

# EXHIBIT A

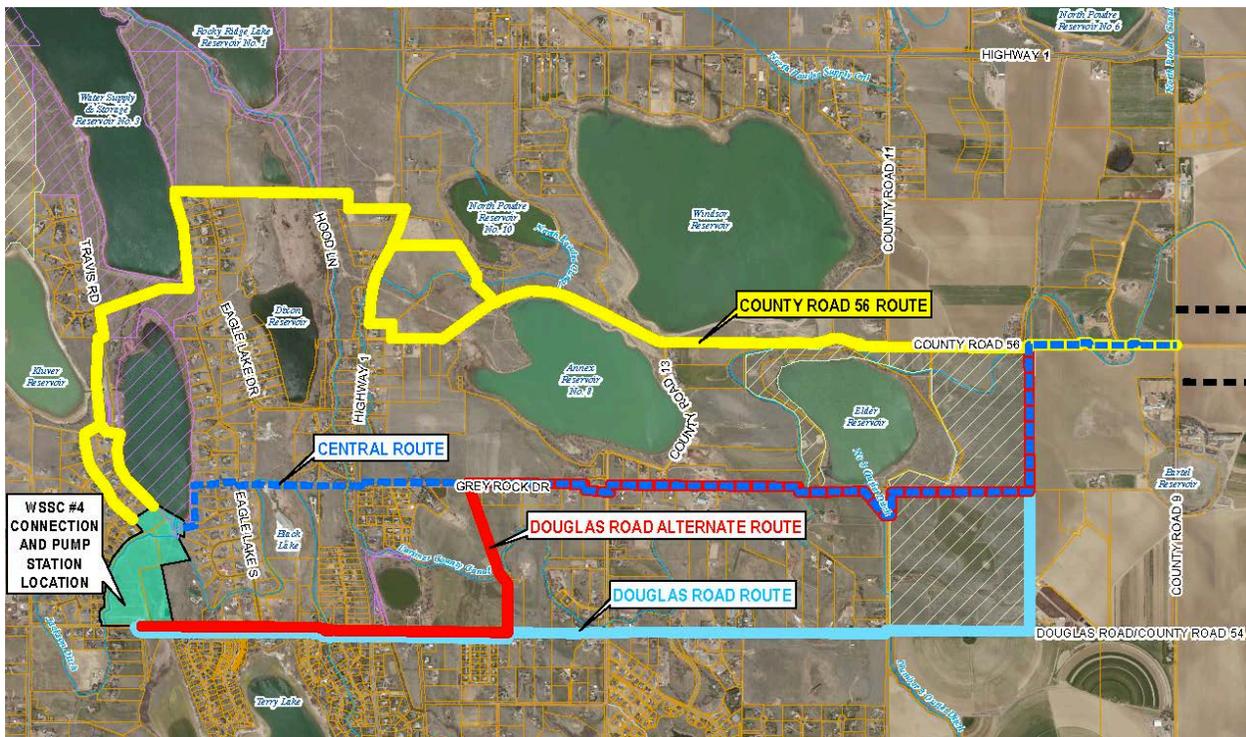
<b>DISTRICT COURT, COUNTY OF LARIMER</b> <b>STATE OF COLORADO</b> <b>201 LA PORTE AVE., SUITE 100</b> <b>FORT COLLINS, CO 80521</b>	<b>DATED FILED:</b> Dec 23, 2019 08:08 AM <b>FILING CLERK:</b> TB 7088402540A11 <b>CASE NUMBER:</b> B7C203068030339
<b>Plaintiff:</b>  CITY OF THORNTON, a home rule municipality of the State of Colorado,  v.  <b>Defendants:</b>  BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARIMER, State of Colorado; John Kefalas, in his official capacity; Steve Johnson, in his official capacity; Tom Donnelly, in his official capacity.	<b>▲ COURT USE ONLY ▲</b>
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<b>COMPLAINT FOR JUDICIAL REVIEW UNDER C.R.C.P. 106 AND DECLARATORY RELIEF</b>	

Pursuant to C.R.C.P. 106 and 57 and Colorado statutes, Plaintiff City of Thornton, Colorado, by and through its attorneys, respectfully bring this Complaint against Defendants, Board of County Commissioners of the County of Larimer, State of Colorado; John Kefalas, Steve Johnson, and Tom Donnelly, all in their official capacities (“**Board**”).

## INTRODUCTION

1. In four or five years, the City of Thornton (“**Thornton**”) will need more drinking water for its residents. It prepared for this need decades ago by purchasing water from the Water Supply and Storage Company (“**WSSC**”) system in Larimer County and changing that water in Water Court to allow it to be transported 75 miles to be used as drinking water in Thornton. As

required by Larimer County regulations at issue in this case, Thornton applied for a 1041 permit from Larimer County to site and develop a single domestic water transmission pipeline from WSSC Reservoir No. 4, a decreed storage location of Thornton’s water right, through 26 miles of unincorporated Larimer County. Larimer County’s 1041 regulations set forth 12 criteria for approval of a 1041 permit. In its initial application, Thornton identified its preferred pipeline route to be in Douglas Road right-of-way (the “**DR Route**”) but also identified three other reasonable pipeline alternatives: an alternative Douglas Road route being a shorter portion of the Douglas Road route which then cuts north to a central route; a central route; and a north route along County Road 56. *See Figure 1* below (demonstrative representation of the four reasonable siting alternatives); *see also Exhibit 1* (the four reasonable siting alternatives individually identified). The DR Route allowed Thornton to install most of the east-west segment of its pipeline in Douglas Road in public right-of-way. Larimer County’s staff recommended approval of this option but the Board did not approve this option for a permit, following a planning commission meeting and three public hearings. Providing no specific guidance to Thornton, the Board required its staff to conduct a public vetting process for three months and return for additional public hearings.



**Figure 1**

2. Attempting to address general concerns Thornton heard from the Commissioners and comments during the 3-month vetting process, Thornton selected County Road 56 (the “**CR56 Route**”) as its preferred pipeline route. **Exhibit 2** (Figure ES-3S (Supplement 3, January 18, 2019)). The CR56 Route was an option Thornton had previously identified in its application (the north route) as a reasonable pipeline alternative that could be installed in public right-of-way

or private easements. Thornton additionally proposed that the DR Route (the south route) was still a viable option that the Board could choose. Larimer County's staff recommended approval of the CR56 Route. After four public hearing sessions, the Board also rejected this option, finding that Thornton did not meet 7 of the 12 criteria. Ultimately, the Board rejected an application that presented two very different preferred routes supported by Larimer County staff (a northern and southern route), as well as the alternative Douglas Road route and central route. This rejection occurred despite more than 1,700 pages in the application, 7 public hearing sessions stretched over 8 months, and an additional public vetting process that lasted three months with 2 open houses, 3 webinars and 5 working group meetings. This rejection occurred despite the Board explicitly finding that "[t]he benefits of Thornton's proposal are also significant, as clean and sufficient water supply is of critical importance." It is undisputed that "the Board's authority is limited to approving the siting and development of pipelines." **Exhibit 3**, Findings and Resolution Denying the Thornton Water Project 1041 Permit ("Findings"), p. 13. As further described below, the Board's decision exceeds its jurisdiction and/or is contrary to law, misinterprets and misapplies its criteria, and was arbitrary and capricious because its findings lack competent evidence to support the Board's denial of Thornton's application. Thornton asks this court to overturn Larimer County's decision and, of the four routes Thornton identified as reasonable in its application, either itself approve or require that the Board approve either the DR Route or the CR56 Route for the siting and development of Thornton's proposal.

### **PARTIES**

3. Plaintiff City of Thornton is a home rule municipality of the State of Colorado. Its principal place of business is located at 9500 Civic Center Drive, Thornton, CO 80229.

4. Defendant Larimer County Board of County Commissioners, including the individual Commissioners in their official capacities, (the "Board"), is the governing body for Larimer County.

### **JURISDICTION AND VENUE**

5. This Complaint arises from the Board's denial of a 1041 permit in Larimer County, Colorado.

6. This Court has jurisdiction under Rules 106(a)(4) and 57, C.R.C.P., and under §§ 13-51-101 to -114, C.R.S. (Uniform Declaratory Judgments Law), §§ 13-51.5-101 to -103, C.R.S. (Review of Land Use Decisions) and § 24-65.1-502, C.R.S. (Areas and Activities of State Interest).

7. Pursuant to Rule 98(a), C.R.C.P., and § 24-65.1-502, C.R.S., venue is proper in Larimer County because this action involves a decision by an elected body of Larimer County concerning land use, including without limitation the denial of a 1041 permit for the siting and development of a domestic water transmission line in Larimer County, Colorado.

## GENERAL ALLEGATIONS

### **Thornton's Water Rights and Need for a Domestic Water Pipeline**

8. Thornton has approximately 139,000 residents and soon its population will need more drinking water than Thornton currently can deliver.

9. To prepare for such a day, decades ago, Thornton purchased water rights in the Water Supply and Storage Company (“**WSSC**”) and Jackson Ditch Company (“**JDC**”), mutual ditch companies system (together “**WSSC system**”). Thornton specifically purchased its WSSC and JDC shares to meet its need for additional water supply from a high-quality water source with adequate storage availability in the WSSC system. Ownership in a mutual ditch company constitutes ownership of a real property interest in water rights.

10. In 1998, Thornton obtained a water court decree in Consolidated Case Nos. 86CW401, 86CW402, 86CW403, and 87CW332, District Court, Water Division No.1 (March 9, 1998) (“**Decree**”). The Decree sets forth factual findings recognizing Thornton's need to acquire and change its WSSC and JDC shares to meet its need for additional water supply from a high-quality water source. The Decree further recognizes Thornton's intent to withdraw its water from a WSSC system reservoir via a pump station and then to carry that water via pipeline to Thornton.

11. The Decree identifies that the points of diversion that Thornton is legally allowed to divert its WSSC and JDC water (the water to be transported in the pipeline through Larimer County) must be at the original headgate of the Larimer County Canal and Jackson Ditch. As a shareholder in WSSC, by contractual agreement with WSSC, and under the Decree, Thornton has the right to store its water rights diverted at the Larimer County Canal in the WSSC Reservoir No. 4 (located in Larimer County). The Decree then provides that Thornton will withdraw its water by a pump station at WSSC Reservoir No. 4.

12. As part of its acquisition of the WSSC and JDC shares, Thornton also purchased 1,766 acres of land in Larimer County. Thornton currently holds 1,590 acres in Larimer County, having sold 176 acres to Dyecrest Dairy. The Decree requires that before Thornton may use its water rights in Thornton, Thornton must remove the water historically used on this acreage and either: 1) establish dryland farming practices; 2) revegetate the acreage to certified self-sustaining native grasses; or 3) establish suitable non-agricultural uses. Of Thornton's remaining 1,590 acres roughly 50% is still in irrigated agriculture. The other 50% has been certified as self-sustaining native grasses, is in the process of being certified, or is an established suitable non-agricultural use.

13. Consequently, to serve the purpose and need in acquiring its WSSC and JDC water rights and to abide by its Decree and contractual agreement with WSSC, Thornton's starting point for its water pipeline is at WSSC Reservoir No. 4. Accordingly, Thornton proposed to build a single domestic water pipeline in Larimer County in a new permanent easement exceeding 30 feet in width beginning at the WSSC Reservoir No. 4 through Larimer County.

## **Thornton's Application for a 1041 Permit**

14. Thornton's proposal for a new permanent easement exceeding 30 feet in width for a single domestic water pipeline in Larimer County required that Thornton apply for a permit under Larimer County's regulations adopted pursuant to C.R.S. §§ 24-65.1-101 *et seq.*, (the "Act") referred to as a 1041 Regulations and a 1041 Permit.

15. Larimer County's 1041 Regulations, application and hearing process are found in Larimer County's Land Use Code ("LUC") in Sections 12 and 14 of Part II and incorporated herein by reference. **See Exhibits 4 (applicable portions of LUC Section 12) and 5 (LUC Section 14).**

16. The procedural steps required for a 1041 permit decision are outlined in LUC Section 14 and reference that in certain instances more specific information on the steps are contained in LUC Section 12. The procedural steps require a: 1) Pre-application conference; 2) receipt of a complete and sufficient application; 3) referral to affected agencies; 4) public hearing before the planning commission and county commissioners; and 5) post-approval requirements. *See Exhibit 5, LUC 14.9.B.*

17. No later than 30 days after receipt of a complete application, the planning director must set and publish a notice of the date, time and place for a hearing before the county commissioners. The notice must be published once in a newspaper of general circulation not less than 30 nor more than 60 days before the date set for hearing. *See Exhibit 5, LUC 14.9.C.1.* Notice of the planning commission hearing must be published in a newspaper of general circulation at least 14 days before the hearing date. *See Exhibit 5, LUC 14.9.C.2.*

18. Notice is to be mailed to property owners in the vicinity of the proposal at least 14 days prior to the hearings. *See Exhibit 5, LUC 14.9.C.3.* Notice must be mailed (first-class, postage-paid) to property owners in the vicinity of the proposal. Records of the county assessor will be used to determine the names and mailing addresses of those to be notified. At the pre-application conference prior to submitting the application, the applicant and the staff planner assigned to the project will determine the area to be included in the mailing list. The area included cannot be less than 500 feet surrounding the property. Depositing the notice in the U.S. mail with postage prepaid is the responsibility of the planning department or rural land use center and satisfies the mailed notice requirement. Failure to send a mailed notice does not invalidate any public hearing. *See Exhibit 4, LUC 12.3.3.*

19. The planning director may, when necessary, decide that additional expertise is needed to review a project. *See Exhibit 5, LUC 14.9.E.*

20. The general requirements for approval of a 1041 permit application are that: 1) he applicant must submit a complete and sufficient application that is consistent with the submittal requirements that are stated at the pre-application conference; 2) the applicant must satisfactorily demonstrate that the proposal, including all proposed mitigation measures, complies with all of the applicable criteria. If the proposal does not comply with all the applicable criteria, the permit shall be denied unless the Board determines that reasonable conditions can be imposed on the

permit which will enable the permit to comply with the criteria; and 3) if the Board determines at the public hearing that sufficient information has not been provided to allow it to determine if the applicable criteria have been met, the Board may continue the hearing until the specified additional information has been received. *See Exhibit 5, LUC 14.10 A.-C.* The Board can, on its own motion, table the public hearing to a specified date. Tabling for more than 40 days without the applicant's consent is not permitted. *See Exhibit 4, LUC 12.4.2.C.*

21. Larimer County's 1041 Regulations sets forth 12 criteria applicable to the "siting and development" of a domestic water pipeline. *See Exhibit 5, LUC 14.10.D. 1-12.*

22. Beginning in 2014 and continuing in 2015, Thornton held preliminary discussions with County Planning, Public Works/Engineering and Open Lands Department staff about Thornton's proposed single pipeline project, including possible alignments and corridors. Thornton also conducted public outreach in developing reasonable alternatives. At this time, Thornton was told by Larimer County staff that it should locate its pipeline outside of Larimer County right-of-way and future right-of-way.

23. In May 2016, Thornton attended a pre-application conference for a 1041 permit with County staff and, although not required by Larimer County's 1041 application process, conducted public outreach through a series of mailings and open houses in late 2016 and through 2017.

24. Originally, Thornton proposed a quarter-mile wide corridor and then, at the request of Larimer County staff, Thornton proposed a preferred alignment with a 500-foot wide corridor for the proposal in the area around the WSSC Reservoirs and east to Larimer County Road 9. Later, the alignment on the DR Route was reduced to the Douglas Road right-of-way with the approval of Larimer County staff. The corridor approach was encouraged and approved by Larimer County staff. The Board never stated that the corridor approach was unacceptable. The purpose of proposing a corridor for the 1041 permit, rather than an exact alignment, is to allow flexibility in locating the water pipeline (typically within a 50-foot permanent easement with an additional 40-foot temporary construction easement) during final design and to not need to obtain future action or approval under the permit for location changes in the corridor based on unforeseen obstacles or property owner location preferences.

25. Thornton completed an Alternative Corridors Analysis from WSSC Reservoir No. 4 to 168<sup>th</sup> Avenue in September 2016. Based on that analysis, Thornton selected Alternative D as the preferred corridor for the pipeline. ***See Exhibit 6 (Figure 3-6 of "Reach 2 Alternative Corridors Analysis", Appendix A-1 to Thornton's 1/5/18 Application).*** Alternative D generally stayed out of County right-of-way and followed the central route from WSSC Reservoir No. 4 to County Road 9.

26. After input from residents, the primary area of controversy concerning the proposal focused on the location of approximately 3 miles of the pipeline between WSSC Reservoir No. 4 and Turnberry Road. As a result, Larimer County staff requested that an analysis of alternative water pipeline alignments from the connection to the WSSC system to approximately County Road 9 be included in the application. No revisions or analysis to the

approximately 23 remaining miles of pipeline in the proposed corridor east of County Road 9 or along the north-south alignment County Road 1/Weld County Road 13 were required by Larimer County staff. In addition, Larimer County staff stated that locating the pipeline in Larimer County right-of-way would be considered at some locations.

27. Thornton completed an Alternative Configurations Analysis-WSSC Reservoir Area to Larimer County Road 9 in October 2017. Thornton analyzed 10 alternative configurations in this analysis as shown in **Exhibit 7 (Figure 5.1.12.2-1 of “Alternative Configurations Analysis-WSSC Reservoir Area to Larimer County Road 9”, Appendix A-2 to Thornton’s 1/5/18 Application)**. Thornton divided the ten alternative configurations considered in the analysis into four general sectors: North, West, Central and South. Based on this analysis, Thornton identified, and presented to the Board, four reasonable alternatives for siting the pipeline. The four reasonable siting alternatives resulting from the analysis were the South 2 and South 4 routes, the West 2 route and the Central route. See Exhibit 1. These are alternatively described as the DR Route (South 2), the alternative Douglas Road route (South 4) the CR56 Route (West 2) and the central route (Central) identified in Paragraph 1 and shown in Figure 1. In the same vein, the east-west segment of the Alternative D route noted in Paragraph 25 corresponds to the central route in the October 2017 analysis. *See also* Exhibit 1.

28. As requested by Larimer County staff Thornton selected a preferred alternative from the October 2017 analysis for inclusion in the application. Thornton selected the DR Route (aka the South 2 route). The DR Route includes a connection to the WSSC Reservoir No. 4 outlet thence south to Douglas Road right-of-way, thence east in Douglas Road right-of-way to Thornton-owned property at Turnberry Road. The route proceeds on Thornton-owned property to County Road 56, and then along County Road 56 to County Road 9. **See Exhibit 8 (Figure 5.1.12.2-11 of “Alternative Configurations Analysis-WSSC Reservoir Area to Larimer County Road 9”, Appendix A-2 to Thornton’s 1/5/18 Application)**. The DR Route was not the least expensive route, but was selected because it best met evaluation criteria taking into consideration impacts to among other things, residential properties, traffic and environment.

29. On January 5, 2018, Thornton submitted its application for 1041 approval of a single domestic water pipeline with the DR Route as the preferred route. Where the corridor parallels Douglas Road, the application proposed that the water pipeline be located in Larimer County right-of-way where feasible and as approved by Larimer County. In the event that the location of the pipeline could not be accommodated in Douglas Road or County Road 56 right-of-way, Thornton proposed to purchase easements from property owners.

30. Thornton discussed the source water pump station (to be located near WSSC Reservoir No. 4) with Larimer County staff at the pre-application conference. Larimer County staff stated that the source water pump station was not a part of the 1041 permitting process but would be separately permitted through the Site Plan Review permit process pursuant to LUC 6.0. Nevertheless, Thornton included information in the application on the source water pump station for informational purposes and to present a more complete scope of the overall pipeline siting and development. Thornton committed to proceeding with a Site Plan Review permit application for the source water pump station in accordance with LUC 6.0.

31. Later, in its staff report referenced in Paragraph 37 Larimer County staff stated that it considered the pump station to be a part of the 1041 application because of its location and intensity of use. Thornton objected to inclusion of the pump station as part of the 1041 application in a June 29, 2018 Statement because of Larimer County's lack of authority to regulate the pump station under its 1041 regulations, but without waiving its right to challenge this decision, agreed to address aspects of the pump station before the Board.

### **The Planning Commission Hearing**

32. On January 16, 2018, after the planning director determined that Thornton's application was complete, he issued and published a Public Hearing Notice setting notice of the date, time and place for a hearing before the Planning Commission and Board. Those hearings were to be held on February 21, 2018 and March 26, 2018 respectively.

33. The Planning Commission's role is as an advisory commission, to review the application, conduct a public hearing, consider all information presented by the applicant and the planning department and formulate a recommendation to the Board for approval, approval with conditions or denial. The Planning Commission's recommendation must include findings stating how the proposal meets or fails to meet the review criteria. *See* Exhibit 4, LUC 12.2.6.

34. Subsequently, Larimer County staff postponed those hearings for Thornton to provide additional information requested by the County. The information requested from Thornton was: 1) to provide field survey and pipe alignment information to determine whether Thornton's pipeline could be constructed within the Douglas Road right-of-way; 2) identify a construction schedule for segments along Douglas Road; 3) provide a pavement restoration plan; 4) summarize how Thornton will coordinate and provide for any utility relocations necessary to install the pipeline; and 5) provide additional basic information on the pump station.

35. Thornton provided the requested information. Thornton confirmed that Thornton's pipeline could be constructed entirely within the existing Douglas Road right-of-way and Thornton proposed to construct the pipeline and limit its construction footprint to be entirely within the existing Douglas Road right-of-way. The alignment in the Douglas road right-of-way would entirely avoid impacts to homes, private improvements and/or landscaping from the pipeline or its construction.

36. On April 19, 2018, again after determining that Thornton's application was complete, the planning director issued and published a Public Hearing Notice setting notice of the date, time and place for a hearing before the Planning Commission and Board. Those hearings were scheduled for May 16, 2018 and July 9, 2018 respectively.

37. In advance of the Planning Commission hearing, the Larimer County staff issued its written report on Thornton's application including that report in the Agenda for the May 16, 2018 Larimer County Planning Commission hearing. Larimer County staff concluded that Thornton "presented a thorough analysis of the proposal and the proposed alignment/corridor." Larimer County staff concluded that Thornton's application met all 12 review criteria and recommended that the Planning Commission recommend approval of the application to the Board with 25 conditions.

38. On May 16, 2018, the Planning Commission held a 4-hour public hearing on Thornton's application.

39. Much of the public/residents' testimony focused on asking the Planning Commission to require that Thornton send its water down the Poudre River rather than approve the siting and development of a pipeline, which is the issue in the 1041 permit application.

40. In discussing Thornton's proposal the Planning Commission exceeded its authority and factored into its decision the notion that Thornton should not build a pipeline but rather send its water down the Cache la Poudre River.

41. In addition, a number of the Commissioners stated that Thornton's application lacked "specificity". However, when asked by Larimer County staff to provide some indication as to what additional information the Planning Commission was seeking or a recommendation as to what the Board should seek, one Commissioner stated that asking for the Planning Commission to outline what they are looking for is "crazy."

42. The Planning Commission with 3 of its 9 members absent, voted 4-2 to recommend that the Board deny Thornton's application. Contrary to LUC 12.2.6.C., the Planning Commission did not make findings of how the proposal met or failed to meet the 12 review criteria.

### **The Board Hearings**

43. In advance of the Board hearing, Larimer County staff issued a second written report on Thornton's application including that report in the Agenda and the Addendum to the Agenda for the July 9, 2018 Board hearing. Larimer County staff concluded that Thornton "presented a thorough analysis of the proposal and the proposed alignment/corridor." Larimer County staff concluded that Thornton's application met all 12 review criteria and recommended that the Board approve the application with 29 conditions.

44. On July 9, and 23, and August 1, 2018, spanning over 8 hours, the Board held public hearings to consider Thornton's application.

45. Some residents south of Douglas Road asserted that they had not received notice of the proposal. However, as described in Paragraphs 18, 32 and 36 a Public Hearing Notice was issued and published by Larimer County in accordance with LUC 14.9.C.2. Further, pursuant to LUC 14.9.C.3 written notice of the hearing was delivered or mailed, first class, postage prepaid to landowners within 500 feet of the proposal. In addition, as described in Paragraph 23 although not required by Larimer County's 1041 application process, Thornton conducted public outreach through a series of mailings and open houses in late 2016 and through 2017 about the proposal.

46. Thornton testified and explained how the proposal for its single pipeline met the 12 review criteria. Many area residents appeared in opposition to the proposal but some did support it.

47. Much of the residents' testimony focused on asking the Board to require that Thornton send its water down the Poudre River rather than approve the siting and development of a pipeline, which is the issue in the 1041 permit application.

48. At the conclusion of the August 1, 2018 hearing, and without specific guidance or specific requests for information, the Board moved to continue the hearing to allow County staff and Thornton time to provide additional information discussed by the Board and directed County staff to involve the public in the information gathering process through public meetings or open houses. In violation of LUC 12.4.2 requiring it to seek Thornton's consent for a delay exceeding 40 days, the Board tabled the application to a December 17, 2018 hearing, with Commissioner Donnelly stating that the Board did not "need to ask the applicant if -- for their concurrence."

49. Stepping outside of the 1041 process at the Board's direction, Larimer County staff then assembled a working group to examine the project. The working group process spanned three months with 5 working group meetings, 3 webinars and 2 open houses. Thornton was not made a member of the working group but attended all meetings to listen, to provide answers to working group member questions, and provide any documents or presentations about technical subjects or the project process.

50. In addition, Larimer County invited the Northern Colorado Water Conservancy District ("**Northern**") to participate in the working group process also as a non-member. Northern is also seeking a permit pursuant to Larimer County's 1041 process for, in part, a water pipeline across Larimer County in the same vicinity as Thornton's proposal. However, Northern is proceeding by way of an intergovernmental agreement with Larimer County for its Northern Integrated Supply Project ("**NISP**"). Larimer County staff said the purpose for Northern's participation in the working group process was to explore the possibility of co-location of the NISP pipeline and Thornton's pipeline to reduce community impacts of consecutive pipeline projects.

51. On December 10, 2018, Thornton submitted to Larimer County Thornton Water Project Larimer County 1041 Permit Application Supplement 3 in draft form ("**Supplement 3**"). On January 18, 2019, Thornton submitted Supplement 3 in final form to Larimer County.

52. At the direction of Larimer County, Thornton evaluated whether Thornton's pipeline and NISP's pipeline could be co-located in Douglas Road. Thornton's uncontroverted evaluation concluded that Thornton's pipeline and NISP's pipeline could be co-located in Douglas Road. Though not part of its 1041 application, Thornton considered and balanced impacts versus benefits of co-locating Thornton's pipeline and NISP's pipeline in Douglas Road. The evaluation revealed that co-locating Thornton's pipeline and NISP's pipeline in the DR Route was more impactful than locating only Thornton's pipeline in the DR Route. Because the working group and the public showed consistent support of co-location of the water pipeline and

the NISP pipeline, Thornton selected the CR56 Route<sup>1</sup> as its preferred alternative as a less impactful route to co-locate these two pipelines. This route is shown on **Exhibit 9 (Figure 2.c-S6) (Supplement 3, January 18, 2019)** which compares the CR56 Route to the West 2 route from Thornton's January 2018 application. The CR56 Route allows for co-location of the Thornton pipeline and the NISP pipeline beginning at a point between WSSC Reservoir Nos. 3 and 4 and thence east to County Road 9 as shown in **Exhibit 10 (CR 56 Co-Location Concept)**.

53. Supplement 3 also showed that the DR Route remains a reasonable siting and design alternative as set forth in the January 2018 application, so long as the project is not co-located with the NISP pipeline in Douglas Road. Accordingly, Supplement 3 offered the Board the option to permit Thornton's pipeline in Douglas Road as a less impactful stand-alone project, or to allow Thornton's pipeline and NISP's pipeline to be co-located in Douglas Road.

54. In Thornton's January 2018 application, in addition to the request for a permit for Thornton's pipeline, Thornton also included a request for approval of a one million gallon above-ground water tank to be located in Larimer County. In Supplement 3, Thornton withdrew the water tank request.

55. In advance of the January 28, 2019 Board hearing, Larimer County staff issued a third written report on Thornton's application including that report in the Agenda for the January 28, 2019 Board hearing. Larimer County staff concluded that Thornton's proposal met all 12 review criteria including that it:

- Is consistent with the Master Plan in insuring the provision of adequate public facilities and insuring public safety.
- Causes no significant long-term impacts to the natural or man-made environment from the siting of the pipeline.
- Is a reasonable alternative selected from multiple alternatives considered.
- Identifies the needed permits and permissions and commits to obtain those prior to construction.
- Demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse effects and the benefits achieved by such mitigation.

On these bases, among others, Larimer County staff recommended that the Board approve the application with 43 conditions.

56. On December 17, 2018, January 28, 2019, February 4, 2019 and February 11, 2019, spanning over 10 ½ hours, the Board continued public hearings and reopened the public record on Thornton's Supplement 3. At the conclusion of the February 11, 2019 hearing, the Board voted to deny Thornton's application.

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<sup>1</sup> This route has been identified with a number of different names. It was identified in Thornton's January 2018 application as the West 2 route. This route was also identified by the working group as the Option C or County Road 56 route and as Alternative 3 in Supplement 3.

57. Much of the public/residents' testimony focused on asking the Board to require that Thornton send its water down the Poudre River or down the Larimer County Canal rather than approve the siting and development of a pipeline, which is the issue in the 1041 permit application.

58. In discussion of Thornton's proposal during the hearings, it is clear that the Board, contrary to its authority, factored into its decision the notion that Thornton should not build a pipeline but rather send its water down the Cache la Poudre River or down the Larimer County canal.

59. The Board issued its findings and resolution denying the Thornton Water Project Permit on March 19, 2019, finding that Thornton failed to meet 7 of the 12 criteria: those being criteria 1 through 4, 6, 10 and 11. *See Exhibit 3, Findings.*

60. The Board found that Thornton met 5 of the 12 criteria: those being criteria 5, 7, 8, 9 and 12. *See Exhibit 3, Findings.*

### **The Board's Findings**

61. As further described below in a non-exhaustive list, in rejecting Thornton's 1041 application under criteria 1 through 4, 6, 10 and 11, the Board's decision exceeds its jurisdiction and/or is contrary to law, misinterprets and misapplies its criteria, and was arbitrary and capricious because its findings lack competent evidence to support the Board's denial of Thornton's application.

### **Criteria 1**

62. Criteria 1 requires that Thornton's proposal (Thornton's siting and development of a water transmission line in a certain sized easement) be "consistent with the master plan and applicable intergovernmental agreements affecting land use and development."

63. There are no applicable intergovernmental agreements, and the Board's findings state none, with respect to Thornton's proposal pursuant to Criteria 1.

64. The Board points to a "Partnership Land Use System" that it is developing as a mission under the Master Plan. On its face, Criteria 1 applies to an existing Master Plan. An undeveloped aspirational goal is not a basis on which the Board can conclude that Thornton's proposal is inconsistent with the Master Plan. The planning director deemed Thornton's application complete without the need to address this mission. The Board did not identify the need for information concerning this mission during hearings.

65. The Board states that there are many themes and principals implicated by Thornton's application, but does not point to any "inconsistencies" with the Master Plan affecting land use and development but instead asserts that it "cannot conclude that Thornton's proposal is consistent with the Master Plan." Despite the planning director having deemed Thornton's application complete, the Board identifies the need for more information but did not ask for additional information.

66. The Board determined that its ability to assess specific impacts to private property along the route is unreasonably limited because of the corridor approach. The corridor approach was encouraged and approved by Larimer County staff. The Board never stated that the corridor approach was unacceptable. The Board has approved other 1041 applications which used a corridor approach, including the Roundhouse Renewable Energy Transmission Line Project 1041 Permit Application (Plan Number: 18-ZONE2476) for a new overhead single-circuit, 230-kV transmission line approximately 9.5 mile long in a 150 foot wide easement. The applicant there requested and obtained approval of a 300- 500 foot wide corridor.

67. The Board's determination to deny a 1041 permit to Thornton on Criteria 1 because the CR 56 Route will have most of the alignment in private easements; Thornton may have to acquire some property by eminent domain; some uses of land subject to private easements may be limited in the future; and landowners along potential pipeline routes expressed concern about short-term construction or long-term impact from maintenance crews, is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

68. The Board's determination to deny a 1041 permit to Thornton on Criteria 1 because one person expressed a concern about being exposed to strangers and equipment on private property is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

69. The Board determined to deny a 1041 permit to Thornton on Criteria 1 because it wishes to consider the cumulative impacts of irrigated farmland turning to dryland. The planning director deemed Thornton's application complete without such information. The Board never asked for this information. In addition, the Board found that its "authority is limited to approving the siting and development of pipelines." Exhibit 3, Findings at 13. The Board's findings further explicitly state that "it may not deny Thornton the use and benefit of its water rights . . ." *Id.* Thornton's siting and development of a water transmission line for its water rights does not impact irrigated farmland. The Board does not have authority to regulate the use of Thornton's property in Larimer County for purposes of Thornton's 1041 application.

70. The Board determined to deny a 1041 permit to Thornton on Criteria 1 because "much of the remaining water in WSSC is also owned by municipalities" and "WSSC expects that most of the water will be removed from Larimer County in the future." "The Board's authority is limited to approving the siting and development of pipelines." Exhibit 3, Findings at 13. The Board's findings explicitly state that "it may not deny Thornton the use and benefit of its water rights . . ." *Id.* Thornton's siting and development of a water transmission line for Thornton's water rights does not impact other water or water users in the WSSC system. The Board does not have authority to regulate the siting and development of Thornton's proposal based on what other municipalities might do with their water rights or to lands within Larimer County.

71. The Board determined to deny a 1041 permit to Thornton on Criteria 1 because "a significant reduction in the amount of irrigated farmland is concerning to the Board and conflicts

with the goals of the Master Plan” and “the long-term viability of Larimer County’s agricultural communities, and the economic, cultural and environmental impacts of drying up irrigated farmland are valid considerations under the Master Plan.” The planning director deemed Thornton’s application complete without such information. The Board never asked for this information. “The Board’s authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. The Board’s findings explicitly state that “it may not deny Thornton the use and benefit of its water rights . . .” *Id.* The Board does not have authority to regulate the use of Thornton’s property in Larimer County for purposes of Thornton’s 1041 application. Thornton’s siting and development of a water transmission line does not affect land use and development goals under the Master Plan because the proposal has no impact on irrigated farmland.

72. The Board interprets Criteria 1 to allow it to, due to an application for the siting and construction of an underground domestic water transmission line in a 50-foot permanent easement, regulate the water source to be transmitted in the pipeline and Thornton-owned properties in Larimer County. The Board’s regulatory authority over the location and construction of a pipeline does not grant it authority to regulate or impose conditions on Thornton’s source water or Thornton-owned properties or to mitigate potentialities not related to the location or construction of a pipeline. “The Board’s authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. The Board “may not deny Thornton the use and benefit of its water rights . . .” *Id.*

## **Criteria 2**

73. Criteria 2 requires that Thornton present “reasonable siting and design alternatives or explained why no reasonable alternatives are available.” On its face, Criteria 2 is a general requirement that Thornton provide a reasonable “siting” and “design” alternative. Thornton presented details for two preferred options as well as siting and design alternatives for two other options. Yet, contrary to the general language of Criteria 2, the Board required exacting detail for the alternatives. In addition, the Board points to no competent evidence of the unreasonableness of the siting and design of the pipeline options presented.

74. The Board’s determination to deny a 1041 permit to Thornton on Criteria 2 because Thornton presented a possibility of delivering its water down the Cache la Poudre to its council, a concept rejected by Thornton’s council 4 years before filing its application, was thoroughly explained on both legal and factual bases as to why it was not a reasonable alternative. “The Board’s authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. Delivery of Thornton municipal water down the Cache la Poudre is not location and construction of a pipeline. Such concept does not afford Thornton the use and benefit of its water rights. The Board “may not deny Thornton the use and benefit of its water rights . . .” *Id.*

75. The Board’s determined to deny a 1041 permit to Thornton on Criteria 2 because it “was not convinced that [the DR Route] was the best option.” The Board’s role is to evaluate whether the pipeline routes Thornton presented met the 12 criteria. The criteria are not a license for the Board to opine or speculate on options that are outside the Board’s authority.

76. The Board's determination to deny a 1041 permit to Thornton on Criteria 2 because the DR Route is a high traffic generator; the Thornton project would take 2-5 years to complete in the DR Route; that there would be safety and emergency access conflicts during construction; that there would be no guarantees that the construction would remain in the right-of-way; and that area residents opposed widening Douglas Road, is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

77. The Board's determined to deny a 1041 permit to Thornton on Criteria 2 because the CR56 Route was "imprecise" because it is presented as a corridor and so "prevents meaningful evaluation of the two alternatives" and so "Thornton should identify where the 50' wide permanent easement will be located." The corridor approach was encouraged and approved by Larimer County staff. The Board never stated that the corridor approach was unacceptable. The Board has approved other 1041 applications which used a corridor approach, including the Roundhouse Renewable Energy Transmission Line Project 1041 Permit Application (Plan Number: 18-ZONE2476) for a new overhead single-circuit, 230-kV transmission line approximately 9.5 mile long in a 150 foot wide easement. The applicant there requested and obtained approval of a 300- 500 foot wide corridor.

78. The Board's determined to deny a 1041 permit to Thornton on Criteria 2 because Thornton did not present the "Shields Street alternative" as a reasonable siting alternative. The "Shields Street alternative" is a variation on the public/resident's and Larimer County's push for Thornton to deliver its water down the Cache la Poudre. Thornton thoroughly explained on both legal and factual bases as to why the "Shields Street alternative" was not a reasonable alternative. "The Board's authority is limited to approving the siting and development of pipelines." Exhibit 3, Findings at 13. Delivery of Thornton municipal water down the Cache la Poudre is not siting and development of a pipeline. Such concept does not afford Thornton the use and benefit of its water rights. The Board "may not deny Thornton the use and benefit of its water rights . . ." *Id.*

79. The Board's determined to deny a 1041 permit to Thornton on Criteria 2 by vaguely referencing unidentified "positive attributes" of unreasonable siting and design alternatives outside the Board's authority and speculating that such "positive attributes" could be combined with the routes rejected by the Board to satisfy other unspecified criteria. The Board's role is to evaluate whether the pipeline routes Thornton presented met Criteria 2. Criteria 2 is not a license for the Board to generally speculate about whether some other proposal could satisfy other unspecified criteria.

### **Criteria 3**

80. Criteria 3 requires that Thornton's proposal "conforms with adopted county standards, review criteria and mitigation requirements concerning environmental impacts...." The findings do not allege that Thornton's proposal fails to conform to adopted county standards, review criteria or mitigation requirements concerning environmental impacts. The Board only speculates on and speaks to future possible permitting obligations from other agencies or agreements with other entities. At the same time, the Board acknowledges that Thornton will meet these obligations finding "[t]here is no evidence that Thornton will not seek all necessary permits and permissions and coordinate as needed at the relevant time." Exhibit 3, Findings at 13.

81. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Wetland Areas for exactly the same reason as Larimer County staff determined that Thornton met this portion of the criteria. *See* Larimer County staff reports referenced in Paragraphs 37, 43 and 55.

82. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Wetland Areas because a “Nationwide Permit from the Army Corps of Engineers (“**Corps**”) may be required to confirm that no jurisdictional wetland areas are affected by construction.” This is not a correct recitation of what is required. To confirm jurisdiction of wetland areas, a “Jurisdictional Determination” or confirmation of “No Permit Required” is requested to confirm whether the Corps asserts jurisdiction over wetland areas.

83. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Wetland Areas because a “Nationwide Permit from the Army Corps of Engineers may be required to confirm that no jurisdictional wetland areas are affected by construction.” This is incorrect as pointed out in Paragraph 82, but even if it were correct, immediately preceding this conclusion, the Board found that wetland areas that are affected by the proposal are non-jurisdictional. In addition, the Board found that Thornton proposed to bore under all designated wetland areas. Finally, the Board found “[t]here is no evidence that Thornton will not seek all necessary permits and permissions and coordinate as needed at the relevant time.” Exhibit 3, Findings at 13.

84. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Hazard Areas for exactly the same reason as Larimer County staff determined that Thornton met this portion of the criteria. *See* Larimer County staff reports referenced in Paragraphs 37, 43 and 55.

85. The Board’s determination to deny a 1041 permit to Thornton on Criteria 3 Hazard Areas because there are flood plains that Thornton proposes to bore under is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

86. The Board’s determination to deny a 1041 permit to Thornton on Criteria 3 Wildlife because the Board is not convinced that Thornton’s mitigation plan “including avoidance, seasonal limitations or prohibitions on activities is adequate” is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

87. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Irrigation Facilities because “Thornton may be required to obtain agreements or licenses” associated with construction activities involving irrigation ditches. The Board found “[t]here is no evidence that Thornton will not seek all necessary permits and permissions and coordinate as needed at the relevant time.” Exhibit 3, Findings at 13.

88. The Board’s determination to deny a 1041 permit to Thornton on Criteria 3 Irrigation Facilities because the “Board would seek alternative alignments that eliminate or reduce impacts on irrigation ditches” is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

89. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Air Quality Standards for exactly the same reason as Larimer County staff determined that Thornton met this portion of the criteria. *See* Larimer County staff reports referenced in Paragraphs 37, 43 and 55.

90. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Air Quality Standards because Thornton will need to obtain an air quality permit. The Board found “[t]here is no evidence that Thornton will not seek all necessary permits and permissions and coordinate as needed at the relevant time.” Exhibit 3, Findings at 13.

91. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Water Quality Management Standards for exactly the same reason as Larimer County staff determined that Thornton met this portion of the criteria. *See* Larimer County staff reports referenced in Paragraphs 37, 43 and 55.

92. The Board determined to deny a 1041 permit to Thornton on Criteria 3 Water Quality Management Standards because Thornton will need to obtain a storm water quality permit. The Board found “[t]here is no evidence that Thornton will not seek all necessary permits and permissions and coordinate as needed at the relevant time.” Exhibit 3, Findings at 13.

#### **Criteria 4**

93. Criteria 4 requires that Thornton’s proposal “will not have a significant adverse affect on or will adequately mitigate significant adverse affects on the land on which the proposal is situated and on lands adjacent to the proposal.” The logical meaning of this provision focuses on “permanent” adverse effects rather than temporary effects during the construction. The Board did not identify any permanent “significant adverse [e]ffect” on “the land on which the proposal is situated and on lands adjacent to the proposal” on either of the preferred routes (DR Route or CR56 Route).

94. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[t]here will be adverse impacts to thirty-six properties on the east side of Reservoir 3 and 4. Thornton’s application does not propose a route on the east side of WSSC Reservoir No. 4. On the east side of WSSC Reservoir No. 3 there are eight properties. The Board’s finding implies that construction of an underground pipeline within a purchased easement on private property is an “adverse impact.” There is not competent evidence in the record supporting this conclusion. Any temporary impacts to the eight properties will be adequately mitigated.

95. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[t]here will be adverse impacts on eight homes and private properties along County Road 56 . . . .” Any temporary impacts to these properties will be adequately mitigated.

96. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[t]here will be adverse impacts . . . on eight homes and private property in Eagle Lake.” These are the same properties described in Paragraph 95. Any temporary impacts to the eight properties will be adequately mitigated.

97. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[t]here will be typical construction impacts to vegetation in the project area or adjacent to the pipeline. There will also be impacts on groundwater and drainage in the area of any bore or cut.” The Board’s denial of the 1041 application on Criteria 4 on this basis is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

98. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[t]he pipelines will not be able to be installed solely within County public right-of-way. This will necessitate acquisition of private property which may result in eminent domain proceedings.” Thornton’s application seeks to locate and construct a single pipeline. The Board’s determination to deny a 1041 permit to Thornton on Criteria 4 because Thornton may have to acquire some property by eminent domain exceeds its jurisdiction and is contrary to law.

99. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[n]eighbors are unclear as to whether Thornton will acquire their property as an easement or as a fee interest.” The record is clear and uncontroverted that Thornton would acquire easements in all areas except where the pump station would be located. The record is clear and uncontroverted that the landowner where the pump station would be located is aware that Thornton seeks to acquire a fee interest in a portion of that property as well as a temporary construction easement.

100. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[t]here are rattlesnakes in the area of the proposed CR 56 Route. These snakes will likely be driven into adjacent subdivisions as a result of construction.” The Board’s denial of the 1041 application on Criteria 4 is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

101. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[n]oise and visual impacts from the pumphouse are of concern.” Thornton objected to inclusion of the pump station as part of the 1041 application in a June 29, 2018 Statement because of Larimer County’s lack of authority to regulate the pump station under its 1041 regulations. Nevertheless, Thornton demonstrated that the pump station would comply with all Larimer County regulations concerning noise and visual impacts.

102. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[w]ell established trees exist along the east side of Reservoir 4. These trees will be lost or their health threatened as a result of construction. These impacts will significantly impair residents’ quality of life and use of their properties.” Thornton’s application does not propose a route on the east side of WSSC Reservoir No. 4. Zero trees along the east side of WSSC Reservoir No. 4 will be impacted by Thornton’s proposal.

103. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because “[t]he Douglas Road route would require an unreasonably lengthy construction cycle, up to four years, which neighbors of the route testified would cause significant disruption to their homes and daily lives.” There was ample evidence in the record that Thornton was going to take all

reasonable steps to accommodate residents during construction and ensure that safety concerns were addressed. The Board's denial of the 1041 application on Criteria 4 is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

104. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because "[t]raffic detours along this route [DR Route] would funnel additional traffic to some intersections that are already overburdened. The added detour traffic would further degrade the function of these intersections to an unacceptable level." The Board's denial of the 1041 application on Criteria 4 is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

105. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because "the CR 56 route will have a greater detrimental impact on private property because less public right of way is available." The Board's finding implies that construction of an underground pipeline within a purchased easement on private property is "detrimental." The Board's denial of the 1041 application on Criteria 4 is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

106. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because "as the pipeline moves north [on the CR56 Route] from Reservoir No. 4, the Braidwood Neighborhood and Eagle Lake neighborhoods will suffer significant disruption to private property." This is not a finding that Thornton's proposal would have significant adverse affect on the Braidwood or Eagle Lake neighborhoods or that if there were a significant adverse affect Thornton's proposal would not adequately mitigate such affect.

107. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because "[f]urther along this route [CR56 Route], a private property will be bisected by the pipeline between the house and the barn." The uncontroverted evidence is that Thornton expanded its corridor on this property specifically to facilitate an alignment that does not go between the house and barn.

108. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because "[t]he sheer size and uncertainty of the proposed 500' to ¼ mile wide corridor prevents the Board and private property owners from reasonably considering all impacts. This uncertainty is, in itself, a significant impact of this project." The corridor approach was encouraged and approved by Larimer County staff. The Board never stated that the corridor approach was unacceptable. The Board has approved other 1041 applications which used a corridor approach, including the Roundhouse Renewable Energy Transmission Line Project 1041 Permit Application (Plan Number: 18-ZONE2476) for a new overhead single-circuit, 230-kV transmission line approximately 9.5 mile long in a 150 ft wide easement. The applicant there requested and obtained approval of a 300- 500 ft wide corridor.

109. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because Thornton did not propose to use lake taps to tunnel portions of the pipeline under certain reservoirs. The Board made no finding that Thornton's proposal would have significant adverse affect on the Braidwood and Eagle Lake neighborhoods, much less to justify the costs and

inherent risks of lake tap construction. The Board made no finding that if Thornton's proposal would have a significant adverse affect Thornton's proposal would not adequately mitigate such affect without using lake taps. In addition, even assuming that temporary construction impacts are a "significant adverse affect," the Board failed to justify cost and inherent risks of lake tap construction against the mitigation in Thornton's proposal for temporary construction impacts.

110. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because "Thornton's application addresses a single 48" water pipeline, however, two additional pipelines are part of Thornton's overall project plan." Thornton's Decree contemplates a three phase approach to utilizing the water rights decreed therein but does not require Thornton to implement such phases simultaneously or at any particular point in time. Thornton's proposal and "project plan" at issue before the Board is for a single pipeline as stated in the application. The Board speculates that because Thornton's Decree contemplates a three phase approach that Thornton's application for a single pipeline "deprives the Board and public of the opportunity to consider cumulative impacts and the effectiveness of mitigation." The planning director deemed Thornton's application complete without such information. The Board's denial of the 1041 application on Criteria 4 exceeds its jurisdiction, is contrary to law, is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

111. The Board determined to deny a 1041 permit to Thornton on Criteria 4 because "[a]n important factor in Thornton preferring the CR 56 route over the previously preferred Douglas Road route is that Douglas Road may be insufficient for co-location of multiple pipelines." At the direction of Larimer County, Thornton evaluated whether Thornton's pipeline and NISP's pipeline could be co-located in Douglas Road. Thornton presented uncontroverted evidence that Thornton's pipeline and NISP's pipeline could be co-located in Douglas Road. Thornton considered and balanced impacts versus benefits of co-locating Thornton's pipeline and NISP's pipeline in Douglas Road and selected the CR56 Route as a less impactful route to co-locate these two pipelines. However, it remained an option to the Board to permit Thornton's pipeline alone in Douglas Road, or to allow Thornton's pipeline and NISP's pipeline to be co-located in Douglas Road.

## **Criteria 6**

112. Criteria 6 requires that the proposal "will not negatively impact public health and safety." The Board stated that Thornton's proposal did not meet Criteria 6. The Board provided no verbal rationale as to why Thornton's proposal did not meet Criteria 6. There is no competent evidence of any permanent negative impacts on either the DR Route or the CR56 Route.

113. There was ample evidence in the record that Thornton was going to take all reasonable steps to accommodate residents during construction and ensure that public health and safety concerns were addressed. The Board's written determination to deny a 1041 permit to Thornton on Criteria 6 because residents adjacent to Douglas Road spoke of safety concerns related to limited access from their neighborhood and a potential delay of emergency services is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

114. The Board's written determination to deny a 1041 permit to Thornton on Criteria 6 because one person expressed a concern about being exposed to strangers and equipment on private property is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

115. The Board's written determination does not find or conclude that Thornton did not meet Criteria 6 for the CR56 Route.

### **Criteria 10**

116. Criteria 10 requires that the "benefits of the proposed development outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development."

117. The Board's findings explicitly state that the "benefits of Thornton's proposal are also significant, as clean and sufficient water supply is of critical importance." Exhibit 3, Findings at 12.

118. The Board did not find that Thornton's proposal would result in the losses of any natural resources.

119. The Board's assertion that Thornton purchased approximately 21,000 acres in Larimer County is not supported by competent evidence. Thornton purchased 1,766 acres of land in Larimer County. Thornton currently holds 1,590 acres in Larimer County. To the extent the Board determined that Thornton's proposal would cause significant reduction to the productivity of agricultural lands in Larimer County as a whole, the Board's denial is not supported by competent evidence.

120. To the extent the Board determined to deny a 1041 permit to Thornton on Criteria 10 because it believes Thornton's proposal will cause significant reduction in the productivity of Thornton owned properties within Larimer County, "[t]he Board's authority is limited to approving the siting and development of pipelines." Exhibit 3, Findings at 12. In addition, the Board recognizes that "it may not deny Thornton the use and benefit of its water rights . . ." *Id.* The Board does not have authority to regulate the use of Thornton's land or water rights in Larimer County for purposes of Thornton's 1041 application.

121. The Board determined to deny a 1041 permit to Thornton on Criteria 10 because "Thornton's proposal will cause significant reduction in the productivity of agricultural lands within Larimer County." Larimer County's 1041 regulation LUC 14.4.J., is for the siting and development of domestic water transmission lines in certain sized easements. "The Board's authority is limited to approving the siting and development of pipelines." Exhibit 3, Findings at 13. The undisputed evidence before the Board is that the impact to productivity of agricultural lands due to the location and construction of Thornton's proposal is limited to the area of the temporary and permanent easement. The undisputed evidence before the Board is that such impacts are temporary. The undisputed evidence before the Board is that any temporary impacts caused by Thornton's proposal to affected landowners will be compensated for and that once

construction is complete, the land over the pipeline will be restored and landowners can continue to use such land for agricultural purposes.

122. The Board interprets Criteria 10 to allow it to, due to the siting and construction of an underground domestic water transmission line in a 50-foot permanent easement, go beyond the temporary physical impacts on agricultural lands caused by construction activity and instead consider whether the water source to be transmitted in the pipeline may potentially cause a reduction of productivity of Thornton-owned properties in Larimer County. “The Board’s authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. In addition, the Board recognizes that “it may not deny Thornton the use and benefit of its water rights . . .”. *Id.* The Board’s regulatory authority over the location and construction of a pipeline does not grant it authority to regulate or impose conditions on Thornton’s source water or Thornton-owned properties.

123. The Board interprets Criteria 10 to allow it to, due to the siting and construction of an underground domestic water transmission line in a 50-foot permanent easement, go beyond addressing mitigation for temporary physical impacts on agricultural lands caused by construction activity and instead, as the result of the water source to be transmitted in the pipeline, require mitigation for economic, cultural and social consequences of a potential reduction of productivity of Thornton-owned properties. “The Board’s authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. In addition, the Board recognizes that “it may not deny Thornton the use and benefit of its water rights . . .”. *Id.* The Board’s regulatory authority over the location and construction of a pipeline does not grant it authority to regulate or impose conditions on Thornton’s source water or Thornton-owned properties or to mitigate supposed issues not related to the location or construction of a pipeline.

124. Thornton’s Decree sets forth the terms and conditions related to Thornton’s obligations regarding its use of agricultural lands within Larimer County. Thornton’s Decree specifically approved a change to Thornton’s agricultural water to be used for municipal use, and requires that for Thornton to use this water, Thornton-owned lands must be revegetated under stringent requirements or put into other non-irrigated use. “The Board’s authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. The Board has no authority to alter the terms and conditions of Thornton’s Decree.

## **Criteria 11**

125. Criteria 11 requires that the “proposal demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse affects and the benefits achieved by such mitigation.” There is no competent evidence in the record of any permanent, adverse effects of Thornton’s proposal. Consequently, the balance necessarily strikes in Thornton’s favor on this criteria before even considering the costs of mitigation.

126. The Board’s reference to an undefined “improved alignment” and “other alternative routes” are thinly veiled references to the Board’s belief that it can require that Thornton use the Cache la Poudre River as a conduit to transport its water and somehow pick it up below Fort Collins, rather than address the siting and development of a pipeline, which is the issue before the Board in Thornton’s 1041 permit application. “The Board’s authority is limited

to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. Delivery of Thornton municipal water down the Cache la Poudre is not location and construction of a pipeline. Such concept does not afford Thornton the use and benefit of its water rights. The Board “may not deny Thornton the use and benefit of its water rights . . .”. *Id.*

127. The Board found that “[t]he benefits of Thornton’s proposal are also significant, *as clean and sufficient water supply is of critical importance.*” Exhibit 3, Findings at 12. The Board’s finding that “there would be less degradation of the water through Fort Collins than through the Denver metro area is not supported by competent evidence. The Board’s finding that “there would be less degradation of the water through Fort Collins . . .” implies that, if the Board could require Thornton to use the Cache la Poudre River as a conduit to transport its water and somehow pick it up below Fort Collins, as opposed to delivering it via pipeline from WSSC Reservoir No. 4, there would be degradation to what the Board just found to be Thornton’s critically important clean water source. Requiring Thornton to purposefully degrade its water quality would deny Thornton the use and benefit of its water rights. The Board “may not deny Thornton the use and benefit of its water rights . . .”. Exhibit 3, Findings at 13.

128. The Board does not have authority to require that Thornton deliver its water down the Cache la Poudre. The Board’s “authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. Moreover, Thornton thoroughly explained on both legal and factual bases as to why this idea is not a reasonable alternative to a pipeline.

129. The Board denied the 1041 application on Criteria 11 because it determined that the *cost to Thornton* of not having a pipeline in Larimer County in order to mitigate no identified adverse affects, much less significant adverse affects, because of the pipeline, *is a reasonable balance* against the *cost to Thornton* to:

- a) try to overcome myriad legal and physical challenges required to deliver its water down the Cache la Poudre River and pick it up below Fort Collins (including required changes to its Decree); and
- b) assuming those issues could be overcome, to then be left with:
  - i) *less water*; and
  - ii) *lower quality water* (with its associated increased treatment costs) than Thornton is currently legally entitled to receive under its Decree.

130. Requiring Thornton to purposefully degrade its water quality denies Thornton the use and benefit of its water rights. The Board “may not deny Thornton the use and benefit of its water rights . . .”. Exhibit 3, Findings at 13. Requiring Thornton to use the Cache la Poudre as a conduit for its municipal water supply as a claimed reasonable balance against locating and constructing a pipeline in Larimer County denies Thornton the right to locate and construct a pipeline in Larimer County. The Board has the power to regulate, but not to prohibit Thornton the right to locate and construct a pipeline in Larimer County.

131. The Board denied the 1041 application on Criteria 11 determining that if Thornton delivered its water down the Cache la Poudre, that Thornton would receive “water of sufficient quality and quantity.” The Board’s “authority is limited to approving the siting and development of pipelines.” Exhibit 3, Findings at 13. The Board “may not deny Thornton the

use and benefit of its water rights . . .”. *Id.* The Board exceeds its authority in substituting its judgment for that of Thornton’s on the sufficiency of the quantity and quality of water to be provided by Thornton to the people of the state.

132. The Board’s determination to deny a 1041 permit to Thornton on Criteria 11 because other unspecified alternative routes may result in fewer adverse impacts to the County which would reduce or equal the costs of mitigating unspecified impacts to the CR56 Route or DR Route is arbitrary and capricious because it is contrary to its own regulations and not supported by competent evidence.

### **The Board’s Misinterpretation and Misapplication of the Act**

133. The Board’s findings, truncating several portions of § 24-65.1-204, C.R.S., state that “components of water facilities ‘shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water systems . . . of adjacent communities;’ and ‘emphasize the most efficient use of water . . . including recycling and reuse of water.’” Larimer County did not adopt site selection of new or major extension of domestic water treatment systems to regulate to which these administrative criteria apply. Consequently, the focus must be on the narrow activity of state interest Larimer County did adopt.

134. The Board adopted a narrow subset being the siting and development of new or extended domestic water transmission lines in certain sized easements, *see* Exhibit 5, LUC 14.4.J.

135. § 24-65.1-204(1)(a), C.R.S. provides: “new domestic water . . . systems shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water. . . systems of adjacent communities.” This statutory administration criteria does not apply to Larimer County’s LUC 14.4.J. “The Board’s authority is limited to approving the siting and development of pipelines.” To the extent that the Board is asserting jurisdiction over “the proper utilization of existing treatment plants” or “orderly development of . . . systems of adjacent communities”, through Thornton’s pipeline application, the Board exceeds its jurisdiction.

136. § 24-65.1-204(8), C.R.S. provides: “Municipal . . . water projects shall emphasize the most efficient use of water, including to the extent permissible under existing law, the recycling and reuse of water.” This statutory administration criteria does not apply to Larimer County’s LUC 14.4.J. “The Board’s authority is limited to approving the siting and development of pipelines.” To the extent that the Board is asserting jurisdiction over Thornton’s water system, through Thornton’s pipeline application, the Board exceeds its jurisdiction.

### **The Board Exceeded its 1041 Authority/Jurisdiction**

137. The Act prohibits the diminishment or the enhancement of the rights of property owners.

138. The Act prohibits modifying or amending existing laws or court decrees with respect to the determination and administration of water rights.

139. The Act requires regulations to be promulgated that relate to the specific activities of state interest implemented.

140. Throughout the process, the Planning Commission, Board and public focused heavily on demanding that Thornton deliver its water down the Cache la Poudre River or down the Larimer County Canal. The Board considered that it had the authority to require that Thornton be required to send its water down the Cache la Poudre river rather than deliver it by pipeline through Larimer County. The Board used this belief as a basis to deny Thornton's 1041 application. The Board's denial on this basis unlawfully: 1) diminishes Thornton's property rights and enhances the property of others under the Act; and 2) modifies or amends existing laws or court decrees with respect to the determination and administration of water rights under the Act. Moreover, the Board's interpretation of its regulations to allow it such authority is unlawful because such regulations are not included in or even rationally related to the specific activity of state interest adopted by the Board under the Act, the siting and development of water pipelines. The Board's denial of Thornton's 1041 application on this basis exceeded its authority and jurisdiction under the Act and its own regulations.

141. The Board determined to deny a 1041 permit to Thornton because of concerns related to the impacts of irrigated farmland turning to dryland based on either Thornton's use of its own water rights and property or other municipalities' use of their water rights or property. The Board's denial on this basis unlawfully: 1) diminishes Thornton's property rights and enhances the rights of others under the Act; and 2) modifies or amends existing laws or court decrees with respect to the determination and administration of water rights under the Act. Moreover, the Board's interpretation of its regulations to allow it such authority is unlawful because such regulations are not included in or even rationally related to the specific activity of state interest adopted by the Board under the Act, the siting and development of water pipelines. The Board's denial of Thornton's 1041 application on this basis exceeded its authority and jurisdiction under the Act and its own regulations.

142. The Board determined to deny a 1041 permit to Thornton because Thornton may have to acquire some property by eminent domain. The Board's denial on this basis unlawfully diminishes Thornton's property rights and enhances the rights of others under the Act. Moreover, the Board's interpretation of its regulations to allow it the authority to deny the power of eminent domain is unlawful because such regulations are not included in or even rationally related to the specific activity of state interest adopted by the Board under the Act, the siting and development of water pipelines. The Board's denial of Thornton's 1041 application on this basis exceeded its authority and jurisdiction under the Act and its own regulations.

143. The Board determined to deny a 1041 permit to Thornton because Thornton's Decree contemplates a three phase approach to utilizing the water rights decreed. The Board determined that because the Decree contemplates a three phase approach that Thornton's application for a single pipeline "deprives the Board and public of the opportunity to consider cumulative impacts and the effectiveness of mitigation." The Board's interpretation of its

regulations to allow it the authority to require Thornton to bring more than the single pipeline proposal before the Board is unlawful because such regulations are not included in or even rationally related to the specific activity of state interest adopted by the Board under the Act, the siting and development of water pipelines. The Board's denial of Thornton's 1041 application on this basis exceeded its authority and jurisdiction under the Act and its own regulations.

144. The Board determined to deny a 1041 permit to Thornton because, over Thornton's objection, it considered the pump station to be a required part of Thornton's 1041 application and found that "[n]oise and visual impacts from the pumphouse are of concern." The Board's denial on this basis unlawfully diminishes Thornton's property rights under the Act. Moreover, the Board's interpretation of its regulations to allow it such authority is erroneous. The Board's denial of Thornton's 1041 application on this basis exceeded its authority and jurisdiction under the Act and its own regulations.

**FIRST CLAIM FOR RELIEF**  
**(Judicial Review under C.R.C.P. 106(a)(4): Abuse of Discretion)**

145. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

146. The request for a pipeline and the approval of a 1041 Permit are all judicial or quasi-judicial actions by the Board.

147. The Board failed to follow its own regulations in denying the 1041 application and failed to rely on competent evidence. Therefore, it acted arbitrarily and capriciously.

148. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106. Moreover, given the extraordinary information provided to the Board and the passage of nearly a year, Thornton would suffer substantial prejudice if this matter was remanded for the Board to consider routes other than the either the DR Route or the CR56 Route, for which exhaustive and exacting information has been provided, for the siting and development of Thornton's proposal. Accordingly, Thornton asks this court to overturn Larimer County's decision and, either itself approve or require that the Board approve either the DR Route or the CR56 Route for the siting and development of Thornton's proposal.

**SECOND CLAIM FOR RELIEF**  
**(Judicial Review under C.R.C.P. 106(a)(4): Exceeding Jurisdiction)**

149. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

150. The Board made demands that fell outside of the authority granted by the 1041 Regulations.

151. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106. Moreover, given the extraordinary information provided to the Board and the passage of nearly a year, Thornton would suffer substantial prejudice if this matter was remanded for the Board to consider routes other than the either the DR Route or the CR56 Route, for which exhaustive and exacting information has been provided, for the siting and development of Thornton's proposal. Accordingly, Thornton asks this court to overturn Larimer County's decision and, either itself approve or require that the Board approve either the DR Route or the CR56 Route for the siting and development of Thornton's proposal.

**THIRD CLAIM FOR RELIEF**

**(Judicial Review under C.R.C.P. 106(a)(4): Abused its Discretion as to a Down the Cache la Poudre River Alternative)**

152. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

153. The Board misconstrued its own regulations by including a down the Cache la Poudre alternative in the 1041 hearing process and, therefore, acted arbitrarily and capriciously.

154. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**FOURTH CLAIM FOR RELIEF**

**(Judicial Review under C.R.C.P. 106(a)(4): Exceeding Jurisdiction as a Down the Cache la Poudre River Alternative)**

155. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

156. The Board lacked authority to review a down the Cache la Poudre alternative as part of the 1041.

157. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**FIFTH CLAIM FOR RELIEF**

**(Judicial Review under C.R.C.P. 106(a)(4): Abused its Discretion to try to Regulate Thornton's or Other Municipalities' Use of Water Rights or Property in Larimer County)**

158. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

159. The Board misconstrued its own regulations determining it can regulate Thornton's or other municipalities' use of water rights or property in Larimer County through

Thornton's 1041 application to site and develop a water pipeline and, therefore, acted arbitrarily and capriciously.

160. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**SIXTH CLAIM FOR RELIEF**

**(Judicial Review under C.R.C.P. 106(a)(4): Exceeding Jurisdiction to try to Regulate Thornton's or Other Municipalities' Use of Water Rights or Property in Larimer County)**

161. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

162. The Board lacked authority to determine it can regulate Thornton's or other municipalities' use of water rights or property in Larimer County through Thornton's 1041 application to site and develop a water pipeline.

163. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**SEVENTH CLAIM FOR RELIEF**

**(Judicial Review under C.R.C.P. 106(a)(4): Abused its Discretion to Require Thornton to Bring Forth Possible Future Pipelines as Part of its 1041 Application)**

164. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

165. The Board misconstrued its own regulations determining it can require Thornton to bring forth possible future pipeline proposals as part of its 1041 application for a single pipeline and, therefore, acted arbitrarily and capriciously.

166. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**EIGHTH CLAIM FOR RELIEF**

**(Judicial Review under C.R.C.P. 106(a)(4): Exceeding Jurisdiction to Require Thornton to Bring Forth Possible Future Pipelines as Part of its 1041 Application)**

167. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

168. The Board lacked authority to determine it can require Thornton to bring forth possible future pipeline proposals as part of its 1041 application for a single pipeline.

169. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**NINTH CLAIM FOR RELIEF**  
**(Judicial Review under C.R.C.P. 106(a)(4): Abused its Discretion to deny Thornton the Power of Eminent Domain)**

170. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

171. The Board misconstrued its own regulations determining it can deny Thornton's right to exercise the power of eminent domain through Thornton's 1041 application to site and develop a water pipeline and, therefore, acted arbitrarily and capriciously.

172. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**TENTH CLAIM FOR RELIEF**  
**(Judicial Review under C.R.C.P. 106(a)(4): Exceeding Jurisdiction to deny Thornton the Power of Eminent Domain)**

173. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

174. The Board lacked authority to determine that because Thornton might exercise its power of eminent domain it can deny Thornton's 1041 application to site and develop a water pipeline.

175. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**ELEVENTH CLAIM FOR RELIEF**  
**(Judicial Review under C.R.C.P. 106(a)(4): Abused its Discretion as to The Pump Station)**

176. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

177. The Board misconstrued its own regulations by including the pump station in the 1041 application process and, therefore, acted arbitrarily and capriciously. Furthermore, assuming arguendo that the pump station could be considered under the 1041 regulations, the basis for its denial lacks competent evidence.

178. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**TWELFTH CLAIM FOR RELIEF**  
**(Judicial Review under C.R.C.P. 106(a)(4): Exceeding Jurisdiction as to The Pump Station)**

179. Thornton incorporates into this claim for relief all of the allegations made elsewhere in this Complaint.

180. The Board lacked authority to review the pump station as part of the 1041.

181. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to relief under Rule 106.

**THIRTEENTH CLAIM FOR RELIEF**  
**(Declaratory Judgment pursuant §13-51-101 C.R.S. et seq. and C.R.C.P. 57; Colo. Const. Art. III)**

182. Thornton incorporates into this claim for relief all of the allegations in the preceding paragraphs.

183. The Board misconstrued its criteria and the scope of its powers under the 1041 Act in denying Thornton's 1041 application.

184. Thornton is entitled to the Court's determinations and declarations that Thornton complied with the 1041 criteria. A ruling from the court will resolve a current dispute.

185. Thornton has no other plain, speedy and adequate remedy otherwise provided by law; therefore, Thornton is entitled to declaratory relief.

WHEREFORE, Thornton respectfully request that the Court grant the following relief:

A. Find and declare that the Larimer County Board of County Commissioners acted arbitrarily and capriciously in denying Thornton's request for a 1041 permit to construct either the DR Route or the CR56 Route, for which exhaustive and exacting information has been provided, for the siting and development of Thornton's proposal;

B. Find and declare that the Larimer County Board of County Commissioners exceeded its authority in denying Thornton's request for a 1041 permit to construct either the DR Route or the CR56 Route, for which exhaustive and exacting information has been provided, for the siting and development of Thornton's proposal;

C. Find and declare that the Larimer County Board of County Commissioners acted arbitrarily and capriciously in ruling that it has authority to require a down the Cache la Poudre alternative in the 1041 hearing process;

D. Find and declare that the Larimer County Board of County Commissioners exceeded its jurisdiction in ruling that it has authority to require a down the Cache la Poudre alternative as part of Thornton's 1041 application;

E. Find and declare that the Larimer County Board of County Commissioners acted arbitrarily and capriciously in ruling that it can regulate Thornton's or other municipalities' use of water rights or property in Larimer County through Thornton's 1041 application;

F. Find and declare that the Larimer County Board of County Commissioners exceeded its jurisdiction in ruling that it can regulate Thornton's or other municipalities' use of water rights or property in Larimer County through Thornton's 1041 application;

G. Find and declare that the Larimer County Board of County Commissioners acted arbitrarily and capriciously in ruling that it could require Thornton to bring forth possible future pipeline proposals as part of its 1041 application for a single pipeline;

H. Find and declare that the Larimer County Board of County Commissioners exceeded its jurisdiction in ruling that that it could require Thornton to bring forth possible future pipeline proposals as part of its 1041 application for a single;

I. Find and declare that the Larimer County Board of County Commissioners acted arbitrarily and capriciously in ruling that it can deny Thornton's 1041 application because Thornton may have to exercise its power of eminent domain;

J. Find and declare that the Larimer County Board of County Commissioners exceeded its jurisdiction in ruling that that it can deny Thornton's 1041 application because Thornton may have to exercise its power of eminent domain;

K. Find and declare that the Larimer County Board of County Commissioners acted arbitrarily and capriciously in ruling that Thornton could not construct a pump station;

L. Find and declare that the Larimer County Board of County Commissioners exceeded its jurisdiction in ruling that Thornton could not construct a pump station;

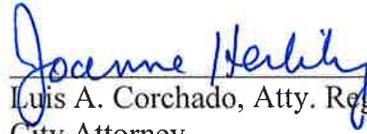
M. Award Thornton its reasonable attorneys' fees and costs; and

N. Grant such other and further relief as the Court may deem just and proper.

WHEREFORE, Thornton respectfully requests that this Court enter judgment in its favor as requested above and against Defendants.

Dated: April 16<sup>th</sup>, 2019

Respectfully submitted,



Luis A. Corchado, Atty. Reg. #17765  
City Attorney

Joanne Herlihy, Atty. Reg. #17838  
Senior Assistant City Attorney

**ATTORNEYS FOR PLAINTIFF CITY  
OF THORNTON, COLORADO**