Patrick R. Day, P.C.
Mark R. Ruppert
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, Wyoming 82003-1347

ATTORNEYS FOR BASIN ELECTRIC
POWER COOPERATIVE

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In the Matter of:	)	
Basin Electric Power Cooperative	)	Docket No. 07-2801
Dry Fork Station,	)	
Air Permit CT – 4631	)	

BASIN ELECTRIC POWER COOPERATIVE INC' S MOTION TO DISMISS APPEAL

I. Introduction

The Sierra Club, the Powder River Basin Resource Council and the Wyoming Outdoor Council have appealed Basin Electric Power Cooperative's final Permit to Construct the Dry Fork Station issued by the Director of the Department of Environmental Quality. Basin Electric now moves to dismiss this appeal because there is no statute granting Protestants any right to appeal to this Council from the final Permit to Construct.

Basin Electric acknowledges the Council will find this Motion surprising and perhaps react to this Motion with considerable skepticism; however, Basin Electric trusts the Council will set aside any such initial reaction and consider this Motion carefully. While it is true that third-party permit appeals to the Council have been routinely undertaken for many years without any person or party ever questioning whether the right to such an appeal actually exists, long

standing practices that are not authorized by statute do not become authorized merely by force of habit or even routine unquestioned acceptance. Other Wyoming agencies have found that their prior experience needed reconsideration when the law was questioned for the first time.[1] That is the case here.

The right to appeal any agency decision is entirely statutory.[2] By its terms, the permit to construct is a final agency decision by the DEQ. Therefore, Protestants have a right to appeal that permit to the Council only if there is a statute that expressly so provides. There is none. As it turns out, the Environmental Quality Act (EQA) only authorizes contested case appeals to the Council by permit applicants, not by third parties. W.S. §§ 35-11-802; 35-11-208. Protestants are not the permit applicant. Protestants' only statutory remedy is to appeal directly to the district court, not to the Environmental Quality Council. W.S. §§ 35-11-1001; 35-11-208.

While it is true the Council has general statutory authority to conduct contested case permit hearings, W.S. § 35-11-112, the Council's authority to hold such hearings is not the same thing as a statutory right for Protestants to have such a hearing. Protestants overlook the fundamental distinction between the Council's general authority *to hold* a hearing and the Protestants' statutory right, or lack thereof, *to have* such a hearing under specific provisions of the EQA.

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[1] In *Antelope Valley Improvement and Service Dist. of Gillette v. State Bd. of Equalization*, 4 P.3d 876 (Wyo. 2000), the Wyoming Supreme Court had to reiterate its previous holding that the Board of Equalization was not a proper party to an appeal of one of the Board's own decisions in its adjudicatory capacity. The Board's "insistence" that it had this authority required the Supreme Court to hold – twice – that it did not.

[2] "Actions of an administrative agent are not reviewable unless made so by statute." *Holding's Little America v. Board of County Commissioners of Laramie County,* Wyo., 670 P.2d 699, 702 (Wyo. 1983).

The EQA includes many specific statutory grants of rights to appeal to the Council, indicating clearly when such appeal rights were intended and authorized by the Legislature. There is no such statutory right to an appeal provided to Protestants here. The absence of any such grant of permit appeal rights (except to permit applicants) demonstrates a clear legislative intent not to allow permits to be appealed by any person or entity other than the applicant to the Council. Protestants' belief that the Council's general power to hold hearings means any person or entity is entitled to a hearing whenever they want is simply in error. The net result is that Protestants are using this case in an effort to invite the Council to usurp the permitting responsibility of the Department and to entertain an appeal that the Wyoming Legislature has not authorized.[3]

II. Background

Basin Electric is building a new 385 megawatt electrical power plant primarily to meet the energy demands of northeast Wyoming. Total plant investment is expected to exceed $1 billion, and the project will include the latest in air pollution control technology applicable to pulverized coal-fired power plants. In Wyoming, a permit to construct must be issued by the DEQ Director before any company can commence construction of a major new source of air emissions. Wyoming Air Quality Standards and Regulations (WAQS&R) Chap. 6, §§ 2 and 6. Basin Electric's Dry Fork Station (the Power Plant) requires such a permit.

Basin Electric obtained its Permit to Construct on October 15, 2007. This Permit was issued only after the DEQ Air Quality Division (Division) had spent almost two years

[3] The Council knows that it stands on the verge of an overwhelming docket without sufficient time and resources to hear all requested permit appeals – a quandary the Legislature never expected the Council to confront.

undertaking a lengthy and exhaustive analysis of the proposed plant, the available complex emission control technologies, and the impact of the plant on air quality standards, visibility, and other air quality-related values in Class I areas (in this case, two National Parks and the Northern Cheyenne Indian Reservation). Basin Electric's permit application included extensive technical evaluations, including sophisticated air quality modeling of potential impacts and exhaustive research and analysis of what would be the Best Available Control Technology (BACT) to reduce potential emissions of regulated air pollutants.

After receiving Basin Electric's initial permit application, the Division on several occasions submitted to the company extensive requests for additional information. The Division then conducted its own detailed technical review and eventually issued a proposed permit which included requirements for costly, state-of-the-art air pollution controls and emission limits. The proposed permit was accompanied by the Division's detailed analysis of what constitutes BACT and modeling of the impacts of the proposed plant on air quality, including impacts in Class I areas. The Division's proposed emission limits were among the strictest applicable to recently-permitted coal-fired power plants anywhere in the United States.

The Division's proposed permit was sent out for public review and comment. Many parties submitted comments, including the Protestants. Basin Electric also submitted comments on the Division's proposed permit. At the request of Protestants and others, the Division held a public hearing at which additional comments were submitted by interested parties. The Air Quality Division then reviewed and considered the detailed comments submitted by Basin Electric, the Protestants, EPA, the National Park Service, and other interested groups with substantial technical expertise in air quality issues. Following this review, the Division issued its

final Permit to Construct on October 15, 2007, again with emission limits that are among the strictest applicable to recently-permitted coal-fired power plants anywhere in the country. This concluded years of technical review and analysis by the Division, Basin Electric, and many other interested parties.

On October 31, 2007 Protestants filed this protest, seeking a contested case hearing on the Permit to Construct. Basin Electric was served a copy of the Petition and, on November 12, 2007, counsel for Basin Electric, as a courtesy, hand delivered a letter to counsel for Protestants advising Protestants of Basin Electric's position that *only judicial review* was available for Protestants to challenge DEQ's final Permit to Construct. Protestants nevertheless persist in this protest to the Council, without statutory authority to do so, necessitating this Motion.

III. Argument

The question presented is whether Protestants have a legal right to appeal Basin Electric's final Permit to this Council, or whether the Protestants' appeal rights are directly to the district court. Wyoming follows the principle of "limited agency authority," which means (a) that agencies can only do what the statutes expressly authorize; (b) that agency decisions are reviewable only as expressly set forth in the statutes; and (c) that any reasonable doubt of existence of any power of the agency must be resolved against the exercise of that power.[4] Accordingly, under Wyoming law, no appeal from a final agency decision exists unless there is a statute that directly authorizes the appeal. No person or party has any automatic or inferred "right" to appeal an agency decision in the absence of a statute granting this right.

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[4] *Hupp v. Employment Security Commission of Wyoming*, 715 P.2d 223, 225 (Wyo. 1986); *French v. Amax Coal West*, 960 P.2d 1023, 1027 (Wyo. 1998). *See also* cases cited in footnotes 1-6.

As a consequence, Protestants would have a right to appeal the Director's final permit decision to this Council only if there were a statute that expressly provided for that appeal. There is no such statute. Only two statutes exist in the Environmental Quality Act relating to Protestants' possible appeal rights, and both statutes require Protestants to go directly to district court, not this Council. W.S. §§ 35-11-1001; 35-11-208.

A. Issuance of the Dry Fork Permit is Final Agency Action

The Dry Fork Station is subject to the Prevention of Significant Deterioration (PSD) program of the Clean Air Act, which requires Basin Electric to employ the best available pollution control technologies for each pollutant subject to regulation under the Clean Air Act. 42 U.S.C. § 7475(a)(4); WAQS&R Chapter 6, § 4(b)(ii). In air quality vernacular, this is known as the "BACT" process: "best available control technology." This means that the Department cannot issue a PSD permit to construct until it has exhaustively investigated all of the available and technically sophisticated emission control technologies that might qualify as the best available and imposed the strictest emission limits obtainable by the use of these technologies. In addition, the Department must review complex air quality modeling of impacts on air quality standards, visibility, and other air quality-related values in Class I areas, and determine that any such impacts will comply with applicable standards. The evaluation of the data and evidence, the decision to grant a PSD permit, and the decision regarding what conditions and requirements to include in the permit require enormous technical expertise and specialized training, and years of study by the applicant and the Department. Even a cursory review of the Petition and the Basin Electric Response reveals the technical complexity of the analysis and review required of the Division and the Department before they issue a PSD permit to construct.

It is therefore not surprising that both the Wyoming statutes and general principles of administrative law provide that the Permit to Construct is *final agency action*. First, Section 35-11-801(b), the general provision on permitting in the EQA, provides that the Director's decision on a permit application is "final action." The specific statute relating to air quality permits, Section 35-11-208, mirrors this language, describing the Director's decision on a permit application as "final action." *See also* W.S. § 35-11-205 (discussing "final action" on air quality permit application). "Final action" is a term of art in administrative law and is frequently used by the Legislature when it has determined that no more agency action is or should be required.[5]

Common sense confirms that a Permit to Construct is final action. Indeed, the statute provides that a permit to construct is all that is required to commence construction on a billion dollar plant. W.S. § 35-11-801(c). The Permit even sets a time limit within which construction *must* commence. This would not be possible if the Permit to Construct were not the final agency authorization to begin spending hundreds of millions of dollars in construction. Basin Electric's legal rights and obligations were therefore finally established by the Permit.

Principles of administrative law support this. An agency action is final if it "mark[s] the 'consummation' of the agency's decision-making process --it must not be of a merely tentative or interlocutory nature. And second, the action [is final if it is] ... one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow....'"[6] In this

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[5] *See, e.g.*, W.S. §§ 16-3-103 (final action); 16-3-114(a) (final decision); 15-4-313 (final action); 18-3-611 (final action); 18-12-117 (final action); 26-31-109 (final action); 26-42-109 (final action); 33-40-113 (final action); *Board of County Commissioners for Sublette County v. Exxon Mobil Corporation*, 55 P.3d 714, 725 (Wyo. 2002) *citing MGTC, Inc. v. Public Serv. Comm'n*, 735 P.2d 103, 106 (Wyo. 1987) (final decision).

[6] *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citations omitted).

case, when the Department issued the Permit to Construct for the Dry Fork Station, the permitting process was consummated. The permit is neither tentative nor interlocutory, and it confers on Basin Electric the full legal right to proceed with construction.

Since the Permit to Construct is final agency action, further administrative review by the Council without express statutory authorization would violate Wyoming administrative law. By definition, and in the absence of express statutory direction, a final agency action means that administrative remedies have been exhausted and any further review of the final agency action, if at all, is to a court. This not only comports with standard notions of administrative law, *but is precisely the scheme set in place under the Environmental Quality Act by the Wyoming Legislature for challenges to air permits by non-applicants.*

B. Any Appeal of the Permit Must be Authorized by Statute.

Under Wyoming law, there is no automatic right to appeal final agency action.[7] The fact that the Council has general power to hear appeals does not mean every person or party who may wish to appeal has the right to do so. A party has only those rights to a hearing before an administrative agency as may be granted by statute.[8] In the *Allied Fidelity* case cited in footnote 8, the EQC denied a hearing to a surety on the forfeiture of a reclamation bond because the statute granted a right to a hearing only to "the operator." In this holding, the EQC itself recognized that if there is no statute authorizing the party seeking an appeal to bring one, no such right exists. Although the Supreme Court reversed, it did so only because it concluded that the

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[7] "Actions of an administrative agent are not reviewable unless made so by statute." *Holding's Little America v. Board of County Commissioners of Laramie County,* Wyo., 670 P.2d 699, 702 (Wyo. 1983).

[8] *Allied Fidelity Insurance Company v. Environmental Quality Council,* 753 P.2d 1038, 1040-41 (Wyo. 1988).

surety stood in the operator's shoes.[9] The Supreme Court agreed with the EQC's general conclusion that no appeal rights exist other than those authorized by statute. The Court noted that, but for subrogation, the surety would not be entitled to an appeal because (1) the statute did not extend that right to sureties and (2) hearings are available only when a statute expressly provides. "Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, we do not resort to rules of statutory construction." *Id.* at 1040.

This principle is reinforced by the parallel principle that the right to judicial review of agency action is entirely statutory. There is no automatic review by either agencies or courts.[10] At issue in the *Albertson's* case cited in footnote 10 was the denial by the City of Sheridan of an application to transfer a liquor license. The Supreme Court in *Albertson's* made clear that review of agency action is not available unless a statute specifically so provides: "The express language of the statutes provides only a right of appeal from a denial of a renewal request. No express right of appeal is made available from a denial of a transfer application." *Albertson's* at 164. Because the Legislature did not grant a right to appeal from a denial of a transfer, the Court held the Legislature's intent was clear and convincing and there was no right to judicial review.

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[9] The EQC was appropriately concerned with allowing appeal rights to a person to whom the Legislature had not provided appeal rights. Section 35-11-421(b), W.S.1977 provided: "The attorney general shall institute proceedings to forfeit the bond of any operator by providing written notice to the surety and to the operator that the bond will be forfeited *unless the operator makes written demand to the council* within thirty (30) days of his receipt of notice, *requesting a hearing before the council.* If no demand is made by the operator within thirty (30) days of his receipt of notice, then the council shall order the bond forfeited" (emphasis added). The EQC in that case correctly focused on the specific statutory right granted only to specified parties to request a hearing before the Council, just as the Council should do now.

If *judicial review* is denied where the Legislature does not expressly provide for judicial review, it obviously follows that there is no right to review *before the Council* where the Legislature has not expressly provided for such review.

C. No Statute Affords Protestants a Right to Review Before the Council

The question thus becomes whether the Legislature has passed a statute granting Protestants a right to appeal the Permit to Construct before the Council. Since the issue is the Petitioner's *right to appeal*, not the Council's power in general to hold contested case hearings when specifically authorized, Protestants must point to statutory authority *allowing them to invoke* the Council's general powers to review agency action.

No such statute exists, and in fact the Environmental Quality Act very carefully limits permit appeals to the Council to appeals by permit applicants. No provision is made for permit appeals by other parties. As discussed above, the Court (and the Council) in *Allied Fidelity*, 753 P.2d at 1040-41, narrowly interpreted petitioner's rights to review before the EQC, despite the broad authority given to the Council to hear appeals under Section 112. Article 8 of the Environmental Quality Act governs permits issued by the Department. Section 801 deals with issuance of permits and licenses, and provides that such permits are final action. Section 802 addresses appeals on permit decisions to the Council, and limits the right to an appeal to the Council to disappointed applicants:

> If the director refuses to grant any permit under this act, *the applicant may petition for hearing before the council* to contest the decision. The council shall give public notice of such hearing. At such hearing, the director and appropriate administrator shall appear as respondent and the rules of practice and procedure

[10] *Albertson's, Inc., v. City of Sheridan,* 33 P.3d 161, 164 (Wyo. 2001); *Industrial Siting Council of State of Wyoming v. Chicago and North Western Transp. Co.*, 660 P.2d 776, 778 (Wyo. 1983).

> adopted by the council pursuant to this act and the Wyoming Administrative Procedures Act shall apply. The burden of proof shall be upon the petitioner. The council must take final action on any such hearing within thirty (30) days from the date of the hearing.

W.S. § 35-11-802 (emphasis added). Nowhere does Article 8 of the Environmental Quality Act provide for an appeal to the Council by Protestants for a decision *granting* a permit. Indeed, no such Wyoming statute exists.

The specific provisions of the Environmental Quality Act applicable to the Air Quality Division demonstrates that this was not an accident; it was a deliberate legislative decision made at the time of the original Environmental Quality Act and in subsequent air permit specific legislation. For example, section 35-11-208, provides that:

> (a) An *applicant* may seek relief pursuant to W.S. 35-11-802 [appeal to the Council] on any final action taken on a permit including the director's refusal to grant a permit under the operating permit program or failure to act on a completed application within eighteen (18) months.
>
> (b) *Any person* who participated in the public comment process on a permit application and who is aggrieved by the final action taken by the director on a permit application may seek relief pursuant to W.S. 35-11-1001 [which is judicial review, *not* appeal to the Council].

W.S. § 35-11-208 (emphasis added). Protestants are persons who participated in the public comment process and thus are required to appeal the Department's "final action" directly to the district court under Section 35-11-1001. No right to appeal to the Council is granted to parties other than permit applicants.

Although Section 208 is included within the "operating permit program" defined by W.S. 35-11-103 (b)(v) as the permitting program authorized by Sections 203 through 212, nothing in

Section 208, limits its application to operating permits only. Not all provisions of the "operating permit program at W.S. 35-11-203 through 35-11-212" apply solely to operating permits. As examples, Section 211(b) expressly provides for payment of fees for construction permits as well as for operating permits, and Section 205(a) expressly provides for the Department to establish procedures to prioritize approval or disapproval actions for construction permit applications. It was the Legislature's prerogative to include within the sections nominally entitled the "operating permit program" provisions that apply also to construction permits. The title given to Sections 203 through 212 does not nullify the Legislature's decision to make at least some of these sections applicable to construction permits as well. Since some provisions in the operating permit program obviously cover more than just operating permits, and since Section 208 is not by its terms limited exclusively to operating permits, Section 208 should be construed, in accordance with its express terms, to apply broadly to all air permits, including construction permits.

Section 208 clearly requires parties who participate in the public comment process to appeal to the courts, not the Council, just as Section 1001 already generally provides for non-applicants. Even if, despite its express terms, one were to conclude that Section 208 applies only to operating permits, the outcome is the same because Sections 802 and 1001 still apply to construction permits and, as explained previously, Section 802 provides for appeals to the Council only to permit applicants, and Section 1001 provides for appeals to the court for all other aggrieved persons. Since Protestants can point to no statute granting them appeal rights to the Council, they have none. Protestants cannot invent a right the Legislature has not conferred.

As both the Council and the Supreme Court recognized in the *Allied Fidelity* case, when the Legislature does intend to authorize a party to appeal to the Council, it must make express provision for such an appeal. In addition to the right to a hearing expressly given to permit applicants whose permit applications are denied, the Legislature has expressly authorized parties to petition the Council in other specific cases. *See, e.g.*, W.S. § 35-11-406(k) (right to appeal to the Council specifying a *de novo* hearing, regarding mining permits); W.S. § 35-11-211(d) (right to appeal to the Council specifying a contested case hearing, regarding fee assessment for construction and operating permits,); W.S. § 35-11-414(e) (right to appeal to the Council regarding director's denial of special license for mineral exploration); W.S. § 35-11-515(k) (right to appeal to the Council regarding director's decision concerning expenditure from solid waste disposal facility trust account); W.S. § 35-11-517(e) (right to appeal to the Council specifying a contested case hearing, regarding fee assessment for hazardous waste facilities); W.S. § 35-11-518(b) (right to appeal to the Council regarding administrative order issued under hazardous waste program); W.S. § 35-11-601(f), (g) (h) (j) (right to appeal to the Council specifying a hearing and a duty to compel attendance of witnesses and production of evidence, regarding the director's decision on variance); W.S. § 35-11-1611 (right to appeal to the Council concerning disputes over voluntary remediation agreements); W.S. § 35-11-1612 (right to appeal to the Council regarding fee assessment for voluntary remediation agreements).

While the Council has *general* statutory authority to conduct hearings under W.S. § 35-11-112, the Council's general authority to do so does not and cannot mean that every person unhappy with a permit or other Department action is automatically entitled to appeal to the Council simply because the Council has the general authority to conduct hearings. If the

Council's general power to hold hearings under Section 112 were sufficient to create a review right for anyone who wanted it, the specific statutory grants of appeal rights listed above would be wholly unnecessary. The Wyoming Supreme Court has made clear that specific statutes control over general statutes involving the same subject.[11] Thus, the general statutory grant under W.S. § 35-11-112 to hold contested hearings must be read in conjunction with, and is controlled by, the specific statutes in the EQA that actually provide a party with a right to a hearing before the Council. To read § 35-11-112 any more broadly than that would ignore the specific grants of appeal rights located throughout the EQA that are listed above and the absence of any such grant regarding permit appeals, and violate the Wyoming Supreme Court's ruling that specific statutes (such as W.S. § 35-11-802) control over general statutes (such as W.S. § 35-11-112).

Moreover, related statutes must be interpreted in harmony with one another. They must be construed as a whole, giving meaning to every word, clause and sentence.[12] The grant of review authority to the Council under W.S. § 35-11-112 must therefore be read in conjunction with other pertinent statutes that define who may obtain review by the Council. If W.S. § 35-11-112 were construed to entitle any person displeased with a decision to review before the Council, the statutes describing specific appeal rights in several places in the EQA would have no meaning. The Council's hearing authority, therefore, does not by itself automatically give to any person a right to be heard. The person also must have a separate statutory right to review, such

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[11] *Thunderbasin Land, Livestock & Inv. Co. v. Laramie County,* 5 P.3d 774, 782 (Wyo. 2000); *Amoco Production Co. v. Dep't of Revenue*, 94 P.3d 430, 439 (Wyo. 2004).

[12] *In the Matter of the Estate of James T. Frost v. Dodson,* 155 P.3d 1031, 1034 (Wyo. 2007); *Sponsel v. Park County,* 126 P.3d 105, 108 (Wyo. 2006).

as the specific grants of rights to appeal to the Council that are cited above. Protestants have no such statutory right, and to say that Section 112 implies such a right would render meaningless the specific appeal rights granted by the Legislature.

The Council's general grant of authority to *hear* permit appeals in W.S.§ 35-11-112 is therefore not a blanket authorization of appeal rights for anyone every time a permit is issued, and close analysis of Section 112 itself only confirms this result. The Council's general authority to act on permits is both *"[s]ubject to any applicable state or federal law, and subject to the right to appeal"*. W.S. § 35-11-112(c) (emphasis added). The EQC's general power to review agency action is "subject to" whether there is a "right to" such an appeal. Applicable state law limits that right to appeal to permit applicants and does not extend it to others. *Compare* W.S. § 35-11-802 (an *applicant* denied a permit may appeal to the *Council*) *with* W.S. § 35-11-1001 (*aggrieved parties* may seek *judicial review* of final action of the Department of Environmental Quality). Protestants have no "right to" an appeal to the Council, although this does not diminish the Council's general powers to hear permit appeals under Section 112 when another statute gives a party a right to appeal to the Council to invoke these general powers.

Common sense again confirms this analysis. If the Legislature had intended to allow anyone to appeal any environmental permit to the Council, the Council would have been created as a full-time permitting appeals board with an extensive technical support staff and separate counsel to advise the Council on the often complex issues of law associated with, for example, the Clean Air Act. The Legislature did not so provide. As a full-time appeals board the Council would quickly find itself the "super-permitting" agency over all of Wyoming's environmental

permits. The Legislature has not provided the Council with the resources to fill this role, because this role was never intended.

This does not mean Protestants have no remedy. The Legislature has merely directed that their appeal go directly to court, if they are "aggrieved parties," which makes sense given the exhaustive exercise of the Division's specialized expertise and the necessarily final decision made by the Department. Protestants' right to obtain review of the Dry Fork permit, if any, is before the courts under W.S. 35-11-1001(a):

> Any aggrieved party[13] under this act, any person who filed a complaint on which a hearing was denied, and any person who has been denied a variance or permit under this act, may obtain judicial review by filing a petition for review within thirty (30) days after entry of the order or other final action complained of. pursuant to the provisions of the Wyoming Administrative Procedure Act.

IV. Conclusion

Basin Electric's Permit to Construct is final agency action, subject to review in district court by any properly defined "aggrieved party." No party except a permit applicant may seek review of that Permit by the Council.[14] Basin Electric therefore respectfully requests that the appeal be dismissed.

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[13] W.S. 35-11-103(a)(vii) defines "aggrieved party" as "any person named or admitted as a party or properly seeking or entitled as of right to be admitted as a party to any proceeding under this act because of damages that person may sustain or be claiming because of his unique position in any proceeding held under this act." Thus, the Legislature defined a standing requirement to qualify as an aggrieved party seeking judicial review under W.S. 35-11-1001(a). Protestants must meet this requirement also.

[14] Previous EQC practice to allow permit appeals by aggrieved parties who are not permit applicants cannot substitute for the plain language and limited rights of appeal to the Council in the EQA: "Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, we do not resort to rules of statutory construction. Neither this Court, *nor the agency charged with administering the statute has a right to look for and impose another meaning.*" *Allied Fidelity, Id.* at 1040 (emphasis added).

DATED February 8, 2008.

Patrick R. Day, P.C.
Mark R. Ruppert
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347
Telephone: (307) 778-4200
Facsimile: (307) 778-8175

ATTORNEYS FOR BASIN ELECTRIC POWER COOPERATIVE

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2008, I served the foregoing Motion to Dismiss Appeal by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

James S. Angell
Robin Cooley
Andrea Zaccardi
Earthjustice
1400 Glenarm Place, #300
Denver, CO 80202

Jay A. Jerde
Deputy Attorney General
Nancy E. Vehr
Senior Assistant Attorney General
Kristen A. Dolan
Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002

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