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**By email (ellislk@co.larimer.co.us)**

Leslie Ellis  
Larimer County Community Development  
P.O. Box 1190  
Fort Collins, CO 80522-1190

April 17, 2020

Re: Request for reconsideration of March 18, 2020 completeness determination for Northern Colorado Water Conservancy District, Northern Integrated Supply Project 1041 Application

Ms. Ellis:

On behalf of No Pipe Dream Corporation, Save Rural NoCo, and Save the Poudre, we are writing to ask you to reconsider, and reverse, your March 18, 2020 determination that that the NISP 1041 application is complete. Exhibit 1 hereto. As highlighted below, there are numerous significant deficiencies with Northern Colorado Water Conservancy's District's ("Northern") 1041 application for the Northern Integrated Supply Project ("NISP") as posted by the County at the following website: (<https://www.larimer.org/planning/NISP-1041>). In light of these numerous deficiencies with the application identified herein, we believe your interpretation and/or administration of the Land Use Code ("LUC") and your completeness determination is in error and should be reversed. Thus, we are asking to reconsider and reverse your March 18, 2020 interpretation and determination. LUC §3.5.A. As per LUC §22.2.2.A.1, we also request a 30-day extension of the deadline for appealing your March 18, 2020 completeness determination to the Board of County Commissioners. Also, please provide us with a copy of the appeal form, as referenced in LUC §22.2.2.A.2, and inform us of any applicable appeal application fee in the event you do not reverse your March 18, 2020 interpretation/determination and we are forced to file such an appeal with the Board.

Below, this letter identifies both substantive deficiencies with the application and deficiencies with the documents posted to the County's website.

**Substantive Deficiencies with application**

- 1) The application is incomplete as to the relocation of Highway 287. The relocation of 7 miles of a major federal highway would not occur "but for" the NISP project, so attempting to bifurcate major components of NISP and treat the highway relocation as a separate "CDOT" project would unacceptably leave out major impacts to Larimer County

resources and residents. The relocation of U.S. Highway 287 is part and parcel of NISP, it must be included in the 1041 application.

- The NISP application states “Larimer County in its designation of areas and activities of state interest and associated 1041 permitting process declined to regulate state highways.” A memo included in the application states:

*The County land use code regulates the construction of Glade Reservoir and all appurtenant uses, including appurtenant roads, however U.S. Highway 287 is not an appurtenant use of Glade Reservoir. The County’s land use code does not define “appurtenant” or “appurtenant road,” but “appurtenant” means “annexed to a more important thing” and an “appurtenance” is “something that belongs or is attached to something else.” See Black’s Law Dictionary. A use is the privilege or benefit of using something. See Use, Webster’s Online Dictionary. Together, appurtenant and use refer to the secondary or tertiary benefits derived from the construction of Glade Reservoir. Appurtenant roads at Glade Reservoir will be the roads subordinated to and used for the benefit of Glade Reservoir and recreation at the reservoir. The relocation of U.S. Highway 287 is a one-time consequence of the reservoir’s construction, not an ongoing benefit provided by it. Glade Reservoir will not be “used” to relocate U.S. Highway 287 - rather the highway is an impediment to Glade’s development and must be realigned.*

- The current 1041 regulations do not list “state” or “federal” highways as exemptions from Designated Matters of the State.
- The relocation would have significant impacts on land uses in Larimer County, disturbing up to 145 acres of open land.
- Elevating the highway out of it’s current valley-bottom alignment and turning it up and over a hogback would create significant visual impacts and noise because the topographic screens would be lost and these impacts will significantly degrade quality of life and impact property values. The impacts of increased noise and aesthetics on rural residents must be evaluated.
- U.S. Highway 287 has a high number of motor vehicle accidents each year. The NISP project has forced CDOT to identify a new alignment (and CDOT has selected a preferred alignment) that involved taking a straight alignment along a valley bottom and turning it up and over a high hogback. How will that curvy realignment affect the accident rate on the highway, and how will local emergency services be affected? How will the noise of traffic, especially the heavy truck traffic, be mitigated? The new alignment will increase emergency response times by at least 5 minutes, critical minutes in a life-threatening emergency. These are key public health and safety concerns that are not addressed in the application.
- NISP and Larimer County publicly stated that the realignment of US Highway 287 would be included in the County’s analysis, first when the proponent was proposing an Intergovernmental Agreement, and then for several months after it opted to complete a full 1041 permitting process. So, up until a few months ago,

the public was led to believe that the Highway 287 relocation would be part of the permit.

- 2) The application is incomplete because it doesn't provide sufficient and necessary information on the feasibility of the project, specifically with regards to water rights. The project is relying on a farm-buying scheme that 1) the Corps of Engineers has deemed doesn't meet the purpose and need for the project and 2) will have significant environmental and socio-economic impacts which aren't analyzed in any environmental document.
- 3) The application states, "Plans and designs presented in this 1041 Permit application have been developed at a conceptual level." The project has had 2 major changes in the past year, since the final EIS was published. The application does not, therefore, provide a complete project description. Because significant impacts from the project as currently proposed to the County have not been fully disclosed and mitigation has not been appropriately developed, determinations regarding evaluation criteria cannot be made.

**Criterion 1. The proposal is consistent with the master plan and applicable intergovernmental agreements affecting land use and development.**

- 4) The application is incomplete because it relies on an outdated County Master Plan. The application refers to the 1997 Master Plan and provides rationale for project compliance with that plan. However, the County adopted The Larimer County Comprehensive Plan in 2019. , Based on our correspondence with the County, this is the appropriate governing document for this 1041 permit application (and the existing land use code is still in effect, although it is being revised). If the County is choosing to use the 1997 Master Plan for the evaluation of this project, it must clearly provide this information to the public so the public can provide input regarding the conformance of the project with land use plans. However, it would appear that the 2019 Comprehensive Plan is in effect and applies, rather than the 1997 Master Plan.

The application does not address the questions posed by The Larimer County Comprehensive Plan for the Mountains and Foothills and Natural Resource Areas that Glade Reservoir would occupy:

- *How does the project adequately protect air and water quality, cultural and natural resources, and minimize fragmentation of the landscape?* The application defers each of these issues to some later permitting/planning effort.
- *How does the project avoid impacts to the open character of rural areas, unique or highly visible viewsheds, landforms and ridgelines?* The project does not avoid such impacts.
- *How does the project consider the natural terrain in its design and siting to minimize environmental impacts and avoid or reduce hazard risk to an acceptable level?* The project severely alters the natural terrain and appears to exacerbate hazard risks.

- *How does the project mitigate risks and reduce economic costs of natural hazard events to increase resiliency?* The projected influx of up to 500 people during construction and almost 400,000 people during operations to this high fire risk area only increases the potential for fires. More human activity increases the likelihood and frequency of human-caused fires, putting local homeowner's lives and property at risk.
- *How does the project comply with County policy, Code, Master Plans, and initiatives in relation to hazard risk reduction?* It doesn't. The application presents only conceptual plans (see section 12.0 in the application); a massive construction project, with huge infrastructure and the potential for hoards of visitors only increases hazard risk, especially fires and medical emergencies.

*Larimer County has had land use and zoning regulations for decades, going back to 1963. These regulations set the rules for developing land in the unincorporated areas of the County and are intended to protect landowner rights while also looking out for overall community interests.* The application does not provide sufficient information to evaluate impacts to landowner rights and in fact provides much misinformation and deferred promises about mitigation. Furthermore, the application does not demonstrate how the project promote "overall community interests" because most of the benefits of the project would accrue to communities outside Larimer County, and the proposed recreational benefits are unlikely to materialize because water to fill the reservoir is not available and the reservoir would often be mostly empty. Finally, current events require a wholesale re-evaluation of the purpose and need for the project and the financial ability to proceed.

**Criterion 2. The applicant has presented reasonable siting and design alternatives or explained why no reasonable alternatives are available.**

- 5) The application is incomplete because it presents no alternatives. The application refers to the alternatives analysis conducted for the federal EIS process, which is unnecessarily limited to a water storage project and is out of date. There are many less costly and less environmentally destructive alternatives for water development now available. Finally, the application is for an alternative that involves both the Glade Reservoir and a farm-buying scheme that has not been evaluated in any of the federal EIS or Clean Water Act Section 4040 documents. Failing to present alternatives is a "my way or the highway" approach that would preclude informed decision-making contrary to the letter and spirit of the LUC.

**Criterion 4. The proposal will not have a significant adverse affect on or will adequately mitigate significant adverse affects on the land or its natural resources, on which the proposal is situated and on lands adjacent to the proposal.**

- 6) The application is incomplete because it does not adequately identify environmental impacts, analysis of key impacts to the land and natural resources is incorrect or inadequate, is not specific enough for local land use decision-making, or is deferred to some later permitting/approval process.

- The noise analysis did not identify sensitive receptors in the residential areas around the proposed dam or reservoir and did not monitor or model expected noise increases due to construction or recreation at these sensitive receptors.
- The air quality impact analysis is incorrect because it is based on a faulty calculation that it would take an 80-mph wind to raise any dust off the lakeshore. Misguidedly, the proponent used a stockpile in an industrial yard, with partially compacted surfaces and large particle sizes, as a surrogate for the sediments along the lakeshore, and concluded that fugitive dust during operations would not be an issue. In reality, many of the native soils are prone to wind erosion. Furthermore, the waves and ice and fluctuating water levels in the reservoir would work together to deposit fine materials on the lakeshore that would readily blow up and down the valley. This part of Larimer County is designated a very high wind area. Larimer County must conduct an independent analysis of impacts to air quality.
- Visual/aesthetic impacts would be significant. The construction of Glade Reservoir would change the character of the area. The EIS states that the scenic quality of residential areas near the reservoir would increase because the water would provide “texture”. The application, however, fails to evaluate the extreme negative visual impacts of a partially filled reservoir and a barren shoreline. The existing scenic quality of Hook and Moore Glade is overlooked. The avoidance and mitigation measures (re-vegetation and planting) don’t even begin to address this issue – once it’s gone, it’s gone.
- Visual impacts from the relocation of Highway 287 would also be significant. The elevated highway would be visible for miles, and the light pollution from nighttime headlights, also elevated to be seen for miles, would also severely impact visual resources in and around the reservoir.
- Noise associated with the elevation of highway 287 is not addressed. Once the highway rises above the topographic screens, the noise from over 14,000 vehicle trips per day, much of it large trucks, would have a unobstructed path into the surrounding hills.
- The effects on property values of dam and a partially full reservoir with exposed, un-vegetated lakeshores have not been disclosed.
- Section 7.1 of the application fails to mention the Bonner Peak residential area, whose landowners will be negatively affected by this project.
- The potential for trespassing and its associated impacts are not addressed. Rural residential landowners experience trespass already; an influx of non-owners to this area will only exacerbate the problem.
- The application fails to address how the rural character of the Hook and Moore Glade and its surrounds would be affected. Larimer County recognizes that its residents may choose to live in non-urban settings for any number of reasons that do not include an industrial project of this magnitude. These settings are becoming more and more rare and difficult to find.

- Most of the mitigation planning is deferred to a later date, to another agency, to another process, etc. The application provides concrete mitigation only for wildlife (which must also be reassessed since the water for a fishery is likely unavailable), which the applicant developed with the Colorado Division of Wildlife, but for air quality, for cultural and historic resources, for fire, and other impacted resources, the mitigation plans are “conceptual” or “will be developed”, are grossly inadequate (e.g., planting trees to screen a 300-foot tall dam), or are simply not proposed (e.g., noise or aesthetics). Unbelievably, the air quality mitigation plan states that a mitigation plan is not needed. The fire mitigation plan ignores two of the affected fire protection districts. The fugitive dust mitigation plan is incomplete by simply calling for application of wastewater for dust suppression. The project relies on the permitting authorities of many other agencies (e.g., Colorado Department of Health and Environment), and the result is a piecemealed project.

**Criterion 5. The proposal will not adversely affect any sites and structures listed on the State or National Registers of Historic Places.**

- 7) The Final EIS states there are 82 eligible or potentially eligible cultural sites present in the Glade Reservoir APE. Eight of the sites are officially eligible and 74 require additional data and formal evaluation. There are numerous additional sites in the APEs of the 287 reroute and other proposed project facilities. The FEIS then states that all unavoidable adverse effects on historical properties would be mitigated following the process described in an as yet to be developed Final Programmatic Agreement. The Corps anticipates the Final Programmatic Agreement will contain a number of provisions for cultural resources mitigation. The Corps then anticipates that Northern Water would implement all feasible and prudent measures to avoid and minimize effects on historic properties and to mitigate all adverse effects. With all these yet to be conducted evaluations, Programmatic Agreement, and anticipations, the Corps (FEIS p.4-527: *Section 4.19.14 Effect Determination*) reaches the conclusion: “*Consequently, effects on directly affected historic properties would be either minor or moderate. Effects on indirectly affected historic properties would be either minor or moderate.*” According to the definition of moderate provided by the Corps in that same section: “*In accordance with criteria in 33CFR325, Appendix C, the following terms are used to describe potential effects on cultural resources:.....Moderate: The effect on a designated historic property would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association. Measures identified in the Programmatic Agreement to minimize or mitigate adverse effects reduce the intensity of impacts under NEPA from major to moderate. The determination of effect for Section 106 would be an adverse effect” Thus, the determination of effect for Section 106 of Northern Water’s proposed action on those affected historic properties that consequently end up post-mitigation as moderate as concluded by the Corps will by definition be adverse effects. The application is incomplete because it does not contain an adequate analysis of Criterion #5.*

**Criterion 6. The proposal will not negatively impact public health and safety.**

- 8) The application is incomplete because it does not adequately analyze wildfire impacts. Public safety may be adversely affected by wildfire.
- While the fire mitigation plan states that wildfire mitigation will follow Larimer County's Recreation Regulations, none of the documentation addresses the real danger of the people who don't follow the regulations and the consequences thereof. With a reservoir of this size, and a trail along the edge, visitors may build fires, smoke and inappropriately discard still burning cigarettes/cigars and/or discharge fireworks outside of the campground, disregarding regulations, and inadvertently start fires. The application fails to analyze these reasonably anticipated actions.
  - Many wildfires are started by people. The County cannot encourage almost 400,000 people to one of the most fire-prone areas in the state and simply hope for the best. It is also one of the windiest areas in the County. The fires that have recently occurred in this area have cost tens of millions of dollars to suppress and have resulted in hundreds of millions of dollars of private property damage, and one fatality.
  - Increased fire risk will impose costs and risks for nearby affected residents and communities that have not been addressed.
  - The application focuses on the Poudre Fire Authority as the primary fire response agency (see fire mitigation plan), but both Livermore and Wellington Fire Protection Districts overlap with the proposed reservoir (e.g., the north end of the reservoir and the proposed trail). Both fire protection districts are rated as having high potential for wildfires. The application doesn't address this.
  - The suppression costs are paid for by taxpayers. The application fails to fire risk and the costs associated with suppression, loss of life and property.
  - Section 7.0 of the application states that the Natural Hazard Mitigation Plan for Glade Reservoir (Technical Memo No. 8) addresses wildfire hazard and mitigation, but this memo does not address wildfire at all.
- 9) The application is incomplete because it fails to evaluate the possible public health issues the project's many air emissions may exacerbate.
- The public health and aesthetic issues surrounding fugitive dust, which, as noted above, the application erroneously concludes would not be an issue during project operations. The application must address these potential impacts, especially in light of the lack of water, and a regular (if not permanent) low-water situation, which will result in frequently exposed, barren shores.
  - The public health issues associated with the emissions of ozone precursors (VOCs and NOx) from recreational uses are not disclosed. Larimer County is frequently a severe non-attainment area for ozone. Most recreation would occur during the hot summer months, when ozone is readily formed. It might move up the valley, to the rural properties, or down, into Bellevue, Laporte, and Fort Collins. The application doesn't address this issue.

- The pumping stations would emit over 30,000 tons per year of CO<sub>2</sub> and ozone forming compounds. Colorado’s climate change policies are calling for large reductions in greenhouse gas emissions. The application must clearly state how the emissions of CO<sub>2</sub>, water vapor, and other greenhouse gases will comply with Colorado’s policies.
- Black carbon emissions (from motorized boating), and their potential to affect public health, are not addressed.

**Criterion 8. Adequate public facilities and services are available for the proposal or will be provided by the applicant, and the proposal will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.**

- 10) Larimer County would pay 25% of the \$21.8 million cost to develop the recreational facilities, or \$5.5 million. The application predicts that total economic benefits would be between \$13 and \$30 million, but these estimates are incorrect because they are based on the 1) a full compliment of water rights, which Northern Water does not possess, 2) the proponent’s modeling (which does not account for future hydrologic conditions and therefore likely overstates reservoir fill levels, and 3) the proponents faulty calculations regarding revenue. The application, therefore, lacks a realistic forecast of recreational income. Operation of Horsetooth Reservoir costs over \$1.7 million per year, and most of the costs are paid for by entrance fees. If Glade would rarely be “full enough” to provide recreational (especially in the form of motorized watercraft with its high entrance fees), then who will pay the operational fees? The risks and costs to taxpayers must be thoroughly explained in the application.
- 11) The FEIS does not assess potential impacts form the range of risks to water supplies to Glade. Climate change, including rising temperatures and the very real threat of increasing frequency of prolonged droughts, and uncertainties in future water policy and water rights acquisitions, represent plausible risks to water supplies to Glade. A robust water supply vulnerability study that considers the range of plausible risks to water supplies at Glade should be part of the County’s review process. As it stands, the FEIS does not provide decision-makers and the public the information necessary to evaluate the feasibility, levels of service, and potential value of proposed recreation at Glade.
- 12) The application fails to disclose how the siting, construction, and operation of an industrial facility in a rural setting will impact sheriff, fire, and other emergency services. For example, the fire mitigation plan states that fires won’t be an issue because the campgrounds will be operated in accordance with Larimer County regulations. But this ignores the fact that wildfires are often started by accident, or even by arson, and in this area, one wrong fire in the right conditions could be devastating. In addition, how will the LCSO deal with a 14% increase (for example, 2,000 vehicles traveling to the reservoir on a summer day) in the number of vehicles (currently about 14,000 per day) on

highway 287? How will the emergency services teams (some of which are all volunteers) that protect these rural areas compensate for the increased number of calls? What is the expected increase in number of calls? How will service to existing communities be impacted by the need to serve visitors?

**Criterion 10. 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.**

- 13) The application is incomplete because it does not identify the farms that will be purchased to acquire the water needed to implement the project. Without information on the location of the farms and water rights to be purchased in Larimer County, it is impossible to determine whether 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.
- 14) The application incorrectly assumes that rural landowners view huge reservoir-based recreation as a benefit, and it fails to address how the natural aspects of the quality of life adjacent to Hook and Moore Glade would be irrevocably destroyed by the project.
- 15) The application is incomplete because it fails to analyze the negative impact to the Cache la Poudre River from removing vast quantities of water from the watershed. There is no analysis of the “benefit” of draining the River and storing water in Glade Reservoir versus keeping the water in the River.

**Criterion 11. The proposal demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse affects and the benefits achieved by such mitigation.**

- 16) The application is incomplete because there is no discussion of costs and adverse impacts to the River versus the benefit of such mitigation.
- 17) The application defers much mitigation planning to a later permit or process, so for many resources, insufficient information has been provided to assess whether this criterion is met. The applicant must provide concrete, not conceptual, mitigation plans and the costs thereof and the benefits to be achieved. The application should also disclose which adverse affects cannot be mitigated.

**Deficiencies with application materials posted to the County’s webpage**

The NISP application materials the County posted to its website (<https://www.larimer.org/planning/NISP-1041>) on or about March 18, 2020 contain numerous errors, do not allow the public to access the actual 1041 application, and underscore the fact that your completeness determination of March 18, 2020 is incorrect. We have identified the following errors of completeness with the application posted to the County’s website.

1. "1st Sub. No. 1 Attachment D Mapbook Poudre Map 4 Topography" is not the correct document.
2. "1st Sub. No. 1 Attachment D Mapbook Poudre Map 5A Wildlife WT Deer" is not the correct

document.

3. "1st Sub. No. 1 Attachment D Mapbook County Line Map 5A Wildlife WTDeer" is not the correct document.
4. "1st Sub. No. 1B Attachment B U.S. Highway 287 Memo" is not the correct document.
5. "1st Sub. No. 10 Glade Unit Stormwater Memo" is not the correct document.
6. "1st Sub. No. 10 Pipeline Stormwater Memo" is not the correct document.
7. "1st Sub. No. 11 Glade Unit Floodplain Study Pipeline" is not the correct document.
8. "1st Sub. No. 12 Pipeline Groundwater Report" is not the correct document.
9. "1st Sub. No. 13 Glade Dam Visual Simulation" is not the correct document.
10. "1st Sub. No. 14 Conveyance Pipeline Noise Analysis" is not the correct document.

Please review and respond to all of the deficiencies identified in this letter. If you disagree with any deficiency, please state why. Further, we ask that you reconsider and reverse your March 18, 2020 completeness determination. Please respond in writing to this request. Thank you,

Sincerely,

s/ John Barth

Counsel for Save the Poudre

s/ Michael Foote

Counsel for No Pipe Dream Corporation

s/ Mike Chiropolos

Counsel for Save Rural NoCo

Exhibit 1

Cc: Jeanine Haag, Larimer County Attorney