

**IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT  
STATE OF WYOMING, COUNTY OF LARAMIE  
DOCKET NO. 2022-CV-201-106**

STATE OF WYOMING )  
BOARD OF LAND COMMISSIONERS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TETON COUNTY BOARD OF )  
COUNTY COMMISSIONERS, )  
 )  
Defendant. )

WY Laramie County  
District Court 1st JD  
Nov 14 2023 03:29PM  
2022-CV-0201106  
71402841

**FILED**

---

**ORDER ON PENDING MOTIONS**

---

THIS MATTER is before the court on two separate motions: The Plaintiff's *Motion to Dismiss* and the Citizens for Responsible Use of State Lands' *Motion to Intervene*. The court set the matter for a hearing that was held on October 2, 2023. Having reviewed the motions, attendant briefing, and listened to argument, the court finds that the *Motion to Dismiss* should be granted and the *Motion to Intervene* should be denied for the reasons outlined below.

**Relevant Facts and Procedural History**

All parties involved have provided a detailed factual and procedural history in the pleadings and briefings that have been filed since this case was first docketed. For the sake of judicial economy, the court will provide a truncated and simplified version of both the facts and procedure that underly the Plaintiff's *Motion to Dismiss* and the Citizens for Responsible Use of State Lands' (hereinafter "CRUSL") *Motion to Intervene*.

In 2022, Plaintiff granted temporary use permits to two commercial entities wishing to build

storage facilities and glamping accommodations on state trust land located in Teton County. After the permits were granted, the Teton County Planning and Building Services Department Director (hereinafter “Planning Director”) sent *Notices to Abate* to both permittees. The *Notices* assert that the Plaintiff and its permittees are subject to Teton County’s Land Development Regulations and initiated abatement proceedings before the Defendant.

Plaintiff filed its *Complaint* initiating this litigation with the overarching question as to whether counties had the authority to subject the State to their independent regulations and abatement proceedings. The Defendant moved to dismiss the case arguing that the venue was improper, the Plaintiff failed to state a claim upon which relief could be granted, and failed to join a necessary party—the permittees. This court denied that motion. Prior to the court’s decision on dismissal, the Planning Director issued a second *Notice to Abate* to one of Plaintiff’s permittees and set the matter for a hearing to occur just weeks later. That action prompted Plaintiff to file a *Motion for Temporary Restraining Order and Preliminary Injunction* which this court granted.

Presently before the court and contemporaneous with its answer and counterclaims, Defendant filed a *Motion for More Definite Statement* requesting that Plaintiff be ordered to clarify certain aspects of its request for declaratory relief. The Plaintiff objected to the court ordering that it provide a more definite statement of its request while simultaneously providing the clarification that Defendant requested. Plaintiff additionally filed a *Motion to Dismiss* each of Defendant’s six counterclaims. While the court allowed the matter to ripen, CRUSL filed its *Motion to Intervene* both permissively and as a matter of right. The court set all three matters for hearing on October 2, 2023. However, on September 22, 2023, Defendant withdrew its *Motion for More Definite Statement* along with counterclaims two, four, five, and six. At the hearing, the court heard argument concerning dismissal of Defendant’s remaining counterclaims one and three along with the *Motion*

to Intervene. Each will be discussed in turn below.

### **Plaintiff's Motion to Dismiss**

In its *Answer and Counterclaims*, Defendant requests that this court declare 2020 Session Laws of Wyoming Chapter 158 unconstitutional and declare that the non-party permittees Basecamp Hospitality, LLC and Wilson Investments, LLC comply with General Condition #8 of their temporary use permits. (Mot. for a More Definite Statement or in the Alternative Def.'s Answer and Counterclaims Including Injunctive Relief at 16-18, 26). The session law at issue provides:

#### **Chapter 158**

#### **STATE TRUST LANDS-PROPOSALS AND STUDY**

##### **Original House Bill No. 162**

AN ACT relating to state lands; requiring the office of state lands and investments to solicit proposals for the development of identified school and state trust lands in Teton county; requiring the office to review proposals and make recommendations as specified; requiring reports; providing an appropriation; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

##### **Section 1.**

(a) Not later than August 1, 2020, the office of state lands and investments shall solicit proposals on opportunities for development of identified school trust land parcels and of any other state trust lands in Teton county that would maximize the value of the parcel to the greatest extent possible. Any person may submit a proposal to the office for consideration. Before soliciting proposals, the office shall ensure that a map and a list of all school trust land parcels and state trust lands are available for the public to view. Proposals may include, but are not limited to, commercial, retail, recreational, agricultural and residential development.

(b) The office of state lands and investments shall review all submitted proposals for feasibility and shall prepare a report with preliminary plans and recommendations for the development of areas and parcels identified in proposals that the office deems feasible. The plan shall:

(i) Identify and recommend opportunities for the transfer, lease, development or exchange of the state trust land and school trust land parcels

identified in the feasible proposals in order to maximize the value of the parcels to the greatest extent possible;

(ii) Identify the potential increases or decreases to public access for hunting, fishing and other current recreational activities;

(iii) Identify potential impacts to existing grazing leases, water rights and irrigation and drainage ditches;

(iv) Consider any other opportunities not included in submitted proposals but that would maximize the value of parcels the office identifies to the greatest extent possible;

(v) Identify costs and sources of revenue to develop and maintain the identified opportunities;

(vi) Estimate the time needed to develop the opportunities on the parcels;

(vii) Identify specific changes to Wyoming law that may be necessary in order to develop and maintain the identified opportunities including public private partnerships and the state's ability to partner with a private entity for purposes of maximizing the return on state funds;

(viii) Identify any resources including personnel necessary for the office of state lands and investments or other state agencies to implement the recommendations and opportunities identified in the plan.

(c) The office of state lands and investments may engage the services of research and consulting firms to solicit proposals and prepare the proposed plan required by this section.

(d) The plan shall ensure that any opportunity for development on any state trust land or school trust land parcel would retain all of the state's royalty or other income interests in the parcels.

(e) The plan shall only include proposals that the office of state lands and investments determines are feasible to implement and that would maximize the value of the parcels to the greatest extent possible.

(f) The office of state lands and investments shall regularly provide updates to the joint appropriations committee and the select committee on capital financing and investments on the status of proposals received by the office and the status of the plan. Not later than October 31, 2020, the office of state lands and investments shall submit and present the plan to the joint appropriations committee, the select committee on capital financing and investments and the board of land commissioners. The joint appropriations committee and the select committee on capital financing and investments shall consider the plan and either committee may develop legislation as it deems appropriate for consideration by the legislature.

(g) The office of state lands and investments shall consult with agencies,

local governments and other interested parties and engage in good faith with representatives from Teton county and the county commissioners, recognizing the objectives of the comprehensive master plan for Teton county. The office of state lands and investments shall duly consider all feedback provided throughout the process.

**Section 2.** There is appropriated seventy-five thousand dollars (\$75,000.00) from the general fund to the office of state lands and investments for the purposes of this act. This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2022. This appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2022. It is the intent of the legislature that this appropriation not be included in the office of state lands and investments' standard budget for the immediately succeeding fiscal biennium.

**Section 3.** This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

2020 Wyo. Sess. Laws. 497-99. The primary purpose of the State Trust Lands—Proposals and Study was to solicit proposals on opportunities for development of identified school trust land parcels and of any other state trust lands in Teton County that would maximize the value of the parcel to the greatest extent possible. The Office of State Lands and Investment was then directed to review the submitted proposals for feasibility and prepare a report with plans and recommendations for development of areas and parcels discussed in the proposals that the Office of State Lands and Investment deemed feasible. This report was to be presented to the joint appropriations committee and the select committee on capital financing and investments who were permitted to develop legislation as they deemed appropriate. Although the temporary use permits themselves are not before the court, condition number eight purportedly states that the “permittee shall observe all state, federal, and local laws and regulations. (Mot. for a More Definite Statement or in the alternative Defendant’s Answer and Counterclaims Including Injunctive Relief at 26).

### **Counterclaim #1**

The Uniform Declaratory Judgments Act permits courts of record to declare rights, status, and other legal relations whether or not further relief is or could be claimed. Wyo. Stat. Ann. §§ 1-37-101—1-37-115. The Act is remedial in nature as “[i]ts purpose is to settle and to afford relief from uncertainty and insecurity with respect to legal relations, and is to be liberally construed and administered.” Wyo. Stat. Ann. § 1-37-114. The Act does not, however, require courts to render advisory opinions or to determine moot or theoretical questions. *Guy v. Lampert*, 2015 WY 148, ¶ 28, 362 P.3d 331, 340 (Wyo. 2015) (quoting *Anderson v. Wyoming Development Co.*, 154 P.3d 318, 335 (Wyo. 1944)). “A court should not hear a case where there has been a change in circumstances occurring either before or after a case has been filed that eliminates the controversy.” *Operation Save America v. City of Jackson*, 2012 WY 51, ¶ 21, 275 P.3d 438, 448 (Wyo. 2012) (quoting *Southwestern Pub. Serv. Co. v. Thunder Basin Coal Co.*, 978 P.3d 1138, 1143 (Wyo. 1999)).

The Defendant asks that this court declare what Plaintiff has called “the Study Act” unconstitutional, arguing that it violates Wyoming’s Constitution as special legislation and gives special privileges to permittees on state trust lands. The parties spent a good deal of time discussing the *Brimmer* test for justiciability both in pleadings and at the hearing on the motions. (See State of Wyoming, Board of Land Commissioners’ Memorandum in Support of its Motion to Dismiss at 4-8). The Study Act required that the Office of State Lands and Investments solicit the requested proposals no later than August 1, 2020, that the report with plans and recommendations for development based on those proposals be presented to the joint appropriations committee no later than October 31, 2020, and that unobligated funds for the study would revert by June 30, 2022. The *Complaint* initiating the present litigation was not filed until December 22, 2022—more than two

years after the work product of the study—the report to the joint appropriations committee and select committee on capital financing and investments—was due. As Plaintiff mentioned at the hearing, the study was completed and presented to the identified legislative committees in accordance with the terms of the Study Act. The court need not answer the question of whether Defendant presented a justiciable claim because, assuming that they did, any questions concerning the constitutionality of the Study Act were immediately rendered moot. Consequently, Defendant’s first counterclaim must be dismissed as such. *Guy*, ¶ 28, 362 P.3d at 340, *Anderson*, 154 P.3d at 335; *In re Guardianship of MEO*, 2006 WY 87, ¶ 27, 138 P.3d 1145, 1153-54 (Wyo. 2006) (“The doctrine of mootness encompasses those circumstances which destroy a previously justiciable controversy.”).

### **Counterclaim #3**

Defendant requests that this court declare that both Basecamp Hospitality, LLC and Wilson Investments, LLC—neither of whom are party to this litigation—adhere to the requirement stated in their temporary use permit that they comply with all state, federal, and local laws and regulations. (Mot. for a More Definite Statement or in the alternative Defendant’s Answer and Counterclaims Including Injunctive Relief at 26). As Plaintiff points out and Defendant conceded at the hearing, Defendant is attempting to enforce a contract to which they are not a party. Generally, a non-party to a contract has no standing to bring a claim concerning that contract. *Southwestern Public Service Co. v. Thunder Basin Coal Co.*, 978 P.2d 1138, 1144 (Wyo. 1999). Because privity of contract is an essential element for a cause of action on a contract, Defendant’s third counterclaim must be dismissed as privity is admittedly lacking. *Id.*; see also *Peterson v. Meritain Health, Inc.*, 2022 WY 54, ¶ 22, 508 P.3d 696, 705 (Wyo. 2022) (citing *Cent. Contractors Co. v. Paradise Valley Util. Co.*, 634 P.2d 345, 348 (Wyo. 1981)).

### CRUSL's Motion to Intervene

In July of 2023, the Citizens for Responsible Use of State Lands (hereinafter "CRUSL") was formed and on August 11, 2023, they moved to intervene in the above captioned case. CRUSL asks to intervene as a matter of right or, alternatively, permissively. (*See generally* Mem. in Support of Mot. to Intervene). CRUSL posits its application as timely given the procedural stature of the case. Although there have been preliminary motions and briefs filed along with requests for preliminary injunction, the case has not yet been set for a scheduling conference. (*Id.* at 5-7). As local land and property owners with parcels "proximate" to the state trust lands that underly the case in controversy, CRUSL contends they have a significant interest in the outcome of the case. (*Id.* at 7-9). CRUSL further argues that should this court rule that temporary use permittees are free of local regulatory compliance, its mission to seek responsible use of state trust lands through the court system would be "practically impaired." (*Id.* at 10-11). Finally, CRUSL states that its interests are not adequately protected by the Defendant because the Defendant is a political organization that has greater complexities and considerations than simply looking out for the interests of citizens such as those comprising CRUSL. (*Id.* at 11-13).

Intervention is governed by Rule 24 of the Wyoming Rules of Civil Procedure. The rule permits both intervention of right and permissive intervention. When the applicant seeking intervention timely claims an interest relating to the subject of the action and the application is so situated that the disposition of the matter would impair or impede the applicant's ability to protect its interest, intervention as a matter of right is permitted so long as the applicant's interest is not otherwise adequately represented by existing parties to the case. W.R.C.P. 24(a)(2). An applicant seeking to intervene as a matter of right must meet all conditions outlined in Rule 24. *Concerned Citizens of Spring Creek Ranch v. Tips Up, LLC*, 2008 WY 64, ¶ 13, 185 P.3d 34, 39 (Wyo. 2008).



To satisfy the conditions of Rule 24(a)(2), the Wyoming Supreme Court created a four part test. *Id.* at ¶ 14. Those conditions are: “1) the applicant must claim an interest related to the property or transaction which is the subject of the action; 2) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect that interest; 3) there must be a showing that the applicant’s interest will not be adequately represented by the existing parties; and 4) the application for intervention must be timely.” *Id.*

Even if an applicant seeking to intervene in a case cannot intervene by right, the applicant may be allowed to permissively intervene. *Concerned Citizens of Spring Creek Ranch v. Tips Up, LLC*, 2008 WY 64, ¶ 23, 185 P.3d 34, 41 (Wyo. 2008). The Wyoming Rules of Civil Procedure permit intervention on a timely motion where the applicant “has a claim or defense that shares with the main action a common question of law or fact.” W.R.C.P. 24(b)(2). In exercising its discretion in deciding whether to allow an applicant to intervene, the court “must determine whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties or not.” *Id.* (quoting *Masinter v. Markstein*, 2002 WY 64, ¶ 6, 45 P.3d 237, 240 (Wyo. 2002)).

The court fails to see how CRUSL has a significant protectable interest in the case beyond that of a member of the public at large concerned with the outcome. *Id.* at ¶ 17, 185 P.3d at 40. The Wyoming Supreme Court discussed what constitutes a “significant protectable interest” as far back as 1982. *Platte County School Dist. No. 1 v. Basin Elec. Power Co-op*, 638 P.2d 1276, 1279-80 (Wyo. 1982). In the cited case, the appellants sought to intervene as a matter of right on the basis of their stated interest in tax revenues collected by the county treasurer. *Id.* at 1279. The litigation centered on tax assessments—disputes that must be settled before any revenues are collected or disbursed—not the revenues themselves. *Id.* Still, the Court “[could not] conclude that the legislature, when adopting the taxation statutes, contemplated that tax beneficiaries would be

permitted to participate in assessment disputes” and that appellants shared no more concern than “any other citizen of the county would be concerned.” *Id.* at 1280 (second quotation citing *State v. Colonial Refrigerated Transportation, Inc.*, 261 So.2d 767, 771 (1971)). It is not sufficient for intervention purposes that the applicant shares an interest “similar to the interest of any member of the public at large.” *Id.* at 1279. Ultimately the Court found that the applicants had not demonstrated a significant protectable interest to permit participation in the case. *Id.*

Much of CRUSL’s argument that it has a significant protectable interest stems from the proximity between the founding members’ property and the parcels of state trust land that caused the controversy to arise. The questions this court has been called to answer, however, are not specific to those parcels of land but rather all state trust land located in Wyoming’s twenty-three counties for which temporary use permits are issued.<sup>1</sup> This would seemingly diminish CRUSL’s proximity argument. However, CRUSL still relies on Wyoming Supreme Court precedent concerning standing for landowners challenging development regulations on nearby or adjacent property in support of their request to intervene. If, as CRUSL suggests, physical proximity to two state trust land parcels in Teton County is relevant for purposes of intervention in this case, Plaintiff is correct that closer proximity than that claimed by CRUSL is required. *N. Laramie Range Found. v. Converse Cnty. Bd. of Cnty. Com’rs*, 2012 WY 158, 290 P.3d 1063 (Wyo. 2012). The Court has recognized the rights of landowners whose properties were adjacent to or adjoining the lands at the center of the dispute however, as Plaintiff identifies, those CRUSL members with residences nearby the parcels of state trust land that bring the controversy before the court, are located more than one mile from where the permitted activity is occurring on those parcels. (Board of Land Commissioners’ Opposition to

---

<sup>1</sup> Counsel for CRUSL noted at the hearing that more than 100 individuals are now members. Although not expressly addressed, the court would find it hard to believe that every member has land

Motion to Intervene at 5, n. 3). This does not appear to be in line with the type of proximity that the Wyoming Supreme Court has held bestowed rights upon landowners. *Id.* at ¶ 33 (finding that property “near” the project at issue did not fall within precedent of finding standing when the property was “adjoined” or “adjacent” to the project).

Of additional concern to the court is that CRUSL simply cites generalized injuries in list form. (Mem. in Support of Mot. to Intervene at 8). This includes deteriorating views, noise, traffic, and threats to public health and safety—to name a few. (*Id.*). The concern is not that these injuries cannot be sufficient to create a legally protected interest in **any** case, but that they are not sufficient in **this** case because they lack specificity. The list of injuries that CRUSL provides are those that could be raised by any concerned citizen. The Court has disapproved of individuals and organizations who have only generally categorized their concerns and not “spell[ed] out” how a decision “specifically threatened them.” *Id.* at ¶¶ 26, 35. On the other hand, where an individual raised specific traffic and safety concerns that could result from a particular project and cited to a traffic study that showed a causal relationship between the perceived threats and the particular project, that harm was distinguished from the harm suffered by the general public and the litigant was allowed to move forward. *Id.* at ¶ 33. Beyond mentioning their concerns in list form, CRUSL has failed to provide this court with any details as to how views are being deteriorated, what noise is happening such that it causes harm, what traffic concerns there are, and what threats to public health and safety are occurring or will occur. Not only have they failed to provide any detail concerning these alleged harms, they have also failed to relate those harms to themselves as applicants as distinguished from any member of the general public.

It is worth mentioning once again that CRUSL’s listed harms appear to be directly related to

---


in proximity to the parcels that first brought this controversy to the court’s attention.

the permitted activities happening on two particular parcels of state trust land. The questions before the court involve determination of whether any activities conducted pursuant to a temporary use permits on any state trust lands are subject to local regulations. Were the court to determine that all local land use regulations applied to temporary use permits on state trust lands, CRUSL has not suggested that the permitted activities they are concerned about would be totally forbidden. There has been no argument to this court that the outcome of this litigation would mitigate or eradicate the generalized issues they have raised concerning activities on those parcels. With no link between the asserted harms and the questions before the court, the court is left with the distinct impression that CRUSL is attempting to substitute intervention in a declaratory judgment action for an administrative appeal from Plaintiff's grant of specific temporary use permits, which is not permissible. *Ten Broek v. Cnty. Of Washakie*, 2003 WY 164, ¶ 8, 82 P.3d 269, 273 (Wyo 2003) (quoting *Rocky Mountain Oil & Gas Ass'n v. State*, 645 P.2d 1163, 1168 (Wyo. 1982)). CRUSL has failed to demonstrate that they have a significant protectable interest in the subject of this action. Because an applicant must meet all four criteria to intervene as a matter of right, their request to do so is denied. W.R.C.P. 24(a).

The court will similarly deny CRUSL's request for permissive intervention. Although there are widespread implications for this court's decision, the two questions presently at issue are straightforward and general in nature and will apply to all temporary use permits granted on state trust lands throughout the State. As previously discussed, CRUSL's stated concerns revolve around Plaintiff's issuance of two individual permits on two specific parcels of state trust land. This, then, would differentiate CRUSL's claims or defenses from the questions before the court. Permissive intervention requires that the applicant "has a claim or defense that shares with the main action a common question of law or fact." W.R.C.P. 24(b)(2). CRUSL has not demonstrated this.

Additionally, while not so tardy as to require that this court make a finding of untimeliness, CRUSL's interjection at this stage in the proceedings would unduly delay progress in the case. As the litigation approaches its first birthday, this court has already considered two motions for injunctive relief as well as cross motions to dismiss. If the court were to permit intervention, CRUSL would need to file an answer and any potential counterclaims which could result in further motions to dismiss. Although CRUSL's briefing discusses the assertion of counterclaims, they did not disclose the substance of any potential claims they might bring so that the court could properly assess the direction the litigation might take were CRUSL to intervene. At this juncture, CRUSL's intervention is not necessary for resolution of the two narrow questions before the court. The request for intervention is denied.

Dated this 14 day of November, 2023.

  
\_\_\_\_\_  
Hon. Steven K. Sharpe  
District Court Judge

Please provide copies to:

Jim Peters  
Patrick Miller  
Brandi Monger

Keith Gingery

Bill Schwartz  
Leah Schwartz

I hereby certify that I distributed a true and correct copy of the foregoing this \_\_\_\_ day of \_\_\_\_\_ 2023, as indicated. [M-mail; B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]