SUMMARY
February 24, 2022

2022COA26

No. 20CA1445, *Bd. of Cnty. Comm'rs v. Ryan* — Public Health and Environment — Air Quality Control Commission — Judicial Review; Jurisdiction of Courts — Standing

A division of the court of appeals considers whether a plaintiff-county is precluded from having standing to challenge an Air Quality Control Commission's (Commission) rulemaking under the rule from *Martin v. District Court*, 191 Colo. 107, 109, 550 P.2d 864, 866 (1976), which held that, absent "an express statutory right, a subordinate state agency . . . lacks standing or any other legal authority to obtain judicial review of an action of a superior state agency." The division concludes that section 25-7-120(1), C.R.S. 2021, does not explicitly confer on the county a right to seek judicial review so as to satisfy the rule from *Martin*. Nor does section 25-7-105(16), C.R.S. 2021. Because (1) the county is

subordinate to the Commission in the context of air quality control, and (2) the legislature has not granted the county an express statutory right to seek judicial review of the Commission's rulemaking, the county is precluded from having standing under *Martin*.

COLORADO COURT OF APPEALS **2022COA26**

Court of Appeals No. 20CA1445
City and County of Denver District Court No. 20CV31022
Honorable Michael A. Martinez, Judge

Weld County Colorado Board of County Commissioners,

Plaintiff-Appellant,

v.

Jill Hunsaker Ryan, in her Official Capacity as the Executive Director of the Department of Public Health and Environment for the State of Colorado; Colorado Department of Public Health and Environment; and Colorado Air Quality Control Commission, an agency of the State of Colorado,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE FOX
Dailey and Taubman*, JJ., concur

Announced February 24, 2022

Polsinelli, P.C., Colin C. Deihl, Bennet L. Cohen, Gina L. Tincher, Denver, Colorado, for Plaintiff-Appellant

Philip J. Weiser, Attorney General, Thomas A. Roan, First Assistant Attorney General, Michael Landis, Assistant Attorney General, Denver, Colorado, for Defendants-Appellees

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

¶ 1 In this action seeking judicial review of an administrative rulemaking, we apply the rule from *Martin v. District Court*, 191 Colo. 107, 109, 550 P.2d 864, 866 (1976), to determine whether plaintiff, the Board of County Commissioners of Weld County (County), has standing to challenge an air quality control regulation promulgated by the Air Quality Control Commission (Commission) of the Colorado Department of Public Health and Environment (Department). Because (1) the County is subordinate to the Commission in the context of air quality control and (2) the legislature has not granted the County an express statutory right to seek judicial review of the Commission's rulemaking, the County does not have standing to challenge the rulemaking under *Martin*. Accordingly, we affirm the district court's order granting the joint motion of the defendants — the Commission, the Department, and Jill Ryan in her official capacity as the Executive Director of the Department (the State Defendants) — to dismiss the County's complaint for lack of jurisdiction.

I. Background

¶ 2 In April 2019, the Colorado General Assembly passed Senate Bill 19-181 to address, among other things, the effects of oil and

gas operations on air quality in Colorado. *See* Ch. 120, sec. 3, § 25-7-109(10), 2019 Colo. Sess. Laws 502. The bill directed the Commission to adopt new rules to minimize emissions of certain air pollutants and to consider revisions to its existing rules. *Id.*

¶ 3 In response, in September 2019, the Air Pollution Control Division of the Department (Division) proposed changes to Regulation 7, 5 Code Colo. Regs. 1001-9, which addresses the control of volatile organic compound emissions from oil and gas operations.[1] The revisions would impose additional requirements on oil and gas companies, including, as relevant here, (1) more frequent leak detection and repair (LDAR) inspections at well production facilities and natural gas compressor stations and (2) additional emission controls for storage tanks. The Commission initiated an administrative rulemaking process to revise Regulation 7.

---

[1] The Commission and the Division are separate agencies within the Department. The Commission is vested with the power to develop an effective air quality control program and to promulgate regulations necessary to carry out that program. *See* § 25-7-106(1), C.R.S. 2021. The Division is tasked with implementing and enforcing those regulations.

¶ 4 The Commission received input from a number of community organizations, industry groups, and local governments, including Weld County — Colorado's largest oil and gas producing county. The County actively engaged in the rulemaking process by submitting comments, filing requests for a regulatory analysis and cost-benefit analysis of the proposed revisions, and participating in the Commission's hearing. During the prehearing phase, the County provided expert testimony that around thirty-five percent of the oil and gas wells in Weld County could potentially be shut down by operators due to the cost of complying with the proposed LDAR and tank control rules.

¶ 5 The Commission ultimately adopted substantial revisions to Regulation 7 that were largely consistent with those the Division had proposed. The adopted rules became effective on February 14, 2020.

¶ 6 Dissatisfied with the revisions, the County filed a complaint in district court asserting claims against the State Defendants under the State Administrative Procedure Act (APA), §§ 24-4-101 to -204, C.R.S. 2021, and the Colorado Air Pollution Prevention and Control Act (Colorado Air Act), §§ 25-7-101 to -1309, C.R.S. 2021. The

County's claims were primarily based on two decisions of the Commission. First, the County alleged that the Commission allowed a local community group to submit a late-amended proposal regarding the LDAR rules without granting other parties to the rulemaking the opportunity to properly respond. Second, it alleged that the Commission failed to comply with section 25-7-105(16), C.R.S. 2021, by not prioritizing the County's concerns regarding how the proposed revisions would impact its economy and land use powers. The County also sought declaratory relief regarding the applicability of section 25-7-105(16) to the Commission's rulemaking.

¶ 7 The State Defendants moved, in part, to dismiss the County's complaint under C.R.C.P. 12(b)(1) for lack of jurisdiction. They argued that the County, being an agency subordinate to the Commission, lacks standing to challenge the Commission's rulemaking under the rule from *Martin*. And irrespective of that prudential limitation, they argued, the County had not suffered an injury-in-fact to a legally protected interest that could establish standing. The district court agreed on both accounts and dismissed the County's complaint.

¶ 8 The County now appeals, arguing that, contrary to the district court's conclusion, it has standing to challenge the Commission's rulemaking. Thus, it argues, the court erred by dismissing its complaint for lack of jurisdiction. We are not persuaded.

II. Standard of Review

¶ 9 Where, as here, there are no disputed issues of material fact, we review de novo the district court's ruling on a C.R.C.P. 12(b)(1) motion to dismiss. *Peabody Sage Creek Mining, LLC v. Colo. Dep't of Pub. Health & Env't*, 2020 COA 127, ¶ 9.

¶ 10 The underlying issue of whether the County has standing to challenge the Commission's rulemaking is a question of law that we also review de novo. *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). We also review de novo questions of statutory interpretation. *E.g.*, *Ronquillo v. EcoClean Home Servs., Inc.*, 2021 CO 82, ¶ 12.

III. Applicable Law

¶ 11 "[F]or a court to have jurisdiction over a dispute, the plaintiff must have standing to bring the case." *Ainscough*, 90 P.3d at 855.

¶ 12 To establish standing, a plaintiff must satisfy the test announced in *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977). The test has two prongs: (1) the plaintiff must

have suffered an injury in fact, and (2) the injury must have been to a legally protected interest. *Id.* The second prong of the *Wimberly* test "is a question of whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Ainscough*, 90 P.3d at 856.

¶ 13 However, in addition to the *Wimberly* test, standing may be subject to further, court-made prudential considerations. *See Romer v. Bd. of Cnty. Comm'rs*, 956 P.2d 566, 573 (Colo. 1998).

¶ 14 "[S]o that courts do not unnecessarily intrude into matters which are more properly committed to resolution in another branch of government," *id.*, a "general [prudential] rule [provides] that counties do not have standing to obtain judicial review of a decision of a superior state agency," *Douglas Cnty. Bd. of Comm'rs v. Pub. Utils. Comm'n*, 829 P.2d 1303, 1309 (Colo. 1992) (*Douglas*). The rule reflects the axiom that a county is not an "independent governmental entity existing by reason of any inherent sovereign authority of its residents; rather, it is a political subdivision of the state, existing only for the convenient administration of the state government, created to carry out the will of the state." *Bd. of Cnty. Comm'rs v. Love*, 172 Colo. 121, 125, 470 P.2d 861, 862 (1970).

Thus, only "where the General Assembly expressly provides that a [county] may seek judicial review of the actions of a superior state agency" may standing exist. *Romer*, 956 P.2d at 573.

¶ 15 This principle is known as the rule from *Martin*, the case in which it was first explicitly articulated. There, our supreme court held that, absent "an express statutory right, a subordinate state agency" — possibly a county — "lacks standing or any other legal authority to obtain judicial review of an action of a superior state agency." 191 Colo. at 109, 550 P.2d at 866.

> The *Martin* standard thus precludes standing when two conditions are met: (1) the agency seeking judicial review is subordinate to the agency whose decision is sought to be reviewed, and (2) no statutory provision confers a right on the subordinate agency to seek judicial review of the superior agency's decision.

Maurer v. Young Life, 779 P.2d 1317, 1320 (Colo. 1989).

¶ 16 The supreme court has since emphasized that a subordinate agency only has standing to seek judicial review where the General Assembly "expressly provides" such relief — that is, "where a statute explicitly confers a right upon a subordinate agency" to do so. *Romer*, 956 P.2d at 573. "[W]ithout a plain and unmistakable

expression of such intent by the legislature, the judiciary will not expand the rights of a subordinate agency to include the right to obtain judicial review of the actions of a superior agency." *Id.* "In other words, without an express statutory right to secure judicial intervention, we assume that any intra-agency dispute is better saved for determination through the political, and not judicial, process." *Id.*

IV. Analysis

¶ 17 The County contends that (1) it is not subordinate to the Commission in the context of air quality control and (2) even if it is, the Colorado Air Act expressly permits it to seek judicial review of the Commission's rulemaking. Thus, it argues, the district court erred by finding that the rule from *Martin* precludes it from having standing to challenge the rulemaking. We disagree and thus affirm the district court's judgment.

A. Subordinate Agency

¶ 18 We first address whether the County is subordinate to the Commission in the context of air quality control.

¶ 19 The County suggests that it cannot be considered a subordinate agency because "the [Colorado Air Act] includes

numerous provisions indicating that counties and the State each enjoy rights and obligations with respect to air quality control." In other words, the County posits that it is not subordinate to the Commission because it enjoys powers that are complementary to those of the agency. The County appears to rely on *Board of County Commissioners v. Colorado Department of Public Health & Environment*, 218 P.3d 336 (Colo. 2009) (*Adams*), for this proposition. But the county's reliance on *Adams* is misplaced.

¶ 20 In *Adams*, the supreme court considered whether the Board of Commissioners of Adams County (Adams County) had standing to challenge the Department's issuance of a radioactive material license and hazardous waste permit. Applying *Martin*, the court held that Adams County had standing because it was not subordinate to the Department in that context. *Id.* at 346. Specifically, the court found that "the General Assembly ha[d] conditioned the Department's authority to issue a license or permit on the county's issuance of a [Certificate of Designation (CD)]" — a land use and zoning device by which a county selects sites for waste disposal. *Id.* at 346; *id.* at 338 n.1 (defining a CD). And the General Assembly "ha[d] assigned the authority to issue such a CD

exclusively to the county." *Id.* at 346. In other words, Adams County's discretion to issue a CD circumscribed the Department's authority in the context of hazardous waste siting. Thus, the court ultimately held that Adams County was not a subordinate agency because the legislature had carved out "an area of exclusive authority for [Adams] County," not because it could exercise complementary authority. *Id.*

¶ 21 Accordingly, *Adams* does not support the County's position that the mere existence of complementary powers suggests that a county is not acting as a subordinate agency.

¶ 22 Moreover, the Colorado Air Act is, in our view, explicit that the County is subordinate to the Commission in the context of air quality control regardless of any "complementary powers" it grants to local governments.

¶ 23 As the County points out, the Colorado Air Act grants counties the authority "to enact local air pollution resolutions or ordinances" and directs that the "enforcement of valid local air pollution laws shall be completely independent of, but may be concurrent with, the . . . enforcement" of the Colorado Air Act. § 25-7-128(1), (5), C.R.S. 2021. Thus, it expressly grants the County some power to

locally regulate air quality that is complementary to the Commission's powers. However, the Colorado Air Act is equally clear that a county may only exercise such regulatory authority to the extent such regulation is sanctioned by the Commission.

¶ 24 Indeed, section 25-7-128(1) expressly limits the County to adopting regulations that "are at least the same as, or may be more restrictive than, the emission control regulations adopted pursuant to [the Colorado Air Act]." In other words, any regulation that the County adopts must conform to the Commission's standards. Because the County can only implement air quality regulations that the Commission has, at least implicitly, permitted it to, the County's regulatory authority is inherently subordinate to that of the Commission.

¶ 25 True, as the County emphasizes, the Colorado Air Act generally instructs the Commission to act cooperatively with local governments. *See* § 25-7-102(1), C.R.S. 2021 (The Commission must "maintain a cooperative [air quality control] program between the state and local units of government."); § 25-7-128(1) ("[L]ocal governmental entities are encouraged to submit their adopted plans and regulations [for approval] as revisions to the state

implementation plan for Colorado."); § 25-7-128(6) ("[A]t least semiannually the [Commission] and each air pollution control authority created by a local air pollution law shall confer and review each other's records concerning the area subject to such local law."). But such general directives do not change the fact that section 25-7-128(1) clearly relegates the County to a subordinate role in the context of air quality control.

¶ 26 Accordingly, we conclude that the County is subordinate to the Commission in this context for purposes of *Martin*.[2]

B. Express Statutory Right

¶ 27 Having concluded that the County is subordinate here, we turn to *Martin*'s second prong. The County argues that two statutes

---

[2] The County also directs us to *Board of County Commissioners v. Colorado Oil & Gas Conservation Commission*, 81 P.3d 1119 (Colo. App. 2003) (*La Plata*), to suggest that the pertinent question in our standing inquiry is not whether the County is a subordinate agency, but whether the Commission infringed on the County's land use powers. But the division in *La Plata* did not apply the rule from *Martin* — for a reason unspecified in the opinion — and thus did not need to consider whether the county-plaintiff was a subordinate agency. The division only applied the test from *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977), and thus its standing inquiry focused instead on whether an alleged restriction to the county's land use authority constituted an injury-in-fact. Accordingly, the County's reliance on *La Plata* is misplaced.

grant it an express right to seek judicial review of the Commission's decision. We address each in turn.

1. Section 25-7-120(1), C.R.S. 2021

¶ 28 First, the County contends that section 25-7-120(1), when read in conjunction with section 24-4-106(4), C.R.S. 2021, sufficiently evinces a legislative grant to the County of a right to seek judicial review for purposes of *Martin*. We disagree.

¶ 29 Section 25-7-120(1) states that "[a]ny final order or determination by the [Commission] shall be subject to judicial review in accordance with the provisions of this article and the provisions of [the APA]." Section 24-4-106(4), in turn, states that "any person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court."

¶ 30 Of course, section 24-4-106(4) itself "does not create a legally protected right so as to confer upon the County standing to seek judicial review," as "the APA does not create substantive legal rights on which a claim for relief can be based." *Romer*, 956 P.2d at 576-77. And absent any identifying language as to who can seek judicial review, section 25-7-120(1) alone does not evince a "plain and unmistakable expression" of intent to confer on the County a

right to judicial review. *Romer*, 956 P.2d at 573. Nor does the County argue as much. Rather, the County points out that the supreme court has read provisions of the APA in conjunction with another operative statute to establish an express statutory right of a subordinate agency to seek judicial review. The County proposes that we do the same here.

¶ 31 In *Douglas*, the Douglas County Board of County Commissioners (Douglas County) sought judicial review of the Colorado Public Utilities Commission's (PUC) decision to grant an application to upgrade an electric transmission line. *Douglas*, 829 P.2d at 1305. Applying the rule from *Martin*, the supreme court held that Douglas County had standing to challenge the PUC's action, reasoning that "section 40-6-115(1), [C.R.S. 1984], when read in conjunction with section 24-4-106(4), confers statutory authority for the county to seek review." *Id.* at 1310.

¶ 32 Section 40-6-115(1), C.R.S. 1984, provided, in pertinent part, that the PUC and "each party to the action or proceeding before the [PUC] shall have the right to appear in the review proceedings." The dispute in *Douglas* was the scope of the statute's phrase "right to appear," and whether that equated to the right to initiate an appeal.

See Douglas, 829 P.2d at 1308. Looking to section 24-4-106(4), the court noted that it "authorizes a person who was a party to an adjudicatory determination by an administrative agency to initiate an appeal."[3] *Id.* The court then interpreted section 40-6-115(1), C.R.S. 1984, when read together with section 24-4-106(4), to evince "a legislative intent to allow parties who appeared at the PUC proceeding," like Douglas County, "to initiate an appeal." *Douglas*, 829 P.2d at 1308. Thus, it held that Douglas County was not precluded from seeking review under the rule from *Martin* because it had specific statutory authority to do so. *Id.* at 1310.

¶ 33 Then, in *Adams*, the court applied *Martin* and held that Adams County was not precluded from challenging the Department's issuance of a radioactive material license and hazardous waste permit because it was not a subordinate agency in the context of hazardous waste siting. *Adams*, 218 P.3d at 346. Nevertheless, the court noted that "statutory provisions [also] expressly permit[ted] suit" — particularly section 25-1-113(1), C.R.S. 2009. *Id.* That

---

[3] Notably, this decision predated *Romer v. Board of County Commissioners*, 956 P.2d 566, 576 (Colo. 1998), in which the supreme court held that "the APA does not create substantive legal rights on which a claim for relief can be based."

section provided that "any person aggrieved and affected" by a Department action "is entitled to judicial review." *Id.* (quoting § 25-1-113(1), C.R.S. 2009). Because section 24-4-102(12) defined "person" to include a "county," the court concluded that section 25-1-113(1), C.R.S. 2009, when read in conjunction with section 24-4-102(12), granted Adams County, as a "person aggrieved," an express right to seek judicial review of the Department's action. *Adams*, 218 P.3d at 346.

¶ 34 The County argues that the supreme court's decisions in *Douglas* and *Adams* compel us to hold that section 25-7-120(1), read with section 24-4-106(4), expressly provides it a statutory right to seek judicial review. Though section 25-7-120(1) is silent as to who, if anyone, is entitled to judicial review, the County suggests we can infer from section 24-4-106(4) that "any person adversely affected or aggrieved" by the Commission's actions may do so — a class that ostensibly includes the County. But the County ignores a pivotal distinction between section 25-7-120(1) and the statutes in *Douglas* and *Adams*: the statute here offers no explicit guidance as to who is entitled to judicial review. Where a statute has left unspecified who can seek judicial review, no Colorado case has

recognized, for purposes of *Martin*, an express right of a subordinate agency to do so by reading the statute in tandem with the APA.

¶ 35 Indeed, in *Douglas*, the "who" was not in question; section 40-6-115(1), C.R.S. 1984, expressly granted parties appearing at the PUC proceeding, like Douglas County, the "right to appear" in review proceedings. The only question was whether the County's express "right to appear" included the right to initiate an appeal. In other words, that section 40-6-115(1), C.R.S. 1984, expressly granted Douglas County some right of review was presupposed; the court was tasked only with interpreting the extent of that right to determine whether the County had been authorized to seek judicial review. While the court relied on section 24-4-106(4) to interpret the scope of the "right to appear," it did not read the APA to infer which parties were entitled to that right.

¶ 36 The statute in *Adams* was similarly explicit: "[a]ny person aggrieved and affected" by a Department action could seek judicial review. § 25-1-113(1), C.R.S. 2009. Though the court looked to the APA for additional clarification, the statute expressly granted to an identified class the right to seek judicial review.

¶ 37 In contrast, section 25-7-120(1) states only that the Commission's decision "shall be subject to judicial review in accordance with [the APA]." § 25-7-120(1). It does not specify who is entitled to seek judicial review, or even explicitly confer such a right. Thus, in contrast to *Douglas* and *Adams*, the statute offers no discernable standard as to whom it grants the right. Being silent on the matter, the County suggests we turn to section 24-4-106(4) — a provision not specifically cited in section 25-7-120(1) — to identify a class of persons who can seek review. However, in our view, doing so would constitute an interpretive leap that would render any conferral of the right of review insufficiently "explicit" for purposes of *Martin*. *See Romer*, 956 P.2d at 573. Indeed, such a conjunctive reading would not simply further explain language already used in the statute, as in *Douglas* and *Adams*, but effectively impute into the statute an additional term without any apparent guidance from the legislature. Such a reading of the statute, though not necessarily unreasonable, is simply too attenuated to represent a "plain and unmistakable expression" of legislative intent. *See Romer*, 956 P.2d at 573. Where a statute is silent as to who can seek judicial review, and an unreferenced

procedural statute can be conjunctively read to fill that void, the statute cannot be said to "expressly" grant a right to secure judicial intervention on a particular party.

¶ 38 Moreover, section 25-7-120(1) is equivocal as to whether it confers a substantive right on anyone to seek judicial review. It states only that the Commission's decision "shall be subject to judicial review," *id.*, which arguably does not "expressly provide" a right to judicial review for purposes of *Martin*. *Cf. Douglas*, 829 P.2d at 1308 (granting a "*right to appear* in the review proceedings" confers a right to judicial review in satisfaction of *Martin*); *Adams*, 218 P.3d at 346 (so does stating that a party is "entitled to judicial review" (quoting § 25-1-113(1), C.R.S. 2009)); *Maurer*, 779 P.2d at 1321 (as does the language "may petition the district court").

¶ 39 Accordingly, we conclude that section 25-7-120(1), even when read together with section 24-4-106(4), does not "explicitly confer" on the County a right to seek judicial review of the Commission's decision so as to satisfy the rule from *Martin*. *See Romer*, 956 P.2d at 573.

¶ 40 However, that is not to say, as the State Defendants would have us rule, that section 25-7-120(1) cannot establish a legally

protected interest that can confer standing for purposes of *Wimberly*. Indeed, even if the statute is silent as to who can seek judicial review, it would be illogical to construe the statute as not granting anyone the right to do so — after all, the statute specifically contemplates a judicial review process for final Commission actions, and no other provision appears to permit such review. *See* § 25-7-120(1).

¶ 41 As the County points out, a division of this court in *Weld Air & Water v. Colorado Oil & Gas Conservation Commission*, 2019 COA 86, ¶ 15, recently held that a nearly identical statute, when read in tandem with section 24-4-106(4), conferred on a party the right to seek judicial review such that it had a legally protected interest for purposes of standing. That statute, section 34-60-111, C.R.S. 2021, provides that "[a]ny rule, regulation, or final order of the [Colorado Oil and Gas Conservation Commission] shall be subject to judicial review in accordance with the provisions of section 24-4-106." The division held, reading the two statutes together, that parties "adversely affected or aggrieved by agency actions" were entitled to seek judicial review. *Weld Air & Water*, ¶ 15.

¶ 42 Unsurprisingly, the County suggests that we must apply the same interpretation here. But *Weld Air & Water* did not concern a subordinate agency, and the division thus did not apply the rule from *Martin*. It considered only whether section 34-60-111 could confer standing under *Wimberly*. And as discussed, our supreme court has emphasized that our prudential consideration under *Martin* is more exacting. *See Romer*, 956 P.2d at 573. For *Martin*, a statute must "explicitly confer[] a right upon a subordinate agency" to seek judicial review through a "plain and unmistakable expression" of the legislature's intent. *Romer*, 956 P.2d at 573. Thus, even though section 34-60-111 — and perhaps section 25-7-120(1) — is sufficient to establish standing for purposes of *Wimberly*, the nearly identical language in section 25-7-120(1) does not satisfy *Martin* for the reasons discussed above.[4]

---

[4] The County again directs us to *La Plata*, this time to point out that the division relied, in part, on section 34-60-111, C.R.S. 2021 — the same statute at issue in *Weld Air & Water v. Colorado Oil & Gas Conservation Commission*, 2019 COA 86 — to determine that a plaintiff-county had standing. However, as noted above, the division in *La Plata* did not apply the rule from *Martin*. Like the division in *Weld Air & Water*, the division in *La Plata* considered only whether section 34-60-111 established a legally protected interest for purposes of *Wimberly*. Thus, for the same reasons

2. Section 25-7-105(16)

¶ 43 Alternatively, the County suggests that section 25-7-105(16)(c) expressly confers on it a right to seek judicial review for purposes of *Martin*. Again, we disagree.

¶ 44 The County appears to primarily contest the district court's conclusion that section 25-7-105(16)(c) "does not apply in the context of a state-wide rulemaking proceeding applicable to the entire oil [and] gas industry." However, even if we agreed with the County that the statute applies, the County does not offer any specific argument as to how it expressly confers on it a right to seek judicial review. Perhaps this is because it cannot do so.

¶ 45 The statute states only that

> [t]he commission shall give priority to and take expeditious action upon consideration of . . . [a] request by a unit of local government that the commission consider local concerns respecting environmental and economic effects in the context of a proceeding where the state is targeting a source for imposition of additional air pollution controls.

---

discussed above, the decision in *La Plata* does not compel us to conclude that section 25-7-120(1), C.R.S. 2021, though nearly identical to section 34-60-111, satisfies the rule from *Martin*.

§ 25-7-105(16)(c). Thus, while the statute allows the Commission to entertain such requests by a county, it contains no language suggesting a right to seek review of the Commission's failure to do so or of a related rulemaking. Accordingly, even assuming the statute is applicable, it cannot be read to "explicitly confer[] a right upon" the County to seek judicial review of the Commission's action. *See Romer*, 956 P.2d at 573.

¶ 46 In sum, then, the rule from *Martin* precludes the County, as a subordinate agency, from having standing to challenge the Commission's rulemaking. Accordingly, the district court correctly dismissed the County's suit for lack of jurisdiction.[5] *See Ainscough*, 90 P.3d at 855.

V. Conclusion

¶ 47 The judgment is affirmed.

JUDGE DAILEY and JUDGE TAUBMAN concur.

---

[5] The County requests, in footnote 3 of its reply brief, that we take judicial notice of the complete administrative record or remand the case pursuant to C.A.R. 10(f)(2) for supplementation of the record. However, because (1) the full administrative record was not available to the district court; (2) a footnote in a reply brief does not equate to a proper motion, *see* C.A.R. 27, 32; and (3) the record is unnecessary to resolve the legal question of whether the County has standing, we deny the County's request.