

SUBMITTED VIA BTNF PUBLIC COMMENT PORTAL

February 23, 2024

Objection Reviewing Officer
JHMR Recreation Enhancements Project - 2023
Forest Service Intermountain Regional Office
324 25th Street,
Ogden, UT 84401

OBJECTION: Jackson Hole Mountain Resort Recreation Enhancements Project - 2023 #64355

To Objection Reviewing Officer:

Set forth below for your consideration is the OBJECTION submitted by Protect Our Water Jackson Hole (“POWJH”). Originally established in 2014, POWJH is a locally-based nonprofit organization dedicated to serving Teton County, Wyoming, as a powerful advocate for restoring and protecting the surface and groundwater in our watershed.

The Objector’s name, mailing address and telephone number:
Protect Our Water Jackson Hole
P.O. Box 1014
Wilson, WY 83014
(307) 413-1776

Name and Title of Responsible Official:
Todd Stiles, District Ranger, Jackson Ranger District, Bridger-Teton National Forest

Name and Title of Objection Reviewing Officer:
Chad Hudson, Forest Supervisor, Bridger-Teton National Forest

Name and location of Project: Jackson Hole Mountain Resort Recreation Enhancements Project - 2023 #64355, Bridger-Teton National Forest, Jackson Ranger District, Teton County, WY (“the Project”)

The issues raised in this objection are based on new information contained in the Forest Service’s Environmental Assessment (“EA”), Draft Decision Notice and Finding of No Significant Impact (“FONSI”) prepared for the Project.

SUMMARY OF OBJECTION ISSUES

- I. Elements of the proposed projects disclosed in the EA are inconsistent with Forest Plan direction, standards and guidelines and are therefore unlawful under the National Forest Management Act (“NFMA”) and its implementing regulations.

- II. The EA fails to analyze an adequate range of alternatives to avoid damaging wetlands and stream channels.
- III. The EA fails to properly disclose direct, indirect and cumulative impacts to Fish Creek, its tributaries, and adjacent wetlands.

DISCUSSION

This Objection is based on new information presented in the EA, FONSI and Draft DN, which were unavailable for public review during the designated public comment period. Our Objection raises concerns about: 1) aspects of the proposed actions that appear to be inconsistent with Forest Plan direction, standards and guidelines for riparian areas, wetlands and stream channels; 2) the inadequate range of alternatives analyzed in the EA to avoid harming riparian areas, wetlands and surface water resources; and 3) inadequate disclosure of direct, indirect and cumulative effects from the proposed actions to wetlands and surface water resources in the Fish Creek drainage.

I. Elements of the proposed projects disclosed in the EA are inconsistent with Forest Plan direction, standards and guidelines and are therefore unlawful under the National Forest Management Act and its implementing regulations.

The National Forest Management Act (“NFMA”) requires that “[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.” 16 U.S.C. §1604(i). This requirement is repeated in the Forest Service’s planning regulations: “Projects and activities authorized after approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (d) of this section.” 36 C.F.R. §219.15(b).

The BTNF Forest Plan itself acknowledges the NFMA consistency requirement and expressly requires that “[t]he management direction contained in the Forest Plan will be used in analyzing proposals by prospective Bridger-Teton National Forest users. All permits, contracts, and other instruments for occupancy and use of the National Forests must be consistent with management requirements in both the Forest and Management Area direction sections. This is required by 16 U.S.C. 1604 (i) and 36 C.F.R. §219.10 (e).” BTNF Forest Plan at 410.

In an apparent nod to the consistency requirement, the FONSI states that “[t]he selected alternative is consistent with and implements pertinent Forest Plan direction. An interdisciplinary team of specialists reviewed the project for consistency with all other relevant direction in the Forest Plan, including objectives, standards, and guidelines.” FONSI/Draft DN at 7.

Despite that claim, it appears from the total absence of discussion in the EA and FONSI that the BTNF neglected to consider a number of applicable forest-wide plan requirements including water quality goals and enforceable management prescriptions, standards and guidelines. See BTNF Forest Plan at 152. In particular, the EA and FONSI omit discussion of the Forest Plan’s “Riparian Areas, Wetlands, and Floodplains Prescription. BTNF Forest Plan at 183. The plan states that “These areas are managed as basic resources for forest management, key to the future productivity of the Bridger-Teton National Forest. Land and Resource Management Objectives

substantially supported by Bridger-Teton National Forest-wide Standards and Guidelines for riparian areas, wetlands, and floodplains include: 1.3(a, b), 4.3(c), 4.7(b).” Id.

The following components of the selected alternative appear to be inconsistent with the direction contained in the Forest Plan:

Riparian Areas and Wetlands. The filling of wetlands to support recreation development is prohibited by the BTNF Forest Plan’s *Recreation Riparian Area Standard* which provides that: “No new recreation sites will be built in riparian areas unless a clear public need can be demonstrated and no other reasonable alternative exists. Unless designed to be submerged, **recreation development will not occur in wetlands** and in 100-year floodplains. BTNF Forest Plan at 153 (emphasis added).

First, it is clear that the BTNF Forest Plan prohibits the filling of wetlands to support or “enhance” recreation development, and we therefore oppose any such activity. The filling of wetlands to “enhance” the recreation experience of skiers would be contrary to standards and guidelines contained in the BTNF Forest Plan and thus impermissible under Forest Service regulations and NFMA.

Second, regarding the potential destruction of riparian areas, the BTNF Forest Plan requires that: “No new recreation sites will be built in riparian areas unless a clear public need can be demonstrated and no other reasonable alternative exists.” The EA has failed to:

- demonstrate “a clear public need” to justify the loss of riparian areas;
- consider alternatives to avoid impacts to riparian areas; and,
- make the required finding that “no other reasonable alternative exists.”

The absence of a proper analysis of alternatives required by the Forest Plan, the failure to articulate the finding required by the Forest Plan that a “clear public need” exists justifying the damage to riparian habitat, and the obvious inconsistencies with Forest Plan standards and guidelines requires the Forest Service to withhold final approval until these issues have been properly addressed in revised NEPA documentation.

Stream Channels. The proposal to fill stream channels (WDEQ Class 1 tributaries to Fish Creek) to create easier ski terrain is prohibited by the Forest Plan’s *Natural Drainage Channel Standard*, which provides that: “**The natural drainage channels of any stream will be protected during building activities.** Following building activities, the stream channel will be returned to the original width, depth, gradient, and curvature. Culverts will be installed to minimize stream transition and, where needed, retain natural flow.” BTNF Forest Plan at 183. (emphasis added). It should be quite apparent that the filling of stream channels with waste rock destroys the “natural drainage channel” of the stream and impairs the natural functions and values of the watercourse; the fact that a channel may be rebuilt in the same location does not change that fact. Moreover, there is no mention in the EA that excavation activities intended to re-contour and smooth out ski slopes will include returning the stream channel “to the original width, depth, gradient, and curvature.” In fact, doing so would seem to defeat the very purpose of the re-contouring efforts.

The EA also notes that “Project effects could include culverting and realigning channel segments into armored channels designed to retain the hydrologic capacity of the natural channels.” EA at 42. It must be understood that simply maintaining the hydrologic capacity does not compensate for the loss of values and other functions these water resources provide and is therefore contrary to BTNF Forest Plan requirements, including Goal 1.3(a) and Goal 1.3(b) to “retain and improve water quality” and to “meet or exceed state water quality standards.” See BTNF Forest Plan at 142. As discussed more fully in Section III of this objection, filling stream channels with dredge and fill material eliminates existing uses of the filled stream segment, in violation of DEQ’s water quality standards.

The EA also appears to omit consideration of the BTNF Forest Plan’s *Streambank Vegetation Standard*. BTNF Forest Plan at 183. This standard provides that “Grass and shrub vegetation will be maintained within about 25 feet plus 2 to 4 feet for each 1 percent side slope adjacent to live streams. Vegetation which gives greater stability due to rooting structure will be planted during the revegetation of channel banks following construction.” *Id.* The EA must be revised to include a discussion of this standard and its applicability to stream segments within the project area.

Given the failure of the BTNF to consider the above-described Forest Plan’s Forest-wide Resource Management Prescriptions, Standards, and Guidelines, any final decision regarding the Recreation Enhancements Project 2023 must not include an authorization that permits the filling and destruction of riparian areas, wetlands or Class 1 Fish Creek tributary stream channels.

II. The EA fails to analyze an adequate range of alternatives (including those alternatives required by the Forest Plan discussed above), to avoid impacts to Fish Creek wetlands and tributary stream channels.

NEPA, the CEQ’s regulations implementing NEPA, and the Forest Service’s own NEPA procedures all require the consideration of one or more alternatives in a EA where there are “unresolved conflicts concerning alternative uses of available resources.” NEPA Section 102(2)(E). In such cases where there are unresolved conflicts associated with the proposed action, the EA must consider additional alternatives to address those conflicts. This is black letter NEPA law. 40 C.F.R. §1501.2(b)(3).¹

The EA claims that because the Forest Service dropped the Alta Chutes and North Hoback Woods projects from further consideration, “there are no other unresolved conflicts associated with the proposed action” and as a result, “the EA provides in-depth analysis of only the proposed action, as revised on the basis of public comment and internal review (36 C.F.R. §220.7[b]).” EA at 20.²

¹ The EA shall “Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of NEPA.”

² The Forest Service repeats the assertion that “[t]here are no other unresolved conflicts associated with the proposed action” in the draft Decision Notice at 6.

At best, this is a questionable assertion given the proposed action's impacts to over 3 acres of wetlands and the filling of over 2,000 feet of intermittent and perennial Class 1 stream channels simply to enhance the recreation experience of intermediate skiers. As discussed in Section I, above, key elements of the proposed actions are inconsistent with Forest Plan direction, standards and guidelines and are therefore impermissible under NFMA and Forest Service regulations. 16 U.S.C. §1604 (i) and 36 C.F.R. §219.15(b). Actions that are inconsistent with Forest Plan direction are unlawful under the NFMA and Forest Service planning regulations, and these proposed actions therefore present unresolved conflicts as to the proper and lawful use of resources that demands further analysis and attention in one or more alternatives. These legal violations, combined with the destruction of important DEQ Class 1 water resources to make way for "recreation enhancements" obviously present unresolved conflicts concerning alternative uses of available resources that must be addressed in alternatives to the proposed action.

In light of these unresolved conflicts regarding appropriate uses of Forest Service lands and resources, the EA should analyze alternatives—including no action alternatives—that minimize and/or avoid impacts to wetlands and stream channels caused by the construction of the Projects identified in the EA as the most damaging to water resources, namely, the Lower Ashley Ridge Upgrade project (1.3 acres of wetlands impacts); the Werner Trail Widening project (0.4 acres of wetland impacts); the Terrain Park Summer Grading project (0.4 acres of wetland impacts); the Elevated Walkway project (0.8 acres of wetlands impacts); and, the Ball Track project (0.1 acres of wetlands impacts).

Similarly, alternatives to the projects (or project designs) that require the filling of stream channels with dredged or fill material (a total of 2,008 linear feet) should be developed and analyzed in a revised EA. The Forest Service must acknowledge in this discussion that if a project does not comply with the BTNF Forest Plan, or federal or state water pollution control laws, it cannot be permitted.

In this instance, the EA discloses that "[p]roposed action projects would also impact up to 1,016 linear feet of intermittent stream channels and 992 feet of perennial stream channels as shown in Table 3-6. Project effects could include culverting and realigning channel segments into armored channels designed to retain the hydrologic capacity of the natural channels." EA at 42. The EA discloses that "[i]n summary, impacts on wetlands and stream channels would reduce the functions and values these resources provide, such as water purification, flood protection, bank stabilization, groundwater recharge, stream flow maintenance and wildlife habitat. The extent of loss of wetlands functions is loosely correlated with the spatial extent of the impact, in this case, up to 3.3 acres." EA at 43. It then acknowledges in section 3.4.3 that "the projects listed in Table 3-6 could not be designed to completely avoid such impacts and preserve the function of the project." *Id.* If the choice is between "preserving the function of the project" and preserving the integrity and function of Class 1 water resources, the decision is straightforward: it must be adhering to the NFMA, the Forest Service's regulations, and the BTNF Forest Plan direction mandating the protection of these Outstanding Aquatic Resources. The conflict between protecting these valuable resources on the one hand, and on the other, moving ahead with the recreation enhancements at the expense of Fish Creek wetlands and tributaries couldn't be more striking. If a project cannot be completed without violating federal and state law, it simply cannot be authorized.

In sum, it is clear that the destruction of Class I wetlands and stream channels to make way for ski hill enhancements presents “unresolved conflicts concerning alternative uses of available resources” which by law demand require further analysis in new EA alternatives. The Forest Service is not legally obligated to approve the proposed recreation enhancements, but it does have a affirmative legal duty to adhere to its Forest Plan and to protect Class 1 Fish Creek wetlands and tributaries. In this instance, POWJH believes that applicable law and regulations requires that the conflict over the appropriate use of public lands within the JHMR’s permit area must be resolved in favor of resource protection.

III. The EA fails to adequately disclose direct, indirect and cumulative effects of the proposed projects to DEQ Class 1 water resources.

As an initial matter, the EA should disclose that the wetlands and other surface water resources in the project area are Wyoming Environmental Quality Council-designated Class 1 *Outstanding Aquatic Resource Waters* entitled by law to the highest level of protection under both the federal Clean Water Act and the Wyoming Environmental Quality Act. See 40 C.F.R. §131.12(a)(3); DEQ WQRR Chapter 1, Sections 4 and 7. See also WDEQ Implementation Policies for Antidegradation, Mixing Zones, Dilution Allowances, Turbidity, Use Attainability Analysis, September 24, 2013.³ The designation of Fish Creek as a Class 1 surface water includes the creek itself, all tributaries to the creek, and adjacent wetlands. See Chapter 1, Appendix A, section (a)(xiv) and (a)(xvii), Wyoming Surface Water Classifications (broadly designating “[a]ll waters within the Fish Creek (near Wilson, Wyoming) drainage”).

Similarly, at the federal level, the BTNF Forest Plan makes clear that riparian areas and wetlands “are managed as basic resources for forest management, key to the future productivity of the Bridger-Teton National Forest. “Land and Resource Management Objectives substantially supported by Bridger-Teton National Forest-wide Standards and Guidelines for riparian areas, wetlands, and floodplains include: 1.3(a, b), 4.3(c), 4.7(b).”

The lack of discussion in the EA of State laws and regulations that apply to Fish Creek surface waters coupled with a woefully inadequate disclosure of environmental impacts to surface waters and wetlands within the Fish Creek drainage is a fatal flaw in this EA. As noted above, the Forest Service has a statutory duty to comply with federal, state, and local water pollution control laws and is obviously unable to do so when seemingly ignorant of those requirements.⁴

³ The DEQ’s Antidegradation Policy is available on the DEQ website at:

<https://deq.wyoming.gov/water-quality/watershed-protection/surface-water-quality-standards/>

⁴“Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges.” See 33 U.S.C. § 1323(a).

Wyoming DEQ Water Quality Rules and Regulations (WQRR) Chapter 1, Section 4(a) provides that: “Class 1, Outstanding Waters. Class 1 waters are those surface waters in which no further water quality degradation by point source discharges other than from dams will be allowed.” “Pursuant to Section 7 of these regulations, the water quality and physical and biological integrity which existed on the water at the time of designation will be maintained and protected.”

Section 7, in turn, provides that”

Storm water and construction-related discharges of pollution to Class 1 waters may be authorized and shall be controlled through applicable water quality permits, Section 401 certifications and/or by the application of best management practices. Such discharges shall not degrade the quality of any Class 1 water below its existing quality or adversely affect any existing use of the water. Temporary increases in turbidity that are within the limits established in Section 23 of these regulations and that do not negatively affect existing uses can be permitted. For purposes of this section, temporary increases in turbidity shall not exceed the actual construction period. The department shall impose whatever controls and monitoring are necessary on point source discharges to Class 1 waters and their tributaries to ensure that the existing quality and uses of the Class 1 water are protected and maintained.

To better understand the requirements that apply to Class 1 surface waters, which include, as noted above, all surface waters in the Fish Creek drainage including tributaries and adjacent wetlands in the JHMR project area, the DEQ’s Antidegradation Implementation Policy explains that “Antidegradation protection is one of the essential elements of state surface water quality standards programs and is required under Section 303(d)(4)(B) of the Clean Water Act. The purpose of this implementation procedure is to disclose the decision-making and public participation processes that will be employed by the Water Quality Division in order to ensure compliance with Section 8.”

Specific antidegradation requirements are set forth in Section 3. Outstanding Aquatic Resources (Class 1).⁵ Among other things, a permit from DEQ under WQRR Chapter 2 is required before a discharge can occur. If the discharge enters Waters of the United States, the Army Corps of Engineers may not authorize the discharge unless the State has issued a Section 401 Certification. The procedures and substantive requirements associated with 401 compliance are set forth in subsection (b): Clean Water Act Section 401 Water Quality Certifications. “This section outlines procedures used by the department to implement tier 3 antidegradation protections that ensure existing quality and uses of Class 1 waters will be maintained for activities subject to 401 certifications.”

“”Tier 3” protections apply to waters that constitute “outstanding national resource waters”

⁵ A note in Section 3 explains that: “The Wyoming water quality protection program has no provision for designating waters that have “national” significance; however, waters designated as Class 1 under the surface water standards are considered to be outstanding resources. Though not designated as ONRWs, Class 1 waters are afforded a level of antidegradation protection which is a functional equivalent of EPA’s tier 3 concept.”

(ONRWs)1. Tier 3 requires maintenance of existing quality with no consideration of assimilative capacity or economic or social development. In certain circumstances, temporary lowering of water quality is allowable; however, the general rule is that no new point sources or increased pollutant loading from existing point sources is allowed.”

In accordance with the DEQ Antidegradation Policy, “(i) Federal licenses or permits can be certified by the department if activities authorized by the license or permit meet the following requirements:

- (A) Any resultant water quality degradation shall be temporary and all potential negative effects cease at the end of the construction period;
- (B) Potential contaminants are limited to turbidity and sediment. Increases in downstream turbidity are limited to 10 NTUs above the upstream condition at all times on streams that support cold water game fisheries and/or drinking water supplies and 15 NTUs on streams that support warm water fisheries, unless a temporary turbidity waiver has been granted by the administrator. Sediment cannot be discharged in amounts that will adversely affect existing or designated uses as described in Chapter 1, Sections 15 and 16;
- (C) Long term or permanent degradation of stream channel stability and aquatic habitat will not occur;
- (D) Long-term or permanent degradation of aesthetic properties will not occur;
- (E) Process water from construction activities (e.g. hydrostatic testing, gravel washing, etc.) will not discharge to a Class 1 water.

(i) 401 Certification shall be denied for federal licenses or permits authorizing discharge to Class 1 waters if any of the following apply:

- (A) The activity may result in degradation of water chemistry or long-term or permanent loss or reduction of: channel stability, aquatic habitat, or existing or designated uses;
- (B) Sediment will be discharged in amounts that settle to form sludge, bank or bottom deposits;
- (C) Existing ambient conditions will be degraded by the activity; or
- (D) Any surface discharge of process water to a Class 1 water will occur.

(iii) The applicant may be asked to consider multiple reasonable alternatives for accomplishing the project objectives and justify the chosen alternative with consideration of environmental, economic and social factors. The chosen alternative must not have significant adverse affects to existing or designated uses.” (emphasis added).

In order to ensure that the proposed projects conform to federal and state water pollution control laws as required by the Clean Water Act, NFMA, and BTNF Forest Plan standards and guidelines requiring compliance with State water quality standards, the EA must analyze—in coordination with the Wyoming DEQ—each of these requirements, and integrate Chapter 2 permitting and state antidegradation review procedures into this analysis. 40 C.F.R. §1502.24(a). Admittedly without the benefit of detailed analysis, it does appear, nonetheless, that a number of requirements specified above can not be met if the Project goes forward as proposed, including, for example, the requirement in Chapter 1, Section 4(a) that “the water quality and physical and

biological integrity” must be maintained. How is it possible to maintain the “physical and biological integrity” of a Fish Creek stream channel when it is permanently buried under waste rock?

The EA notes that “Some wetlands in the project area may not be jurisdictional and thus would not receive protection under the Clean Water Act.” EA at 39. Although a correct statement, the EA should acknowledge and describe Wyoming DEQ’s regulatory program for the protection of wetlands, and in particular, Class 1 wetlands.⁶ It is clear that the Forest Service has a responsibility to protect non-jurisdictional wetlands in the project area in accordance with the Wyoming Environmental Quality Act and its implementing regulations for water quality protection including Chapter 1 (water quality standards) and Chapter 2 (permitting).

Relatedly, the EA improperly confines its disclosure of impacts to “aquatic resources” which it defines as “Waters of the U.S.” EA at 39. Under NEPA and its implementing regulations, the EA must disclose impacts to all wetlands and not just those that meet the federal definition of waters of the U.S. The Forest Service has an obligation under NEPA, the NFMA, and the BTNF Forest Plan to disclose, avoid and mitigate impacts to both jurisdictional and non-jurisdictional waters, so this term should be revised to include all wetlands in the project area, as defined by the Wyoming Environmental Quality Act,⁷ and include an appropriate impacts analysis. This is especially important since many wetlands in the project area previously identified as jurisdictional WOTUS may have lost federal protection as a result of the U.S. Supreme Court’s 2023 decision in Sackett. See Sackett v. EPA, 598 U.S., 143 S. Ct. 1322 (2023).

The EA, FONSI and draft DN place reliance on the Section 404 permitting process to protect aquatic resources in the project area. However, given recent the changes in the definition of “Waters of the U.S.” sanctioned by the U.S. Supreme Court in Sackett, this reliance is misplaced. It is possible that many of the aquatic resources identified in previous inventories (e.g., Pioneer 2019) as WOTUS will lose federal protection. The consequences of this must be taken into account in subsequent environmental analyses—including new wetlands surveys—prior to any final decision being made.

In addition, the revised EA (or EIS) should disclose that dredge and fill activities authorized under Nationwide Permit No. 27 do not require compensatory mitigation, so assertions made in the EA (at 39) that mitigation will compensate for the loss of aquatic resources are not correct when NWP 27 is utilized, for example, as recently proposed in the BTNF’s 2023 categorical exclusion for ski run improvements.

Regarding cumulative impacts to water resources, the EA improperly confines its analysis to the federal actions noted in the BTNF’s schedule of proposed activities (SOPA) as well as a few projects in Grant Teton National Park. See Table 3-7. Contrary to NEPA’s clear requirements,

⁶ For example, Wyoming’s Wetland Protection Act, W.S. §§ 35-11-308 through 35-11-311

⁷ See WDEQ WQRR Chapter 1, Section 2(a): (xii) “Wetlands” means those areas in Wyoming having all three (3) essential characteristics:

- (A) Hydrophytic vegetation;
- (B) Hydric soils; and
- (C) Wetland hydrology.

the EA fails to examine the combined effects of activities—including dredge and fill of waters of the United States—that have occurred on private and state lands in the Fish Creek watershed. A proper analysis would also take into account the effects on non-jurisdictional wetlands in this DEQ-designated Class 1 watershed.

Council on Environmental Quality (CEQ) regulations implementing NEPA define effects as follows:

- (g) Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:
 - (1) Direct effects, which are caused by the action and occur at the same time and place.
 - (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
 - (3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.
 - (4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.

40 C.F.R. § 1508.1

Understanding that “[c]umulative effects can result from individually minor but collectively significant actions taking place over a period of time” the EA should analyze the total impact to wetlands and stream channels from previous JHMR projects, as well as other “Federal or non-Federal” actions in the watershed. Among other things, this would entail reviewing all previous Clean Water Act Section 404 permits—both individual and nationwide permit authorizations—as well as DEQ CWA Section 401 certifications. Analyzing that information would provide a more thorough and complete disclosure of the environmental “effects” of the proposed actions.

Notably, the Draft Wyoming 2022/2024 Integrated 305(b) and 303(d) Report finds that Fish Creek is impaired for nutrients. The Report notes: “Multiple lines of evidence from nutrient and aquatic life data collected at multiple locations throughout Fish Creek from 2014-2018 indicated that the Aquatic Life Other than Fish designated use is impaired due to nutrients (total nitrogen and total phosphorus). In the 2020 IR, Fish Creek was also listed as impaired for the Recreation designated use due to high concentrations of *E. coli*.” The EA should analyze the impacts of Jackson Hole Mountain Resort operations as a potential contributor of *E. coli* and nutrient impairments. To ensure the “hard look” mandated by NEPA, the EA should

analyze the impacts of Jackson Hole Mountain Resort and Teton Village base operations as potential contributors to *E. coli* and nutrient impairments.

Finally, the CEQ's NEPA regulations require that the Clean Water Act Section 404 permitting process, the DEQ's review under Section 401 of the Clean Water Act, and point source discharge permitting under WDEQ WQRR Chapter 2, be integrated into this analysis. 40 C.F.R. §1502.24(a). Integrating these related processes into the NEPA analysis is the only way that the full extent of impacts to aquatic resources can be disclosed prior to the final decision.

We appreciate the opportunity to present this objection letter and respectfully request a meeting in accordance with 36 C.F.R. §218.11(a) to discuss these concerns in greater detail.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Regan".

Kevin Regan
Law and Policy Advisor