

STATE OF  
COLORADO

Deranleau - DNR, Greg &lt;greg.deranleau@state.co.us&gt;

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## Water Rights for Industrial (Oil and Gas) Use Question

11 messages

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

Mon, Nov 30, 2020 at 10:11 AM

To: Tracy Kosloff - DNR &lt;tracy.kosloff@state.co.us&gt;

Hi Tracy,

Thanks again for your support during our rulemaking efforts this summer. It already seems so long ago that we were working on the issues surrounding public water system intake protection! Our Commission voted unanimously to adopt our entire proposal (modified through the process, of course) last Monday.

On an unrelated note, we are following up on a complaint about a company pumping water from some quarry ponds along Middle Boulder Creek to support oil and gas development. To the best of my knowledge, COGCC does not have regulatory authority over a water provider except to the extent that the company is working on an oil and gas location. We do not have authority over when or from where they withdraw surface water to sell to an oil and gas operator.

The gist of the complaint is that the water provider (A&W Water) is using noisy diesel powered pumps in close proximity to an established bald eagle winter night roost area and disturbing the birds. CPW has a recommended best practice that would avoid this type of operation from November 15-March 15 within 1/4 or 1/2 mile of the roost site. However, that is a recommended practice document and is not incorporated into the COGCC issued permits for the oil and gas location in question.

My question for you is, does anyone have authority over A&W in a situation like this to have them source water farther from the roost? Are there local government approvals (the withdrawal location is within Firestone city limits) or is it totally a private transaction with whomever owns the water rights?

Sorry if you are not the right person to ask, I'd be happy to talk with anyone over there who can help explain the process to me!

Thanks,  
Greg

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Greg Deranleau  
Environmental Manager



**COLORADO**  
Oil & Gas Conservation  
Commission  
Department of Natural Resources

The mission of the COGCC is to 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, welfare, the environment and wildlife resources.

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**Kosloff - DNR, Tracy** <tracy.kosloff@state.co.us>

Mon, Nov 30, 2020 at 10:43 AM

To: "Deranleau - DNR, Greg" &lt;greg.deranleau@state.co.us&gt;

Cc: Lauren Berrien - DNR &lt;lauren.berrien@state.co.us&gt;, "Brucker, Sarah" &lt;Sarah.Brucker@state.co.us&gt;, Michael Hein &lt;michael.hein@state.co.us&gt;

Dear Greg:

First of all, congratulations to your staff for the passage of the Rules. From my understanding the transformation of the agency and the rules effort was monumental and I can't imagine how much work that must have been for you and your colleagues. Also, I understand that the rules include groundbreaking requirements to reduce methane losses in oil and gas processes, which sounds like a huge benefit for greenhouse gas reductions. I am really thrilled to hear about that.

Ok, in terms of your question, I'm checking by cc'ing a few folks (Sarah, Mike, Lauren) that A&W has either a temporary or permanent change of water right that allows the use of the water for industrial use. That is the limit of DWR's authority related to the use of the water.

Your email also made me think, might A&W just pump from the opposite side of the ponds to get further from the eagles? Again, this water right may have a point location where the water diversion must occur. If the location is more generally "from the ponds", there may be flexibility just to move elsewhere on the pond. Mike, Sarah, or Lauren, could you help with this question of location specificity as well?

There should not be any local government approval for the water use piece. There might be local government regulations related to the harassment of wildlife - but, that is something I don't know about.

Regards,  
Tracy

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Tracy Kosloff, PE  
Deputy State Engineer



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

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[1313 Sherman Street, Denver, CO 80203](mailto:Tracy.Kosloff@state.co.us)  
[Tracy.Kosloff@state.co.us](mailto:Tracy.Kosloff@state.co.us) | [www.colorado.gov/water](http://www.colorado.gov/water)

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

Mon, Nov 30, 2020 at 11:05 AM

To: "Kosloff - DNR, Tracy" <tracy.kosloff@state.co.us>

Cc: Lauren Berrien - DNR <lauren.berrien@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, Michael Hein <michael.hein@state.co.us>, John Noto - DNR <john.noto@state.co.us>

Thanks for the follow up (and the congrats regarding rules!).

I will be interested to hear more about A&W's permitted right. Not surprisingly, much of the area that includes the surface water ponds is encompassed by the roost buffers. And, unfortunately, a mapping area left this particular shoreline out of the protected area when we originally permitted the oil and gas location.

In the picture below, the oil and gas location is circled in black, the pumping area is in red, and the edge of the mapped roost buffer is in blue. The blue asterisk shows an active roost tree that should have had a buffer extending from it, which would have made the pumping area off limits.



I'm also copying John Noto on my team, so that he is aware of our conversation.

Thanks again!  
greg

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**Hein - DNR, Michael** <michael.hein@state.co.us> Mon, Nov 30, 2020 at 1:01 PM  
 To: "Deranleau - DNR, Greg" <greg.deranleau@state.co.us>  
 Cc: "Kosloff - DNR, Tracy" <tracy.kosloff@state.co.us>, Lauren Berrien - DNR <lauren.berrien@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, John Noto - DNR <john.noto@state.co.us>

Lauren,  
Can you look into the water source diverted from the ponds and let the group know if it can be legally used for industrial use?

Michael Hein, P.E.  
Assistant Division Engineer  
Water Division 1



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**Deranleau - DNR, Greg** <greg.deranleau@state.co.us> Thu, Dec 10, 2020 at 8:41 AM  
 To: "Hein - DNR, Michael" <michael.hein@state.co.us>  
 Cc: "Kosloff - DNR, Tracy" <tracy.kosloff@state.co.us>, Lauren Berrien - DNR <lauren.berrien@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, John Noto - DNR <john.noto@state.co.us>

Hi all,

I'm just trying to close the loop on this complaint. Was anyone able to determine that A&W has the legal right to be diverting water from the east side of the pond for oil and gas development activities?

Thanks for your help on this.

Greg

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**Berrien - DNR, Lauren** <lauren.berrien@state.co.us>

Thu, Dec 10, 2020 at 10:40 AM

To: "Kosloff - DNR, Tracy" <tracy.kosloff@state.co.us>

Cc: "Deranleau - DNR, Greg" <greg.deranleau@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, Michael Hein <michael.hein@state.co.us>

Hello Greg,

The pumping you are referring to is out of Filly Reservoir to Stromquist Reservoir. Mike and I met with John File who is the owner/ operator of this transaction and it is indeed legal. They typically avoid disturbing the Eagle and tried doing the operation prior to the Eagle coming, but due to the freeze we had with the last snow storm it pushed them back. They have been doing the operation since November 9th, pumping for 40 days total. The water that is pumped to Stromquist is to be used immediately for fracking and cannot be stored. Is the buffer not adequate enough to protect the roosting area?

Please let me know if you have any further questions or concerns.

Lauren Berrien

On Mon, Nov 30, 2020 at 10:43 AM Kosloff - DNR, Tracy <tracy.kosloff@state.co.us> wrote:

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**Lauren Berrien**  
**Lead Water Commissioner WD 6**  
**(303) 947-3522**

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

Thu, Dec 10, 2020 at 11:18 AM

To: "Berrien - DNR, Lauren" <lauren.berrien@state.co.us>

Cc: "Kosloff - DNR, Tracy" <tracy.kosloff@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, Michael Hein <michael.hein@state.co.us>

Lauren,

Thanks so much for the response! I'm sorry, but I'm not familiar with all the pond/reservoir names over there, so perhaps a map would be helpful, just so I'm 100% clear. The attached map shows the pumping location about which I have questions. From your description I am assuming (however dangerous that is!) that this is the pump removing water from Stromquist Reservoir because it is going directly to the frac operation on the Dream Weaver oil and gas location just to the east.

I could not find any online resource that named the various ponds.

Thanks again!!

Greg

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 **Dreamweaver\_21H-N268\_DeliverableMap\_20201125.pdf**  
936K

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**Berrien - DNR, Lauren** <lauren.berrien@state.co.us>

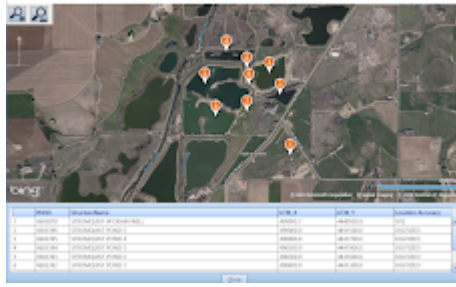
Thu, Dec 10, 2020 at 11:33 AM

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

Cc: "Kosloff - DNR, Tracy" <tracy.kosloff@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, Michael Hein <michael.hein@state.co.us>

See the attached map. It is a bit complicated within the decrees so I am not sure if you would find any information directly online.

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**Screenshot (9).png**  
1020K

**Kosloff - DNR, Tracy** <tracy.kosloff@state.co.us>

Thu, Dec 10, 2020 at 12:05 PM

To: "Berrien - DNR, Lauren" <lauren.berrien@state.co.us>

Cc: "Deranleau - DNR, Greg" <greg.deranleau@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, Michael Hein <michael.hein@state.co.us>

Thanks Lauren:

Last question from me, does the water user need to pump from that specific location or can they move further from the eagle nest and still be legal? Also, it sounds like they will be done with pumping in another 9 days or so?

Regards,

Tracy

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**Berrien - DNR, Lauren** <lauren.berrien@state.co.us>

Thu, Dec 10, 2020 at 12:32 PM

To: "Kosloff - DNR, Tracy" <tracy.kosloff@state.co.us>

Cc: "Deranleau - DNR, Greg" <greg.deranleau@state.co.us>, "Brucker, Sarah" <Sarah.Brucker@state.co.us>, Michael Hein <michael.hein@state.co.us>

Yes they should be done soon, if it freezes up again that could halt the operation again. I do not know if there is another pumping location they could use, I will ask though.

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

Mon, Dec 28, 2020 at 4:14 PM

To: John Noto - DNR <john.noto@state.co.us>

For what it's worth, this email conversation documents my reach out to DWR and their confirmation that there is a legal right to obtain water from the ponds in the vicinity of the eagle roost trees near Dream Weaver for oil and gas purposes. In addition to these conversations, I had a phone discussion with Lauren on the 10th, in which we determined that while there may be other pumps associated with the sand and gravel or cement operations, this would be the only pump directly associated with the oil and gas operations. So when A&W goes into the area to service pumps other than these, there is no nexus to oil and gas.

Thanks,

Greg

----- Forwarded message -----

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

Date: Thu, Dec 10, 2020 at 12:38 PM

Subject: Re: Water Rights for Industrial (Oil and Gas) Use Question

To: Berrien - DNR, Lauren <lauren.berrien@state.co.us>

Cc: Kosloff - DNR, Tracy <tracy.kosloff@state.co.us>, Brucker, Sarah <Sarah.Brucker@state.co.us>, Michael Hein <michael.hein@state.co.us>

From my perspective that location looks most appropriate, they still are running their pipes a ways south to cross the county road and then back to the north along the east side of the road. If they moved to the next pond south (which may not be a stromquist) they would be closer to a couple residences. If they moved north, they get closer to the nest.

CPW is ok with the way they are conducting their operations and has made some suggestions for improvement.

thanks,

greg

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