



COLORADO

**Oil & Gas Conservation
Commission**

Department of Natural Resources
1120 Lincoln Street, Suite 801
Denver, CO 80203
303-894-2100

February 3, 2021

Mr. Dana Bove
Front Range Nesting Bald Eagle Studies
1935 Tincup Court
Boulder, CO 80305
Via email: danajbove@gmail.com

Re: COGCC Complaint Response #200449290 and #200449342

Dear Mr. Bove,

The Colorado Oil and Gas Conservation Commission (COGCC) received your complaints regarding disturbance to the bald eagle winter night roost area in Sections 20 and 21, Township 2 North, Range 68 West from noise and activity associated with oil and gas operations occurring at Crestone Peak Resources, LLC's (Crestone) Dream Weaver 21H-N268 Pad (Dream Weaver or Pad) and water pumping operations occurring nearby to provide water to the ongoing completion operations.

Your complaints, Document Numbers 200449290 and 200449342 were filed November 24, 2020 and January 15, 2021, respectively. Your complaints allege that Crestone's operations are encroaching on the Middle Boulder Creek winter night roost area and request that the operations be shut down until after March 15. Complaint #200449342 included an addendum alleging a violation of COGCC noise standards and included data you or your representative collected on November 27, 2020, following the first complaint filing, and January 15, 2021, preceding the filing of the second complaint.

Below is a summary of the review and action taken in response to your complaints followed by summaries excerpted from both complaint documents.

COGCC Complaint Response #200449290 and #200449342

The Colorado Oil and Gas Conservation Commission (COGCC) has reviewed the information provided by the complainant in and subsequent to both complaint numbers 200449290 and 200449342. At this time, the COGCC finds no evidence that a violation of COGCC Rules, orders, or permit conditions occurred and is therefore closing both complaints. The findings



that lead to this conclusion are discussed below. However, despite not finding a violation, the COGCC is convinced by the evidence provided by the Complainant and the operator that operations ancillary to and in support of the oil and gas operations are likely causing impacts to bald eagles in the Middle Boulder Creek roost area.

The COGCC considered the following information in support of this conclusion:

1. Complaint 200449290 alleged that “water pumping operations in support of” oil and gas operations at the Dream Weaver Pad were adversely affecting bald eagles’ night roosting patterns in the Middle Boulder Creek roost area.
2. Based on baseline data provided by the complainant, and observational data by the complainant through Front Range Nesting Bald Eagle Studies (FRNBES) and Crestone’s wildlife monitoring consultant, the COGCC agrees that bald eagles are not using the night roost area in numbers equivalent to years past.
3. The COGCC consulted with Colorado Parks and Wildlife (CPW). CPW also agrees that bald eagles are preferentially avoiding roosting in the trees in the vicinity of the Dream Weaver location and the water pumping operations. While some birds do stop over briefly, they quickly move along to roost elsewhere.
4. Based on our review of the information provided and discussions with the complainant and CPW, the COGCC has determined that the most significant disturbance mechanism in the area is the water pumping operations. The water pumping operations are located approximately ¼ mile closer to the trees in which eagles roost. Although surrounded by sound dampening walls, the pump engines are a nearly constant source of noise, at the immediate edge of the pond. The pumps require fueling, service, and maintenance which requires personnel visits.
5. The COGCC contacted the State Engineer’s Office within the Division of Water Resources and determined that the water service provider (A&W Water) has a legal right to obtain water from the location at which the pump is located.
6. Based on the nature of the water pumping operations, the COGCC has determined that the water pumping does not meet the definition of oil and gas operations. Accordingly, the COGCC lacks authority to enforce its regulations against the water pumping operations.
 - a. The Colorado Oil and Gas Conservation Act (the Act) authorizes COGCC to regulate oil and gas development in a manner that protects public health, welfare, safety, the environment, and wildlife resources.¹

¹ “It is declared to be in the public interest and the commission is directed to: (l) Regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources[.]” C.R.S. § 34-60-102(1)(a); *see also* C.R.S. § 34-60-106(2.5)(a) (“In exercising the authority granted by this article 60, the commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations.”).

- b. The Act clarifies the scope of COGCC's authority by defining two important terms: Oil and Gas Operations and Operator.² The COGCC interpreted and further refined the definition of Oil and Gas Operations in its 100 Series Rules.³
 - c. The legal withdrawal of water from a surface water body, whether for the purpose of providing water for hydraulic fracturing operations or any other industrial, agricultural, or municipal use, does not fall within the statutory or regulatory definition of "Oil and Gas Operations."
7. The second complaint (#200449342) alleged specifically that the operations violated COGCC's noise regulations.
- a. The sound survey average documented by the complaint for January 15, 2021 is 58.7 dBA; the survey average for November 27, 2020 is 58 dBA.
 - b. The complainant's statement that their recorded noise measurements are above the COGCC noise limit is incorrect.
 - i. Under COGCC Rule 423.b.(2).A, which became effective on January 15, 2021, the limit for this area during completion operations is 60 dBA between 7pm and 7am.
 - ii. At the time the complainants measured noise on November 27, 2020, Rule 802, in effect on that date, set industrial land use noise limits of 75dBA during completion operations between 7pm and 7am.⁴
 - c. Even with the water pumping operations potentially interfering with and raising the cumulative noise levels, the sound data provided by the complainant does not indicate a violation of COGCC's Rules occurred on January 15, 2021 or November 27, 2020.

Accordingly, the Director hereby determines that no violation of the Act or any Commission Rule, order, or permit has occurred.

²"Oil and gas operations means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations." C.R.S. § 34-60-103.(6.5).

"Operator means any person who exercises the right to control the conduct of oil and gas operations." C.R.S. § 34-60-103.(6.8).

³ "OIL AND GAS OPERATIONS means exploring for oil and gas, including conducting seismic operations and the drilling of test bores; siting, drilling, deepening, recompleting, reworking, or abandoning a well; producing operations related to any well, including installing flowlines; the generating, transporting, storing, treating, or disposing exploration and production wastes; and any constructing, site preparing, or reclaiming activities associated with such operations."

⁴ The Commission amended nearly all of its Rules, including its noise regulations, in the Mission Change Rulemaking. The Commission voted to adopt the Mission Change Regulations on November 23, 2020, and they became effective on January 15, 2021.

However, the Director also determined that the timing of Crestone's completion operations does not adhere to the "Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors (2020)." However, the recommendations of this CPW document are not enforceable components of the Form 2A location permit for Dream Weaver and are not enforceable on the oil and gas operations or the water pumping operations in the vicinity. The COGCC and CPW agree that the entire situation at and surrounding the Dream Weaver location is not ideal for the birds.

Complaint #200449290 Summary:

For reference, the following is a summary of the information you provided in Complaint #2000449290 on November 24, 2020.

Front Range Nesting Bald Eagle Studies (FRNBES) is filing a complaint to the COGCC regarding concerns about adverse impacts from operations at Crestone's "Dreamweaver" location to nearby high priority habitat for bald eagles (see attached *Complaint Front Range Nesting Bald Eagle Studies Middle roost 11-24-20.pdf*; *EX 1-8 FRNBES complaint Middle Roost pump station encroachment.pdf*).

Concerns include the encroachment from the location and nature of operations on a bald eagle winter night roost (Middle Boulder Creek Communal Roost; Exhibits 1 and 2; see attached *EX 1-8 FRNBES complaint Middle Roost pump station encroachment.pdf*) by water pumping operations in support of horizontal drilling by Crestone at this non-conventional multi-well pad location. The Form 2A Oil and Gas Location Assessment is COGCC Document No. 401614921 and the Form 2 Application for Permit to Drill is Document No. 401614935. Crestone Peak Resources Operating LLC (Crestone) is the operator of this project. The general project location is southwest Weld County near Middle Boulder Creek.

Please Note: Whereas Crestone has contracted Apex Consultants to conduct Middle Roost Counts, to our knowledge, they have never compiled any baseline data during periods when oil and gas development was NOT operating. Without baseline data, as provided in the 8/14/20 COGCC Testimony by Dana Bove, it would be impossible to determine if oil and gas development is impacting bald eagle use of the Middle Roost.

The attached Request for Reconsideration (2/25/2019) and Supplement to Request for Reconsideration (3/8/2019)(FRNBES supplement to Request...pdf; Request for Reconsideration...pdf) document deficiencies in Crestone's 2A and adverse impacts to the adjacent priority habitat from earlier operations. Crestone continues to proceed as if the designated priority habitat is not present within 0.5 miles of the location. Contrary to the information and data compiled and submitted by FRNBES, Crestone representatives assert that it's operations have not adversely impact[ed] bald eagle

populations or habitats. This is wrong: significant adverse impacts are documented by exhaustive data.

I request that the attachments and exhibits to those prior submissions be made part of the record for this complaint. They should already be part of the case file for this problem location. Please let me know if COGCC requests that some or all of these documents be re-submitted.

Complaint #200449342 Summary:

For reference, the following is a summary of the information you provided in Complaint #2000449290 on January 21, 2021.

Front Range Nesting Bald Eagle Studies (FRNBES) is filing a NEW complaint to the COGCC regarding concerns about adverse impacts from operations at Crestone's "Dreamweaver" location to nearby high priority habitat for bald eagles (see attached *Submitted 1-21-21 Middle Roost COGCC complaint FRNBES.pdf*). Please also see attached Exhibits that accompany this complaint: *Exhibits 1 to 8 Submitted 1-21-21 Middle Roost COGCC complaint FRNBES.pdf* AND *Exhibit 9 Submitted 1-21-21 Middle Roost COGCC complaint FRNBES.xlsx*.

Please also be advised that this NEW complaint now supersedes a previous complaint filed on November 24, 2020 (Document number 200449290). There are several reasons for filing the new complaint: 1) the new complaint now falls under the new COGCC rules adopted on January 15, 2021; 2) we have included new scientific information in the new complaint, and the water pumping operations—the subject of the initial complaint—continue; 3) we have not received a written response to our initial complaint; and 4) under the new COGCC rules, groups such as FRNBES will be afforded new Standing consideration for a hearing request by the professional Commission—if a hearing is so desired.

Sound measurement recordings were conducted by FRNBES at a site located about 1,420 feet from Crestone's Dreamweaver well pad prior to oil and gas development activity (baseline measurements from 8/7/20 to 8/10/20; average 39.5 dbA) and also during well stimulation. Sound levels during well stimulation activity exceeded both Weld County and current COGCC maximum allowable levels (50dbA) for residential dwellings during the time period between 7P to 7A. As shown in the data attached [to complainant's email] below, sound measurements measured in the 60 to 70dbA range for extended durations.

Summary and Conclusion

The Director did not identify any violation of the Act or Commission Rules, orders, or permits that would lead to the issuance of a Notice of Alleged Violation (NOAV). Accordingly the COGCC has closed your complaints.

I appreciate your patience as COGCC worked to investigate your complaint, including meeting with our partners at the Division of Water Resources and Colorado Parks and Wildlife, while also working to implement new Rules, which led to delays in our response to your first complaint.

Sincerely,

Greg Deranleau
Environmental Manager
Colorado Oil and Gas Conservation Commission

Cc. Julie Murphy, Director, COGCC
Brandon Marette, Northeast Region Energy Liaison, CPW
Jason Oates, Vice President Government Affairs & Public Relations, Crestone Peak
Resources, LLC