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Amy Staehr

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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

* Candidate for J.D., University of Wyoming, 2011. My sincerest thanks to Professor Dennis Stickley and Professor Lawrence MacDonnell for their insightful comments. Additionally, a special thank you to the entire Wyoming Law Review editorial board for their helpful thoughts and guidance throughout this process.

² Brief of Appellants at ix, William West Ranch, 206 P.3d 722 (No. S-08-0161), 2008 WL 5041670.
³ Id.
appealed to the Wyoming Supreme Court. Finding the landowners did not present a justiciable controversy, the court affirmed the district court’s dismissal.

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. 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. 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. 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.

This case note analyzes the Wyoming Supreme Court’s application of the Brimmer test to establish a justiciable controversy in William West Ranch. 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. Next, this note explores the requirements for establishing justiciability

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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. Particular attention is given to the requirement that, under certain circumstances, plaintiffs must exhaust alternative remedies before bringing a declaratory judgment action. 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. 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. 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. 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 precedent case law invoking the exception. 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.

**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. The main by-product of the process is a large quantity of often saline water. The Powder River Basin CBM wells produce relatively high quality water that is often potable, although it can be unsuitable for irrigation.

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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.


because it is harmful to plants and certain soils in large amounts. 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. Most producers in the Powder River Basin discharge CBM water into drainage systems, onto the soil as irrigation, or into unlined storage reservoirs. 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. 

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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.


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.

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). Responsibility lies with the WOGCC to permit “oil and gas well construction, well spacing and density, and bonding and reclamation.” 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. DEQ issues permits for CBM water as a point-source pollutant subject to the Wyoming Pollutant Discharge Elimination System (WYPDES).

The State Engineer is responsible for managing the quantity of produced CBM water. The State Engineer categorizes CBM water as a type of groundwater. 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. The State Engineer has determined the production of CBM

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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).


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. The State Engineer is also responsible for issuing permits for CBM water put to an additional beneficial use or stored in on-channel reservoirs.

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. For a court to have jurisdiction over a declaratory judgment action, a justiciable controversy must exist. 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. A court's finding of whether a justiciable controversy exists is a threshold

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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浦, 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.”).

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. Of these, the doctrines of ripeness and standing deserve some attention.

Courts use the doctrine of ripeness to avoid premature adjudication. For a controversy to be considered ripe, it is generally necessary for the litigant to exhaust administrative remedies before bringing the case to court. 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. In Wyoming, courts base their decision about whether alternate remedies must be exhausted on the type of claim at issue.

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. 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. Wyoming case law

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).


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.


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. 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. 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."

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. 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. 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. Indeed, the Wyoming legislature mandates that the Uniform Declaratory Judgments Act "is to be liberally construed..."
and administered.” Thus, the legislature’s provisions and the court’s recognition of the public interest exception justify a liberal invocation of jurisdiction.

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. 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. The Brimmer test encompasses the doctrines of standing, ripeness, and mootness. 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.

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. In Office of State Lands & Investments v. Merbanco, Inc., the plaintiffs filed a declaratory judgment action claiming the Board of Land Commissioners’ consideration of

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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); Dept 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.


\(^{63}\) 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).
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:

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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

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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 Hirschfield, 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., Dept 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

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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. Travisono, 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. 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.

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. Generally, these matters involved the constitutionality of a statute or act. 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.”

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. 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.

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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. 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. In their briefs, the appellants asserted the unconstitutionality of “the system of financing public education” rather than identifying a particular statute. 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. 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.

The second element of the Brimmer test addresses whether the judgment of the court will effectively operate on the situation at hand. 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. 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.

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. As discussed earlier in this note, the Merbanco opinion clearly stretched the envelope of connectivity between rights, injury, and resolution. Akin to Merbanco, the Wyoming Supreme Court’s 2003 finding of a justiciable controversy based on the public interest exception in

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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. 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. The plaintiff claimed this violation resulted in diminished school funds, which in turn translated into an injury to the public school system. 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.” The court acknowledged this stretch of the justiciability requirements by invoking the “great public interest exception.”

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.” In order to have genuine adversity, the parties must have a tangible interest at stake that provokes more than mere disagreement. The situation in Pedro/Aspen, Ltd. v. Board of County Commissioners illustrates what constitutes genuine adversity for the Wyoming Supreme Court. Pedro/Aspen, a land development corporation, brought a declaratory judgment action challenging a Natrona County zoning ordinance. 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. 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.

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.
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. 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. The district court dismissed their complaint, stating it did not present a justiciable controversy. The landowners appealed this dismissal to the Wyoming Supreme Court. 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. 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.

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.
The Court’s Opinion

Justice Kite wrote the opinion for William West Ranch. The court focused its jurisdictional discussion on whether the plaintiff landowners established a justiciable controversy. Because Wyoming case law is well-settled regarding declaratory judgment actions, the court limited its discussion to the court’s own previous holdings. 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. After noting the plaintiffs’ allegations were “extensive” and “somewhat vague,” the court consolidated them into four claims and applied the Brimmer test.

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. The
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. 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.

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

141 Id. at 737.
public interest, a justiciable controversy must be at the heart of the issue for it to be heard. 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.

**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. 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. 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. 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

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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).


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.
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.\(^\text{149}\) 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*.\(^\text{150}\) Consequently, the *William West Ranch* decision raised the bar for plaintiffs attempting to establish justiciability.\(^\text{151}\)

Finally, this note examines the court’s discussion of the public interest exception in precedential case law and its application in *William West Ranch*.\(^\text{152}\) The court’s invalidation of the exception nullified the doctrine’s jurisdiction-granting function.\(^\text{153}\)

**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.\(^\text{154}\) When a particular agency action is challenged,

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\(^\text{148}\) *See infra* notes 154–73 and accompanying text.

\(^\text{149}\) *See infra* notes 174–92 and accompanying text.

\(^\text{150}\) *See infra* notes 174–92 and accompanying text.

\(^\text{151}\) *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.

\(^\text{152}\) *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.


\(^\text{153}\) *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.

\(^\text{154}\) *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

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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.”).
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. 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. 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. This treatment suggests the alternative remedies doctrine does not apply to a number of the landowners’ claims.

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. The court’s contradictory characterizations of the landowners’ various challenges to the agency’s regulatory stance based on the standing doctrine without addressing whether they were barred by the alternative remedies doctrine.
declaratory requests muddied 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. The only claim the court conclusively addressed was the plaintiffs’ request for a declaratory judgment ordering the State to adopt new regulations. The court stated the landowners should have first requested rulemaking under Wyoming Statute § 16-3-106. 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.

In William West Ranch, the distinction between the two types of claims comes down to scope and semantics. The plaintiffs based their allegations on the unconstitutional nature of the general scheme of regulation currently in place. While the court’s stance was slightly unclear, it repeatedly focused on specific actions of the State, consistently dismissing the landowners’ broader arguments. 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. 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.

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. 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. 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. This approach appears closer to the federal three-prong test for injury-in-fact than to the requirements of the Brimmer test. 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. This wide, and arguably vague, focus in the landowners’ pleadings led to exactly the lack of specificity the court criticized. However, in precedential cases the court found the plaintiffs met the Brimmer test even when the pleadings exhibited similar gaps and lacked specificity.

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). Because the EQC’s regulations

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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.\textsuperscript{182} In dissenting, however, Justices Rose and Thomas argued the majority was too liberal in finding a justiciable controversy.\textsuperscript{183} Justice Rose explained the plaintiffs ought to have pointed to an “actual threatened application of a rule together with a probable adverse effect.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{186} In sum, both Justices argued the presence of Brimmer elements one and two was ambiguous.\textsuperscript{187} Nevertheless, the majority found a threatened right sufficiently connected to the agency’s regulation which was redressable by the court.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{191}

\textsuperscript{182} Id.
\textsuperscript{183} Id. at 1174–75 (Rose, J., dissenting); id. at 1175 (Thomas & Rose, JJ., dissenting).
\textsuperscript{184} Id. at 1174 (Rose, J., dissenting).
\textsuperscript{185} Id.
\textsuperscript{186} Id. at 1175 (Thomas & Rose, JJ., dissenting).
\textsuperscript{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).
\textsuperscript{188} Rocky Mtn., 645 P.2d at 1168.
\textsuperscript{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).
\textsuperscript{190} William West Ranch, 206 P.3d at 728.
\textsuperscript{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.\footnote{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).}

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.\footnote{William West Ranch, 206 P.3d at 731–32.} It was, however, willing to accept the landowners’ assertion that the case presented a matter of great public importance.\footnote{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.} 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.\footnote{William West Ranch, 206 P.3d at 737.} 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.\footnote{Merbanco, 70 P.3d at 246–49 (stating the plaintiffs met the four Brimmer elements even though the court invoked the public interest exception).} 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.\footnote{Id. at 248.} 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.\footnote{Id.} Nor did the plaintiffs show how their rights as stakeholders in that system would be negatively impacted.\footnote{Id. at 248–49.} 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.\footnote{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. Unlike the plaintiffs in *Merbanco*, they showed not just that they were stakeholders, but that their rights had been tangibly invaded. 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. In neither case was it certain such a ruling would redress the problem. 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. 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. 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.\(^{211}\)

\(^{207}\) 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 according 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

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


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 Hop., 770 P.2d at 227; Washakie County, 606 P.2d at 318; supra notes 82–111 and accompanying text.

215 See Mem’l Hop., 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. 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. 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. 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.