

ORAL ARGUMENTS IN THE THORNTON LAW SUIT HEARD BY JUDGE JOUARD
9/9/2020

Despite a last minute attempt by the City of Thornton to file for a continuance, Judge Jouard decided to proceed with oral arguments in the Thornton Lawsuit yesterday.

Thornton's motion for a continuance was based on the recent approval of NISP by the Commissioners, which they felt could have a direct bearing on their case. Counsel for Larimer County and Interveners, No Pipe Dream and Save The Poudre opposed this motion. The Judge granted permission for all parties to submit written arguments for future consideration. It is likely that a decision on this issue could take 2 months, which would ultimately delay the courts decision on this lawsuit.

Thornton had 40 minutes to present their arguments, which were focused on their constitutional right to construct a pipeline in Larimer Co in order to get their water. They stated that the decree of the water court specified their location to take out water and that it was to be piped to Thornton. Thornton argued that Larimer County violated the 1041 process by effectively denying any and all pipeline routes, requiring instead conveyance by river or canal options, which would degrade both water quantity and quality. Thornton made additional statements, some blatantly inaccurate, regarding the routing of their pipeline and their two-year effort working in collaboration with the Larimer County Planning and Engineering group. They cited that the county staff recommended approval of the 1041, which the Commissioners should have accepted. Thornton closed their arguments with a request for the judge to order the Commissioners to approve the 1041 and specify which of the two pipeline routes should be used.

Attorneys for Larimer County, No Pipe Dream and Save The Poudre had 40 minutes, 20 minutes and 10 minutes, respectively to present their oral arguments, which were a clear benefit of the intervener strategy, since we collectively were allowed 70 minutes for arguments vs. 40 minutes for Thornton. Arguments focused on:

- The Courts decision should be based on Rule 106 dealing with the adequacy of the 1041 process, which the court must uphold even if only one of the Commissioners findings are validated and that Rule 57 arguments from Thornton regarding their water rights are irrelevant.
- The 1041 process was extensive and took place over a two-year period of time, involved 7 public hearings and a working group of Larimer County citizens including scientist, professors and engineers.
- The decision to approve and/or deny a 1041 is the sole responsibility of the County Commissioners who are elected officials and that staff recommendations have no binding effect on their decision.
- Thornton's failure to propose specific pipeline routes, opting instead to request ¼ mile wide construction corridors, which were impossible for the county and the public to properly evaluate.

- Any potential decision from the court to overturn the Commissioners ruling should at a minimum result require Thornton to reapply in the 1041 process and not be a directive to approve the 1041 and specify a pipeline route as requested by Thornton.