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*Attorneys for Intervenor Basecamp Teton WY SPV LLC*

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

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

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**BASECAMP’S MOTION TO DISMISS**

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Intervenor Basecamp Teton WY SPV LLC (“Basecamp”), by and through its undersigned counsel, respectfully submits this *Motion to Dismiss*. Basecamp specifically moves to dismiss paragraphs 32\*, 40, 47—49, and 51(1) of the *First Amended Appeal of Notification of Coverage*. In each of these paragraphs, POWJH attempts to bring a claim for which the Council cannot grant relief. Accordingly, the Council should dismiss those claims from the appeal.

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\* Paragraph 32 is incorrectly numbered as paragraph 33 in the *First Amended Appeal of Notification of Coverage*. In this *Motion to Dismiss*, Basecamp refers to the paragraph immediately following paragraph 31 as paragraph 32.

## LEGAL BACKGROUND

The Council has adopted and incorporated Wyoming Rule of Civil Procedure 12(b)(6). Rules, Wyo. Dep't of Env'tal Quality, Practice and Procedure, Ch. 2, § 2. Under that rule, the Council can dismiss a claim that “fail[s] to state a claim upon which relief can be granted[.]” Wyo. R. Civ. P. 12(b)(6). A claim fails to state a claim upon which relief can be granted when a petitioner cannot assert any set of facts that would entitle the petitioner to its requested relief. *E.g., Moses Inc. v. Moses*, 2022 WY 57, ¶ 8 (citations omitted). When a judicial body lacks legal authority to grant the requested relief, dismissal is warranted. *See Guy v. Lampert*, 2015 WY 148, ¶ 20.

## ARGUMENT

The Council should dismiss paragraphs 32, 40, 47—49, and 51(1) of the *First Amended Appeal of Notification of Coverage* because they contain claims that are not within the scope of the Council’s jurisdiction. First, paragraph 32 asserts a claim that Protect Our Water Jackson Hole (“POWJH”) lacks standing to assert. Second, paragraph 40 improperly requests that the Council grant relief that is not within the scope of its review authority. Third, paragraphs 47—49 and 51(1) request a stay or suspension that the Council has already determined it lacks authority to grant.

### **A. Protect Our Water Jackson Hole lacks standing to raise the delegation issue contained in paragraph 32.**

The Council should dismiss the delegation issue raised in paragraph 32 because POWJH lacks standing to assert this claim. “The Wyoming Administrative Procedure Act limits standing to appeal agency action to one who is ‘aggrieved or adversely affected’ by that action.” *Moose Hollow Holdings, LLC v. Teton Cnty. Bd. of Cty. Comm’rs*, 2017 WY 74, ¶ 21 (citing Wyo. Stat. Ann. § 16-3-114(a)). “The interest which will sustain a right to appeal must generally be substantial, immediate, and pecuniary. A future, contingent, or merely speculative interest is

ordinarily not sufficient.” *Id.* (citations and internal quotation marks omitted). In general, citizens (or citizen groups) do not have standing to seek general enforcement of administrative processes and laws. *See Roe v. Bd. of Cnty. Comm’rs*, 997 P.2d 1021, 1023 (Wyo. 2000). They do not have standing when they raise general allegations “about whether the administrative process was correctly followed but fail[] to specifically assert how they have been aggrieved by any alleged deviation from this process[.]” *Id.*

POWJH fails to specify how, as a citizen group, it has been aggrieved or adversely affected. POWJH has not alleged that any harm occurred when the Department, rather than Teton County, issued the permit. POWJH’s sole complaint in paragraph 32 is that the Department allegedly stepped on Teton County’s authority. While a governmental entity like Teton County might have standing to assert its jurisdiction, a citizen group like POWJH does not. A general interest in enforcing administrative processes and land use regulations is not sufficient to support standing. *See Moose Hollow Holdings*, ¶ 21.

The requirement for standing ensures that a party “is properly situated to assert an issue for judicial determination” and will vigorously argue the claim. *See N. Laramie Range Found. v. Converse Cnty. Bd. of Cnty. Comm’rs*, 2012 WY 158, ¶ 23 (quotation marks and citations omitted). When it comes to asserting Teton County’s rights to issue permits within its boundaries, POWJH is plainly not the right party to vigorously assert that right. POWJH’s interest centers on a single permit, not on the jurisdictional authority of Wyoming counties relative to the Department. That issue would be better addressed by Teton County and the Department—not POWJH and Basecamp. Because POWJH is not aggrieved or adversely affected in fact by the Department issuing a permit in lieu of Teton County, the Council should dismiss paragraph 32.

**B. The Council lacks authority to grant relief on the WYPDES permit issue contained in paragraph 40.**

The Council should dismiss paragraph 40 because the Council cannot grant, deny, suspend, revoke, or renew (*see* Wyo. Stat. § 35-11-112(a)(iv)) a WYPDES permit that is not the subject of this appeal. This appeal concerns the Department’s decision to grant Basecamp a permit to operate its small wastewater septic system. Crucially, Basecamp has not applied for or been granted a WYPDES permit, nor has the Department required Basecamp to obtain a WYPDES permit. Basecamp has always complied with the permitting requirements applicable to it. If a WYPDES permit were required for Basecamp’s operation, Basecamp would obtain such a permit—but it has not done so at this time because such a permit is not required.

With respect to permits, the Council has authority 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[.]” Wyo. Stat. § 35-11-112(a)(iv). POWJH’s claim that the Department should have required Basecamp to obtain a WYPDES permit is not a grant, denial, suspension, revocation, or renewal the Council can review. The Council also has authority to “[o]rder that any permit, license, certification or variance be granted, denied, suspended, revoked or modified[.]” Wyo. Stat. § 35-11-112(c)(ii). Similarly, the Council cannot order the Department to grant or deny a WYPDES permit for which Basecamp has not applied. Nor can the Council order that a WYPDES permit be suspended, revoked, or modified when no such permit currently exists. And the Council cannot conduct a hearing on the Department’s decision to grant, deny, suspend, revoke, or renew a WYPDES permit that does not currently exist. Because there is no WYPDES permit that can be granted, denied, suspended, revoked, or modified here, the Council has no authority to grant relief on POWJH’s claims related to surface water discharge.

In a case brought under the Wyoming Public Records Act, the Wyoming Supreme Court upheld dismissal of a claim that sought a prospective ruling on records requests that might be made in the future. *Guy v. Lampert*, 2015 WY 148, ¶ 20. Dismissing the claims under Rule 12(b)(6) was warranted where petitioner asked the court to “prospectively declare that a class of records that may be requested sometime in the future will be subject to the [Wyoming Public Records Act] and must be produced upon demand[,]” but the court lacked legal “authority to rule on records requests that have not yet been made.” *Id.* Similarly, paragraph 40 requests the Council review a permit that might be applied for in the future. The Council lacks legal authority to issue such prospective rulings on potential permits. Therefore, paragraph 40 fails to state a claim for which the Council can grant relief, and the Council should dismiss it.

In paragraph 40, POWJH attempts to raise a claim that the Department “allow[ed] a discharge [... in] violation of the requirement that all point-source discharge of effluent be permitted under WDEQ Water Quality Rules, Chapter 2[.]” (1st Am. Appeal of Notification of Coverage, ¶ 40). The Council undoubtedly has authority to review the Department’s decision to issue a small wastewater permit. However, determining whether the Department should have required a WYPDES permit is a markedly different exercise. The Department’s decision *not to require* a WYPDES permit is a separate decision from its decision *to grant* Basecamp’s small wastewater permit. The Council cannot grant, deny, suspend, revoke, or renew a permit that Basecamp has not even applied for yet. Because the Council does not have authority to grant prospective relief for a permit that has not even been applied for, it should dismiss paragraph 40.

Additionally, the Council should dismiss paragraph 40 because the Council lacks authority to “invalidate[] Wyoming’s delegated permitting program under Section 402(b) of 33 U.S.C. § 1342.” (*See First Amended Appeal of Notification of Coverage*, ¶ 40). Wyoming administers its

WYPDES permit program as an approved state program under 33 U.S.C. § 1342(b). The federal Environmental Protection Agency has authority to withdraw its approval of Wyoming’s program if it “determines . . . that [Wyoming] is not administering [its] program . . . in accordance with requirements of this section [of the Clean Water Act.]” 33 U.S.C. § 1342(c)(3). Only the federal Environmental Protection Agency can withdraw its approval of, or “invalidate,” Wyoming’s program. *See id.* To the extent that POWJH attempts to argue that the Council should determine what “invalidates” Wyoming’s WYPDES program, the Council cannot grant relief on that claim because only the federal Environmental Protection Agency has such authority, and the Council should dismiss paragraph 40.

**C. The Council lacks authority to issue the stay or suspension requested in paragraphs 47—49 and 51(1).**

The Council does not have authority to stay or suspend Basecamp’s permit or construction activities. Therefore, the Council should dismiss paragraphs 47—49 and 51(1). Following motions, briefing, and a hearing on POWJH’s *Motion to Suspend*, the Council determined that it “lacks the legal authority to suspend or stay the Basecamp permit during the pendency of the ongoing appeal.” (*Order Denying Protect Our Water Jackson Hole’s Motion to Suspend Permit* at 1.) To the extent that POWJH continues to assert this request in paragraphs 47—49 and 51(1), the Council should dismiss those paragraphs because they request relief that the Council has already determined it is without legal authority to grant.

**CONCLUSION**

Because the *First Amended Appeal of Notification of Coverage* raises claims for relief that the Council is without authority to grant, the Council should dismiss paragraphs 32, 40, 47—49, and 51(1).

Respectfully submitted this 28th day of June, 2024.

/s/ Kelly Shaw

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of June, 2024, a true and correct copy of the foregoing **BASECAMP'S MOTION TO DISMISS** was filed and served in accordance with Rules of Practice and Procedure, Chapter 2, Section 5(b) by uploading to Docket Entry No. 23-3801 at [wyomingeqc.wyo.gov](http://wyomingeqc.wyo.gov).

/s/ Kelly Shaw  
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