IN THE SUPREME COURT, STATE OF WYOMING

2025 WY 36

OCTOBER TERM, A.D. 2024

March 31, 2025

PROTECT OUR WATER JACKSON HOLE, a Wyoming nonprofit corporation, Appellant (Plaintiff), v. WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY and BASECAMP TETON WY SPV LLC, a Wyoming limited liability company, Appellees (Defendants).	S-24-0232

Appeal from the District Court of Teton County
The Honorable Keith G. Kautz (Retired Justice), Judge

Representing Appellant:

John Graham, Geittmann Larson Swift LLP, Jackson, Wyoming. Argument by Mr. Graham.

Representing Wyoming Department of Environmental Quality:

Bridget Hill, Attorney General; D. David DeWald; Deputy Attorney General; Christopher Brown, Senior Assistant Attorney General; Abigail Boudewyns, Senior Assistant Attorney General. Argument by Ms. Boudewyns.

Representing Basecamp Teton WY SPV LLC:

Kelly Shaw; Stacia Berry; Travis Koch, Koch Law, P.C., Cheyenne Wyoming. Argument by Ms. Shaw.

Before FOX, C.J., and BOOMGAARDEN, GRAY, FENN, and JAROSH, JJ.

FOX, Chief Justice.

[¶1] The Wyoming Department of Environmental Quality (DEQ) issued a permit to Basecamp Teton WY SPV LLC (Basecamp) allowing Basecamp to construct and operate a septic system for its glamping[1] operation. Protect Our Water Jackson Hole, a Wyoming nonprofit corporation (POWJH), sought a declaratory judgment that DEQ did not have authority to issue the permit, as well as an injunction staying the permit during the pendency of the declaratory judgment action. The district court dismissed the complaint, relying on several alternative arguments made by DEQ and Basecamp. Because we find that POWJH lacked standing to bring this action, we affirm.

ISSUE

[¶2] The dispositive issue in this appeal is whether POWJH had standing to pursue this declaratory judgment action.

FACTS

[¶3] Basecamp runs a glamping operation on state land in Teton County, Wyoming pursuant to a temporary use permit from the Wyoming Office of State Lands and Investment. As part of its operation, Basecamp sought a permit from DEQ for the septic system it planned to use. Initially, DEQ authorized the septic system under a general permit, but withdrew that authorization after realizing that the permit was expired. DEQ then restarted the permitting process and ultimately granted Basecamp the permit at issue in this litigation.

[¶4] POWJH appealed DEQ's issuance of the permit to the Wyoming Environmental Quality Council (EQC). Among the issues POWJH raised before the EQC was the question of whether DEQ had the authority to issue the septic permit despite an agreement between DEQ and Teton County transferring DEQ's authority to permit small wastewater facilities within Teton County to the county. POWJH also requested that the EQC stay the permit during the pendency of the administrative appeal. The EQC determined that it did not have authority to grant such a stay.

[¶5] POWJH then brought this declaratory action in the district court. It alleged that Teton County, pursuant to Wyo. Stat. Ann. § 35-11-304 (2023), had requested that DEQ delegate the authority to permit small wastewater facilities to the county, and that DEQ had done so, as memorialized by a delegation agreement between the two entities. As a

[1] "Glamping" combines the words "glamorous" and "camping," and is the word used by the parties throughout these proceedings to refer to Basecamp's resort operation located in Teton County.

result, POWJH asserted that DEQ had no authority to grant Basecamp the septic permit at issue in this case. POWJH requested that the district court declare that when DEQ delegates its authority to permit small wastewater facilities to a county, DEQ retains no such authority for itself, and that as a result of the delegation agreement in this case, DEQ had no authority to permit small wastewater facilities in Teton County. POWJH also requested that the district court enjoin operation of Basecamp's permit during the pendency of the declaratory action.

[¶6] POWJH's complaint addressed its standing to bring this action, alleging:

> POWJH has standing to make this request as POWJH has expended (1) approximately $164,000 for water quality monitoring in Fish Creek between 2014 and 2022; (2) approximately $88,000 for stakeholder involvement in an attempt to improve water quality in Fish Creek between 2015 and 2019; and (3) approximately $250,000 in funding for the Teton County Water Quality Master Plan process, which includes water quality recommendations for Fish Creek, all of which is included in a standing affidavit filed with the EQC and reproduced here as Exhibit C.

The "standing affidavit" referenced above elaborated somewhat on POWJH's claim of standing. In the affidavit, the chair of POWJH's board explained that POWJH's expenditures were intended "to restore and protect water quality in Fish Creek and its tributaries." The affidavit further alleged that "[t]he operation of the onsite wastewater system authorized by the Permit will discharge pollutants—including *E. coli* and nutrients—to Fish Creek and its tributaries, diminishing the use and enjoyment that POWJH and its supporters enjoy and appreciate, and undermining POWJH's previous efforts at mitigating pollutants entering Fish Creek." Finally, the affidavit alleged that Fish Creek was "heavily used by POWJH supporters for a variety of recreational, scenic, and aesthetic purposes."

[¶7] DEQ and Basecamp each moved to dismiss POWJH's complaint. Their collective arguments can be summarized as: 1) POWJH could only seek a preliminary injunction by a motion separate from its complaint; 2) POWJH could not pursue a declaratory action where other specific statutory procedures were available to challenge the permit and where the time limitations for some of those procedures had expired; 3) contesting a septic permit through a declaratory action would run afoul of the State's limited waiver of sovereign immunity under the Wyoming Environmental Quality Act; and 4) POWJH lacked standing to bring its declaratory action.

[¶8] After hearing arguments on the motions to dismiss, the district court issued an oral ruling that it would grant them. In explaining its ruling, it emphasized that POWJH did not establish that a favorable decision would remedy any injury it suffered, since it was unclear whether Teton County would have granted the permit had Basecamp sought a permit from the county rather than DEQ. It also explained that POWJH lacked the ability to enforce the delegation agreement between DEQ and Teton County, since POWJH was not a party to that agreement.

[¶9] POWJH filed a "Motion for Reconsideration or, in the Alternative, to Amend the Complaint Pursuant to WRCP 15." POWJH primarily argued that its complaint already alleged that Teton County would not have issued the permit in place of DEQ. In the alternative, POWJH proposed to amend its complaint to add allegations that Teton County would have denied the permit based on a statement by legal counsel for Teton County in "a related case."

[¶10] The district court denied POWJH's motion, and shortly thereafter entered a written order granting DEQ and Basecamp's motions to dismiss. The court clarified that its oral ruling was not exhaustive and was not based solely on the remedy issue that became the focus of POWJH's efforts to amend its complaint. Instead, the district court "agree[d] with each of the arguments made by [the] Defendants" and reminded the parties that its analysis was "of no consequence, as appellate review [would] be de novo." POWJH appealed.

STANDARD OF REVIEW

[¶11] The district court dismissed POWJH's complaint under W.R.C.P. 12(b)(6).[2]

> We review Rule 12(b)(6) dismissals de novo. *Peterson v. Laramie City Council*, 2024 WY 23, ¶ 9, 543 P.3d 922, 926 (Wyo. 2024). "We examine the same materials and apply the same standards as the district court, accepting the facts alleged in the complaint as true and viewing them in the light

[2] DEQ and Basecamp each cited both W.R.C.P. 12(b)(1) and 12(b)(6) in their motions to dismiss, and the district court's order granting the motions did not specify which subsection it relied on in granting the motions. Because we affirm based on POWJH's lack of standing, we treat the district court's dismissal as a dismissal under W.R.C.P. 12(b)(6). *See Matter of Adoption of L-MHB*, 2018 WY 140, ¶¶ 20-24, 431 P.3d 560, 567-68 (Wyo. 2018) (explaining that despite our occasional labeling of standing as a jurisdictional issue, standing is not truly jurisdictional and claims by parties who lack standing should be dismissed for failure to state a claim upon which relief can be granted rather than lack of subject matter jurisdiction); *see also Hull v. N. Lincoln Hosp. Dist.*, 2025 WY 6, ¶ 19, 561 P.3d 791, 796 (Wyo. 2025) ("[W]e may affirm a district court decision on any basis supported by the record.") (citing *Winney v. Jerup*, 2023 WY 113, ¶ 30, 539 P.3d 77, 86 (Wyo. 2023)).

> most favorable to the non-moving party." *Williams v. Lundvall*, 2024 WY 27A, ¶ 6, 545 P.3d 431, 433 (Wyo. 2024). "Dismissal is appropriate only if it is certain on the face of the complaint that the plaintiff cannot assert any facts that create entitlement to relief." *Id.* Additionally, we may affirm a district court decision on any basis supported by the record. *Winney v. Jerup*, 2023 WY 113, ¶ 30, 539 P.3d 77, 86 (Wyo. 2023).

Hull v. N. Lincoln Hosp. Dist., 2025 WY 6, ¶ 19, 561 P.3d 791, 796 (Wyo. 2025). "The existence of standing is a legal issue reviewed de novo." *N. Silo Res., LLC v. Deselms*, 2022 WY 116A, ¶ 51, 518 P.3d 1074, 1089 (Wyo. 2022) (quoting *HB Fam. Ltd. P'ship v. Teton Cnty. Bd. of Cnty. Comm'rs*, 2020 WY 98, ¶ 16, 468 P.3d 1081, 1087 (Wyo. 2020)). Thus, when we review whether a party has standing when a case has been dismissed under W.R.C.P. 12(b)(6), we focus on the allegations of the complaint. *See The Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶ 28, 395 P.3d 167, 175 (Wyo. 2017).

DISCUSSION

[¶12] Wyo. Stat. Ann. § 1-37-103 (2023) provides:

> Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by the Wyoming constitution or by a statute, municipal ordinance, contract or franchise, may have any question of construction or validity arising under the instrument determined and obtain a declaration of rights, status or other legal relations.

"In order to maintain an action for declaratory judgment, the party seeking relief must be an 'interested' person." *Weldon v. Gordon*, 2022 WY 115, ¶ 8, 517 P.3d 550, 553 (Wyo. 2022) (quoting *Forbes v. Forbes*, 2022 WY 59, ¶ 33, 509 P.3d 888, 897 (Wyo. 2022)). The required "interest" is only present if a controversy is justiciable, which in turn requires that the party bringing the action have standing. *Weldon*, 2022 WY 115, ¶¶ 8-9, 517 P.3d at 553.

[¶13] We have adopted the following four-part test for standing in declaratory judgment actions, referred to as the *Brimmer* test:

> 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, ¶ 37, 409 P.3d 260, 270 (Wyo. 2018) (quoting *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974)).

[¶14] Our analysis in this case begins and ends with the first element of this test. Our standing precedent describes the interest a plaintiff must have to meet this element in various ways. *E.g., Forbes*, 2022 WY 59, ¶ 35, 509 P.3d at 898 ("[a] tangible interest which has been harmed") (quoting *Johnson Cnty. Ranch Improvement #1, LLC v. Goddard*, 2020 WY 115, ¶ 52, 471 P.3d 307, 322 (Wyo. 2020)); *Weldon*, 2022 WY 115, ¶ 13, 517 P.3d at 554 ("a legitimate claim of entitlement to a protectable right") (quoting *Dorman v. State*, 665 P.2d 511, 514 (Wyo. 1983)); *Allred*, 2018 WY 8, ¶ 49, 409 P.3d at 274 ("[an] interest distinguishable from the interest of any Wyoming citizen"); *The Tavern*, 2017 WY 56, ¶ 33, 395 P.3d at 176 ("a 'perceptible' rather than a 'speculative' harm") (quoting *Carnahan v. Lewis*, 2012 WY 45, ¶ 26, 273 P.3d 1065, 1073 (Wyo. 2012)).

[¶15] Determining whether a party meets the first *Brimmer* element is a fact-intensive inquiry, and as with the standing inquiry as a whole, the question is often "one of degree." *William F. West Ranch, LLC v. Tyrell*, 2009 WY 62, ¶ 30, 206 P.3d 722, 733 (Wyo. 2009) (citing *Cranston v. Thomson*, 530 P.2d 726, 729 (Wyo. 1975)). We find guidance in the following observation from the United States Supreme Court:

> When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred . . . in order to establish standing depends considerably upon whether the plaintiff is himself an

> object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it. When, however . . . a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*, much more is needed.

Lujan v. Defs. of Wildlife, 504 U.S. 555, 561-62, 112 S.Ct. 2130, 2137, 119 L.Ed.2d 351 (1992).[3] A review of our standing cases supports a similar observation in Wyoming.

[¶16] In cases where a particular law or regulation was enforced against an individual or group, we have found that individual or group to have a sufficient interest to support standing. *E.g., Williams v. State ex rel. Univ. of Wyoming Bd. of Trustees*, 2019 WY 90, ¶ 9, 448 P.3d 222, 226 (Wyo. 2019) (holding that the plaintiff had a sufficient interest to challenge the legality of a university regulation when he was charged with criminal trespass for violating that regulation); *Pedro/Aspen, Ltd. v. Bd. of Cnty. Comm'rs for Natrona Cnty.*, 2004 WY 84, ¶¶ 13-15, 94 P.3d 412, 416-17 (Wyo. 2004) (holding that a purchaser of land under a contract for deed had a sufficient interest to challenge a zoning resolution that prohibited the purchaser from making subdivisions of its property that were necessary to facilitate existing and future sales of land). In these cases, standing was readily apparent because the government action challenged by the party seeking declaratory judgment was a direct regulation of that party. In other words, because each plaintiff was an "object" of the government action at issue, the action's impact upon that plaintiff was immediately clear. *See Lujan*, 504 U.S. at 561-62, 112 S.Ct. at 2137.

[¶17] Other cases reveal that standing can be substantially more difficult to establish for a non-regulated person or entity. In *Allred*, one plaintiff was "a citizen of Wyoming and an individual residing in Uinta County, Wyoming," while the other was a member of the Wyoming House of Representatives. 2018 WY 8, ¶ 7, 409 P.3d at 263-64. They brought a declaratory action seeking to challenge construction projects that were partially overseen by the legislature, as well as the bidding process under which state contracts were awarded. *Id.*, ¶¶ 9-26, 409 P.3d at 264-67. The fact that the plaintiffs were not themselves regulated by the actions they sought to challenge unquestionably made it more difficult for them to establish a tangible interest. The following observation is illustrative of this difficulty:

[3] Federal standing law may guide, but does not govern, Wyoming's standing law. *Allred*, 2018 WY 8, ¶ 35, 409 P.3d at 269. "We have on occasion found guidance in federal standing law, and we continue to do so, although we recognize that we are not bound by the tight constraints of federal law on this issue." *Id.* (citations omitted).

> In Appellants' brief, they again argue passionately about the importance of separation of powers, but say little about a tangible interest that has been harmed. They contend that they "have a right to protect their liberty interests by calling upon the judiciary to confine the legislature to its constitutional limits," and, they say, "[t]heir liberty interests are genuine and very personal in the assurance that the legislature adheres to the rule of law by confining itself to constitutional limits." But that conclusory statement fails to establish a tangible interest that has been harmed.

Id., ¶ 44, 409 P.3d at 273.

[¶18] In *Northern Laramie Range Foundation v. Converse County Board of County Commissioners,* we held that a nonprofit corporation did not have standing to challenge a wind energy project. 2012 WY 158, ¶¶ 34-35, 290 P.3d 1063, 1075-76 (Wyo. 2012).[4] Because the nonprofit had no members, it had to establish that its interests as an organization would be harmed by the project. *Id.*, ¶ 34, 290 P.3d at 1075-76. The nonprofit did not own property adjacent to the project, but claimed that the project would "thwart its purposes." *Id.*, ¶ 35, 290 P.3d at 1076. Though the nonprofit extensively explained its mission and purpose, its allegations were "extremely general and d[id] not show a causal relationship between these perceived threats and the project." *Id.* We observed that the nonprofit did not explain its planned programs, the locations of its programs, or how the programs would be harmed by the project. *Id.* Because it had not "separate[d] its asserted injury from that of the general public who enjoys the Northern Laramie Range," the nonprofit had not demonstrated sufficient injury for it to have standing. *Id.*

[¶19] Even though, as these cases demonstrate, it is more difficult to establish a tangible interest when a party is not itself regulated, other cases demonstrate that a non-regulated party can still be injured by government action. In *Northern Laramie Range Foundation*, while the nonprofit did not have a tangible interest in opposing the wind project, two limited liability companies demonstrated a tangible interest because they or their members owned land adjacent to or near the proposed project, and they had demonstrated that the project would affect their use and enjoyment of their own property. 2012 WY 158, ¶¶ 27, 33, 290 P.3d at 1074-75. Other cases have also shown that landowners will often be able to establish an interest sufficient to challenge government action that affects

[4] Because *Northern Laramie Range Foundation* was an appeal of agency action, we did not apply the *Brimmer* test to determine whether the parties had standing. *See id.*, ¶¶ 21-35, 290 P.3d at 1073-76. Instead, we considered whether the parties were "aggrieved or adversely affected in fact." *Id.*, ¶ 23, 290 P.3d at 1073. Though these legal standards are not identical, there is some overlap, and we find the analysis in *Northern Laramie Range Foundation* persuasive in the present case.

the use and enjoyment of their own property. *See, e.g.*, *William F. West Ranch*, 2009 WY 62, ¶ 26, 206 P.3d at 731;[5] *Cox v. City of Cheyenne*, 2003 WY 146, ¶ 13, 79 P.3d 500, 506 (Wyo. 2003); *Hirschfield v. Bd. of Cnty. Comm'rs of County of Teton*, 944 P.2d 1139, 1143 (Wyo. 1997).

[¶20] With these cases and principles in mind, we turn to the present case. POWJH is not the "object" of DEQ's action; rather, it seeks to challenge DEQ's "allegedly unlawful regulation (or lack of regulation) of *someone else*": Basecamp. *Lujan*, 504 U.S. at 562, 112 S.Ct. at 2137. Nor does POWJH claim any property interests in Fish Creek, or that any property it owns is directly affected by DEQ granting the septic permit to Basecamp. Though these facts alone do not mean that POWJH lacks a tangible interest that has been harmed, it bears the burden to plead that its interests are distinguishable from those of the general public, *see Allred*, 2018 WY 8, ¶ 49, 409 P.3d at 274, as well as to explain how those interests are harmed by the septic permit. *See N. Laramie Range Found.*, 2012 WY 158, ¶ 35, 290 P.3d at 1076 (nonprofit failed to show "a causal relationship" between threats to its interests and the challenged project).

[¶21] POWJH's primary allegation regarding standing is that it spent money on water quality initiatives that affect Fish Creek. It lumps its expenditures into three categories: 1) "water quality monitoring in Fish Creek"; 2) "stakeholder involvement in an attempt to improve water quality in Fish Creek"; and 3) "funding for the Teton County Water Quality Master Plan process, which includes water quality recommendations for Fish Creek[.]" POWJH's remaining allegations on standing are minimal. Its standing affidavit explains that its water quality initiatives were intended to "improve" the water quality in Fish Creek and that the activity authorized by the permit will harm that water quality. It also briefly alleges that its "supporters" use Fish Creek "for a variety of recreational, scenic, and aesthetic purposes."

[¶22] POWJH's allegations regarding its spending are largely conclusory. It blankly asserts that its expenditures were directed at improving Fish Creek's water quality, but has not described any improvements that have actually resulted from its efforts. Further, the described expenditures are vague. It is difficult to tell exactly what "stakeholder involvement" might mean or how that might improve water quality. Likewise, POWJH has done nothing to elaborate on "the Water Quality Master Plan process" except to say that it "is underway in Teton County and has important implications for the Fish Creek watershed." Just what these implications are is not apparent from POWJH's submissions.

[5] The plaintiffs in *William F. West Ranch* failed to establish standing based on the second *Brimmer* element, but we concluded that they had demonstrated a tangible interest that had been harmed and thus satisfied the first element. 2009 WY 62, ¶¶ 26-48, 206 P.3d at 731-38.

Finally, though POWJH claims that its supporters use Fish Creek for certain recreational purposes, it does not identify them, allege that those supporters are formally affiliated with POWJH, or make any attempt to claim standing through any of its members or affiliates. *See N. Laramie Range Found.*, 2012 WY 158, ¶ 29, 290 P.3d at 1074 ("An association can establish standing on its own or through the associational rights of its members.").

[¶23] POWJH also fails to connect whatever interest it may have to an injury caused by DEQ's issuance of the permit. *See id.*, ¶ 35, 290 P.3d at 1076. While it alleges that Basecamp's septic system will impair the water quality in Fish Creek, it fails to explain how that impairment will hinder POWJH's efforts to monitor water quality, involve stakeholders, and work with Teton County on a water quality master plan. POWJH does allege that the pollution of Fish Creek will "increase the costs" of its water quality improvement efforts generally, but has not sufficiently described its three listed activities so that even a favorable reading of the complaint could support a conclusion that those particular activities would become more expensive due to a reduction in water quality.

[¶24] "Dismissal is a drastic remedy which should be used cautiously," *Peterson v. Laramie City Council*, 2024 WY 23, ¶ 9, 543 P.3d 922, 926 (Wyo. 2024), and we accept each allegation in the complaint as true. *Hull*, 2025 WY 6, ¶ 19, 561 P.3d at 796. However, the plaintiff in a declaratory judgment action remains affirmatively obligated to demonstrate in its complaint that it has standing. *Bird v. Lampert*, 2019 WY 56, ¶ 8, 441 P.3d 850, 854 (Wyo. 2019). This includes an obligation to demonstrate a "tangible interest which has been harmed." *Forbes*, 2022 WY 59, ¶ 35, 509 P.3d at 898. In determining whether that interest has been sufficiently alleged, we do not apply anything more than our established standard for motions to dismiss; we simply require more than a conclusory assertion that a party has a legitimate claim of entitlement to a protectable right. *Compare The Tavern*, 2017 WY 56, ¶ 34, 395 P.3d at 176-77 (reversing a dismissal under W.R.C.P. 12(b)(6) and noting that the procedural posture greatly limited the scope of our review of the plaintiffs' allegations), *with Allred* (explaining that the plaintiffs' "conclusory statement" about their "genuine and personal" liberty interests was insufficient to show a tangible interest). This case is more like *Allred*.

[¶25] Though we view the allegations at this stage in the light most favorable to POWJH, we do not create additional facts that POWJH has failed to allege. *See Hull*, 2025 WY 6, ¶ 19, 561 P.3d at 796; *see also Whitam v. Feller*, 2018 WY 43, ¶ 22, 415 P.3d 1264, 1269 (Wyo. 2018) ("Although [plaintiffs] could have alleged [facts necessary to maintain their cause of action], they did not."); *The Tavern*, 2017 WY 56, ¶ 28, 395 P.3d at 175 ("With the case in this posture, we must focus on what Appellants allege in

terms of a tangible interest . . . ."). Even when accepting all the facts in POWJH's complaint as true, we are unable to conclude that POWJH has shown a tangible interest in the water quality in Fish Creek that is distinguishable from any other member of the general public.[6]

[¶26] Affirmed.

[6] Because we find that POWJH does not meet the first element of the *Brimmer* test, we conclude that POWJH lacks standing without reaching the other elements of that test. And because we may affirm on any basis, *Hull*, 2025 WY 6, ¶ 19, 561 P.3d at 796, we do not reach DEQ and Basecamp's other arguments for dismissal of POWJH's complaint. Finally, we need not address POWJH's argument that the district court abused its discretion in denying POWJH's motion to amend its complaint. The amendment offered by POWJH only sought to remedy the district court's concerns about whether POWJH had an effective remedy, and thus would only address the second element of the *Brimmer* test. This would do nothing to address POWJH's inability to show a tangible interest that has been harmed. *See Allred*, 2018 WY 8, ¶ 59, 409 P.3d at 277 ("A district court may refuse to allow amendment if it would be futile.") (brackets omitted) (quoting *Full Life Hospice, LLC v. Sebelius*, 709 F.3d 1012, 1018 (10th Cir. 2013)).