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**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

MOTION FOR LEAVE TO FILE AMENDED PETITION FOR REVIEW

Pursuant to Wyoming Rule of Civil Procedure (“*WRCP*”) 15, as incorporated by Chapter 2, Section 2 of the Department of Environmental Quality Practice and Procedure Rules, Petitioner Protect Our Water Jackson Hole (“*POWJH*”) requests leave from the Environmental Quality Council (“*EQC*”) to file an amended Petition for Review, and provides the following in support:

- 1) WRCP 15 provides that leave to amend should be freely granted when justice so requires.
- 2) In operationalizing this standard, the Wyoming Supreme Court has stated that “[i]n the absence of undue delay, bad faith, dilatory motive, or undue prejudice to the opposing party, leave to amend a pleading should liberally be granted.” *Daniels v. Carpenter*, 2003 WY 11, ¶ 26 (Wyo. 2003).
- 3) Absent one of those three identified factors, denial of leave to amend is an abuse of discretion. *Id.* at ¶ 29.
- 4) In this case, POWJH is requesting leave to add clarity to two of the claims it is making.
- 5) First, POWJH is explicitly identifying that it is challenging the issued permit based on the grounds the Wyoming Department of Environmental Quality (“**DEQ**”) had no authority to issue the challenged permit, as it has delegated septic permitting authority in Teton County to Teton County.
- 6) POWJH maintains this claim is fairly encompassed in Paragraphs 30 through 31 of its original Petition for Review, which highlights that the issued permit fails to comply with Teton County’s regulations, and necessarily implicates the applicability of those regulations. However, DEQ has argued that these allegations were not clearly pled in its Motion to Dismiss.
- 7) While DEQ’s Motion to Dismiss is focused on the merits of these arguments, POWJH is requesting leave to amend out of an abundance of caution, should the EQC deny the Motion to Dismiss.
- 8) Second, POWJH is explicitly identifying that it is arguing the challenged permit was issued in error because the proposed septic system will lead to “point source” pollution under

County of Maui v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020), and requires an effluent permit under the WDEQ Water Quality Rules, Chapter 2, Section 5.

- 9) While POWJH maintains this claim is fairly encompassed within Paragraphs 32 through 38 of its Petition for Review, which provides a detailed argument of why the permit should not have been issued based on the groundwater connectivity between the permitted site and Fish Creek, POWJH request leave to amend out of an abundance of caution.
- 10) In the case of both amendments, there is no “undue delay, bad faith, dilatory motive” as POWJH has frequently discussed and put all parties on notice that it was pursuing these claims, including in initial filings raising the issue of DEQ’s delegation of authority and proposed scheduling orders highlighting the need for expert reports on groundwater connectivity.
- 11) There is also no prejudice to the other parties in this matter, as discovery has not yet commenced and the parties will have a full and complete opportunity to defend these claims.
- 12) A proposed amended Petition for Review, with two additional sections highlighted in redline format, is attached as Exhibit A.

NOW THEREFORE, POWJH requests that the EQC enter an order granting POWJH leave to amend its Petition for Review. Additionally, to avoid duplication, POWJH requests that the EQC order the Petition for Review be filed without exhibits, and that all exhibit references in the Amended Petition for Review shall incorporate the exhibits filed with the original petition.

Respectfully submitted this March 4, 2024.



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Certificate of Service

Based on the foregoing signature, counsel certifies that a true and correct copy of motion was electronically filed with the Environmental Quality Council and was served on all parties via the Environmental Quality Council's electronic notification.