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CASE NOTE

CIVIL PROCEDURE—The Wyoming Supreme Court Constricts the Public Interest Exception of the Declaratory Judgments Act; *William F. West Ranch, L.L.C. v. Tyrrell*, 206 P.3d 722 (Wyo. 2009)

Amy M. Staehr*

INTRODUCTION

The William West Ranch and the Turner Family (the Wests and the Turners) own tracts of land in Wyoming's Powder River Basin.¹ The Wests alleged that by 2007 they were no longer able to normally irrigate their land because saline and sodic water from nearby coalbed methane (CBM) wells had infiltrated their local water supply, resulting in plant and soil damage.² Additionally, leaking CBM water stored in reservoirs had further harmed the soil and vegetation on the West Ranch.³ The Turners claimed several of the wells they use for domestic and agricultural purposes had either dried up or threatened to as a result of the CBM ground water pumping in their area.⁴

Based on these alleged injuries, the Wests and the Turners filed a complaint with the district court seeking a declaratory judgment stating Wyoming State Engineer Patrick Tyrrell and the Wyoming Board of Control had acted unlawfully and in violation of the Wyoming Constitution in permitting CBM wells and reservoirs.⁵ The district court dismissed the case, and the Wests and the Turners

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¹ *William F. West Ranch, L.L.C. v. Tyrrell*, 206 P.3d 722, 725 (Wyo. 2009).

² Brief of Appellants at ix, *William West Ranch*, 206 P.3d 722 (No. S-08-0161), 2008 WL 5041670.

³ *Id.*

⁴ Brief of Pennaco Energy Inc. & Devon Energy Production Co. as Appellees at 2, *William West Ranch*, 206 P.3d 722 (No. S-08-0161), 2008 WL 6559519 [hereinafter Brief of Pennaco].

⁵ *William West Ranch*, 206 P.3d at 725. In Wyoming, the State Engineer issues permits for wells to extract CBM water as well as permits for reservoirs in which to store CBM water. WYO. STAT. ANN. §§ 41-3-930 to -931 (2009); STATE ENGINEER'S OFFICE, GUIDANCE: CBM/GROUND WATER PERMITS 1-2 (2004), available at http://seo.state.wy.us/PDF/GW_CBM_Guidance.pdf; STATE ENGINEER'S OFFICE, PERMITTING REQUIREMENTS ASSOCIATED WITH OFF-CHANNEL CONTAINMENT PITS 1 (2002), available at <http://seo.state.wy.us/PDF/OffChannelContainReq.pdf>. For additional information on the CBM water regulatory process, see *infra* notes 27-35 and accompanying text.

appealed to the Wyoming Supreme Court.⁶ Finding the landowners did not present a justiciable controversy, the court affirmed the district court's dismissal.⁷

The landowners premised their justiciable controversy argument on the public interest exception, which recognizes a relaxed version of standing in cases where the public interest is affected.⁸ Because the regulation of water in an arid Western state is almost surely a matter of great public interest, the landowners argued they need not explicitly satisfy all four prongs of the *Brimmer* test—a tool to assess justiciability in Wyoming first articulated in *Brimmer v. Thomson*.⁹ The court, however, disagreed with the plaintiff landowners and found not only that the landowners failed to meet the second *Brimmer* element, but that all four elements of the *Brimmer* test must be met even in cases concerning the public interest.¹⁰ As a result, the Wyoming Supreme Court held the landowners failed to establish a justiciable controversy because (1) they did not allege an injury that would be practically redressed by the court's ruling, and (2) they failed to exhaust administrative remedies.¹¹

This case note analyzes the Wyoming Supreme Court's application of the *Brimmer* test to establish a justiciable controversy in *William West Ranch*.¹² The background section looks briefly at the coalbed methane industry in Wyoming's Powder River Basin, as well as the regulations governing CBM wastewater disposal.¹³ Next, this note explores the requirements for establishing justiciability

⁶ *William West Ranch*, 206 P.3d at 726. The district court held the plaintiffs did not present a justiciable controversy because other sectors of the government were currently considering the issue and because the issue concerned a political question. *Id.* at 725.

⁷ *Id.*

⁸ *Id.* at 736; Brief of Appellants, *supra* note 2, at 7–8.

⁹ *William West Ranch*, 206 P.3d at 727, 736; *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974) (quoting *Sorenson v. City of Bellingham*, 496 P.2d 512, 517 (Wash. 1972)). The test reads as follows:

First, a justiciable controversy requires parties having existing and genuine, as distinguished from theoretical, rights or interests. Second, the controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument evoking a purely political, administrative, philosophical or academic conclusion. Third, it must be a controversy the judicial determination of which will have the force and effect of a final judgment in law or decree in equity upon the rights, status or other legal relationships . . . or, wanting these qualities be of such great and overriding public moment as to constitute the legal equivalent of all of them. Finally, the proceedings must be genuinely adversary in character and not a mere disputation . . .

Brimmer, 521 P.2d at 578.

¹⁰ *William West Ranch*, 206 P.3d at 737.

¹¹ *Id.* at 738.

¹² See *infra* notes 174–218 and accompanying text.

¹³ See *infra* notes 21–35 and accompanying text.

in a declaratory judgment action.¹⁴ Particular attention is given to the requirement that, under certain circumstances, plaintiffs must exhaust alternative remedies before bringing a declaratory judgment action.¹⁵ Finally, this note explores the public interest exception and its purported relaxation of justiciability requirements, including an investigation into the Wyoming Supreme Court's relevant precedential cases.¹⁶ This note argues that the specificity the landowners' pleadings lacked in *William West Ranch* was also lacking in earlier cases in which the court found a justiciable controversy.¹⁷ In stating that plaintiffs had a *duty* to allege facts specifically demonstrating how the court's decision would remedy their specific harm, the court imposed a more rigid burden on pleadings than called for in the past.¹⁸ Additionally, by acknowledging the landowners in *William West Ranch* brought a claim implicating an issue of great public interest and yet failing to extend the court's jurisdiction, the court departed from precedential case law invoking the exception.¹⁹ In holding that under the public interest exception all four *Brimmer* elements must be met, the Wyoming Supreme Court constricted the exception's intended jurisdiction-granting role.²⁰

BACKGROUND

Wyoming's Powder River Basin has seen an explosion of coalbed methane (CBM) production since the late 1980s; this increasingly-prevalent method of gas extraction involves drilling into and dewatering unmineable coal seams, thereby releasing methane gas.²¹ The main by-product of the process is a large quantity of often saline water.²² The Powder River Basin CBM wells produce relatively high quality water that is often potable, although it can be unsuitable for irrigation

¹⁴ See *infra* notes 36–124 and accompanying text.

¹⁵ See *infra* notes 40–43, 82–89, 154–73 and accompanying text.

¹⁶ See *infra* notes 90–118 and accompanying text.

¹⁷ See *infra* notes 174–92 and accompanying text.

¹⁸ See *infra* notes 174–92 and accompanying text.

¹⁹ See *infra* notes 193–218 and accompanying text.

²⁰ See *infra* notes 193–218 and accompanying text.

²¹ Anne MacKinnon & Kate Fox, *Demanding Beneficial Use: Opportunities and Obligations for Wyoming Regulators in Coalbed Methane*, 6 WYO. L. REV. 369, 370 (2006).

²² Sharon Buccino & Steve Jones, *Controlling Water Pollution From Coalbed Methane Drilling: An Analysis of Discharge Permit Requirements*, 4 WYO. L. REV. 559, 562–63 (2004). In 2005 alone, the Powder River Basin wells produced 72,000 acre-feet of water—an amount equal to a five-year supply of water for the city of Cheyenne; this amount is expected to double by 2014. Kate Fox, *The Problem of Water as Waste*, 2008 No. 1 ROCKY MTN. MIN. L. INST. Paper 16, 1 (2008). Use of saline water in large quantities on crop or grazing land can adversely affect clay-based soils such as those in the Powder River Basin by altering the soil's water absorption rate and ability to drain, thereby compromising crop growth and yield. JAN M.H. HENDRICKX & BRUCE A. BUCHANAN, EXPERT SCIENTIFIC OPINION ON THE TIER-2 METHODOLOGY: REPORT TO THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY 3–11 (2009), available at http://deq.state.wy.us/out/downloads/Final_Report_WY_DEQ_sep_21_2009.pdf.

because it is harmful to plants and certain soils in large amounts.²³ A number of options exist for handling CBM water including discharge into drainage systems, use as a municipal water supply, release directly onto the land, reinjection of the water back into deep geological formations, storage in a series of pools that rely on evaporation rather than seepage as a disposal method, or treatment to remove sodium.²⁴ Most producers in the Powder River Basin discharge CBM water into drainage systems, onto the soil as irrigation, or into unlined storage reservoirs.²⁵ Currently, CBM water is almost universally managed as a waste product of gas production; however, as a scarce resource in an arid state, it is widely argued that CBM water should be regulated and made use of as a valuable resource in and of itself.²⁶

²³ U.S. Geological Survey, U.S. Dep't of the Interior, Fact Sheet 2006-3137, *Coalbed Methane Extraction and Soil Suitability Concerns in the Powder River Basin, Montana and Wyoming*, ¶ 3 (2006), available at http://pubs.usgs.gov/fs/2006/3137/pdf/fs06-3137_508.pdf. The quality of CBM water is generally discussed in terms of total dissolved solids, sodium absorption ratio, and electrical conductivity, all of which are dependant upon the inorganic salt content of the water. THE RUCKELSHAUS INST. OF ENV'T & NATURAL RES., WATER PRODUCTION FROM COALBED METHANE DEVELOPMENT IN WYOMING: A SUMMARY OF QUANTITY, QUALITY AND MANAGEMENT OPTIONS 17 (Univ. of Wyo. 2005) [hereinafter RUCKELSHAUS REPORT]. The quality of water extracted in CBM production generally deteriorates the deeper the wells are drilled. Samuel S. Bacon, Comment, *Why Waste Water? A Bifurcated Proposal for Managing, Utilizing, and Profiting From Coalbed Methane Discharged Water*, 80 U. COLO. L. REV. 571, 577 (2009). The Powder River Basin's coal seams tend to be shallow, thus the extracted water is of relatively high quality. *Id.* at 579. While this water can be used for domestic uses and stock watering, it nevertheless poses significant risks to plants and crops in large quantities, making it unsuitable for irrigation unless it is properly managed. *Id.* at 577-78; HENDRICKX & BUCHANAN, *supra* note 22, at 20.

²⁴ Bacon, *supra* note 23, at 576-77.

²⁵ Buccino & Jones, *supra* note 22, at 570-71; RUCKELSHAUS REPORT, *supra* note 23, at vii. Storage reservoirs are designed to be permeable, allowing CBM water to migrate back to the water table; however, the water seeping out of such reservoirs generally ends up in a higher water table with better quality water than that from which it was originally pulled, impacting the quality of the higher water table. See Buccino & Jones, *supra* note 22, at 571. Additionally, these reservoirs often double as stock watering ponds (in fact, their potential as stock watering ponds has led to the current lack of an adjudication step in the permitting process for such reservoirs). *Id.*; see also *infra* note 35 and accompanying text.

²⁶ Colby Barrett, *Fitting a Square Peg in a Round (Drill) Hole: The Evolving Legal Treatment of Coalbed Methane-Produced Water in the Intermountain West*, 38 *Envtl. L. Rep.: News & Analysis* (Envtl. Law Inst.) 10,661, 10,662 (2008); Thomas F. Darin, *Waste or Wasted?—Rethinking the Regulation of Coalbed Methane Byproduct Water in the Rocky Mountains; A Comparative Analysis of Approaches to Coalbed Methane Produced Water Quantity Legal Issues in Utah, New Mexico, Colorado, Montana and Wyoming*, 17 *J. ENVTL. L. & LITIG.* 281, 288-89, 341 (2002); Bacon, *supra* note 23, at 571-73; RUCKELSHAUS REPORT, *supra* note 23, at 42-54. See generally Neal Joseph Valorz, Comment, *The Need for Codification of Wyoming's Coal Bed Methane Produced Groundwater Laws*, 10 *WYO. L. REV.* 115 (2010).

Current Regulatory Structures for CBM Water

In Wyoming, CBM production is regulated by three state agencies: the Wyoming Oil and Gas Conservation Commission (WOGCC), the Department of Environmental Quality (DEQ), and the State Engineer's Office (State Engineer).²⁷ Responsibility lies with the WOGCC to permit "oil and gas well construction, well spacing and density, and bonding and reclamation."²⁸ DEQ regulates the quality of extracted CBM water according to the Clean Water Act (CWA) which establishes minimum federal water quality standards and allows individual states to further regulate, control, and enforce more stringent requirements.²⁹ DEQ issues permits for CBM water as a point-source pollutant subject to the Wyoming Pollutant Discharge Elimination System (WYPDES).³⁰

The State Engineer is responsible for managing the quantity of produced CBM water.³¹ The State Engineer categorizes CBM water as a type of groundwater.³² As such, it falls under the State's prior appropriation system, which allows the appropriation of groundwater if it is being stored or diverted for a beneficial use in the public interest.³³ The State Engineer has determined the production of CBM

²⁷ RUCKELSHAUS REPORT, *supra* note 23, at 33–35 (including additional information on the regulatory and permitting process in Wyoming). Local environmental groups, as well as the federal Environmental Protection Agency, consider Wyoming's current regulatory scheme insufficient. Robert J. Duffy, *Political Mobilization, Venue Change, and the Coal Bed Methane Conflict in Montana and Wyoming*, 45 NAT. RESOURCES J. 409, 434–35 (2005). This has not gone unnoticed: the Wyoming legislature formed the Wyoming Coal Bed Natural Gas Water Management Task Force. Wyoming CBM Water Management Task Force, Final Recommendations, Power Point, <http://governor.wy.gov/Media.aspx?MediaId=214> (last visited Nov. 24, 2009). The Governor's office asked the University of Wyoming to address a series of CBM-related questions. RUCKELSHAUS REPORT, *supra* note 23, at 4. And the Environmental Quality Council (EQC), the rulemaking body of DEQ, has worked towards adopting a rule embodying standards regarding water quality and discharge quantity. Letter from John V. Cora, Director of DEQ, to Dennis Boal, Chairman of EQC (Sept. 23, 2009), *available at* <http://deq.state.wy.us/out/downloads/cbmletter9.23.09.pdf>. However, on September 23, 2009, DEQ withdrew the proposed rule from consideration in response to a report by two independent consultants that called into question the science behind the rule. *Id.*; *see also* HENDRICKX & BUCHANAN, *supra* note 22, at ii.

²⁸ WYO. STAT. ANN. § 30-5-104(d) (2009); RUCKELSHAUS REPORT, *supra* note 23, at 34.

²⁹ RUCKELSHAUS REPORT, *supra* note 23, at 34; Bacon, *supra* note 23, at 588. The objective of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Clean Water Act, 33 U.S.C. §§ 1251–1387 (2006).

³⁰ 33 U.S.C. §§ 1251(a), 1311(a), 1342; *see also* Bacon, *supra* note 23, at 582. In order to delegate the WYPDES program to a state, the state must establish a scheme of citizen enforcement. 33 U.S.C. § 1251(e); *see also* WYO. STAT. ANN. § 35-11-1001 (2009).

³¹ C. Stephen Herlihy, Comment, *Trading Water for Gas: Application of the Public Interest Review to Coalbed Methane Produced Water Discharge in Wyoming*, 9 WYO. L. REV. 456, 462 (2009).

³² GUIDANCE: CBM/GROUND WATER PERMITS, *supra* note 5, at 1.

³³ WYO. CONST. art. 8, § 3; WYO. STAT. ANN. § 41-3-101 (2009); *see also* GUIDANCE: CBM/GROUND WATER PERMITS, *supra* note 5, at 1.

water is a beneficial use; it therefore requires permitting.³⁴ The State Engineer is also responsible for issuing permits for CBM water put to an additional beneficial use or stored in on-channel reservoirs.³⁵

The Uniform Declaratory Judgments Act

The Uniform Declaratory Judgments Act is a legal vehicle used to determine rights, status, or other legal relationships between parties; its application is left to the discretion of the courts; its purpose is remedial; and courts should construe it liberally.³⁶ For a court to have jurisdiction over a declaratory judgment action, a justiciable controversy must exist.³⁷ While courts have tremendous discretion in exercising their jurisdictional parameters, it is the court's responsibility, as well as the underlying logic behind stare decisis, that it make such decisions with an eye towards precedent, as well as towards the future implications of its current rulings.³⁸ A court's finding of whether a justiciable controversy exists is a threshold

³⁴ WYO. STAT. ANN. § 41-3-931 (2009).

³⁵ GUIDANCE: CBM/GROUND WATER PERMITS, *supra* note 5, at 2; PERMITTING REQUIREMENTS ASSOCIATED WITH OFF-CHANNEL CONTAINMENT PITS, *supra* note 5, at 2. Unlike with traditional water rights, there is no adjudication process required for CBM water production or its storage in reservoirs. WYO. STAT. ANN. § 41-3-935(b) (2009).

³⁶ Uniform Declaratory Judgments Act, WYO. STAT. ANN. §§ 1-37-101, -103, -114 (2009); *Barber v. City of Douglas*, 931 P.2d 948, 951 (Wyo. 1997) (“To accomplish its purpose, the Uniform Declaratory Judgments Act is to be ‘liberally construed and administered.’” (quoting *Brimmer v. Thomson*, 521 P.2d 574, 577 (Wyo. 1974)); *Reiman Corp. v. City of Cheyenne*, 838 P.2d 1182, 1185 (Wyo. 1992) (“As a measure of preventive justice, the declaratory judgment . . . is designed to enable parties to ascertain and establish their legal relations”); *Brimmer*, 521 P.2d at 577 (“Begrudging availability of the declaratory vehicle is inconsistent with the Act’s expressed remedial tenor directed to the elimination of uncertainty and insecurity and the settlement of controversy.”).

³⁷ *Washakie County Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 316 (Wyo. 1980); *Cranston v. Thomson*, 530 P.2d 726, 728–29 (Wyo. 1975).

³⁸ 22A AM. JUR. 2D *Declaratory Judgments* § 15 (2009) [hereinafter *Declaratory Judgments*]. According to *American Jurisprudence, Second Edition*:

The grant or denial of relief in a declaratory judgment action is a matter within the discretion of the trial court. This discretion entrusted to the courts must be exercised judicially and cautiously, with due regard to all the circumstances of the case. Discretion must not be arbitrary, but based on good reason and calculated to serve the purposes for which the legislation was enacted—namely, to afford relief from uncertainty and insecurity.

. . . However, the discretion of the court with regard to declaratory relief is not unlimited, and where a complaint sets forth facts and circumstances showing that a declaratory judgment is entirely appropriate, the court may not properly refuse to assume jurisdiction.

Id.; see also *Mem'l Hosp. of Laramie County v. Dep't of Revenue & Taxation*, 770 P.2d 223, 226 (Wyo. 1989) (“Declaratory relief should be liberally administered if the elements of a justiciable controversy exist to give the trial court jurisdiction.”). Commenter Ann M. Rochelle notes, “What constitutes a justiciable controversy will not always be clear. In the past, the Wyoming Supreme Court has involved itself in the splitting of hairs when it comes to distinguishing a *justiciable*

determination that includes a multiplicity of doctrines.³⁹ Of these, the doctrines of ripeness and standing deserve some attention.

Courts use the doctrine of ripeness to avoid premature adjudication.⁴⁰ For a controversy to be considered ripe, it is generally necessary for the litigant to exhaust administrative remedies before bringing the case to court.⁴¹ Although the existence of an alternative remedy does not always bar a plaintiff from seeking a declaratory judgment, some courts will refrain from entertaining an action if alternate remedies have not been exhausted.⁴² In Wyoming, courts base their decision about whether alternate remedies must be exhausted on the type of claim at issue.⁴³

To establish standing in Wyoming, a party must demonstrate it is sufficiently affected by the issue at hand, thereby ensuring the controversy presented to the court is justiciable and the court has jurisdiction over the matter.⁴⁴ The standing doctrine requires the parties to have a tangible interest at stake that directly affects them rather than one which is abstract or hypothetical.⁴⁵ Wyoming case law

controversy from a *nonjusticiable* one.” Comment, *Wyoming’s Uniform Declaratory Judgments Act: Statutory and Case Law Analysis*, 16 LAND & WATER L. REV. 243, 267 (1981). According to *Black’s Law Dictionary*, *stare decisis* is “[t]he doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation.” 1537 (9th ed. 2009).

³⁹ *Reiman*, 838 P.2d at 1186 (“The doctrines include the political question doctrine, the administrative questions doctrine, the advisory opinions doctrine, the feigned and collusive cases doctrine, the doctrine of standing, the doctrine of ripeness, and the doctrine of mootness.”); *W. Texas Utils. Co. v. Exxon Coal USA, Inc.*, 807 P.2d 932, 938 (Wyo. 1991); *Anderson v. Wyo. Dev. Co.*, 154 P.2d 318, 337–38 (Wyo. 1944).

⁴⁰ *BHP Petroleum Co. v. State*, 766 P.2d 1162, 1164 (Wyo. 1989).

⁴¹ 2 AM. JUR. 2D *Administrative Law* § 474 (2003); *see also* *Rissler & McMurry Co. v. State*, 917 P.2d 1157, 1162–63 (Wyo. 1996); *Seckman v. Wyo-Ben, Inc.*, 783 P.2d 161, 170 (Wyo. 1989); *BHP Petroleum*, 766 P.2d at 1164.

⁴² *Declaratory Judgments*, *supra* note 38, at § 50.

⁴³ WYO. R. CIV. P. 57 (“The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.”); *see also, e.g.*, *Bonnie M. Quinn Revocable Trust v. SRW, Inc.*, 91 P.3d 146, 151–52 (Wyo. 2004) (holding that because the landowners had not exhausted administrative remedies in challenging the CBM producer’s right to drill exploratory wells on land zoned for agricultural purposes, judicial relief was not available); *Rocky Mtn. Oil & Gas Ass’n v. State*, 645 P.2d 1163, 1167–68 (Wyo. 1982) (stating in Wyoming the availability of an alternate remedy will not alone preclude declaratory judgment relief); *infra* notes 82–89 and accompanying text.

⁴⁴ *Jolley v. State Loan & Inv. Bd.*, 38 P.3d 1073, 1076 (Wyo. 2002); *see also* *Mem’l Hosp.*, 770 P.2d at 226; *Washakie County*, 606 P.2d at 316–17.

⁴⁵ *Washakie County*, 606 P.2d at 317. According to the Wyoming Supreme Court:

Standing is a concept used to determine whether a party is sufficiently affected to insure that a justiciable controversy is presented to the court. It is a necessary and useful tool to be used by courts in ferreting out those cases which ask the

urges courts to liberally interpret the requirements for standing in a declaratory judgment action; nevertheless, parties must present a justiciable controversy.⁴⁶ The Wyoming Supreme Court, however, has recognized an exception which states that if a great public interest is implicated in a case in which elements of a justiciable controversy are lacking, the existence of a great public interest can stand in as the legal equivalent of a justiciable controversy.⁴⁷ Regarding a court's jurisdictional discretion, Professor Robert B. Keiter has characterized the standing doctrine as "a highly abstract jurisdictional concept that the court periodically invokes to avoid reaching the merits of cases otherwise properly before it."⁴⁸

In order to better understand Wyoming's standing doctrine, a brief discussion of its relationship to federal standing requirements is warranted. Article III standing under the U.S. Constitution is predicated upon the "case or controversy" requirement.⁴⁹ Lacking a similar restriction, the Wyoming Constitution instead gives the Wyoming Supreme Court jurisdiction over all "civil and criminal causes," thereby allowing a wider jurisdiction than that accorded in federal courts.⁵⁰ Furthermore, most notably in cases where the Wyoming Supreme Court invoked the public interest exception, the court has found a justiciable controversy in cases that would not have met the federal standards.⁵¹ Indeed, the Wyoming legislature mandates that the Uniform Declaratory Judgments Act "is to be liberally construed

courts to render advisory opinions or decide an artificial or academic controversy without there being a palpable injury to be remedied. However, it is not a rigid or dogmatic rule but one that must be applied with some view to realities as well as practicalities. Standing should not be construed narrowly or restrictively.

Id. (citations omitted); *see also* Cox v. City of Cheyenne, 79 P.3d 500, 505 (Wyo. 2003); *Jolley*, 38 P.3d at 1076; *Barber*, 931 P.2d at 951; *Declaratory Judgments*, *supra* note 38, § 21.

⁴⁶ *Barber*, 931 P.2d at 951; *Rocky Mtn.*, 645 P.2d at 1167–68; *Washakie County*, 606 P.2d at 317.

⁴⁷ *Brimmer*, 521 P.2d at 578.

⁴⁸ Robert B. Keiter, *An Essay on Wyoming Constitutional Interpretation*, 21 LAND & WATER L. REV. 527, 528 (1986).

⁴⁹ U.S. CONST. art. III, § 2, cl. 1; Keiter, *supra* note 48, at 529. The United States Supreme Court elaborated upon the "case or controversy" requirement in *Lujan v. Defenders of Wildlife*: "Article III requires, as an irreducible minimum, that a plaintiff allege (1) an injury that is (2) 'fairly traceable to the defendant's allegedly unlawful conduct' and that is (3) 'likely to be redressed by the requested relief.'" 504 U.S. 555, 590 (1992) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

⁵⁰ WYO. CONST. art. 5, § 2; Keiter, *supra* note 48, at 529, 533–34. Keiter argues there is enough of a difference between the state and federal judicial systems to justify the State's rejection of the narrow constraints of the federal standing doctrine. Keiter, *supra* note 48, at 533–34.

⁵¹ Keiter, *supra* note 48, at 534. *Compare* *Eastwood v. Wyo. Highway Dep't.*, 301 P.2d 818, 819 (Wyo. 1956) (finding the plaintiff had standing under the public interest exception even though the issue was moot), *with* *Defunis v. Odegaard*, 416 U.S. 312, 316 (1974) (finding because the issue was moot the plaintiff did not have standing).

and administered.”⁵² Thus, the legislature’s provisions and the court’s recognition of the public interest exception justify a liberal invocation of jurisdiction.⁵³

The Brimmer Test

In assessing whether a Wyoming court has jurisdiction over an issue, courts use a four-prong test first articulated in *Brimmer v. Thomson*.⁵⁴ According to *Brimmer*, (1) the parties must have genuine rights at issue; (2) their controversy must be redressable by the court; (3) the judgment must have the effect of a final judgment on the rights or, in the absence of these qualities, encompass a great public interest and thereby stand in for the legal equivalent of all of them; and (4) the issue must engender adversity.⁵⁵ The *Brimmer* test encompasses the doctrines of standing, ripeness, and mootness.⁵⁶ It is relevant to note Wyoming case law regarding justiciability reveals that, absent a matter of great public interest implicating the third *Brimmer* element, litigants widely contest the first two elements, while the fourth has received relatively little attention.⁵⁷

The First Brimmer Element

The first *Brimmer* element requires the parties to “have existing and genuine, as distinguished from theoretical, rights or interests” at stake.⁵⁸ In *Office of State Lands & Investments v. Merbanco, Inc.*, the plaintiffs filed a declaratory judgment action claiming the Board of Land Commissioners’ consideration of

⁵² WYO. STAT. ANN. § 1-37-114; see also Rochelle, *supra* note 38, at 243.

⁵³ Keiter, *supra* note 48, at 537; see, e.g., *Washakie County*, 606 P.2d at 318; *Brimmer*, 521 P.2d at 574.

⁵⁴ 521 P.2d at 578; see *Cox*, 79 P.3d at 505 (quoting *Reiman*, 838 P.2d at 1186). This test is originally from a Washington State case *Sorenson v. City of Bellingham*, 496 P.2d 512, 517 (Wash. 1972).

⁵⁵ 521 P.2d at 578.

⁵⁶ *Barber*, 931 P.2d at 951 (“The jurisprudential principles underlying the standing, ripeness, and mootness doctrines are embodied in the definition of a justiciable controversy adopted in *Brimmer*.”). The *Brimmer* elements and the doctrines they encompass tend to overlap, making it difficult to discuss the requirements and boundaries of one element without implicating another. Rochelle, *supra* note 38, at 252.

⁵⁷ See, e.g., *Wilson v. Bd. of County Comm’rs*, 153 P.3d 917, 926 (Wyo. 2007) (finding while the plaintiffs had a “tangible interest” in the controversy when they received approval of their subdivision, they lost it by not asserting their complaint regarding required open space when their plan was initially approved, thereby failing to meet *Brimmer* elements one and two); *Office of State Lands & Invs. v. Merbanco, Inc.*, 70 P.3d 241, 248–49 (Wyo. 2003) (finding while a non-profit, a county resident, and his children had standing to challenge the State’s obligation to sell public school land at auction, a corporation did not because it did not have a legally recognizable right to bid on the property, therefore failing to satisfy *Brimmer* element one); *Dep’t of Revenue & Taxation v. Pacificorp*, 872 P.2d 1163, 1168–69 (Wyo. 1994) (ruling no tangible and legally protected interest existed because the taxpayers only claimed they *might* apply for the contested exemption for uncapitalized property, thereby failing to meet *Brimmer* element one).

⁵⁸ *Brimmer*, 521 P.2d at 578; *Cox*, 79 P.3d at 505 (quoting *Reiman*, 838 P.2d at 1186).

an exchange of public school land for private land without a public auction was unconstitutional.⁵⁹ When the plaintiffs filed the action, the Board had yet to decide whether to forgo a public auction.⁶⁰ Nevertheless, the Wyoming Supreme Court found some of the plaintiffs had genuine rights at issue.⁶¹

Conversely, in *White v. Board of Land Commissioners*, the Board requested a declaratory judgment on their own ruling that a lessee did not have a preferential right to meet the highest bid in a public land auction.⁶² The Wyoming Supreme Court found no justiciable controversy existed because the Whites' rights were only theoretical.⁶³ The auction had not yet taken place, and the Board's letter indicated an *intent* to deny the Whites' right at the auction—a future, rather than existing, denial of a right.⁶⁴ Most importantly, the Whites had not yet tried to exercise their right nor was it ensured they would.⁶⁵

Notably, in *Merbanco*, as opposed to *White*, while the damage had not yet occurred, the court found the first *Brimmer* element satisfied because the litigants' rights—the county resident and his school-age children were stakeholders and beneficiaries of funds generated by state school lands—were genuinely at issue whether the auction occurred or not.⁶⁶ Even if the Board denied the Whites the

⁵⁹ 70 P.3d at 244–45.

⁶⁰ *Id.* at 246.

⁶¹ *See id.*

⁶² 595 P.2d 76, 77 (Wyo. 1979).

⁶³ *Id.* at 79–80; *see also, e.g., Pacificorp*, 872 P.2d at 1168–69 (holding no tangible and legally protected interest existed because the taxpayers only claimed they *might* apply for the contested exemption for uncapitalized property); *Mtn. W. Farm Bureau Mut. Ins. Co. v. Hallmark Ins. Co.*, 561 P.2d 706, 711–12 (Wyo. 1977) (finding because the plaintiff did not make the insurance policy at issue a part of the record, their rights were only theoretical and therefore the controversy was not justiciable); *Budd v. Bishop*, 543 P.2d 368, 372–73 (Wyo. 1975) (finding a water rights owner did not have standing to challenge the State's administration of the surplus water statute on behalf of other water rights holders when he himself could not show an injury).

⁶⁴ *White*, 595 P.2d at 79–80.

⁶⁵ *Id.* at 80 (“It is altogether possible that the bid might be in excess of what the appellants believe to be the value of the land, it might be beyond their resources, or they might simply lose interest in buying this land.”).

⁶⁶ *Merbanco*, 70 P.3d at 248. Regarding the use of a declaratory judgment action in situations where the harm has not yet occurred but is almost certain to occur:

The Uniform Declaratory Judgments Act dispelled the myth that the judicial arm of government could be extended only to redress prior wrongdoings (corrective justice). The Act is founded upon the premise that society is disturbed not only when legal rights are violated, but also when they are placed in serious doubt or uncertainty. Consequently, the Act establishes a procedural vehicle whereby litigants may approach the court for a declaration of their “rights, status, and other legal relations whether or not further relief is or could be claimed” (preventative or corrective justice).

Reiman, 838 P.2d at 1185 (citations omitted).

opportunity to meet the highest bid, it was not certain their rights would have been genuinely at issue because they might not have availed themselves of the opportunity to meet the highest bid.⁶⁷ Thus, the Whites' theoretical rights did not satisfy the first *Brimmer* element while the *Merbanco* plaintiffs' did.⁶⁸

The Second Brimmer Element

The *Brimmer* test states, "The controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument evoking a purely political, administrative, philosophical or academic conclusion."⁶⁹ In *Reiman Corp. v. City of Cheyenne*, the Wyoming Supreme Court clarified "effectively operate."⁷⁰ Reiman sought to rescind a mistaken bid for a city project; after the city accepted Reiman's mistaken bid as the low bid, Reiman filed a declaratory judgment action seeking to either withdraw or reformulate the bid.⁷¹ Subsequent to the filing, the city and Reiman agreed that if Reiman prevailed, the city would pay the higher bid price, and if the city prevailed, it would pay the lower amount.⁷² The district court held the issue was moot based on the parties' agreement; the Wyoming Supreme Court reversed, stating, "[E]ffectively operate' means only that a court's decision must have *some practical effect* upon the litigants, i.e., a court may not issue a purely advisory opinion."⁷³ In *Reiman*, the practical effect was that the ruling would determine which price the city paid.⁷⁴

The second *Brimmer* element was also implicated in both *White* and *Merbanco*. In *White*, the Board effectively asked for an advisory opinion regarding the Board's own ruling; however, because the Whites' rights might never become an issue, the court's opinion would have been academic.⁷⁵ In *Merbanco*, the court held the county resident and his children had standing as stakeholders in the educational system.⁷⁶ However, the court noted while revenues from school lands are devoted to the support of education, they provide a relatively small portion of overall public school funding.⁷⁷ Furthermore, the plaintiffs did not show how

⁶⁷ *White*, 595 P.2d at 79–80.

⁶⁸ *Id.*; *Merbanco*, 70 P.3d at 248.

⁶⁹ *Brimmer*, 521 P.2d at 578; *Cox*, 79 P.3d at 505 (quoting *Reiman*, 838 P.2d at 1186).

⁷⁰ 838 P.2d at 1187.

⁷¹ *Id.* at 1184–85.

⁷² *Id.*

⁷³ *Id.* at 1187 (emphasis added); see also *Beatty v. C.B. & Q.R. Co.*, 52 P.2d 404, 409 (Wyo. 1935); *Holly Sugar Corp. v. Fritzler*, 296 P. 206, 210 (Wyo. 1931).

⁷⁴ 838 P.2d at 1187.

⁷⁵ 595 P.2d at 79–80; see *supra* notes 62–68 and accompanying text.

⁷⁶ 70 P.3d at 248; see also *Washakie County*, 606 P.2d at 316 (finding the plaintiffs had standing even though they did not specifically cite the statutes causing their harm but referred to a "system" of financing public education); *supra* notes 58–61, 66–68 and accompanying text.

⁷⁷ *Merbanco*, 70 P.3d at 248.

a lack of increase in interest from the permanent school fund—where proceeds from a public action would be deposited—would negatively impact the public schools.⁷⁸ Additionally, an exchange of school lands must be undertaken on a value-for-value basis, and the court stated, “[I]t seems unlikely that an exchange of lands would negatively impact the funds available for the support of education in any significant amount.”⁷⁹ Nevertheless, the court found the county resident and his children met the second *Brimmer* element.⁸⁰ While the underlying goal of the second *Brimmer* element is that the court expend its resources only on issues adjudication can actually resolve, the distinction can be a narrow one.⁸¹

The second *Brimmer* element also encompasses the administrative remedies consideration. The Wyoming Supreme Court first articulated this consideration in *Anderson v. Wyoming Development Co.*⁸² Individual water users sued a private development company, arguing they had proportionate rights to stored water that the permit-holding company refused to recognize.⁸³ In this opinion the court stated, “[A] declaratory judgment will not be entertained where another equally serviceable remedy has been provided for the character of case in hand.”⁸⁴ Almost twenty-five years later, the court heard *Rocky Mountain Oil & Gas Association v. State*, in which the plaintiffs sought a declaratory judgment action invalidating the rules promulgated by the Environmental Quality Council (EQC) to regulate water produced by oil and gas companies.⁸⁵ The court reiterated its *Anderson* finding but then went on to reject it:

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* In coming to its conclusion, the court relied on reasoning in *Branson School Dist. RE-82 v. Romer*, 958 F. Supp. 1501, 1509–11 (D. Colo. 1997) (finding the plaintiff school district and public school students had standing even though the state legislature would likely make up any shortfall from a decline in revenue caused by the challenged amendment, thereby negating the plaintiffs’ injury), *aff’d*, 161 F.3d 619, 631 (10th Cir. 1998) (declining to address whether plaintiffs had standing based on a potential lack of revenue change but finding injury-in-fact in that the trustees managed the lands not solely in the interest of supporting the public schools but taking environmental and aesthetic considerations into their management strategy). *Merbanco*, 70 P.3d at 248; *see infra* notes 90–118 and accompanying text (discussing the public interest exception).

⁸¹ *See* *Hirschfield v. Bd. of County Comm’rs*, 944 P.2d 1139, 1143 (Wyo. 1997); *Brimmer*, 521 P.2d at 578. In *Rocky Mtn.*, while the majority opinion of the Wyoming Supreme Court held the plaintiffs presented a justiciable controversy, the opinion itself does not reflect a discussion of the *Brimmer* elements. *See* 645 P.2d at 1168. In his dissent, however, Justice Rose pointed out he failed to find where the plaintiffs had identified an application or probable future application of a rule that would lead to an impingement of the plaintiffs’ rights resulting in a controversy the court’s decision would redress. *Id.* at 1174 (Rose, J., dissenting).

⁸² 154 P.2d at 348.

⁸³ *Id.* at 347–48.

⁸⁴ *Id.* at 348; *see also* *Humane Soc’y v. Port*, 404 P.2d 834, 835–36 (Wyo. 1965).

⁸⁵ 645 P.2d at 1164.

In Wyoming, the existence of another adequate remedy will not, of itself, preclude declaratory judgment relief. We cannot relegate such relief to the position of an extraordinary, as opposed to an optional, remedy.

Of course, there must be a justiciable controversy, and the procedure cannot be used to secure an advisory opinion in a matter in which there is no justiciable controversy.⁸⁶

Furthermore, the *Rocky Mountain* court opined if the requested relief concerned the validity of an agency regulation or the constitutionality of a statute granting agency action, the court should hear the issue without requiring the exhaustion of alternate remedies.⁸⁷ As a result, the *Rocky Mountain* court found it within the scope of the Declaratory Judgments Act to clarify whether the EQC had the power to create rules and regulations controlling industrial waste, including water produced by oil and gas companies.⁸⁸ The court has subsequently applied the *Rocky Mountain* parameters.⁸⁹

The Third Brimmer Element & The Public Interest Exception

The *Brimmer* court stated the controversy must be one in which the court's decision will have the effect of a final judgment regarding the law or a legal relationship, or "wanting these qualities to be of such great and overriding

⁸⁶ *Id.* at 1167–68 (commenting on WYO. R. CIV. P. 57 which states, "The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.").

⁸⁷ *Id.* at 1168; see also *Hirschfeld*, 944 P.2d at 1142.

⁸⁸ 645 P.2d at 1169. In his dissent, however, Justice Thomas (joined by Justice Rose) stated that a declaratory judgment should not have been available in this case because they did not exhaust their administrative remedies, namely rulemaking proceedings according to Wyoming Statute § 9-4-106. *Id.* at 1175 (Rose & Thomas, JJ., dissenting). Both Justice Rose and Justice Thomas questioned the court's finding of a justiciable controversy, arguing the plaintiffs' rights were not sure to be affected, nor was any action by the court sure to have any impact on the plaintiffs. *Id.* at 1174; see also *infra* notes 183–89 and accompanying text (discussing the dissenting opinions). But see *Goedert ex rel. Wolfe v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 991 P.2d 1225, 1228 (Wyo. 1999) (explaining the plaintiffs had the option of requesting rulemaking or instituting a declaratory judgment action).

⁸⁹ See, e.g., *Dep't of Revenue v. Exxon Mobil Corp.*, 150 P.3d 1216, 1221–23 (Wyo. 2007) (holding Exxon was not required to exhaust administrative remedies because it challenged the authority of the Board, not the results of the Board's valuation method); *Bonnie M. Quinn*, 91 P.3d at 149 (holding the Trusts did not have standing to challenge a CBM operator's lack of a conditional use permit because they had not sought relief with the board administering the zoning resolution and their complaint did not challenge the board's authority to act); *Mem'l Hosp.*, 770 P.2d at 225–26 (holding administrative remedies need not be exhausted because the hospital's complaint questioned the constitutionality of statutory interpretation).

public moment as to constitute the legal equivalent of all of them.”⁹⁰ Further articulating the public interest exception, the *Brimmer* court stated, “[T]here is a well recognized exception that the rule requiring the existence of justiciable controversies is not followed or is relaxed in matters of great public interest or importance.”⁹¹ The third *Brimmer* element clearly states that if a matter of great public interest is implicated in a case, it can stand in for the legal equivalent of a justiciable controversy.⁹² Nevertheless, the exception must be employed with caution.⁹³

A year after *Brimmer*, the court stated in *Cranston v. Thomson* that in the absence of the other *Brimmer* elements, an overriding public interest alone was not enough to assert justiciability.⁹⁴ However, the *Brimmer* version of the public interest exception prevailed in several subsequent cases.⁹⁵ Fifteen years after *Brimmer*, in *Memorial Hospital v. Department of Revenue & Taxation*, the court extended the exception from “a relaxation of the requirement for a justiciable controversy to a *justification* for standing,” stating:

Declaratory relief should be liberally administered if the elements of a justiciable controversy exist to give the trial court jurisdiction. For that controversy to exist, a genuine right or interest must be at issue between adversarial parties, and the trial court must be able to make an effective judgment which will finally determine the rights of the parties. Even these prerequisites, however, may properly be avoided or relaxed when matters of great public interest or importance are presented to the trial court.⁹⁶

⁹⁰ 521 P.2d at 578.

⁹¹ *Id.* Wyoming is not the only jurisdiction to recognize the public interest exception. *See, e.g.,* *Godfrey v. State*, 752 N.W.2d 413, 425 (Iowa 2008) (“We believe our doctrine of standing in Iowa is not so rigid that an exception to the injury requirement could not be recognized for citizens who seek to resolve certain questions of great public importance and interest in our system of government.”); *Berberian v. Trivisono*, 332 A.2d 121, 124 (R.I. 1975) (“[E]xcept for a relatively few instances when compelling public interest makes for an exception to the rule, and actual justiciable controversy . . . is basic to the court’s jurisdiction.”); *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 492 P.2d 1012, 1014 (Wash. 1972) (“Where the question is one of great public interest and has been brought to the court’s attention . . . the court may exercise its discretion and render a declaratory judgment to resolve a question of constitutional interpretation.”).

⁹² *Brimmer*, 521 P.2d at 578.

⁹³ *Id.*

⁹⁴ 530 P.2d at 729.

⁹⁵ *See, e.g., Mem'l Hosp.*, 770 P.2d at 226 (holding that, notwithstanding that the hospital had filed an administrative petition for review, a declaratory judgment action alleging the hospital’s tax-exempt status precluded tax assessed on property purchased for its own use was available because the hospital’s complaint questioned the constitutionality of statutory interpretation); *Washakie County*, 606 P.2d at 318.

⁹⁶ 770 P.2d at 226 (citations omitted) (emphasis added); *cf. Jolley*, 38 P.3d at 1077 (holding a plaintiff challenging a change in the schedule of public meetings did not meet the justiciability

Nine years later, in *Management Council of the Wyoming Legislature v. Geringer*, the court considered whether the Management Council had standing to challenge the Governor's exercise of partial veto power under Article 4, § 9 of the Wyoming Constitution.⁹⁷ The court entirely dispensed with applying the *Brimmer* test, stating the issue was one of great public importance, and therefore the court recognized the standing of the Council to bring a declaratory judgment action.⁹⁸

Following *Brimmer*, the Wyoming Supreme Court relaxed or dispensed with analyzing requirements for a justiciable controversy in situations of educational funding, the apportionment of state revenues, the constitutionality of the Wyoming Professional Review Panel Act, gubernatorial powers under the Wyoming Constitution, and the constitutionality of a preferential right to renew public land leases.⁹⁹ Generally, these matters involved the constitutionality of a statute or act.¹⁰⁰ The court clarified this distinction in *Jolley v. State Loan & Investment Board* by declining to expand the exception to "encompass alleged violations of an agency's rules and regulations that do not directly implicate the constitutionality of legislation or an agency's actions or inactions."¹⁰¹

Oftentimes, after determining the issue was of great public interest, the court dispensed with applying the *Brimmer* test, finding the existence of a great public interest gave the court jurisdiction over the matter.¹⁰² In other cases invoking the public interest exception, the court discussed the *Brimmer* test and stated the

requirements, and those requirements would not be relaxed because the issue was *not* one of great public importance).

⁹⁷ 953 P.2d 839, 840–42 (Wyo. 1998).

⁹⁸ *Id.* at 842.

⁹⁹ *See id.* (Governor's partial veto power); *Bd. of County Comm'rs v. Laramie County Sch. Dist. No. One*, 884 P.2d 946, 950 (Wyo. 1994) (accumulated interest from school district funds); *Wyo. Ass'n of Consulting Eng'rs & Land Surveyors v. Sullivan*, 798 P.2d 826, 828–29 (Wyo. 1990) (Wyoming Professional Review Panel Act); *Mem'l Hosp.*, 770 P.2d at 227 (hospital's tax exempt status); *Washakie County*, 606 P.2d at 318 (educational funding).

¹⁰⁰ *E.g.*, *Washakie County*, 606 P.2d at 318; *cf. Jolley*, 38 P.3d at 1078–79.

¹⁰¹ 38 P.3d at 1078–79.

¹⁰² *E.g.*, *Geringer*, 953 P.2d at 842 (following no discussion of the *Brimmer* test, the court recognized jurisdiction over the plaintiffs because the issue was of great public importance); *Laramie County Sch. Dist. No. One*, 884 P.2d at 950 (following no mention of the *Brimmer* test, the court stated the School District asserted a justiciable controversy because the issue was of great public importance); *Sullivan*, 798 P.2d at 829 ("Without deciding whether Petitioners have standing . . . , we hold that the issue of whether the Wyoming Professional Review Panel Act is constitutional is of great public importance and, therefore, merits a decision from this Court."); *Sullivan*, 798 P.2d at 831 (Golden, J., specially concurring) ("I would also prefer that this court identify, explore, and try to resolve certain concerns about 'affected party' principles and standing doctrine in Wyoming jurisprudence. This appeal presents a unique opportunity for such an analysis, but we do not seize it.") (citations omitted).

plaintiffs met all four elements.¹⁰³ A number of these cases are worth a close look because the court's application of the *Brimmer* elements allowed wide latitude regarding the manner in which the plaintiffs met the elements.¹⁰⁴ For example, the first *Brimmer* element was noticeably relaxed in *Washakie County School District No. One v. Herschler*, a case in which the appellants challenged Wyoming's system of financing public education.¹⁰⁵ In their briefs, the appellants asserted the unconstitutionality of "the *system* of financing public education" rather than identifying a particular statute.¹⁰⁶ The court found further specificity unnecessary because in their pleadings the appellants had shown a complete understanding of the statutes and how the statutes affected them.¹⁰⁷ Consequently, the court was willing to accept that the school district's rights to an equitable system of public education financing were existing and genuine even given the lack of specificity in pleading.¹⁰⁸

The second element of the *Brimmer* test addresses whether the judgment of the court will effectively operate on the situation at hand.¹⁰⁹ The *Washakie County* plaintiffs did not show how a new system of financing would increase the school district's funds enough to impact the quality of education.¹¹⁰ As a result, the plaintiffs' argument that their damage was redressable by the court contained several gaps the court was willing to overlook in order to assert the existence of a justiciable controversy and find the system of school financing unconstitutional.¹¹¹

Similarly, in *Office of State Lands & Investments v. Merbanco*, the court acknowledged the issue was of great public interest but only *after* concluding all elements of a justiciable controversy existed.¹¹² As discussed earlier in this note, the *Merbanco* opinion clearly stretched the envelope of connectivity between rights, injury, and resolution.¹¹³ Akin to *Merbanco*, the Wyoming Supreme Court's 2003 finding of a justiciable controversy based on the public interest exception in

¹⁰³ *E.g.*, *Merbanco*, 70 P.3d at 249; *Riedel v. Anderson*, 70 P.3d 223, 229–31 (Wyo. 2003); *Washakie County*, 606 P.2d at 318.

¹⁰⁴ The *William West Ranch* court acknowledged this leniency. 206 P.3d at 737.

¹⁰⁵ 606 P.2d at 316.

¹⁰⁶ *Id.* (emphasis added).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Brimmer*, 521 P.2d at 578; *Cox*, 79 P.3d at 505 (quoting *Reiman*, 838 P.2d at 1186).

¹¹⁰ *See* 606 P.2d at 316.

¹¹¹ *See id.*; *see also* Keiter, *supra* note 48, at 535–36.

¹¹² 70 P.3d at 249; *see also supra* notes 58–61, 66–68, 75–81 and accompanying text.

¹¹³ 70 P.3d at 249 (holding plaintiffs presented a justiciable controversy despite a lack of evidence showing how funds from a public auction, as opposed to a proposed exchange of public lands, would affect the quality of education in the district); *see also supra* notes 58–61, 66–68, 75–81 and accompanying text.

Riedel v. Anderson was liberal in its application of the *Brimmer* test.¹¹⁴ The plaintiff landowner challenged the constitutionality of the statute creating a preferential right to renew public land leases, arguing that absent a competitive bid system, the fiduciary violated its obligation to maximize revenue for the public school system.¹¹⁵ The plaintiff claimed this violation resulted in diminished school funds, which in turn translated into an injury to the public school system.¹¹⁶ The plaintiff was not a beneficiary of the public school system nor did he articulate an alternate injury; nonetheless, the court found injury “implicit in the relief he seeks, namely, that the Board be enjoined from enforcing the preferential renewal statute and that they be ordered to award the lease to him.”¹¹⁷ The court acknowledged this stretch of the justiciability requirements by invoking the “great public interest exception.”¹¹⁸

The Fourth Brimmer Element

Finally, the fourth element of the *Brimmer* test stipulates, “The proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues.”¹¹⁹ In order to have genuine adversity, the parties must have a tangible interest at stake that provokes more than mere disagreement.¹²⁰ The situation in *Pedro/Aspen, Ltd. v. Board of County Commissioners* illustrates what constitutes genuine adversity for the Wyoming Supreme Court.¹²¹ *Pedro/Aspen*, a land development corporation, brought a declaratory judgment action challenging a Natrona County zoning ordinance.¹²² The county argued that because the developer submitted an application under the ordinance “in the spirit of cooperation” before challenging its validity, it did not hold a truly adverse position.¹²³ The court, however, found adversity, citing that because the developer had withdrawn the application, the two parties’ positions were “diametrically opposed” and held the plaintiff’s attempt to meet the terms of the regulation did not preclude it from later asserting its invalidity.¹²⁴

¹¹⁴ See 70 P.3d at 230–31.

¹¹⁵ *Id.* at 230.

¹¹⁶ See *id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 231.

¹¹⁹ *Brimmer*, 521 P.2d at 578; *Cox*, 79 P.3d at 505 (quoting *Reiman*, 838 P.2d at 1186).

¹²⁰ See *Pedro/Aspen, Ltd. v. Bd. of County Comm’rs*, 94 P.3d 412, 417 (Wyo. 2004).

¹²¹ *Id.* at 413.

¹²² *Id.* at 419.

¹²³ *Id.*

¹²⁴ *Id.*

PRINCIPAL CASE

The Wests and the Turners, Powder River Basin landowners, claimed damage to their properties due to the influx of CBM water into the local water supply, leaking CBM reservoirs, and excessive CBM ground water pumping in their area.¹²⁵ In a declaratory judgment action at the district court level, the landowners challenged the constitutionality of the Wyoming State Engineer's and the Wyoming Board of Control's overall scheme in permitting CBM wells and reservoirs.¹²⁶ The district court dismissed their complaint, stating it did not present a justiciable controversy.¹²⁷ The landowners appealed this dismissal to the Wyoming Supreme Court.¹²⁸ In their argument, the Wests and the Turners called upon the public interest exception to justiciability in declaratory judgment actions, claiming the issue of groundwater drilling and disposal in an arid Western state was of great public importance.¹²⁹ The State countered by arguing the court lacked jurisdiction because the landowners failed to establish any of the four *Brimmer* elements and failed to exhaust administrative remedies.¹³⁰

¹²⁵ Brief of Appellants, *supra* note 2, at ix; Brief of Pennaco, *supra* note 4, at 2.

¹²⁶ William F. West Ranch, L.L.C. v. Tyrrell, 206 P.3d 722, 725 (Wyo. 2009). The landowners asked the district court for several additional declarations on their behalf:

1. The current permitting of CBM ground water and reservoirs violates Wyoming's statutes because it fails to quantify the amount of water put to beneficial use for CBM production.
2. The [State Engineer's] practice of permitting CBM ground water without notice and an opportunity for a hearing violates the constitutional right to due process of law under the United States and Wyoming constitutions.
3. The State cannot issue permits for CBM ground water wells and reservoirs without adopting rules pursuant to WAPA specifically addressing CBM water and defining the "public interest."
4. Placement of CBM water in reservoirs and pits for the purpose of achieving disposal of that water through evaporation, infiltration and/or flushing is not a beneficial use of water.
5. The State must evaluate and weigh the public and various interests as part of its duty to supervise Wyoming's water.
6. The State must inspect and adjudicate all CBM groundwater wells and reservoirs used to store CBM water.

Id. at 732.

¹²⁷ *Id.* at 725.

¹²⁸ *Id.*

¹²⁹ Brief of Appellants, *supra* note 2, at 6–22. The landowners alternatively argued they met all four prongs of the *Brimmer* test. *Id.* at 9.

¹³⁰ Brief of Appellees at 10–31, *William West Ranch*, 206 P.3d 722 (No. S-08-0161), 2008 WL 6559518.

The Court's Opinion

Justice Kite wrote the opinion for *William West Ranch*.¹³¹ The court focused its jurisdictional discussion on whether the plaintiff landowners established a justiciable controversy.¹³² Because Wyoming case law is well-settled regarding declaratory judgment actions, the court limited its discussion to the court's own previous holdings.¹³³ After generally defining the scope of declaratory judgment actions, the court invoked the *Brimmer* test and proceeded into a discussion of case law providing guidance in applying the four elements.¹³⁴ After noting the plaintiffs' allegations were "extensive" and "somewhat vague," the court consolidated them into four claims and applied the *Brimmer* test.¹³⁵

The court found the first *Brimmer* element, that of a tangible interest, satisfied by the plaintiffs' claim that they owned property damaged by CBM water.¹³⁶ The

¹³¹ 206 P.3d at 724. The court's decision was unanimous. *Id.*

¹³² *Id.* at 725. The district court found the landowners failed to allege a justiciable controversy but premised their holding on the fact that issues concerning the permitting and regulating of CBM water were currently being deliberated by other branches of state government. *Id.*

¹³³ *Id.* at 727 n.2. The State's briefs relied on the federal case and controversy doctrine of standing. *Id.* The court, however, rejected the federal argument and focused on Wyoming case law regarding establishing a justiciable controversy in declaratory judgment actions, stating, however, that Wyoming law is mostly consistent with federal law. *Id.* Keiter disagrees. *Supra* note 48, at 535–41.

¹³⁴ *William West Ranch*, 206 P.3d at 726–29.

¹³⁵ *Id.* at 729–36. The court summarized the plaintiffs' allegations as follows:

1. The State has violated the Wyoming Constitution by failing to consider the "public interest" and "all the various interests involved" when administering CBM water. In addition, the plaintiffs allege generally that the State has violated their right to due process. . . .

2. The State has violated Wyoming statutes in administering CBM water by failing to protect the public interest in issuing CBM permits and to determine the amount of water which may be withdrawn from groundwater wells and placed in reservoirs in accordance with the concept of beneficial use and prevention and waste. West and Turner also claim that the State has abdicated its statutory duty to adjudicate and inspect wells and reservoirs.

3. The State's actions violate the plaintiffs' due process rights. . . .

4. The State has violated the Wyoming Administrative Procedure Act (WAPA) governing agency rulemaking. Specifically, the plaintiffs claim the State has failed to promulgate rules pertaining particularly to CBM well and reservoir permitting and is, instead, unlawfully regulating by "policy" and "guidance" as evidenced by the exhibits to the complaint.

Id. at 729–30 (citations and footnotes omitted). After holding the claims were "too amorphous to be justiciable," the court laid out what the plaintiffs needed to allege to establish a justiciable controversy. *Id.* at 730–31.

¹³⁶ *Id.* at 731.

second element, however, the court found lacking, stating the plaintiffs failed to specifically show how the relief they requested—that the court find the State’s regulatory actions regarding CBM water wells and reservoirs unconstitutional and in violation of Wyoming statutes—would tangibly mitigate or prevent the property damage they suffered.¹³⁷

The court then addressed the exhaustion of administrative remedies doctrine.¹³⁸ Citing *Rocky Mountain* and *Bonnie M. Quinn*, the court stated when the substance of the issue has been delegated to a specific agency and a plaintiff challenges an agency action under its delegated authority, all available administrative remedies must be exhausted; when a plaintiff challenges an agency’s constitutional or statutory authority to act, however, administrative remedies need not be exhausted before bringing a claim.¹³⁹ Without specifically characterizing each of the *William West Ranch* landowners’ claims, by holding the landowners ought to have pursued administrative remedies before bringing their suit, the court implied they challenged the State Engineer’s and Board of Control’s actions under their delegated authority.¹⁴⁰

In addressing the Wests’ and the Turners’ invocation of the public interest exception, the court agreed the issue was one of great public interest.¹⁴¹ Summarizing precedential usage of the exception, the court characterized it as confined to instances presenting a constitutional question or issue regarding the apportionment of State funds.¹⁴² Then the court reiterated an early holding, that of *Cranston v. Thomson* in 1975, in which it stated even in cases concerning the

¹³⁷ *Id.* at 731–32. See also *supra* note 126 and accompanying text for the specific declarations the plaintiffs asked the court to make. In summing up its position, the court took its previous declaratory judgment rulings a step further by stating the plaintiffs had a “duty to allege sufficient specific facts showing that a judgment in their favor will have an immediate and real effect on them.” *William West Ranch*, 206 P.3d at 733 (emphasis added). The court noted that by “failing to challenge a particular permit, the plaintiffs have not provided a context in which a court could determine” the nature of the agency’s action. *Id.* Additionally, the court cited *Budd v. Bishop*, 543 P.2d 368, 372 (Wyo. 1975) (finding a water rights owner did not have standing to challenge the State’s administration of the surplus water statute on behalf of other water rights holders when he himself could not show any injury), stating that parties cannot ask for a declaratory judgment on behalf of other injured parties. *William West Ranch*, 206 P.3d at 733.

¹³⁸ *William West Ranch*, 206 P.3d at 735.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 735–36. The court mentioned several potentially available administrative remedies including: (1) petitioning the State Engineer to conduct rulemaking pursuant to Wyoming Statute § 16-3-106; (2) filing a well interference action pursuant to Wyoming Statute § 41-3-911; (3) petitioning the Board of Control for a determination of the amount of water a CBM producer is entitled to withdraw; and (4) petitioning the district court to review a specific agency action pursuant to Wyoming Statute § 16-3-114. *William West Ranch*, 206 P.3d at 735–36.

¹⁴¹ *William West Ranch*, 206 P.3d at 736–37.

¹⁴² *Id.* at 737.

public interest, a justiciable controversy must be at the heart of the issue for it to be heard.¹⁴³ In holding it did not have jurisdiction over the action brought by the Wests and the Turners, the court stated that while it has recognized a “more lenient definition of justiciability” in cases of great public importance, all four *Brimmer* elements must nonetheless be met to establish justiciability.¹⁴⁴

ANALYSIS

In *William F. West Ranch, L.L.C. v. Tyrrell*, the Wyoming Supreme Court asserted that to establish a justiciable controversy and invoke the court’s jurisdiction, the plaintiffs had a *duty* to specifically show how the court’s action would remedy their particular harm.¹⁴⁵ This decision narrows the footing upon which a declaratory judgment can be brought to only those plaintiffs who can unequivocally show how the declaration of a right—even one in the public interest—would directly and tangibly benefit them.¹⁴⁶ Additionally, the court’s holding that all four *Brimmer* elements must be met even in situations of great public interest negates the public interest exception’s role as a legal stand-in for a justiciable controversy.¹⁴⁷ This section tracks the court’s exploration of the second *Brimmer* element as it applied to the plaintiff landowners’ claims, beginning with the court’s holding that the plaintiffs ought to have exhausted administrative

¹⁴³ *Id.*; see also *Cranston v. Thomson*, 530 P.2d 726, 728–29 (Wyo. 1975).

¹⁴⁴ *William West Ranch*, 206 P.3d at 732–33, 736–37. As examples, the court cited *Washakie County*, *Memorial Hospital*, and *Merbanco*, stating that in none of these intervening public interest cases had they detoured from *Cranston*. *Id.* at 737. Along the way to this holding, the court articulated how future litigants in CBM water cases might avoid the pitfalls it identified in the Wests’ and the Turners’ pleadings. *Id.* at 722–28. As alternatives to declaratory judgment actions, the court noted the plaintiff landowners might have been able to bring a civil action to find relief from continuing property damage. *Id.* at 735 n.12. Negligence, nuisance, and trespass actions have been brought against individual CBM producers for damage to property based on the producer’s disposal of CBM wastewater. *Id.* However, while these alternatives might solve one issue of property damage on one piece of property, they would not do what the Wests and the Turners set out to do—effect a changed State system of regulation and permitting procedures that more equally balances the many interests at stake in accord with the agency’s constitutional and statutory duties. See Brief of Appellants, *supra* note 2, at 2–3. Furthermore, it is possible that civil claims against the CBM producers were unavailable to the Wests and the Turners. Brief of Pennaco, *supra* note 4, at 6. Appellees Pennaco Energy Inc. and Devon Energy Production Company, L.P., stated:

On February 14, 2002, . . . the Wests entered into a Surface Damage and Access Agreement . . . with Devon whereby they agreed to accept payment of a substantial annual fee for Devons’ [sic] discharge and management of CBNG water on their ranch. Pursuant to the terms of the Agreement, the Wests further agreed that the payments they received from Devon were full and complete satisfaction for any damages caused by the discharge and management of CBNG water.

Id. (citations omitted).

¹⁴⁵ 206 P.3d 722, 733 (Wyo. 2009).

¹⁴⁶ See *infra* notes 174–92 and accompanying text.

¹⁴⁷ *William West Ranch*, 206 P.3d at 737; see also *infra* notes 193–218 and accompanying text.

remedies.¹⁴⁸ Next, this analysis takes a close look at how the court characterized the plaintiffs' claims in relation to the requirements of the second *Brimmer* element.¹⁴⁹ The leniency with which Wyoming Supreme Court precedent applied the *Brimmer* test suggested a wider latitude for establishing a justiciable controversy than the court adopted in *William West Ranch*.¹⁵⁰ Consequently, the *William West Ranch* decision raised the bar for plaintiffs attempting to establish justiciability.¹⁵¹ Finally, this note examines the court's discussion of the public interest exception in precedential case law and its application in *William West Ranch*.¹⁵² The court's invalidation of the exception nullified the doctrine's jurisdiction-granting function.¹⁵³

Exhaustion of Administrative Remedies

In *William West Ranch*, the court acknowledged its holdings in *Rocky Mountain* and *Bonnie M. Quinn*, both of which distinguished between cases challenging a particular action of an agency and those challenging the agency's statutory or constitutional authority to act.¹⁵⁴ When a particular agency action is challenged,

¹⁴⁸ See *infra* notes 154–73 and accompanying text.

¹⁴⁹ See *infra* notes 174–92 and accompanying text.

¹⁵⁰ See *infra* notes 174–92 and accompanying text.

¹⁵¹ See *Washakie County Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 317 (Wyo. 1980) (“[I]t is not a rigid or dogmatic rule but one that must be applied with some view to realities as well as practicalities. Standing should not be construed narrowly or restrictively.”); see also *infra* notes 174–92 and accompanying text.

¹⁵² See *infra* notes 193–218 and accompanying text; Keiter, *supra* note 48, at 536–37. Keiter writes:

The Wyoming Supreme Court has . . . broadly construed the Uniform Declaratory Judgments Act and sanctioned actions under it that raised questions of great public importance.

. . . .

. . . [T]he court has held that parties seeking relief under the Act must present a justiciable controversy in an adversarial posture; however, the court also has read an “issue of great public importance” exception into these justiciability requirements.

Keiter, *supra* note 48, at 536–37; see also *Washakie County*, 606 P.2d at 317; *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974).

¹⁵³ See Keiter, *supra* note 48, at 540 (“[T]he ‘affected party’ principle cannot be understood as an absolute standing barrier because the court has recognized the ‘matter of great public importance’ exception.”). Keiter’s “affected party” terminology is drawn from Wyoming case law; he explains that it reflects the court’s concern with avoiding premature judicial resolution of constitutional issues but should not be restricted by the federal three-part injury-in-fact test for standing. *Id.* at 539; see also *Office of State Lands & Invs. v. Merbanco, Inc.*, 70 P.3d 241, 249 (Wyo. 2003); *Brimmer*, 521 P.2d at 578.

¹⁵⁴ *William West Ranch*, 206 P.3d at 735; see, e.g., *Bonnie M. Quinn Revocable Trust v. SRW, Inc.*, 91 P.3d 146, 151 (Wyo. 2004); *Rocky Mtn. Oil & Gas Ass’n v. State*, 645 P.2d 1163, 1168–69 (Wyo. 1982). See *supra* notes 87–89 and accompanying text for a discussion of the difference between the types of challenges.

plaintiffs must first exhaust alternative remedies; when the agency's constitutional or statutory authority to act is challenged, alternative administrative remedies need not be exhausted.¹⁵⁵

The court identified several of the landowners' claims as challenging the State's constitutional and statutory authority to act.¹⁵⁶ For example, the landowners asked for a declaration that the State's regulatory scheme for CBM water violated its statutory authority by disregarding the public welfare.¹⁵⁷ Specifically, the landowners argued that since the State's regulatory scheme does not control the *amount* of water which may be withdrawn by CBM producers "in accordance with the concepts of beneficial use and prevention of waste," the State has violated its affirmative duty to guard the public welfare.¹⁵⁸ In support of their claim, the landowners cited several Wyoming statutes including § 41-3-909(a), which outlines the policy of the State regarding the conservation of underground water resources and charges the State Engineer and Board of Control with requiring that wells be constructed and maintained to prevent waste of underground water.¹⁵⁹

¹⁵⁵ *Bonnie M. Quinn*, 91 P.3d at 151 (holding the plaintiffs must exhaust administrative remedies because their request for a declaratory judgment regarding whether the production of CBM requires a conditional use permit according to a zoning resolution was not a constitutional challenge); *Rocky Mtn.*, 645 P.2d at 1168–69 (holding the plaintiffs need not exhaust administrative remedies because their request for a declaratory judgment challenged the EQC's regulatory scheme as in violation of its statutory authority).

¹⁵⁶ See *William West Ranch*, 206 P.3d at 731–34; Reply Brief of Appellants at 7, *William West Ranch*, 206 P.3d 722 (No. S-08-0161), 2008 WL 5041673. See *supra* note 135 and accompanying text listing the court's restatement of the plaintiffs' claims. The landowners' complaints were admittedly general, as the court and the State concluded; nevertheless, they were couched as challenges to the agencies' statutory and constitutional authority to act. Brief of Appellants, *supra* note 2, at vi, 15–16; Reply Brief of Appellants, *supra*, at 6–7 ("The relief sought by Appellants . . . concerns the constitutionality of agency practices . . . and thus falls squarely into the *Merbanco* category of cases, in which the Wyoming Supreme Court has found that judicial review is necessary regardless of the availability of administrative remedies."). Additionally, the district court classified the landowners' complaints as challenging the "constitutionality of the current CBM water permitting scheme." Brief of Appellants, *supra* note 2, at 11 n.2. *But see* Brief of Appellees, *supra* note 130, at 8–9 ("They did not ask the district court to declare illegal any particular actions or inactions by the State Engineer or Board of Control either in their respective drainages or which relate to their particular properties.").

¹⁵⁷ *William West Ranch*, 206 P.3d at 732; see WYO. CONST. art. 8, § 3; WYO. STAT. ANN. §§ 41-3-931, 41-4-503 (2009); see also *Merbanco*, 70 P.3d at 244; *Rocky Mtn.*, 645 P.2d at 1168–69.

¹⁵⁸ *William West Ranch*, 206 P.3d at 729–30; see Brief of Appellants, *supra* note 2, at 16–17. These allegations are analogous to prior challenges of constitutional or statutory authority. See, e.g., *Merbanco*, 70 P.3d at 244 (challenging the decision of the Office of State Lands & Investments and the Board of Land Commissioners to exchange school lands without public auction as in violation of the state constitution); *Rocky Mtn.*, 645 P.2d at 1165, 1168–69 (challenging the EQC's regulatory scheme as in violation of its statutory authority).

¹⁵⁹ *William West Ranch*, 206 P.3d at 729–30; see Brief of Appellants, *supra* note 2, at 14–17. Additionally, the landowners state:

Just as in *Merbanco* and *Brimmer*, the Wests and Turners seek a judicial determination of the constitutional propriety of the State Engineer's practice

The landowners focused their argument on the overall CBM water regulatory scheme and its unconstitutional nature; however, the court repeatedly noted the plaintiffs should have made allegations regarding specific permits, specific wells, and specific State actions.¹⁶⁰ The court recognized the State's duty to consider the public interest under the cited statutes but asserted that a declaration regarding that duty would not have a practical effect on the plaintiff landowners.¹⁶¹ Effectively, the court disregarded the landowners' challenges to the statutory authority of the agency's regulatory stance based on the standing doctrine without addressing whether they were barred by the alternative remedies doctrine.¹⁶² This treatment suggests the alternative remedies doctrine does not apply to a number of the landowners' claims.¹⁶³

Without identifying which claims it referenced, the court went on to imply some of the plaintiffs' claims challenged the State's action in granting permits, which, according to *Rocky Mountain*, requires the exhaustion of alternate remedies.¹⁶⁴ The court's contradictory characterizations of the landowners' various

of issuing permits without consideration of the public interest, as required by Wyoming Constitution art. 8, § 3; without equally guarding the various interests involved, as required by Wyoming Constitution art. 1, § 31

Brief of Appellants, *supra* note 2, at 14; *see* WYO. CONST. art. 1, § 31 ("Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the state, which, in providing for its use, shall equally guard all the various interests involved."); WYO. CONST. art. 8, § 3 ("Priority of appropriation for beneficial use shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.").

¹⁶⁰ *William West Ranch*, 206 P.3d at 730–34. It is difficult to reconcile the court's and the State's insistence that the landowners challenge a *particular* action of the State when the State's current regulatory stance is general inaction regarding the quantity of produced CBM water, the adjudication of reservoirs that double as stock ponds, and the depletion of groundwater resources. GUIDANCE: CBM/GROUND WATER PERMITS, *supra* note 5, *passim* (explaining the State Engineer is required to grant applications for permits to drill wells for the production of CBM "as a matter of course" because it is for a "beneficial use."). *See generally* Herlihy, *supra* note 31 (arguing limits should be placed on the quantity of water produced by the CBM industry to ensure compliance with the public interest statutory requirement and the wise use of both resources).

¹⁶¹ *William West Ranch*, 206 P.3d at 732–33; *see supra* notes 69–81 and accompanying text (discussing the second *Brimmer* element and the court's ability to address injured rights).

¹⁶² *See William West Ranch*, 206 P.3d at 733–35. "Declaratory relief decrees under Wyoming's Uniform Declaratory Judgments Act are intended to terminate uncertainty and provide relief from insecurity with respect to one's rights; prevent wrongs before their commission; stabilize uncertain or disputed legal relations; and generally declare rights, status, or other legal relations." Rochelle, *supra* note 38, at 243.

¹⁶³ *See William West Ranch*, 206 P.3d at 733–35; *Merbanco*, 70 P.3d at 247; *Rocky Mtn.*, 645 P.2d at 1168–69.

¹⁶⁴ *William West Ranch*, 206 P.3d at 735; *see also Bonnie M. Quinn*, 91 P.3d at 151; *Humane Soc'y v. Port*, 404 P.2d 834, 835 (Wyo. 1965). The court stated, "[W]hen the matter at issue is one that has been delegated to an administrative agency, such as whether to grant a permit, the challenger must utilize available administrative processes." *William West Ranch*, 206 P.3d at 735.

declaratory requests muddled the court's argument, making it difficult to parse which declarations the court felt challenged the State's constitutional and statutory authority to act and which did not.¹⁶⁵ The only claim the court conclusively addressed was the plaintiffs' request for a declaratory judgment *ordering* the State to adopt new regulations.¹⁶⁶ The court stated the landowners should have first requested rulemaking under Wyoming Statute § 16-3-106.¹⁶⁷ Regarding the court's handling of this request, however, there is contrary precedent suggesting that a declaratory judgment action was still within the purview of the plaintiffs.¹⁶⁸

In *William West Ranch*, the distinction between the two types of claims comes down to scope and semantics.¹⁶⁹ The plaintiffs based their allegations on the unconstitutional nature of the general scheme of regulation currently in place.¹⁷⁰ While the court's stance was slightly unclear, it repeatedly focused on *specific* actions of the State, consistently dismissing the landowners' broader arguments.¹⁷¹ However, had the court clearly found no constitutional or statutory challenge, it could have stopped its analysis there, forgoing any discussion of the standing doctrine.¹⁷² The court's holding regarding the exhaustion of alternate remedies was not in error; it was simply not specific as to which claims it applied.¹⁷³

Perhaps the court referred to separate declaratory judgment requests than those discussed previously in its analysis; perhaps it meant to recharacterize the previously discussed claims. *See id.*

¹⁶⁵ *William West Ranch*, 206 P.3d at 730–35.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 736. Any interested person may petition the State Engineer to conduct rulemaking. WYO. STAT. ANN. § 16-3-106 (2009).

¹⁶⁸ *William West Ranch*, 206 P.3d at 730–35. In its discussion, the court specifically referenced *Goedert ex rel. Wolfe v. State ex rel. Wyoming Workers' Safety & Compensation Division*, 991 P.2d 1225, 1228 (Wyo. 1999), as illustrative of the importance of rulemaking. *Id.* at 736. While the *Goedert* court held the plaintiff should have requested rulemaking, it acknowledged that, alternatively, the plaintiff "could have challenged the rules by instituting an independent action for a declaratory judgment." 991 P.2d at 1228. The *Goedert* court stated seeking rulemaking and initiating a declaratory judgment action were equally viable, independent options. *See id.* The Wests and the Turners opted for a declaratory judgment. *See William West Ranch*, 206 P.3d at 735; Brief of Appellants, *supra* note 2, at 4–8.

¹⁶⁹ Compare *William West Ranch*, 206 P.3d at 733–35 (insisting landowners allege harm from specific wells and permits), with Reply Brief of Appellants, *supra* note 156, at 6–7 (alleging the State's overall scheme of CBM water regulation did not comply with statutory and constitutional mandates).

¹⁷⁰ Reply Brief of Appellants, *supra* note 156, at 6–7.

¹⁷¹ *William West Ranch*, 206 P.3d at 733–35.

¹⁷² *See Bonnie M. Quinn*, 91 P.3d at 151; *Humane Soc'y*, 404 P.2d at 835; *see also supra* notes 82–89 and accompanying text.

¹⁷³ *See William West Ranch*, 206 P.3d at 733–35.

Specificity of Evidence Needed to Establish the Brimmer Elements

In criticizing how the plaintiff landowners argued their issue, the court stated to meet the second *Brimmer* element, the plaintiffs should have alleged (1) the State had a constitutional duty to execute a particular function in regulating CBM water; (2) the State failed to do so with respect to particular CBM producers; (3) this failure caused actual damage to their properties; and (4) the State must take some regulatory action that will effectively redress their grievances.¹⁷⁴ Furthermore, the parties should have challenged a particular permit or the lack of adjudication of particular wells and reservoirs affecting their land and identified specific reservoirs that leaked, leading to the damage they claimed.¹⁷⁵ Overall, the court asked for a very specific line of evidence from the actions of the State to the landowners' impinged-upon rights and, from there, to an established assuredness the court's ruling would have an effect on the plaintiffs.¹⁷⁶ This approach appears closer to the federal three-prong test for injury-in-fact than to the requirements of the *Brimmer* test.¹⁷⁷ Furthermore, the Wests and the Turners were not challenging a particular State action but the entire regulatory CBM water scheme as an unconstitutional interpretation of the agency's authority.¹⁷⁸ This wide, and arguably vague, focus in the landowners' pleadings led to exactly the lack of specificity the court criticized.¹⁷⁹ However, in precedential cases the court found the plaintiffs met the *Brimmer* test even when the pleadings exhibited similar gaps and lacked specificity.¹⁸⁰

In *Rocky Mountain*, a case that did not implicate a great public interest, the court held the plaintiffs asserted a justiciable controversy in bringing a declaratory judgment action challenging the constitutionality of the rules and regulations of the Environmental Quality Council (EQC).¹⁸¹ Because the EQC's regulations

¹⁷⁴ *Id.* at 730–31.

¹⁷⁵ *Id.* at 734.

¹⁷⁶ *Id.*; see also *Brimmer*, 521 P.2d at 578–79. For further discussion of *Brimmer* elements one and two, see *supra* notes 58–81.

¹⁷⁷ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992); *supra* notes 49–53 and accompanying text (discussing the federal three-prong test); Keiter, *supra* note 48, at 533–34, 539 (commenting there is enough of a difference between the state and federal judicial systems to justify the State's rejection of the narrow constraints of the federal standing doctrine).

¹⁷⁸ See *supra* note 156 and accompanying text (discussing the nature of the landowners' allegations).

¹⁷⁹ *William West Ranch*, 206 P.3d at 729–31; Brief of Appellants, *supra* note 2, at 18–23.

¹⁸⁰ See, e.g., *Merbanco*, 70 P.3d at 249 (failing to show how the plaintiffs would be affected by a lack of increase in interest from the school fund or how the court's action would have any tangible effect on them); *Washakie County*, 606 P.2d at 316 (failing to specifically cite the statutes with which the plaintiffs took issue or how the court's action would have any tangible effect on the plaintiffs); see also Keiter, *supra* note 48, at 537; *supra* notes 58–81 (discussing cases in which the court overlooked gaps and vague pleadings to find standing).

¹⁸¹ 645 P.2d at 1168.

required the plaintiffs' immediate action to secure permits which could require considerable time and expense, as well as penalties if they did not succeed, the court found the *Brimmer* test met.¹⁸² In dissenting, however, Justices Rose and Thomas argued the majority was too liberal in finding a justiciable controversy.¹⁸³ Justice Rose explained the plaintiffs ought to have pointed to an "actual threatened application of a rule together with a probable adverse effect."¹⁸⁴ He went on to posit, "For all we know, DEQ might never invoke the rule against the appellants, or, if it did, the appellants might find it impossible to show they were harmed in such a degree as a court would find sufficient to call for declaratory relief."¹⁸⁵ Justice Thomas stated the plaintiffs premised their claim on their own interpretation of the agency rules, which could arguably be interpreted and applied in an alternate way.¹⁸⁶ In sum, both Justices argued the presence of *Brimmer* elements one and two was ambiguous.¹⁸⁷ Nevertheless, the majority found a threatened right sufficiently connected to the agency's regulation which was redressable by the court.¹⁸⁸

The dissenting opinions in *Rocky Mountain* articulated several arguments used by the *William West Ranch* court in finding the landowners had not presented a justiciable controversy.¹⁸⁹ However, it is the majority opinion in *Rocky Mountain* that stands as precedent, and it is indeed the majority's finding of a justiciable controversy in *Rocky Mountain* that the *William West Ranch* court cited.¹⁹⁰ The dissent's characterization of the nebulous quality of the *Rocky Mountain* plaintiffs' affected right and the lack of certainty regarding the court's ability to mitigate the issue highlights a precedential degree of leniency regarding *Brimmer* elements one and two, even when the public interest exception was not implicated.¹⁹¹ In

¹⁸² *Id.*

¹⁸³ *Id.* at 1174–75 (Rose, J., dissenting); *id.* at 1175 (Thomas & Rose, JJ., dissenting).

¹⁸⁴ *Id.* at 1174 (Rose, J., dissenting).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 1175 (Thomas & Rose, JJ., dissenting).

¹⁸⁷ *See id.* at 1174–75 (Rose, J., dissenting); *id.* at 1175 (Thomas & Rose, JJ., dissenting). *Brimmer* element one requires an impinged-upon present or future right. *See supra* notes 58–68. The possibility that the agency might never invoke the rule against the plaintiff, that the plaintiff might not be able to show actual harm by having to comply with the rule, or that the rule might be interpreted so as to not implicate the plaintiff at all pulled the first *Brimmer* element into question. *Rocky Mtn.*, 645 P.2d at 1174–75 (Rose, J., dissenting). The second *Brimmer* element requires the court's decision to effectively remedy the harm. *See supra* notes 69–81. If the harm was not certain to occur, it was possible the court's action would have no tangible effect on the plaintiffs. *Rocky Mtn.*, 645 P.2d at 1174–75 (Rose, J., dissenting).

¹⁸⁸ *Rocky Mtn.*, 645 P.2d at 1168.

¹⁸⁹ *See William West Ranch*, 206 P.3d at 730–35; *Rocky Mtn.*, 645 P.2d at 1174–75 (Rose, J., dissenting); *id.* at 1175 (Thomas & Rose, JJ., dissenting); *supra* notes 131–44 and accompanying text (discussing the principal case).

¹⁹⁰ *William West Ranch*, 206 P.3d at 728.

¹⁹¹ *See Rocky Mtn.*, 645 P.2d at 1174–75 (Rose, J., dissenting); *see also* Keiter, *supra* note 48, at 535–36.

William West Ranch, however, under the purported relaxed standards of the public interest exception, the court was not willing to find a justiciable controversy in light of similar doubts as to the court's ability to redress the harm.¹⁹²

The Court's Negation of the Public Interest Exception

The court was unwilling to find that the *William West Ranch* plaintiffs met the requirements of the second *Brimmer* element.¹⁹³ It was, however, willing to accept the landowners' assertion that the case presented a matter of great public importance.¹⁹⁴ In its discussion, the court stated that throughout precedential case law applying the public interest exception, all four elements of the *Brimmer* test were met.¹⁹⁵ Such is not the case.

In *Merbanco*, a case implicating a great public interest, the court found all four prongs of the *Brimmer* test met in a situation presenting as many gaps as that in *Rocky Mountain*.¹⁹⁶ A county resident and his children claimed the school system would be detrimentally affected if the Board of Land Commissioners traded school lands in a value-for-value exchange instead of putting them up for auction.¹⁹⁷ The court conceded the plaintiffs failed to show how additional interest deposited in the school fund from a public auction would have any effect on the educational system.¹⁹⁸ Nor did the plaintiffs show how their rights as stakeholders in that system would be negatively impacted.¹⁹⁹ The court instead focused on the impact funds from an auction would have on the balance of the permanent school fund itself, found the impact significant, and therefore concluded the plaintiffs had standing.²⁰⁰

¹⁹² See Rochelle, *supra* note 38, at 267 ("What constitutes a justiciable controversy will not always be clear. In the past, the Wyoming Supreme Court has involved itself in the splitting of hairs when it comes to distinguishing a *justiciable* controversy from a *nonjusticiable* one."). See *supra* notes 126, 135, 144, and 156 for a discussion of the vague nature of the landowners' allegations in relation to the second element of the *Brimmer* test. See, e.g., *Humane Soc'y*, 404 P.2d at 835 (refusing to grant declaratory relief because the plaintiff did not plead concrete facts). *But see* Rochelle, *supra* note 38, at 256–57 (arguing the court's finding in *Humane Society* was erroneous because declaratory relief is to be liberally administered).

¹⁹³ *William West Ranch*, 206 P.3d at 731–32.

¹⁹⁴ *Id.* at 736. Additionally, the State Engineer and Board of Control conceded the issue presented a matter of great public importance. Brief of Appellees, *supra* note 130, at 28.

¹⁹⁵ *William West Ranch*, 206 P.3d at 737.

¹⁹⁶ *Merbanco*, 70 P.3d at 246–49 (stating the plaintiffs met the four *Brimmer* elements even though the court invoked the public interest exception).

¹⁹⁷ *Id.* at 248.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 248–49.

²⁰⁰ *Id.*

The Wests and the Turners were in an analogous situation as stakeholders in a scheme of interests including landowners, sub-surface mineral rights holders, CBM producers, water rights holders, etc., affected by the State's regulation of CBM water.²⁰¹ Unlike the plaintiffs in *Merbanco*, they showed not just that they were stakeholders, but that their rights had been tangibly invaded.²⁰² The Wests and the Turners asked for a ruling that the State's regulation and permitting of CBM water wells and reservoirs was unconstitutional, just as the *Merbanco* plaintiffs asked for a ruling that not offering school lands at a public auction was unconstitutional.²⁰³ In neither case was it certain such a ruling would redress the problem.²⁰⁴ In *Merbanco*, no actual problem was identified; nevertheless, as stakeholders, the court considered the plaintiffs' rights at issue; furthermore, the chance the requested ruling would have any effect at all on the plaintiffs was miniscule.²⁰⁵ In *William West Ranch*, there was similarly no guarantee, though certainly a chance, that a new regulatory/permitting scheme would mitigate the landowners' property damage.²⁰⁶ In both cases, however, finding the contested

²⁰¹ See Brief of Appellants, *supra* note 2, at 16–17; RUCKELSHAUS REPORT, *supra* note 23, at v–ix.

²⁰² *William West Ranch*, 206 P.3d at 731; Brief of Appellants, *supra* note 2, at ix; see *infra* notes 66–68 and accompanying text (discussing how, in a declaratory judgment action, the damage need not have already occurred as long as it is substantially certain to occur).

In *Merbanco*, the court recognized the plaintiffs' interest in the value of the permanent school fund as their affected right even though no tangible benefit or detriment would accrue to the plaintiffs. 70 P.3d at 248. The value of the school lands added to the value of the permanent school fund in a value-for-value exchange was equal to the value of the school fund if the land was auctioned. *Id.* This suggests the issue was moot. See *Eastwood v. Wyo. Highway Dept.*, 301 P.2d 818, 819 (Wyo. 1956) (holding even though the period of revocation had expired and the issue was therefore moot, the plaintiff could challenge the revocation of his driver's license because the court considered the issue to be of great public interest). Nevertheless, the *Merbanco* court found a justiciable controversy. 70 P.3d at 248–49.

²⁰³ *William West Ranch*, 206 P.3d at 729–30. The *Merbanco* plaintiffs challenged a much more specific action of the State than did the landowners in *William West Ranch*. Compare *William West Ranch*, 206 P.3d at 729–30, with *Merbanco*, 70 P.3d at 248–49. However, the landowners in *William West Ranch* listed the statutes and acts they challenged. 206 P.3d at 729–30. For an example of a case in which the court waived the need for specificity in challenging a particular statute, see *Washakie County*, 606 P.2d at 316 (finding the plaintiffs asserted a justiciable controversy even though they did not specifically cite the statutes allegedly causing their harm, instead referring to a “system” of financing public education).

²⁰⁴ *William West Ranch*, 206 P.3d at 732; *Merbanco*, 70 P.3d at 248–51. See *supra* notes 162–73 for a discussion of the court's rationale in *Rocky Mountain* regarding the existence of arguably unaffected rights that would not be redressable by the court's action.

²⁰⁵ 70 P.3d at 248–49.

²⁰⁶ 206 P.3d at 731; Brief of Appellants, *supra* note 2, at 21–22. The landowners did not claim a judicial finding that the actions or lack thereof on the part of the State would specifically redress their damage, rather they argued the *Reiman* court's articulation of “effectively operate” applied. Brief of Appellants, *supra* note 2, at 21–22. According to the *Reiman* court, “effectively operate” means the court's opinion must have some practical effect on the litigants. 838 P.2d 1182, 1187 (Wyo. 1992); see also *supra* notes 69–74 and accompanying text (discussing the second *Brimmer*

actions unconstitutional would affect the stakeholders—groups to which the plaintiffs, in each case, belonged.

The court's granting of standing to the *Merbanco* plaintiffs can only be understood in light of the leniency afforded by the public interest exception; it follows that the same leniency should have been applied in *William West Ranch*.²⁰⁷ The *Merbanco* court showed particular leniency in finding the plaintiffs satisfied the *Brimmer* test.²⁰⁸ The Wyoming Supreme Court acted with similar leniency in regard to the *Brimmer* elements in cases discussed throughout this note, both those that did and did not implicate a great public interest.²⁰⁹ In *Washakie County*, for example, the plaintiffs established a justiciable controversy even though they did not specifically cite the statutes causing their harm but referred to a "system" of financing public education.²¹⁰ Similarly, the *Riedel* court found the plaintiff asserted a justiciable controversy by claiming the fiduciary for public school lands failed to maximize revenue for the public schools, even though the plaintiff was not a beneficiary of the school system and did not articulate an alternate injury.²¹¹

element). Practically, having the permanent school fund increase by \$36.48 million would have had no effect on the *Merbanco* plaintiffs. See 70 P.3d at 248. As stakeholders in the system, the court explained, the balance of the permanent school fund was relevant to the plaintiffs. See *id.* Similarly, while a ruling that the State acted unconstitutionally in permitting CBM wells would result in new regulations that might affect the Wests and the Turners, it is likely that they, like the *Merbanco* plaintiffs, would be unaffected in a practical way. Brief of Appellees, *supra* note 130, at 21, 30. However, as Powder River Basin landowners, a new set of regulations purportedly taking the public interest into account would be as relevant to the Wests and the Turners as a \$36.48 million increase in the permanent school fund was to the *Merbanco* plaintiffs. See Brief of Appellants, *supra* note 2, at 22.

²⁰⁷ See Keiter, *supra* note 48, at 537–38. Regarding the public interest exception:

[T]he Act represents a legislative determination that the doors of the State's courts should be opened widely to hear such actions Thus, the court is justified in liberally accord[ing] standing under the Act as it has in cases such as *Brimmer v. Thompson* [sic] and *Washakie County School District No. 1 v. Herschler*. . . .

. . . The cases [*Brimmer* and *Washakie County*] point towards a liberal construction of the state constitutional standing provisions.

Id.

²⁰⁸ See *id.*; *supra* notes 58–81 and accompanying text (discussing how *Merbanco* stretched the boundaries of the *Brimmer* elements).

²⁰⁹ See Keiter, *supra* note 48, at 537–38; Rochelle, *supra* note 38, at 251–52; see, e.g., *Rocky Mtn.*, 645 P.2d at 1174–75 (Rose & Thomas, JJ., dissenting); *Washakie County*, 606 P.2d at 316; *Brimmer*, 521 P.2d 574.

²¹⁰ 606 P.2d at 316.

²¹¹ 70 P.3d at 230.

In acknowledging the relaxed justiciability requirements previously afforded by the public interest exception, the *William West Ranch* court asserted that, leniency aside, all four elements of the *Brimmer* test had been met in precedential cases.²¹² This argument is akin to saying the chicken came first, not the egg—the court found the *Brimmer* elements met, but the elements were only met because of the leniency with which the court established standing in cases involving a great public interest.²¹³ Absent a great public interest, the court arguably might have found these same elements lacking.²¹⁴

While it lies within the court's discretion to read flexibility into the four *Brimmer* elements in any given case, its holdings set the tone for future litigation.²¹⁵ In this case, while it was within the court's discretion to find that the parties did not present a justiciable controversy, the court did so based on reasoning that directly contradicted its own past decisions.²¹⁶ Consequently, as *William West Ranch* now stands as precedent, the court has restricted cases which can be brought under a declaratory judgment action by requiring a more specific link between the plaintiffs' damages and the court's ability to provide a tangible remedy.²¹⁷ Additionally, the court has withdrawn the public interest exception from the justiciability doctrine, likewise limiting the cases which can be brought implicating a great public interest but standing on shaky justiciability legs.²¹⁸

CONCLUSION

The Wyoming Supreme Court's decision in *William West Ranch* narrowed the basis upon which a declaratory judgment action can be brought to only those plaintiffs who can show how their specific remedy will be directly and tangibly

²¹² *William West Ranch*, 206 P.3d at 737.

²¹³ See, e.g., *Mgmt. Council of the Wyo. Legislature v. Geringer*, 953 P.2d 839, 843 (Wyo. 1998); *Bd. of County Comm'rs v. Laramie County Sch. Dist. No. One*, 884 P.2d 946, 950 (Wyo. 1994); *Wyo. Ass'n of Consulting Eng'rs & Land Surveyors v. Sullivan*, 798 P.2d 826, 828–29 (Wyo. 1990); *Mem'l Hosp. of Laramie County v. Dep't of Revenue & Taxation*, 770 P.2d 223, 227 (Wyo. 1989); *Washakie County*, 606 P.2d at 318.

²¹⁴ See, e.g., *Geringer*, 953 P.2d at 843; *Laramie County Sch. Dist. No. One*, 884 P.2d at 949–50; *Sullivan*, 798 P.2d at 828–29; *Mem'l Hosp.*, 770 P.2d at 227; *Washakie County*, 606 P.2d at 318; *supra* notes 82–111 and accompanying text.

²¹⁵ See *Mem'l Hosp.*, 770 P.2d at 226; *Keiter*, *supra* note 48, at 527–28; *Rochelle*, *supra* note 38, at 267.

²¹⁶ See *supra* notes 174–214 and accompanying text.

²¹⁷ See *supra* notes 174–92 and accompanying text.

²¹⁸ See *supra* notes 193–214 and accompanying text.

redressed by the court's actions.²¹⁹ Additionally, the court restricted the relaxed nature of justiciability in cases implicating a great public interest by holding all four elements of the *Brimmer* test must be met even when plaintiffs invoke the exception.²²⁰ This decision is inconsistent with past cases—both those that did and did not involve a great public interest—in which the court found a justiciable controversy even when pleadings lacked specificity and exhibited gaps similar to those in *William West Ranch*.²²¹ With the requirements to establish a justiciable controversy as well as the public interest exception thus narrowed, plaintiffs that have traditionally been able to seek relief in Wyoming's courts will be without a remedy.²²²

²¹⁹ See *supra* notes 174–92 and accompanying text.

²²⁰ See *supra* notes 193–214 and accompanying text.

²²¹ See *supra* notes 193–214 and accompanying text.

²²² See *supra* notes 215–18 and accompanying text.