

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

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

**ORDER DENYING PROTECT OUR
WATER JACKSON HOLE'S MOTION TO SUSPEND PERMIT**

On July 13, 2023, DEQ's Water Quality Division issued a permit to Basecamp authorizing Basecamp to construct and install a sand mound septic system. On August 11, 2023, Protect Our Water Jackson Hole appealed DEQ's decision, requesting that the Council reverse and vacate DEQ's decision, requesting a stay of the permit pending appeal, and requesting a contested case hearing. On October 10, 2023, Protect Our Water filed a separate motion requesting that the Council suspend or stay Basecamp's permit during the pendency of the ongoing appeal. DEQ and Basecamp responded separately to the motion asserting that the Council lacks the legal authority to suspend or stay the permit during the pendency of the appeal.

Following the issue being fully briefed, the Council held a hearing on December 12, 2023 via videoconference on the issue of whether it has the legal authority to suspend or stay the permit during the pendency of the ongoing appeal. After hearing and considering the parties' arguments and otherwise being fully advised, the Council voted 5 to 0 in favor of denying Protect Our Water's motion to suspend permit. The Council denies the motion because it lacks the legal authority to suspend or stay the Basecamp permit during the pendency of the ongoing appeal.

In 2008, the Council addressed an almost identical issue and concluded that it did not have the legal authority to suspend or stay a permit during an appeal. (*See Order Denying Protestants'*

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