

WY Teton County District Court
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2024-CV-0019048
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**IN THE NINTH JUDICIAL DISTRICT COURT
TETON COUNTY, STATE OF WYOMING**

PROTECT OUR WATER JACKSON HOLE,
a Wyoming nonprofit corporation

Plaintiff,

v.

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

Defendants.

Civil No. 2024-CV-0019048

**MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO AMEND THE
COMPLAINT PURSUANT TO WRCP 15**

COMES NOW Plaintiff, Protect Our Water Jackson Hole (“**POWJH**”), by and through its undersigned counsel, and respectfully submits the following *Motion for Reconsideration or, in the alternative, to Amend the Complaint Pursuant to WRCP 15*. In support of this motion, POWJH states as follows:

- 1) On July 11, 2024, the District Court held a hearing in the above captioned matter to consider separate motions to dismiss filed by both defendants.

- 2) At the close of that hearing, the District Court issued a verbal ruling granting both motions to dismiss on the grounds that, as reflected in the preliminary transcript of this matter, “[t]here's no indication that Teton County would have [not] issued the permit or would have provided more stringent requirements.”
- 3) The undersigned counsel requested leave to amend POWJH’s *Complaint* at the close of the hearing to directly address this concern, as Teton County, through counsel, has represented it would have denied the Septic Permit in a related proceeding, and the court stated that such proposed amendment would be futile.
- 4) Out of an abundance of caution, however, the undersigned counsel now submits this request for reconsideration or, in the alternative, for leave to amend the complaint, in order to provide a complete record of that request and afford the District Court an opportunity to review the bases of that request outside of the confines of oral argument.
- 5) As a preliminary matter, POWJH’s complaint, when read in its entirety, sufficiently alleges that Teton County could have properly denied a septic permit application by Basecamp, based on the substantive violations of those permitting rules applicable to both entities as outlined in Exhibit A to POWJH’s *Complaint*, which is the underlying *Petition for Review* to the Environmental Quality Council. *See Peterson v. Laramie City Council*, 2024 WY 23, ¶ 17 (“In ruling on a motion to dismiss, a court may consider documents referenced in the complaint if they are central to the plaintiff’s claim and the parties do not dispute the documents’ authenticity) (internal quotations and formatting omitted).
- 6) Specifically, POWJH has alleged that Basecamp’s application failed to meet numerous standards that are applicable in both state and county septic permitting, such the allegations that the DEQ did not consider appropriate “best management practices,” and require those

best management practices of Basecamp under the Class 1 water rules, as outlined in Paragraphs 39-41 of Exhibit A.

- 7) As a result, the District Court's conclusion that there "[t]here's no indication that Teton County would have [not] issued the permit" is, essentially, a conclusion that Teton County would have looked at the alleged deficiencies outlined in Exhibit A and nonetheless issued a septic permit to Basecamp.
- 8) This conclusion requires an impermissible inference against POWJH under the Rule 12(b)(6) standard, namely that Teton County would not have found these alleged deficiencies meritorious and would have issued a septic permit in spite of them, as the DEQ did. If all reasonable inferences were granted to POWJH, however, as the non-moving party, the appropriate inference would be that Teton County would have denied a permit application, unlike the DEQ, based on the alleged deficiencies outlined in Exhibit A to POWJH's *Complaint. Brooks v. Zebre*, 792 P.2d 196, 206 (Wyo. 1990) (Stating that when evaluating a motion to dismiss "[a]ll reasonable inferences are to be given the non-moving party.").
- 9) Moreover, there is actual evidence in the record in this matter that Teton County would not have issued the permit, and that Teton County would have provided more stringent, or at least materially different, standards for approval.
- 10) Specifically, on Page 11 of POWJH's *Response to DEQ's Motion to Dismiss*, POWJH stated that "Teton County has stated on the record in a separate but related judicial proceeding that the system the DEQ permitted would not be permitted under Teton County's rules." POWJH then cited an order entered in that separate, but related, case, written by Justice Davis sitting by assignment for Judge Sharpe, where Justice Davis

specifically noted that counsel for Teton County made that representation. POWJH also attached that order as Exhibit A to its *Response to DEQ's Motion to Dismiss*.

- 11) Similarly, also on Page 11 of POWJH's *Response to DEQ's Motion to Dismiss*, POWJH stated that Teton County's Small Wastewater Facility Rules include a provision for denial of a permit for "[o]ther justifiable reasons necessary to carry out the provisions of these regulations," a broad catchall provision with no analog in the DEQ's septic permitting rules.
- 12) This cited difference is just one of a myriad of differences in the septic permitting program run by Teton County and the septic permitting program run by the DEQ. One prominent example is that the Teton County Small Wastewater regulations require connection to a public sewer system if one is within 500 ft. of the proposed system, which the DEQ regulations do not. In this case, even some of the standards applicable to "sand mound systems," which Basecamp's system is, are different, such as the specific requirement in Teton County that "[s]and mound systems must not be sited where they may allow effluent to surface," which is not included in the DEQ's standards. *Compare* Teton County Small Wastewater Facility Regulations, Section 9-3-11 *with* Wyo. Admin. Code 020.0011.25 § 14.
- 13) To the extent the District Court overlooked, or POWJH did not sufficiently highlight, both the evidence that Teton County would not have granted the challenged permit, in the form of statements on the record by Teton County's counsel, and evidence that Teton County and the DEQ have materially different septic permitting requirements, in the form quoted passages from the Teton County Small Wastewater Facility Regulations that have no analog in the DEQ rules, POWJH now asks the District Court to reconsider its conclusion

that “[t]here's no indication that Teton County would have [not] issued the permit or would have provided more stringent requirements” based on this material.

14) Such reconsideration, before the entry of judgment, is appropriate as the District Court has “traditional authority to revise its rulings prior to final judgment.” *Steranko v. Dunks*, 2009 WY 9, ¶ 6 (Wyo. 2009). In fact, “[i]f a trial court in exercise of its discretion may modify tentative decisions until entry of the final order, it does not err in rendering a decree with changed provisions.” *Id.* (internal quotations omitted).

15) Accordingly, POWJH requests the District Court reconsider its conclusion that “[t]here's no indication that Teton County would have [not] issued the permit or would have provided more stringent requirements” and that dismissal of POWJH’s claims is, consequently, appropriate.

16) To the extent the District Court was aware of the allegations referenced above but believes those allegations cannot be appropriately considered as they were not explicitly alleged in POWJH’s *Complaint*, POWJH requests leave to amend its *Complaint* pursuant to Wyoming Rule of Civil Procedure 15, in the alternative to reconsideration.

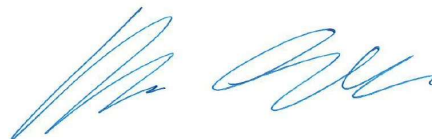
17) Under Rule 15, a party may amend a complaint, after the expiration of by right amendment periods, with “the court's leave” and the “court should freely give leave when justice so requires.”

18) In operationalizing this standard, the Supreme Court has stated that leave should be freely given absent “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment.” *Foxley & Co. v. Ellis*, 2009 WY 16, ¶ 32.

- 19) In this case, none of those factors are present. There is no undue delay or bad faith as POWJH cited the material it now wishes to include in its amendment in immediate response to the DEQ's *Motion to Dismiss*, alerting all parties to its existence. In fact, the record of Teton County's counsel's representations to the Court referenced in the response was not available until May 6, 2024, after the *Complaint* was filed, when Justice Davis issued his decision in the related litigation.
- 20) Similarly, there is no undue prejudice in granting the amendment as all parties were made aware of the allegations proposed to be incorporated in the briefing on the relevant motions to dismiss.
- 21) There is also no issue with previous amendments not curing deficiencies as no prior amendment has occurred.
- 22) Finally, there does not appear to be futility in the amendment as both allegations directly address whether Teton County would have treated the subject permit application differently.
- 23) Accordingly, to the extent the Court does not grant reconsideration, or finds that current incorporation of the referenced evidence of potentially disparate outcomes in the *Complaint* is insufficient, POWJH requests the Court grant leave to amend to add an additional paragraph containing the statements that Teton County's counsel has represented Teton County would not approve the permit and that Teton County has materially different regulations than the DEQ.
- 24) The proposed amended complaint is attached as Exhibit A.

Respectfully submitted this 17th day of July, 2024.

[signature page follows]



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Certificate of Service

Based on the foregoing signature, counsel certifies that a true and correct copy of this *Motion for Reconsideration or Leave to Amend* was served via electronic filing, on July 17, 2024, to the following:

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