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March 8, 2019

Sent Via Email:

Jeff Robbins
Acting COGG Director
jeff.robbins@state.co.us

**RE: Supplement to FRNBES Request for Reconsideration dated Feb 25, 2019
“Dreamweaver” APD and Location Assessment Forms 2 and 2A
Failure to Disclose or Consider Sensitive Wildlife Habitat Prior to Approvals**

Dear Director Robbins:

This letter supplements the FRNBES Request for Reconsideration submitted to Director Robbins on February 25, 2019.

First, this matter arises under the authority of the Director. FRNBES requests a response from the Acting Director.

Second, FRNBES restates the facts and argument provided in the Request for Reconsideration establishing that COGCC’s approval of the Form 2 and Form 2A for this proposed drilling project violates COGCC rules because the project is within Sensitive Wildlife Habitat. As already established, the existence of Sensitive Wildlife Habitat was neither disclosed by the operator nor considered by either COGCC staff or the prior Director when the existing approvals were issued in August 2018.

In December 2017, Dana Bove—i.e., a representative of FRNBES—shared digital maps with Mike Sherman at Colorado Parks and Wildlife (CPW) and Greg Deranleau of COGCC, which identified the location of the Middle Boulder Creek Winter Roost.

As stated in the Request for Reconsideration at page 2, in December 2017 FRNBES provided digital maps identifying the Middle Boulder Creek Winter Roost to CPW and COGCC. CPW subsequently provided email confirmation to FRNBES that the maps had been updated based on the habitat information provided by FRNBES.

Third, FRNBES further supplements the existing Request for Reconsideration as follows.

The Director has authority to withhold approval of the Dreamweaver Form 2 and Form 2A.

303.j. Special circumstances for withholding approval of Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A.

(1) The Director may withhold approval of any Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, for any proposed well or Oil and Gas Location when, based on information supplied in a written complaint submitted by any party with standing under Rule 522.a.(1), other than a local governmental designee, or by staff analysis, the Director has reasonable cause to believe the proposed well or Oil and Gas Location is in material violation of the Commission's rules, regulations, orders or statutes, or otherwise presents an imminent threat to public health, safety and welfare, including the environment, or a material threat to wildlife resources. Any such withholding of approval shall be limited to the minimum period of time necessary to investigate and dismiss the complaint, or to resolve the alleged violation or issue. If the complaint is dismissed or the matter resolved to the dissatisfaction of the complainant, such person may consult with the parties identified in Rule 503.b.(7).

(2) In the event the Director withholds approval of any Application for Permit-To-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, under this Rule 303.j., an operator may ask the Commission to issue an emergency order rescinding the Director's decision.

Rule 303.j (underlining emphasis added, bold original).

The Director was informed of the presence of sensitive wildlife habitat when FRNBES submitted its Request for Reconsideration on February 25, 2019. The operator has yet to commence any on-the-ground activities. Wildlife resources are threatened.

The 2A violated COGCC 300-series rules governing review and decisions on proposed operations in Sensitive Wildlife Habitat.

G. Designation of the current land use(s) and landowner's designated final land use(s) and basis for setting reclamation standards. [. . .]

ii. If the final land use includes rangeland, forestry, recreation, or wildlife habitat, then a reference area shall be selected and the following information shall be attached:

aa. **Reference Area Map.** A topographic map showing the location of the site, and the location of the reference area; and

bb. **Reference Area Pictures.** Four (4) color photographs of the reference area, taken during the growing season of vegetation and facing each cardinal direction. Each photograph shall be identified by date taken, well or Oil and Gas Location name, and direction of view. Provided that these photographs may be submitted at any time up to twelve (12) months after the Form 2A.

[. . .]

P. Designation of whether the proposed Oil and Gas Location is within sensitive wildlife habitat or a restricted surface occupancy area.

Rule 303.b(3)G.ii and P.

The receipt of an application for operations within bald eagle sensitive habitat required posting to Colorado Parks and Wildlife triggering consultation. This was not done.

(1) Form 2A. Upon receipt of an Oil and Gas Location Assessment, Form 2A, the Director shall, as provided by Rule 303, determine if the application is complete and, if so, post such Form 2A on the Commission's website. The Commission shall provide concurrent electronic notice of such posting to [. . .] the Colorado Parks and Wildlife (where consultation is triggered pursuant to Rule 306.c)[.].

Rule 305.b(2).

Thus, the disputed approvals violated Rules 303 and 305.

COGCC's Additional Director Review Notice to Operators (February 19, 2019) explicitly applies to Sensitive Wildlife Habitat for Bald Eagles under Criteria 10: "10. Well located in RSO or SWH for Greater Sage Grouse or Bald Eagle". That document is attached as FRNBES Exhibit 15.

Director Murphy's signature box on both the disputed Form 2A and Form 2 explicitly provides that approval was "[b]ased on the information provided herein". See Exhibit 9 at page 6 and Exhibit 10 at page 4 (attached to Request for Reconsideration). Material omissions are grounds for suspending the approval and reopening COGCC's review. The operator is required to submit revised applications noting the existence of Sensitive Wildlife Habitat which triggers consultation with COGCC. The law requires *formal* consultation *prior* to decisions.

The current approvals violate the Colorado Habitat Stewardship Act, COGCC rules, and the policies and guidance documents referenced in the original Request for Reconsideration and this Supplement. The sundry notice referred to in Mr. Deranleau's response does not cure these violations.

Given the time-sensitive nature of this matter, the Director's response is respectfully requested in advance of the March 15 date on which the operator might otherwise commence disturbances within protected habitat.

Thank you for your attention to this request. Please contact me at 303-956-0595 or mike@chiroposlaw.com if I can provide any additional information or to discuss this matter.

Sincerely,



Mike Chiropoulos
Chiropoulos Law

Cc: Greg Deranleau, COGCC
Kristin Cannon and Joe Padia, CPW
Dana Bove, FRNBES

Att. Exhibit 15