

Date: Wednesday, April 10, 2024
Time: 6:00 PM
Location: Hybrid: In-Person, Hearing Room, 1st Floor, 200 West Oak Street, Fort Collins or Virtual, Zoom link – https://larimer-org.zoom.us/webinar/register/WN_KXG36s4UTISCdhzd-7bPdQ

PLANNING COMMISSION MEETING MINUTES

The Larimer County Planning Commission met in the Hearing Room as well as virtually by Zoom video at 6:00 p.m., on Wednesday, April 10, 2024, at which time the following business was transacted.

Board Members Present: Bob Choate, Patrick Rowe, Conor Duffy, Anne Best Johnson, Jordana Barrack, Jon Slutsky, Shelby King, and Lisa Chollet.

Staff Present: Rebecca Everette, Community Development Director; Jenny Axmacher, Planning Manager; John Barnett, Planner II; Steven Rothwell, Civil Engineer II; Schnieder, Environmental Health Planner; Frank Haug, Assistant County Attorney II; Christine Luckasen, Assistant County Attorney I; and Christina Scrutchins, Recording Secretary.

COMMENTS BY THE PUBLIC REGARDING THE COUNTY LAND USE CODE OR REGARDING OTHER RELEVANT LAND USE MATTERS NOT ON THE AGENDA OR FUTURE PROPOSALS

None.

DISCUSSION ITEMS

Larimer County 1041 Regulations

ITEM NO. 1 – THORNTON WATER PROJECT SEGMENT F 1041 PERMIT, FILE NO. 23-ZONE3584

The City of Thornton requests approval of a proposed 10.4-mile, 42-inch steel raw water transmission line and associated appurtenances, Segment F of the 70-mile Thornton Water Project (TWP) to convey up to an average of 14,000 acre-feet of raw water per year. The City of Thornton currently owns decreed water rights for the water that would be transported. It would extend from Water Supply and Storage Reservoir #3 to its Wes Brown Water Treatment Plant in Thornton, CO. The proposed TWP would be capable of conveying 40 million gallons per day (mgd). Associated appurtenances to the proposed TWP would include buried fiberoptic cable, various buried water pipeline structures, and valve vaults including access manways, blow-off assemblies, air release vaults, isolation valve vaults, source water connection, and a 10,000 square foot source water pump station.

In 1996 Thornton litigated over the water rights that it intends to use for this project, and a water court decree was issued that allows the water to be used for the purposes intended by Thornton. All of the water Thornton proposes to convey via its pipeline has, for over 100 years, been diverted from the Poudre River at the location established in Thornton's water court decree. Thornton does not propose changing the diversion point for its water or the amount of water being diverted from the Poudre River. What will change with the use of Thornton's pipeline is that the water currently and historically being diverted from the Poudre will, over time, cease being used for agricultural purposes and instead be conveyed via the pipeline to Thornton for municipal purposes.

Staff has recommended that several conditions be included in any approval if the project moves forward.

These conditions are intended to bridge gaps between the submittal and the criteria that were identified during staff review, to help clarify how the project is to be implemented and operated, and to guide the Technical Review Process. Conditions must be related to the criteria for approval and the impacts the TWP would have.

Preconstruction Activities

If the project is approved and the applicants move forward, the next phase is Technical Review. Technical Review is an administrative process that the following purposes:

1. 1 To review the final engineering design of all necessary improvements,
2. 2 To implement all conditions of the approval,
3. 3 To work out all utility conflicts and other project details,
4. 4 To ensure project owners secure necessary property interests,
5. 5 To prepare final wetland, riparian, and wildlife impact analysis and mitigation designs,
6. 6 To obtain necessary construction permits,
7. 7 To complete necessary agreements, and
8. 8 To secure financial guarantees where necessary.

If and when the Technical Review process is complete, necessary agreements have been finalized, property interests have been acquired, and necessary permits have been obtained, then construction of the TWP could proceed.

Construction Activities

Thornton's application materials indicate that it plans to begin construction activities in unincorporated Larimer County in 2025, with operation of the Project beginning in 2027 if the TWP is approved and all conditions satisfied. Work on multiple construction packages, including the water pipeline, trenchless water pipeline road crossings, and source water pump station may occur concurrently with multiple crews of 10 to 20 workers each. At the peak of construction, approximately 60 to 80 workers could be required at multiple sites along the Project, including Thornton staff, contractors, inspectors, engineers, and delivery personnel. Construction work hours are proposed typically to be from 7 a.m. to 7 p.m. Monday through Saturday unless otherwise approved by Larimer County. Thornton proposes that construction may extend beyond these hours on an as-required and case-by-case approved basis. For example, some construction activities, such as hydrostatic testing, require 24/7 operation, and shift work may be required. However, shifts are not anticipated for construction on a day-to-day basis.

According to the TWP application materials the following major activities would be involved in construction in typical pipeline construction sequence:

- Traffic control installation
- Survey
- Construction stormwater best management practice (BMP) and access installation
- Site clearing
- Stage materials/staging area setup
- Locate existing utilities
- Excavate the water pipeline trench/bore pit. Stockpile topsoil separately
- Water pipeline installation
- Backfill the trench/bore pit (pipe zone, trench backfill, topsoil)
- Conduct pressure testing
- Clean up
- Restore ground surface
- Road restoration
- Revegetation
- Ongoing maintenance

Operation of the Thornton Pipeline

If the TWP moves forward and is built, after completion of the TWP, there will be a monitoring period for wetland mitigation, environmental restoration, and revegetation of upland areas as well as a warrantee period for roadways and other public improvements, in addition to any other conditions that may be placed on the project. The exact details would be worked out during the Technical Review or other post-approval processes. Conditions on any approval will remain in force throughout the life of the TWP.

APPLICANTS PRESENTATION

Carolynne White, representing the Brownstein law firm and the city of Thornton, introduced the legal team and outlined the presentation for the 1041 application regarding the Thornton water pipeline. Todd Barnes, Thornton's Communications Director, gave an overview of the project approach. Emily Hunt, the Deputy Utilities Director, discussed partner outreach and introduced the project. Barnes then explained the decision-making framework for selecting the proposed alignment and described the project components. White discussed proposed mitigation efforts, expert reports, criteria, conditions of approval, and the legal framework. Hunt did not speak about potential public benefits. White concluded by emphasizing the importance of project approval and provided a recap. Attendees available for questions included Thornton's city attorney, executive director of utilities and infrastructure (also interim city manager), engineering team from Jacob's Engineering, and environmental consultant team from Ero. Barnes began the presentation.

Todd Barnes, the Communications Director for the city of Thornton, expressed gratitude for the opportunity to present the city's 2023 application for a 1041 permit for a 10.4-mile pipeline, outlining how it met Larimer County's criteria. Barnes noted improvements made since the last presentation, particularly in communication and project details. Notable changes included providing a precise alignment for the pipeline, relocating the pump station to minimize residential impact, reducing the pipeline length, and minimizing traffic impacts. Thornton engaged in extensive community outreach, including public meetings, surveys, and open houses, to gather feedback and address concerns. Despite efforts to engage opponents, Barnes emphasized Thornton's commitment to the project's necessity and environmental responsibility. He highlighted the importance of the project for Thornton's growth and water supply needs, noting that the water will meet municipal demands until at least 2065. Barnes concluded by providing an overview of the Thornton Water project's progress and introducing Emily Hunt, the Deputy Director of Utilities, to discuss outreach efforts with partners and property owners.

Emily Hunt, the Deputy Utilities Director at the city of Thornton, described the early conversations held with key stakeholders and landowners following the survey results, highlighting the community's desire to minimize impacts on private landowners and consider co-locating with the Northern Integrated Supply Project (NISP) where possible. Hunt detailed the collaboration with the Water Supply and Storage Company (WSSC) and Northern Water to explore pump station locations and discussed the development of various pipeline routes based on community feedback. She emphasized the extensive outreach efforts, including personal communication with landowners along potential alignments and the importance of open dialogue. Hunt underscored the project's necessity for Thornton's growth and water quality improvement, emphasizing that it wouldn't degrade the Poudre River's water volume or quality. She clarified that Thornton's water rights, sourced from WSSC shares, were legally secured and wouldn't increase water withdrawal from the Poudre River. Hunt concluded by introducing Todd Barnes to discuss the decision-making framework for selecting the preferred pipeline alternative.

Todd Barnes provided a high-level overview of how Thornton selected its preferred alignment for the pipeline. The process began with analyzing public feedback from surveys, open houses, and meetings, leading to the identification of 10 possible alignments meeting Thornton's core requirements. Twelve selection factors were developed, informed by community input and Larimer County's regulations, to evaluate each alignment. Factors included minimizing impacts on private property, traffic, construction duration, and co-location with NISP. The preferred alignment minimizes impacts on property owners, traffic, and wildlife, co-locates with NISP, and meets the project's purpose and need for high-quality water. Barnes discussed the decision to move the withdrawal point to WSSC Reservoir Number 3 based on community feedback, with 10 alternatives accessing water from this site. The preferred alignment connects to the pump station at WSSC Reservoir Number 3, which

will have an estimated capacity of 40 million gallons per day and be constructed adjacent to the reservoir. Barnes presented renderings of the pump station from different viewpoints and noted Thornton's commitment to consult with Larimer County and residents on its design. Tours of operational pump stations were offered to Larimer County residents, and a sound study demonstrated compliance with noise ordinances. The pipeline will be buried for its entire length, with facilities associated with the project adhering to local regulations and Larimer County's comprehensive plan. Barnes concluded by introducing Carolyn to discuss the project's compliance with Larimer County's 1041 regulations and comprehensive plan.

Carolynne White provided an overview of how Thornton's proposed pipeline project meets the criteria outlined in Larimer County's 1041 regulations and comprehensive plan. She highlighted the legal framework established by the Court of Appeals regarding the jurisdiction of the Water Court and the 1041 process, emphasizing that the proposed project does not impact the Poudre River diversion point or water rights, which remain under the exclusive jurisdiction of the Water Court. White discussed technical reports supporting Thornton's application, which conclude that any impacts from the project will be temporary and mitigable, with no significant long-term effects on the environment or property. She addressed specific areas such as wildlife mitigation, traffic impacts during construction, and construction noise, noting mitigation measures proposed by Thornton to minimize disruptions to residents. Regarding compliance with Larimer County's 1041 criteria and comprehensive plan, White outlined Thornton's efforts to address each criterion, emphasizing the selection of a preferred alignment that minimizes impacts on private property and aligns with community preferences and county regulations. She referenced a chart provided to the commissioners, detailing how the project meets various goals outlined in the comprehensive plan related to growth, development, and environmental policies. White mentioned that Thornton's proposed project meets the criteria outlined in Larimer County's regulations and comprehensive plan, with minor adjustments proposed to certain conditions of approval. She invited further questions from the commissioners and reiterated Thornton's commitment to ongoing communication and dialogue with stakeholders as the project progresses. Carolynne White concluded her presentation by addressing several key criteria outlined in Larimer County's regulations, specifically focusing on environmental impacts, sustainability, and water rights. Here's a summary of her main points: Impact to Streams and Wetlands (10.9.1.F): White explained that the project avoids impacting rivers entirely, with wetland impacts limited to temporary disruptions during construction. Thornton plans to map wetlands before and after construction to monitor and ensure restoration efforts. Sustainability (10.9.1.Q): The project aligns with Thornton's commitment to water efficiency and sustainability, with plans to incorporate Envision framework principles to minimize environmental impact and enhance sustainability. Benefit versus Loss of Natural Resources and Agricultural Lands (10.9.1.T): White argued that the project does not result in any long-term loss of natural resources or agricultural productivity, with impacts being temporary and mitigated through restoration efforts. Surface and Subsurface Water Rights (10.10.6.D): The project does not adversely affect surface or subsurface water rights, as it primarily involves a water delivery system for municipal use without altering existing water rights. White highlighted the critical need for Thornton to access its water shares to meet the growing demands of its population and fulfill comprehensive plan objectives, particularly regarding housing and economic development. She emphasized that the proposed project represents a significant departure from previous proposals, reflecting extensive community engagement and responsiveness to feedback. In conclusion, White underscored the project's importance for both individual property owners impacted and the broader Thornton community, urging the commissioners to consider the human impact and the necessity of providing high-quality water to residents. She expressed gratitude for the opportunity to present and offered to address any questions from the commissioners.

PLANNING COMMISSION, STAFF, AND APPLICANT COMMENTS

Carolynne White discusses objections to certain conditions related to a water rights decree in a 1041 proceeding. Specifically, she mentions disagreement with condition number 8, which directs Thornton to undertake activities related to agricultural properties covered by the decree. White argues that these activities have already been addressed by the Water Court and thus fall outside the scope of the 1041 proceeding. She clarifies that their objection is procedural rather than principled, as they are already planning to address the activities suggested by the staff through their Northern stewardship program but believe it shouldn't be part of this particular proceeding.

PUBLIC COMMENT

Gary Walkner, Morgan Cullen, Warren Lemerich, Barry Feldman, Eric Steidl, Patrick Crotzer, Lindsay Delecki, Patty Clifford, Jake Schroeder, Patricia Babbitt, Elizabeth Lynch, Ryan Donovan, Karen Wagner, and Christine Day.

Comments

- Thornton's use of the Poudre River option has been encouraged by stakeholders for over 15 years.
- Accessing Thornton's water rights could help address Colorado's housing affordability crisis by increasing housing supply.
- Approval of Thornton's permit could create jobs and stimulate economic growth in the region.
- Collaboration and cooperation between Larimer County and Thornton could benefit both parties and address water and housing challenges.
- Thornton's proposed water project could potentially contribute to the restoration of the Cache La Poudre River.
- Concerns about the environmental impact on Larimer County's agricultural ecosystem and wildlife due to water diversion.
- Opposition to Thornton's pipeline project based on concerns about noise pollution, property damage, and disruption to agricultural activities.
- Criticism of Thornton's lack of cooperation with Larimer County officials and failure to address citizen concerns adequately.
- Doubt about the transparency and accuracy of information provided by Thornton regarding the project's scope and impacts.
- Skepticism about Thornton's commitment to environmental restoration is based on observed neglect of their current properties and lack of maintenance.

PLANNING COMMISSION, STAFF, AND APPLICANT COMMENTS:

Commissioner Duffy asks about major crossings and whether any properties have pipelines running through their middle rather than along the edges. Carolynne White, representing the project, initially states there are no instances of pipelines going through the middle of properties but later corrects this to mention two properties where this occurs due to specific circumstances. Commissioner Duffy also inquired about landowner support for the project. Carolynne White and Emily Hunt explain that while there may not be formal letters of support on record, positive conversations have occurred with some landowners. The project team acknowledges discussions with certain landowners, including Mr. Seidel and the Windsor Reservoir and Canal Company. Commissioner Duffy queries the quality of water sources and the blending process. Emily Hunt explains that while Poudre River water is of higher quality than South Platte water, blending can occur before or after treatment to improve overall water quality and reduce treatment costs and energy consumption.

Discussion arises regarding the potential cost implications for residents. Emily White mentions the current residential water rate in Thornton and suggests that blending with a higher-quality water source can help manage costs and ensure water quality standards are met. Commissioner Rowe raises concerns about compliance with criteria and conditions set by Larimer County. Carolynne White explains the role of county code enforcement and the existence of performance bond requirements for specific project components. There's a discussion about co-locating the pipeline with another project, NISP, and its potential impacts. Gerald Simpson explains the evaluation process for site selection and considerations regarding community feedback and criteria ranking. Commissioner Chollet questions the classification of nearby dams as high hazard and their

potential risks. Gerald Simpson elaborates on the classification process and emphasizes the importance of engineering design and regulatory oversight to mitigate risks associated with the pipeline's proximity to dams.

Commissioner Slutsky expresses concerns about the impact of increased traffic and road construction on agriculture, particularly during critical times like harvest season. The conversation highlights the importance of ensuring minimal disruption to farming operations, considering the time-sensitive nature of agricultural activities. There's a discussion about the proposed construction timeline, traffic management plans, and the potential impact on rural roads. Commissioners inquire about measures to mitigate traffic disruptions, such as alternative construction times and coordination with farmers to avoid peak agricultural activities. Questions are raised about the project's impact on water rights and canal diversions, particularly concerning the Larimer Canal and groundwater usage by farmers. The discussion touches on legal considerations, water court decrees, and agreements between stakeholders.

The conversation extends to the broader topic of land stewardship and environmental impact mitigation. Commissioners discuss the potential adoption of a stewardship plan for Thornton-owned land in Larimer County and the project's alignment with local values and regulations related to open space preservation and conservation. Commissioners deliberate on the conditions of approval for the project, including reclamation and land stewardship responsibilities. There's a debate about the necessity and scope of certain conditions, balancing the project's objectives with environmental and agricultural considerations. Overall, the discussion encompassing agricultural concerns, environmental stewardship, regulatory compliance, and community values, all aimed at ensuring responsible land use and minimizing adverse impacts on the local ecosystem and economy.

APPLICANTS REBUTLE

Carolynne White emphasizes that the court ruling and project framework dictate that the "down the river" option is not viable and should not be considered. The focus should be on the preferred alternative proposed by Thornton, which has undergone thorough analysis and meets regulatory criteria. White acknowledges concerns raised, particularly regarding noise from the pump station. She highlights that noise modeling indicates compliance with noise ordinances, and mitigation measures will be implemented if necessary. White outlines how the proposed pipeline route minimizes various impacts, including on private property, wetlands, traffic, and agricultural lands. The selection of this route prioritizes minimizing disruptions and aligns with community feedback. White discusses detailed mitigation plans to address concerns such as dust control during construction. These measures, along with proposed conditions of approval, aim to mitigate potential negative impacts of the project. White clarifies that the application is for a single pipeline, dispelling any confusion about multiple pipelines being included. Approval would only apply to the specific pipeline outlined in the application. Overall, White asserts that the evidence in the record supports the conclusion that the project meets regulatory criteria and addresses concerns effectively, thus recommending approval of the 2023 pipeline application to the Board of County Commissioners.

PLANNING COMMISSION AND STAFF COMMENTS

Barnett explains that the Windsor Reservoir Company is already involved as a reviewing agency for the 1041 application and will also be involved in the technical review. The Dam Safety Administration was added as a reviewing agency due to the potential hazard of one of their dams. Despite not providing comments yet, they will participate in the final technical review. Barnett acknowledges receiving a letter from Thornton with a glitched numbering system and indicates that he hasn't had the chance to review the updated version sent today. He commits to working through any issues raised in the letter and having a response ready for the Board of County Commissioners. When asked about seeking comments from the Dam Safety Authority, Barnett clarifies that they will only seek comments for the technical review, not prior to going to the county commissioners. The technical review primarily focuses on engineering aspects, such as geotechnical considerations, which are not seen as directly impacting the approval of the pipeline from a land use perspective. Overall, Barnett emphasizes the importance of involving relevant agencies in the technical review process and commits to addressing any outstanding issues before presenting to the Board of County Commissioners.

PLANNING COMMISSION DISCUSSION

Commissioner Best Johnson proposed amending condition 8 to specifically apply to the pipeline and suggested adding a requirement for the applicant to demonstrate coordination with the State of Colorado Division of Dam Safety and resolution of concerns expressed by Windsor Reservoir. This amendment aimed to ensure thorough consideration of safety aspects related to the pipeline's construction and operation. Several commissioners expressed support for the idea of considering alternatives, including co-location with the NISP pipeline. They emphasized the importance of thoroughly evaluating all options to minimize environmental impacts and ensure the best possible outcome for the community. Some commissioners raised concerns about the potential impacts of the pipeline on agriculture, particularly regarding property rights and land use. They emphasized the need for comprehensive mitigation measures to address these concerns and protect the interests of local farmers. Commissioners expressed appreciation for the public's input and engagement throughout the process. They acknowledged the concerns raised by community members and emphasized the importance of considering these perspectives in their decision-making process. Despite various concerns and considerations, most commissioners ultimately expressed support for the application. They highlighted the extensive efforts made by the applicant to address community concerns and mitigate potential impacts. Additionally, they noted the overall benefits of the project for the community and the region. Overall, while commissioners acknowledged the complexity of the issues raised and the need for careful consideration, they generally expressed confidence in the applicant's ability to address these concerns and move forward with the project in a responsible manner.

MOTION

Commissioner Best Johnson moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission to the Board of County Commissioners for the Thornton Water Transmission Line and Pump Station Project, known as TWP. Segment, F. As found in 1041. Permit file 23-ZONE3584. This recommendation is based on the findings and analysis of how the application adheres to the Review Criteria found in sections 10.9 and 10.10.4 of the Land Use Code for 1041 applications, as described in the Staff Report. This recommendation is subject to the applicant meeting the conditions of approval as listed in the staff report to ensure adherence to these sections, 10.9 and 10.10.4 of the Land Use Code and following the procedures and standards for the Technical Review phase. I am going to suggest that we add a condition of approval that the applicant shall provide evidence of coordination with the State Colorado Division of Dam Safety and resolve the safety concerns expressed by whatever entity is associated with the Windsor Reservoir 8 at the time this condition shall be met is with the submittal of the Technical Review Criteria that they show evidence of reaching out. This new condition of approval is added as it is supported by standard the standard 1041 criteria for approval items K, Q, and T. Then also suggest, to amend condition of approval 8 to reflect the pipeline area only, and this amended condition of approval reflects back to criteria T in the standard 1041 regulations. Commissioner Rowe seconded the motion. Motion carried (5-3).

REPORT FROM STAFF

None.

ADJOURN

With there being no further business, the hearing adjourned at 10:38 p.m.

These minutes constitute the Resolution of the Larimer County Planning Commission for the recommendations contained herein which are hereby certified to the Larimer County Board of Commissioners.