

STATE OF
COLORADO

Deranleau - DNR, Greg <greg.deranleau@state.co.us>

Dreamweaver and Complaint to COGCC/Complaint Response Document # 200449290

Marette - DNR, Brandon <brandon.marette@state.co.us>

Tue, Dec 22, 2020 at 12:26 PM

To: Mike Chiropoulos <mike@chiropouloslaw.com>

Cc: dana bove <danajbove@gmail.com>, "Cannon - DNR, Kristin" <kristin.cannon@state.co.us>, "Padia - DNR, Joe" <joe.padia@state.co.us>, Mike Sherman - DNR <mike.sherman@state.co.us>, John Noto - DNR <john.noto@state.co.us>, Greg Deranleau - DNR <greg.deranleau@state.co.us>

Good afternoon Mike and Dana (*I've also cc'd John & Greg from COGCC*),

Thank you for your continued concern for this roost.

As Joe mentioned in his Friday e-mail to Dana, CPW is continuing to work through this matter with COGCC and the Operator.

I expect COGCC will send an update once they are able. (**Note, you are probably well aware that COGCC and CPW are very busy trying to get SB181 guidance out ahead of 1/15. That doesn't mean this roost is any less important, but that an answer may be more delayed than normal.*)

Regards,

Brandon B. Marette, CWB®

Northeast Region Energy Liaison and Land Use Coordinator

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CPW's Energy Webpage



THINK SAFETY FIRST!



(**Note, I'll be on furlough 12/23, and off 12/24 for a Governor's Holiday*)

On Tue, Dec 22, 2020 at 11:05 AM Mike Chiropoulos <mike@chiropouloslaw.com> wrote:

Liza and All:

Thanks for the interest and the commitment to getting this resolved.

My perspective below. Questions and discussion welcome. Simple ask: protect the habitat.

The operator's location permit was submitted and approved before the heightened protections under SB19-181 became law.

Even prior to 181 became effective, the location would have likely been denied had the operator checked the box for "sensitive wildlife habitat" in the 2A application.

The operator did not, and Front Range Eagle Studies did not learn of the application until after it was approved by COGCC.

For protected bald eagle habitat including the Middle Boulder Creek winter night roost, CPW high priority habitat policies and buffers are substantially unchanged for High Priority Habitat protections, buffers and seasonal closures.

The current operations are inconsistent with those HPH buffers and seasonal protections for the roost.

FRES has baseline data and several years of data documenting displacement and avoidance by bald eagles coinciding with past disturbances by operations at the location on Middle Boulder Creek.

The operator's consultant appears to assert that it has not observed bald eagles since operations commenced and the consultant's monitoring commenced – this assertion fails to take account of baseline data going to past years.

The new COGCC "Mission Change" rules become effective January 15, 2021 and generally raise the standards for protection and avoidance of wildlife resources. However, the existing (pre-Mission Change) 1200 series rules provide ample authority for applying seasonal closures and other protective measures for this location within sensitive/high priority wildlife habitat.

The operator knowingly proceeded drilling at this problem location – after being informed of the presence of the roost post-approval of the 2A and prior to drilling. So the operator was on notice that seasonal and other protections would apply to future operations.

In addition to recommending protections and suspensions of operations during the winter closure period, data and documentation should be added to COGCC's new "CIDER" database.

Here's the new CIDER Rule at 303.a.(5) -- effective 1/15/2020 – which appears to provide authority to require new measures to minimize impacts in addition to providing comprehensive location data going to public health, environmental and wildlife issues and impacts:

Cumulative Impacts Data Evaluation Repository.

A. Purpose. This Rule 303.a.(5) is intended to provide data for the Commission's cumulative impacts data evaluation repository. The Commission intends to use the data, in cooperation with CDPHE and other partners, to undertake basin-wide, statewide, and other studies to evaluate and address cumulative impacts to relevant resources at appropriate scales pursuant to Rules 304.c.(19) or 904.

B. Resource Impacts. The Operator will submit a Form 2B, Cumulative Impacts Data Identification that provides quantitative and qualitative data to evaluate incremental adverse and beneficial contributions to cumulative impacts caused by Oil and Gas Operations associated with the proposed Oil and Gas Development Plan, including any measures the Operator will take to avoid, minimize, or mitigate any adverse impacts:

The duty to protect wildlife resources under 181 is mandatory, not voluntary on the operator's part or discretionary on COGCC's part. Allowances for "technical feasibility" or "cost effectiveness" were deleted from the Oil and Gas Act, effective on the effective date of the Act.

In sum, the operator was on notice and chose to proceed to drill at a problem location. Applying seasonal closures and other protections is appropriate to conserve this important bald eagle habitat under the Oil and Gas Act.

The operator will be able to re-commence operations after the seasonal closure is over.

My sense is that CPW's general HPH protections apply to all activities, so beyond oil and gas operations at the site (including water pumping related to the concrete operation). Are BMPs available to direct those activities away from the HPH during the seasonal closure period?

Best to all,

Mike

Mike Chiropolos

Attorney & Counselor, Chiropolos Law

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"Because it's not the size of the firm in the fight, it's the size of the fight in the firm"

Please contact sender immediately if you may have received this email in error, because this email may contain confidential or privileged information

On Fri, Dec 18, 2020 at 9:52 AM Rossi - DNR, Liza <liza.rossi@state.co.us> wrote:

Good Morning Dana and Mike,

The CPW folks in the NE Region (many of whom you copied on your email) are aware of your official COGCC complaint and will reach out to you regarding how best to proceed. Please understand that this is a local issue on which I do not have the relevant information to be of much assistance. Furthermore, because it sounds like you have already been in communication with Brandon and Joe, it is not particularly helpful to alter the lines of communication at this point. In the future, it really is best if you can continue to work with the local CPW personnel rather than reaching out directly to me.

Thank you for your continued work and interest in bald eagles on the Front Range. As I said on our video call before the 1200 series hearings, FRNBES and CPW are working towards the same goal - long-term conservation of bald eagles. The new SB 181 rules and the 1200 series, in particular, will be a big improvement compared to the 1298 Rules in terms of protecting high priority wildlife habitats across the state. COGCC and CPW, along with the huge number of public participants, worked hard to develop a protective and balanced regulatory approach.

I hope you have Happy Holidays.

Liza

Liza Rossi

Bird Conservation Coordinator



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Working Remotely - Cell 970-819-1695

On Thu, Dec 17, 2020 at 12:03 PM dana bove <danajbove@gmail.com> wrote:

Hello Liza,

I'm copying the email below (at least on my end it is in blue) regarding the complaint we filed with COGCC **Document # 200449290**.

While Mike Chiropolos received a response from Greg Deranleau on Monday that he would make some time to look into this by the end of this week, CPW as far as we know has not weighed in with COGCC formally regarding their view of this complaint.

So far, COGCC's response to this complaint indicates that they have a fairly rudimentary understanding of this as wildlife issue. It is our understanding that it is incumbent upon CPW to consult and weigh in on

this matter in regard to violation of HPH buffers as they pertain to winter communal roost with clear line of sight.

It makes sense, as Brandon has explained that CPW should be able to wave HPH abidance in circumstances where eagles have not been actively maintaining nests for some time, etc. At the Middle Boulder Creek Roost, there are no circumstances that warrant such a waiver on HPH protections. In addition, but by no means required, FRNBES has supplied ample scientific data to document that the Middle Roost has been repeatedly and extensively impacted negatively by a multitude of oil and gas development. As stated in the copied email below, the burden of proof is on Crestone.

Although we are well aware that CPW is still contemplating whether ultimately Tier 2 species should receive future protections in the COGCC rules, and if there is sufficient staffing to enforce this, the fact is, Winter Communal Roosts are part of the New Rules. CPW staff has not been required to take the time to study the Middle Roost-- FRNBES has provided that information already. All CPW should be required to do here is consult and clarify regarding the validity and "level" of seriousness of the submitted complaint. CPW has our data and their own HPH data based on scientific studies.

We have had constructive conversations with Brandon and Joe Padia regrading this matter. However, this complaint was filed over 3 weeks ago, and to our knowledge, CPW has not weighed in officially on this matter. As an aside, we feel that with a new direction being set with the New Rules, there should be transparency, especially with the stakeholder that filed said complaint.

SB19-181 has shifted the paradigm in regard to these matters. We realize that things will need to time to be sorted through, as the new rules are not even on the record until January 15, 2021. Still, from my personal perspective, this so far has a strong sense of the way matters have been handled for some time —1) a letter response by COGCC and talk of compromise allowing the the operator to continue the pumping operation; 2) a polite request that they consider operating between 10A to 2P; and 3) so far, only a hope on our part that we would gain some transparency in CPW's actual response to the complaint.

REQUEST: First my hope is that you don't see this as a complaint (about a Complaint), but an honest reaching out to see if we might engage in conversation about this matter, and how it could be instructive in other similar matters as they arise in the future—in light of the new paradigm set within the New Rules.

Mike Chiropolos is more than happy to be the point person on any conversation to follow. We'd just like to begin an open conversation about this.

Thanks

Dana

Begin forwarded message:

From: dana bove <danajbove@gmail.com>
Subject: Dreamweaver and Complaint to COGCC/Complaint Response Document # 200449290
Date: December 12, 2020 at 11:23:58 AM MST
To: "Marette - DNR, Brandon" <brandon.marette@state.co.us>, "Deranleau - DNR, Greg" <greg.deranleau@state.co.us>, Mike Chiropolos <mike@chiropoloslaw.com>
Cc: "Padia - DNR, Joe" <joe.padia@state.co.us>

[Quoted text hidden]

