

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF )  
TWO ELK GENERATION PARTNERS' ) EQC Docket No. 14-2801  
DEQ AIR PERMIT CT-1352B )

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**TWO ELK GENERATION PARTNERS'  
MOTION FOR DISMISSAL OF PETITION**

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Comes now, the Respondent/Permittee, Two Elk Generation Partners (TEGP), by and through its undersigned counsel, Mary Throne, of Throne Law Office, P.C., and in accordance with Wyo. R. Civ. P. 12(b)(1) and Chapter 2, Sections 3 and 14 of the Department of Environmental Quality Rules of Practice and Procedure (DEQ Rules of Practice), hereby moves to dismiss the Powder River Basin Resource Council's and the Sierra Club's (Petitioners) Petition for a Show Cause Hearing:


1. On April 24, 2014, Petitioners filed a Petition to the Environmental Quality Council for a Show Cause Hearing Related to the Validity of the Two Elk Generation Partners' Permit (Petition). The Petition asks the Environmental Quality Council (Council) to issue an Order to TEGP requiring the company to show cause as to why the permit is not invalid as a matter of law.
2. Wyo. Stat. Ann. § 35-11-112 describes the general duties and powers of the Council including the duty to hear all cases arising under the Act. Petitioners have not brought forth a case, arising under the Wyoming Environmental Quality Act (Act), and therefore, the Council lacks subject matter jurisdiction over this matter, and it should be dismissed.

3. Wyo. R. of Civ. Proc. 12(b)(1) allows a respondent to file a Motion to Dismiss for lack of subject matter jurisdiction, in lieu of an answer to a pleading. Chapter 2, Section 14 of the DEQ Rules of Practice applies the Wyoming Rules of Civil Procedure to a Council matter.
4. The Council lacks the statutory authority to issue the order and to conduct the hearing requested by Petition. As set forth in more detail in TEGP's *Memorandum in Support of the Motion to Dismiss*, there has been no final agency action subject to appeal, the Act does not grant the Council the authority to order termination of an air quality construction permit, and the Council has no authority to initiate enforcement actions. Therefore, there is no subject matter jurisdiction. In addition, the doctrine of issue preclusion prohibits the Petitioners from raising any issues previously resolved by the Council.

WHEREFORE, Respondent respectfully requests the Council enter an Order dismissing the Petition for a Show Cause Hearing and such other and further relief, as the Council deems appropriate.

DATED this 3<sup>rd</sup> day of June, 2014.

ATTORNEY FOR PETITIONER TEGP:

  
Mary A. Throne  
Throne Law Office, P.C.  
P.O. Box 828  
Cheyenne, WY 82003  
307-637-2822

EQC Docket No. 14-2801  
Motion to Dismiss

**CERTIFICATE OF SERVICE**

I, Mary A. Throne, certify that at Cheyenne, Wyoming, on the 3rd day of June, 2014, I served a copy of the foregoing *Two Elk Generation Partners' Motion to Dismiss* by electronic mail to the following:

Jeremiah Williamson  
Assistant Attorney General  
jeremiah.williamson@wyo.gov


Elizabeth Lyon  
Assistant Attorney General  
elizabeth.lyon@wyo.gov

Steve Dietrich  
AQD Administrator  
steve.dietrich@wyo.gov

Todd Parfitt  
Director, DEQ  
todd.parfitt@wyo.gov

Shannon Anderson  
PRBRC  
sanderson@powderriverbasin.org

Andrew Kuhlmann  
Assistant Attorney General  
andrew.kuhlmann@wyo.gov

  
Mary A. Throne  
Throne Law Office, P.C.  
P.O. Box 828  
Cheyenne, WY 82003  
307-637-2822