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Attorneys for Petitioner Protect Our Water Jackson Hole

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

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

RESPONSE TO BASECAMP'S MOTION TO DISMISS

Petitioner, Protect Our Water Jackson Hole (“**POWJH**”), by and through the undersigned counsel, provides the following *Response to Basecamp’s Motion to Dismiss*:

- 1) Basecamp has filed a *Motion to Dismiss* challenging POWJH’s right to raise, and by extension the EQC’s authority to rule on, two issues in this matter: 1) whether the delegation agreement between Teton County and DEQ deprived the DEQ of permitting authority and 2) whether the requirement for a WYPDES permit for Basecamp’s septic system would invalidate the issued Septic Permit challenged in this case.
- 2) As one of these issues has been briefed already and another can be dealt with by cursory citation to Wyoming’s Water Quality Regulations, POWJH’s response in this matter will be concise and limited.
- 3) In response to Basecamp’s argument that POWJH lacks standing to bring a claim that the DEQ did not have statutory or regulatory authority to issue the Septic Permit, because of DEQ’s delegation agreement with Teton County, POWJH reiterates, and incorporates by reference, the arguments POWJH has already put forward on this issue in POWJH’s December 19, 2023 *Response to the DEQ’s Motion to Dismiss*.
- 4) In addition to incorporating those arguments generally, POWJH notes, specifically, that the Water Quality Rules, Chapter 3, provide that the DEQ’s permitting authority for septic systems does not extend to “[f]acilities permitted by a municipality, water and sewer district, or county delegated authority under W.S. § 35-11-304.” *See* Section 2(b)(xi). As a

result, the issue of whether the DEQ and Teton County had a valid delegation goes directly to the issue of whether the DEQ complied with its own permitting rules and regulations, which is plainly within the gamut of the EQC.

- 5) In response to Basecamp's argument that whether a WYPDES permit is required is not material to whether the Septic Permit was properly issued under Chapter 3 of the Water Quality Regulations, that argument ignores the plain language of Chapter 3, which provides that a permit should be denied when "[t]he facility does not meet the minimum design standards of this Chapter or *other applicable Water Quality Rules.*" See Section 11(a)(2) (Emphasis added).
- 6) WYPDES permits are required under Chapter 2 of the Water Quality Regulations. So, suppose a project needs a WYPDES permit under Chapter 2, and does not get one. In that case, a separate permit should not issue under Chapter 3, is the applicant does not also apply for a receive a separate WYPDES permit, as Chapter 3 requires compliance will all applicable water quality rules to issue a permit. As a result, the question of whether a WYPDES permit was required goes directly to the regulatory requirements for permitting Basecamp's septic system under Chapter 3 and is also in the gamut of issues the EQC is empowered to address.
- 7) Based on the foregoing, POWJH respectfully request the EQC deny Basecamp's *Motion to Dismiss.*

DATED this 18th day of July, 2024.



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Certificate of Service

Based on the foregoing signature, I, John Graham, certify that on July 18, 2024, a true and correct copy of the foregoing served via the EQC's electronic filing system to the following:

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