

<p>Larimer County District Court 201 La Porte Ave, Suite 100 Fort Collins, CO 80521</p> <hr/> <p><b>NO PIPE DREAM CORPORATION, SAVE RURAL NOCO CORPORATION, SAVE THE POUFRE</b> <b>Plaintiffs</b></p> <p>v.</p> <p><b>COMMISSIONER TOM DONNELLY, in his official capacity as a Larimer County Commissioners. COMMISSIONER STEVE JOHNSON, in his official capacity as a Larimer County Commissioners. NORTHERN INTEGRATED SUPPLY PROJECT WATER ACTIVITY ENTERPRISE.</b> <b>Defendants.</b></p>	<p style="text-align: center;"><b>COURT USE ONLY</b></p>
<p>Michael Foote Foote Law Firm LLC 357 S. McCaslin Blvd., Suite 200 Louisville, CO 80027 303-519-2183 <a href="mailto:mjbfoote@gmail.com">mjbfoote@gmail.com</a> Counsel for No Pipe Dream Corporation</p> <p>Mike Chiropolos Chiropolos Law 3325 Martin Drive Boulder, CO 80305 <a href="mailto:mike@chiropoloslaw.com">mike@chiropoloslaw.com</a> Counsel for Save Rural NoCo Corporation</p> <p>John M. Barth, Attorney at Law P.O. Box 409 Hygiene, CO 80533 (303) 774-8868 (fax and phone) <a href="mailto:barthlawoffice@gmail.com">barthlawoffice@gmail.com</a> Counsel for Save the Poudre</p>	<p>Case Number:</p> <p>Division</p>

**COMPLAINT FOR DECLARATORY RELIEF UNDER COLO.R.CIV.PRO. 57**

Plaintiffs No Pipe Dream Corporation, Save Rural NoCo Corporation, and Save the Poudre (collectively, “Plaintiffs”) bring this Complaint for Declaratory under Colorado Rule of Civil Procedure 57 against the Defendants Tom Donnelly, in his official capacity as a member of the Larimer County Board of County Commissioners (“Board”) and Steve Johnson, in his official capacity as a member of the Larimer County Board of County Commissioners. This Complaint seeks declaratory rulings that: 1) Commissioners Donnelly and Johnson have publicly displayed unconstitutional bias as supporters and/or endorsers of the Northern Integrated Supply Project (“NISP”); and, 2) Donnelly and Johnson’s bias creates an unconstitutional violation of the Larimer County Land Use Code (“LUC”) and the due process clauses of the Colorado and/or U.S. Constitution with regard to Defendant Northern Integrated Supply Project Water Activity Enterprise’s (“Northern”) 1041 land use application for NISP currently pending before the Board for quasi-judicial determination. Plaintiffs also seek injunctive relief prohibiting Donnelly and Johnson from serving as quasi-judicial officers in any adjudication of NISP on behalf of the County. Defendant Northern Integrated Supply Project Water Activity Enterprise is the applicant seeking 1041 approval for NISP from the County and is being named as a Defendant in this lawsuit pursuant to Colo.R.Civ.Pro. 57(j). In support, Plaintiffs state the following.

#### **NATURE OF THE CASE**

1. This is an action under C.R.C.P. 57 seeking declaratory and injunctive relief.

2. Plaintiffs bring an “as applied” constitutional challenge to Commissioner Donnelly and Johnson’s participation as quasi-judicial officers in any 1041 adjudication of NISP.

### **JURISDICTION AND VENUE**

3. NISP is a proposed water conveyance pipeline and water storage reservoir project to be located, in large part, in unincorporated Larimer County, Colorado.

4. Northern has submitted a 1041 land use application for NISP with Larimer County.

5. The Board of County Commissioners of Larimer County is the sole legal entity authorized to render a quasi-judicial determination on Northern’s NISP 1041 land use application.

6. Tom Donnelly and Steve Johnson presently serve as County Commissioners of Larimer County.

7. Jurisdiction is proper in this Court pursuant C.R.C.P. §57.

8. Venue is proper before this Court pursuant to C.R.C.P. § 98(a) because this is an action affecting real property in Larimer County, Colorado.

9. Plaintiffs have standing to bring these claims because Plaintiffs and/or their members live in close proximity to the proposed project and will be adversely impacted by noise, air pollution, traffic, water pollution, property damage, diminution of property value or loss of appreciation, recreational interests, as well as violations of their due process rights. These injuries are causally connected to Commissioner Donnelly and Johnson’s participation as quasi-judicial officers over the NISP 1041 land use application. The injuries complained of by Plaintiffs can be remedied by an order from

this Court declaring an unconstitutional bias and prohibiting Commissioners Donnelly and Johnson from participating as quasi-judicial officers on NISP proceedings on behalf of the County.

### **THE PARTIES**

10. Defendant Tom Donnelly is a Commissioner on the Larimer County Board of Commissioners, which is the governing body of a political subdivision of the State of Colorado with a principal address at 200 West Oak, Suite 2200, Fort Collins, Colorado.

11. Defendant Steve Johnson is a Commissioner on the Larimer County Board of Commissioners, which is the governing body of a political subdivision of the State of Colorado with a principal address at 200 West Oak, Suite 2200, Fort Collins, Colorado.

12. Pursuant to the Larimer County Land Use Code, the Board is responsible for reviewing and rendering quasi-judicial determinations on 1041 land use applications. LUC §§ 14.8 and 14.10.

13. Northern is the NISP 1041 permit applicant.

14. Plaintiff No Pipe Dream Corporation (“NPD”) is a Colorado Non Profit membership corporation based in Larimer County, Colorado. NPD’s purpose is to protect citizens from the intense adverse impacts of multiple proposed water pipeline and reservoir projects in Larimer County, including but not limited to NISP.

15. Plaintiff Save Rural NoCo Corporation (Save NoCo”) is a Colorado Non Profit membership corporation based in Larimer County, Colorado. Save NoCo’s purpose is to protect existing land, water, and communities in rural northern Colorado from harmful development through research and public education.

16. Save the Poudre (“STP”) is a Colorado Non Profit membership corporation based in Larimer County, Colorado. STP’s purpose is to protect and enhance the Cache la Poudre River in Larimer County, Colorado.

17. Plaintiffs’ members live, own homes, buildings, and/or properties in close proximity to the proposed NISP and would be adversely impacted by construction and operation of NISP and its water conveyance pipelines.

18. Plaintiffs’ members recreate in and along the Cache la Poudre River and would be adversely impacted by the construction and operation of NISP.

19. NISP would adversely impact the Plaintiffs’ members by imposing unwanted noise, traffic, dust, reduced property values and/or diminished home appreciation, recreational harm, and aesthetic injury on the owners and occupants of the properties and/or residents of Larimer County as well as a violation of their procedural due process rights.

#### **STATEMENT OF FACTS AND LAW**

20. The land use law applicable to lands located in unincorporated Larimer County is set forth in the Larimer County Land Use Code (“LUC”). See, [https://library.municode.com/co/larimer\\_county/codes/code\\_of\\_ordinances?nodeId=PTII LAUSCO](https://library.municode.com/co/larimer_county/codes/code_of_ordinances?nodeId=PTII LAUSCO).

21. The LUC requires 1041 land use approval for the construction and operation of water conveyance pipelines, reservoirs, and appurtenances in unincorporated Larimer County. LUC §14.4.J. & K.

22. The LUC grants the Board the sole authority to render quasi-judicial decisions with regard to 1041 land use applications. LUC §§ 14.8 & 14.10.

23. Defendants Donnelly and Johnson presently serve as Commissioners on the Board.

24. For nearly the last 10 years, Defendants Donnelly and Johnson have been public supporters and/or endorsers of NISP.

25. Over at least the past nearly 10 years, Defendants Donnelly and Johnson have attended rallies and provided public testimony in support of NISP at events that were organized by the 1041 permit applicant Northern.

26. Defendants Donnelly and Johnson have made other public statements expressing their support and/or endorsement of NISP in their official capacities.

27. Since at least 2011, Defendants Donnelly and Johnson have allowed Northern to list their names as local government officials that support and/or endorse NISP.

28. In a March 27, 2020 publicly available email, Commissioner Johnson has also displayed bias against Plaintiff Save the Poudre, a long-standing opponent of NISP, by stating that Save the Poudre has “lost ALL credibility with me.”

29. On or about February 14, 2020 Northern filed a 1041 land use application with Larimer County for NISP. Northern’s NISP 1041 land use application is pending before the Board.

30. The Board is the quasi-judicial adjudicator of Northern’s 1041 land use application.

31. The Board has scheduled its first quasi-judicial public hearings on Northern’s NISP 1041 land use application for August 17, 2020, August 24, 2020 and August 31, 2020. The Board has scheduled a decision on the NISP 1041 application for

September 2, 2020.

32. The LUC states that Commissioners must avoid any conflict of interest and that all official actions “must represent unconflicted loyalty to the interest of the citizens of the entire county.” LUC § 2-71.

33. The LUC requires that a Commissioner recuse himself or herself from any quasi-judicial decision if he or she “believe[s] they have a conflict of interest or for any other reason believes that they cannot make a fair and impartial decision.” LUC § 2-67(10).

34. Article XXIX(1)(c) of the Colorado Constitution requires that local governments “avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.”

35. The nearly decade-long public endorsement/support for NISP by Commissioners Donnelly and Johnson has created a justifiable impression among citizens of Larimer County that that Donnelly and Johnson do not have un-conflicted loyalty to the interests of the citizens of the county, they cannot make fair and impartial quasi-judicial decisions with regard to NISP proceedings before the County, and that the public trust has been violated.

36. A quasi-judicial decision must provide for due process and adhere to fundamental principles of fairness. *Churchill v. University of Colorado at Boulder*, 285 P.3d 986, 1006 (Colo. 2012 *en banc*); *see also Canyon Area Residents v. Bd. of Cnty Comm’rs*, 172 P.3d 905, 908 (Colo. App. 2006).

**CLAIM FOR RELIEF**  
(Request for Declaratory and Injunctive Relief )

37. The Plaintiffs incorporate all of the foregoing allegations as if set forth

herein.

38. Plaintiffs bring an “as applied” constitutional challenge under C.R.C.P. 57 to Commissioner Donnelly and Johnson’s participation as quasi-judicial officers in any County proceedings related to NISP. By not recusing themselves, Defendants Donnelly and Johnson fell below the “constitutional floor” for guaranteeing a fair process before a fair tribunal. *City of Manassa v. Ruff*, 235 P.3d 1051, 1057 (Colo. 2010).

39. A judgment or decree by the Court, if rendered or entered on these Rule 57 issues, would end the uncertainty, insecurity, and controversy with respect to the rights, status, or other legal relations between the parties.

40. The Plaintiffs have suffered and will continue to suffer harm as a result of Commissioner Donnelly and Johnson’s participation as quasi-judicial adjudicators of NISP proceedings on behalf of the County.

41. The Plaintiffs have no other plain, speedy, or adequate remedy provided by law.

WHEREFORE, the Plaintiffs respectfully request that this Court:

- a) Declare that: 1) Defendants Donnelly and Johnson have displayed unconstitutional bias in their nearly decade-long public support and/or endorsement of NISP; 2) Defendant Donnelly and Johnson’s bias creates an unconstitutional violation of the LUC and/or due process clauses of the Colorado and/or U.S. Constitution with regard to the NISP quasi-judicial proceedings; and,
- b) Preliminarily enjoin Donnelly and Johnson from participating in any quasi-judicial proceedings related to NISP, pursuant to C.R.C.P. 65(a);
- c) Permanently enjoin Donnelly and Johnson from participating in any quasi-judicial



NISP proceedings on behalf of the County;

d) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 26th day of June 2020.

/s/ John M. Barth  
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**CERTIFICATE OF DELIVERY**

I hereby certify that on this 26th day of June 2020, a true and correct copy of the foregoing **Complaint for Declaratory Relief Under Colo.R.Civ.Pro. 57** was filed via Colorado Courts E-filing System.

/s/ John M. Barth  
John M. Barth