



PROTECT OUR WATER
JACKSON HOLE

Transmitted by U.S. Priority Mail — Certified, Electronic Receipt

November 22, 2022

Keenan Hendon
Department of Environmental Quality
Water & Wastewater Program Manager
200 West 17th St.
Cheyenne, WY 82002

Re: POWJH Comments on the Wyoming DEQ's "NOTIFICATION OF COVERAGE" for the Teton Village Resort—Onsite Wastewater System Improvements Project, Permit No. 2022-274, Teton County.

Dear Mr. Hendon:

The following comments are submitted on behalf of Protect Our Water Jackson Hole (POWJH) in response to the DEQ's October 28, 2022, request for comments on the above-referenced NOTIFICATION OF COVERAGE published on the DEQ's Water & Wastewater webpage under "Recent General Permit Authorizations."

POWJH is a tax-exempt, nonprofit organization registered in the State of Wyoming. The mission of POWJH is to serve as a powerful advocate for the protection of ground and surface waters in Teton County, Wyoming. Our members and supporters are very concerned about potential adverse impacts to Fish Creek, its tributaries, and adjacent wetlands resulting from the construction and operation of Teton Village Resort's wastewater facility located in the headwaters of this Wyoming Game and Fish Department-designated "Red Ribbon" fishery.

Background

The Office of State Lands and Investments (OSLI) issued a temporary use permit (TUP-03345) to Mountain Ventures/Basecamp Hospitality, LLC ("Basecamp") on June 24, 2022, to develop a geodesic dome hotel complex on state trust lands in Teton County.¹ The TUP authorizes "11 low-impact accommodates for single and multi-night vacation rental." As described in the TUP, the project includes, and is authorized to develop, a "shower house trailers, a welcome center, retail/rental space, food offering, sauna, storage and maintenance shed, and

¹ The site is located in the southeast portion of Section 36, T42N, R117W.

small staff living quarters.” The TUP also authorized the construction of “a septic system and leach field” on the state land parcel. Paragraph 8 of the TUP’s General Conditions expressly requires the permittee, to “observe all state, federal and local laws and regulations.” However, in the short time this project has been in existence, the project has demonstrated a history of non-compliance.

The permittee completed excavation and clearing of the site in late summer, without obtaining a grading and erosion control permit from Teton County and in the absence of a Stormwater Pollution Prevention Plan (SWPPP) required by DEQ’s water quality regulations. Subsequent efforts by POWJH ultimately led to the preparation of a SWPPP in late October, after the completion of major excavation activities.

In mid-September, the DEQ received an application from Basecamp for a commercial wastewater system. The application and associated materials indicated a significant deviation from the representations made to the State Land Board, which included promises to build a closed-loop wastewater system. Nevertheless, the DEQ authorized the construction and operation of a commercial wastewater system under a “NOTIFICATION OF COVERAGE” (NOC) Permit No. 2022-274, dated October 6, 2022.

The NOC was authorized under a general permit issued by the DEQ in June, 2017. The general permit provides that: “This permit becomes effective on the date of issuance and shall be reviewed every five years, modified as needed and reissued in accordance with the Wyoming Water Quality Rules and Regulations Chapter 3, Section 7(c).”²

On October 28, 2022, the DEQ published notice of the NOC on its Water & Wastewater webpage under “Recent General Permit Authorizations” and invited the public to submit comments during a 30-day period ending November 28, 2022.

The apparent futility of public comment

As an initial matter, we note the unusual circumstances in which the public is being invited to comment. The decision to authorize the Teton Village Resort wastewater system has been made, and the wastewater system has been constructed. Thus we question why the DEQ is inviting public comments now, weeks after the date of the NOC; it seems likely that comments submitted *after* the final decision will serve no useful purpose. Perhaps it is an attempt by DEQ to satisfy the requirements of W.S. § 35-11-801(d). If so, we cannot imagine the legislature creating a right for citizens to provide comments on one hand, while on the other intending that right, and any comments submitted thereunder, to be meaningless. Nevertheless, despite the apparent futility in writing, we believe it is important for POWJH to bring our concerns to DEQ, once again.

The October 6, 2022, NOC informs the permittee, Mountain Ventures/Basecamp Hospitality, LLC (Basecamp), that “DEQ authorizes you to construct, install, or modify the

² Note that Chapter 3, Section 7(c) referenced in the NOC has nothing to do with wastewater facilities; rather, it refers to sedimentation control structures. Moreover, the link contained in the NOC to the general permit is non-functional, “dead link.”

facility in accordance with Chapter [sic] WQRR Chapter 25, the general permit, and the materials submitted in your application package.” Based on the finality of this language, we assume that there are no additional authorizations required by DEQ, and that public comments submitted at this stage would serve no useful purpose. Nonetheless, we have elected to do so to outline our concerns, and to point out flaws in this process which we hope DEQ will correct.

As stated in our October 20, 2022, letter to Director Parfitt, our position is that wastewater from this operation should NOT be permitted to enter ground or surface water. That was the promise made to the State Land Board, OSLI, and to the public. But that promise was broken, and a septic system has been constructed on the site. We understand that occupancy of the site is weeks, if not months, away. In the meantime, and for the reasons stated below, we believe that the DEQ should order Basecamp to refrain from releasing any wastewater into the septic system’s absorption field which, as noted in the attached materials, will inevitably enter nearby ground and surface waters thereby exacerbating existing *E.coli* impairment in Fish Creek and its tributaries.

Violations of the Wyoming Environmental Quality Act and the DEQ’s Water Quality Rules and Regulations.

The reasons supporting an immediate cessation of wastewater discharges are stated below.

1) The General Permit has expired; any authorization made thereunder is invalid.

The DEQ’s Water Quality Rules and Regulations (WQRR) provide that: “The Director shall review each general permit at least every five (5) years from the date of issuance, make modifications as needed, and **reissue** the general permit.” See WQRR Chapter 3, section 12(d)(emphasis added). The General Permit relied on by the DEQ to support the issuance of the NOC was issued on June 19, 2017, for a five-year term which ended on June 19, 2022. The NOC, Permit No. 2022-274, was issued to Basecamp on October 6, 2022, several months after the June 17, 2022, expiration of the General Permit. As a result, the General Permit that purportedly provided the basis for the issuance of Permit No. 2022-274 is invalid, and any authorization made under it is also invalid.

Any question about the validity of an expired general permit is answered on the DEQ’s website, which explains that: “DEQ develops and issues a new general permit every 5 years for each of the four types of facilities listed below. The general permits were last issued June 19, 2017, and are valid until June 19, 2022.” See <https://deq.wyoming.gov/water-quality/water-wastewater/permitting/general-permits/>.

It goes without saying that if the general permit is “valid until June 19, 2022,” it is invalid thereafter. Lacking proper authorization from DEQ, the commercial wastewater system constructed by Basecamp constitutes an un-permitted discharge of pollutants into ground and surface waters of the state in violation of the Wyoming Environmental Quality Act, § 35-11-301(a).

2) The General Permit cannot be used to authorize a small wastewater facility in Teton County.

Under the plain terms of the General Permit, the DEQ may not use a general permit to authorize a small wastewater facility in Teton County.

Teton County was delegated the authority by DEQ to regulate small wastewater systems. The Wyoming Environmental Quality Act states:

(ix) "Small wastewater system" means any sewerage system, disposal system or treatment works having simple hydrologic and engineering needs which is intended for wastes originating from a single residential unit serving no more than four (4) families **or which distributes two thousand (2,000) gallons or less of domestic sewage per day;**

W.S. § 35-11-103(c) (emphasis added).

The DEQ asserts that Teton County lacks the authority under the delegation agreement to permit this wastewater system because it is a non-residential/commercial system, and therefore not a small wastewater system covered by the delegation agreement. The DEQ is mistaken. The definition provided in W.S. § 35-11-103(c) above is clear that a system that “distributes two thousand (2,000) gallons or less of domestic sewage per day” is also a small wastewater system, even if non-residential.³

The General Permit, Part II, A. Facilities Covered Under This Permit, plainly states that coverage is provided for “[s]mall wastewater facilities located in areas not regulated by local governments in accordance with Wyoming Statute (W.S.) § 35-11-304.” (emphasis added). However, because Teton County is an area regulated by local government, the General Permit does not apply, and the authorization —Permit No. 2022-274—provided thereunder is invalid.

In addition, General Permit Part II.D. lists the types of “Facilities Not Covered Under This Permit,” which include:

3. Small wastewater facilities regulated by local governments in accordance with W.S. § 35-11-304.”

Because Teton County has been delegated the authority to regulate small wastewater facilities in accordance with W.S. § 35-11-304, the DEQ’s reliance on the General Permit to authorize Basecamp’s wastewater system is expressly prohibited, and the authorization under the general permit approving the septic system is unlawful and invalid. In this circumstance, the DEQ should take immediate action to halt the flow of any wastewater into the raised-mound system.

³ The term, “domestic sewage” “means liquids or solid wastes obtained from humans and domestic activities including wastewater from activities such as showers, toilets, human wash basins, food preparation, clothes washing, and dishwashers.” See DEQ WQRR Chapter 27, Section 2 (o).

3) The General Permit may not be used to authorize a small wastewater system having complex hydrologic and engineering needs.

The DEQ determined that the wastewater system proposed by Basecamp is a “small wastewater system,” which is defined in the Wyoming Environmental Quality Act to mean: “any sewerage system, disposal system or treatment works having simple hydrologic and engineering needs which is intended for wastes originating from a single residential unit serving no more than four (4) families or which distributes two thousand (2,000) gallons or less of domestic sewage per day;” W.S. § 35-11-103(c)(ix).

Far from having “simple hydrologic and engineering needs,” the wastewater system approved by DEQ under the General Permit is a complex, unconventional, raised-mound, pressure dosed system requiring advanced engineering and a continuous electric power supply. The system is located in an area where groundwater is often at, or above, the surface, which creates significant hydrologic concerns that conventional (i.e., standard) systems do not encounter. See the attached report from Alder Environmental describing the hydrology of this area and potential water quality impacts from Basecamp’s onsite septic system.⁴ A simple system is described in Chapter 25, Section 12, as a “Standard Soil Absorption System” which is a conventional, gravity fed, and entirely below the surface wastewater system. The septic system approved by DEQ and installed by Basecamp is clearly neither simple nor standard.

The DEQ abused its discretion and otherwise acted unlawfully by authorizing under the general permit a complex, raised mound, pressure dosed wastewater facility in the headwaters of Fish Creek, a system that—because of its hydrology and design flows— will undoubtedly add additional *E.coli* and other pollutants to surface waters previously deemed impaired by *E.coli*. See Teton County Septic System Effluent Monitoring Report, Teton Conservation District (August 2022) attached as Exhibit B.⁵

3) The wastewater system is located in prohibited setbacks.

In the process of reviewing Basecamp’s application for a permit to construct a wastewater system, the DEQ determined that the system is a non-residential, i.e., commercial wastewater facility, which is defined in the DEQ’s rules as:

(c) “Commercial/industrial waste and wastewater facilities’ means any facility not defined as a municipal or single family residence facility.” See WQRR Chapter 11, Section 4.

Mandatory setbacks for commercial wastewater facilities are specified in WQRR Chapter 25, Section 19. As shown in Table 7, the minimum setback from surface water is 100 feet; from a public water supply well, the minimum setback is 500 feet. Basecamp’s engineering drawings show, however, that the raised-mound absorption field is 50 feet or less from a pond, well within

⁴ The assessment prepared by Alder Environmental is attached as Exhibit A, and is incorporated by reference in its entirety as if fully set forth herein.

⁵ The report prepared by the Teton Conservation District, marked as Exhibit B, is incorporated by reference in its entirety as if fully set forth herein.

the 100-foot setback from surface water required for commercial septic systems, and likely within the 50-foot setback required for residential systems. Field observations confirm that the raised mound septic system has been constructed within the mandatory setback from surface waters, in violation of Chapter 25, Section 19. See Sean E. O'Malley, P.E., Review of Teton Village Resort Wastewater Treatment, November 22, 2022, attached as Exhibit C.⁶

In addition, the same engineering drawings show that the raised-mound pressure dosed absorption field is located 280 feet from a public water supply well, considerably less than the 500 feet separation distance required by DEQ's rules, in violation of Chapter 25, Section 19.

In addition, Chapter 11, Section 27 requires that "Commercial/ industrial facilities that generate waste that is entirely domestic waste shall be designed in compliance with Part B of Chapter 11 or Chapter 25." Basecamp's wastewater system is not in compliance with Chapter 11 or Chapter 25, and the DEQ's approval of wastewater facilities inside these critical setbacks is a violation of its own water quality rules and regulations.

Finally, the General Permit may not be used to authorize a wastewater facility "that [does] not meet the minimum design and construction standards of Wyoming Water Quality Rules and Regulations Chapter 25." See General Permit, Part II, D. Facilities Not Covered Under This Permit, No. 5. The wastewater system approved by DEQ does not meet the minimum design and construction standards required by DEQ's rules set forth in Chapter 11 and Chapter 25.

4) The NOC fails to protect ground and surface water resources.

The wastewater facility authorized by DEQ has been constructed in the headwaters of Fish Creek, a Class 1 surface water. Pursuant to WQRR Chapter 1, Appendix A, the entire Fish Creek drainage is designated Class 1, together with all adjacent wetlands. The regulatory objective for Class 1 surface waters is to protect and maintain water quality that existed at the time of designation. WQRR Chapter 1, Section 4 and Section 7.

A number of recent studies and reports show a hydrologic connection between ground and surface water in the Fish Creek drainage. See, e.g., Alder Environmental, attached as Exhibit A. Indeed, at certain times of the year, groundwater flows on the surface. The commercial septic system authorized by DEQ in Permit No. 2022-274 will introduce a variety of pollutants into ground and surface water and adjacent wetlands in the headwaters of Fish Creek, including *E.coli*, further exacerbating an existing *E.coli* impairment documented in the DEQ's combined 305(b)/303(d) water quality assessment (2020). The WDEQ's decision allowing a discharge of *E.coli*, nitrates and other pollutants into a tributary of Fish Creek is a violation of the Wyoming Environmental Quality Act, the federal Clean Water Act, and is unlawful agency action within the meaning of W.S. § 16-3-114(c).

Given the unique hydrology in this area, along with the inability of septic systems to remove all pollutants, contamination of ground and surface water from Basecamp's septic

⁶ Mr. O'Malley's November 22, 2022, Review of Teton Village Resort Wastewater Treatment is incorporated by reference in its entirety as if fully set forth herein.

system is all but certain. See Verhougstraete, et al., *Linking fecal bacteria in rivers to landscape, geochemical, and hydrologic factors and sources at the basin scale*, National Academy of Sciences, August 18, 2015, Vol. 112, No. 33, 10419-10424.⁷

Despite the high risk of water quality contamination, the DEQ has failed to demonstrate, as required by its rules, that ground and surface water quality standards will be met. WQRR Chapter 11 provides:

PART C: COMMERCIAL/INDUSTRIAL WASTE AND WASTEWATER FACILITIES

Section 25. General.

This part contains the minimum standards for the design and construction of commercial/ industrial wastewater facilities. The applicant shall demonstrate to the Administrator that any discharge or seepage from the wastewater facility will not cause a violation of the Surface and/ or Groundwaters of the State in accordance with Chapter 1, "Quality Standards for Wyoming Surface Waters" and Chapter 8, "Quality Standards for Wyoming Groundwaters." Due to the wide variety of wastes, wastewater and site conditions, the latest available scientific information shall be used to demonstrate that violations will not occur.

POWJH has been unable to locate any evidence in the application, drawings and related materials that such a demonstration has been made. Neither the expired general permit nor the one page NOTIFICATION OF COVERAGE provides this required demonstration or even references this requirement. In its haste to approve Basecamp's septic system, the DEQ missed—or perhaps ignored— this critical requirement.

5) The DEQ acted unlawfully and abused its discretion by not requiring Basecamp to obtain an individual permit under Chapter 25, or alternatively, an individual permit required by Chapter 27, for a UIC Class V large capacity system.

When properly calculated, design flows indicate that Basecamp's wastewater system may exceed 2,000 gallons per day, which would remove it from coverage under the General Permit. See Part II, D. Facilities Not Covered Under This Permit, #1, #2, and #4. In any event, and regardless of whether the system's design flows exceed 2,000 gallons per day or not, the complexity of the system, its location in the headwaters of Fish Creek, and potential to contaminate groundwater and Class 1 surface waters, design flows near (or in excess of) the 2,000 gpd threshold, necessitate the need for an individual permit.

In conclusion, for the reasons stated above, we request that you order Basecamp to refrain from and/or halt the placement of wastewater into the raised mound system until the issues raised above are resolved in a lawful and mutually satisfactory manner.

⁷ This article is attached as Exhibit D and is incorporated by reference as if fully set forth herein.

Sincerely,

Dan Heilig
Board Member
Protect Our Water Jackson Hole

Cc (via email):

Mark Gordon, Governor of the State of Wyoming
Todd Parfitt, Wyoming DEQ Director
Jennifer Zygmunt, Water Quality Administrator
Wendy Cheung, EPA Region 8
Teton County Board of County Commissioners
Carlin Girard, Executive Director, Teton Conservation District

Enclosures: Exhibits

**LIST OF EXHIBITS
(Incorporated by reference herein)**

Alder Environmental, Aquatic Resources and Water Quality Impact Assessment of Wyoming State Land (Teton Village) OSLI Site 9, November 19, 2022.

Sean E. O'Malley, P.E. Review of Teton Village Resort Wastewater Treatment, November 22, 2022.

Teton Conservation District, Teton County Septic System Effluent Monitoring Study Report, August 2022, available online at: <https://www.tetonconservation.org/septic-monitoring-study>

Science News, "Septic tanks aren't keeping feces out of rivers, lakes." ScienceDaily. ScienceDaily, 3 August 2015. <www.sciencedaily.com/releases/2015/08/150803154850.htm>.

Verhougstraete, M. et al. (2015) Linking fecal bacteria in rivers to landscape, geochemical, and hydrologic factors and sources at the basin scale. Publication of the National Academy of Sciences, available online at: <https://www.pnas.org/doi/full/10.1073/pnas.1415836112>.