IN THE SUPREME COURT, STATE OF WYOMING

CITY OF LARAMIE, WYOMING, Appellant (Plaintiff), v. UNIVERSITY OF WYOMING and UNIVERSITY OF WYOMING BOARD OF TRUSTEES, Appellees (Defendants).	S-23-0062

Appellant's Opening Brief

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Statement of Jurisdiction

As part of a planned proprietary irrigation system, the University of Wyoming and its Board of Trustees (collectively "the University") drilled and operated new water wells within the corporate jurisdiction of the City of Laramie ("the City"). In 2020, the City enacted an ordinance requiring a franchise or permit to use nonmunicipal water within City limits. In 2021, the Wyoming Legislature passed a statute exempting the University from local restrictions on its water systems.

After its unrequited compromise efforts failed, the City filed a complaint seeking (as pertinent here) declarations that the University must comply with the 2020 ordinance and honor a 1965 covenant prohibiting the University's operation of one of its new wells. (R. 002-079). The district court had subject-matter jurisdiction under the Wyoming Uniform Declaratory Judgments Act, WYO. STAT. § 1-37-102, because the complaint sought declaratory relief related to property interests located in Albany County.

The University filed a motion to dismiss, which the district court partially granted on 29 October 2021. (R. 226-257). The University subsequently filed a motion for judgment on the pleadings or summary judgment, which the district court granted on 5 January 2023. (R. 444-445).

The City timely filed its Notice of Appeal on 2 February 2023. (R. 448-451). This Court has jurisdiction under the Declaratory Judgments Act, WYO.

STAT. § 1-37-109, and Article 5, Section 2 of the Wyoming Constitution. *See also* WYO. R. APP. P. 1.05.

Statement of Issues

1. A 1965 deed from Union Pacific to the University reserved non-domestic water-drilling rights to Union Pacific and included a covenant prohibiting the University from operating water wells. At the time, state entities enjoyed sovereign immunity for "governmental" but not "proprietary" functions. Beginning in 2019, the University has drilled and operated a water well on the land, a "proprietary" function. Does sovereign immunity prohibit enforcement of the 1965 Covenant against the University?

2. The Wyoming Constitution guarantees equal protection under the law. In this regard, Article 3, Section 27 prohibits special laws "where a general law can be made applicable." Meanwhile, enacted in 2021, Section 21-17-126 of the Wyoming Statutes ("the University Water Statute") specially exempts the University—and only the University—from local restrictions on its water systems. Did the legislature have a rational basis to prefer the University over all other similarly situated property owners?

3. Under Article 3, Section 37 of the Wyoming Constitution and this Court's precedent, the legislature may not delegate "power to . . . interfere with any municipal improvements" or "perform any municipal functions" to an entity beyond municipal control. The University Water Statute empowers the

University to interfere with the supply, drainage, and fiscal integrity of the City water system, and to authorize its own water systems within City limits. Does the statute impermissibly delegate municipal power?

4. Enacted in August of 2020, Laramie Municipal Code Section 13.04.360 ("the City Ordinance") generally requires a franchise or permit to develop or use nonmunicipal water within City limits. Assuming *arguendo* the University Water Statute is constitutional, would it entirely exempt the University from the City Ordinance, including on non-University property? Would any other authority exempt the University from the City Ordinance?

Statement of the Case

I. Facts

Laramie, the Gem City of the Plains, was settled in 1868 along the Union Pacific Railroad line, although it began as a tent city near the Overland Stage Line a few years earlier. The first waterworks were built in 1868, conveying water into the Laramie settlement from the nearby City Springs. Meanwhile, the University of Wyoming opened its doors in Laramie in 1887. The City has been privileged to host the University ever since.

a. 1868: The Union Pacific Railroad Company ("Union Pacific") owned all of Section 35, Township 16 North, Range 73, sharing water rights with the City.

Dating back to territorial days, Union Pacific owned all of Section 35, Township 16 North, Range 73 West of the 6th P.M., in Albany County. The

City Springs lie in the S½ of Section 35. Both the City and Union Pacific appropriated water from the City Springs under an 1868-priority water right.

b. 1946: The City's Water Exchange Agreement with Union Pacific

On 5 March 1946, the City and Union Pacific entered into a water exchange agreement. (R. 024-035). The 1946 agreement quoted a 1912 district court decree, which adjudicated and described the City and Union Pacific as appropriating the entire flow of the City Springs water, with "their rights as between themselves . . . as fixed by their written contracts." (R. 025). The 1946 agreement also outlined a succession of prior agreements between the City and Union Pacific, dating back to 1874, concerning their respective rights to the City Springs water. (R. 024-025). Under these prior agreements, Union Pacific had the right to use the entire flow from City Springs, and the City had the right to any excess. (R. 025).

The 1946 Water Exchange Agreement changed this equation, essentially (with conditions) granting the City Springs water to the City, in exchange for water from the Laramie River. (R. 026-035). Among other things, the City and Union Pacific agreed to protect their respective interests in the water sources against third-party interferers:

> Neither party hereto will, without the written consent of the other party, lease, sell or otherwise dispose of any real property in said Albany County south of said north line of Township 17 which it may now or hereafter own or control without reserving unto itself the exclusive rights to drill for, produce or pump, and use the

> underground water therein or therefrom for all purposes other than domestic or stock-watering purposes or purposes of oil or other mineral exploration and development. In the event that a third party or parties should propose or threaten to drill, enlarge, pump or otherwise use any well or spring in the aforesaid area in Albany County in such location and manner as to endanger or decrease the flow or production of water from any existing source of supply belonging to either party hereto, or propose or threaten to do or perform any other act or take any other action whatsoever tending to endanger or decrease such flow or production of water, the parties hereto will join in such action as may be available to prevent or minimize the danger of such third-party activity, and otherwise protect the interests of the parties in and to their respective sources of water supply.

(R. 034). Thus, neither the City nor Union Pacific was able to convey specified water-drilling rights without the other's written consent, and both the City and Union Pacific had the ability to protect their respective water rights.

c. 1965: Union Pacific deeded the North 1/2 of Section 35 to the University, reserving water-drilling rights and prohibiting the operation of water wells.

On 26 October 1965, Union Pacific deeded the N½ of Section 35 to the University. (R. 018-020). Consistent with the 1946 Water Exchange Agreement, Union Pacific reserved "the exclusive rights to drill for, produce or pump, and use the underground water therein or therefrom for all purposes other than domestic purposes." (R. 019). The deed also contains a restrictive covenant ("the 1965 Covenant"), in which the University agreed: "Said premises shall not be used at any time for the construction, maintenance or operation of water wells, septic tanks, waste sumps or appurtenances thereto,

or for installations or uses which may contaminate the water supply produced or developed on the South Half (S½) of said Section 35." (R. 019).

d. 2019-2023: The University violated the 1965 Covenant

In 2019, the University filed two applications with the State Engineer's Office ("SEO") for test wells. (R. 040-043). The University then drilled two exploration wells in Township 16 North, Range 73 West of the 6th P.M., in Albany County: "UW 2019 Well A" in the SW¼SW¼ of Section 25 (hereafter "Well A"), and "UW 2019 Well B" in the NE¼NE¼ of Section 35 (hereafter "Well B"). (R. 008). The University's new test wells were close to the City's existing Turner wells, including the City's Turner No. 2 well in the SE¼SW¼ of Section 35, which diverts water under the 1868-priority City Springs right. (R. 007-009, 012, 060). The City's wells enjoy a higher priority, but the new wells are drilled deeper into the underlying Casper Aquifer.

On 14 November 2019, although Well B violated the 1965 Covenant, the University applied to convert its new test wells into high-capacity production wells. (R. 044-045, 051-052). In a letter to the SEO dated 15 January 2020, a consultant revealed the University irrigated "212 acres of lawn grass and landscaped areas" in 2019, including the Jacoby Golf Course, and that "[t]he University intend[ed] to comingle water from the two new Casper Aquifer wells with the existing Forelle and Chugwater formation wells to meet the lawn watering demands on campus. The water used from the University's wells will

be offset with reduced demands from the City of Laramie potable water system." (R. 059). Ultimately, the SEO would grant the University's applications on 23 November 2020. (R. 045-050, 052-057).

e. August 2020: The City Ordinance

Meanwhile, in August of 2020, the City Council enacted Laramie Municipal Code § 13.04.360 (hereafter "the City Ordinance"), which provides in pertinent part:

> It is unlawful to do the following unless a franchise or permit is granted by the city council upon a determination that such franchise or permit is in the best interest of the city:
>
> A. To develop, drill, construct, operate, maintain, or use any water line, system, well, or works within the corporate limits of the city in order to sell, distribute, provide, or use nonmunicipal water (potable and/or non-potable) within the city;
>
> B. To interconnect any building, facility, landscape, lot, premises, or structure of any kind within the corporate limits of the city to any water line, system, well, or works other than to the city's water utility; or
>
> C. To use any portion of the city's streets, alleys, easements, or rights-of-way, or other property owned or managed by the city, for such purposes.
>
> A water well within the corporate limits of the city that was constantly (year to year) and legally producing water on or before June 1, 2020 may continue to operate for the same purpose and capacity [under specified conditions] . . . .

LARAMIE, WYO., MUN. CODE § 13.04.360. When proposed, the reasons underlying the City Ordinance included (but were not limited to): (1) protecting

the City's investment in its water utility and the utility's fiscal integrity; (2) protecting the City's drainage and sewage systems from uncontrolled runoff; and (3) protecting the City's water supply and eliminating possible point source contamination. (R. 374).

f. March-April 2021: The University Water Statute

The City repeatedly proposed six solutions designed to meet the University's water needs without damaging or interfering with the City's water supply, and to avoid costly litigation or mitigation. (R. 009-010, 061-068). Three of these solutions contemplated no ongoing payments to the municipal water utility for "consumption" of irrigation water at the Jacoby Golf Course. (R. 063-064). But the University neither accepted nor countered the City's proposals. Instead, even before the SEO granted its applications, the University gave notice that it intended to connect its new wells to its water system. (R. 065-066). This would require a pipeline under 30th Street, which the City owns, and which separates the University campus from the new wells. (R. 012).[1]

On 2 March 2021, House Bill No. 198 was introduced in the Wyoming Legislature. (R. 010). Subsequently enacted and effective 5 April 2021, the statute (hereafter, "the University Water Statute") provides:

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[1] With this appeal pending, the City granted the University a license to install a limited-use pipeline under 30th Street.

> (a) Subject to title 41 of the Wyoming statutes and notwithstanding any municipal or county ordinance, the University of Wyoming may:
>
> (i) Develop, drill, construct, operate, maintain and use any water line, system, well or works on property owned by the university for the purposes of distributing, providing and using nonpotable water on property owned or leased by the university for miscellaneous use where water is to be used for landscape watering, lawns, athletic fields, trees, shrubs and flowers;
>
> (ii) Connect a building, facility, landscape, lot, premises or structure owned by the university to any water line, system, well or works operated, maintained or used by the university.
>
> (b) No city or county shall restrict or prohibit the university from developing, drilling, constructing, operating, maintaining or using any water system independent of the city's or county's water system.

WYO. STAT. § 21-17-126. The legislature also amended Title 15, Chapter 7, Article 7 to accommodate the new statute. *See infra* § II(c)(ii)(2).

II. Procedural History and Rulings Presented for Review

On 8 June 2021, the City filed its complaint and exhibits. (R. 002-079). The University subsequently filed a motion to dismiss, (R. 094-096), which the district court partially granted on 29 October 2021. (R. 226-257).

The University filed its answer, counterclaims, and affirmative defenses on 15 December 2021. (R. 267-290). Subsequently, the University moved for summary judgment and judgment on the pleadings. (R. 322-324). The district court granted the University's motion orally on 19 December 2022 and entered an order dismissing the City's complaint with prejudice on 5 January 2023. (R.

444-445; Transcript at 9, Dec. 19, 2022). The University's counterclaims were "rendered moot by this Order." (R. 444).

The City's complaint sought several declaratory judgments. However, only the following claims remain at issue on appeal.

First, the City sought a declaration that it could enforce the 1965 Covenant to prohibit the University from producing water from Well B. (R. 013). This claim survived the University's motion to dismiss. (R. 256). However, the University subsequently invoked sovereign immunity and claimed the 1965 Covenant has never been enforceable by anyone, including Union Pacific. (R. 342-346). The district court agreed and granted summary judgment. (Transcript at 5-7, 9, Dec. 19, 2022).

Second and *third*, the City sought a declaration that the University Water Statute is unconstitutional as a "special law" under Article 3, Section 27 or an impermissible delegation of municipal power under Article 3, Section 37 of the Wyoming Constitution. (R. 015). These claims did not survive the University's motion to dismiss. (R. 256).

Fourth, the City sought a declaration that the University must comply with the City Ordinance. (R. 015). This claim survived the University's motion to dismiss. (R. 256). However, at summary judgment, the district court held the University Water Statute exempts the University from compliance with the City Ordinance. (Transcript at 7-9, Dec. 19, 2022).

Summary of Argument

First, the district court erroneously held state sovereign immunity bars the City from enforcing the 1965 Covenant against the University. As the University acknowledged, this question is governed by the law as it existed in 1965. At the time, state entities only enjoyed sovereign immunity when performing "governmental" functions, not "proprietary" functions. And here, the University's operation of a private water system for landscape irrigation is a "proprietary" function. Accordingly, because the City's claimed right to enforce the 1965 Covenant as a third-party beneficiary raises genuine issues of material fact, this Court should reverse and remand the issue for trial.

Second, the district court erroneously held the University Water Statute is not a "special law" under Article 3, Section 27. Under an equal-protection analysis, the University Water Statute grants the University a special privilege to operate proprietary water systems without municipal restriction, without granting that same privilege to similarly situated irrigators. There is no rational basis for this preference, because it does not implicate the University's core educational mission.

Third, the district court erroneously held the University Water Statute does not violate Article 3, Section 37, which prevents the legislature from delegating power to "interfere with any municipal improvements" or "perform any municipal functions" to an entity beyond municipal control. Pertinent

here, operating a municipal water system is a municipal function with attendant municipal improvements. And the University Water Statute violates Section 37 by delegating the University power to interfere with the City's water supply, to use and interfere with the City's drainage system, to impair the fiscal integrity of the City's water utility, and to usurp the City's decision-making authority over the operation of waterworks within City limits.

Finally, the district court erroneously held the University Water Statute entirely exempts the University from enforcement of the City Ordinance. For one thing, because the statute is unconstitutional, it does not supersede the ordinance. However, even assuming *arguendo* the statute were constitutional, it would only supersede the ordinance as to water systems existing entirely on the University's property or entirely independent of the City's water system. Here, the University's proposed water system does not satisfy these criteria, because it would involve a pipeline under 30th Street, and because it would burden the municipal drainage system. At minimum, these circumstances raise genuine issues of material fact.

Furthermore, apart from the University Water Statute, there is no legal barrier to enforcing the City Ordinance against the University. Therefore, regardless of whether the University Water Statute survives constitutional scrutiny, this Court should remand for determination of whether the

University's contemplated water system—whether in whole or in part—requires compliance with the City Ordinance.

Argument

A common theme pervades this case: the University's belief that it enjoys supreme status under—and above—the law. According to the University, it is free to violate a decades-old covenant with impunity. Any statute enacted for its benefit is excused from equal-protection requirements. It may usurp municipal power without constitutional restriction. Simultaneously, it is exempt from any municipality's exercise of its own statutory and constitutional authority. "The servant," declares the University, "cannot regulate the master." (R. 340). The University's theme is dominance, not coexistence.

The City's theme is different. Having hosted the University since its inception, the City readily acknowledges the University's unique constitutional status as Wyoming's flagship institution of higher learning. But as a proprietary landscape irrigator, the University's status is no different than other proprietors'. In this capacity, the University is not free to violate its covenant from 1965. It may not receive preferential treatment under the law or exercise municipal power. And it is not exempt from municipal authority. The City values amicable coexistence, and it tried to resolve this dispute in good faith. But the University is not the City's only inhabitant, and the City must defend its interests and those of its other residents.

I. Standards of Review

Similar standards apply to dismissals under Rule 12(b)(6) and summary judgments. This Court's review is *de novo*. *Harnetty v. State*, 2022 WY 68, ¶ 12, 511 P.3d 165, 169 (Wyo. 2022); *Allred v. Bebout*, 2018 WY 8, ¶ 29, 409 P.3d 260, 268 (Wyo. 2018). Under Rule "12(b)(6), this Court accepts the facts stated in the complaint as true and views them in the light most favorable to the plaintiff. Such a dismissal will be sustained only when it is certain from the face of the complaint that the plaintiff cannot assert any facts that would entitle him to relief." *Van Riper v. Oedekoven*, 2001 WY 58, ¶ 24, 26 P.3d 325, 329 (Wyo. 2001). When reviewing a summary judgment, this Court considers the record in the perspective most favorable to the non-moving party, affirming only if "there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Symons v. Heaton*, 2014 WY 4, ¶ 7, 316 P.3d 1171, 1173 (Wyo. 2014).

II. Discussion of Issues

a. The University may not invoke sovereign immunity against the 1965 Covenant.

The district court held the University enjoys sovereign immunity against the 1965 Covenant. This holding was legally erroneous, and this Court should reverse and remand for trial on the issue of whether the City may enforce the covenant as a third-party beneficiary.

i. This Court should analyze the sovereign-immunity issue *de novo*, under law preceding the Wyoming Governmental Claims Act, without regard to what the City argued below.

Before analyzing why the University may not invoke sovereign immunity in this case, two preliminary observations are warranted.

First, this Court should apply sovereign-immunity principles that predated the Wyoming Governmental Claims Act (WGCA). Sovereign immunity stems from the Wyoming Constitution. WYO. CONST. art. 1, § 8; *Worthington v. State*, 598 P.2d 796, 800-05 (Wyo. 1979). In the WGCA, the legislature authorized specified suits against the state, partially waiving sovereign immunity. *E.g.*, *Wyoming State Hosp. v. Romine*, 2021 WY 47, ¶ 14, 483 P.3d 840, 845 (Wyo. 2021). However, matters occurring before the WGCA's enactment are governed by pre-WGCA sovereign-immunity principles. *See Oyler v. State*, 618 P.2d 1042, 1045 & n.9 (Wyo. 1980); *id.* at 1056 (Raper, C.J., dissenting in part and concurring in part). *Cf., e.g.*, *In re. Application of Hagood*, 356 P.2d 135, 138 (Wyo. 1960) ("[A] statute may not be applied retroactively so as to deprive contracting parties of their rights.").

Here, the 1965 Covenant predated the WGCA. Therefore, as the University correctly argued below, (R. 343), this court should consider sovereign immunity under pre-WGCA principles.

Second, this court should consider the sovereign-immunity issue *de novo*, without regard to what the City argued below. Although this Court generally does not consider issues not raised in the district court, it makes an exception for issues that "are jurisdictional or are fundamental in nature." *Peterson v. Meritain Health, Inc.*, 2022 WY 54, ¶ 20, 508 P.3d 696, 705 (Wyo. 2022). Pertinent here, state sovereign immunity is a jurisdictional issue. *Biscar v. Univ. of Wyo. Bd. of Trustees*, 605 P.2d 374, 377 (Wyo. 1980); *Retail Clerks Loc. 187 AFL-CIO v. Univ. of Wyo.*, 531 P.2d 884, 887 (Wyo. 1975); *see Mountain View/Evergreen Imp. & Serv. Dist. v. Brooks Water & Sewer Dist.*, 896 P.2d 1355, 1361 (Wyo. 1995). Thus, in considering the University's claim of sovereign immunity, this Court should consider the City's arguments on appeal without regard to whether it raised the same arguments below.

ii. The University enjoys no sovereign immunity to operate Well B as a proprietary activity.

Under a pre-WGCA analysis, "[t]he University of Wyoming, together with its officers, as they undertake to act in their official capacities, enjoy sovereign immunity since a suit against the University or these officers is a suit against the state." *Biscar*, 605 P.2d at 375. But there is an important exception to this general rule: "the state may be sued without its consent when it engages in a proprietary function." *Id.* at 376. *E.g.*, *Jivelekas v. City of Worland*, 546 P.2d 419, 429 & n.14 (Wyo. 1976). *See Harrison v. Wyo. Liquor*

Comm'n, 177 P.2d 397, 402-03 (Wyo. 1947); *Nat'l Sur. Co. v. Morris*, 241 P. 1063, 1067-68 (Wyo. 1925). Therefore, the issue is whether the University's operation of Well B is governmental or proprietary.[2]

Distinguishing between governmental and proprietary activities is sometimes challenging, but principles emerge from this Court's precedent. An activity "concerned with the health and welfare of the public at large . . . is governmental," *Biscar*, 605 P.2d at 376, including regulation and control under the state police power, *see Harrison*, 177 P.2d at 404-05. Similarly, an activity involving legislative discretion, *e.g.*, enacting zoning ordinances, is governmental. *Biscar*, 605 P.2d at 376; *Wikstrom v. City of Laramie*, 262 P. 22, 23 (Wyo. 1927). Furthermore, a state entity's quintessential function is relevant. Thus, for the Wyoming Liquor Commission, purchasing liquor is a governmental function. *See Harrison*, 177 P.2d at 404-05. And for the

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[2] In its 1975 *Retail Clerks* decision, with minimal analysis, this Court distinguished prior municipal immunity cases involving the proprietary-governmental distinction. 531 P.2d at 887 & n.2. However, in at least two earlier cases, this Court essentially recognized the proprietary-governmental distinction under state sovereign immunity. *See Harrison*, 177 P.2d at 402; *Nat'l Sur. Co.*, 241 P. at 1067-68. And this Court again applied the proprietary-governmental distinction in its 1980 *Biscar* decision. *See* 605 P.2d at 376-77.

University, hiring professors is a governmental function. *Biscar*, 605 P.2d at 377.

Conversely, some state activities are proprietary. The state engages in a proprietary activity "when it places itself in the same class and on the same footing with private individuals in connection with its property rights." *See Nat'l Sur. Co.*, 241 P. at 1067. Moreover, an activity historically carried on by a private corporation or that generates fees is proprietary. *Biscar*, 605 P.2d at 376. And as pertinent here, "the operation of water works, power plants, and gas systems . . . [is] clearly proprietary." *Town of Pine Bluffs v. State Bd. of Equalization*, 333 P.2d 700, 711 (Wyo. 1958) (quoting *Hayes v. Town of Cedar Grove*, 30 S.E.2d 726, 730 (W. Va. 1944)). Indeed, this Court has long reasoned that providing water and operating utilities are proprietary activities,[3] with

[3] *See Frank v. City of Cody*, 572 P.2d 1106, 1110 (Wyo. 1977) (discussing *Pine Bluffs*, 333 P.2d 700) ("[W]hen a municipality engages in business, as an electric utility, it is acting in a private or proprietary capacity . . . ."); *Stewart v. City of Cheyenne*, 154 P.2d 355, 364 (Wyo. 1944) (contrasting "local affairs" with "governmental affairs" and characterizing water works as "strictly a local affair"); *Seaman v. Big Horn Canal Ass'n*, 213 P. 938, 940 (Wyo. 1923) ("A municipality . . . that supplies the inhabitants with water does so in its proprietary or business capacity.").

the sometime exception of securing and providing water for the life and health of the general public.[4]

Here, the University's operation of Well B is a proprietary activity. The University is operating Well B to provide landscape irrigation, which is unrelated to "the health and welfare of the public at large." *See Biscar*, 605 P.2d at 376. Furthermore, the Jacoby Golf Course generates fees. *Cf. id.* And unlike hiring professors, *see id.* at 377, operating a water works for landscape

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[4] *Pine Bluffs*, 333 P.2d at 710 ("[I]t may well be for the purpose of taxation at least that when a municipality furnishes water to its inhabitants it may be said to be acting in a governmental capacity in view of the fact that water is essential to health as well as to life itself."); *Holt v. City of Cheyenne*, 137 P. 876, 881 (Wyo. 1914) ("[T]he city of Cheyenne, in the matter of acquiring and holding the right to the use of water for the benefit of the whole public, acts as the agent of the state in exercising . . . governmental functions and powers, and as already stated the securing of water sufficient not alone for its present but such as may be necessary for its future inhabitants was and is within its governmental powers."). *See also Town of Lovell v. Menhall*, 386 P.2d 109, 122 (Wyo. 1963) (Harnsberger, J., concurring in opinion for reversal) ("[W]ater is a health and even a life necessity and thus a matter properly within governmental police power.").

irrigation is not a quintessential function of the University. Under the circumstances, the University's operation of Well B is "clearly proprietary." *See Pine Bluffs*, 333 P.2d at 711. Accordingly, the University does not enjoy sovereign immunity against the 1965 covenant under pre-WGCA law.

iii. This court should remand for trial on the issue of whether the City may enforce the 1965 Covenant.

Apart from its inapt claim of sovereign immunity, the University has no legal exemption from the 1965 Covenant. "Covenants are contractual in nature," and this Court "interpret[s] them as [it] would a contract. [Its] goal is to determine and effectuate the intention of the parties, especially the grantor or declarant." *Sweetwater Station, LLC v. Pedri*, 2022 WY 163, ¶ 13, 522 P.3d 617, 622 (Wyo. 2022) (citation and quotation marks omitted).

And as pertinent here, covenants may benefit third parties. RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) ("RESTATEMENT") § 2.6(2) (2000). "A servitude benefiting a third party may be created in a document that simultaneously conveys the burdened estate to another," *id.* cmt. e, and "[t]he identity of the beneficiary of a servitude may be implied by the facts or circumstances of the transaction creating the servitude," *id.* § 2.11(b). *See also Peterson*, 2022 WY 54, ¶ 56, 508 P.3d at 713 ("[T]he parties' intention to create a third-party beneficiary is to be gleaned from a consideration of all of the

contract and the circumstances surrounding the parties at the time of its execution." (quotation marks and emphasis omitted)).

Here, the facts and circumstances raise genuine factual issues regarding the City's right to enforce the 1965 Covenant. In reserving water rights in the 1965 deed, Union Pacific acted in accordance with its 1946 Water Exchange Agreement with the City. Indeed, the district court characterized the language of these documents as "remarkably similar." (R. 239). Furthermore, the 1965 Covenant not only prohibits the University from constructing or operating water wells on the N½ of Section 35; it also prohibits the University from using the N½ of Section 35 "for installations or uses which may contaminate the water supply produced or developed on the South Half (S½) of said Section 35." (R. 019). This language indicates an intent to benefit the City, which was—and is—appropriating water from City Springs in the S½ of Section 35 (currently diverting it through the City's Turner No. 2 well). Accordingly, this Court should remand the issue for trial.

b. The University Water Statute is a "special law" that violates Article 3, Section 27 of the Wyoming Constitution.

The district court held the University Water Statute is not a "special law" that violates Article 3, Section 27 of the Wyoming Constitution ("Section 27") . This holding was legally erroneous.

i. This Court should analyze the University Water Statute under its established equal-protection framework.

Section 27 prohibits special and local laws. It enumerates specific prohibitions and concludes with an omnibus prohibition:

> The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; incorporation of cities, towns or villages; or changing or amending the charters of any cities, towns or villages; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; giving effect to any informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating[,] increasing, or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever, or amending existing charter for such purpose; for punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury, relinquishing or extinguishing, in whole or part, the indebtedness, liabilities or obligation of any corporation or person to this state or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or

> impairing of liens; creating offices or prescribing the powers or duties of officers in counties, cities, townships or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted.

WYO. CONST. art. 3, § 27.

As a predicate matter, this Court need not parse Section 27's enumerated prohibitions to resolve this appeal. Irrespective of the enumerations, the University Water Statute violates Section 27's omnibus prohibition.

In its ruling below, the district court construed Section 27 as a blanket prohibition of entity-specific legislation. The court viewed such a prohibition as incompatible with Article 7, Section 17 of the Wyoming Constitution, which requires the legislature to "provide by law for the management of the university, its lands and other property by a board of trustees" and prescribe "[t]he duties and powers of the trustees." (R. 250).

But the district court's reasoning was incorrect. As a rule, "every statement in the constitution must be interpreted in light of the entire document . . . with all portions of it read in pari materia and every word, clause and sentence considered so that no part will be inoperative or superfluous." *Geringer v. Bebout*, 10 P.3d 514, 520 (Wyo. 2000). Thus, rather than construing constitutional provisions as incompatible, courts should harmonize them. And here, as discussed below, Section 27 is entirely compatible with University-specific legislation under Article 7, Section 17.

"With relative consistency, this Court has for years treated article 3, section 27 as an equal protection provision . . . ." *Baessler v. Freier*, 2011 WY 125, ¶ 17, 258 P.3d 720, 727 (Wyo. 2011). *See also Greenwalt v. Ram Rest. Corp. of Wyo.*, 2003 WY 77, ¶ 39, 71 P.3d 717, 730 (Wyo. 2003) ("The Wyoming Constitution does not contain . . . an express 'equal protection' clause; rather, it contains a variety of equality provisions, *viz.,* Article 1, §§ 2, 3, and 34; and Article 3, § 27."). As an equal protection provision, "[Section] 27 . . . does not forbid legislative classification, but the legislature is required to treat with equality citizens or entities that are similarly situated." *Bd. of Cnty. Comm'rs v. Geringer*, 941 P.2d 742, 746 (Wyo. 1997); *accord Nation v. Giant Drug Co.*, 396 P.2d 431, 434 (Wyo. 1964). *See also Baessler*, 2011 WY 125, ¶ 16.

Therefore, contrary to the district court's conclusion, Section 27 is not a blanket prohibition of University-specific legislation. The legislature has passed dozens of University-specific statutes in Chapter 17 of Title 21. However, many of these statutes do not trigger Section 27 scrutiny, because they do not implicate or prefer the University over other entities. *See, e.g.*, WYO. STAT. §§ 21-17-103, -104, -203, -204 (prescribing powers and duties of University employees and trustees); *id.* § 21-17-301(e) (requiring any lease of state land for the University's agricultural experiment and research program to be "at the fair market value"). And here, if the University Water Statute merely empowered the University to develop and operate water systems like

any other proprietor, without a special exemption from local regulation, then Section 27 would have nothing to say.

But even where (as here) a statute prefers the University over comparable citizens or entities, the statute is not automatically invalid under Section 27. Instead, the statute's validity depends on whether a sufficient justification supports the preference. *See infra* § II(b)(ii).

In sum, there is no constitutional tension between the legislature's mandate to manage the University and the requirements of Section 27. Whenever the legislature acts, it is exercising constitutional authority. There is nothing talismanic about Article 7, Section 17 that negates equal protection requirements. For instance, the legislature could not establish special rules of evidence or statutes of limitations for lawsuits involving the University. *See* WYO. CONST. art. 3, § 27. Nor could the legislature prohibit women from attending the University or serving as professors. *See id.* art. 1, § 3. Whether it is managing the University or legislating in some other area, the legislature may not deny equal protection of the law.

ii. The University Water Statute violates Section 27, because it grants the University a special and unjustified preference over similarly situated property owners.

When analyzing statutes, this Court presumes they are constitutional and resolves any doubt in favor of constitutionality. *Powers v. State*, 2014 WY 15, ¶ 7, 318 P.3d 300, 303 (Wyo. 2014). However, "it is [this Court's] equally

imperative duty to declare a legislative enactment invalid if it transgresses the state constitution." *Id.*

Here, having dispensed with the mistaken premise that Section 27 does not apply to University-specific statutes, this Court must consider whether the University Water Statute passes muster. To analyze equal protection issues, this Court applies "a three-element test requiring: (1) identification of the legislative classification at issue; (2) identification of the legislative objectives; and (3) determination of whether the legislative classification is rationally related to the achievement of an appropriate legislative purpose." *Krenning v. Heart Mountain Irr. Dist.*, 2009 WY 11, ¶ 33, 200 P.3d 774, 784 (Wyo. 2009) (citing *Greenwalt*, 2003 WY 77, ¶ 40, 71 P.3d at 732).

1. The University Water Statute solely benefits the University.

As the first prong of its equal-protection analysis, this Court must identify the legislative classification at issue by examining the pertinent statutory language. *Greenwalt*, 2003 WY 77, ¶¶ 40, 45, 71 P.3d at 732-33. Here, the University Water Statute only applies to the University. Only the University is exempt from any municipal or county ordinance that would otherwise affect its proprietary water systems. No other property owner receives this exemption: neither government entities, community colleges,

Wyoming Catholic College, other schools, other proprietors of golf courses and athletic fields, nor any other public or private landscape irrigator.

For its part, the district court misanalysed the classification issue in two ways. *First*, the district court held "the University is granted no special or exclusive privilege" under the statute, because the University—like other entities—remains subject to Title 41 of the Wyoming Statutes. (R. 250). But this reasoning is myopic. Any other entity seeking to develop a proprietary water system must comply with two layers of authority: (1) any local ordinance, and (2) the requirements of Title 41. Therefore, by exempting the University from the first layer of authority, the University Water Statute prefers the University over other entities, regardless of the second layer.

Second, the district court held the University Water Statute is a general law because it applies to the University and its property statewide. (R. 251). The district court cited *State ex rel. Keefe v. McInerney*, in which this Court upheld a law authorizing local electors to adopt a city manager, observing, "Since the statute here in question applies to all cities and towns in the state, it is quite plain that it is not a special law." 182 P.2d 28, 30, 38 (Wyo. 1947).

However, *McInerney* does not support the district court's holding. The statutory scheme in *McInerney* applied equally to municipalities statewide, so no municipality enjoyed a special privilege. Here, by contrast, only the University enjoys a special privilege under the University Water Statute. The

statute's statewide application only amplifies the University's special status, because it prefers the University over every comparable landowner statewide, not just in Laramie.

In short, the University is the sole beneficiary of preferential legislative classification under the University Water Statute. This preferred treatment implicates Section 27.

2. The legislature's objective in passing the University Water Statute was to grant the University a special exemption.

As the second prong of its equal-protection analysis, this court must identify the legislative objectives. *Greenwalt*, 2003 WY 77, ¶ 40, 71 P.3d at 732.

> To ascribe a purpose or purposes to the statutory classification, the court may properly consider not only the language of the statute but also general public knowledge about the evil sought to be remedied, prior law, accompanying legislation, enacted statements of purpose, formal public announcements, and internal legislative history. If an objective can confidently be inferred from the provisions of the statute itself, recourse to internal legislative history and other ancillary materials is unnecessary.

Id. ¶ 39 (quotation marks omitted).

Here, the purpose of the University Water Statute is evident from the statutory language. The legislature intended to grant the University a special exemption from any local restriction that might otherwise restrict its proprietary water systems. *See* WYO. STAT. § 21-17-126.

And if this Court were to consider ancillary materials, they would confirm the same purpose. Enacted shortly after the City Ordinance, the statute mirrors the ordinance's language. In the meantime, the University had stated its intent to connect its new wells and expressed its discontent with the City Ordinance. (R. 65-66). Evidently, the legislature passed the University Water Statute at the University's behest, intending to neutralize the City Ordinance for the University's benefit.

3. The University Water Statute is not rationally related to an appropriate legislative purpose.

As the third prong of its equal-protection analysis, this Court must "[d]etermine whether the legislative classification is rationally related to the achievement of an appropriate legislative purpose. In this element the court is evaluating whether the legislature's objectives justify the statutory classification." *Greenwalt*, 2003 WY 77, ¶ 40, 71 P.3d at 732. "The rational-basis test is not a toothless one." *Id.* ¶ 39 (quotation marks omitted). To be permissible, "[t]he discrimination must rest upon some reasonable ground of difference." *Nation*, 396 P.2d at 434 (quoting *State v. Sherman*, 105 P. 299, 300 (Wyo. 1909)). In other words, "there must be some distinguishing peculiarity which gives rise to the necessity for the law as to the designated class. A mere classification for the purpose of legislation without regard to such necessity is

special legislation condemned by the constitution." *May v. City of Laramie*, 131 P.2d 300, 306 (Wyo. 1942).

According to the district court, by designating the University as Wyoming's sole university and tasking the legislature with its management, Article 7, Section 17 supplies the "distinguishing peculiarity" that justifies the University Water Statute. (R. 251). Under this reasoning, Article 7, Section 17 functions as a proverbial blank check that would justify any preferential classification in the University's favor, regardless of subject-matter.

But this is not the law. Instead of relying on a blanket justification, "the reason for the classification must inhere in the subject–matter, and must be natural and substantial, and must be one suggested by necessity, by such difference in the situation and circumstances of the subjects as to suggest the necessity or propriety of different legislation with respect to them." *State v. Le Barron*, 162 P. 265, 266 (Wyo. 1917) (emphasis added).

Here, the University undeniably enjoys unique constitutional status as Wyoming's only four-year public university. *See* WYO. CONST. art. 7, § 15. And in appropriate circumstances, it would be reasonable for the legislature to prefer the University in its capacity as an educator.

But as an irrigator, the University enjoys no special status under the Wyoming Constitution. And it has no special need for proprietary water systems. Whatever the advantages of such systems, they are necessarily

attenuated from the University's core educational mission, because they are similarly available to other proprietary irrigators. Regardless of whether it hires professors and awards degrees, every golf-course proprietor needs to water its grass. Thus, when it comes to irrigation water, there is no "reasonable ground of difference" or "distinguishing peculiarity" between the University and comparable proprietors. Accordingly, there is no "necessity" to justify the University's preferential treatment under the University Water Statute.

This conclusion comports with this Court's prior holdings. In *Le Barron*, 162 P. at 267, this Court invalidated a statute exempting women working in railroad-operated restaurants from hourly restrictions governing their counterparts in non-railroad restaurants. In *May*, 131 P.2d at 304-05, 308, 310, this Court invalidated a statute creating second-class cities, which only applied to Laramie in practice, permitting it to pay relatively lower salaries. And in *Allhusen v. State ex rel. Wyo. Mental Health Prof'l Licensing Bd.,* 898 P.2d 878, 880-82, 884-88 (Wyo. 1995), this Court invalidated statutory provisions treating unlicensed counselors less favorably at private, for-profit institutions than those working at public institutions (among others). In each case, as here, the unequal treatment of similarly situated persons or entities was unjustified.

In the final analysis, the legislature had no rational basis to prefer the University over every comparable property owner needing irrigation water. Therefore, the statute violates Section 27's requirement of equal protection.

c. The University Water Statute is an unconstitutional delegation of municipal power, in violation of Article 3, Section 37 of the Wyoming Constitution.

Article 3, Section 37 of the Wyoming Constitution ("Section 37") prohibits legislative delegation of municipal power. Specifically, it provides: "The legislature shall not delegate to any special commissioner, private corporation or association, any power to make, supervise or interfere with any municipal improvements, moneys, property or effects, whether held in trust or otherwise, to levy taxes, or to perform any municipal functions whatever." WYO. CONST. art. 3, § 37.

Here, the district court held the University Water Statute passes muster under Section 37. This holding was legally erroneous.

At first blush, two analytical questions might seem pertinent under Section 37. *First*, does the pertinent statute delegate power to "interfere with" specified municipal matters or perform "municipal functions?" *Second*, does the delegee qualify as a "special commissioner, private corporation or association?" If these two questions were distinct, then Section 37 would not entirely prohibit the legislature from delegating municipal power. It would merely limit the universe of available delegees.

However, as discussed below, Section 37's "special commissioner" aspect is not distinct from its municipal-power aspect. Rather, the only salient

question is whether a particular statute delegates municipal power to an entity beyond municipal control. The University Water Statute does exactly that.

i. Section 37 prohibits the legislature from delegating municipal power to an entity beyond municipal control.

This Court has considered Section 37 in two seminal cases. The first was *Stewart v. City of Cheyenne*, 154 P.2d 355 (Wyo. 1944). The second was *Town of Pine Bluffs v. State Board of Equalization*, 333 P.2d 700 (Wyo. 1958).

In *Stewart*, a statutory scheme (among other things) empowered a board of utilities controlling a city water works to compel elected city officials to pass ordinances, initiate condemnations, and propose municipal bonds, while also exempting board members from discharge except for cause and requiring a popular election to abolish the board. 154 P.2d at 356-58, 369. This Court invalidated these statutory features under Section 37, because they impermissibly delegated municipal taxing and legislative authority and permitted the board to perform municipal functions without control by city authorities. *Id.* at 365-66, 369.

Beyond its bare holdings, *Stewart* clarified the scope and meaning of Section 37. This Court concluded the term "special commissioner" in Section 37 has the same meaning as the term "special commission" in comparable

provisions from other states. *Id.* at 363.[5] This Court also surveyed pertinent out-of-state authority, including a Colorado opinion, quoting the Colorado Supreme Court's characterization of "special commission" as "a body distinct from the city government, created for a different purpose, or one not connected with the general administration of municipal affairs." *Id.* at 366 (quoting *Town of Holyoke v. Smith*, 226 P. 158, 160-61 (Colo. 1924)). And ultimately, this Court determined the surveyed cases "show conclusively . . . that no board or commission can perform municipal functions unless it is under the control of the regularly elected municipal officers." *Id.* at 369.

In *Pine Bluffs*, various municipalities claimed Section 37 prohibited the State Board of Equalization from assessing their light-and-power-plant properties. 333 P.2d at 703, 705-06. This Court disagreed. It began by declaring, "The State Board of Equalization is neither a special commissioner nor a private corporation nor an association within the meaning of the above provision. It is a board recognized by the constitution of this state in art. 15, §§ 9 and 10." *Id.* at 705. Then, acknowledging *Stewart*, this Court explained why Section 37 did not apply: "The main purpose of [Section 37] seems to be to leave

[5] Thus, it is not immediately clear why this Court took an attorney to task decades later for using the term "special commission" rather than "special commissioner." *See Lund v. Schrader*, 492 P.2d 202, 204 (Wyo. 1971).

the control of municipal functions in the hands of the duly elected officials in the municipality." *Id.* at 706. And this Court explained Section 37's prohibition on delegating taxing authority refers to "the levy for the municipality of local taxes for local purposes, and has no connection with the ad valorem taxes to be assessed by the State Board of Equalization." *Id.*

Here, the district court misconstrued the holdings of *Stewart* and *Pine Bluffs*. Specifically, the court contrasted the board of public utilities in *Stewart*, a statutory entity, with the State Board of Equalization in *Pine Bluffs*, a constitutional entity. (R. 243-245). The court observed the University is also a constitutional entity and therefore concluded the University is not a "special commissioner" within the meaning of Section 37. (R. 245). By this reasoning, the legislature may delegate municipal power to the University without restriction.

But in comparing *Stewart* and *Pine Bluffs*, the district court drew the wrong distinction. This Court's holdings did not turn on the statutory or constitutional status of the entities, but on the functions they were performing. To be sure, this Court acknowledged the Board of Equalization was a constitutional entity in *Pine Bluffs*, but this status was not determinative. Rather, the deciding factor was that the Board was assessing *ad valorem* taxes, not exercising local taxing authority. *Pine Bluffs*, 333 P.2d at 706.

This Court has applied the principles of *Stewart* and *Pine Bluffs* in other cases involving Section 37. In resolving Section 37 challenges, this Court has frequently focused on the function performed by the non-municipal entity.[6] Admittedly, this Court has occasionally noted an entity's status as though it were a separate analytical consideration, but the cases in question did not

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[6] *See Witzenburger v. State ex rel. Wyoming Cmty. Dev. Auth.*, 575 P.2d 1100, 1133 (Wyo. 1978) ("[The Wyoming Community Development Authority] is patterned to perform a function not within the capabilities of a municipality. It does not interfere with that which is within the powers of a municipality."); *Frank*, 572 P.2d at 1110 ("Because the operation of an electric utility is a proprietary and not a governmental function of the City of Cody, [Section 37] is not applicable . . . ."); *Rodin v. State ex rel. City of Cheyenne*, 417 P.2d 180, 186 (Wyo. 1966) ("No independent power of disbursing the escrowed funds, except for the designated purposes, is given unto the escrow bank."); *Bd. of Cnty. Comm'rs of Albany Cnty. v. White*, 335 P.2d 433, 442 (Wyo. 1959) ("[T]he functions of the board of trustees here is purely administrative and all powers of condemnation and taxation in relation to, and even the designation of, the recreational facilities authorized remains under the exclusive control of the board of county commissioners."); *Bd. of Trustees of Mem'l Hosp. of Sheridan Cnty. v. Pratt*, 262 P.2d 682, 685 (Wyo. 1953).

involve delegations of municipal power in any event.[7] To the City's knowledge, this Court has never affirmed the delegation of municipal power to a non-municipal entity under Section 37, regardless of the entity's status.

In sum, Section 37 does not apply when a constitutional entity like the Board of Equalization—or the University—is performing its own functions. However, Section 37 prohibits the legislature from delegating municipal functions to any entity beyond municipal control, regardless of whether that entity is a statutory or constitutional creature or otherwise. Accordingly, the University's constitutional status does not remove the University Water Statute from the ambit of Section 37. The only salient question is whether the statute delegates municipal power to the University.

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[7] *L.U. Sheep Co. v. Bd. of Cnty. Comm'rs of Cnty. of Hot Springs*, 790 P.2d 663, 674 (Wyo. 1990) ("Neither Hot Springs County nor the USFS is a 'special commissioner, private corporation or association.' Furthermore, the property taken really had nothing to do with any municipal property or function." (citation omitted); *Lund*, 492 P.2d at 205-06 ("We are shown no authority for considering the county committee a 'special commissioner' or a 'private corporation' or an 'association.' . . . [No] power has been delegated to either the county committee or state committee to levy taxes.").

ii. The University Water Statute is invalid under Section 37.

1. Municipal water systems implicate Section 37.

As a general matter, municipal water systems enjoy protection under Section 37 for two, interrelated reasons. *First*, operating a municipal water system is a "municipal function," which an outside entity may not perform unless it is controlled by municipal authorities. *Stewart*, 154 P.2d at 369.[8] *Second*, operating a municipal water system involves "municipal improvements, moneys, property or effects."

A municipal water system is comprehensive. It includes the municipality's rights to its water supplies, which it holds in trust for its inhabitants. *See Holt v. City of Cheyenne*, 137 P. 876, 881 (Wyo. 1914). But beyond supply, a municipal water system also includes infrastructure in which the municipality has invested, *i.e.*, water works and drainage systems.

Title 15 of the Wyoming Statutes reflects the comprehensive nature of municipal water systems. Municipalities have statutory authority to "regulate the use of streets, including the regulation of any structures thereunder," WYO.

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[8] Providing water for the health and benefit of the public is an exercise of municipal police power. *See supra* Note 4. Therefore, even if Section 37 only applies to "governmental" rather than "proprietary" activities, *Frank*, 572 P.2d at 1110, municipal water systems fall outside this limitation.

STAT. § 15-1-103(a)(xi), "regulate the . . . use of sewers and drains," *id.* § 15-1-103 (a)(xxx)(A), "regulate as deemed necessary the channels of streams, water courses and any other public water sources or supplies within the city," *id.* § 15-1-103 (a)(xxxi), "[e]stablish, construct, purchase, extend, maintain and regulate a system of water works, for the purpose of supplying water for extinguishing fires and for domestic, manufacturing and other purposes," *id.* § 15-7-101(a)(ii), and "establish, purchase, extend, maintain and regulate a water system for supplying water to and diverting surface water runoff from [their] inhabitants and their property and for any other public purposes," *id.* § 15-7-101 (a)(iii). Moreover, municipalities may grant waterworks franchises to corporations appropriately organized under Wyoming law. *Id.* § 15-7-701(a).

Title 15 also empowers municipalities to protect their water systems. They "may enact ordinances and make all necessary rules and regulations for the government and protection of their water works." *Id.* § 15-7-101(a)(ii). More generally, they may "[a]dopt ordinances, resolutions and regulations, including regulations not in conflict with this act and necessary for the health, safety and welfare of the city or town, necessary to give effect to the powers conferred by [Title 15]." *Id.* § 15-1-103(a)(xli).

In *Coffinberry v. Town of Thermopolis*, 2008 WY 43, 183 P.3d 1136 (Wyo. 2008), this Court confirmed the viability of ordinances that protect the fiscal integrity of municipal utility systems. Coffinberry argued municipalities lack

statutory authority to charge property owners for water, sewer, and sanitation service fees their tenants fail to pay. *Id.* ¶ 9, 183 P.3d at 1139. This Court disagreed, reasoning,

> It cannot seriously be argued that the authority of a municipality to operate sewer, water, and sanitation systems does not carry with it the authority to charge for those services in the manner most reasonably designed to obtain payment. . . . A municipal utility system that required the municipality to "swallow" the losses occasioned by tenants who "skipped out" without paying, would not be financially sound.

Id. ¶ 8, 183 P.3d at 1139. As sources of municipal authority, this Court cited sections 15-1-103 and 15-7-101. *Id.* ¶¶ 5-6, 183 P.3d at 1138-39. By the same logic, these statutes empower municipalities to enact ordinances protecting the fiscal integrity of their water systems.

Because the legislature has empowered municipalities to operate and protect their water systems, Section 37 prohibits the legislature from delegating that same power elsewhere. To be sure, "municipal corporations are creatures of the legislature and thereby subject to statutory control." *Coulter v. City of Rawlins*, 662 P.2d 888, 894 (Wyo. 1983). Accordingly, the legislature might have authority to withdraw municipal power over water systems, assuming it were to do so clearly and in compliance with Wyoming's "home rule" amendment.[9] *See Blumenthal v. City of Cheyenne*, 186 P.2d 556, 563

[9] *See infra* § II(d)(ii).

(Wyo. 1947). However, although the legislature might have the authority to declare water systems non-municipal, it has not yet done so. And because water systems implicate municipal power, Section 37 prohibits the legislature from delegating this power to non-municipal entities like the University.

2. The University Water Statute violates Section 37 by delegating municipal power to the University.

The University Water Statute violates Section 37, because it authorizes the University to interfere with the City's water system and operate its own water systems, exempt from City regulation or control. This is an unconstitutional delegation of municipal power in at least four ways.

First, the University Water Statute empowers the University to interfere with the City's water supply. The University's Well A and Well B are drilled deeper in the Casper Aquifer than the City's existing Turner wells. Although the City's water rights are senior, the City could not pursue an interference claim under Title 41 without redrilling at least one of its Turner wells to the bottom of the aquifer. *See* WYO. STAT. §§ 41-3-911, -933. This would cost hundreds of thousands of dollars. Accordingly, there is a vast difference between "interference" under Title 41 and the practical danger that the University's new wells will interfere with the City's existing wells. And in any event, the City need not rely on Title 41 to protect its water supply, because it

has independent statutory authority under Title 15. By undermining this protection, the University Water Statute violates Section 37.

Second, the University Water Statute empowers the University to use and interfere with the City's drainage system. Whereas the City otherwise has authority to regulate surface water runoff, WYO. STAT. §§ 15-1-103(a)(xxx)(A), 15-7-101(a)(iii), the University Water Statute exempts the University's water systems from this authority. Thus, the City remains burdened with—but no longer has any power to regulate—the quality and quantity of runoff from the University's water systems into the municipal drains. Indeed, the University Water Statute puts the proverbial bottom rail on top, prohibiting the City from interfering with the University's use of the municipal drainage system. Not only does the University become a proprietary user of the municipal drains, but a *de facto* co-regulator of surface water runoff within the City—a municipal function reserved to the City under Section 37.

Third, the University Water Statute empowers the University to interfere with the fiscal integrity of the City's water system. The City has authority to protect its investment in its water system by regulating nonmunicipal water development and waterworks within its corporate limits. *Cf. Coffinberry*, 2008 WY 43, ¶ 8, 183 P.3d at 1139; *Town of Ennis v. Stewart*, 807 P.2d 179, 183 (Mont. 1991) ("[I]n small communities a water system may not be affordable unless a sufficient number of citizens connect to the system

and pay the corresponding fee."). However, if the University were to curtail its reliance on municipal water in favor of proprietary water systems, a portion of the City's investment in its waterworks system would be wasted. The City's other inhabitants would be forced to "swallow" the losses.

The district court oversimplified this issue, reasoning the City's interference claim boils down to a concern over lost revenue. (R. 246-247). But the constitutional problem is not revenue loss *simpliciter*. The constitutional problem is the corresponding waste of the City's investment in its water system, which Section 37 protects from outside interference, along with the system's diminished future fiscal integrity.

Fourth, although granting waterworks franchises is a municipal function, the University Water Statute delegates this function to the University. Specifically, under subsection 15-7-701(a), "The governing body of any city or town may grant the right to construct, maintain and operate a system of waterworks within the corporate limits of the city or town to any corporation organized under the laws of Wyoming for that purpose." But incident to the University Water Statute, the legislature added subsection 15-7-701(d) : "Nothing in this article shall be construed to restrict, prohibit or otherwise affect the rights of the University of Wyoming under W.S. 21-17-126." In other words, whereas the City formerly controlled the operation of

waterworks within its corporate limits, the University now enjoys the power to construct and operate certain water systems without municipal oversight.

In sum, the University Water Statute empowers the University to interfere with the City's water system and exercise municipal power. Accordingly, the University Water Statute violates Section 37.

d. Whether or not the University Water Statute is unconstitutional, the University is subject to the City Ordinance.

The district court held the University Water Statute bars any enforcement of the City Ordinance against the University. This holding was legally erroneous. First and foremost, because the statute is unconstitutional, it does not affect the ordinance.

But as discussed below, summary judgment was not appropriate in any event. Even assuming *arguendo* the University Water Statute were constitutional, it would not entirely exempt University water systems from the City Ordinance. Furthermore, because the ordinance is a valid exercise of the City's authority, the University is subject to the ordinance.

i. Under the University Water Statute, the City Ordinance still would apply to some University water systems.

Even if the University Water Statute were to survive constitutional scrutiny, it would not entirely excuse the University from compliance with the City Ordinance. By its own terms, the statute's exemptions are limited.

This Court's "general rules of statutory construction are well settled. If the language of a statute is clear and unambiguous, [this Court] must abide by the plain meaning of the statute, but where a statute is ambiguous, the [C]ourt will resort to general principles of statutory construction in an attempt to ascertain legislative intent." *Deloges v. State ex rel. Wyo. Worker's Comp. Div.*, 750 P.2d 1329, 1331 (Wyo. 1988) (citation omitted). This Court will "construe the statute as a whole, giving effect to every word, clause, and sentence, and . . . construe together all parts of the statute *in pari materia* so that no part will be inoperative or superfluous." *Fall v. State*, 963 P.2d 981, 983 (Wyo. 1998).

Here, if the University were to exercise authority conferred by subsection (a) of the University Water Statute, it would be exempt from any local ordinance. *See* WYO. STAT. § 21-17-126 (a). However, the exemption necessarily would be limited by the scope of the authority.

Under subsection (a)(i) , "the University . . . may . . . [d]evelop, drill, construct, operate, maintain and use any water line, system, well or works," but this authority is limited in three ways. *First*, it is limited to systems "on property owned by the [U]niversity." *Id.* § 21-17-126 (a)(i). *Second*, it is limited to "the purposes of distributing, providing and using nonpotable water on property owned or leased by the university." *Id.* And *third*, the water must "be used for landscape watering, lawns, athletic fields, trees, shrubs and flowers."

Id. In short, subsection (a)(i) only authorizes water systems for specified purposes on University property.

Subsection (a)(ii) confers additional limited authority. Specifically, the University may "[c]onnect a building, facility, landscape, lot, premises or structure owned by the university to any water line, system, well or works operated, maintained or used by the university." However, although subsection (a)(ii) authorizes the University to connect its facilities to its water systems, it does not broaden the University's underlying authority to develop or construct those systems. In other words, subsection (a)(ii) does not alter the limitations imposed in subsection (a)(i).

That leaves subsection (b). Subsection (b) grants no additional authority, but it contains a broad exemption: "No city or county shall restrict or prohibit the university from developing, drilling, constructing, operating, maintaining or using any water system independent of the city's or county's water system." *Id.* § 21-17-126 (b). Unlike subsection (a), subsection (b)'s exemption is not limited to water systems on the University's property for specified purposes.

Nevertheless, subsection (b)'s exemption is limited. Specifically, the exemption only extends to a water system that is "independent" of a local water system. As discussed above, municipal water systems are comprehensive and include various elements, from source of supply to drainage apparatus. *See supra* § II(c)(ii)(1). Accordingly, because subsection (b)'s exemption requires

independence, it would not apply to a University water system that is interdependent with any aspect of a city or county water system.

Here, even assuming *arguendo* the Water Statute were constitutional, neither subsection (a) nor subsection (b) would exempt the University's contemplated water system involving Well A and Well B. The contemplated system would not exist entirely on the University's property, because it would involve a pipeline under 30th Street.[10] Furthermore, the contemplated system would not be independent, because (1) it would rely on the same source of supply as the City's water system (the Casper Aquifer), and (2) it would burden the municipal drainage system.

At minimum, these circumstances raise genuine issues of material fact. Accordingly, even if this Court were to reject the City's constitutional arguments, the University Water Statute would not justify summary judgment for the University.

ii. The University is subject to the City Ordinance, because the City properly enacted the Ordinance under Title 15 and the "home rule" amendment to the Wyoming Constitution.

Because the University Water Statute does not excuse the University from compliance with the City Ordinance, summary judgment only would be

[10] Moreover, the University is usurping Union Pacific's reservation of exclusive non-domestic water-drilling rights under the 1965 deed.

appropriate if the University were otherwise exempt. In this vein, when moving for summary judgment, the University argued the City lacked authority to enact the ordinance. (R. 329-339). But the University was wrong.

As a rule, "municipalities can exercise only those powers of government which are expressly or impliedly conferred." *City of Buffalo v. Joslyn*, 527 P.2d 1106, 1107 (Wyo. 1974). But here, as discussed below, the City properly exercised both statutory and constitutional authority when it enacted the City Ordinance.

Commonly known as the "home rule" amendment, Article 13, Section 1(b) of the Wyoming Constitution grants broad legislative authority to municipalities. It provides (in pertinent part):

> All cities and towns are hereby empowered to determine their local affairs and government as established by ordinance passed by the governing body, subject to referendum when prescribed by the legislature, and further subject only to statutes uniformly applicable to all cities and towns, and to statutes prescribing limits of indebtedness. The levying of taxes, excises, fees, or any other charges shall be prescribed by the legislature. . . .

WYO. CONST. art. 13, § 1(b).

Admittedly, the "home rule" amendment does not confer unlimited police power. The legislature may supersede "home rule" ordinances by enacting statutes "uniformly applicable to cities and towns," in which case municipal authority must yield. However, as a matter of constitutional law, "The powers

and authority granted to cities and towns, pursuant to [the "home rule" amendment], shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns." *Id.* § 1(d) .

In *K N Energy, Inc. v. City of Casper*, 755 P.2d 207 (Wyo. 1988), this Court analyzed municipal authority under both Title 15 and the "home rule" amendment. At issue was a Casper ordinance requiring municipal licenses for gas companies operating without city franchises. *Id.* at 209, 222. This Court held the licensing ordinance was not authorized by Casper's Title 15 power to license, tax, and regulate for the purpose of raising revenue, *id.* at 211-12, or its Title 15 authority to franchise, *id.* at 214-16. Furthermore, because the ordinance did not relate to an underlying Title 15 authority, this Court held it was not authorized under section 15-1-103(a)(xli). *Id.* at 212. As for the "home rule" amendment, this Court held Casper's authority yielded entirely to the Public Service Commission's statutory authority under Title 37. *Id.* at 212-14.

Here, by contrast, the City Ordinance is authorized under Title 15. Whereas Title 15 contained no authority for Casper to license gas companies, Title 15 is replete with provisions authorizing municipalities to establish, operate, and protect their water systems. *See supra* § II(c)(ii)(1). The City Ordinance fits comfortably within these grants of authority, because it protects the City water system's fiscal integrity, drainage systems, and supply; guards against point source contamination; and generally furthers the health, safety,

and welfare of City inhabitants. Accordingly, the City Ordinance is a proper exercise of municipal authority under Title 15.

Similarly, the City Ordinance is a proper exercise of municipal power under the "home rule" amendment. In *K N Energy*, Casper's "home rule" authority yielded to the Public Service Commission, which enjoyed "general and exclusive power to regulate and supervise every public utility within the state" under Title 37. *See* 755 P.2d at 213 (quoting WYO. STAT. § 37-2-112) (emphasis added). Admittedly, as pertinent here, the State Board of Control and State Engineer have "broad" and "general" powers "of supervision of the waters of this state, their appropriation, distribution and diversion." *See John Meier & Son, Inc. v. Horse Creek Conservation Dist. of Goshen Cnty.*, 603 P.2d 1283, 1288-90 (Wyo. 1979). However, unlike the Public Service Commission, neither the State Board of Control nor the State Engineer has "exclusive" authority and control over water. On the contrary, municipalities enjoy concurrent authority under Title 15 to regulate water within their corporate jurisdictions. Especially when construed (as it must be) to give "the largest measure of self-government to cities and towns," WYO. CONST. art. 13, § 1(d) , the "home rule" amendment authorizes the City Ordinance.

In sum, the City Ordinance is a proper exercise of the City's statutory and constitutional authority. The University is not exempt from the ordinance.

iii. Even if the University were to enjoy some immunity from authorized municipal ordinances, balancing the pertinent interests weighs against such immunity here.

In its motion for summary judgment, along with arguing the City Ordinance was unauthorized, the University argued more generally that "[a] municipal entity cannot regulate the State or a State constitutionally created entity." (R. 339). According to the University, only the legislature "has any authority to manage or regulate UW or the UW Trustees," and "[t]here is no authority in Title 15 . . . granting the City . . . the power to regulate the State of Wyoming and its alter ego UW." (R. 340).

These arguments are unavailing. As discussed above, the City Ordinance was enacted under authorities granted in Title 15 and the "home rule" amendment, which do not exempt state entities from their application. Indeed, the legislature apparently did not share the University's conviction that it is intrinsically exempt from local regulation. Hence its attempts to exempt the University from local ordinances in the University Water Statute.

But even if this Court were to hold the University enjoys intrinsic immunity from local regulation, that immunity should not be plenary. Instead, this Court should apply a balancing analysis, as other jurisdictions have done.

A growing number of courts now resolve intergovernmental land-use disputes under a balancing-of-interests test. *See Town of Exeter v. State*, 226 A.3d 696, 703 & n.8 (R.I. 2020). As a predicate matter, this balancing test

would neither supersede a direct statutory grant of immunity from local regulation on the one hand, nor excuse a state entity from making a good-faith attempt to comply with local regulation on the other. *See Native Vill. of Eklutna v. Alaska R.R. Corp.*, 87 P.3d 41, 55 (Alaska 2004) (discussing these threshold requirements in the context of local zoning laws). Beyond these threshold considerations, a state entity seeking exemption or immunity from local ordinances must

> prove that a balancing of the following factors weigh in favor of immunity: the nature and scope of the instrumentality seeking immunity, the kind of function or land use involved, the extent of the public interest to be served thereby, the effect local land use regulation would have upon the enterprise concerned[,] and the impact upon legitimate local interests.

Id. at 54 (footnote and quotation marks omitted).

Here, with the facts construed (as they must be) in the City's favor, these factors weigh in favor of requiring the University to comply with the City Ordinance. The University's interest in operating Well A and Well B and connecting them to the rest of campus (west of 30th Street) is outweighed by the significant adverse impacts to Laramie residents. Money the University will save by irrigating its landscapes will be assumed by Laramie residents, causing an increase to their water rates. Also, "the proximity of the University's new high-capacity production wells to the City's existing Turner wells, including the 1868 City Springs Water Right, and the detrimental effect

to the City's water supply," (R. 009), is a weighty interest in the balancing test. Moreover, the University made no good faith attempt to comply with the City Ordinance, whereas the City repeatedly tried to resolve this dispute without litigation. (R. 009-010).

In sum, the balance of pertinent interests weighs in the City's favor, at least for purposes of summary judgment. Accordingly, whatever its immunity against municipal ordinances generally, the University enjoys no such immunity here. This Court should reverse and remand for trial on this issue.

Conclusion

This Court should reverse the district court's dismissal of the City's complaint and remand for trial. The case should be tried to determine whether the City may enforce the 1965 Covenant against the University. Furthermore, regardless of the University Water Statute's constitutionality, the case should be tried to determine whether the University must comply with the City Ordinance before operating its proprietary irrigation system, like any other City inhabitant. However, in reversing the district court's order, this Court also should declare the University Water Statute is unconstitutional.

DATED this 5th day of May, 2023.

s/ Thomas Szott
THOMAS SZOTT
Attorney for Appellant

s/ Korry D. Lewis
KORRY D. LEWIS
Attorney for Appellant

Certificate of Service

I, Thomas Szott, hereby certify that a true and correct copy of the foregoing was or will be filed and served electronically through the C-Track Electronic Filing System this 5th day of May, 2023, on the following:

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I hereby certify that a true and correct copy of the foregoing was or will be served via U.S. Mail this 5th day of May, 2023, on the following:

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I hereby certify that no privacy redactions were required or made, and the document submitted in digital form is an exact copy of the written document filed with the Clerk, excepting the wet signatures. The electronic

document has been scanned for viruses and is free of viruses, per Microsoft Defender.

s/ Thomas Szott
Thomas Szott (7-5139)

Appendix

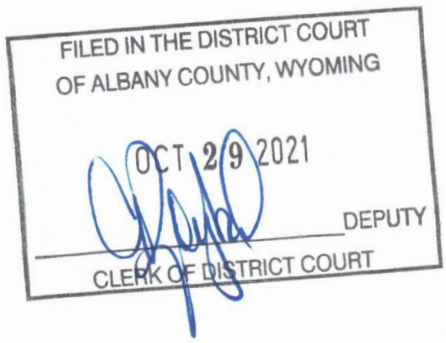
Copies of the district court's order partially granting the University's motion to dismiss (R. 226-257) and its final order granting the University's motion for summary judgment (R. 444-445) are appended to this brief. WYO. R. APP. P. 7.01(k)(1). Oral reasons for the summary judgment are contained in a transcript and are not appended here. *See id.* 7.01(k)(2).

I hereby certify that payment of $237.25 was made to the court reporter for transcripts of hearings on 28 November 2022 and 19 December 2022. *See id.* 7.01(k)(3), 10.01(a).

s/ Thomas Szott
Thomas Szott (7-5139)

IN THE DISTRICT COURT
FOR THE SECOND JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF ALBANY
Civil Action No. 35517

CITY OF LARAMIE, WYOMING Plaintiff, vs. UNIVERSITY OF WYOMING and UNIVERSITY OF WYOMING BOARD OF TRUSTEES, Defendants.	)



ORDER ON MOTION TO DISMISS

THIS MATTER came before the Court on *Defendant University of Wyoming and University of Wyoming Board of Trustees' Motion to Dismiss Pursuant to Rule 12(b)(6), W.R.C.P.*, filed on July 14, 2021. Having considered the record and the arguments of counsel, and being otherwise fully advised in the premises, the Court finds, concludes, and orders as set forth below:

THE PARTIES

1. Plaintiff, the City of Laramie (the City) is a Municipal Corporation located in Albany County, Wyoming and is an incorporated city pursuant to Wyoming statutes.

2. Defendant, the University of Wyoming (the University) is a public university in the State of Wyoming, established by Wyoming's constitution and statutes, and described as an "institution of learning." *See* Wyo. Stat. Ann. § 21-17-101. The University is governed through its Board of Trustees, who are designated as a body corporate pursuant to Wyoming Statute § 21-17-203. *See also* Bylaws of the Trustees of the University of Wyoming, Article I, Section 1-1 ("In accordance with the laws of the State of Wyoming . . . the government of the University of Wyoming is vested in a board

of twelve (12) trustees, appointed by the governor, with the advice and consent of the senate, for a six year term, with terms to be staggered.").

3. The Trustees of the University

> [p]ossess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have custody of the . . . buildings and all other property of the university.

Wyo. Stat. Ann. § 21-17-203.

4. The Bylaws of the Trustees of the University of Wyoming are adopted pursuant to authority granted to the Trustees by the Wyoming Legislature and in accordance with the Wyoming Constitution. *See* Bylaws of the Trustees of the University of Wyoming, Introduction.

BACKGROUND FACTS AND PROCEDURAL POSTURE

5. Historically, the Union Pacific Railroad (UPRR) owned all of Section 35, Township 16 North, Range 73 West of the 6th P.M., in Albany County, Wyoming.

6. Certain water resources, known as "City Springs," are located in the South Half (S1/2) of Section 35, on the lands historically owned by the UPRR.

7. On December 27, 1912, the District Court of the First Judicial District, Laramie County, Wyoming, in the *Matter of the Adjudication of the Right and Use of Waters of the Big Laramie River and its Tributaries*, adjudicated the water rights of the UPRR and the City with respect to the City Springs, as follows:

> City Springs (Laramie City) tributary of Laramie River; stream priority No. 1; name of ditch, City Ditch and Pipe Line, name of appropriators, City of Laramie and the Union Pacific Railroad Company (their rights as between themselves are as fixed by their written contracts); date of appropriation, Ditch 1868, Pipe Line, 1874; use to which water is applied, municipal, railroad; amount appropriated, entire flow of stream.

Exhibit 4, *Complaint for Declaratory Judgment*.

8. On March 5, 1946, the City and the UPRR entered into an agreement ("1946 Water Exchange Agreement") in which they agreed to exchange water from City

Springs for water from the Laramie River. *See* Exhibit 4, *Complaint for Declaratory Judgment*. Contained within that Agreement, the City and the UPRR agreed:

> Neither party hereto will, without the written consent of the other party, leaser, sell or otherwise dispose of any real property in said Albany County south of said north line of Township 17 which it may now or hereafter own or control without **reserving unto itself the exclusive rights to drill for, produce or pump, and use the underground water therein or therefrom for all purposes other than domestic or stock-watering purposes**. . . .
>
> In the event that a third party or parties should propose or threaten to drill, enlarge, pump or otherwise use any well or spring in the aforesaid area in Albany County in such location and manner as to endanger or decrease the flow or production of water from any existing source of supply belonging to either party thereto, or propose or threaten to do or perform any other act or take any other action whatsoever tending to endanger or decrease such flow or production of water, **the parties hereto will join in such action as may be available to prevent or minimize the danger of such third-party activity, and otherwise protect the interests of the parties in and to their respective sources of water supply**.

1946 Water Exchange Agreement, Exhibit 4, *Complaint for Declaratory Judgment*, ¶ 15 (emphasis added).

9. In October 1965, via Quitclaim Deed, the UPRR conveyed the North Half (N1/2) of Section 35, Township 16 North, Range 73 West of the 6th P.M., Albany County, Wyoming to the University, excepting from the deed and reserving unto the Union Pacific Railroad Company as follows:

> **EXCEPTING from this quitclaim and RESERVING unto the party of the first part, its successors and assigns, forever**,
>
> 1) all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, coal, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to the party of the first part. Its successor and assigns, including the right of access to, and use of, such parts of said described lands, upon or below the surface thereof, as may be necessary or convenient for any purpose in connection

with exploration for, removal, storage, disposition and transportation of, said mineral and the deposit of tailings; and together also with the perpetual right to remove the subjacent support from the surface od said lands (except such as is necessary for the support of permanent structures erected thereon prior to the time such right is exercised) without thereby incurring any liability whatsoever for damages so cause; and

2) **the exclusive rights to drill for, produce or pump, and use the underground water therein or therefrom for all purposes other than domestic purposes.**

This deed is made, executed and delivered upon the following covenants, conditions, and restrictions which the party of the second part by the acceptance of this deed covenants for itself, its successors and assigns, faithfully to keep, observe, and perform:

Said premises shall not be used at any time for the construction, maintenance or operation of water wells, septic tanks, waste sumps or appurtenances thereto, or for installations or uses which may contaminate the water supply produced or developed on the South Half (S½) of said Section 35.

Exhibit 1, *Complaint for Declaratory Judgment* (emphasis added).

10. On December 4, 1991, the Wyoming State Board of Control granted a joint petition by the City and the UPRR to change the point of diversion and means of conveyance of the 1868 City Springs Water Right to the Turner No. 1 Well and its enlargement, Permit Nos. U.W. 55508 and U.W. 59133, located in the SE1/4SW1/4 of Section 35, which is the same quarter-quarter as the original point of diversion for City Springs.

11. On May 2, 2019, the University filed two applications with the Wyoming State Engineer's Office (SEO) for test wells, named UW 2019 Exploration Well A and UW 2019 Exploration Well B. The applications were granted by the SEO on May 13, 2019, as Permit Nos. U.W. 210667 and U.W. 210669, respectively. These permits were granted to "test purposes only; no water will be sued beneficially." *See Complaint for Declaratory Judgment*, Exhibit 6. "Well A" was drilled in the SW1/4SW1/4 of Section 25, Township 16 North, Range 73 West of the 6th P.M., in Albany County. "Well B"

was drilled in the NE1/4NE1/4 of Section 35, Township 16 North, Range 73 West of the 6th P.M., in Albany County.[1]

12. On November 14, 2019, the University filed applications with the SEO to convert the test wells into production wells. On November 23, 2020, UW 2019 Test Well A and UW Test Well B were granted as Permit Nos. U.W. 213495 and U.W. 213496, respectively. Generally speaking, the purpose of the wells was to meet the lawn watering needs on the University campus.

13. On August 5, 2020, the City passed Laramie Municipal Ordinance 13.04.360, which provides, in relevant part:

> It is unlawful to do the following unless a franchise or permit is granted by the city council upon a determination that such franchise or permit is in the best interest of the city:
>
> > A. To develop , drill construct, operate, maintain, or use any water line, system, well, or works within the corporate limits of the city in order to sell, distribute, provide, or use nonmunicipal water (potable and/or non-potable) within the city;
> >
> > B. To interconnect any building, facility, landscape, lot, premises, or structure of any kind within the corporate limits of the city to any water line, system, well, or works other than to the city's water utility; or
> >
> > C. To use any portion of the city's streets, alleys, easements, or rights-of-way, or other property owned or managed by the city, for such purposes.

L.M.O. 13.04.360 (2020).

14. In 2021, the Wyoming Legislature passed Wyoming Statute § 21-17-126, which provides:

> (a) Subject to title 41 of the Wyoming statutes and notwithstanding any municipal or county ordinance, the University of Wyoming may:

[1] Well B falls within the lands conveyed from the UPRR to the University in the 1965 Deed.

(i) Develop, drill, construct, operate, maintain and use any water line, system, well or works on property owned by the university for the purposes of distributing, providing and using nonpotable water on property owned or leased by the university for miscellaneous use where water is to be used for landscape watering, lawns, athletic fields, trees, shrubs and flowers;

(ii) Connect a building, facility, landscape, lot, premises or structure owned by the university to any water line, system, well or works operated, maintained or used by the university.

(b) No city or county shall restrict or prohibit the university from developing, drilling, constructing, operating, maintaining or using any water system independent of the city's or county's water system.

Wyo. Stat. Ann. § 21-17-126 (2021).

15. Additionally, Wyoming Statute § 15-7-701 was amended to add the underlined portion below:

(a) The governing body of any city or town may grant the right to construct, maintain and operate a system of waterworks within the corporate limits of the city or town to any corporation organized under the laws of Wyoming for that purpose. Subject to the supervision and control of the governing body, the corporation acquiring a right or franchise to construct waterworks may use the streets and alleys within the corporate limits to put down and operate all pipes, hydrants and other appliances necessary to the complete operation of the works.

(b) However, the governing body shall not grant a franchise:

(i) Repealed by Laws 2007, ch. 176, § 1.

(ii) For more than twenty (20) years at any one time.

(c) Repealed by Laws 2007, ch. 176, § 1.

(d) Nothing in this article shall be construed to restrict, prohibit or otherwise affect the rights of the University of Wyoming under W.S. 21-17-126.

Wyo. Stat. Ann. § 15-7-701 (2021) (underline added).

16. On June 8, 2021, the City filed its *Complaint for Declaratory Judgment*, asserting that the University is planning to use a temporary water line to produce water from UW 2019 Well B to irrigate the Jacoby Golf Course and that the University is planning to construct and install a permanent water pipeline from the UW 2019 Well A to the UW 2019 Well B, which pipeline will traverse a position of the NW1/4NW1/4 of Section 36, Township 16 North, Range 73 West of the 6th P.M., which is owned by the State of Wyoming.

17. In its *Complaint for Declaratory Judgment*, the City asks this Court to declare that:

a. The City has the right to enforce the drilling restrictions contained in the 1965 UPRR-University Deed;

b. Wyoming Statute § 21-17-126 is unconstitutional;

c. The University must comply with all Laramie Municipal Ordinances, including LMO 13.04.360 and LMO 15.08.040;

d. The City has the right to prohibit the University from crossing the right-of-way for the City's Transmission Line without an agreement with or consent from the City;

e. The City has the right to prohibit the University from crossing 30th Street without an agreement with or consent from the City;

See Complaint for Declaratory Judgment, at 15 (June 8, 2021).

18. Therein, the City also asks for a preliminary injunction prohibiting the University from producing water from its UW 2019 Well A and UW 2019 Well B during the pendency of this lawsuit, as well as an award of costs and attorney's fees.

19. On July 14, 2021, the University and the Trustees filed *Defendant University of Wyoming and University of Wyoming Board of Trustees' Motion to Dismiss Pursuant to Rule 12(b)(6), W.R.C.P.*, which is now before this Court for consideration. Further facts will be set forth herein as necessary for a resolution of the pending issues.

STANDARDS GOVERNING MOTION TO DISMISS

20. In requesting dismissal, the University relies on Wyoming Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

21. The standards governing such motions to dismiss are well established: As a general rule, a court must accept as true all the facts alleged in the *Complaint for Declaratory Judgment* and examine those facts in a light most favorable to the non-moving party (the City). *See Feltner v. Casey Family Program*, 902 P.2d 206 (Wyo. 1995); *Kautza v. City of Cody*, 812 P.2d 143 (Wyo. 1991). Pleadings must be liberally construed in order to do justice to the parties. *See Apodaca v. Ommen*, 807 P.2d 939, 942 (Wyo. 1991); Wyo. R. Civ. P. 8(a) and (b).

22. Pursuant to Wyoming Rule of Civil Procedure 12(d), "[if], on a motion under Rule 12(b)(6) or 12(c) matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." *Id.* The "pleadings" are limited to the complaint and the answer to the complaint and the attachments thereto. *See* Wyo. R. Civ. P. 7(a).

23. Of course, dismissal is a drastic remedy and is granted sparingly. *See Manioc v. Chase Manhattan Mortgage Corp.*, 2002 WY 49, ¶ 3, 43 P.3d 576 (Wyo. 2002); *Simon v. Teton Bd. Of Realtors*, 4 P.3d 197 (Wyo. 2000). A complaint should be dismissed only when it shows that the plaintiff cannot achieve relief under any stated facts. *See Swinney v. Jones*, 2008 WY 150, ¶ 6, 199 P.3d 512, 515 (Wyo. 2008); *Story v. State*, 2001 WY 3, ¶19, 15 P.3d 1066 (Wyo. 2001); *Feltner*, *supra*; *Coones v. Aetna Casualty and Surety of Hartford, Connecticut,* 608 P.2d 1299 (Wyo. 1980).

CONSIDERATION OF THE UNIVERSITY'S MOTION TO DISMISS

24. The University seeks dismissal of the *Complaint for Declaratory Judgment* on the following grounds:

a. Argument One: The City has no standing or authority to enforce any limitations or reservations that may exist in the 1965 Deed;

b. Argument Two: The City does not have standing to request most of the relief it seeks in Claim Two;

c. Argument Three: Wyoming Statute § 21-17-126 is constitutional; and

d. Argument Four: The Office of State Lands and Investments (OSLI) has sole and exclusive control over what easements are granted on lands controlled by OSLI. This Court has no jurisdiction or authority to declare that City can interfere with OSLI discretion to grant an easement to UW.

25. The Court will address each claim in turn.

I. Standing to Enforce Limitations/Restrictions in the 1965 Deed

26. The University first asserts that the City has no standing or authority to enforce any limitations or reservations that may exist in the 1965 Deed (in which the UPRR conveyed certain property in the North Half (N1/2) of Section 35, Township 16 North, Range 73 West of the 6th P.M., Albany County, Wyoming to the University).

27. In response to the University's first claim, the Court must resolve whether the City lacks standing to enforce any restrictions/limitations in the 1965 Deed between the University and the UPRR.

28. The Wyoming Supreme Court has defined standing thusly:

> "The existence of standing is a legal issue that we review *de novo.*" *Halliburton Energy Services v. Gunter,* 2007 WY 151, ¶ 10, 167 P.3d 645, 649 (Wyo. 2007). *See also, Northfork Citizens for Resp. Dev. v. Park County Bd. of County Comm'rs,* 2008 WY 88, ¶ 6, 189 P.3d 260, 262 (Wyo. 2008). Standing is a jurisprudential rule that implicates a court's subject matter jurisdiction; thus, it can be raised at any time. *Hicks v. Dowd,* 2007 WY 74, ¶ 18, 157 P.3d 914, 918 (Wyo. 2007), citing *Granite Springs Retreat Ass'n, Inc. v. Manning,* 2006 WY 60, ¶ 5, 133 P.3d 1005, 1009–10 (Wyo. 2006); *Mutual of Omaha Ins. Co. v. Blury–Losolla,* 952 P.2d 1117, 1119–20 (Wyo. 1998).
>
> In general, the doctrine of standing centers on whether a party "is properly situated to assert an issue for judicial determination." *Cox v. City of Cheyenne,* 2003 WY 146, ¶ 9, 79 P.3d 500, 505 (Wyo. 2003). A party has standing when it has a personal stake in the outcome of a case. *Id.*

N. Laramie Range Found. v. Converse Cty. Bd. of Cty. Comm'rs, 2012 WY 158, ¶¶ 22-23, 290 P.3d 1063, 1073–74 (Wyo. 2012).

29. In support of its argument that the City lacks standing, the University relies upon the 1965 Deed in which the Union Pacific Railroad Company conveyed the subject

property to the University. The Court understands the University's argument to be that the City was not a party to the 1965 Deed and, thus, has no standing to enforce any restrictions or limitations therein. And, further, nothing in the 1946 Water Exchange Agreement between the City and the UPRR independently grants the City the authority to enforce the 1965 Deed.

30. Recognizing that it is not a party to or in privity with the 1965 Deed, the City responds to the University's argument by asserting that it was/is an intentional third party beneficiary of the 1965 Deed.[2]

31. The law in Wyoming on the issue of third party beneficiaries is as follows:

In *Wyoming Machinery,* the court said:

> [A] promise may be made to one person for the benefit of another and a third-party beneficiary may enforce his rights under a contract, ***although not a party to nor specifically mentioned in the contract;*** but there is more to it than that. An outsider claiming the right to sue must show that it was intended for his direct benefit. Otherwise he may be only an incidental beneficiary because the compelling provisions of a contract require that his claims be satisfied in order to protect another. However, an incidental beneficiary acquires no right of action against the promisor or promisee.

---

[2] Without citation to legal authority, the City also argues that the following language in the 1946 Water Exchange Agreement bestows upon it an independent right to enforce the restrictions in the 1965 Deed:

> In the event that a third party or parties should propose or threaten to drill, enlarge, pump or otherwise use any well or spring in the aforesaid area in Albany County in such location and manner as to endanger or decrease the flow or production of water from any existing source of supply belonging to either party thereto, or propose or threaten to do or perform any other act or take any other action whatsoever tending to endanger or decrease such flow or production of water, **the parties hereto will join in such action as may be available to prevent or minimize the danger of such third-party activity, and otherwise protect the interests of the parties in and to their respective sources of water supply**.

1946 Water Exchange Agreement, Exhibit 4, *Complaint for Declaratory Judgment*, ¶ 15 (emphasis added).

This Court disagrees. While this language certainly evidences an intent of the City and the UPRR to cooperate to protect the sources of their water supply, the 1946 Water Exchange Agreement does not create an independent legal right of the City to be made a party to or intervene in proceedings involving property or water rights to which it is not a party.

614 P.2d at 720 (emphasis added). On the basis of these principles, the court held that construction project subcontractors were not third-party beneficiaries to a surety bond obtained by the general contractor in compliance with its contract with the project owner guaranteeing the general contractor's performance free of liens from subcontractors. The subcontractors argued they were intended third-party beneficiaries because the bond required them to be paid. However, the court concluded that, simply because a party benefits from performance of a contract, it is not automatically a "third party beneficiary" with individual rights to enforce the contract. The real question, the court said, is whether the parties to the contract intended a direct benefit to a third party; absent evidence of such intent, the party is an incidental beneficiary with no enforceable rights under the contract. *Id.* Applying this test, the court held the subcontractors were not intended third-party beneficiaries because the contracting parties' intent was to benefit the owner by assuring a lien free project.

Subsequently, in *Richardson Associates,* the court concluded a project architect and mechanical engineer were not third-party beneficiaries to a contract between the project contractor and the soil lab. 806 P.2d at 807. In reaching that result, the court applied Restatement (Second) of Contracts, which provides:

> (1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either (a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.
>
> (2) An incidental beneficiary is a beneficiary who is not an intended beneficiary.

Restatement (Second) of Contracts § 302 at 439–40 (1981). Applying this test, the court upheld the dismissal of the third-party beneficiary claim on the ground that the architect and engineer failed to adequately allege the soil lab undertook testing for their benefit and, therefore, failed to state a claim that they were anything more than incidental beneficiaries to the contract between the soil lab and the contractor. In reaching this result, the

court noted the focus of § 302 is the intent of the contracting parties rather than reliance by the beneficiary. *Wyoming Machinery* likewise focused on the contracting parties' intent. Thus, rather than overruling *Wyoming Machinery,* the court in *Richardson Associates* merely applied the Restatement's more recent expression of the basic rule applied earlier in *Wyoming Machinery.* Thereafter, in *Bear v. Volunteers of America, Wyoming, Inc.,* 964 P.2d 1245, 1252 (Wyo. 1998), the court cited both *Wyoming Machinery* and *Richardson Associates* in addressing a third-party beneficiary claim.

Cordero Mining Co. v. U.S. Fid. & Guar. Ins. Co., 2003 WY 48, ¶¶ 11-13, 67 P.3d 616, 621–22 (Wyo. 2003) (underline added).

32. Legal authorities and courts, including Wyoming, have recognized that third-party beneficiary rights can be encompassed within real property conveyances:

e. Third-party beneficiaries. Under the rule stated in subsection (c), the parties to a transaction creating a servitude may freely create benefits in third parties, whether the servitude is a covenant, easement, or profit. If their intent is expressed, and other requirements for creating a servitude have been met, the benefits in third parties will be given effect under the rule stated in this section. If their intent is not expressed, but may be inferred from the circumstances, it may be given effect under the rules stated in §§ 2.11, 2.13, and 2.14.

Under the rule stated in subsection (c), no particular form need be followed to create benefits in third parties. Any statement of intent that a third party hold the benefit of a servitude that meets other requirements for servitude creation will be given effect. A servitude benefiting a third party may be created in a document that simultaneously conveys the burdened estate to another.

. . . .

Third-party beneficiaries—easements, Comment e. Substantial authority supports the proposition that a single instrument of conveyance can be used to create and convey the benefit of an easement to one party and to convey the servient estate to another. See 2 American Law of Property § 8.29 (Casner ed. 1952). R. Cunningham, W. Stoebuck & D. Whitman, Property § 8.3 at 444 (1984), characterizes the jurisdictions allowing easements and profits to be created in favor of third persons by language of reservation as

> a minority, "probably representing a trend." The rationale varies. The most modern approach recognizes that the instrument creates rights directly in the intended beneficiary of the easement. Earlier approaches treated the reservation in favor of the third party as an exception retained by the grantor, or an exception of pre-existing rights held by the third party.

Restatement (Third) of Property (Servitudes) § 2.6 (2000). *See also Simpson v. Kistler Investment Co.*, 713 P.2d 751 (Wyo. 1986).

33. Here, decades prior to the 1965 UPRR-University Deed, the City and the UPRR entered into the 1946 Water Exchange Agreement, which expressly stated:

> Neither party hereto will, without the written consent of the other party, leaser, sell or otherwise dispose of any real property in said Albany County south of said north line of Township 17 which it may now or hereafter own or control without **reserving unto itself the exclusive rights to drill for, produce or pump, and use the underground water therein or therefrom for all purposes other than domestic or stock-watering purposes**. . . .

1946 Water Exchange Agreement, Exhibit 4, *Complaint for Declaratory Judgment*, ¶ 15 (emphasis added).

34. Then, in the 1965 UPRR-University Deed, the UPRR expressly excepted and reserved from its conveyance to the University:

> . . . **the exclusive rights to drill for, produce or pump, and use the underground water therein or therefrom for all purposes other than domestic purposes.**
>
> This deed is made, executed and delivered upon the following covenants, conditions, and restrictions which the party of the second part by the acceptance of this deed covenants for itself, its successors and assigns, faithfully to keep, observe, and perform:
>
> > **Said premises shall not be used at any time for the construction, maintenance or operation of water wells**, septic tanks, waste sumps or appurtenances thereto, or for installations or uses **which may contaminate the water supply produced or developed on the South Half (S½) of said Section 35**.

Exhibit 1, *Complaint for Declaratory Judgment* (emphasis added).

35. In light of these events and in light of the remarkably similar language as to the agreed-upon exception/reservation language in the 1946 Water Exchange Agreement and the actual UPRR exception/reservation in the 1965 Deed, this Court ultimately may conclude that the UPRR[3] intended to benefit the City as an intended third party beneficiary to the 1965 Deed. However, this issue is not ripe for decision at this time and based only upon a motion to dismiss, particularly without further evidence and argument by the parties. At the very least, there are sufficient facts alleged within the *Complaint for Declaratory Judgment* to permit the City to survive the University's motion to dismiss with respect to the City's claims involving the City's standing and its ability to enforce the restrictions and limitations in the 1965 Deed. In this respect, the University's motion to dismiss must be denied.[4]

II. Standing to Request Relief in Claim Two

36. The University next asserts that the City lacks standing to seek most of the relief requested in its second claim for declaratory judgment, which is the claim regarding the constitutionality of Wyoming Statute § 21-7-126 and the enforceability of Laramie Municipal Ordinance 13.04.360.

37. Specifically, the City's second claim for relief states:

a. The City seeks a declaration from this Court that the UW Statute (Wyoming Statute § 21-7-126) is unconstitutional under Article 3, Section 27 and/or Section 37 of the Wyoming Constitution.

b. The City seeks a declaration from this Court that the University shall comply with the City Ordinance [L.M.O. 13.04.360] and all applicable requirements under the Laramie Municipal Code, including Section 15.08.040 – Aquifer Protection Overlay.

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[3] In its *Defendant University of Wyoming and University of Wyoming Board of Trustees' Reply to Plaintiff City of Laramie's Opposition to Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), W.R.C.P.*, filed on October 18, 2021, and only as to the 1965 Deed issues, the University briefly raised the notion that UPRR must be joined as a necessary and indispensable party. *See* Wyo. R. Civ. P. 19. No such motion has been made at this time and the Court is not in a position to make a determination as to whether UPRR is necessary and/or indispensable without considering the arguments of the parties.

[4] To the extent the University asserts that this Court's decisions in *University of Wyoming et al. v. City of Laramie*, Albany County Docket No. 35487 are *res judicata* and controlling on this issue, the Court disagrees that the issue of the City's status as an intended third party beneficiary to the 1965 Deed was litigated and/or decided in those proceedings.

See Complaint for Declaratory Judgment, at 14 , ¶¶81-82 (June 8, 2021).

38. While the University concedes that the City has standing to seek a declaration as to the constitutionality of Wyoming Statute § 21-17-126, it argues that the City "does not have standing to ask the court to declare that UW must comply with other City Ordinances or provisions that they have not alleged have not been followed or have been violated." *Brief in Support of Motion to Dismiss Pursuant to Rule 12(b)(6)*, at 10 (July 14, 2021).

39. For the most part, the Court concurs.

40. Regarding principles of standing and justiciability,

> 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 of one or more of the real parties in interest, 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, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues. Any controversy lacking these elements becomes an exercise in academics and is not properly before the courts for solution.

Allred v. Bebout, 2018 WY 8, ¶¶ 36-37, 409 P.3d 260, 270 (Wyo. 2018) (quoting *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974)).

41. The University is not alleged to have violated ***all*** city ordinances nor is there an allegation in the *Complaint for Declaratory Judgment* that the University has, is, or will violate Laramie Municipal Ordinance § 15.08.040 – Aquifer Protection Overlay. To the extent that the City asks this Court to declare that the University must comply with "all" city ordinances, including Section 15.08.040 – Aquifer Protection Overlay, that request fails for lack of justiciability and must be dismissed.

42. However, given the allegations in the *Complaint for Declaratory Judgment*, the City does have standing to seek a declaration as to the constitutionality of Wyoming Statute § 21-17-126, as well as a declaration as to the enforceability of Laramie Municipal Ordinance 13.04.360, which the City has alleged the University has violated by a failure to obtain a franchise permit. The Court will not dismiss those specific claims.

III. Whether Wyoming Statute § 21-17-126 is Constitutional

43. The University next asserts that dismissal is appropriate because Wyoming Statute § 21-17-126 is constitutional.[5] The Wyoming Attorney General's Office joins in this argument. *See Brief of the Wyoming Attorney General Regarding the Constitutionality of Wyo. Stat. Ann. § 21-17-126* (Sept. 15, 2021). Perhaps more appropriately stated, the University argues that its motion to dismiss must be granted because the City has failed to state a claim upon which this Court could conclude that Wyoming Statute § 21-17-126 is unconstitutional under Article 3, Section 27 of the Wyoming Constitution as a "special law" and/or that Wyoming Statute § 21-17-126 is unconstitutional under Article 3, Section 37 of the Wyoming Constitution.

44. The City responds that it has stated a claim that Wyoming Statute § 21-17-126 is unconstitutional because the Wyoming Legislature is barred from delegating to anyone, other than a municipality, the power to regulate a municipal utility or interfere with municipal functions, and Wyoming Statute § 21-17-126 is a special law barred by the Wyoming Constitution.

45. As noted, in 2021, the Wyoming Legislature passed Wyoming Statute § 21-17-126, which provides:

> (a) Subject to title 41 of the Wyoming statutes and notwithstanding any municipal or county ordinance, the University of Wyoming may:
>
> > (i) Develop, drill, construct, operate, maintain and use any water line, system, well or works on property owned by the university for the purposes of distributing, providing and using nonpotable water on property owned or leased by the university for miscellaneous use where water is to be used for landscape watering, lawns, athletic fields, trees, shrubs and flowers;

[5] Conversely, the University asserts that Laramie Municipal Ordinance 13.04.360 is unconstitutional and illegal, having been passed in excess of the City's statutory authority. However, the University has not sought dismissal on those grounds and, thus, the Court will not address those contentions herein.

(ii) Connect a building, facility, landscape, lot, premises or structure owned by the university to any water line, system, well or works operated, maintained or used by the university.

(b) No city or county shall restrict or prohibit the university from developing, drilling, constructing, operating, maintaining or using any water system independent of the city's or county's water system.

Wyo. Stat. Ann. § 21-17-126 (2021).[6]

46. In addressing the constitutionality of Wyoming Statute § 21-17-126, this Court is mindful that statutes are presumed constitutional. *See Sheesley v. State*, 2019 WY 32, ¶ 3, 437 P.3d 830, 833 (Wyo. 2019). The party challenging the constitutionality of a statute "bears a heavy burden" of proving that the statute is unconstitutional "beyond any reasonable doubt." *Dir. Of Office of State Lands & Invs. v. Merbanco*, 2003 WY 73, ¶ 32, 70 P.3d 241, 252 (Wyo. 2003); *see also Cathcart v. Meter*, 2004 WY 49, ¶7, 88 P.3d 1050, 1056 (Wyo. 2004). Thus, "every statute is presumed constitutional and not to be held in conflict with the constitution unless such conclusion is clear, palpable, unavoidable, and beyond a reasonable doubt." *Merbanco*, ¶ 32, 70 P.3d at 252. A statute should "never be construed unconstitutional where it can be, in any possible way, reconciled with the provisions of the constitution." *Hansen v. Town of Greybull*, 183 P.2d 393, 401 (Wyo. 1947) (citations omitted). Courts are "duty bound to uphold statutes

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[6] Additionally, as noted, Wyoming Statute § 15-7-701 was amended to add the underlined portion below:

(a) The governing body of any city or town may grant the right to construct, maintain and operate a system of waterworks within the corporate limits of the city or town to any corporation organized under the laws of Wyoming for that purpose. Subject to the supervision and control of the governing body, the corporation acquiring a right or franchise to construct waterworks may use the streets and alleys within the corporate limits to put down and operate all pipes, hydrants and other appliances necessary to the complete operation of the works.

(b) However, the governing body shall not grant a franchise:

(i) Repealed by Laws 2007, ch. 176, § 1.

(ii) For more than twenty (20) years at any one time.

(c) Repealed by Laws 2007, ch. 176, § 1.

(d) <u>Nothing in this article shall be construed to restrict, prohibit or otherwise affect the rights of the University of Wyoming under W.S. 21-17-126.</u>

Wyo. Stat. Ann. § 15-7-701 (2021) (underline added).

where possible and resolve all doubts in favor of constitutionality." *Merbanco*, ¶ 32, 70 P.3d at 252; *see also Thomson v. Wyo. In-Stream Flow Comm.*, 651 P.2d 778, 789-90 (Wyo. 1982); *Powers v. State*, 2014 WY 15, ¶7, 318 P.3d 300, 303 (Wyo. 2014).

A. Whether Wyoming Statute § 21-17-126 Violates Article 3, Section 37 of the Wyoming Constitution

47. The City first claims that Wyoming Statute § 21-17-126 improperly delegates power to the University to perform the municipal function of providing water to landscapes and golf courses utilized by the public in violation of Article 3, Section 37 of the Wyoming Constitution, which, the City asserts, interferes with the City's operation of its water utility (including its ability to protect the water source which supplies its water utility).

48. Article 3, Section 37 of the Wyoming Constitution states:

> The legislature shall not delegate to any special commissioner, private corporation or association, any power to make, supervise or interfere with any municipal improvements, moneys, property or effects, whether held in trust or otherwise, to levy taxes, or to perform any municipal functions whatever.

Wyo. Const. art 3, § 37.

49. The first flaw with the City's argument is that the University is not a special commissioner, private corporation, or association.

50. In making its argument to the contrary, the City relies on Colorado's interpretation of a similar provision, in which the Colorado Supreme Court defined "special commission" as a "body or association of individuals separate and distinct from the city government; that is created for different purposes, or else created for some individual or limited object not connected with the general administration of municipal affairs." *Anema v. Transit Constr. Auth.*, 788 P.2d 1261, 1264 (Colo. 1990) (citations omitted).

51. The City also relies on *Stewart v. City of* Cheyenne, 154 P.2d 355 (Wyo. 1944), in arguing that the University should be considered a special commissioner. However, *Stewart* involved the legislatively created Board of Public Utilities to which the legislature had delegated "the exclusive control of all municipally owned water works." *Stewart*, at 357. Under those circumstances, the Wyoming Supreme Court held:

> The foregoing cases show conclusively, we think, that no board or commission can perform municipal functions unless it is under the control of the regularly elected municipal officers. In the case at bar the elected officials of Cheyenne have no control over the Board of Public Utilities, under the legislative act, which enables them to create the Board. The members are appointed by the city authorities and may be discharged for cause. But that is not sufficient, as shown by Moll v. Morrow, supra, in which it appears that the members of the board were subject to removal at the pleasure of the mayor, whereas, under our statute, they are subject to removal only for cause. In fact, the situation has been reversed by the legislature. Instead of the regularly elected officials of the city having control of the Board of Public Utilities, the latter has control of the regular city authorities, so far as the water works are concerned, for it has the power under the statute to compel the former to pass any ordinances which it may desire; compel them to commence condemnation proceedings, and compel them to submit to the people the question of issuing bonds. It is too plain for argument that under the statute, as it stands, the Board of Public Utilities is an independent, special commission to perform municipal functions. It could not be made much more independent. Such a reversal of control cannot be sustained under our constitution unless we go contrary to all the authorities on the subject and contrary to the principle, which seems sound, therein announced.

Stewart v. City of Cheyenne, 60 Wyo. 497, 154 P.2d 355, 369 (1944).

52. While the Wyoming Supreme Court has not defined "special commissioner," it has addressed the term as follows:

> It is contended that when the State Board of Equalization undertook to tax the property of municipally owned electric light plants it violated art. 3, § 37, of the constitution of this state reading as follows:
>
> > 'The legislature shall not delegate to any special commissioner, private corporation or association, any power to make, supervise or interfere with any municipal improvements, moneys, property or effects, whether held in trust or otherwise, to levy taxes, or to perform any municipal functions whatever.'
>
> The objection must be overruled. **The State Board of Equalization is neither a special commissioner nor a private corporation nor an**

association within the meaning of the above provision. It is a board recognized by the constitution of this state in art. 15, §§ 9 and 10.

Town of Pine Bluffs v. State Bd. of Equalization, 79 Wyo. 262, 278–79, 333 P.2d 700, 705–06 (1958) (emphasis added).

53. By analogy, the University of Wyoming was established under Article 7, Section 15 of the Wyoming Constitution. "The University, though declared by statute to be a body corporate by a specified name, is not separate or independent from the state[.]" *Ross v. Trs. Of Univ. of Wyo.*, 228 P. 642, 651 (Wyo. 1924). The Wyoming Constitution tasks the Wyoming Legislature with the management of the University and its property, including "management of the university, its lands and other property by a board of trustees[.]" *See* Wyo. Const. art. 7, § 17.

54. And, contrary to the Board of Public Utilities and like the State Board of Equalization, as discussed in *Town of Pine Bluffs*, the University is not legislatively created; it was confirmed by the Wyoming Constitution and engages in its constitutional functions as prescribed by law. The purpose of Article 3, Section 37 is to prohibit the Legislature from naming a commission to perform some duty of a municipal character. *See Stewart*, 154 P.2d at 367. Here, the Wyoming Legislature did not name or create any such commissioner; rather, it complied with the constitutional directive to provide law for the management of the University. This Court concludes that the University is not a special commissioner within the meaning of Article 3, Section 37 of the Wyoming Constitution.

55. Second, Wyoming Statute § 21-17-126 does not delegate to the University any power to make, supervise, or interfere with municipal improvements or property or to perform any municipal function.

56. The City contends that Wyoming Statute § 21-17-126 interferes with its municipal water utility management and, more specifically, its public water supply, drainage system, and municipal water utility. In support of its claim, the City notes that "water works" are "generally considered to be a matter involving strictly a local affair." *Stewart v. Cheyenne*, 154 P.2d 355, 364 (Wyo. 1944). Further, "[a]ll cities and towns are hereby empowered to determine their local affairs." Wyo. Const. Art. XIII, Sec. 1(b). And, "[t]he powers and authority granted to cities and towns . . . shall be liberally construed for the purposes of giving the largest measure of self-government to cities and towns." Wyo. Const. Art. XIII, Sec. 1(d). Thus, the City argues "if the Legislature's grant of a right to the University to drill a well for nonpotable water use on its property interferes with the City's municipal functions, then the statute is unconstitutional."

Plaintiff City of Laramie's Opposition to Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), W.R.C.P., at 20 (Aug. 25, 2021).[7]

57. Essentially the City argues that, if the University's water wells negatively impact the City's water sources (quality, quantity, etc.) and/or negatively impact the City fiscally in any way, then the Legislature has delegated to the University the power to make, supervise or interfere with any municipal improvements or to perform any municipal functions. Frankly, the City is concerned with the negative fiscal impact that may result from the University being permitted to utilize its own wells to water University lawns and the Jacoby Golf Course (as opposed to paying the City for the use of the City's water supply). Thus, the crux of the City's argument is that the removal of the University from the City's municipal water system constitutes the "interfere[nce] with . . . municipal improvements" and the "perform[ance of] . . . municipal functions" about which it complains. *See* Wyo. Const. art 3, § 37.

58. The Court deems this too broad an interpretation of Article 3, Section 37 of the Wyoming Constitution.[8] Nothing in Wyoming Statute § 21-17-126 delegates any power to the University to interfere with "any municipal improvements, moneys, property or effects" or delegates performance of any "municipal function." Rather, the statute relates directly to management of the University's lands and other property, not to the operation of any municipal water utility. Wyoming Statute § 21-17-126 authorizes the University to drill wells and develop water systems on property owned by the University for the purpose of supplying nonpotable water to property owned or leased by the University, but not for municipal use. Nothing in Wyoming Statute § 21-17-126 authorized the University to supply water to any other person or entity or to operate a municipal water utility. Nothing in Wyoming Statute § 21-17-126 delegates any power to the University to control or use the City's water utility. Wyoming Statute § 21-17-126 does not prohibit any city or county from restricting or prohibiting the University from developing or using the described wells and water systems, but only if they are independent of the city or county's water system. In fact, Wyoming Statute § 37-1-101(a)((vi) defines "public utility" but specifically excludes the very situation presented by the University:

> . . . the furnishing or distribution of water, nor to the production, delivery or furnishing of steam or any other substance, by a producer or other person,

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[7] The basis for this argument is the City's concern that the proximity of the University's new production wells to the City's existing Turner wells will have a detrimental effect on the City's water supply and the City's municipal water utility. The City has not alleged that any detrimental effect has yet occurred.

[8] The fact that an action taken by the University under the authority of Wyoming Statute § 21-17-126 may impact the City's water supply is not akin to a legislative delegation of the power to interfere with municipal improvements or the power to perform municipal functions.

> for the sole use of a producer or other person, or for the use of tenants of a producer or other person and not for sale to others.

Wyo. Stat. Ann. § 37-1-101(a)(vi)(H)(VI).

59. The Court disagrees that simply by authorizing the University to develop and use wells, which effectively removes the University from the City's water supply, Wyoming Statute § 21-17-126 delegates power to the University to interfere with the City's water utility.[9] And, though a negative financial impact may result from the decreased consumption of City's utilities by the University, this Court does not interpret the constitutional provision as going so far. Akin to *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928), there simply are too many links in that chain to create a causal connection between the meaning of Article 3, Section 37 of the Wyoming Constitution and the notion of interference with municipal functions.

60. Ultimately, nothing in the plain language of Wyoming Statute § 21-17-126 delegates any power to interfere with the City's water utility, including "municipal improvements, moneys, property or effects" and nothing within Wyoming Statute § 21-17-126 is a constitutional violation of Article 3, Section 37 of the Wyoming Constitution.

B. Whether Wyoming Statute § 21-17-126 Violates Article 3, Section 27 of the Wyoming Constitution

61. The City next contends that Wyoming Statute § 21-17-126 is a special law, prohibited by Article 3, Section 27 of the Wyoming Constitution.

62. Article 3, Section 27 of the Wyoming Constitution prohibits the Wyoming Legislature from passing local or special laws in any of a long list of enumerated cases, including township affairs. The Article provides:

> **The legislature shall not pass local or special laws in any of the following enumerated cases**, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; **regulating county or township affairs**; incorporation of cities, towns or villages; or changing or amending the charters of any cities, towns or villages; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or

[9] The mere existence and use of junior groundwater wells from the same source of supply does not equate to interference. The University remains subject to Title 41 of the Wyoming statutes regarding rights to use groundwater.

constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; giving effect to any informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating[,] increasing, or decreasing fees, percentages or allowances of public officers; changing the law of descent; **granting to any corporation, association or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever, or amending existing charter for such purpose**; for punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury, relinquishing or extinguishing, in whole or part, the indebtedness, liabilities or obligation of any corporation or person to this state or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices or prescribing the powers or duties of officers in counties, cities, townships or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted.

Wyo. Const. Art. III, § 27 (emphasis added).

63. Regarding the prohibition of special laws in the context of Article 3, Section 27 of the Wyoming Constitution, the Wyoming Supreme Court has noted:

> We observed that a general law could be enacted instead of the above special law shielding only architects and contractors. 611 P.2d at 831. Justice Rooney, writing separately, noted that the statute would be constitutional "if it were all inclusive as the class of persons against whom actions may not be brought." *Id.* at 831 (Rooney, J., specially concurring).

Worden v. Vill. Homes, 821 P.2d 1291, 1293 (Wyo. 1991) (quoting *Phillips v. ABC Builders*, 611 P.2d 821, 831 (Wyo. 1980) (Rooney, J., concurring).

64. The Supreme Court has defined what constitutes a "general law":

> It was stated in *Standard Cattle Co. v. Baird*, 8 Wyo. 144, 157, 56 P. 598, 601, that "a law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purpose of the legislature, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law." In McGarvey v. Swan, 17 Wyo. 120, 96 P. 697, 701, the court quoted with approval the following, namely, "a general law, as distinguished from a local or special law, is one that embraces a class of subjects, and does not exclude any subject or place naturally belonging to the class, when considered in its relation to the subject of classification." Again the Court stated in the same case that "whether a particular statute is or is not a general law is often a question difficult of determination, but the general rules controlling such determination are quite well established. That a reasonable classification of objects of legislation or localities may be resorted to without rendering an act objectionable as a local or special law, within the meaning of the constitutional inhibition of such laws, is a general principle, too well settled to admit of present controversy." See, also, State v. A. H. Read Co., 33 Wyo. 387, 418, 240 P. 208; Public Service Comm. v. Grimshaw, 49 Wyo. 158, 185, 53 P.2d 1; State v. Sherman, 18 Wyo. 169, 176, 105 P. 299, 27 L.R.A.,N.S., 898, Ann.Cas.1912C, 819; May v. City of Laramie, 58 Wyo. 240, 256, 131 P.2d 300.

Unemployment Comp. Comm'n v. Renner, 59 Wyo. 437, 143 P.2d 181, 183 (1943). *See also May v. Laramie*, 131 P.2d 300, 306 (Wyo. 1942).

65. Ultimately, the City argues that Wyoming Statute § 21-17-126 has designated the University as a special class without reasonable explanation as to why the University has any special need, as opposed to any other educational institution in the State.

66. First, it must be noted that Wyoming Statute § 21-17-126 does not fall within or under any of the specifically enumerated cases contained in Article 3, Section 27 of the Wyoming Constitution. To the extent the City has claimed that Wyoming Statute § 21-17-126 regulates "township affairs," to the contrary, the statute addresses the University's affairs, which the Wyoming Legislature is directed by the Wyoming Constitution to manage. *See* Wyo. Const. Art. 7, § 17. The statute restricts the City from action (e.g. prohibiting the University from developing and using certain wells and water

systems) only to the extent that those wells and water systems are independent of the City's water system. Thus, the City's affairs -- here, its water utility -- are not directly affected by Wyoming Statute § 21-17-126.[10]

67. Second, to the extent that the City asserts that Wyoming Statute § 21-17-126 grants to the University a special or exclusive privilege in violation of the Wyoming Constitution, the University is not a corporation, association, or individual. Rather, as discussed previously, the University is the State of Wyoming. *See Ross*, 228 P. at 651. Additionally, Wyoming Statute § 21-17-126 does not grant a special or exclusive privilege or franchise to the University. Rather, the Wyoming Legislature has authorized the University to drill wells and develop a nonpotable water system to supply water to property owned or leased by the University. That authority remains subject to Title 41 of the Wyoming Statutes, which addresses rights to appropriate groundwater and place it to beneficial use. Accordingly, the University is granted no special or exclusive privilege but, rather, remains subject to the laws and regulations of the State of Wyoming regarding development and use of groundwater.

68. Third, to the extent the City claims that Wyoming Statute § 21-17-126 is a "special law" and unconstitutional in that there is no reasonable explanation as to why the statute applies only to the University. The situation here is unique given the Wyoming Constitution's express mandate that the Wyoming Legislature manage the University and its property. *See* Wyo. Const. Art. 7, § 17. By this very directive, the Legislature is put in a position requiring it to legislate for the management of the University and its property. Thus, simply by being enacted as a law specifically related to the management of the University's lands and property, Wyoming Statute § 21-17-126 cannot be deemed "special" when its sole intent is to fulfill the Wyoming Legislature's constitutional obligations. Put another way, it is nonsensical to conclude that a law must be made "general," or applicable to a larger audience, when the intent of the Wyoming Legislature is specifically to comply with Wyoming Constitution Article 7, Section 17 so as to manage the University and its property.

69. The purpose behind the prohibition of "special legislation" is "so a statute operates alike on all persons in the same circumstances." *Campbell Cty. Sch. Dist. V. State*, 907 P.2d 1238, 1273 (Wyo. 1995).

> The prohibition against special legislation does not mean that a statute must affect everyone in the same way. It only means that the classification contained in the statute must be reasonable, and that the statute must operate alike upon all persons or property in like or the same circumstances

[10] Again, the City's argument lies in the indirect effect of the University's decreased usage of the city water supply and, thus, decreased payment therefor.

> and conditions. Nation v. Giant Drug Company, Wyo., 396 P.2d 431, 434; and State v. Sherman, 18 Wyo. 169, 105 P. 299, 300. See also, May v. City of Laramie, 58 Wyo. 240, 131 P.2d 300, 306; and Davis v. Commonwealth Edison Co., supra. We have already explained why we believe the statute sets forth a reasonable classification. The operation of the statute equally affects all of the objects within that classification there being no discernible exceptions within the water well and mineral industries. Both requisite factors are met and, therefore, the statute is considered a general law. See, Standard Cattle Company v. Baird, 8 Wyo. 144, 56 P. 598; and McGarvey v. Swan, 17 Wyo. 120, 96 P. 697. See also, Davis v. Commonwealth Edison Co., supra.

Mountain Fuel Supply Co. v. Emerson, 578 P.2d 1351, 1356 (Wyo. 1978).

70. Here, Wyoming Statute § 21-17-126 intentionally relates only to the University and does so reasonably given the "distinguishing peculiarity" created by the Wyoming Constitution, which designates the University as the sole university of the State and tasks the Wyoming Legislature with management thereof. *See* Wyo. Const. Art. 7, § 17. Wyoming Statute § 21-17-126 necessarily implicated (and affects) only the University because that is its very purpose, in accordance with constitutional mandate.

71. Additionally Wyoming Statute § 21-17-126 indeed operates alike on all persons and property in the same circumstances and conditions in that the University owns and leases property elsewhere in the State of Wyoming.[11] Pursuant to Wyoming Statute § 21-17-126, no city or county shall restrict or prohibit the University from drilling or using wells for the purposes state therein, which necessarily applies throughout the State of Wyoming. "Since the statute here in question applies to all cities and towns in the state, it is quite plain that it is not a special law, but a general law[.]" *State ex rel. Keefe v. McInerney*, 182 P.2d 28. 38 (Wyo. 1947). Wyoming Statute § 21-17-126 applies equally statewide and is, therefore, a general law under these circumstances. *See Baessler v. Freier*, 2011 Wy 125, ¶ 16, 258 P.3d 720. 726 (Wyo. 2011).[12]

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[11] For example, the University has experimental farms near Sheridan, Powell, and in Goshen County. *See* Wyo. Stat. Ann. § 21-17-302.

[12] To the extent the City argues "[e]ven if [Wyoming Statute § 21-17-126] is deemed constitutional, the statute does not give the University the right to drill for water in any location where the University lacks a property right to drill for water," *see Plaintiff City of Laramie's Opposition to Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), W.R.C.P.*, at 26 (Aug. 25, 2021), that issue is not properly before the Court at this time.

72. Having considered the parties' arguments, the Court finds that the City has failed to state a claim of relief upon which this Court can conclude that Wyoming Statute § 21-17-126 is unconstitutional pursuant to Article 3, Section 27 of the Wyoming Constitution and/or pursuant to Article 3, Section 37 of the Wyoming Constitution.[13] The City's claims must be dismissed in this regard.

IV. Consideration of the University's OSLI Easement and the University's Ability to Traverse 30th Street

73. The final issue involves the City's assertion that the University is planning to utilize a temporary water line to produce water from the UW 2019 Well B to irrigate the Jacoby Gold Course and the University is planning to construct and install a permanent water pipeline from the UW 2019 Well A to the UW 2019 Well B, which will traverse a portion of the NW1/4NW1/4 of Section 26, Township 16 North, Range 73 West of the 6th P.M., which is owned by the State of Wyoming.

A. The OSLI Easement

74. The City alleges that the University has submitted a Non-Roadway Easement Application to the Office of State Lands and Investments (OSLI) for this water pipeline project and that the proposed water pipeline crosses the City's existing easement through the State Section for its East Tank Water Transmission Line. The City is concerned that its East Tank Water Transmission Line may be compromised if the University's pipeline is installed as proposed.

75. Given those assertions and concerns, the City claims that it has real property interests in its easement across the State Section for the City's East Tank Water Transmission Line and has the right to protect its property by requiring the University to obtain the City's consent prior to construction or installing a water pipeline under or above the City's East Tank Water Transmission Line.

76. In seeking dismissal as to the first claim, the University argues that the City seeks to exercise power reserved to state entities (namely, OSLI), not the City. Specifically, the State Land Board is vested with the authority to grant easements over state lands. *See* Wyo. Const., Art. 18, § 3; Wyo. Stat. Ann. § 36-2-101. The University argues that the City has no authority to interfere with or prohibit the Office of State Lands (OSLI) from exercising its authority, including the grant of an easement to the University.

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[13] The Court has not been called upon to make any determination as to the impact, if any, of Wyoming Statute § 21-7-126 on the exceptions/restrictions in the 1965 Deed, or the City's ability to enforce those exceptions/restrictions.

77. In response, the City relies on the Rules and Regulations, Office of State Lands and Investments, Board of Land Commissioners, Ch. 3, § 8, which is entitled "Encroachment on Existing Easements and Conflicting Use" and states:

> (a) Applicants shall be responsible for determining whether or not the proposed easement would spatially encroach upon any existing easements or other permitted uses on state lands and for implementing any necessary measures to prevent or mitigate impacts on existing easements or uses.
>
> (b) An easement, granted to a person for a specific purpose, shall not be used for other purposes or by other persons without the approval of the Board. The Board reserves the right to grant easements to additional applicants for use of the established route, provided that such subsequent easements do not adversely affect the existing easement or facility. In such cases the Director may require the subsequent applicant to negotiate a maintenance agreement with the holder of the existing easement prior to the grant of easement.

Id.

78. The City contends that it is within its rights to ask this Court to declare that the University is required to recognize its planned encroachment on the City's existing easement and to comply with its duty to implement such measures.

79. The Court disagrees. To the extent that City believes that the University is not compliance with the Rules and Regulations of the Office of State Lands and Investments, Board of Land Commissioners, it must seek proper avenues of relief, including exhaustion of administrative remedies and judicial review of administrative action. That is particularly true here, where this Court in unaware of the status of any pending administrative issues.

80. The Wyoming Supreme Court has opined:

> Ordinarily, a declaratory judgment action is not a substitute for an appeal. School Districts Nos. 2, 3, 6, 9, and 10, Campbell County v. Cook, Wyo., 424 P.2d 751 (1967); Stahl v. Wilson, Fla. App., 121 So.2d 662 (1960); Sparks v. Brock & Blevins, Inc., 274 Ala. 147, 145 So.2d 844 (1962); and Bryarly v. State, 232 Ind. 47, 111 N.E.2d 277 (1953). But such direct action is often available "even though there was a statutory method of appeal," School Districts Nos. 2, 3, 6, 9 and 10, Campbell County v. Cook,

supra, 424 P.2d at 755. Here, there is no appeal actually pending and the issues are not moot.

However, there is a restriction on the availability of a declaratory judgment action with reference to its applicability to administrative matters. **Where the action would result in a prejudging of issues that should be decided in the first instance by an administrative body, it should not lie. This is because, if it be otherwise, all decisions by the several agencies could be bypassed, and the district court would be administering the activities of the executive branch of the government.** Public Service Commission of Utah v. Wycoff Co., 344 U.S. 237, 73 S.Ct. 236, 97 L.Ed. 291 (1952); and City of Cheyenne v. Sims, Wyo., 521 P.2d 1347 (1974). **This restriction on the scope of declaratory judgments is akin to the requirement that administrative remedies must be exhausted before judicial relief is available.**

Accordingly, where the relief desired is in the nature of a substitution of judicial decision for that of the agency on issues pertaining to the administration of the subject matter for which the agency was created, the action should not be entertained. If, however, such desired relief concerns the validity and construction of agency regulations, or if it concerns the constitutionality or interpretation of a statute upon which the administrative action is, or is to be, based, the action should be entertained. This is no more than that obviously and plainly provided for in the language of the Uniform Declaratory Judgments Act.

Rocky Mountain Oil & Gas Ass'n v. State, 645 P.2d 1163, 1168–69 (Wyo. 1982) (emphasis added). *See generally Bush Land Dev. Co. v. Crook Cty. Weed & Pest Control Dist.*, 2017 WY 12, 388 P.3d 536 (Wyo. 2017).

81. For these reasons, the Court must dismiss the City's claims regarding whether the City has the right to prohibit the University from crossing the right-of-way for the City's Transmission Line without an agreement with or consent from the City.

B. University Access Across/Under 30th Street

82. Next, the City asserts that, in order to connect the University's new wells to its existing wells on University campus, and to use the new wells to irrigate the lawn grass and landscaped areas on campus, the University will have to install a water pipeline under 30th Street in Laramie, Wyoming, which is owned by the City. Accordingly, the City claims that the University is required to obtain the City's consent prior to

constructing or installing a water pipeline under 30th Street, which is owned by the City, and that the University has not done so.

83. In seeking dismissal as to this second claim, the University asserts:

> The Complaint contains no factual allegation that UW plans to construct a water pipeline under 30th Street at the present time. Without such a factual allegation, there is no case or controversy necessary to give this court jurisdiction. *See, Allred v. Bebout*, 409 P.3d 260 (Wyo. 2018); *Carnahan v. Lewis*, 2021 WY 45, ¶ 26, 273 P.3d 1065, 1073 (Wyo. 2012). UW has no current plan to construct a pipeline under 30th Street. The City has no standing to seek any declaration from the court with regard to 30th Street. This claim for relief must be dismissed pursuant to Rule 12(b)(6), W.R.C.P.

Brief in Support of Motion to Dismiss Pursuant to Rule 12(b)(6), at 21 (July 14, 2021).

84. The City responds that "[the] only way to connect the University's new wells to its existing campus irrigation system is with a pipeline under 30th Street." *Plaintiff City of Laramie's Opposition to Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), W.R.C.P.*, at 27 (Aug. 25, 2021).

85. That may be the case, but the *Complaint for Declaratory Judgment* does not allege as much, nor does it allege sufficient facts for this Court to be able to conclude that the University presently has any plan (now or in the future) to construct a pipeline under 30th Street or is in the process of doing so.

86. As has been well recognized, a justiciable controversy requires "parties having existing and genuine, as distinguished from theoretical, rights or interests" and "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." *Allred v. Bebout*, 2018 WY 8, ¶¶ 36-37, 409 P.3d 260, 270 (Wyo. 2018) (quoting *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974)). *See also Carnahan v. Lewis*, 2021 WY 45, ¶26, 273 P.3d 1065, 1073 (Wyo. 2012).

87. Under the circumstances presented here, this Court has not been presented with a justiciable controversy regarding whether the University must ask permission of the City prior to constructing or installing a water pipeline under 30th Street and/or whether the City has the right to prohibit the University from crossing 30th Street without an agreement with or consent from the City. As a result, the request for declaratory judgment on this matter must be dismissed.

CONCLUSION

WHEREFORE, for the reasons set forth herein,

88. *Defendant University of Wyoming and University of Wyoming Board of Trustees' Motion to Dismiss Pursuant to Rule 12(b)(6), W.R.C.P.*, filed on July 14, 2021, shall be and hereby is **GRANTED in part and DENIED in part**.

89. The City's following claims shall **survive** the motion to dismiss:

a. Whether the City has the right to enforce the drilling restrictions contained in the 1965 UPRR-University Deed as a third-party beneficiary;

b. Whether the University must comply with Laramie Municipal Ordinance 13.04.360.[14]

See Complaint for Declaratory Injunction, at 15 (June 8, 2021).

90. The City's following claims shall be **dismissed** pursuant to Rule 12(b)(6) of the Wyoming Rules of Civil Procedure:

a. Whether the University must comply with all Laramie Municipal Ordinances, including Laramie Municipal Ordinance 15.08.040;

b. Whether Wyoming Statute § 21-17-126 is unconstitutional in violation of Article 3, Section 27 of the Wyoming Constitution and/or in violation of Article 3, Section 37 of the Wyoming Constitution;

c. Whether the City has the right to prohibit the University from crossing the right-of-way for the City's Transmission Line without an agreement with or consent from the City; and

d. Whether the City has the right to prohibit the University from crossing 30th Street without an agreement with or consent from the City.

[14] To the extent the University has raised an argument that Laramie Municipal Ordinance 13.04.360 is unconstitutional and, thus, unenforceable, that issue necessarily must be considered in addressing whether the University must comply with Laramie Municipal Ordinance 13.04.360.

91. The Court has scheduled this matter for a remote Scheduling Conference on **November 29, 2021 at 9:00 A.M**. Further deadlines, scheduling, and issues will be addressed at that time.

SO ORDERED this 29th day of October 2021.

TORI R.A. KRICKEN
DISTRICT JUDGE

Copies to:

Crank Legal Group, attorneys for University of Wyoming
Tara Evans, General Counsel, University of Wyoming
Korry Lewis, Counsel for City of Laramie
Robert Bernhoft, Counsel for City of Laramie

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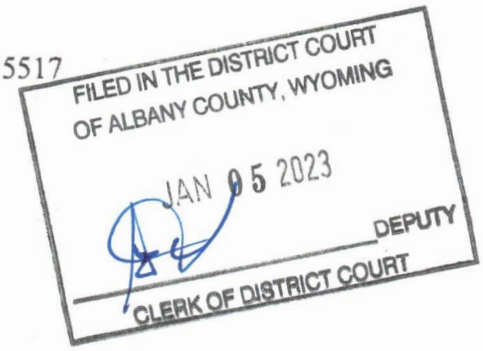
STATE OF WYOMING	)	IN THE DISTRICT COURT
	) ss	
COUNTY OF ALBANY	)	SECOND JUDICIAL DISTRICT

CITY OF LARAMIE, WYOMING, Plaintiffs, v. UNIVERSITY OF WYOMING and UNIVERSITY OF WYOMING BOARD OF TRUSTEES, Defendants.	)	Civil No. 35517



ORDER GRANTING SUMMARY JUDGMENT AS TO CITY OF LARAMIE'S REMAINING CLAIMS

THIS MATTER, having come before the Court pursuant to Cross Motions for Summary Judgment filed by the parties, and the Court being fully advised, hereby orders as follows:

1. Summary Judgment in favor of Defendants is granted with regard to Plaintiff's claim that Plaintiff can enforce terms of the 1965 Quit Claim deed between UW and UPPR (Plaintiff's First Claim for Declaratory Judgment) for the reasons set forth in the transcript of the oral ruling on December 19, 2022, made in this matter;
2. Summary Judgment in favor of Defendants is granted with regard to Plaintiff's prayer for relief that Defendants must comply with Laramie City Ordinance 13.04.360 for the reasons set forth in the transcript of the oral ruling on December 19, 2022, made in this matter.

Based on these rulings, the Court hereby denies the parties' other motions for summary judgment. Defendants' counterclaims are rendered moot by this Order.

Further, based on the rulings contained herein as memorialized in the transcript of the oral ruling on December 19, 2022, this matter is dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED.

DATED this 5th day of January, 2023.

HONORABLE MISHA WESTBY
SECOND JUDICIAL DISTRICT COURT JUDGE

~~APPROVED AS~~ TO FORM:

Patrick J. Crank

Attorney for the Defendant, University of Wyoming and University of Wyoming Board of Trustees

Korry D. Lewis

Korry D. Lewis

Attorney for the Plaintiff, City of Laramie, Wyoming

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