

Larimer County leaders sued over NISP vote

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Save the Poudre, No Pipe Dream and Save Rural NoCo are suing the Larimer County Board of Commissioners to contest the board's approval of a key permit for the Northern Integrated Supply Project, a proposal to draw water from the Poudre River for storage in two new reservoirs.

The lawsuit, filed in Larimer County District Court, contends that former commissioners Steve Johnson and Tom Donnelly were biased in favor of the project and shouldn't have voted on the 1041 permit. The suit also argues that commissioners' 2-1 approval of the permit in September violated criteria of Larimer County's land use code.

The county 1041 permit covers the siting of Glade Reservoir, the larger of the two reservoirs included in the project, and the construction of four pipelines associated with NISP. Johnson and Donnelly voted in favor of the 1041 permit, while commissioner John Kefalas voted against it.

The lawsuit argues that Johnson and Donnelly demonstrated bias in several ways, citing a photo of Donnelly speaking at a "Farmers for NISP" event and an online news release from NISP proponent Northern Water reading "Larimer County Commissioners support NISP."

The complaint also references August 2019 text messages from Donnelly to Northern Water spokesperson Jeff Stahla that read, according to the lawsuit: "You guys are getting ready to blow this deal ..." and "Northern has no idea what is in store for them if they let this slide into the next boards (sic) term."

Stahla told the Coloradoan that Donnelly "reached out to me ... when we were in the middle of the (intergovernmental agreement) process." The county and Northern Water had been drafting an intergovernmental agreement to cover the siting of Glade Reservoir and associated pipelines before they pivoted to the 1041 permitting process.

"... at that point, we were having open discussions with commissioners regarding this project, so we had not yet moved into" the 1041 part of the project, Stahla said on Tuesday.

Johnson and Donnelly were both in the final months of their terms on the Larimer County Board of Commissioners when they voted to approve the NISP 1041 permit. New commissioners.

"We call on this new Larimer County Commission to reconsider the illegal actions and decisions of the previous Commission," Save the Poudre executive director Gary Wockner said in a statement. "NISP would be the biggest and most environmentally damaging project in Larimer County history, and throughout the County permitting process over 90% of public comments opposed NISP."

Stahla, the Northern Water spokesperson, said the NISP 1041 permit application was robust and addressed all the county's criteria.

He also noted that the Colorado Water Quality Control Commission in December rejected Save the Poudre's appeal of the state water quality certification. That certification addresses NISP's anticipated impacts on Poudre River water quality and includes 30 conditions.

He added that it wouldn't be appropriate for the new class of commissioners to reconsider NISP's 1041 permit.

"If you file a permit application and county staff recommends approval, the county planning commission recommends approval, and then you get approved by the county commissioners — well then, how far down the road can you have all of those votes changed at a long future date?" Stahla said. "We felt that we met the criteria, and the commissioners, acting in their role properly, approved the application for a 1041 permit, and so we feel we have our permit."

Save the Poudre, No Pipe Dream and Save Rural NoCo previously asked Johnson and Donnelly to recuse themselves from the 1041 hearings and sought a preliminary injunction from the Larimer County District Court to prevent their participation. District Court Judge Stephen J. Jouard dismissed the complaints, stating at the time that it was up to the commissioners to decide if they have a conflict of interest.

Johnson told the Coloradoan in August that felt confident he could make an unbiased decision on the 1041 permit because it specifically related to siting of Glade Reservoir's facilities and pipeline routes, which he said he hadn't previously taken a stance on.

"I believe I can look at the evidence and decide whether it has met the criteria of the land use code — that's my obligation," he previously told the Coloradoan.

The Coloradoan was not able to reach Johnson or Donnelly for reaction on Tuesday.

In a text message to the Loveland Reporter-Herald this week, Johnson called the lawsuit "total crap" and added that he and Donnelly "were no more biased in favor of the project than John (Kefalas) was biased against the project. But as we said in the hearing, we put aside all of our opinions of the project and commented completely and exclusively on the criteria in the land use code."

Karen Wagner of lawsuit co-plaintiff No Pipe Dream told the Coloradoan that the group had hoped the commissioners would apply their 1041 criteria as thoroughly as they did in their ruling on the proposed Thornton pipeline permit — which commissioners rejected after heavy opposition from No Pipe Dream.

"It is really disappointing that citizens have to go to this length in order to hold our county officials, in this case two county commissioners, accountable," Wagner said.

NISP would take water from the Poudre to store in Glade and Galeton reservoirs for use by 15 growing Colorado municipalities and water districts, including the town of Windsor and Fort Collins-Loveland Water District. The projected annual yield at full buildout would be 40,000 acre-feet, although NISP opponents argue the project won't be able to deliver its full yield because of excess strain on the Poudre River.

Save the Poudre has mounted myriad legal challenges against NISP, which Wockner has long said will deal a death blow to a river that already loses over half its water before it gets to Fort Collins. NISP could divert between 25% and 71% of the Poudre's stream flows, depending on the month and time of year, with most of the diversions taking place in the higher-flow months of April to August.

While the county 1041 permit is an integral milestone for the project, the U.S. Army Corps of Engineers has yet to issue a final record of decision on NISP. That decision is expected in the first quarter of 2021 after years of delays, Stahla said. The Army Corps' decision could also be contested in court.

Jacy Marmaduke covers government accountability for the Coloradoan. Follow her on Twitter @jacymarmaduke. Support her work and that of other Coloradoan journalists by purchasing a digital subscription today.