

# EXHIBIT B

Larimer County, Colorado, District Court Larimer County Justice Center 201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 494-3500	DATE FILED: October 12, 2020 12:18 PM FILING OFFICE: DISTRICT CLERK CASE NUMBER: 19CV30339
CITY OF THORNTON, a home rule municipality of the State of Colorado,  Plaintiffs,  v.  BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARIMER, State of Colorado; JOHN KEFALAS, in his official capacity; STEVE JOHSON, in his official capacity, and TOM DONNELLY, in his official capacity,  Defendants.	Court Use Only
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<b>ANSWER</b>	

Defendants by their undersigned attorneys answer as follows Plaintiff's Complaint for Judicial Review Under C.R.C.P. 106 and Declaratory Relief.

(Note: Plaintiff's Introduction (Paragraph 1 and 2) sets out its position and is largely argument. Notwithstanding, Defendants use best efforts to address the factual allegations set out in the Introduction.)

1. Deny Thornton's three proposed pipeline routes were reasonable inasmuch as such routes were determined not to meet each of the 1041 review criteria. Admit the remainder of the allegations.

2. Admit:

- a. Plaintiff selected County Road 56 as its preferred pipeline route.
- b. The CR 56 Route was an option Thornton had previously identified in its application (the north route) as a pipeline alternative that could be installed in public right-of-way or private easements.
- c. Thornton additionally proposed the Douglas Road Route was still a viable option that the Board could choose.
- d. Larimer County's staff recommended approval of the CR56 Route.
- e. After four public hearing sessions, the Board denied Thornton's 1041 application finding that Thornton did not meet 7 of the 12 criteria.
- f. Thornton's application included more than 1,700 pages.
- g. Thornton's application included 7 public hearings over 8 months, and an additional public vetting process that occurred over three months with 2 open houses, 3 webinars and 5 working group meetings.
- h. The Board found "The benefits of Thornton's proposal are also significant, as clean and sufficient water supply is of critical importance."
- i. The Board's authority is specified in C.R.S. 24-65.1-501 and Section 14 of the Larimer Land Use Code.
- j. The Findings and Resolution Denying the Thornton Water Project 1041 Permit ("Findings") at page Thirteen states: ". . . the Board's authority is limited to approving the siting and development of pipelines."

Deny:

- a. 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.
- b. All allegations in Paragraph 2 inconsistent with those Defendants expressly admit above.

3. Admit.

4. Admit.

5. Admit.

6. Admit.

7. Admit.

8. Without knowledge sufficient to know the truth of the following and therefore deny same:

9. Admit.

10. Admit.

11. The Decree speaks for itself. Defendants deny any allegations, conclusions, characterizations, interpretations or constructions inconsistent with the express provisions of the Decree.

12. Admit:

a. 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.

b. Of Thornton's remaining 1,590 acres, roughly 50% is still in irrigated agriculture.

c. 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.

Deny:

As to the following allegation: "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," the Decree speaks for itself. Defendants deny any allegations, conclusions, characterizations, interpretations or constructions inconsistent with the express provisions of the Decree.

13. Admit:

a. 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.

Without knowledge sufficient to know the truth of the following and therefore deny same:

a. 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.

14. Admit.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Admit.

20. Admit.

21. Admit.

22. Admit.

23. Admit.

24. Admit with the exception that the Board as a quasi-judicial body does not comment on aspects of a proposed project until the project is brought before it at a publicly advertised hearing.

25. Admit.

26. Admit:

a. Area residents expressed concern about locating a pipeline in Douglas Road between WSSC Reservoir 4 and Turnberry Road.

b. 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.

c. Larimer County staff made no revisions 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.

d. Larimer County staff stated that locating the pipeline in Larimer County right-of-way would be considered at some locations.

Deny:

All allegations in Paragraph 26 not admitted above.

27. Admit:

a. Thornton completed an Alternative Configurations Analysis-WSSC Reservoir Area to Larimer County Road 9 in October 2017.

b. 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).

c. Thornton divided the ten alternative configurations considered in the analysis into four general sectors: North, West, Central and South.

d. Based on this analysis, Thornton identified, and presented to the Board, four alternatives for siting the pipeline. The four siting alternatives resulting from the analysis were the South 2 and South 4 routes, the West 2 route and the Central route.

e. 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.

f. The east-west segment of the Alternative D route noted in Paragraph 25 corresponds to the central route in the October 2017 analysis.

Deny:

All allegations in Paragraph 27 not admitted above.

28. Admit:

a. Thornton selected a preferred alternative from the October 2017 analysis for inclusion in the application.

b. 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.

c. The route proceeds on Thornton-owned property to County Road 56, and then along County Road 56 to County Road 9.

d. The DR Route was not the least expensive route, but was selected by Thornton because Thornton believed it best met evaluation criteria taking into consideration impacts to among other things, residential properties, traffic and environment.

Deny:

All allegations in Paragraph 28 not admitted above.

29. Admit.

30. Admit.

31. Admit.

32. Admit.

33. Admit.

34. Admit.

35. Admit.

36. Admit.

37. Admit.

38. Admit.

39. The record of the hearing speaks for itself. Defendants deny any characterization, interpretation or construction of the testimony inconsistent with the record.

40. Deny.

41. The record of the hearing speaks for itself. Defendants deny any characterization, interpretation or construction of the testimony inconsistent with the record.

42. Admit the Planning Commission voted 4-2 to recommend the Board deny Thornton's application.

As to the Planning Commission's decision, the record of the hearing speaks for itself. Defendants deny any characterization, interpretation or construction of the decision inconsistent with the record.

43. Admit.

44. Admit.

45. Admit.

46. Admit.

47. The record of the hearing speaks for itself. Defendants deny any characterization, interpretation or construction of the testimony inconsistent with the record.

48. Admit:

a. At the conclusion of the August 1, 2018 hearing the Board continued the hearing to allow County staff and Thornton time to provide additional information.

b. The Board directed County staff to engage in additional public outreach to gather information through public meetings or open houses.

c. The Board tabled the application to December 17, 2018 hearing.

Deny:

All allegations in Paragraph 48 not admitted above.

49. Admit:

a. Larimer County staff assembled a working group to review the project.

b. The working group process was three months with 5 working group meetings, 3 webinars and 2 open houses.

c. Thornton 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.

Deny:

All allegations in Paragraph 49 not admitted above.

50. Admit.

51. Admit.

52. Admit:

a. Thornton evaluated whether Thornton's pipeline and NISP's pipeline could be co-located in Douglas Road.

b. Thornton concluded that Thornton's pipeline and NISP's pipeline could be co-located in Douglas Road.

c. 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.

d. 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.

e. Thornton concluded 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.

f. Thornton selected the CR56 Route as its preferred alternative as a less impactful route to co-locate these two pipelines.

g. 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.

Deny:

All allegations in Paragraph 50 not admitted above.



53. Admit:

Thornton contended that 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.

Deny:

All allegations in Paragraph 51 not admitted above.

54. Admit.

55. Admit.

56. Admit.

57. The record of the hearing speaks for itself. Defendants deny any characterization, interpretation or construction of the testimony inconsistent with the record.

58. Deny.

59. Admit.

60. Admit.

61. Deny.

62. Admit.

63. Admit.

64. Deny.

65. Deny.

66. Admit.

a. The Board approved the Roundhouse Renewable Energy Transmission Line Project 1041 Permit Application for a new overhead single-circuit, 230-kv transmission line approximately 9.5 miles long in a 150 foot-wide easement.

Deny:

a. The Roundhouse approval is part of the record for the Thornton Project.

b. The Roundhouse application had been presented to and approved by the Board at the time the Board ruled on Thornton's 1041 application.

c. All allegations in Paragraph 66 not admitted above.

67. Deny.

68. Deny.

69. The record speaks for itself. Defendants deny any characterization, interpretation, or construction inconsistent with the express provisions of the record.

Defendants deny that 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 record speaks for itself. Defendants deny any characterization, interpretation or construction inconsistent with the express provisions of the record.

Defendants deny 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 record speaks for itself. Defendants deny any characterization, interpretation or construction inconsistent with the express provisions of the record.

Defendants deny 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.

72. Deny.

73. Admit:

a. Criteria 2 requires that Thornton present "reasonable siting and design alternatives or explained why no reasonable alternatives are available."

b. Thornton presented details for two preferred options as well as siting and design alternatives for two other options.

Deny:

All allegations in Paragraph 73 inconsistent with those Defendants expressly admit above.

74. Deny.

75. Admit:

a. The Board denied a 1041 permit to Thornton based in part on Criteria 2 because the Board was not convinced the DR Route was the best option.

Deny:

All allegations in Paragraph 75 not admitted above.

76. Deny.

77. Admit:

a. The Board denied a 1041 permit to Thornton based in part on Criteria because the CR 56 Route was imprecise and prevented a meaningful evaluation of the two alternatives.

Deny:

a. The Roundhouse approval is part of the record for the Thornton Project.

b. The Roundhouse application had been presented to and approved by the Board at the time the Board ruled on Thornton's 1041 application.

c. All allegations in Paragraph 76 not admitted above.

78. Defendants admit they expressed interest in the Shields Street alternative during Thornton's 1041 hearing.

Defendants deny the remainder of the allegations in Paragraph 78.

79. Deny.

80. Deny.

81. Deny.

82. Deny.

83. Deny.

84. Deny.

85. Deny.

86. Deny.

87. Admit.

88. Deny.

89. Deny.

90. Deny.

91. Deny.

92. Deny.

93. Admit Criteria 4 requires that Thornton’s proposal “will not have a significant adverse affect on or will adequately mitigate significant adverse effects on the land on which the proposal is situated and on lands adjacent to the proposal.

Deny the remainder of the allegations of Paragraph 93.

94. Deny.

95. Admit the Board found “[t]here will be adverse impacts on eight homes and private properties along County Road 56 . . . .”

Deny the remainder of the allegations of Paragraph 95.

96. Admit the Board found “[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.”.

Deny the remainder of the allegations of Paragraph 96.

97. Admit the Board found “[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.”.

Deny the remainder of the allegations of Paragraph 97.

98. Admit the Board found “[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.”

Deny the remainder of the allegations of Paragraph 98.

99. Admit the Board found “[n]eighbors are unclear as to whether Thornton will acquire their property as an easement or as a fee interest.”

Deny the remainder of the allegations of Paragraph 99.

100. Admit the Board found “[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.”

Deny the remainder of the allegations of Paragraph 100.

101. Admit the Board found “[n]oise and visual impacts from the pumphouse are of concern” and that Thornton objected to inclusion of the pump station as part of the 1041 application in a June 29, 2018 Statement.

Deny the remainder of the allegations of Paragraph 101.

102. Admit the Board found established trees on the east side of Reservoir 4 would be lost or threatened by construction impairing residents’ quality of life and use of their properties.

Deny the remainder of the allegations of Paragraph 102.

103. Admit the Board found the Douglas Road route would require an unreasonable length of construction which residents testified would be disruptive.

Deny the remainder of the allegations of Paragraph 103.

104. Admit the Board found “[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.”

Deny the remainder of the allegations of Paragraph 104.

105. Admit the Board found “the CR 56 route will have a greater detrimental impact on private property because less public right of way is available.”

Deny the remainder of the allegations of Paragraph 105.

106. Admit the Board found “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.”

Deny the remainder of the allegations of Paragraph 106.

107. Admit the Board found “[f]urther along this route [CR56 Route], a private property will be bisected by the pipeline between the house and the barn.”

Deny the remainder of the allegations.

108. Admit the Board found “[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.” Admit the Board approved the Roundhouse project which is not part of the record and was decided after Thornton.

Deny the remainder of the allegations of Paragraph 108.

109. Deny.

110. Deny.

111. Deny.

112. Admit Criteria 6 requires that the proposal “will not negatively impact public health and safety.” Deny the remainder of the allegations of Paragraph 112.

113. Deny.

114. Deny.

115. Deny.

116. Admit.

117. Admit.

118. Deny.

119. Deny.

120. Admit the Board found “it may not deny Thornton the use and benefit of its water rights....”

Deny the remainder of the allegations of Paragraph 120.

121. Admit the Board found Thornton’s proposal will cause significant reduction in the productivity of agricultural lands within Larimer County.

Deny the remainder of the allegations of Paragraph 121.

122. Admit the Board found “the Board’s authority is limited to approving the siting and development of pipelines” and “it may not deny Thornton the use and benefit of its water rights. . . .”

Deny the remainder of the allegations of Paragraph 122.

123. Admit the Board found “the Board’s authority is limited to approving the siting and development of pipelines” and “it may not deny Thornton the use and benefit of its water rights. . . .”

Deny the remainder of the allegations of Paragraph 123.

124. Admit the Board found “the Board’s authority is limited to approving the siting and development of pipelines.” As to the water decree, the decree speaks for itself and Defendants deny any characterization, interpretation or construction inconsistent with the decree.

Deny the remainder of the allegations of Paragraph 124.

125. Admit 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.”

Deny the remainder of the allegations of Paragraph 125.

126. Admit the Board found “The Board’s authority is limited to approving the siting and development of pipelines” and the Board “may not deny Thornton the use and benefit of its water rights.”

Deny the remainder of the allegations of Paragraph 126.

127. Admit the Board found “[t]he benefits of Thornton’s proposal are also significant, as clean and sufficient water supply is of critical importance.”

Deny the remainder of the allegations of Paragraph 127.

128. Admit the Board found the Board’s “authority is limited to approving the siting and development of pipelines.”

Deny the remainder of the allegations of Paragraph 128.

129. Deny.

130. Admit the Board found the Board “may not deny Thornton the use and benefit of its water rights.”

Deny the remainder of the allegations of Paragraph 130.

131. Admit the Board found “the Board’s authority is limited to approving the siting and development of pipelines.” And the Board “may not deny Thornton the use and benefit of its water rights . . . .”

Deny the remainder of the allegations of Paragraph 131.

132. Deny.

133. Admit the Board found “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.’”

Deny the remainder of the allegations.

134. Defendants’ 1041 regulations speak for themselves. Defendants deny any characterization, interpretation or construction of the regulations inconsistent with the express terms of such regulations.

135. Admit § 24-65.1-204(1)(a), C.R.S. provides in part: “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.” Admit the Board found “the Board’s authority is limited to approving the siting and development of pipelines.”

Deny the remainder of the allegations of Paragraph 135.

136. Admit § 24-65.1-204(8), C.R.S. provides in part: “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.” Admit the Board found “the Board’s authority is limited to approving the siting and development of pipelines.”

Deny the remainder of the allegations of Paragraph 136.



137. The Act speaks for itself. Defendants deny any characterization, interpretation or construction inconsistent with the express terms of the Act.

138. The Act speaks for itself. Defendants deny any characterization, interpretation or construction inconsistent with the express terms of the Act.

139. The Act speaks for itself. Defendants deny any characterization, interpretation or construction inconsistent with the express terms of the Act.

140. Deny.

141. Deny.

142. Deny.

143. Deny.

144. Admit the Board found “[n]oise and visual impacts from the pumphouse are of concern.”

Deny the remainder of the allegations of Paragraph 144.

145. No response is required.

146. Admit.

147. Deny.

148. Deny.

149. No response is required.

150. Deny.

151. Deny.

152. No response is required.

153. Deny.

154. Deny.

155. No response is required.

- 156. Deny.
- 157. Deny.
- 158. No response is required.
- 159. Deny.
- 160. Deny.
- 161. No response is required.
- 162. Deny.
- 163. Deny.
- 164. No response is required.
- 165. Deny.
- 166. Deny.
- 167. No response is required.
- 168. Deny.
- 169. Deny.
- 170. No response is required.
- 171. Deny.
- 172. Deny.
- 173. No response is required.
- 174. Deny.
- 175. Deny.
- 176. No response is required.
- 177. Deny.

- 178. Deny.
- 179. No response is required.
- 180. Deny.
- 181. Deny.
- 182. No response is required.
- 183. Deny.
- 184. Deny.

**AFFIRMATIVE DEFENSES**

1. The Board of County Commissioners’ decision to deny Thornton’s application for a 1041 permit was quasi-judicial. As such, Thornton’s exclusive remedy is C.R.C.P. 106 and limited to the information and evidence in the record.

2. The Court’s review is deferential in that it must affirm the Board of County Commissioners’ decision if there is any competent evidence in the record supporting the decision.

3. The Court is without authority to substitute its judgment for that of the Board of County Commissioners. If the Court determined the Board has erred, it must remand the case to the Board for reconsideration and correction of those errors.

4. The Board of County Commissioners’ determination that Thornton did not satisfy each of the twelve review criteria is supported by competent evidence when the record is reviewed as a whole.

WHEREFORE, Defendants respectfully request this Court enter judgment affirming their decision.

Dated: June 3, 2019

LARIMER COUNTY ATTORNEY’S OFFICE

By: s/Jeannine S. Haag  
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Attorneys for Defendants

## CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing ANSWER was served using the Colorado Courts E-Filing system this 3<sup>rd</sup> day of June, 2019, which will send notification to the following:

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s/Jennifer D. Infeld