

District Court, Pueblo County, Colorado 501 N. Elizabeth, Room 116 Pueblo, Colorado 81003	DATE FILED: April 9, 2021 1:56 PM CASE NUMBER: 2020CV49
<b>Melvin Manrose et al.,</b> Plaintiffs,  v.  <b>Pueblo County Board of County Commissioners, and Black Hills Colorado Electric, LLC d/b/a Black Hills Energy</b> Defendants.	<b>▲ COURT USE ONLY ▲</b>  <b>Case No.: 2020CV49</b>  Div.: 406
<b>ORDER GRANTING MOTIONS TO DISMISS</b>	

This matter comes before the court on the Motions to Dismiss filed by Defendant Pueblo County Board of County Commissioners (“BOCC”) and Defendant Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (“Black Hills”) regarding the complaint of Plaintiffs Melvin Manrose et al. The BOCC filed its Motion to Dismiss on January 26, 2021 pursuant to C.R.C.P. Rule 12(b)(1), and Black Hills filed its Motion to Dismiss on January 27, 2021 under both C.R.C.P. Rule 12(b)(1) and (12)(b)(5), arguing that both subsections provide independent grounds for dismissing Plaintiffs’ complaint. On February 11, 2021, Plaintiffs filed a Response and on February 12, 2021 Plaintiffs filed an Amended Response, to the Motions to Dismiss filed by Black Hills and the BOCC. The BOCC and Black Hills filed Replies on February 18, 2021. On March 11, 2021, Plaintiffs filed a pleading titled “Plaintiffs’ Closing Summary Statement.” The court has reviewed the complaint, the Motions to Dismiss, the Responses to the Motions to Dismiss, the Replies and Plaintiffs’ Closing Summary Statement, and the file herein and now being fully advised, the court hereby enters the following **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS:**

## **I. BACKGROUND AND FACTUAL FINDINGS**

### **A. Procedural Background**

1. On December 18, 2020, Plaintiffs (proceeding *pro se*) filed a complaint against the BOCC. The complaint claimed relief under C.R.S. § 24-4-106, the section providing judicial review under the Colorado Administrative Procedure Act.
2. The Certificate of Service for the complaint was filed on January 6, 2021.
3. The BOCC timely filed its Motion to Dismiss on January 26, 2021, and Black Hills filed a Motion to Intervene and a timely Motion to Dismiss on January 27, 2021. Both Motions to Dismiss argue that this court should dismiss the case for lack of subject-matter jurisdiction pursuant to C.R.C.P. Rule 12(b)(1) because Plaintiffs did not seek relief under C.R.C.P. Rule 106(a)(4). Additionally, Black Hills argued that even if this court has subject-matter jurisdiction, the complaint failed to state a claim for which relief can be granted under C.R.C.P. Rule 12(b)(5).
4. On February 11, 2021, Plaintiffs timely filed Responses to BOCC's Motion to Dismiss and Black Hills' Motions, and on February 12, 2021, the BOCC filed an Amended Response.
5. On February 18, 2021, the BOCC and Black Hills timely filed their Replies in support of their Motions to Dismiss, and Black Hills timely filed its Reply in support of its Motion to Intervene.
6. On February 26, 2021, the court granted Black Hills' Motion to Intervene as a defendant in the case.

7. On March 11, 2021, Plaintiffs filed a pleading entitled “Plaintiffs’ Closing Summary Statement.”<sup>1</sup>
8. On March 22, 2021, the court entered a Minute Order directing Black Hills to file a new proposed order regarding its Motion to Dismiss, requiring that the proposed order must contain findings of fact, conclusions of law, and address Plaintiffs’ Closing Summary Statement. The Minute Order required Black Hills to file the new proposed order within 14 days. Black Hills timely filed a Proposed Order on April 2, 2021. No objections to this proposed order have been filed pursuant to C.R.C.P. Rule 121 Section 1-16 (1)

**B. Factual Background and Findings**

9. Given the procedural posture of this case, the court’s factual findings are grounded in the factual allegations provided in the complaint and the complaint’s Attachments. However, the court does not take as true the allegations concerning the Pueblo County Ordinances or other law relevant to this case. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (the district court need not accept as true a legal conclusion couched as a factual allegation).
10. According to the complaint, Black Hills is an electric utility serving Pueblo County and surrounding areas, and it is developing a 115 kilovolt (“kV”) transmission line project (the “Cañon West Reliability Project,” “Cañon West Project,” or “Project”) that will run from Black Hills’ West Station corridor in Pueblo County to a new substation in the north Cañon City area of Fremont County. Compl., Attach. A-2, at 12, 23. The Project will provide an additional connection to Cañon City and

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<sup>1</sup> The Court addresses this filing in more detail in its Conclusions of Law.

the surrounding areas and also connect to new distribution substations in Pueblo West and Penrose. *Id.* at 12.

11. The complaint states that Black Hills filed a permit application for the Cañon West Project on September 19, 2019. See Compl. at 11; Compl., Attach. A-2, at 1. The BOCC, after providing public notice of Black Hills' permit application, held several hearings on the matter and took evidence from those interested, including Plaintiffs. See Compl. at 11. On October 1, 2020, the BOCC granted Black Hills a 1041 Permit, but with two conditions (numbers 6 and 7) requiring, among other things, undergrounding of the Project and requiring Black Hills to pay for an independent consultant to evaluate any impacts to local land owners, pay local land owners' legal costs for representation, and pay for estimated lowered property values, if any. Compl., Attach. A-12. Black Hills requested on October 1, 2020 that the BOCC reconsider condition numbers 6 and 7 as excessively costly and potentially far-reaching barriers to the Project that could set negative precedent. See Compl., Attach. A-12, at 2–3.
12. On December 8, 2020, the BOCC, by Resolution No. 20-037, granted Black Hills' Permit No. 2019-003 (the "1041 Permit") under its 1041 authority, with condition numbers 6 and 7 removed. See Compl., Attach. A-1.
13. Thereafter Plaintiffs filed their complaint under C.R.S. § 24-4-106 (not C.R.C.P. Rule 106(a)(4)) on December 18, 2021. The complaint does not allege that the BOCC exceeded its jurisdiction or abused its discretion in any manner with respect to the 1041 permitting process it granted pursuant to its delegated authority. Rather, the complaint raises a variety of other allegations on the legal

standards that Plaintiffs claims apply to the BOCC's decision-making process when exercising its 1041 powers. Because these allegations relate to legal standards that do or do not apply to the BOCC when issuing a 1041 permit for major public utility facilities, the court addresses them below.

14. The court takes judicial notice that the BOCC is not a state agency or board, bureau, commission, department, institution, division, section, or officer of the state. Rather, the BOCC is a local government entity.

## **II. CONCLUSIONS OF LAW**

### **A. The BOCC's 1041 Permitting Authority**

15. In 1974, the Colorado General Assembly passed the Areas and Activities of State Interest Act ("AASIA"), codified at CRS §§ 24-65.1-101 to 502. AASIA was introduced in the General Assembly as H.B. 1041. The AASIA encourages local governments to designate certain geographic areas and specified activities as matters of state interest. *Id.* If a local government has made such a designation under the AASIA, it must promulgate regulations, commonly called 1041 regulations after the bill number of the state statute. The regulations must control development of land resources within the designated area or that are affected by the designated activity. A permit ("1041 permit") from the local government is required for development in regulated areas or for regulated activities. CRS § 24-65.1-501.

16. The BOCC, as a local government entity, pursuant to their 1041 powers may designate and regulate a variety of activities of statewide interest, which include site selection and construction of major public utility facilities, such as the Cañon

West Project. See C.R.S. § 24-65.1-203(1)(f). Relevant here, Pueblo County has established such local guidelines under the AASIA. See Pueblo County Code §§ 17.168.010 to 17.168.040. The BOCC must adhere to these guidelines when evaluating applications for major public utility facilities, and § 17.168.040 provides the specific substantive guidelines that the BOCC must follow. That is, the evaluation of the 1041 permit application (Black Hills' Permit No. 2019-003) by the BOCC is limited to a review of whether the requested permit satisfies the guidelines adopted in the Pueblo County Code. See C.R.S. § 24-65.1-501(4) (providing that a local government may approve an application if the local 1041 guidelines are satisfied and shall deny an application if the guidelines are not satisfied).

**B. C.R.C.P. RULE 12(b)(1)**

17. CRCP Rule 12(b)(1) provides for dismissal when a court lacks subject matter jurisdiction. If this court does not have subject-matter jurisdiction over a case, then the case must be dismissed. See *Long v. Cordain*, 2014 COA 177, ¶ 10 (“[L]ack of subject matter jurisdiction requires dismissal.”).
18. Because the BOCC is not a *state* agency but rather a governmental entity or body, this court does not have subject-matter jurisdiction over this case under C.R.S. § 24-4-106, which is the jurisdictional source asserted by Plaintiffs for the complaint. See *Arline v. American Family Mutual Insurance Company*, 2018 COA 82, 431 P.3d 670 (Colo. App. 2018), *cert. denied*, 2018 WL 6497033 (Colo. 2018) (plaintiff bears the burden of establishing the trial court's jurisdiction.); C.R.S. §§ 24-4-102 (defining “Agency” as “any board, bureau, commission,

department, institution, division, section, or officer of the state”), C.R.S. § 24-4-107 (limiting scope of article to state-wide agencies and every other agency “to which it is made to apply by specific statutory reference”). Thus, to challenge the BOCC’s decision here, Plaintiffs needed to bring their claim under C.R.C.P. Rule 106(a)(4). This interpretation of the Colorado Administrative Procedure Act and C.R.C.P. Rule 106(a)(4) is confirmed by well-established Colorado Supreme Court case law. In *Gale v. City & County of Denver*, 2020 CO 17, ¶ 19, for instance, the Supreme Court explained that C.R.S. § 24-4-106(7) is meant for review of state agency decisions, whereas C.R.C.P. 106(a)(4) governs review of local government action. Because the BOCC is not an agency for the purposes of C.R.S. § 24-4-106, and because there is no specific statutory reference applying C.R.S. § 24-4-106 to the BOCC, the complaint fails to state a claim for which this court has subject-matter jurisdiction under C.R.S. § 24-4-106.

19. The next inquiry, then, becomes whether an amendment to the complaint regarding the jurisdictional source can legally be made to bring plaintiffs' cause of action within C.R.C.P. Rule 106? As explained below, the answer to this question, based upon the relevant Colorado case law, is “No”. The complaint cannot be amended to cure the jurisdictional defect, therefore any amendment is futile. See *Vinton v. Virzi*, 2012 CO 10, ¶ 13 (“amendment would clearly be futile if, among other things, [the amended complaint] failed to state a legal theory or was incapable of withstanding a motion to dismiss”).
20. A complaint against a local government body for permitting decisions made pursuant to their 1041 powers must be brought under C.R.C.P. Rule 106(a)(4),

on the basis that the local government body “exceeded its jurisdiction or abused its discretion.” C.R.C.P. Rule 106(b) establishes that a complaint must be filed within 28 days after the final decision of the governmental body, therefore Plaintiffs needed to file a Rule 106 complaint conferring subject-matter jurisdiction by January 5, 2021. This 28-day deadline effectively acts as a statute of limitations. See *Westlund v. Carter*, 565 P.2d 920, 921 (Colo. 1977). As the Colorado Court of Appeals has explained: “[I]f the plaintiff’s original complaint did not seek review under Rule 106(a)(4) within the relevant limitations period, an amendment seeking such review will not ‘relate back to the date of filing of the original complaint.’” *Auxier v. McDonald*, 2015 COA 50, ¶ 24. *Auxier* also explains that C.R.C.P. Rule 15(c) - addressing the “relating back” of an amendment to a complaint - does not apply to C.R.C.P. Rule 106(a)(4) cases. See *id.* at ¶ 13. The Colorado Court of Appeals applied *Auxier* in *Dunafon v. Krupa*, where the court held that the district court lacked jurisdiction to consider a claim under C.R.C.P. 106(a)(4) filed after the 28-day deadline. 2020 COA 149, ¶¶ 29–30. Thus, because a “plaintiff may not amend the complaint to seek review under Rule 106(a)(4) if such relief was not timely requested in the original complaint,” an amendment to the complaint regarding the jurisdictional source is ineffective. *Auxier*, ¶ 12.

21. As Black Hills’ Motion to Dismiss explains, *Best v. La Plata Planning Commission*, 701 P.2d 91 (Colo. 1984), a case that addressed relation-back issues under C.R.C.P. 106 and C.R.S. § 24-4-106, does not apply to this case. The court in *Best* determined that the “sole amendment required to bring



plaintiffs' cause of action within C.R.C.P. 106 was to delete the mistaken reference to the [Administrative Procedure Act]" and that "[i]n all other respects the timely filed complaint stated causes of action under C.R.C.P. 106(a)(4) and C.R.C.P. 57." *Id.* at 94 (emphasis added). Further, *Best* explicitly found that the complaint's claims stated a viable C.R.C.P. 106 claim in all other respects because the claims bore "directly upon the Board's exercise of discretion and whether the Regulations conformed to the state enabling act." *Id.* (internal citations omitted).

22. In contrast, the complaint herein fails to state a cognizable cause of action under C.R.C.P. 106(a)(4) because it does not allege that the BOCC exceeded its jurisdiction or abused its discretion in any manner. See Compl. at 11–14. Those two grounds are the only grounds to support a viable C.R.C.P. 106(a)(4) claim. Plaintiffs, allegations in the complaint that they are affected by the BOCC grant of a permit under AASIA, see, e.g., Compl. at 11–12 (stating reasons Plaintiffs believe the transmission project will affect them), are insufficient to state a claim under C.R.C.P. 106(a)(4) in any respect. Additionally, the complaint requests relief that cannot be granted under C.R.C.P. 106(a)(4), which further distinguishes this case from *Best*. The complaint requests this court to deny the 1041 Permit. However, by law this court's review under C.R.C.P. 106(a)(4) is "limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion," C.R.C.P. 106(a)(4)(l), this court cannot deny the 1041 Permit.

23. Unlike the complaint in *Best*, Plaintiffs' complaint fails to establish a legally viable C.R.C.P. 106(a)(4) claim "in all other respects" to which an amended complaint could conceivably relate back to.
24. The law is clear that *pro se* litigants are held to the same standards and legal requirements as litigants that are represented by counsel. Therefore, the fact that Plaintiffs are proceeding *pro se* does not affect this analysis. See *Adams v. Sagee*, 2017 COA 133, ¶¶ 8, 10 (noting that "[n]othing in [C.R.C.P. 106(b)] countenances any exceptions" and "plaintiffs' *pro se* status doesn't affect our analysis.").
25. Because the court concludes it does not have subject matter jurisdiction over this complaint, and that the jurisdictional defect cannot be remedied, the complaint must be dismissed with prejudice.

**C. C.R.C.P. 12(b)(5)**

26. Even if, *arguendo*, this court had subject-matter jurisdiction and Plaintiffs had properly filed the complaint under C.R.C.P. 106(a)(4) before the 28-day deadline, or amendment to the complaint were permitted and related back C.R.C.P. 12(b)(5) independently compels dismissal of the complaint as Plaintiffs have failed to allege facts otherwise entitling them to relief. In short, the facts pleaded, and any reasonable inferences drawn from those facts, are insufficient as a matter of law to state a legally sufficient or cognizable claim for relief.
27. The Colorado Supreme Court has adopted the *Twombly/Iqbal*<sup>2</sup> plausibility standard for evaluating a motion to dismiss for failure to state a claim. See

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<sup>2</sup> See *Twombly*, 550 U.S. 544; *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

*Warne v. Hall*, 2016 CO 50, ¶ 24. Under this standard, “only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* at ¶ 9 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)).

28. In assessing whether a complaint states a plausible claim for relief, courts may only consider the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which the court may take judicial notice. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). “When documents are attached to a complaint, the legal effect of the documents is determined by their contents rather than by allegations in the complaint.” *Stauffer v. Stegemann*, 165 P.3d 713, 716 (Colo. App. 2006).
29. While the district court may consider relevant ordinances in assessing a motion to dismiss, see *Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo. App. 2006), the district court need not accept “as true a legal conclusion couched as a factual allegation.” *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Where the substantive law does not support the claims asserted, the complaint may be dismissed. *Denver Parents Ass’n v. Denver Bd. of Educ.*, 10 P.3d. 662, 664 (Colo. App. 2000).
30. To state a claim under C.R.C.P. 106(a)(4), a complaint must allege that the BOCC either exceeded its jurisdiction or abused its discretion. Here, the complaint makes no plausible allegations to that effect. See Compl. at 11–14. The complaint does not allege that the BOCC exceeded its 1041 powers or that the BOCC abused its discretion in exercising those powers; rather, it makes claims related to Pueblo County Ordinances that amount to legal conclusions

that do not withstand scrutiny. The court addresses each allegation in turn to demonstrate why they do not allege an abuse of discretion or action in excess of jurisdiction under Pueblo County's 1041 permitting guidelines applicable to public utility facilities.

31. The complaint alleges that granting the 1041 Permit violated Pueblo County Code § 17.84.020 because that ordinance, according to the complaint, only permits a "use by right" for emergency facilities. See Compl. at 13; Compl., Attach. B-1. This allegation, however, is irrelevant to the question of whether the BOCC adhered to its relevant 1041 permitting guidelines. In fact, the provision the complaint cites is from a completely different chapter of Pueblo County Code than where Pueblo County's 1041 permitting guidelines reside. See Compl., Attach. B-1. Pueblo County Code § 17.84.020 is therefore irrelevant to the 1041 permit determination at issue here.
32. The complaint cites Pueblo County Code § 17.168.010 and alleges that it prohibits "a new transmission line in a utility easement where no high-voltage . . . line currently exists" and that no increase of an easement is permitted after 1978. Compl. at 13 (citing § 17.168.010, provided as Attach. B-2). However, the complaint mistakes exemptions from the 1041 permitting process for blanket prohibitions and is therefore also irrelevant. See Compl. Attach B-2.
33. The complaint alleges that the BOCC approved the 1041 Permit without any "mitigation of . . . demonstrated adverse effects that the new transmission line would have on us who own residential properties adjacent to the proposed line." Compl. at 14. But the Resolution granting Permit No. 2019-003 expressly found

- that there had been mitigation. See Compl., Attach. A-1, at 3, ¶ B (“When an adverse impact is expected to occur, reasonable modifications and programs and other reasonable mitigating actions will be implemented and maintained to minimize the degree of adversity of the impact.”). The complaint does not allege that there is a complete lack of competent evidence for this finding throughout the entire record, which is required to overturn a factual finding under C.R.C.P. 106(a)(4). See *Morris-Schindler, LLC v. City & Cty. of Denver*, 251 P.3d 1076, 1080 (Colo. App. 2010). Again, even if the complaint had been brought under C.R.C.P. 106(a)(4), it would again fail to state a plausible claim for relief.
34. The complaint cites Pueblo County Code § 17-120-010, alleging the code “prohibits anything injurious or offensive to the neighborhood.” Compl. at 13. However, § 17-120-010 has no relevance to the 1041 Permit. Again, this section is not in the same Pueblo County Code chapter setting forth the 1041 permit guidelines for major utility facilities and is not part of the evaluation the BOCC must make under its guidelines for 1041 permit applications.
35. Similarly, the complaint cites another provision from Chapter 20 of Title 17 (§ 17-120-030) for the proposition that “Distribution, transmission and service lines for service to properties exclusively within Pueblo County requiring simple easements or installation in public rights-of-way or installed under franchise agreement with City and/or County and usual customer facilities for service to properties exclusively within Pueblo County shall not be subject to zoning requirements.” Compl. at 13. The complaint argues that, because the Cañon West Project will cross a county boundary, every one of the zoning requirements

it has cited are somehow applicable. Again, the complaint fails to explain how § 17-120-030 is relevant to the 1041 permitting process at issue here or Pueblo County's 1041 guidelines more generally. This court therefore discerns no relevance.

36. The complaint also alleges that a 1977 quitclaim deed transferring a utility easement to the Pueblo West Metropolitan District requires all uses of easements to be for the benefit of all Pueblo West property owners. Compl. at 13–14. This claim again falls flat because, as the complaint itself states, the easement is owned by Pueblo West Metropolitan District, and the BOCC reached no conclusion on that easement in issuing the 1041 Permit. See Compl., Attach. A-1, at 4, ¶ 8 (specifically directing Black Hills to “comply with the requirements of the Pueblo West Metropolitan District’s Public Works Department relative to the submission of a . . . Right-of-Way Use Permit and any conditions [thereof].”).
37. In addition to the aforementioned allegations, the complaint also alleges that the BOCC’s procedural processes were somehow faulty. These allegations likewise fail to state a claim upon which relief can be granted. The complaint asserts that, Black Hills by submitting its “letter of protest before being officially notified by the County in its October 2, 2020 letter,” had “prior knowledge of what would transpire at the October 1[, 2020] hearing.” Compl. at 12. Plaintiffs “feel this simple letter is a prohibited method for appealing a formal decision . . . and is possibly indicative of illegal communication.” Compl. at 12. However, the complaint fails to explain how this allegation, even if proven true, amounted to or could have amounted to the BOCC exceeding its jurisdiction or abusing its

discretion, as required by C.R.C.P. 106(a)(4). This court concludes that such allegations fail to state a claim upon which relief can be granted.

38. The complaint also states: “The 2019 1041-003 application does not address or correct any of the reasons that an earlier version of the line ([Application No.] 2018 1041-002) was rejected by the BOCC on November 13, 2018.” Compl. at 14. Plaintiffs suggest the cause for the change in the BOCC’s decision may have been the solar array mentioned in Black Hills’ letter of October 1, 2020, requesting the BOCC reconsider two permitting conditions. See *id.* (citing Attach. A-12 (Black Hills’ Letter requesting reconsideration)). The complaint alleges, without referencing any legal authority, “This is a direct violation of the 1041 approval process.” *Id.* Notably, under C.R.S. § 24-65.1-501(4), “The local government *may* approve an application for a permit to conduct an activity of state interest if the proposed activity complies with the local government’s regulations and guidelines for conduct of such activity.” (Emphasis added). Thus, the BOCC has discretion when a permit application complies with its guidelines, and it is permitted to exercise that discretion differently here than in a previous application. Simply because the BOCC denied a permit for an earlier application does not mean that it denied the permit for failure to comply with its guidelines; its decision on an earlier application does not (and cannot) constrain the BOCC’s decision-making authority in a subsequent application under C.R.S. § 24-65.1-501(4).
39. The complaint requests various forms of relief that this court simply cannot grant under C.R.C.P. 106(a)(4). Specifically, the complaint requests the court:

(1) reverse the BOCC's Resolution Granting Permit No. 2019-003 and deny the permit;

(2) instruct the BOCC to approve a different route; or

(3) reinstate condition numbers 6 and 7 in granting the permit.

40. Under C.R.C.P. 106(a)(4)(I), a reviewing court may only determine "whether the body or officer has exceeded its jurisdiction or abused its discretion." Pursuant to C.R.C.P. 106(a)(4), the court cannot direct the local government how to decide local permitting matters expressly vested in the local government. *Van Sickle v. Boyes*, 797 P.2d 1267, 1274 (Colo. 1990) ("[T]he primary responsibility for the function under review lies in the administrative agency and not in the courts." (quoting *Bennett v. Price*, 446 P.2d 419, 421 (Colo. 1968))).

#### **D. Plaintiffs' Closing Summary Statement**

41. In reaching its decision in this order, the court notes that it has reviewed Plaintiffs' pleading entitled "Plaintiffs' Closing Summary Statement." The Closing Summary Statement, as its name suggests, largely restates the complaint's allegations and Plaintiffs' responses to the Motions to Dismiss. The contents of the Closing Summary Statement do not affect this court's analysis concluding that dismissal is proper and required.

### **III. ORDER AND ENTRY OF JUDGMENT**

#### **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

A. For the reasons set forth herein, the BOCC's Motion to Dismiss the complaint with prejudice pursuant to C.R.C.P. 12(b)(1) and Black Hills' Motion to Dismiss

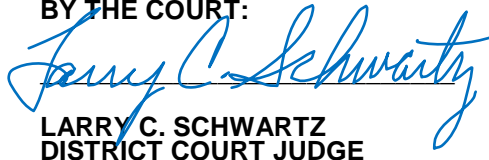


the Complaint pursuant to both C.R.C.P. 12(b)(1) and 12(b)(5) are hereby  
**GRANTED.**

- B. Plaintiffs' complaint is hereby **DISMISSED WITH PREJUDICE.**
- C. All parties are to pay their own costs.

Date: April 9, 2021

BY THE COURT:



LARRY C. SCHWARTZ  
DISTRICT COURT JUDGE