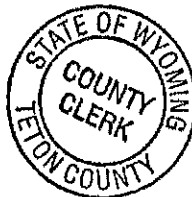
Local Governmental Entity

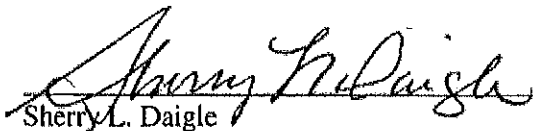
TETON COUNTY, WYOMING


 Mark Newcomb, Chair
 Teton County Board of County Commissioners

12/19/17
 Date

Attest:




 Sherry L. Daigle

12/19/17
 Date

ATTACHMENT A

AREA TO BE COVERED BY DELEGATION AGREEMENT

All of Teton County, Wyoming, as described in Wyo. Stat. § 18-1-101

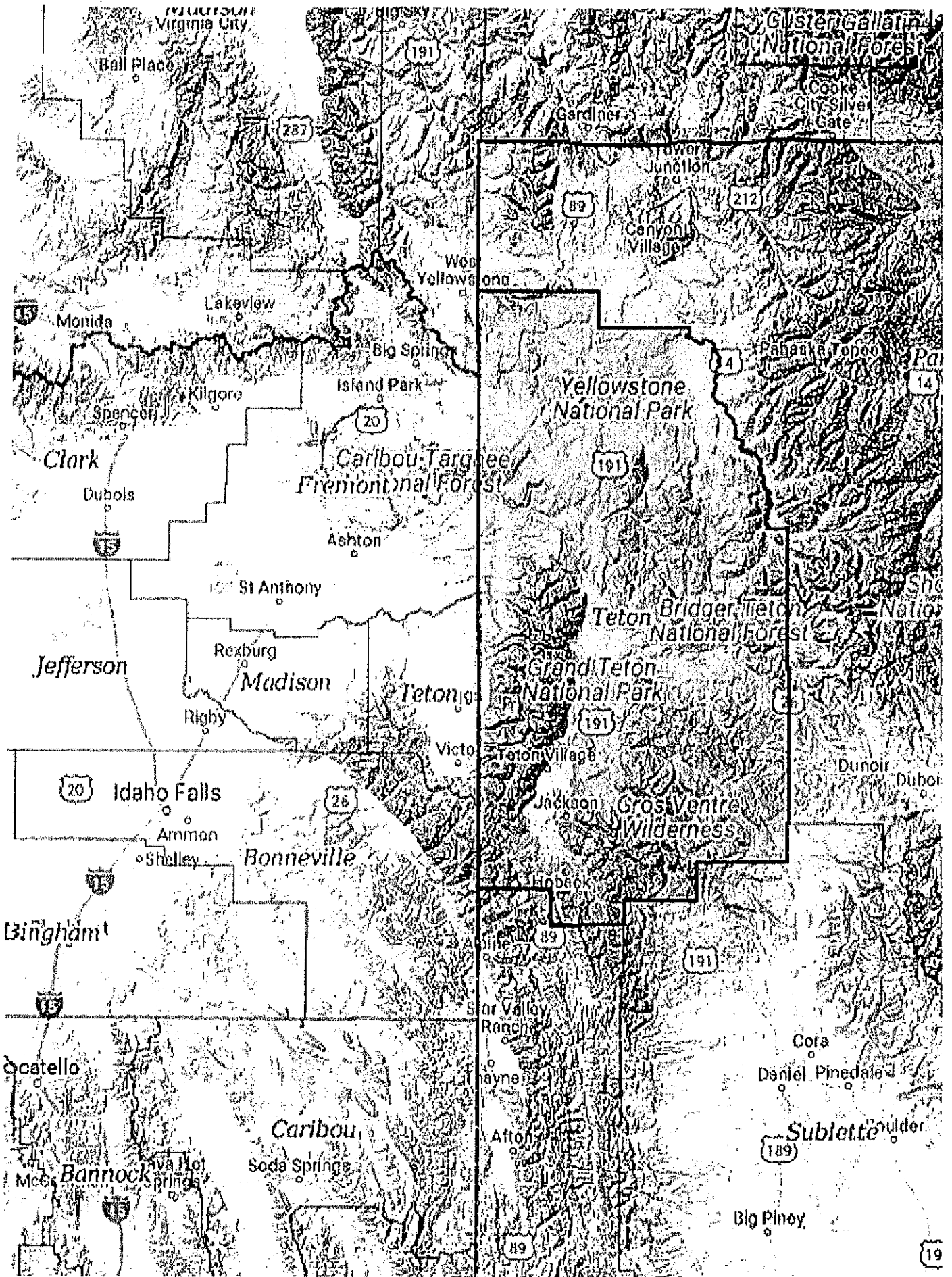
(v) Teton county is that portion of the state of Wyoming within the following boundaries: beginning at the point where 44 40' parallel of north latitude intersects the Wyoming-Idaho boundary line, thence east along said parallel of latitude to the 110 40' meridian of west longitude from Greenwich, thence south along said meridian to parallel 44 35' of north latitude, thence east along said parallel to the middle of the main channel of the Yellowstone River, thence southerly following the centerline of the main channel of the Yellowstone River to the point where the Yellowstone River flows from the Yellowstone Lake; thence southerly following the east shoreline of Yellowstone Lake to the mouth of Yellowstone River; thence southeasterly following the centerline of the main channel of the Yellowstone River to intersect the southern boundary of Yellowstone National Park; thence east along the southern boundary of the Yellowstone National Park to a point where the continuation of the section line between sections 33 and 34, township 45 north, range 110 west, intersects said southern boundary; thence south along section lines to the southeast corner of section 33, township 45 north, range 110 west; thence along the 11th standard parallel to the northeast corner of section 4, township 44 north, range 110 west; thence south along section lines to the southeast corner of section 33, township 41 north, range 110 west; thence west along the township line between townships 40 and 41 north, to the north one-quarter corner of section 4, township 40 north, range 110 west; thence south through the one-quarter corners to the south one-quarter corner of section 33, township 40 north, range 110 west; thence west along the township line between townships 39 and 40 north to the southeast corner of section 36, township 40 north, range 113 west; thence south along the range line between ranges 112 and 113 to the southeast corner of section 36, township 39 north, range 113 west; thence west along the township line between townships 38 and 39 north, to the southeast corner of section 36, township 39 north, range 115 west; thence south along the range line between ranges 114 and 115 to the southeast corner of section 24, township 38 north, range 115 west; thence west along the section lines to the southwest corner of section 19, township 38 north, range 116 west; thence north along the section line to the southeast corner of section 25, township 39 north, range 117 west; thence west along the section lines to the southwest corner of section 30, township 39 north, range 117 west; thence north along the township line to the southeast corner of section 36, township 39 north, range 118 west; thence west along the township line between townships thirty-eight (38) and thirty-nine (39) north to an intersection with the Wyoming-Idaho boundary line; thence north along said boundary line to the point of beginning.

ATTACHMENT A

AREA TO BE COVERED BY DELEGATION AGREEMENT

All of Teton County, Wyoming, as described in Wyo. Stat. § 18-1-101

(v) Teton county is that portion of the state of Wyoming within the following boundaries: beginning at the point where 44 40' parallel of north latitude intersects the Wyoming-Idaho boundary line, thence east along said parallel of latitude to the 110 40' meridian of west longitude from Greenwich, thence south along said meridian to parallel 44 35' of north latitude, thence east along said parallel to the middle of the main channel of the Yellowstone River, thence southerly following the centerline of the main channel of the Yellowstone River to the point where the Yellowstone River flows from the Yellowstone Lake; thence southerly following the east shoreline of Yellowstone Lake to the mouth of Yellowstone River; thence southeasterly following the centerline of the main channel of the Yellowstone River to intersect the southern boundary of Yellowstone National Park; thence east along the southern boundary of the Yellowstone National Park to a point where the continuation of the section line between sections 33 and 34, township 45 north, range 110 west, intersects said southern boundary; thence south along section lines to the southeast corner of section 33, township 45 north, range 110 west; thence along the 11th standard parallel to the northeast corner of section 4, township 44 north, range 110 west; thence south along section lines to the southeast corner of section 33, township 41 north, range 110 west; thence west along the township line between townships 40 and 41 north, to the north one-quarter corner of section 4, township 40 north, range 110 west; thence south through the one-quarter corners to the south one-quarter corner of section 33, township 40 north, range 110 west; thence west along the township line between townships 39 and 40 north to the southeast corner of section 36, township 40 north, range 113 west; thence south along the range line between ranges 112 and 113 to the southeast corner of section 36, township 39 north, range 113 west; thence west along the township line between townships 38 and 39 north, to the southeast corner of section 36, township 39 north, range 115 west; thence south along the range line between ranges 114 and 115 to the southeast corner of section 24, township 38 north, range 115 west; thence west along the section lines to the southwest corner of section 19, township 38 north, range 116 west; thence north along the section line to the southeast corner of section 25, township 39 north, range 117 west; thence west along the section lines to the southwest corner of section 30, township 39 north, range 117 west; thence north along the township line to the southeast corner of section 36, township 39 north, range 118 west; thence west along the township line between townships thirty-eight (38) and thirty-nine (39) north to an intersection with the Wyoming-Idaho boundary line; thence north along said boundary line to the point of beginning.



ATTACHMENT B

AUTHORIZING RESOLUTION

(Include document authorizing entity to enforce/administer terms of delegation agreement)

RESOLUTION

(Designation of County Sanitarian)

WHEREAS, pursuant to Wyo. Stat. §35-1-306(c) the Board of County Commissioners may appoint a County Sanitarian; and

WHEREAS, pursuant to Wyo. Stat. §35-11-304(a)(iv) the local government entity shall demonstrate to the Wyoming Department of Environmental Quality that the local government entity has a County Sanitarian appointed to approve all small wastewater facilities; and

WHEREAS, Teton County has been delegated the authority by the Wyoming Department of Environmental Quality the power to regulate small wastewater facilities, publicly owned or controlled sewage collection and water distribution facilities and publicly owned or controlled nondischarging treatment works, and

WHEREAS, this resolution serves only to officially designate the Teton County Sanitarian, is not an employment contract, and the Teton County Sanitarian will continue to serve as an at-will employee and have other job duties; and

NOW THEREFORE, having duly met at a regular meeting and considered the matter, it is

RESOLVED, Ted Van Holland is hereby appointed as the Teton County Sanitarian.

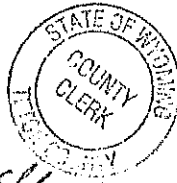
Adopted on the 11 day of April, 2017.

TETON COUNTY BOARD OF COUNTY COMMISSIONERS

Mack Newcomb
Mack Newcomb, Chair

(Seal)

Attest:



Sherry Daigle
Sherry Daigle, Teton County Clerk

THE STATE OF WYOMING
County of Teton

I, Sherry L. Daigle, County Clerk and Ex-Officio Register of Deeds, within and for Teton County, in the State of Wyoming, do hereby certify that the above and foregoing is a full, true and complete copy of transcript of Designation of County Sanitarian

being so full, true and complete, as the same now appears upon record.

IN TESTIMONY WHEREOF, I have unto set my hand and the official seal at Jackson, Wyoming, this 11 day of April, 2017

County Clerk and Ex-Officio Register of Deeds
By *Sherry L. Daigle*
Deputy Clerk

Filed: 08/11/2023 WEQC

FILED

AUG 11 2023

ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

RESPONSE TO COMMENTS

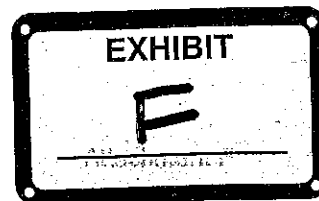
Permit #2023-025

Teton Village Resort, Small Wastewater Facility

Basecamp Teton WY SPV LLC

July 13, 2023

Wyoming Department of Environmental Quality
Water Quality Division—Water and Wastewater Section
200 W. 17th Street, Cheyenne, WY 82002



Executive Summary

On April 17, 2023; the Wyoming Department of Environmental Quality (DEQ) received an application from Basecamp Teton WY SPV LLC (Basecamp) for a permit to construct a small wastewater facility at Teton Village Resort, located in the NE¼SE¼, Section 36, Township 42 North, Range 117 West, Teton County. Following its review of the application, the DEQ drafted a permit for the facility. Given the significant interest in the facility and the draft permit, the DEQ, in accordance with Chapter 3 of the Wyoming Water Quality Rules, held a 30-day public comment period on the draft permit. The public comment period began May 3, 2023 and closed June 2, 2023. Both the draft permit and the final application were made available for public review. Based on commenters' requests for a public meeting, the DEQ, also in accordance with Chapter 3 of the Wyoming Water Quality Rules, held a public meeting on June 9, 2023 in Wilson, WY and accepted oral and written comments at that meeting.

During the May 3 - June 2, 2023 public notice period, written comments were received from 58 entities.

- Gregory Bigler
- Bruce Bonich
- Laura Bonich
- Kerri Ratcliffe
- John Wasson
- Frances Clark
- Mark Clark
- Les Gibson
- Scott Harmon
- Laurie Hunter
- Esther Kane
- Anne Ladd
- Michelle McCormick
- Kathryn Nyrop
- Daniel Paduano
- Steve Stokes
- Stephen Koch
- Berthe Ladd
- Béatrice Screve
- Elizabeth Walton
- Cynthia Dietzmann
- David Landes
- John McMorrow
- Ashleigh Babcock
- Jane Carey
- Mitchell Dann
- William Hayes
- Sarah Kraemer
- Philip Leeds
- Bradford Nielson
- Jared Smith
- Lisa Friesecke
- Katherine Goldfeder
- Leo Hopkins
- Maggie Hunt
- Margie Whistler
- Gayle Roosevelt
- Robert Strawbridge
- Andrew Bergin
- Richard Hobbins
- Cassandra Hopkins
- Lisa Nesbitt
- Steve Feldman
- Michele Goodman
- Geoff Gottlieb
- Duncan McClelland
- Jay Kaplan
- David and Christine Murdoch
- Coco and Tom Bancroft
- Karen Daubert
- Melissa Turley
- Juliann Whelan
- Dan Creighton
- Susan Lurie
- Stephen and Jaye Alfers
- Anne Columbia
- Lisa Franzen
- Kevin Regan (Protect Our Waters Jackson Hole, POWJH)

During the June 9, 2023 public meeting, written comments were provided by 15 entities:

- Fred and Ginny Becker
- Mary Cheney
- Nancy and Doug Cole
- John Culbertson
- Mitchell Dann
- Jennifer Durning
- William Hayes
- Thomas Markovitz
- Margery and Edgar Masinter
- Andrew and Danna Nehrbas
- Hank Phibbs and Leslie Petersen
- Kevin Regan, POWJH
- Andrew Sheehan
- Kenneth Taylor
- Geoff Tennican

During the June 9, 2023 public meeting, oral comments were provided by 24 entities:

- Meghan Quinn, POWJH
- Robert Paulson
- Bob Shriver
- Kay Modi (2)
- Brad Nielson (2)
- Sue Lurie
- Luther Propst
- Valérie Brown
- Kevin Regan, POWJH
- Roger Smith
- John Wasson
- Christine Murdoch

- Hank Phibbs
- Aaron Pruzan
- Leslie Petersen
- Charlie Gulatta
- Andrew Breffeilh
- Duncan McClelland
- Sally Yocum
- Scott Harmon
- Margeret Breffeilh
- Liz Storer
- Fred Staehr
- Tricia Tsketr

This document provides DEQ's responses to comments received during the public notice period and the public meeting. DEQ's responses to comments received are organized into the following tables:

- Table 1: Miscellaneous comments
- Table 2: Comments regarding performance or specifications of the small wastewater facility
- Table 3: Comments regarding wetlands
- Table 4: Comments regarding Fish Creek and the surrounding watershed
- Table 5: Comments regarding compliance, inspections, and monitoring

Table 1. Miscellaneous comments

#	Comment/Response
1-1	Comment: Comments expressed opposition to development of the Teton Village Resort (glamping facility) in general.
	Response: Comments acknowledged. Comments are outside the scope of DEQ's permit and authority.
1-2	Comment: Comments stated that the facility's domes are an eyesore or blight.
	Response: Comments acknowledged. Comments are outside the scope of DEQ's permit and authority.
1-3	Comment: Comments expressed concern about the importance of water quality and the ecosystem to tourism and the economy in Teton County.
	Response: Comments acknowledged.
1-4	Comment: Comments expressed concerns with the state lease, how the state lease was awarded, and that the lease should require county regulations to be followed.
	Response: Comments are outside the scope of the DEQ's permit and authority.
1-5	Comment: Comments stated that Wyoming DEQ lacks the authority to issue the permit. Commenters stated that county regulations should be followed.
	Response: The DEQ is issuing this permit pursuant to the Wyoming Environmental Quality Act, specifically W. S. 35-11-301(a)(iii) and Chapters 3 and 25 of the Wyoming Water Quality Rules.
	Comments on county regulations not pertaining to the small wastewater facility are outside the scope of the permit and DEQ's authority.
1-6	Comment: Comments and questions about the Office of State Lands and Investments Temporary Use Permit were provided.
	Response: Comments and questions are outside the scope of the DEQ's permit and authority.
1-7	Comment: Numerous commenters requested that DEQ hold a public meeting.
	Response: Based on the requests, DEQ held a public meeting in Wilson, WY on June 9, 2023.
1-8	Comment: Comments asked about what has changed between DEQ's revocation of the first permit for the small wastewater facility and the issuance of this permit.
	Response: The DEQ revoked the first permit issued for the small wastewater facility due to administrative deficiencies. Following revocation of the first permit, DEQ required Basecamp to submit a new application for an individual permit. In order to ensure the application was given an objective review, a new DEQ engineer was assigned to review the application to determine compliance with DEQ's rules. As part of that review, Basecamp was required to make modifications to the facility's designs. These modifications are reflected in the design drawings included with the final application during the public notice. Upon issuance of the permit,

	Basecamp will be authorized to construct the modified facility.
1-9	<p>Comment: Several commenters stated that a contained system, as originally proposed, should be used at this site, with waste periodically hauled to a treatment facility. Other commenters asked if the wastewater system could be connected to an existing municipal sewer line.</p> <p>Response: While holding tanks can be a feasible wastewater management solution in some cases, the DEQ in general does not advocate for their use when other wastewater management solutions are available. Because holding tanks do not provide any treatment, if the tanks fail, the resulting impacts to the environment can be significant due to the release of raw sewage into groundwater or surface water. Spills of raw sewage can also occur during transport of wastewater. For these reasons, the DEQ determined that the use of the sand mound pressure distribution system at this site will provide increased protection over holding tanks. The basis for how the sand mound pressure distribution system will provide effective treatment is outlined in responses to comments 3-1 and 4-1.</p> <p>The option to connect to an existing municipal sewer line would require the installation of approximately two miles of sewer line, the need for sewer line easements, and possibly remapping of sewer district boundaries. A sewer connection to a permanently installed sewer line would provide a safe, reliable wastewater management solution. However, a permanently installed sewer line would not lend itself to the temporary use nature of the facility. A properly designed, installed, and maintained sand mound pressure distribution septic system can effectively treat the wastewater effluent. The sand mound pressure distribution septic system can then be reclaimed on the property should the facility's land use permit not be renewed.</p>
1-10	<p>Comment: Several commenters asked about the permittee's responsibility to obtain other permits and the timing of those permits, based on the following language in the permit: "It is the duty of the permittee, owner and operator to comply with all applicable federal, state and local laws or regulations in the exercise of its activities authorized by this permit." How is DEQ making sure these requirements are being met for Teton County Regulations and other potential regulations for the site?</p> <p>Response: DEQ can only regulate activities in accordance with the authority specifically granted to the agency per the Wyoming Environmental Quality Act (Wyoming Statutes Title 35, Chapter 11). The issued permit represents DEQ's regulation of the design and construction of the small wastewater facility. The language identified in the comment is standard language included in all Permits to Construct primarily to notify the permittee of their responsibility to secure all other applicable permits as required by federal, state, and local laws or regulations. DEQ is not the arbiter, however, of what those permits may be and whether a permittee is in compliance with another entity's permitting requirements. If presented with a final judicial determination that a permittee had not obtained or complied with another entity's permitting requirement, DEQ would be able to take enforcement action with respect to its permit. It is the responsibility of the respective federal, state, or local agencies to regulate and enforce permits under their authority.</p>
1-11	<p>Comment: Commenters requested additional information on stormwater permitting and erosion control. What stormwater and erosion control, if any, are in place on the site, and how is DEQ going to enforce "best management practices" and proper stormwater and erosion control going forward?</p> <p>Response: The DEQ has reviewed the facility for compliance with Wyoming Pollutant Discharge Elimination System (WYPDES) stormwater permitting requirements. Because the facility's planned land disturbance will total less than five acres, the facility falls under the Small Construction Stormwater General Permit. In accordance with that general permit, the DEQ received a Stormwater Pollution Prevention Plan (SWPPP) for the facility on October 20, 2022. A site visit by a WYPDES inspector was conducted on November 1, 2022 to ensure best management practices are being implemented and general housekeeping requirements (e.g., trash removal) are being followed in accordance with the SWPPP. The inspection resulted in DEQ issuing a Letter of Violation (LOV) to the permittee on November 10, 2022. The LOV outlined actions the permittee needed to</p>

	complete to address concerns noted by the WYPDES inspector. The permittee has since completed all actions outlined in the LOV. The DEQ will complete additional stormwater inspections on an as-needed basis.
1-12	<p>Comment: Commenters requested clarification on the facility in general. There appears to be confusion on what is being built on the site. Some records indicate 13 overnight units, 2 staffing units, and a welcome center. Other records indicate a different number of overnight units and staffing units. What is being proposed on the site?</p> <p>Response: Based on the application submitted by Basecamp, DEQ's small wastewater facility permit applies to wastewater from the following structures on the site:</p> <ul style="list-style-type: none"> • 11 Overnight Units • 2 Staffing Units • 1 Welcome Center <p>DEQ has conducted site visits and confirmed with the permittee that these are the applicable structures on the site.</p> <p>The fixtures in each unit are as follows:</p> <ul style="list-style-type: none"> • Overnight Unit <ul style="list-style-type: none"> ○ 1 sink ○ 1 toilet ○ 1 shower • Staffing Unit <ul style="list-style-type: none"> ○ 1 sink ○ 1 toilet ○ 1 shower • Welcome Center <ul style="list-style-type: none"> ○ 2 sinks ○ 1 toilet
1-13	<p>Comment: Several commenters asked if the proper permit was being issued?</p> <p>Response: DEQ's determination is that the facility is a small wastewater system treating less than 2,000 gallons per day of domestic sewage (see comment/response 2-1). Therefore, the proper permit (a Permit to Construct issued under Chapters 3 and 25 of the Wyoming Water Quality Rules) is being issued.</p>
1-14	<p>Comment: Is the proposed permit sufficient to protect health and the environment?</p> <p>Response: DEQ's rules are established to protect water quality. By meeting DEQ's rules, the facility will protect human health and the environment, in accordance with DEQ's mission. If a proposed facility meets DEQ's rules, the DEQ, under the Wyoming Environmental Quality Act, is obligated to issue a permit for the facility. Information about how the facility meets DEQ's rules and DEQ's analysis of how the facility will protect water quality, is outlined in other comments/responses, particularly 3-1 and 4-1 below. Given the high level of treatment that will occur in the facility, the DEQ's determination is that the facility will be protective of groundwater in the area and will not cause additional pollutant loading to Fish Creek or other surface waters. In accordance with DEQ's rules and given the public's concerns about water quality in the area, the DEQ has determined that an environmental monitoring program is appropriate for the facility to ensure it is operating effectively and protecting water quality.</p>
1-15	<p>Comment: With regards to Fish Creek, is the DEQ fulfilling its mission to protect, conserve, and enhance Wyoming's environment?</p>

	Response: The DEQ is fulfilling its mission by ensuring that permitted facilities meet DEQ's rules and by working through other programs to monitor and assess Fish Creek and provide technical and financial assistance for locally-led efforts to plan and implement watershed restoration and protection measures.
1-16	Comment: Commenters expressed concerns about population growth in the valley affecting the environment.
	Response: Comments acknowledged.
1-17	Comment: Commenters asked about who will manage safety from campfires?
	Response: Comments acknowledged. Comments are outside the scope of DEQ's permit and authority.
1-18	Comment: Commenters expressed that Teton County's voice needs to be heard and asked for DEQ's assistance in communicating with other entities in the state.
	Response: DEQ thanks everyone who attended the public meeting and provided comments. While the above comment is outside the scope of the small wastewater facility permit, the DEQ has communicated and shared information with other state agencies as needed throughout its permitting process to notify those agencies of DEQ's actions. The DEQ will continue to communicate with those agencies as needed moving forward. This document and the June 9 public meeting transcript will be shared with those agencies.

Table 2. Comments regarding performance or specifications of the small wastewater facility

#	Comment/Response
2-1	<p>Comment: Comments were received on the type of wastewater from this facility. This facility will be operating eleven overnight units, operating for a profit, appears to be a commercial facility and so the wastewater generated must be classified as commercial/industrial wastewater. Based on this business, what is the type of wastewater generated at the facility and should this business be considered a commercial wastewater facility?</p> <p>Response: As part of its application review, the DEQ evaluates the type of wastewater that a proposed facility will generate. Based on DEQ's review of Basecamp's application, the DEQ has determined the proposed facility is a small wastewater facility that will treat domestic sewage. This determination is based on the following statutes and rules:</p> <p>W.S. 35-11-103(c)(ix) defines a "small wastewater system" as "any sewerage system, disposal system or treatment works having simple hydrologic and engineering needs which is intended for wastes originating from a single residential unit serving no more than four (4) families or which distributes two thousand (2,000) gallons or less of domestic sewage per day (emphasis added)."</p> <p>Chapter 3, Section 3(e) defines "domestic sewage" as "waste and wastewater that is primarily from human or household operations that is discharged to or otherwise enters a treatment works."</p> <p>Furthermore, Chapter 25 (which applies to septic tanks, soil absorption systems, and other small wastewater systems), Section 4(l) defines "domestic wastewater" as "combination of the liquid carried from residences, business buildings, institutions and other establishments arising from normal living conditions."</p> <p>The Basecamp Teton Village Resort is a business generating wastewater from human or household operations and arising from normal living conditions. The facility has no restaurant, no on-site laundry, no brewery, no commercial, or industrial waste facilities, nor are there any other high concentrated waste streams. Therefore,</p>

	<p>the wastewater generated from this facility is domestic sewage. Because the facility will generate less than 2,000 gallons per day of domestic sewage (see comment/response 2-4), the facility is a small wastewater facility, and regulations in Chapter 25 apply.</p>
2-2	<p>Comment: Comments and questions were received about future development. The plans indicate future development and expansion plans including a septic drainfield/leachfield. Is future development allowed?</p> <p>Response: As required by Water Quality Rules, Chapter 25, Section 7(b), the facility plans identified a future replacement leach field. The identified replacement leach field (sand mound location in this instance) is incorrectly labeled on the plans as "future expansion." The DEQ will require Basecamp to update the plans to correct the labeling error.</p> <p>Basecamp is only allowed to construct the facility as identified in the permit and permit application. Any future modification would require Basecamp to submit a permit modification application to DEQ.</p>
2-3	<p>Comment: Comments and questions were received about the performance of the system in colder months and severe winters. How is the facility mitigating freezing of the small wastewater system?</p> <p>Response: The sand mound pressure distribution system is designed to operate in cold and freezing climate conditions. Water Quality Rules, Chapter 25 requires the applicant to take measures to prevent freezing of the small wastewater facility. DEQ has reviewed the facility plans and materials to ensure the project meets or exceeds material requirements. All applicants are encouraged to take additional measures to mitigate freezing conditions and enhance system operations in cold conditions.</p> <p>Sand mound septic systems are permitted in the following surrounding states: Colorado, Nebraska, South Dakota, North Dakota, Montana, Utah, and Idaho. Many of these states experience winter conditions similar to those in Teton County.</p> <p>The designed system meets rules established for DEQ to mitigate freezing conditions on the septic tanks and dosing chambers. There is at least four feet of cover on the septic tanks and dosing chambers. The septic tank and dosing chambers both have additional bury depth reaching nine to ten feet in total depth. Teton County's Planning Department identifies 34 inches as the frost line depth from finished grade to the bottom of support footings.</p> <p>As designed, DEQ has determined the small wastewater system will effectively treat the wastewater effluent and mitigate freezing conditions. However, because of the concerns expressed by the public, DEQ discussed the winter conditions and freezing potential with Basecamp. In order to help address the concerns, Basecamp has opted to provide insulation on the septic tanks and dosing chambers as an extra measure to aid in heat retention and effluent treatment. DEQ will incorporate this extra measure into the permit. The insulation on septic tanks and dosing chambers was a recommended outcome from the Teton County Septic System Effluent Monitoring Report, August 2022.</p>
2-4	<p>Comment: Commenters identified concerns on how the wastewater flow calculations were determined for the facility and the type of wastewater flow being used to determine daily flows. How is the facility meeting DEQ rules for its wastewater flow determination?</p> <p>Response: The determination was made in accordance with DEQ rules, as outlined below.</p> <p>Water Quality Rules, Chapter 25, Section 5, Design Flows, provides that the volume of wastewater shall be determined by one of the following:</p> <ul style="list-style-type: none"> • Section 5(a) – Tables 1 and 2 provided in this section • Section 5(b) – Metered water supply data from the facility

- Section 5(c) – Metered water supply data from another facility where similar water demands have been demonstrated.

Basecamp supplied information meeting the requirements of Section 5(c) demonstrating flows of 61 gallons/day/unit for a similar facility.

- This equates to 920 gallons per day (gpd) for the facility.
 - Overnight Units: $11 * 61 = 671$ gpd
 - Staff Units: $2 * 61 = 122$ gpd
 - Welcome Center Guests: $28 * 4 = 112$ gpd
 - Welcome Center Staff: $1 * 15 = 15$ gpd
 - Total = 920 gpd

To further evaluate flow rates from the facility to ensure the system was designed appropriately, the DEQ calculated flow rates using three other methods:

- Chapter 25, Table 2, Motel, Hotel, Resort – 140 gpd
 - Calculating flows for 11 overnight units, 2 staffing units and 1 welcome center, and the facility is designed for 28 guests and 5 staff or 33 overnight persons. The hotel, resort rate would generate the following flow:
 - Overnight Units: $11 * 140 = 1,540$ gpd
 - Staff Units: $2 * 140 = 280$ gpd
 - Welcome Center Guests: $28 * 4 = 112$ gpd
 - Welcome Center Staff: $1 * 15 = 15$ gpd
 - Total = 1,947 gpd
 - 1,947 gpd is less than the 2,000 gpd threshold for small wastewater facilities to be classified as a UIC facility, per Chapter 25
 - The flow calculation of 1,947 gpd includes laundry flows, which are not applicable to this facility due to laundry being conducted off-site
 - Chapter 25, Section 17(b)(i)(B) identifies Laundry flow at 15 gpd/person
 - The facility is designed for 28 guests and 5 staff or 33 overnight persons
 - Laundry flows would be: $33 * 15 = 495$ gpd
 - Facility Flows without Laundry would be: $1947 - 495$ gpd
 - Total flow without Laundry = 1,452 gpd
- Chapter 25, Table 2, Campground (w/showers) – 45 gpd/person
 - The facility is designed for 33 persons
 - Total flow: $33 * 45 = 1,485$ gpd
- Additional Flow evaluations:
 - USEPA Onsite Wastewater Treatment Systems Manual – Cabins/Resort – 40 gpd/person
 - The facility is designed for 33 persons
 - Total flow: $33 * 40 = 1,320$ gpd

Based on these evaluations ranging from 920 to 1,485 gpd for the facility, the DEQ conservatively used 1,500 gpd for the wastewater flow determination for the facility. Basecamp will be required to conduct and report flow metering to ensure this capacity is not exceeded.

2-5

Comment: Comments identified concerns on how the facility meets separation distance requirements. How is the facility meeting DEQ rules for horizontal separation distances?

Response: As described in the responses to comments above, the DEQ has determined (1) the facility is producing domestic wastewater generated from normal living conditions and (2) the facility will produce a

	<p>maximum of 1,500 gpd of wastewater. Therefore, setback distances established in Water Quality Rules Chapter 25, Section 7 apply. Because the facility is not generating commercial or industrial waste, or domestic waste greater than 2,000 gpd, the setback distances in Chapter 25, Section 19 do not apply.</p> <p>Chapter 25, Section 7, Table 4 provides the following minimum horizontal setback distances:</p> <ul style="list-style-type: none"> • 200 ft setback from public water supply well to absorption system (the sand mound effluent distribution laterals) • 50 ft setback from surface water or spring to absorption system <p>The proposed system meets or exceeds the minimum horizontal setback distances provided in Chapter 25, Section 7, Table 4:</p> <ul style="list-style-type: none"> • 287 ft between the public water supply and the absorption system • 65 ft between the nearest surface water* and the absorption system <p>*The separation distance from the absorption system to surface water (including wetlands) is based on the US Army Corps of Engineers Wetland Delineation for the site as shown on the design plans.</p>
2-6	<p>Comment: Commenters stated that the facility should provide treatment beyond a basic septic system to ensure protection of the groundwater.</p> <p>Response: See comments/responses 3-1 and 4-1, which outline the high level of treatment the system will provide. The DEQ notes that the permitted facility is not a basic septic system, in which the leach field would be buried in native soils. That type of system would not be appropriate for this site due to the high groundwater. In contrast, the permitted system, as a sand mound pressure distribution system (see comments/responses 3-1 for details), will provide treatment in the sand mound above native soils, and the effluent will be highly treated before leaving the sand mound and reaching native soils. As noted in comments/responses 3-1, these types of systems are commonly used in areas of high groundwater to be protective of water quality. In addition, Basecamp has opted to incorporate additional measures to ensure effective operation of the system (see comments/responses 2-3 and 2-8).</p>
2-7	<p>Comment: How does the system protect high groundwater? Will flood irrigation in the area impact the system's performance? Has it been properly documented that these lands and therefore the mound system are not subject to seasonal flooding? Was the perc test done at the right time of year (September) and was the individual who did the perc test qualified?</p> <p>Response: See comments/responses 3-1 and 4-1 on how the system will protect high groundwater. The system meets required setback distances to be protective of seasonally high groundwater and wetlands as delineated by the US Army Corps of Engineers. Such delineations would account for factors such as flood irrigation that can cause high groundwater. The submitted percolation test was conducted and submitted by Basecamp in accordance with Chapter 25, Appendix A. DEQ evaluated the percolation test information, determined the provided results were similar to other tests conducted for this type of soil in the area, and accepted the results.</p>
2-8	<p>Comment: Are there other technological requirements that would serve as Best Management Practices for wastewater management on the site?</p> <p>Response: The facility as designed meets DEQ requirements per Water Quality Rules. Because of the public's concerns about water quality, particularly for the Class 1 surface waters in the watershed, the DEQ has incorporated an environmental monitoring program into the permit in accordance with Water Quality Rules Chapter 3, Section 14. The permit requires that two groundwater monitoring wells be installed to verify the sand mound pressure distribution system is operating effectively and protecting water quality. The applicant will be required to submit quarterly water quality results from the two groundwater monitoring wells. DEQ will review the information to evaluate effectiveness of the system and determine whether impacts to groundwater</p>

	<p>quality are occurring. Basecamp will also be required to submit quarterly effluent metering reports to ensure the system is operating within its maximum design flow. Exceeding the maximum design flow would be a violation of permit conditions.</p> <p>Basecamp has opted to provide additional measures that serve as best management practices for wastewater management. Basecamp will provide insulation on the septic tanks and dosing chambers as an extra measure to aid in heat retention and effluent treatment. The insulation on septic tanks and dosing chambers was a recommended outcome from the Teton County Septic System Effluent Monitoring Report, August 2022. In addition, Basecamp will add aeration treatment units on each septic tank to provide aerobic pretreatment of the effluent. DEQ will incorporate these extra measures into the permit.</p>
2-9	<p>Comment: How is DEQ going to incorporate the results of a two-year study of raised mound wastewater treatment leach fields and septic systems in the Fish Creek watershed? More specifically, the study identifies recommendations to improve winter treatment of wastewater in leach fields and septic systems through heat retention designs.</p> <p>Response: The designed system meets DEQ's review for mitigating freezing conditions on the septic tanks and dosing chambers. There is at least four feet of cover on the septic tanks and dosing chambers. The septic tank and dosing chambers both have additional bury depth reaching nine to ten feet in total depth. Teton County's Planning Department identifies 34 inches as the frost line depth from finished grade to the bottom of support footings.</p> <p>As designed, the small wastewater system will effectively treat the wastewater effluent and mitigate freezing conditions. However, because of the concerns expressed by the public, DEQ discussed the winter conditions and freezing potential with Basecamp. In order to help address the concerns, Basecamp has opted to provide insulation on the septic tanks and dosing chambers as an extra measure to aid in heat retention and effluent treatment. DEQ will incorporate this extra measure into the permit. The insulation on septic tanks and dosing chambers was a recommended outcome from the Teton County Septic System Effluent Monitoring Report, August 2022.</p> <p>Additionally, Basecamp has opted to install aeration units in the septic tanks to provide aerobic pretreatment to the effluent prior to the sand mound system. The aeration units will aid in treatment of the effluent throughout the year and assist to mitigate any potential freezing.</p>
2-10	<p>Comment: Is a system designed in Wisconsin applicable to this location?</p> <p>Response: See comment/response 3-1. This type of system, initially developed in North Dakota and extensively studied by North Dakota and Wisconsin, has been adopted for use by most states, including Wyoming, through small wastewater system regulations. The information presented regarding this research in other states supports the use of these systems in climates and conditions similar to those at the site for this facility. The "Wisconsin Mound" has been adopted by most states coast-to-coast due to its ability to mitigate potential impacts to water quality due to local soil conditions or a high-water table. The sand mound accomplishes treatment by requiring specific design requirements and the use of specific, imported materials for the filter sand. Treatment of effluent is conducted in the imported sand material and does not rely on native soils. The DEQ has also considered and incorporated information from Teton Conservation District's septic system study (see comment/response 2-9).</p>
2-11	<p>Comment: Commenters expressed concern that the wastewater going into the system would have increased concentration of pollutants when compared to a residence. If this is the case, will the system be able to treat those concentrations?</p>

	<p>Response: Based on its review, the DEQ has determined the system as designed will be able to treat the concentration of pollutants in the wastewater (see comment/response 3-1). However, given the public concerns, DEQ has consulted with Basecamp, and Basecamp has offered to install aeration treatment units in the septic tanks and insulation over the septic tanks and dosing tanks as extra measures to address public concerns. Aeration units have demonstrated enhanced pre-treatment of septic effluent by introducing aerobic treatment into the septic tank. The aeration units will aid in providing aerobic pretreatment of the effluent prior to receiving additional aerobic treatment in the sand mound. The aeration units will also aid in mitigating freezing potential of the effluent and providing pre-treatment during winter conditions.</p>
--	---

Table 3. Comments regarding wetlands

#	Comment/Response
3-1	<p>Comment: Comments were received about how the facility will be protective of wetlands and surface water on site and the interaction between groundwater and wetlands on the site. Have there been any studies of the hydrological relationship between wetlands or ponds on the site and groundwater? Many comments raised the concern that having a septic system installed at the Basecamp Teton Village Resort does not protect Fish Creek or the Snake River and will expose groundwater to septic effluent discharge.</p> <p>Response: Chapter 25 of the Wyoming Water Quality Rules was established to ensure that septic tanks, soil absorption systems, and other small wastewater systems are designed and constructed to protect water quality.</p> <p>DEQ is not aware of any studies of the hydrological relationship between the wetlands or ponds and groundwater specific to this site. However, the US Army Corps of Engineers has conducted a wetland delineation for the site. A wetland delineation determination requires that one or more indicators of wetland vegetation, hydric soil, and wetland hydrology must be present for an area to be a wetland. Basecamp is building their facilities on areas deemed non-wetlands based on the US Army Corps of Engineers wetland delineation for the site. Additionally, in POWJH's June 9, 2023 Letter, Exhibit N, Alder Environmental identified wetland and non-wetland areas that align with the Army Corps of Engineers wetland delineation for the site.</p> <p>The proposed septic system is a sand mound pressure distribution septic system. These systems were initially developed in the 1930s in North Dakota to mitigate impacts to water quality due to a high-water table, slow or fast permeability in soils, and shallow soil cover over creviced or porous bedrock. Significant research has been conducted by North Dakota and Wisconsin since that time, and most states have adopted regulations for the "Wisconsin Mound" design, including Wyoming DEQ (see Water Quality Rules, Chapter 25). Teton County has also adopted regulations for these systems in its Small Wastewater Facility Regulations (effective 2022).</p> <p>The "Wisconsin Mound" has been adopted by most states due to its ability to mitigate potential impacts to water quality due to local soil conditions or a high-water table. The sand mound accomplishes treatment by requiring specific design requirements and the use of specific, imported materials for the filter sand. Treatment of effluent is conducted in the imported sand material and does not rely on native soils.</p> <p>The sand mound pressure distribution septic system has three major components – a septic tank, a pressure dose tank, and the sand mound system. The septic tank pretreats the effluent and allows the solids to settle out. The effluent passes through an effluent filter and then moves to the pressure dosing tank. The pressure dosing tank, at timed intervals or volume intervals, pressurizes the distribution lines and evenly disperses effluent into the sand mound system. The sand mound system is located above ground with separation requirements over native ground and high groundwater. The proposed sand mound has approximately two feet of separation between the bottom of the mound and high groundwater (both DEQ and Teton County regulations require one foot of separation), and the sand mound has four feet of separation between the native soil and the distribution laterals (DEQ regulations require three feet of separation, and Teton County regulations require four feet of separation).</p>

	<p>Therefore, a sand mound pressure distribution septic system will treat the effluent prior to it leaving the mound system. Effluent leaving the mound system will be highly treated and thus protective of groundwater (see additional information in the comment/response 4-1). Because effluent will be highly treated before reaching groundwater, no adverse impacts or additional pollutant loading is expected to occur in Fish Creek.</p> <p>Because of the public's concerns about water quality, particularly for the Class 1 surface waters in the watershed, the DEQ has incorporated an environmental monitoring program into the permit in accordance with Water Quality Rules Chapter 3, Section 14. The permit requires that two groundwater monitoring wells be installed to verify the sand mound system is operating effectively and protecting water quality. The applicant will be required to submit quarterly water quality results from the two groundwater monitoring wells. DEQ will review the information to evaluate effectiveness of the system and determine whether impacts to groundwater quality are occurring. Basecamp will also be required to submit quarterly effluent metering reports to ensure the system is operating within its maximum design flow. Exceeding the maximum design flow would be a violation of permit conditions.</p>
3-2	<p>Comment: Comments were received on the delineation of wetlands and surface water on the site. How was the surface water area delineation determined, does the delineation include the wetlands, and was the United States Army Corps of Engineers involved in these determinations? Are these jurisdictional wetlands under the Clean Water Act?</p> <p>Response: In the permit application, Basecamp's engineer supplied information and offset distances for review. Basecamp provided information from a US Army Corp of Engineers wetland delineation for the site. The US Army Corp of Engineers wetland delineation for the site allowed DEQ to determine the small wastewater facility will meet the necessary setback requirements from surface water. The existing sand mound will be removed and rebuilt to meet the required setback requirements.</p> <p>Additionally, the POWJH letter dated June 9, 2023 provided wetland delineation information in Exhibit N. The wetland delineation conducted by Alder Environmental further identifies wetland and non-wetland areas on the site. The information provided by Alder Environmental aligns with information provided by the Army Corp of Engineers and Basecamp. The information provided by POWJH and Alder Environmental confirms the small wastewater facility will meet setback requirements to surface water and wetlands.</p> <p>The US Army Corps of Engineers should be contacted for jurisdictional determinations. Regardless of whether the wetlands are jurisdictional or non-jurisdictional, the same setback distances apply, which the facility has met based on the US Army Corps of Engineers wetland delineation provided in the application.</p>
3-3	<p>Comment: A commenter noted the access road shown on the drawings encroaches well within the required County required setback from the US Army Corps of Engineers wetland buffer (See sheet C-100). Please address this issue and how the needed re-design will be accommodated given the parcel constraints and footprint of the facilities?</p> <p>Response: The location of the access road and associated required setbacks in county regulations are outside the scope of DEQ's permit and authority.</p>

Table 4. Comments regarding Fish Creek and the surrounding watershed

#	Comment/Response
4-1	<p>Comment: A number of commenters are concerned with a septic system discharging into the groundwater and further impacting Fish Creek. Fish Creek is a Class 1 waterbody with a current impairment from <i>E. coli</i> levels. Commenters are concerned about water quality in general in the area and additional pollutant loading to the creek and potential impacts on drinking water.</p>

	<p>Response: Chapter 25 of the Wyoming Water Quality Rules was established to ensure that septic tanks, soil absorption systems, and other small wastewater systems are designed and constructed to protect water quality.</p> <p>USEPA, Wisconsin, Colorado, North Dakota, and universities including but not limited to the Colorado School of Mines, South Dakota State University, and the University of Madison-Wisconsin have conducted research on the treatment capabilities of sand mound systems and sand filtration treatment. USEPA's Onsite Wastewater Treatment Systems Manual, Table 3-18, concludes the removal of organic compounds and suspended solids is greater than 95% in effluent from sand mound systems. USEPA, Onsite Wastewater Treatment Systems Manual, Table 3-18, concludes that effluent is treated such that levels of Fecal Coliform and Fecal Streptococci are undetectable at two feet below the absorption field and four feet below the absorption field. Therefore, the risk of groundwater contamination below a properly sited, designed, constructed and maintained wastewater infiltration system is unlikely (USEPA, Onsite Wastewater Treatment Systems Manual, 3-28).</p> <p>The proposed facility has four feet of separation between the absorption field and native soil. The facility has an additional two feet of separation between native soil and groundwater. A total of six feet of separation exists between the absorption field and groundwater. The system is designed to achieve the pollutant removal efficiencies identified above.</p> <p>As described in comment/response 3-1, the system is designed to effectively treat the effluent prior to it leaving the mound system. The permit also incorporates an environmental monitoring program to evaluate effectiveness of the system and determine whether impacts to groundwater quality are occurring. Based on the proposed design and performance of sand mound systems, DEQ does not anticipate any untreated effluent from the system reaching or negatively impacting Fish Creek or other surface waters.</p> <p>DEQ understands the importance of Fish Creek to the community and the significance of its designation as a Class 1 waterbody. The DEQ has invested significant resources into assessing Fish Creek to better understand its water quality. This includes collecting <i>E. coli</i> samples from Fish Creek in 2017 to determine whether the creek is supporting its primary contact recreation use. The DEQ has also collaborated with partners since 2016 to collect and assess nutrient stressors and response data in Fish Creek and is currently sharing the results of that assessment with stakeholders. In 2023, the DEQ provided grant funds to Teton Conservation District to support the development of a watershed plan to address both <i>E. coli</i> and nutrient pollution in Fish Creek. The District, which has experience and expertise in developing effective watershed plans, is well suited to bring stakeholders to the table to evaluate all potential sources of pollutants in a watershed and identify restoration strategies. Sources of both <i>E. coli</i> and nutrient pollution in any given watershed can be numerous—e.g., wildlife, human, livestock, pets, fertilizers—and effective watershed plans need to consider all sources. The DEQ looks forward to supporting and assisting with that effort and subsequent projects to implement restoration strategies with the goal of reversing the degradation in Fish Creek and returning it to attaining water quality standards. The DEQ will continue to work with Teton Conservation District and other partners to provide assistance as needed, including supporting and assisting with additional monitoring in the watershed.</p>
4-2	<p>Comment: Many comments raised the concern that having a septic system installed at the Basecamp Teton Village Resort does not protect Fish Creek or the Snake River and will expose groundwater to septic effluent discharge.</p> <p>Response: See comments/responses 3-1 and 4-1.</p>
4-3	<p>Comment: A recent United State Supreme Court Case indicates that in certain situations a discharge to groundwater can constitute a point source (County of Maui v Hawaii Wildlife Fund). With the facility's location to a Class 1 surface water, DEQ should conduct further hydrological analysis to determine if the proposed project constitutes a prohibited point source.</p> <p>Response: W. S. 35-11-103(a)(xi) defines a "point source" as "any discernible, confined and discrete conveyance...from which pollutants are or may be discharged." Unless demonstrated to be otherwise, septic</p>

	<p>Response: The DEQ appreciates the comments. The DEQ is aware of proactive efforts of local stakeholders to restore Fish Creek as well as the proactive efforts of many entities in Teton County working together to address water quality issues in various areas of the county. We commend these proactive and locally-led efforts to restore and protect water quality. The DEQ has been a partner in many of these efforts and will continue to do so. DEQ staff routinely provide technical assistance to water quality projects in the county, and since 2009, the DEQ has awarded over \$1.2 million in grant funding to local partners to implement voluntary watershed planning and restoration projects related to Fish Creek and Flat Creek.</p> <p>In particular, the DEQ understands the concerns with the degradation of water quality in Fish Creek, and we share the goal of seeing Fish Creek once again attain water quality standards. In addition to the past water quality assessments the DEQ has conducted on Fish Creek, the DEQ has provided financial and technical support to the Fish Creek Watershed Management Plan project, sponsored by Teton Conservation District. We look forward to working with Teton Conservation District and the public during this project to develop a plan that identifies all potential sources of pollution in the watershed and proposes strategies to address them, and we will continue to provide technical assistance as needed as the plan is developed. Following development of that plan, sponsors will be able to apply for additional DEQ grant funding to implement on-the-ground projects to address identified sources. Effective watershed planning should be based on the best available science and must look at all pollutant sources within a watershed to identify the most effective restoration strategies. It is important that all stakeholders participate in watershed planning to share information and identify effective restoration strategies, and public participation is encouraged.</p>
--	---

Table 5. Comments regarding compliance, inspections, and monitoring

#	Comment/Response
5-1	<p>Comment: Several commenters asked about actions the DEQ will take to ensure the system is installed correctly. The small wastewater facility has already been built. How will DEQ conduct inspections of the facility to determine sewer, water and the sand mound system components have been installed correctly?</p>
	<p>Response: DEQ District Engineers have been onsite conducting periodic site inspections. This has included conducting an April 2023 site inspection in response to a citizen complaint. The results of that site inspection indicated Basecamp was in compliance with DEQ's rules. If the permit is issued, the permit will require the sand mound to be removed and rebuilt to meet required setback distances. DEQ District Engineers will be conducting periodic construction inspections of the sand mound and the reinstallation of the septic and dosing chambers. During these site visits, the District Engineers will also inspect waste and water line installations. The system's waste and water lines will also need to pass pressure tests, and the septic and dosing chambers will need to pass a leakage test.</p>
5-2	<p>Comment: Commenters asked if DEQ will conduct site inspections and conduct inspections for building, electrical and other local code requirements?</p>
	<p>Response: DEQ can only conduct inspections in accordance with the authority granted to the agency under the Wyoming Environmental Quality Act (Wyoming Statutes Title 35, Chapter 11). W. S. 35-11-303(a)(i) gives the DEQ Water Quality Division (WQD) authority to conduct inspections to determine if a facility is complying with DEQ-issued permits for that facility. For the small wastewater facility, the DEQ will conduct inspections as needed to determine compliance with the permit. At a minimum, this will include an inspection during construction of the small wastewater facility. Additional inspections will be scheduled as needed.</p> <p>DEQ does not have authority to conduct inspections for building, electrical or other local code requirements. While DEQ requires a permittee to obtain all applicable permits, DEQ is not the arbiter of what those permits may be and whether a permittee is in compliance with another entity's permitting requirements. If presented with a final judicial determination that a permittee had not obtained or complied with another entity's permitting requirement, DEQ would be able to take enforcement action with respect to its permit.</p>

5-3	<p>Comment: Commenters asked if DEQ will conduct site inspections, verify the septic tank installation, pressure testing, backfilling, verify separation distances, and other requirements for the small wastewater facility?</p> <p>Response: Please see the response to comments 5-1 and 5-2 above. DEQ District Engineers have conducted and will continue to conduct site inspections as needed to verify the small wastewater facility is being constructed in accordance with the permit, including verifying proper installation, pressure testing, separation distances, and other applicable requirements. In addition to DEQ's inspection, Basecamp will be required to verify setback distances through a third-party surveyor.</p>
5-4	<p>Comment: A commenter stated that the Draft Permit seems to absolve DEQ of responsibility for monitoring proper construction of the permitted facility. It states that "The compliance with construction standards and the operation and maintenance of the facility to meet the engineer's design are the responsibility of the permittee, owner, and operator." Later in the permit language, however, the Draft Permit states that "In carrying out its activities authorized by this permit, the permittee, owner and operator shall comply with all of the following permit conditions," and it then lists a comprehensive list of nine requirements designed to demonstrate that the permittee is adequately and effectively protecting the Fish Creek watershed. What measures will the DEQ take to monitor compliance with the nine permit conditions enumerated in the Draft Permit?</p> <p>Commenters expressed their concerns that Basecamp has not acted in good faith and should not be trusted to self-monitor compliance with the permit. Commenters requested that Teton County Planning or DEQ be responsible for compliance. Commenters expressed concern with the following language in the permit: "Granting this permit does not imply that WQD (Water Quality Division) guarantees or ensures that the permitted facility, when constructed, will meet applicable discharge permit conditions or other effluent or operational requirements. Compliance with discharge standards remains the responsibility of the permittee."</p> <p>Commenters asked what actions DEQ will take to ensure compliance with surface and groundwater quality if a violation is detected?</p> <p>Response: The referenced language is standard language included in all DEQ Permits to Construct, though permit conditions may vary by permit to ensure appropriate conditions are incorporated for each permit. The language is included to put a permittee on notice that it is the permittee's responsibility to comply with all permit conditions. Approval of a permit by the DEQ does not absolve a permittee and cannot be a defense to any subsequent violation of the terms of the permit by the permittee. While the permittee is responsible for complying with permit conditions, the DEQ retains its inspection, compliance, and enforcement authority as granted to it under the Wyoming Environmental Quality Act (see Articles 3, 7, and 9). Under its authority, the DEQ, as determined to be necessary, can inspect facilities to determine compliance (see W. S. 35-11-303(a) and 35-11-701(a)). If the DEQ determines a facility is not in compliance and that a violation exists, the DEQ has authority to work through conference and conciliation to resolve the violation (W. S. 35-11-701(c)). The DEQ may also consider enforcement action that may include penalties (W. S. 35-11-901) to resolve the violation. As noted in comments/responses 5-1, 5-2, and 5-3, the DEQ will, as needed, conduct inspections of the facility to determine compliance with the permit. Both DEQ and the permittee have roles to ensure compliance. As needed, the DEQ will coordinate with the Teton County Planning Department on inspection and compliance issues.</p>
5-5	<p>Comment: Will the mound system have monitoring by the State DEQ and the data made available to the public?</p> <p>Response: The permit as issued requires Basecamp to conduct the required monitoring. However, as part of its authority to ensure compliance with the permit, the DEQ may opt to collect its own samples to verify data submitted by Basecamp. All files in the DEQ, including monitoring data, are open to the public unless they are found to be confidential under W. S. 35-11-1101 or otherwise protected under the Wyoming Public Records Act. The public may request DEQ records at https://deq.wyoming.gov/records-requests/.</p>

5-6	Comment: Is the proposed monitoring adequate to detect changes in groundwater quality? Commenters also expressed concern about how those monitoring wells would be constructed.
	Response: The DEQ has determined that the monitoring as incorporated into the permit will be sufficient to achieve the intended objective of ensuring the system is performing as planned and protecting water quality. If data indicate additional or less monitoring is needed to achieve the objective, the DEQ will consider changes to the monitoring program at that time. As stated in the permit, monitoring wells must be constructed in accordance with Water Quality Rules, Chapter 26, Well Construction Standards.

Filed: 08/11/2023 WEQC

ALDER ENVIRONMENTAL
water | wetlands | ecological consulting



FILED

AUG 11 2023

November 19, 2022

To: Protect Our Water Jackson Hole, Wilson, WY

From: Brian Remlinger, *Professional Wetland Scientist*, Alder Environmental LLC
 ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

B. E. Remlinger

 Re: WY State Land (Teton Village) Site 9 - Aquatic Resources and Water Quality Impact Assessment

Alder Environmental LLC has been retained by Protect Our Water Jackson Hole to assess the aquatic resources within the vicinity of Site 9 of the Teton Village State Land Parcel and to evaluate potential impacts to surface and groundwater quality from current Teton Village Resort (Resort) development on Site 9. This assessment and opinion are based off a review of historical aerial imagery, best available hydrologic feature data, a site visit on November 16, 2022, previous site visits to the parcel, and 23 years of professional experience and knowledge of wetlands and water resources in the area.

LOCATION

Site 9 of the "Teton Village" State Land Parcel is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, Township 42 North, Range 117 West of the 6th P.M., Teton County, Wyoming (Figure 1). The Teton Village Parcel is located centrally within the Fish Creek Watershed, a tributary of the Snake River. The watershed is underlain by the vast Snake River alluvial aquifer containing coarse gravels and significant groundwater reservoirs. There is a slight downward tilt in the valley to the west towards Wilson and Fish Creek where surface and groundwaters flow to.

Fish Creek and its tributaries, including wetlands, irrigation ditches, and return flows are designated as Class 1 Surface Waters by the State of Wyoming. Class 1 Surface Waters are defined by Wyoming's Chapter 1 Surface Water Quality Standards as:

(a) Class 1, Outstanding Waters. Class 1 waters are those surface waters in which no further water quality degradation by point source discharges other than from dams will be allowed. Non-point sources of pollution shall be controlled through implementation of appropriate best management practices. Pursuant to Section 7 of these regulations, the water quality and physical and biological integrity which existed on the water at the time of designation will be maintained and protected. In designating Class 1 waters, the Environmental Quality Council (council) shall consider water quality, aesthetic, scenic, recreational, ecological, agricultural, botanical, zoological, municipal, industrial, historical, geological, cultural, archaeological, fish and wildlife, the presence of significant quantities of developable water and other values of present and future benefit to the people.

In addition, dredge and fill activities within Class 1 Surface Waters trigger specific Clean Water Act Sections 401 and 404 notifications to the State and US Army Corps of Engineers.

HYDROLOGIC CONDITIONS

The Fish Creek watershed gains surface water flows from Teton Mountain Range snowmelt runoff to the west and north, irrigation diversions from the Snake River to the east, and many springs seeping from the ground (Figure 1). Interactions between surface and groundwater are well documented in studies conducted by the US Geological Survey and others (Eddy-Miller 2009). Valley snowmelt and rainfall runoff contribute to surface flows

and groundwater recharge at the Teton Village State Parcel. Groundwater flows within the gravel based alluvial aquifer at the Parcel respond quickly to seasonal conditions and surface water inputs or recharge. The seasonal rise in groundwater can result in the water table rising at or above the surface in certain locations.

The area within the vicinity of Site 9 Teton Village State Parcel contains surface waters that flow from northeast to southwest. These include irrigation supply ditches, remnant spring and river flood channels, and irrigation laterals (Figure 2). The ponds at the Site were historically excavated in coarse gravels and the water surface in the ponds fluctuate with the groundwater water table. The outlets of these ponds eventually surface flow into the Grosh and Palmer Ditches that return flows to Lake Creek, a tributary of Fish Creek. These ponds also recharge or interact with the groundwater in the vicinity. The groundwater within the vicinity of Site 9 has significant hydrologic connectivity with surface water and stormwater and snowmelt runoff due to being seasonally near the ground surface, having high infiltration rates, and as a result of high transmissivity or the porous nature of the gravel based alluvial aquifer.

AQUATIC RESOURCES

Aquatic resources include wetlands and surface waters that are regulated by the federal Clean Water Act. The area in the vicinity of Site 9 was observed to contain ponds, flowing channels, emergent and scrub-shrub wetlands, and groundwater inundating the ground surface. Figure 2 depicts the wetlands and surface waters identified and mapped using knowledge of the area, historical infrared and true color aerial imagery, site observations, and existing topographic contour data. Connectivity of these wetlands and surface water is continuous throughout the Study Area from Site 9 to the Grosh and Palmer ditches.

The US Army Corps of Engineers and WY Department of Environmental Quality (DEQ) determine federal and state jurisdiction over aquatic resources. Depending on their jurisdictional determination, any dredge or fill activities and other non-point source pollution resulting from construction and operation of Site 9 may require notification and/or permits from federal and state regulatory agencies.

WATER QUALITY

The surface and groundwater in the upper Snake River watershed in Jackson Hole is generally of excellent quality, however, has been affected by anthropogenic disturbances and uses in the Fish Creek watershed (Eddy-Miller 2013). Twenty-one different wastewater chemicals were detected in the Fish Creek and groundwater during the US Geological Survey studies from 2007-11 (Eddy-Miller 2013).

In the summer of 2021, Kelsey Ruehling, a University of Wyoming graduate student, collected and analyzed microbes in water, fecal, and wastewater samples to identify and quantify sources of fecal pollution in Fish Creek. Ms. Ruehling's research indicates that increasing land development in the Fish Creek watershed has a negative effect on microbial diversity and that human wastewater is the dominant fecal source contributor to the creek (Ruehling 2022). The high number of residential wastewater treatment leachfields in the Fish Creek watershed (~1,000) are assumed to be the primary contributor to this wastewater fecal contamination load.

A recent 2-year study of raised mound wastewater treatment leachfields and septic systems in the Fish Creek watershed indicates that nitrate contamination of groundwater due to these systems is highest during winter months when the effectiveness of these systems is limited by cold conditions (Nelson and Alder 2022). There was an increase in nitrate concentrations observed in the groundwater downgradient of the leachfields, most notably in the winter months. The study makes recommendations to improve winter treatment of wastewater in leachfields and septic systems through heat retention designs.

POTENTIAL & OBSERVED DEVELOPMENT IMPACTS

The proposed development plans at Site 9 (Teton Village Resort Construction Plans, 11/9/22) depicts a leachfield and mound near and likely within potential wetlands and surface waters. The existing contours on the plan set, a review of aerial imagery, and site observations indicate the mound from the leachfield extends into the wetland/pond complex. The leachfield infiltrators are less than 50 feet from estimated wetlands and possibly surface waters.

The potential fill in wetlands and surface waters resulting from development at Site 9 appears relatively minor and would likely comply with a federal Clean Water Act Section 401 and 404 Nationwide Permit Conditions, however the fact that the fill is associated with a leachfield system might negate that compliance. The US Army Corps of Engineers and WY DEQ are the regulatory authorities that would make determinations on this development fill and situation.

Negative water quality impacts to groundwater as a result of the wastewater from the proposed Site 9 Resort facilities would likely be highest during the winter unless the wastewater treatment system was designed to be insulated for heat retention, as recommended in the 2022 Nelson and Alder report. Regardless, there will likely be some level of wastewater pollutant contribution to groundwater from the Resort as indicated by the 2022 study. The level of wastewater pollution leaching into the groundwater at Site 9 will likely be low concentration, however, water quality impacts will be chronic and long term and will ultimately be determined by occupancy rates and flow rates to the system.

REFERENCES

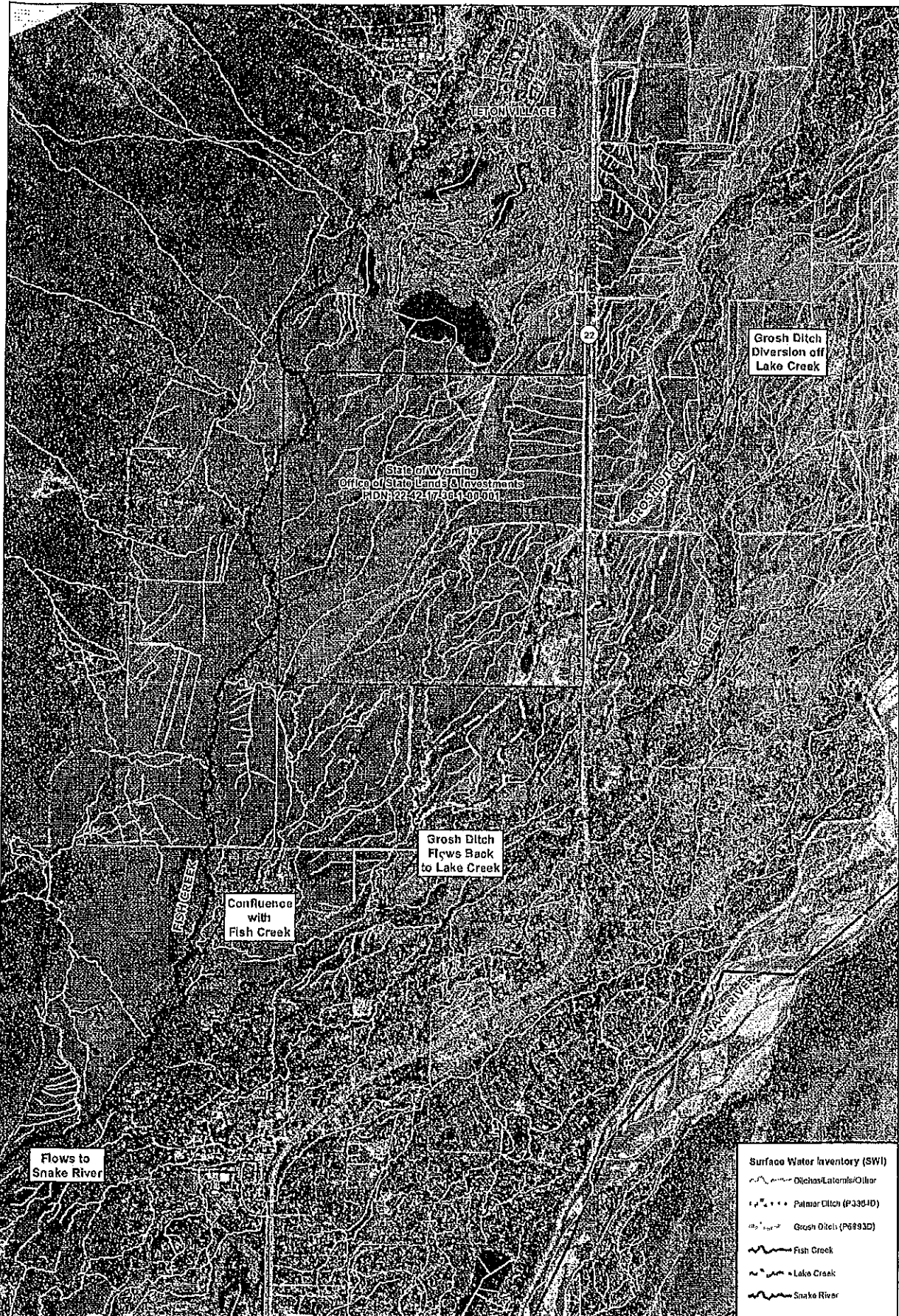
Eddy-Miller, C.A., Wheeler, J.D., and Essald, H.I., 2009, Characterization of interactions between surface water and near-stream groundwater along Fish Creek, Teton County, Wyoming, by using heat as a tracer: U.S. Geological Survey Scientific Investigations Report 2009-5160, 53 p.

Eddy-Miller, C.A., Peterson, D.A., Wheeler, J.D., Edmiston, C.S., Taylor, M.L., and Leemon, D.J., 2013, Characterization of water quality and biological communities, Fish Creek, Teton County, Wyoming, 2007-2011: U.S. Geological Survey Scientific Investigations Report 2013-5117, 76 p.

Nelson Engineering and Alder Environmental LLC. 2022. Teton County Septic System Effluent Monitoring Report. Jackson, WY. August 2022.

Ruehling, K. 2022. Microbial Source Tracking Presentation. May 26, 2022. Jackson, WY, <https://www.youtube.com/watch?v=Yco-OoO8zMM&t=1535s>

- Enc. Figure 1 – Watershed and Location
 Figure 2 – Aquatic Resources Connectivity in Vicinity of Site 9
 Photo Log (Corresponds to Photo Points on Figure 2)



<p>FIGURE 1</p> <p>Watershed & Location</p> <p>November 19, 2022</p>	<p>Protect Our Waters Jackson Hole</p> <p>Site 9 State Land Parcel</p> <p>Teton County, WY</p>	<p>Legend</p> <ul style="list-style-type: none"> State Land Parcel Site 9 (09-04) Flowline (approx.) 	<p>Scale</p> <ul style="list-style-type: none"> Teton County Ownership Boundaries Aerial Imagery, 2019 Teton Conservation District (TCD) Surface Water Inventory (SWI) WY State Engineer's Office Water Right ALDER Environmental LLC Aquatic Resources (approximate) 	<p>1 inch = 1,500 feet</p> <p>0 500 1,000 1,500 Feet</p> <p>ALDER ENVIRONMENTAL</p> <p>water wetlands ecological consulting</p> <p>2024 Oct. 27 Attachment1.html</p>
---	--	--	---	---

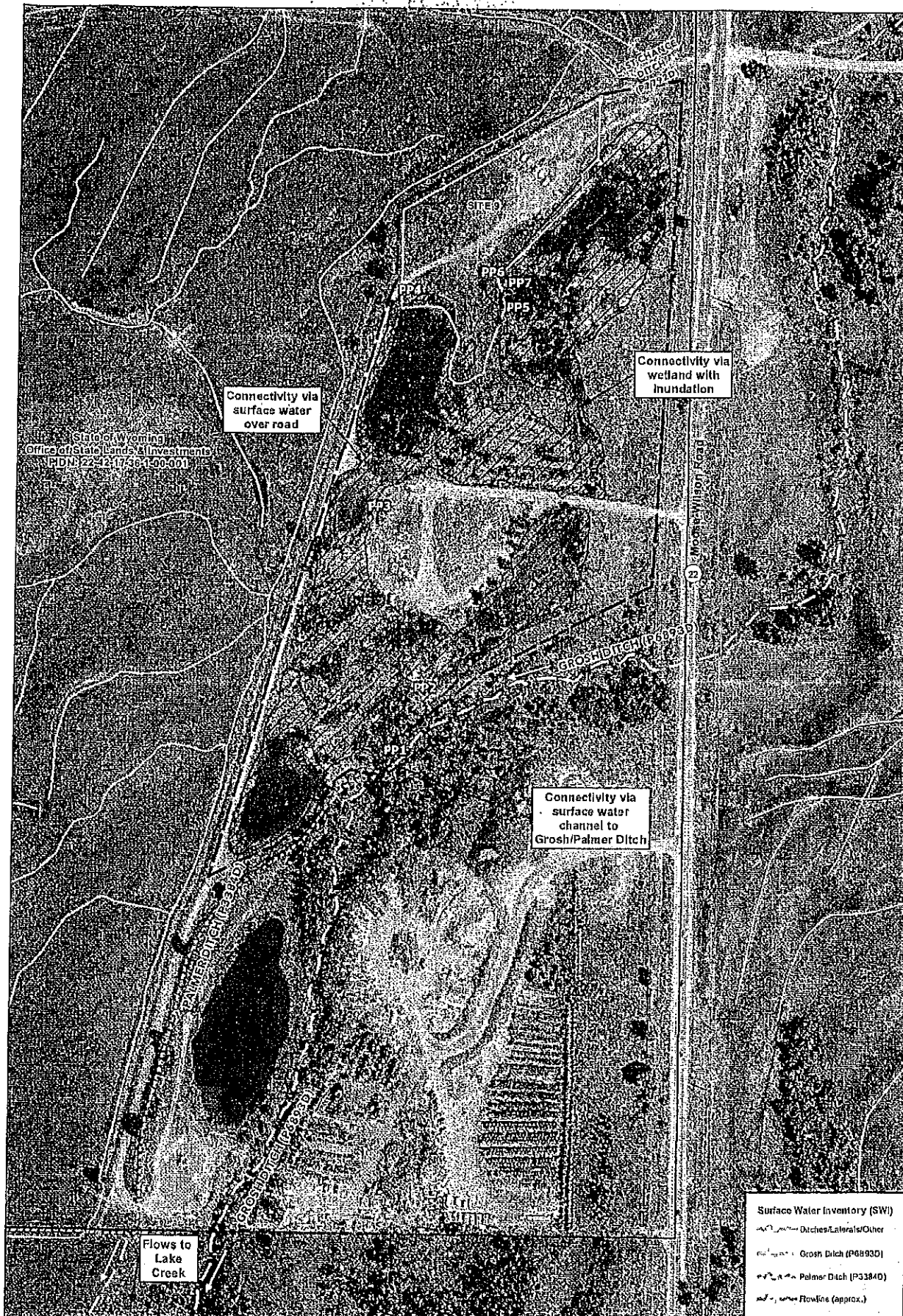


FIGURE 2
 Aquatic Resources
 Connectivity in
 Vicinity of Site 9
 November 19, 2022

**Protect Our Waters
 Jackson Hole**
 Site 9
 State Land Parcel
 Teton County, WY

- Legend**
- State Land Parcel
 - Site 9 Area
 - Site 9 (approx.)
 - Wetland/Surface Water Complex (approx.)
 - Flowline (approx.)
 - Photo Point (1/1/2022)

- Sources**
- Teton County
 - Ownership Boundaries
 - Aerial Imagery, 2019
 - Teton Conservation District (TCD)
 - Surface Water Inventory (SWI)
 - WY State Engineer's Office
 - Water Rights
 - Alder Environmental LLC
 - Aquatic Resources (approximate)

1 inch = 200 feet
 0 50 100 150 200 Feet

ALDER ENVIRONMENTAL
 water | wetlands | ecology | consulting
 200 So. 33rd Attachment 1/11/2022

ALDER ENVIRONMENTAL

water | wetlands | ecological consulting



Photo 1 – Photo Point 1. View south of Grosh Ditch/Palmer Ditch Diversion and the channel connecting from the Site 9 vicinity ponds (November 16, 2022).

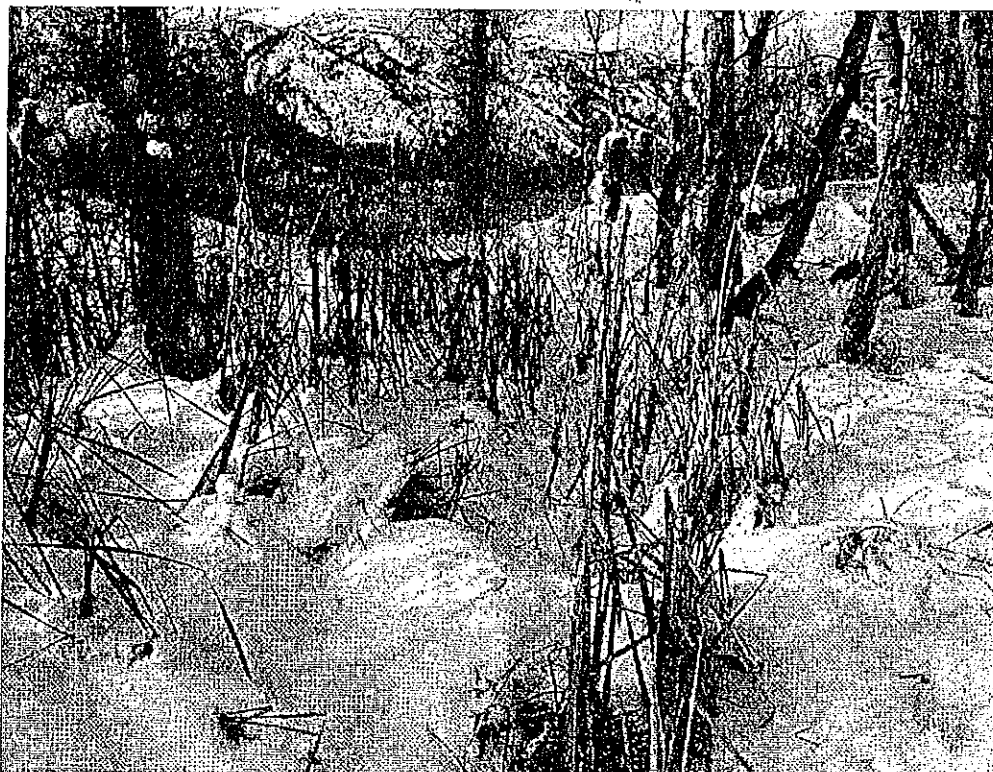


Photo 2 – Photo Point 1. View northwest of surface water channel and wetland connectivity to Grosh/Palmer Ditch (November 16, 2022).

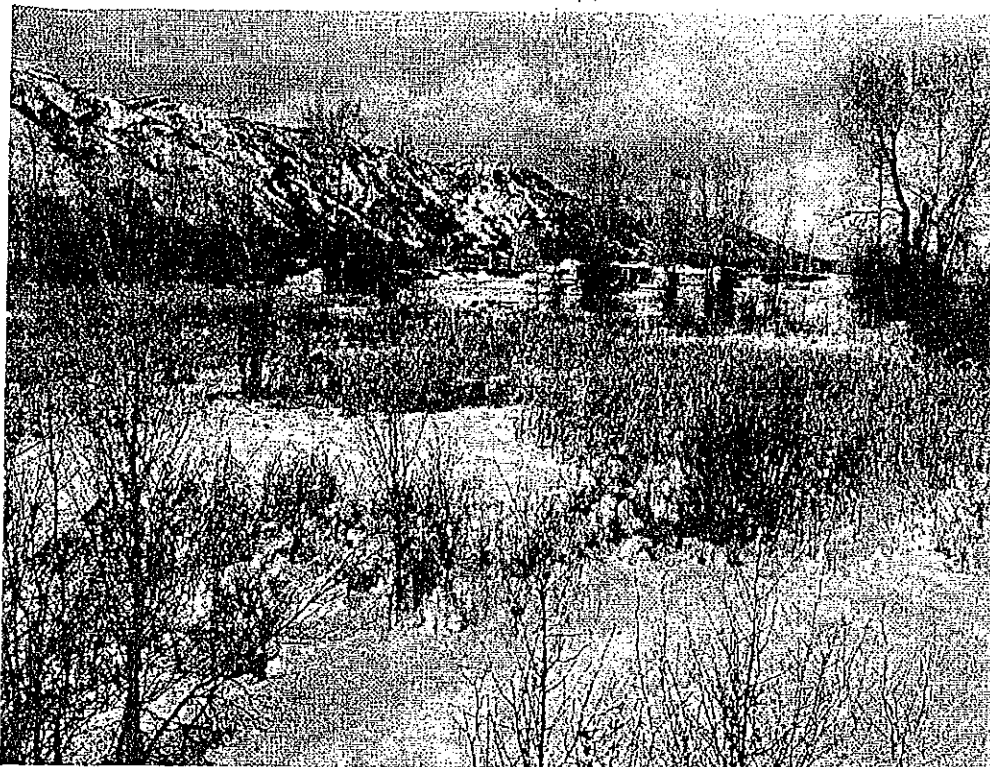


Photo 3 – Photo Point 2. View northwest of wetland and surface water complex that connects to Gresh/Palmer Ditch to Site 9 Vicinity (November 16, 2022).

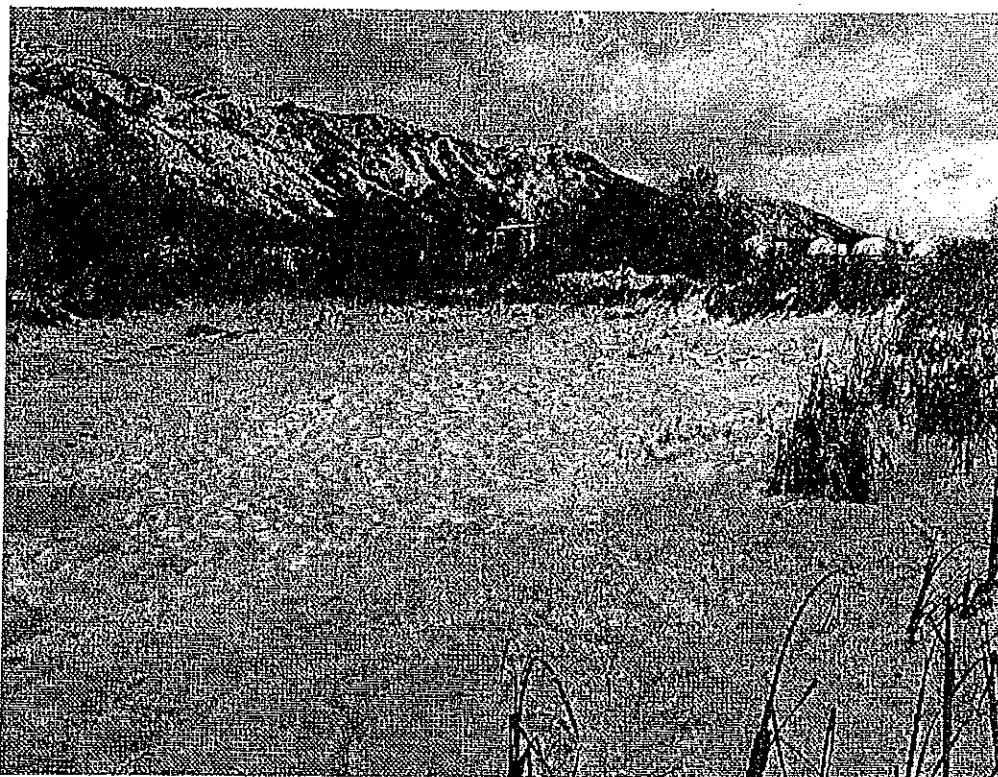


Photo 4 – Photo Point 3. View northwest of surface water and wetland complex, with surface water connectivity over road to Site 9 Ponds (November 16, 2022).

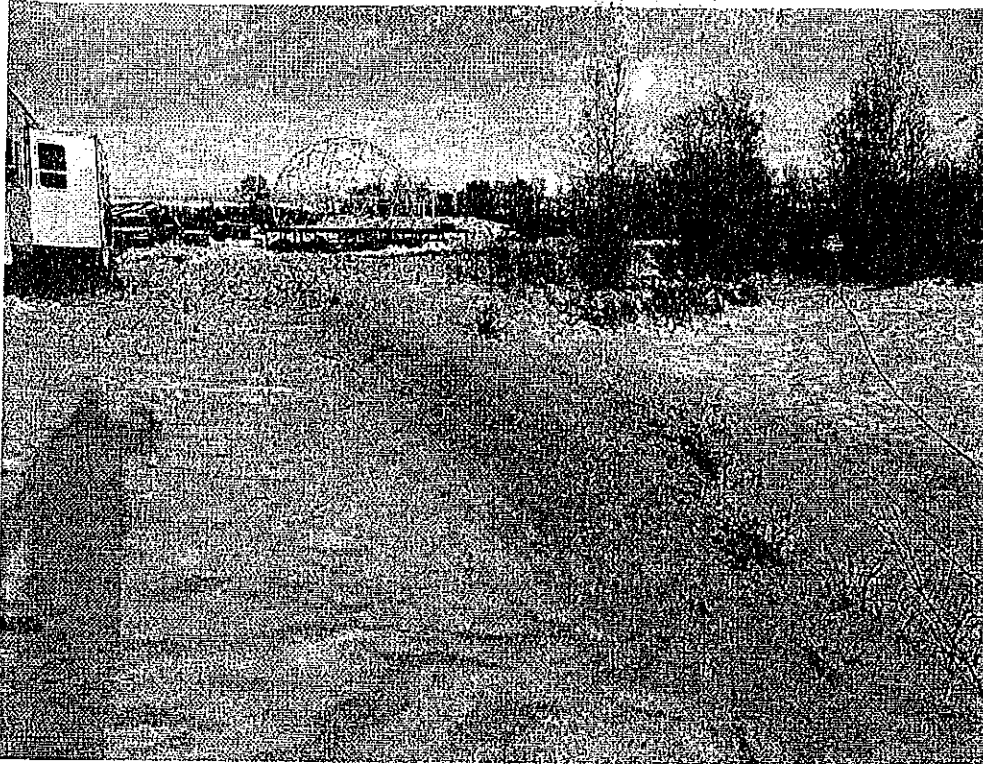


Photo 5 – Photo Point 4. View northeast along surface water/wetland complex at Site 9 development (November 16, 2022).



Photo 6 – Photo Point 5. View southwest of location of future Geodome facilities, sewer line pipe risers on right (November 16, 2022).

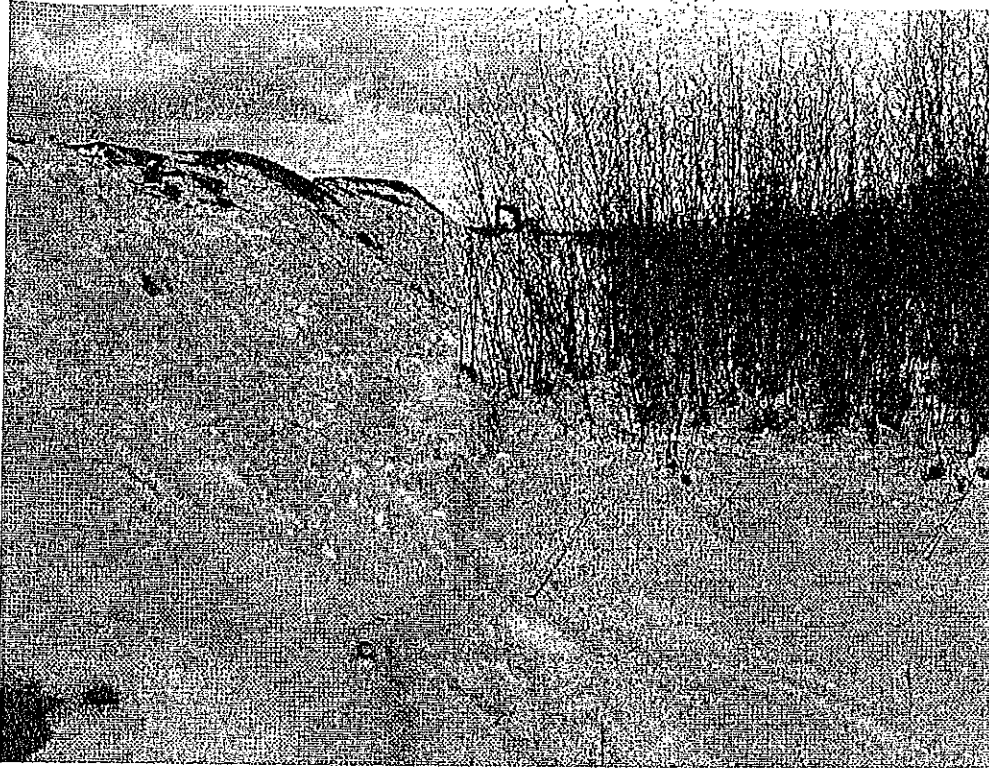


Photo 7 – Photo Point 6. View northeast of leachfield mound fill adjacent to and likely into surface water/wetland complex (November 16, 2022).

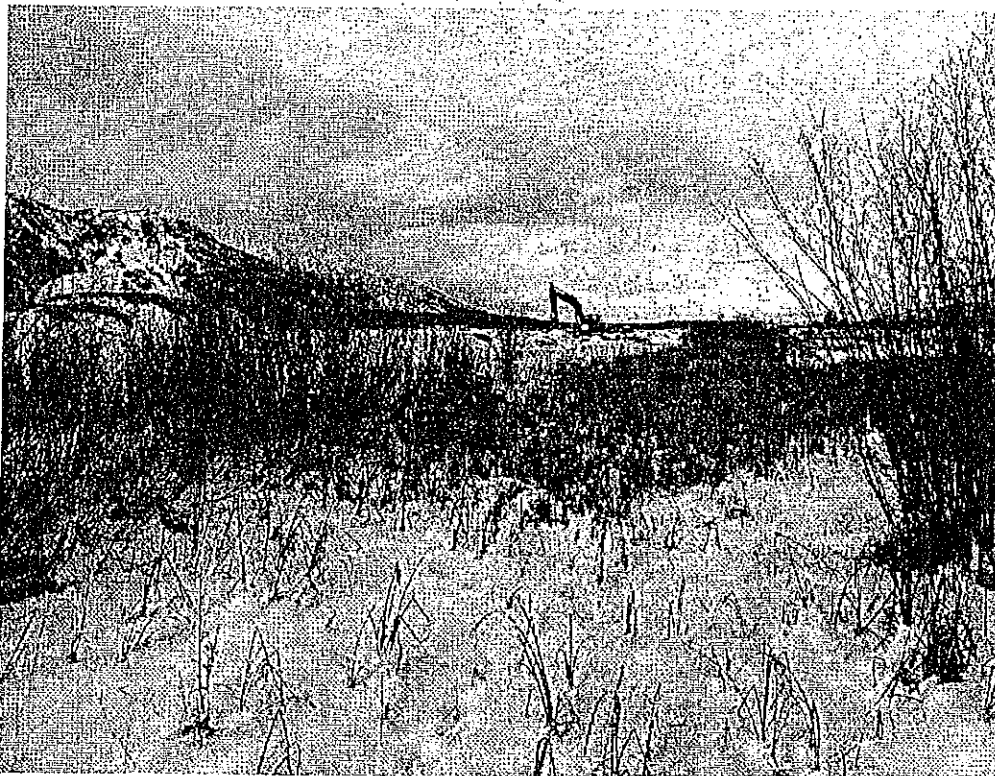


Photo 8 – Photo Point 7. View north of surface water/wetland complex adjacent to Site 9 (November 16, 2022).

Wyoming Department of Environmental Quality
Water Quality Division
PERMIT TO CONSTRUCT

PERMIT NO. 2023-025

Reference Permit Numbers: 2022-090

**RE: Basecamp Teton WY SPV LLC
Teton County,
NE¼SE¼, Section 36, Township 42 North, Range 117 West;
Lat: 43.55969, Long: -110.82297**

This permit hereby authorizes the permittee Basecamp Teton WY SPV LLC, % Oscar Covarrubias, 333 E. Main, Lehi, UT, 84043 to install a sand mound septic system with an approximately 156' X 16' sand mound, fed by two (2) 1500-gallon septic tanks and two (2) 1000-gallon pumping chambers, HDPE water and sewer lines, pump house for the well, miscellaneous fittings, and appurtenances, according to the procedures and conditions of this permit. The facility is located at the legal description and latitude/longitude listed above, Teton County, in the State of Wyoming. The permittee shall complete all construction, installation, or modification allowed by this permit by April 17, 2028.

The issuance of this permit confirms that the Wyoming Department of Environmental Quality (DEQ) Water Quality Division (WQD) has evaluated the application submitted by the permittee and determined that it meets minimum applicable construction and design standards. The compliance with construction standards and the operation and maintenance of the facility to meet the engineer's design are the responsibility of the permittee, owner, and operator.

Granting this permit does not imply that WQD guarantees or ensures that the permitted facility, when constructed, will meet applicable discharge permit conditions or other effluent or operational requirements. Compliance with discharge standards remains the responsibility of the permittee.

Nothing in this permit constitutes an endorsement by WQD of the construction or the design of the facility described herein. This permit verifies only that the submitted application meets the design and construction standards imposed by Wyoming statutes, rules and regulations. The DEQ assumes no liability for, and does not in any way guarantee or warrant the performance or operation of the permitted facility. The permittee, owner and operator are solely responsible for any liability arising from the construction or operation of the permitted facility. By issuing this permit, the State of Wyoming does not waive its sovereign immunity.

The permittee shall allow DEQ personnel and their invitees to enter the premises where the facility is located, or where records are kept under the conditions of this permit, and collect resource data as defined by Wyoming Statute § 6-3-414, inspect and photograph the facility, collect samples for analysis, review records, and perform any other function authorized by law or regulation. The permittee shall secure and maintain such access for the duration of the permit.

If the facility is located on property not owned by the permittee, the permittee shall also secure and maintain from the landowner upon whose property the facility is located permission for DEQ personnel and their invitees to enter the premises where a regulated facility is located, or where records are kept under the conditions of this permit, and collect resource data as defined by Wyoming Statute § 6-3-414, inspect and photograph the facility, collect samples for analysis, review records, and perform any other function authorized by law. The permittee

shall secure and maintain such access for the duration of the permit.

If the facility cannot be directly accessed using public roads, the permittee shall also secure and maintain permission for DEQ personnel and their invitees to enter and cross all properties necessary to access the facility. The permittee shall secure and maintain such access for the duration of the permit.

The permittee shall maintain in its records documentation that demonstrates that the permittee has secured permission for DEQ personnel and their invitees to access the permitted facility, including (i) permission to access the land where the facility is located, (ii) permission to collect resource data as defined by Wyoming Statute § 6-3-414, and (iii) permission to enter and cross all properties necessary to access the facility if the facility cannot be directly accessed from a public road. The permittee shall also maintain in its records a current map of the access route(s) to the facility and contact information for the owners or agents of all properties that must be crossed to access the facility. The permittee shall ensure that the documentation, map, and contact information are current at all times. The permittee shall provide the documentation, map, and contact information to DEQ personnel upon request. On closure of a facility, the permittee shall maintain such records for a period of five (5) years.

Nothing in this permit precludes the institution of any legal action or other proceeding to enforce any applicable provision of law or rules and regulations. It is the duty of the permittee, owner and operator to comply with all applicable federal, state and local laws or regulations in the exercise of its activities authorized by this permit.

The issuance of this permit does not convey any property rights in either real or personal property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

The permittee shall construct and operate the permitted facility in accordance with the statements, representations, procedures, terms and conditions of the permit application, supporting documents and permit. This permit does not relieve the permittee from any duty to obtain any other permit or authorization that may be required by any provision of federal, state or local laws.

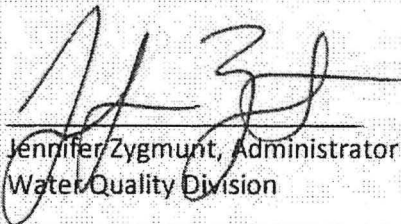
In carrying out its activities authorized by this permit, the permittee, owner and operator shall comply with all of the following permit conditions:

- 1 of 11. The permittee will immediately notify WQD of any changes or modifications that are not consistent with the terms and conditions of this permit. Submit oral or written notice to Bradley E. Ellis, PE, Northeast District Engineer, bradley.ellis@wyo.gov, 444 West Collins Dr., Casper, WY 82601; 307-473-3469, in accordance with the provisions of Section 4, Chapter 3, Wyoming Water Quality Rules.
- 2 of 11. The permittee will submit a Certificate of Completion signed by the engineer of record or the owner to the engineer listed above within sixty (60) days of completing the construction of the authorized facility. A form titled "Certificate of Completion" is available on the WQD Construction Permitting website.
- 3 of 11. Prior to installing the aeration devices, the permittee shall consult with the Northeast District Engineer on septic tank aeration devices for approval. Prior to operating the system, the permittee shall submit updated plans and specifications to address aeration, septic tank insulation, and replacement leach field labeling.
- 4 of 11. DEQ bases the review and approval of this permit upon the items identified in the attached "Statement of Basis".
- 5 of 11. The permittee shall construct the on-site monitoring wells to the requirements of DEQ Water Quality Rules Chapter 26 and supply DEQ with documentation of well construction.

ATTACHMENT B

- 6 of 11. Prior to operating the system, the permittee shall conduct a septic tank leakage test under the greatest anticipated hydraulic potential; the test shall last for no less than eight (8) hours. The test must confirm leakage is no more than 5% of design flow. The permittee shall provide results to the WQD Northeast District Engineer within 10 days of conducting the test.
- 7 of 11. Prior to operating the system, the permittee shall collect water quality samples from monitoring wells on the site, the drinking water well on the site, and the surface water pond on the site to establish background water quality. The permittee shall submit samples to an EPA or State Certified testing laboratory to test (i) monitoring wells and drinking water wells for fecal coliform, nitrates, chloride, pH and ammonia, and (ii) surface water for fecal coliform, nitrates, pH, ammonia, and phosphorus. The permittee shall provide sample results to the WQD Northeast District Engineer within 10 days of receiving the results.
- 8 of 11. On a quarterly basis, the permittee shall provide WQD with well and effluent pump flows from monthly reports showing (i) total effluent volume per month and (ii) average daily effluent volume. Quarterly reports are to be submitted to the WQD Northeast District Engineer within thirty days of the close of the quarter.
- 9 of 11. On a quarterly basis, the permittee shall collect water quality samples for fecal coliform, nitrates, chloride, pH and ammonia from the monitoring wells on the site and shall report results to the WQD Northeast District Engineer within thirty days of the close of the quarter. The permittee shall include copies of lab testing results from an EPA or State Certified testing laboratory.
- 10 of 11. The permittee will maintain copies of all reporting records.
- 11 of 11. The permittee is responsible for properly installing, operating, maintaining, and removing all necessary monitoring equipment.

AUTHORIZED BY:


Jennifer Zygmunt, Administrator
Water Quality Division


Todd Parfitt, Director
Department of Environmental Quality

July 13, 2023
Date of Issuance

STATEMENT OF BASIS

1. Permit Number: **2023-025**
2. Application reviewed for compliance with the following regulations:
Chapters 3, 11, 12, and 25 of the Wyoming Water Quality Rules.
3. Does the permit comply with all the applicable regulations identified above?

Yes

4. If a Chapter 3, Section 4 groundwater review, and Section 14 review are required, indicate how WQD will determine that the permittee will protect groundwater quality.

The WQD Administrator has determined Chapter 3, Section 14 environmental monitoring requirements shall be included. The environmental monitoring requirements are listed as permit conditions 5 through 11.

5. Documentation of Statement of Basis: The archive file for this permit includes adequate documentation of all sections of this Statement of Basis.

CERTIFICATION

DEQ issued this permit based upon a review of the application package submitted in accordance with the requirements of Chapter 3, Section 4, Wyoming Water Quality Rules. Bradley E. Ellis, PE, Northeast District Engineer, completed this review on April 17, 2023. DEQ recommends issuing this permit based upon the statements, representations and procedures presented in the permit application and supporting documents, permit conditions, and the items identified in this "Statement of Basis."

XC: Robert Rouselle, PE, Ensign Engineering and Land Surveying. email rrouselle@ensigneng.com
Jenifer Scoggin, Director, Office of State Lands and Investments, email jenifer.scoggin@wyo.gov