

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF APPEAL OF:)
)
LIMITED MINING OPERATION,) **DOCKET NO. 24-4801**
PEAK GRAVEL, ET0961, TFN 7 6/211)

RESPONSE TO “MOTION TO STRIKE AFFIDAVITS”

THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY-LAND QUALITY DIVISION (hereinafter “DEQ-LQD”) responds as follows to the “Motion to Strike Affidavits” filed by Appellants, as follows:

The Council Can Consider the Affidavits

In conjunction with its motion to dismiss in this matter, and in support thereof, DEQ-LQD submitted affidavits from Todd Parfitt, Director of the Wyoming Department of Environmental Quality and Kyle Wendtland, Administrator of the Wyoming Department of Environmental Quality Land Quality Division. Appellants’ challenge to the affidavits fails on several counts.

First, in a completely unwarranted action, Appellants boldly contend that the affidavits from Director Parfitt and Administrator Wendtland constitute “new interpretations” of the Wyoming Environmental Quality Act. Such a contention is completely baseless and lacks all evidentiary support.¹

Second, Appellants’ belabored effort to rely on *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) is misplaced. The United States Supreme Court’s *Loper* decision applies to federal administrative agencies, and the Wyoming Supreme Court has not taken any action whatsoever to apply the principles from the *Loper* case to Wyoming administrative agencies.

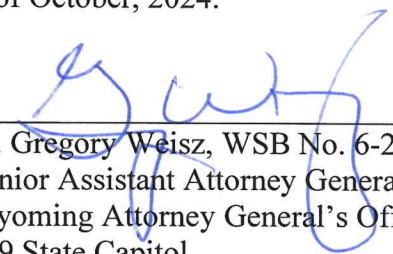
¹ See Rules, *Wyo. Dept. of Env’tl. Quality*, ch. 2, § 2.

Finally, Appellants contend that submission of the affidavits somehow violates the Wyoming Rules of Civil Procedure. This contention, as with the Appellants' first two contentions, is incorrect.

The Wyoming Supreme Court has plainly noted that in considering a “**motion to dismiss for lack of subject matter jurisdiction, materials outside the complaint, such as affidavits and other documents, may be considered.**” *Apodaca v. Safeway*, 2015 WY 51, ¶ 9, 346 P.3d 21, 23 (Wyo. 2015) (citations omitted) (emphasis added).

Thus, the Council must deny the motion to strike the affidavits.

RESPECTFULLY SUBMITTED this 30th day of October, 2024.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served by email or mailing a true and correct copy on the 30th day of October, 2024, addressed to the following:

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