

NO PIPE DREAM CORPORATION
SAVE RURAL NOCO CORPORATION
SAVE THE POUUDRE

August 14, 2020

By email to: jeanninehaag@larimer.org, wressue@larimer.org, tdonnelly@larimer.org,
swjohnson@larimer.org, bocc@larimer.org, rhelmick@larimer.org

Larimer County Commissioners Tom Donnelly
200 West Oak, Suite 2200
Fort Collins, CO 80521

Larimer County Commissioner Steve Johnson
200 West Oak, Suite 2200
Fort Collins, CO 80521

Jeannine Haag
William Ressue
Larimer County Attorney's Office
224 Canyon Ave, Suite 200
Fort Collins, CO 80522

Re: NISP 1041 Quasi-judicial Hearing-Petition for Recusal of Commissioners Donnelly and Johnson from the 1041 permit application proceeding related to Northern Integrated Supply Project.

Dear Commissioners Donnelly and Johnson:

This is a petition for recusal submitted on behalf of No Pipe Dream Corporation, Save Rural NoCo Corporation, and Save the Poudre, and their numerous members who are residents and taxpayers in Larimer County. As you know, on August 17, 2020 the Larimer County Board of County Commissioners ("Board") intends to commence a quasi-judicial land use hearing on the Northern Integrated Supply Project ("NISP") 1041 application. After you open the quasi-judicial hearing on August 17, 2020, as your first order of business we request that you address this Petition seeking recusal of Commissioners Tom Donnelly and Steve Johnson from consideration of the NISP 1041 land use application due to the decade-long support and endorsement of the project, as well as the long-standing *ex parte* communications each have had with the permit applicant about the project.

The Larimer County Attorney has previously taken the position that any recusal request

must take place as part of the quasi-judicial NISP 1041 proceeding. Accordingly, we submit this Petition for Recusal to be heard at the NISP 1041 land use quasi-judicial hearing commencing on August 17, 2020. We ask that Tom Donnelly and Steve Johnson each render a quasi-judicial determination as to recusal as the first order of business after opening the proceeding on August 17, 2020. In doing so, we request that Commissioners Donnelly and Johnson each identify the relevant recusal, bias, and conflict of interest provisions of the Larimer County Land Use Code, as well as County Policy and Colorado Constitutional provisions on the same subjects. A summary of those legal provisions is contained in the attached exhibits to this Petition for Recusal. We then ask that Commissioners Donnelly and Johnson apply the facts of their decade-long support and endorsements of NISP, as well as *ex parte* communications with the permit applicant--which are contained in the evidence attached hereto--to the legal criteria for recusal in the Land Use Code, County policy, and State Constitution. Finally, we ask that Commissioner Donnelly and Johnson make a final public decision with regard to recusal before commencing consideration of the NISP 1041 permit application on August 17, 2020.

By means of background, Commissioners Donnelly and Johnson publicly supported and endorsed NISP since at least 2009. The Commissioners have attended, and spoken at, “rallies” hosted by the project applicant Northern Water for the purpose of generating support for the project. For years, the Commissioners have allowed their names and positions to be included on Northern Water’s public list of “supporters and endorsers,” which has been repeatedly disseminated to the public. Further, both Commissioners have made repeated public statements in support of NISP, with Commissioner Donnelly even referring to the project as his “legacy” as a Board member. Both Commissioners have also had private conversations with employees of Northern Water regarding the project. As recently as 2019 Commissioner Donnelly was exchanging private text messages with the permit applicant warning them what might happen if the current Board does not rule on the 1041 application. Finally, Commissioner Johnson has recently stated that Save the Poudre, a primary opponent of NISP, “has lost all credibility” with Johnson. Documentation of this evidence is attached hereto.

In considering this Petition, Commissioners Donnelly and Johnson should keep in mind the precedent set by the Planning Commission on the NISP 1041 application in which 3 members recused themselves for various appearances of impropriety. At a minimum, Commissioner Donnelly and Johnson’s decade long support, endorsement, and *ex parte* communications with the applicant amounts to an appearance of impropriety.

It has been suggested that if two Commissioners recused the BOCC would be denied of a quorum to review and decide the application. In the event the Board is concerned of this prospect resulting from two recusals, we ask that Commissioner Donnelly alone recuse himself from the proceeding. As detailed below, Commissioner Donnelly’s public statements endorsing and supporting NISP are more numerous and more concerning than those by Commissioner Johnson. For at least one Commissioner to recuse under the circumstances would help restore the confidence of Larimer County citizens to receive the fair and impartial hearing process and objective decision on the merits required by the law.

In summary, the decade-long public endorsement/support for NISP by Commissioners Donnelly and Johnson has created a justifiable impression among citizens of Larimer County that that Commissioners 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, and that the public trust would be violated unless they recuse themselves from adjudicating NISP.

Please address this Petition for Recusal in the manner requested herein. In addition, please include this Petition and all exhibits hereto in the administrative record for the NISP 1041 quasi-judicial hearing.

Sincerely,

s/ Gary Wockner
Save the Poudre

s/ Robert Kitchell
No Pipe Dream Corporation

s/ Karyn Coppinger
Save Rural NoCo Corporation

cc: Commissioner John Kefalas at jkefalas@larimer.org

Exhibit List

- 1. Larimer County District Court Complaint**
- 2. Motion for Preliminary Injunction (Motion)**
- 3. Exhibit 1 to Motion**
- 4. Exhibit 2 to Motion**
- 5. Exhibit 3 to Motion**
- 6. Exhibit 4 to Motion**
- 7. Exhibit 5 to Motion**
- 8. Exhibit 6 to Motion**
- 9. Exhibit 7 to Motion**
- 10. Exhibit 8 to Motion**
- 11. Exhibit 9 to Motion**
- 12. Exhibit 10 to Motion**
- 13. Exhibit 11 to Motion**
- 14. Exhibit 12 to Motion**
- 15. Exhibit 13 to Motion**
- 16. Exhibit 14 to Motion**
- 17. Exhibit 15 to Motion**
- 18. Exhibit 16 to Motion**

- 19. Exhibit 17 to Motion**
- 20. Exhibit 18 to Motion**
- 21. Exhibit 19 to Motion**
- 22. Exhibit 20 to Motion**
- 23. Exhibit 21 to Motion**
- 24. Exhibit 22 to Motion**
- 25. Reply on Motion**
- 26. Exhibit 23 to Reply**
- 27. Exhibit 24 to Reply**
- 28. Exhibit 25 to Reply**
- 29. Exhibit 26 to Reply**