

April, 1 2024

To: Larimer County Planning Commission

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[pcboard@larimer.org](mailto:pcboard@larimer.org)

From: Save The Poudre

RE: Comments on the proposed Thornton Pipeline 1041 application  
(delivered by email, Monday, April 1, 2024)

*“This would probably be the biggest opportunity for river restoration that we have ever seen in the state of Colorado.”* -- Gary Wockner of Save The Poudre, in the *Colorado Sun*<sup>1</sup>, 9/6/2023

Dear Larimer County Planning Commission,

These comments are for the “Thornton Pipeline 1041 Permit.” Save The Poudre respectfully requests that you recommend denial of the 1041 application submitted by the City of Thornton for the proposed Thornton Water Pipeline because it does not meet the “**Review Criteria for Approval of all 1041 Permits**” in LUC 10.9.1. Specifically, the application violates at least five of the Review Criteria.

Save The Poudre is a 501c3 non-profit organization based in Fort Collins. We have about 1,000 dues-paying members, the vast majority of which live in Larimer County. Our mission is to protect and restore the Poudre River. This Thornton Water Pipeline application falls squarely within our work because it seeks to build a water pipeline across northern Larimer County containing Poudre River water that is diverted out of the River.

**Section One: Thornton’s previous application for a pipeline was denied by the Larimer County Commissioners in 2019, a denial that was upheld by the district court and the court of appeals. This new application is essentially no different than the previous application**

This is the second time that Thornton has tried to push a pipeline through the Larimer County permitting process. The first time in 2018/19, the pipeline was denied by a **unanimous** vote of the Larimer County Commissioners<sup>2</sup>. Afterwards, Thornton sued Larimer County and lost in district court<sup>3</sup>, after which Thornton appealed and lost again in the court of appeals<sup>4</sup>.

<sup>1</sup> <https://coloradosun.com/2022/12/04/thornton-water-rights-pipeline-larimer-county/>

<sup>2</sup> See “Finding and Resolution Denying The Thornton Water Project 1041 Application”, attached as Exhibit A.

<sup>3</sup> See the district court decision, attached as Exhibit B(1) and Exhibit B(2).

<sup>4</sup> See the appeals court decision, attached as Exhibit c.

**Importantly, there is nothing notably different in this new application other than a slight change in the location of the pipeline. Moreover:**

- A. The new application also chooses County Road 56, an option that was in the previously **denied** application as well. Responding to the County Road 56 location, the former County Commissioners unanimously wrote:  
*“County Road 56 will have a greater detrimental impact on private property because less public right of water is available.” (page 10)*
- B. The previous County Commissioners also noted that the previous project *“includes three phases with one pipeline per phase.”* And that the project *“does not account for cumulative impacts of all three pipelines.”* (page 10) That same critique exists in this new application which completely ignores the last two phases of the project requiring multiple pipelines.
- C. Notably, the former County Commissioners denied the previous application because it did not meet the “standards of review” which laid out twelve review criteria in the Land Use Code (LUC). The Commissioners found that the previous application did not meet seven of the twelve review criteria. Every one of those critiques exists in the new application as well.

**Section Two: The new “Thornton Water Project” application was submitted to Larimer County on Dec. 11, 2023, and on Feb. 14, 2024, Larimer County deemed the application “ready for review.” The application violates five of the Review Criteria in Section 10.9.1 of the Larimer County Land Use Code including:**

- 1. The application violates LUC section 10.9.1.(C) which states: “The applicant has adequately considered reasonable siting and design alternatives.....”**

The applicant has violated 10.9.1(C) because Thornton has failed to consider the **“Poudre River Option”** as a reasonable siting and design alternative.

Save The Poudre has been involved with the Thornton Pipeline for 16 years, and during the entire time period we have told Thornton that the “Poudre River Option” (also sometimes called the “Poudre River Diversion” by Thornton) was a great project that would not only be met with open arms by Save The Poudre and the Fort Collins community, but we would also help them through the permitting process to make it a success.

Initially in 2008, we heard from engaged people that the City of Thornton was proposing to use the Poudre River as a conveyance to get their Larimer County Canal water down to Thornton. Because Thornton owns so much water that could be a consequential addition to flows in the river in downtown Fort Collins, Save The Poudre decided to meet with Thornton and discuss the opportunity. In 2008, Save The Poudre did meet with Thornton, and we let Thornton know that

we would be delighted to work with them to help the “Poudre River Option” become reality.

At our meeting in 2008, we offered to help Thornton with their permitting process through the Army Corps of Engineers, and offered to be a public advocate for the “Poudre River Option” as well as Thornton’s path through the permitting at the local and state level.

Over the intervening years, one of Save The Poudre’s board members stayed in touch with Thornton’s staff – as well as served on the “Poudre Runs Through It” committee – which also involves Thornton’s staff. Throughout that time, Save The Poudre was committed to working with Thornton to help the Poudre River Option be reality.

In 2015, Save The Poudre was informed that the City of Thornton was not choosing the Poudre River Option as their path to get their water to Thornton, but was instead considering a pipeline option. In April of 2016, Thornton began meeting with City of Fort Collins staff to discuss the “Thornton Pipeline”, meetings at which Save The Poudre attended. At that point, it increasingly became evident that Thornton had dug in their heels and was not choosing the Poudre River Option. In December of 2016, Save The Poudre began communicating with the public about the “Thornton Pipeline” (see press release here<sup>5</sup>)

In 2017, the City of Thornton began increasingly communicating with citizens and government agencies in northern Colorado about the pipeline option, as well as beginning their “1041 permit” application with Larimer County. In September of 2017, Thornton held a public meeting at the Aztlan Center in Fort Collins, at which Save The Poudre publicly spoke and told Thornton, **again**, that they should choose the Poudre River Option and that Save The Poudre would help them get through the permitting process as well as publicly support them in so doing.

In January of 2018, the formal 1041 application for the Thornton Pipeline through Larimer County was made public. Through a series of Colorado Open Records Act requests in 2018, Save The Poudre received documents from the City of Thornton (Exhibit D) that included a full discussion and partial analysis of Thornton’s “Poudre River Option. Dozens of documents were included in multiple CORA responses, with the most revealing being document “2975\_001.pdf<sup>6</sup>” which describes the “concepts” to get water to Thornton, including the “Poudre River Option” (see Figure 1 below).

Throughout the 2018 and 2019 permitting process with Larimer County, Save The Poudre continued to call for the Poudre River Option. Later in 2022 and 2023, Save The Poudre met with Thornton three times and continued to encourage them to pursue the Poudre River Option.

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<https://www.facebook.com/SaveThePoudre/photos/a.10150094333203398/10154752509303398/?type=3&theater>

<sup>6</sup> Exhibit D

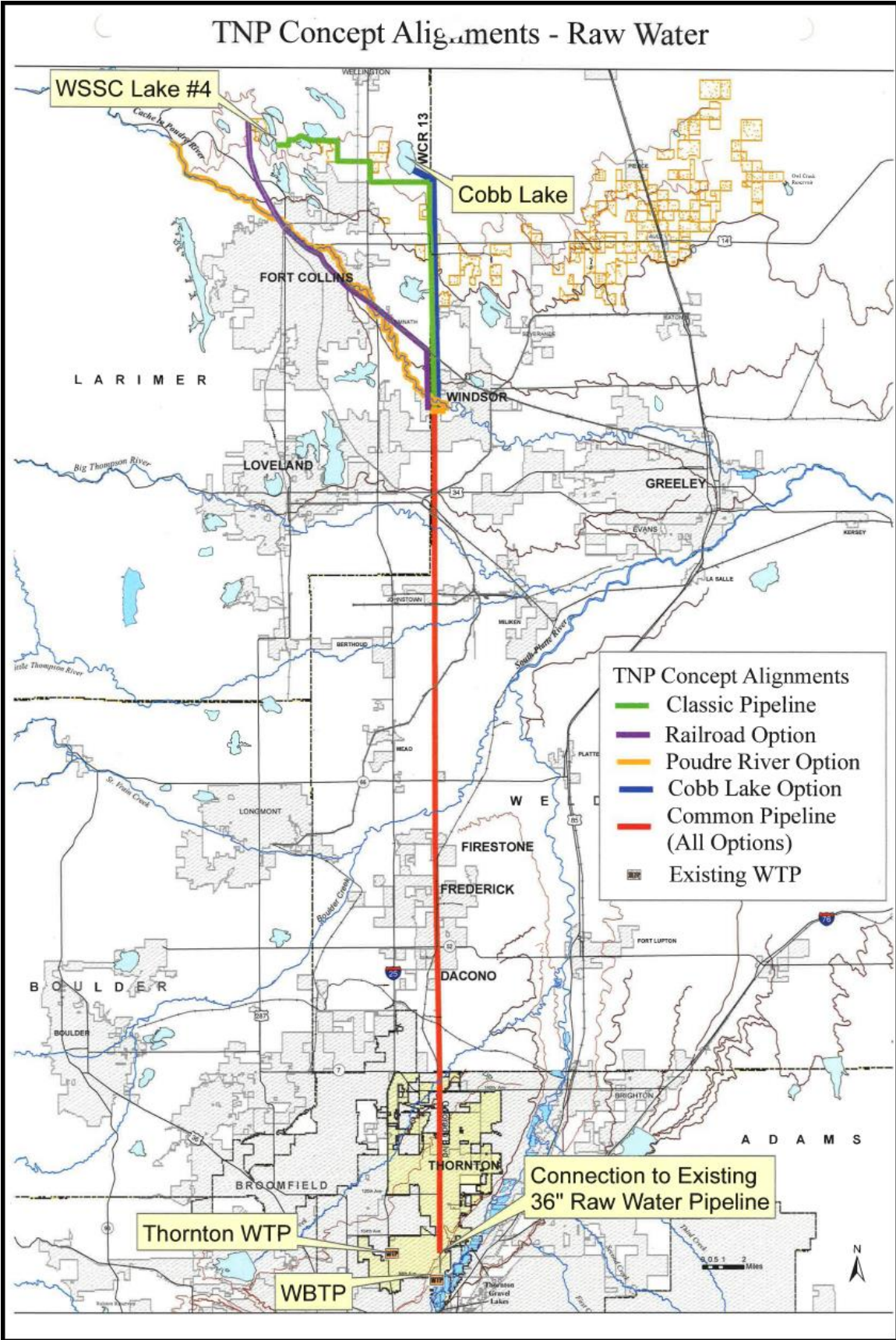


Figure 1

## The Poudre River Option is “reasonable” for the following reasons:

- The Poudre River Option gets Thornton its water in a timely fashion – in fact, Thornton could have had its water **20 years ago** by using the Poudre River Option.
- The construction costs of the Poudre River Option are likely considerably less because no pipeline would have to be built in Larimer County and **no permit would be needed in Larimer County**.
- Colorado State Law allows a river to be used as a “conveyance” for water rights:
  - i. Colorado Revised Statutes 37-87-102, section (4) allows water rights owners to use the natural rivers/streams to convey their water downstream.  
<https://law.justia.com/codes/colorado/2016/title-37/water-rights-and-irrigation/article-87/section-37-87-102/>
  - ii. Northern/NISP took it farther – they created and passed a state law in the legislature in 2018, SB 18-170, that further allows them to release the water down the river for ecological purposes.  
<https://leg.colorado.gov/bills/sb18-170>
- Thornton’s water decree<sup>7</sup> for the Project allows water diversion at any location in the WSSC system, which includes significant opportunities downstream of Fort Collins and in Weld County<sup>8</sup>. In fact, the water decree specifically states that water can be diverted, “at such other point(s) within the WSSC System as may be agreed upon by Thornton and WSSC, following notification of the Division Engineer and the objectors identified with an asterisk [\*] in paragraph 3.”
- In May of 2021, Save The Poudre released the “Clean The Poudre” report<sup>9</sup>. The analysis in this report clearly demonstrates that the water quality in the Poudre River can be cleaned up so that the river can be used as a conveyance for all raw water delivery, including as a replacement for the Thornton raw water Pipeline Project in Larimer County. On May 17, 2021<sup>10</sup>, the report was submitted to the Larimer County Commissioners with specific mention that the analysis in the report indicates that cleaning the Poudre River can be used to allow Thornton to use the river as a conveyance rather than building a pipeline.

Save The Poudre consulted with AbTech Industries<sup>11</sup> to provide estimates of technologies and costs for cleaning the City of Fort Collins’ stormwater before it runs into the Poudre. Our report, as well as AbTech’s website, provide lots of examples and

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<sup>7</sup> See “Where can I find the Thornton Northern Water Supply Project decree?”:

<https://thorntonwaterproject.com/faqs/>

<sup>8</sup> See WSSC Map, Exhibit D.

<sup>9</sup> The Clean The Poudre report is attached as Exhibit E.

<sup>10</sup> See press release here: <https://www.savethepoudre.org/2021/05/17/poudre-river-update-clean-the-poudre-campaign-would-allow-more-water-in-the-poudre/>

<sup>11</sup> <https://www.abtechindustries.com/>

photographs for you to consider. In summary, all water providers, including Thornton, can use the Poudre River as a cost-effective conveyance, that would provide the following benefits:

- Increase quality-of-life for City and County residents,
- Preservation of the environment and natural habitat along the Poudre River corridor,
- Increasing flows for recreation including at the new downtown Fort Collins Whitewater Park,
- Increase water quality and cleanliness in the Poudre River,
- Helping to heal the ecological health of the ailing Poudre River and the biotic community surrounding it.

Importantly, Thornton would get “raw” water from their Poudre River project, no matter how it’s built, that will be treated to drinking water quality standards at Thornton’s water treatment plant in Thornton. The Poudre River Option, with some clean up or not, can easily serve this need.

## 2. The application violates LUC section 10.9.1.(E) which states that,

*“The mitigation shall follow a hierarchy to first avoid impacts to resources of highest value, second minimize the impacts that are unavoidable and finally mitigate the impacts that occur. For purposes of this section, the term environment shall include: 1. Air quality, 2. Surface water quality and stream and river health, 3. Groundwater quality, 4. The ecological and functional health of wetlands and riparian areas, 5. Terrestrial and aquatic animal life, 6. Terrestrial and aquatic plant life, 7. Soils and geologic conditions, and 8. Visual quality.”*

LUC 10.9.1.(E) is violated because the application must “first **avoid** impacts to resources...”. By not choosing the Poudre River Option – which would **AVOID ALL** impacts in Larimer County including all of those listed in #1 - #8 – the application is choosing to “mitigate” impacts rather than “first avoid” impacts. In fact, the application spends 10 pages – pages 3-50 through 3-60 – describing the mitigations, all of which could be avoided in the first place by choosing the Poudre River Option. The LUC is clear that the application and project must “**FIRST AVOID.**”

## 3. The application violates LUC 10.9.1.(F), which states that:

*“The proposed project demonstrates how it mitigates impacts on rivers, streams and wetlands to the greatest extent possible, including following a mitigation hierarchy to first avoid impacts to resources of highest value, second minimize the impacts that are unavoidable and finally mitigate the impacts that occur.”*

LUC 10.9.1.(F) is violated because the application must “first **avoid** impacts to resources...”. By not choosing the Poudre River Option – which would **AVOID ALL** impacts in Larimer County – the application is choosing to “mitigate” impacts rather than “first avoid” impacts. The LUC is clear that the application and project must “**FIRST AVOID.**”

**4. The application violates LUC 10.9.1.(Q), which states that:**

*“The planning, design, and operation of the proposed project will reflect principles of resource stewardship and conservation, which is characterized by but not limited to: energy efficiency, recycling or reuse, adaptive management, and conservation or mitigation strategies for forest, water, soil, and other applicable natural assets.”*

By not choosing the Poudre River Option, the application violates LUC 10.9.1.(Q) because the Poudre River Option reflects principles of resource stewardship and conservation for the protection and enhancement of the ecological, biological and recreational health of the Cache la Poudre River in Larimer County including through Fort Collins.

The Cache la Poudre River currently has about 60% of its water diverted out before the river reaches downtown Fort Collins (see Figure 2 and Figure 3 below). The diversion of water has caused dramatic negative ecological impacts to the river including to its fishes and wildlife, forest and wetlands, and water quality.

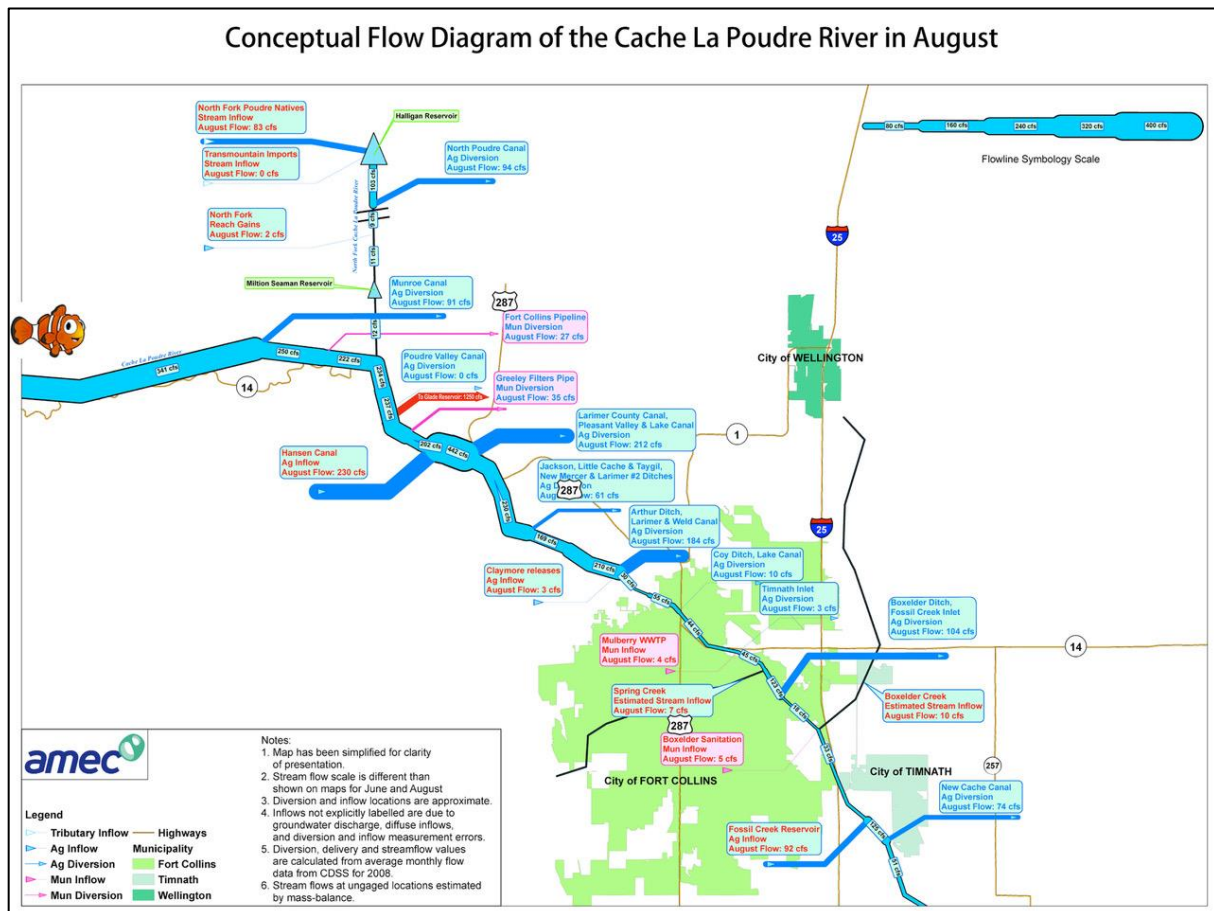


Figure 2

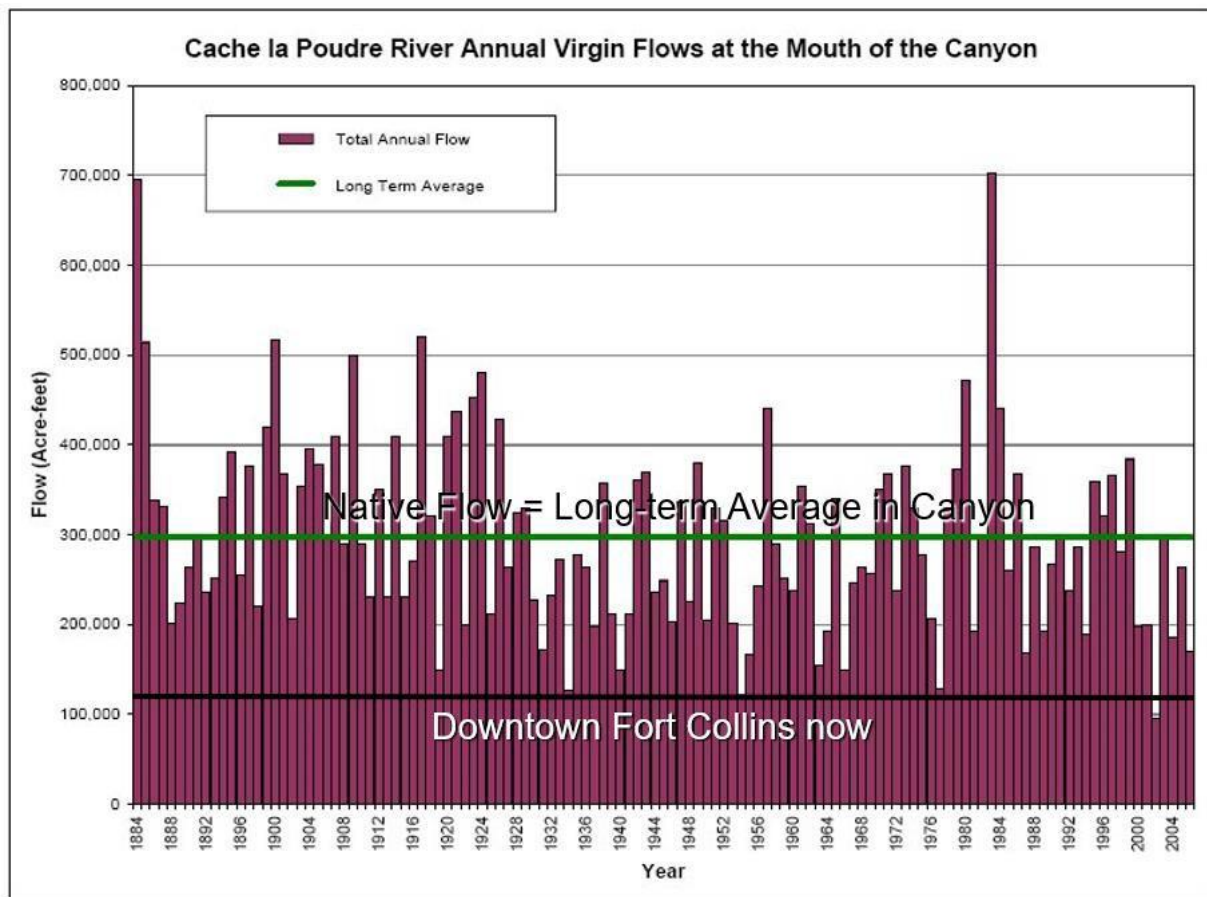


Figure 3

In 2016 and 2017, the City of Fort Collins created an in-depth study and report called the “State of the River Report: A River Health Assessment” and a summary “Poudre River Report Card” (see links here<sup>12</sup>, and included as Exhibit F) that “graded” the health of the river on several ecological “indicators”. In this report, the “Urban Zone” – Overland Trail to Timberland Road – received a grade of “C” due to the negative ecological impacts of reduced flows in the river and the impacts reduced flows have on the riparian corridor through Fort Collins.

Due to over a dozen diversions before the river reaches downtown Fort Collins (see Figure 4 below), peak flows have especially been reduced in the Urban Zone, where currently about 50% of the peak flow is diverted (see Figure 5 below).

<sup>12</sup> <https://www.fcgov.com/poudrereportcard/>



# POUDRE RIVER DIVERSIONS

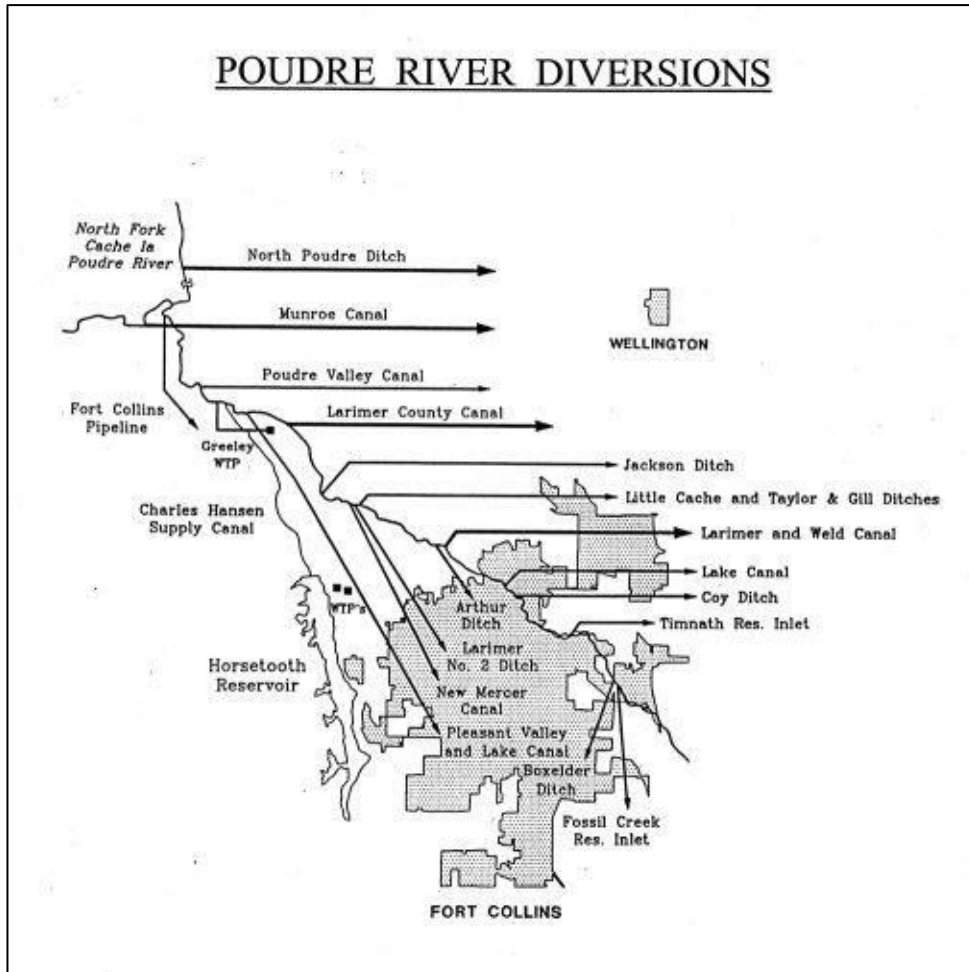


Figure 4

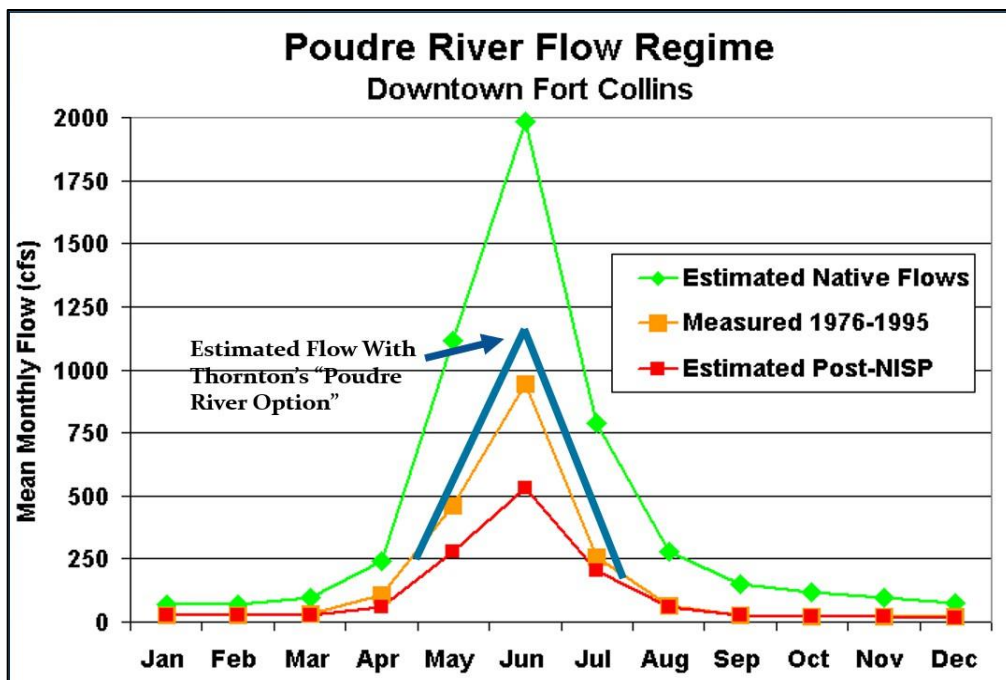


Figure 5

The reductions in these peak flows have caused the following ecological problems and impairments to the health of the river:

1. The river water is warmer which can lead to fish die-offs and injury to aquatic life.
2. Sediment and mud have built up on the bottom of the river which negatively impacts aquatic life.
3. Trout and other native fishes can't spawn in mud.
4. Algae grows in the riverbed and on rocks.
5. The pollution entering from the City's stormwater and wastewater further degrades the water quality in the river because of the lack of dilution caused by the diversion of high flows.
6. Wetlands are dried up.
7. The forest canopy – cottonwoods and willows – are dried up.
8. Recreational opportunities are impaired, including those provided by the new Whitewater Park that is being built.
9. Flooding increases because the channel is increasingly filled in with sediment and vegetation, and so when it floods, the flooding impacts spread out quicker and farther.
10. An increase in the presence of e Coli bacteria, a serious human health problem.
11. The low-flowing river, with reduced high flows, is uglier.

The Poudre River Option offers a principle of resource conservation and water management that helps address some of the ecological problems – and helps heal the river and the biotic community surrounding it – in Larimer County and Fort Collins. The City of Thornton intends to yield about 14,000 acre feet of water from the Larimer County canal system to send in pipelines down to Thornton. This water is currently diverted into the canal system at a rate of about 100 cubic feet/second (cfs) through the high-flow months of mid-May to mid-July. Adding that 100 cfs of “peak flow” to the Poudre River through Fort Collins would make a significant positive impact on the ecological health of the river (see Figure 5 above).

As depicted in Figure 3 above, about 115,000 acre feet of water currently flow through Fort Collins, with average peak flows of around 1,000 cfs during the spring runoff (“June Rise”). Adding Thornton's 14,000 acre feet would add about 11% to the overall amount of water in the river and about 10% to the peak flow during the spring runoff (see Figure 5 above).

If the “Poudre River Option” were implemented instead of a pipeline option, it would provide significant benefits to the river by increasing the ecological health of the Poudre River and increasing the recreational opportunities in the river in the Urban Zone. The benefit of adding water would have a healing effect on the ailing river. In fact, rivers – like all natural systems – have a tremendous ability to heal themselves, a process that has occurred in many places across the U.S. when dams have been removed. Further, right here on the Poudre River, one dam has already been removed – the Josh Aims Dam<sup>13</sup> – that has helped heal the river. Adding Thornton's 14,000 acre feet of water would help heal the river because:

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<sup>13</sup> [https://www.youtube.com/watch?v=lu\\_Tl\\_uJ9n8](https://www.youtube.com/watch?v=lu_Tl_uJ9n8)

1. The river water would be cooler which would benefit native fish.
2. The higher flow would help flush sediment and mud out of the river channel.
3. Trout could more easily spawn in a cleaner river-bottom of sand and gravel.
4. Less algae would grow on the riverbed and on rocks.
5. Less water treatment and expense might be needed by the City's wastewater treatment plant, and city-wide stormwater runoff would have less negative impact on water quality in the river.
6. Wetlands would be helped to flourish along the river.
7. Cottonwoods and willows would be helped to flourish along the river.
8. Recreational opportunities, including those at the new Whitewater Park, would be enhanced.
9. Flooding impacts may decrease.
10. The river would be more beautiful.

**5. The application violates LUC 10.9.1.(T), which states that:**

*"The benefits, in terms of physical improvements, enhanced services, or environmental impacts, of the proposed project outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development."*

As described in "#4" above, adding Thornton's 14,000 acre feet of water to the Poudre River, by utilizing the Poudre River Option, would provide the greatest benefit to Larimer County. Therefore, by not choosing the Poudre River Option, the application violates the LUC because the "benefits" do not "outweigh the losses of any natural resources."

Further, in the application, Thornton describes creating and adding money to a "Poudre River Enhancement Fund" of "at least \$3 million" from the sale of its Larimer County farms. The application claims that the money in the Fund can be used for "Acquisition and development of additional water supplies to add to the Cache la Poudre River." Notably, this \$3 million would be the proverbial drop in the bucket compared to actually implementing the Poudre River Option to use the river as the conveyance for all of Thornton's water.

- First, at recent auction of C-BT water, bidders paid an average of \$52,220 for an acre-foot of firm-yield water<sup>14</sup>. Thus, Thornton's 14,000 acre feet of water is worth ~\$731 million, making the \$3 million offer a drop in the bucket of the water's actual worth.
- Second, and related, if Larimer County chose to use Thornton's \$3 million to buy firm-yield water that would be guaranteed to flow in the Poudre, the County could buy only **57 acre feet** of C-BT water with \$3 million. Again, this is a drop in the bucket compared to the 14,000 acre feet that the Poudre River Option would provide. Additionally, 57 acre feet of water would provide essentially meaningless ecological benefits as compared to adding 14,000 acre feet provided by the Poudre River Option. Further, other water sources in the Poudre River basin – including those of the North Poudre Irrigation Company – are

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<sup>14</sup> <https://www.thefencepost.com/news/auction-of-colorado-river-water-nets-4-7m/>

significantly more expensive than C-BT water. Thus, we see zero path forward that involves purchasing water to increase flows in the Poudre – water is simply too expensive, and Thornton’s statement about “acquiring” water is not realistic.

- In the application, Thornton also discusses, “Adding Water to the Poudre via the Poudre Flows Instream Flow Project.” **This is not new** – this concept was also present in the previous application that was **denied** by the former Larimer County Commissioners. While the concept has advanced slightly since then, it still suffers from a lack of specificity regarding the location, amount, and timing of water added, and thus its ecological benefit is undeterminable.

### Conclusion:

Larimer County’s Land Use Code is very clear that the application must meet all of the Review Criteria in order to be accepted. The Code is also clear that the Larimer County Commissioners have the power to deny the application based on it not meeting any or all of the Review Criteria.

The Thornton Water Pipeline application does meet at least five of the Review Criteria for Approval. We request that the Planning Commission recommend that the application be denied. Further, the Planning Commission should recommend that Thornton pursue the Poudre River Option.

Thank you,



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