

However, in order to reach its conclusion, the Resource Council ignores all the other words in that subsection and the other subsections in Wyoming Statute § 35-11-406. Those words are vital to understanding the statute, and reveal that the Council’s “decision on the application” in this case is not to issue or deny the requested permit, but to resolve objections. *See Brock v. State ex rel. Wyo. Workforce Servs., Unemployment Ins. Div.*, 2017 WY 47, ¶ 8, 394 P.3d 460, 463 (Wyo. 2017) (“[W]e begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute *in pari materia*.”).

For example, important context is found in the text and arrangement of Wyoming Statute § 35-11-406(k), (n), and (p). Subsection (k) provides that the purpose of either an informal conference or a Council hearing on objections to an application is to “resolve the disputes” presented by objections. Wyo. Stat. Ann. § 35-11-406(k). Therefore, after its hearing on objections, the Council’s “findings of fact, conclusions of law and decision on the application” relate to resolving the objections. *See* Wyo. Stat. Ann. § 35-11-406(k) and (p). After the Council issues those findings, conclusions, and decision, the Director is then responsible for issuing or denying the permit. Wyo. Stat. Ann. § 35-11-406(p).

Regardless of whether a permit application receives objections or not, the Administrator is always responsible for making the findings under Wyoming Statute § 35-11-406(n). When no one objects to an application, the Land Quality Division Administrator can make the findings under subsection (n) immediately. Wyo. Stat. Ann. § 35-11-406(k), (n), and (p). When someone objects, however, the Administrator must wait until the objections are resolved to make his findings because, for example, that resolution could affect how the proposed operation may or may not

impact, among other things, the hydrologic balance outside the permit area or alluvial valley floors. Wyo. Stat. Ann. § 35-11-406(n)(iii) and (v). The Administrator must evaluate those impacts in order to make the findings under Wyo. Stat. Ann. § 35-11-406(n). *Id.* It is for this reason that Wyoming Statute § 35-11-406 is structured so that objections are made and resolved (subsection (k)) before the Administrator makes the required findings (subsection (n)) and before the Director issues or denies a permit (subsection (p)).

In addition, the statute always charges the Director with issuing or denying the requested permit. Wyo. Stat. Ann. § 35-11-406(p). Even after the Council holds a hearing to resolve objections, the statute states: “The director shall issue or deny the permit no later than fifteen (15) days from receipt of any findings of fact and decision of the environmental quality council.” *Id.* Both this language and the fifteen-day window would be superfluous if the Legislature had intended the Council’s “decision on the application” to issue or deny the application. Similarly, the language directing the Administrator to make findings under Wyoming Statute § 35-11-406(n) would be superfluous if the Legislature had intended the Council’s “decision on the application” to make those required findings. But statutes must be construed so that no part is superfluous. *Seherr-Thoss v. Teton Cnty. Bd. of Cnty. Comm’rs*, 2014 WY 82, ¶ 19, 329 P.3d 936, 945 (Wyo. 2014) (“Each word of a statute is to be afforded meaning, with none rendered superfluous.”).

When read in context with the permitting statute’s language and structure as a whole, the Council’s “decision on the application” required by Wyoming Statute § 35-11-406(p) is not a decision to issue or deny the permit. Instead, the Council’s decision resolves the objections. Wyo. Stat. Ann. § 35-11-406(k). Once the Council resolves the objections, the Administrator then has the information necessary to make the required findings under Wyoming Statute § 35-11-406(n).

In all cases, the statute requires the Director to issue or deny the permit, rather than the Council. Wyo. Stat. Ann. § 35-11-406(p).

II. Nature and Order of Decisions in the Permitting Process.

The objectors have expressed confusion about the determinations the Department has already made on the Brook Mine permit application and the significance of those determinations. *See, e.g., Big Horn Coal Br.* at 4-6. That confusion includes the meaning and occurrence of the phrases, “complete application,” “technical adequacy,” “suitable for publication,” and “accurate and complete.” *See, e.g., id.* at 4-6 and 12-13.

The Department’s previous brief discusses the permit review process in detail, including the meaning and timing of the Department’s and the Land Quality Division’s (“Division”) determinations during that process. *Department Br.* at 2-7. To summarize briefly here, the Division evaluates whether a permit application is a “complete application” under Wyoming Statute § 35-11-103(e)(xxii) after the applicant initially submits the application to the Division. Wyo. Stat. Ann. §§ 35-11-103(e)(xxii) and -406(e). The Division then reviews the “complete application” for “substance and compliance” with the permit requirements in the Environmental Quality Act and the Division’s coal rules. Wyo. Stat. Ann. §§ 35-11-103(e)(xxii) and -406(h). After a series of comments and responses with the applicant, if the Division concludes that the application complies with the rules and statutes’ permit requirements, the Division deems the application complete and “suitable for publication.” Wyo. Stat. Ann. § 35-11-406(h). The application is then publicly noticed, which allows the opportunity for objections. Wyo. Stat. Ann. § 35-11-406(j) and (k). After any objections are resolved (if there are any), but prior to a decision on permit issuance, the Administrator must find, in writing, that the application is “accurate and complete.” Wyo. Stat. Ann. § 35-11-406(n)(i).

III. In resolving the objections, the Council does not need to defer to the Department's decision that the Brook Mine permit application was "suitable for publication."

Big Horn Coal correctly argues that the Council does not need to defer to the Division's decision that the Brook Mine permit application was suitable for publication when the Council considers and resolves the objections to the application. *See Big Horn Coal Br.* at 12-14. However, the actual reason why deference does not apply here is different than what Big Horn Coal claims.

As the process requires, the Division determined the application was "suitable for publication" before moving forward with public notice and receiving objections. *See Wyo. Stat. Ann. § 35-11-406(h) through (k)*. The Division's determination is different than the decision the Council must make in this case, which is whether the application complies with the statutory and regulatory requirements after considering the objections. *Id.* Therefore, as different conclusions at different stages of the process, the Council does not need to give any deference to the Division's earlier decision that the application was "suitable for publication." *See id.* Also, although the Department has now reviewed the objections and taken the position that the application meets the application requirements notwithstanding the objections, the Council does not need to defer to that Department conclusion either. Instead, it is the Council's responsibility to resolve the objections through this contested case proceeding. *Wyo. Stat. Ann. § 35-11-406(k)*.

IV. The *Grams* case is not applicable to the questions before this Council.

The Resource Council and Big Horn Coal argue that the Wyoming Supreme Court held in *Grams v. Environmental Quality Council*, 730 P.2d 784 (Wyo. 1986), that this Council first must make the Administrator's findings under Wyoming Statute § 35-11-406(n) and, second, must decide whether to issue or deny a permit application that receives objections. *See Big Horn Coal Br.* at 11-12; *Resource Council Br.* at 2. However, *Grams* does not support either position.

The Court's discussion in *Grams* of Wyoming Statute § 35-11-406(n) was brief and unrelated to the issues in this case. *See Grams*, 730 P.2d at 789. Citing Wyoming Statute § 35-11-406(n), the Court in *Grams* stated that the permit applicant had the burden of proving that its application complied with the law. *Id.* The Court also stated:

The record reveals that AMAX recognized this in its prehearing memorandum, as did the EQC when it stated in its final conclusion of law that "AMAX Coal Company has met its burden of proof demonstrating that the Eagle Butte Mine is in compliance with W.S. § 35-11-406(n), and all other applicable state laws."

Id.

Contrary to the objectors' argument, *Grams* says nothing about the Council making the Administrator's findings under Wyoming Statute § 35-11-406(n), or whether that is or is not required or permitted. The Court's holding is entirely limited to the applicant's burden of proof in a Council hearing on objections to a surface coal mining permit application. *Id.* at 789. That burden is not disputed in this case.

Further, the Court in *Grams* did not hold that the Council must issue or deny the permit application. It did briefly note in the statement of proceedings leading up to the appeal that the Council "entered its order directing the [Division] to issue a mining permit to AMAX." *Id.* at 786. However, that recitation of case events is not a legal holding by the Court, and it certainly is not a precedent for this case. Additionally, the Court did not consider whether the Council had any responsibility or authority beyond resolving the objections. Accordingly, that brief statement from *Grams* does not apply to this case.

Rather than straining to analogize *Grams* to the issues and facts of this case, the Council should recognize that the plain language of Wyoming Statute § 35-11-406 is unambiguous and controls. *See Brock*, 2017 WY 47, ¶ 8, 394 P.3d at 463. In addition, the Council must read the statute as a whole and cannot divorce the words "decision on the application" from the context of

the rest of the statute. *See id.* (“We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute *in pari materia.*”). Wyoming Statute § 35-11-406(n) explicitly tasks the Administrator, not the Council, with the responsibility and authority to make the required findings. The Administrator can make the required findings only after the Council has resolved any objections. Finally, instead of directing the Council to issue or deny the permit, the statute tasks the Director with that responsibility. Wyo. Stat. Ann. § 35-11-406(n), (p).

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CERTIFICATE OF SERVICE

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