

November 24, 2020

Dana Bove

Front Range Nesting Bald Eagle Studies

1935 Tincup Court, Boulder, CO, 80305

[danajbove@gmail.com](mailto:danajbove@gmail.com)

303-475-9947

Submitted via an e-mail to [dnr\\_cogcc.complaints@state.co.us](mailto:dnr_cogcc.complaints@state.co.us)

### **Complaint**

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.

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.

Crestone became aware of the existence of the night roost and proximity to its proposed location when FRNBES raised concerns to COGCC in early 2020. Crestone declined to voluntarily comply with applicable seasonal protections after meetings and discussion, taking the position that it's previously approved 2A approval exempted it from complying with the recommended protections for sensitive and priority bald eagle habitat.

**Colorado Parks and Wildlife's (CPW's) 2020 High Priority Habitat recommendations for Bald Eagle Winter Night Roosts:** Under Colorado Parks and Wildlife's (CPW) recently updated Raptor Buffer Guidance (2020), there is to be no permitted or authorized human activities within 0.50-mile of winter night roost or communal roost site from November 15 to March 15 if there is direct line of sight to the activity. Highly developed area buffer reduction does not apply to communal roosts.

The water pumping operations are an ancillary phase of the Dreamweaver operations, and do not fall under the overall umbrella of the 2A permit. The operations are currently operating at the time of this complaint (6 days past the seasonal HPH closure date), and multiple vehicles and personnel (A & W Water Inc), with several industrial-sized pumps are set up within 50 meters of roost trees utilized by bald eagles (Exhibit 3; *see attached EX 1-8 FRNBES complaint Middle*

*Roost pump station encroachment.pdf*). These ancillary operations are in violation of CPW's HPH recommendations and seasonal restrictions for winter Bald Eagle night roost sites.

The pumping of water is part and parcel of Crestone's operations at this location. Other agencies might have overlapping or separate jurisdiction on the water rights side of pumping. But the direct, indirect and cumulative wildlife impacts from the pumping are directly related to and resulting from Crestone's oil and gas operations. Accordingly, they are subject to existing rules and policies, and the general requirement in the Oil and Gas Act of minimizing impacts to wildlife resources and the environment. As currently conducted, these activities are causing significant disruption to wildlife, including but not limited to the bald eagles being displaced from the roost from this encroachment.

CPW's HPH policies are a general regulatory tool applied to all human activities that disturb wildlife species and habitats covered by the protective designations.

### **Middle Roost Background and FRNBES Studies Documenting Cumulative Impact from Oil and Gas Development**

Front Range Nesting Bald Eagle Studies (FRNBES) has been researching nesting and roosting eagles in the northern Front Range since 2015. The Middle Boulder Creek Roost (Middle Roost) (Exhibit 1 and 2; *see attached EX 1-8 FRNBES complaint Middle Roost pump station encroachment.pdf*) is an example of how multiple types of permitted and ancillary oil and gas encroached on and disturbed a bald eagle winter communal roost.

The Middle Roost is a part of a roost network, with three discrete roost areas that are near evenly dispersed along a 4-mile stream corridor. The Middle Roost area is about 0.7 by 0.4 miles in size, and mature cottonwood trees in the roost are used by 20 or more bald eagles primarily from the months of November thru April (Exhibit 4; *see attached EX 1-8 FRNBES complaint Middle Roost pump station encroachment.pdf*). The roost area includes or is adjacent to prey habitat including several ponds for fishing and upland terrane with mammals such as prairie dogs and rabbits.

Exhibit 5 depicts data from FRNBES dusk and dawn eagle counts from the Middle roost as recorded in written testimony by Dana Bove to the COGCC on August 14, 2020 (see attached file *WBRC Bove Testimony and CV 8.14.2020.pdf*). The number of eagles counted is on the Y axis and we conducted 82 sessions from early 2017 into middle March 2020. The blue bars are eagles counts, and there is a trending decline in counts over our study period.

The numbered bars of different colors represent a subset of the multiple phases of oil and gas operations that were conducted in the immediate vicinity of the Middle Roost.

In red, #'s 1, 2, and 8 are some of the episodes where workover rigs operated close to the Middle Roost (Exhibit 5; *see attached EX 1-8 FRNBES complaint Middle Roost pump station encroachment.pdf*). COGCC information recorded in the August 14, 2020 by Dana Bove demonstrates that cumulative impacts from oil and gas activities, like the current pumping operations could be leading to collapse of the Middle Roost as shown in the 32 count sessions with zero eagles after December 6, 2019.

On November 7, 2020 we documented 5 bald eagles near dusk at the Middle Roost (Exhibit 8; *see attached EX 1-8 FRNBES complaint Middle Roost pump station encroachment.pdf*), suggesting that activity have the potential of resuming this season. The combination of high noise levels associated with fracking activity that commenced on November 19, 2020, combined with pumping operations directly at the roost sight will likely exacerbate ongoing cumulative disturbance of roosting at this critical site.

### **Requested Relief**

Crestone's 2A was approved prior to the passage of SB19-181 and the new interim and permanent protections for wildlife and habitat imposed by policies since promulgated by COGCC, including the Director's Interim Criteria. Crestone failed to check the "sensitive wildlife" box on the permit application form, so it was approved under the prior administration without knowledge of the proximity to the winter roost, a protected habitat for a protected species.

Crestone is now operating at this site within the seasonal closure buffer under CPW's raptor guidance. FRNBES has documented disturbance to bald eagles who use this habitat, including avoidance and displacement.

Accordingly, we request that Crestone's operations be suspended, at a minimum, for the duration of the recommended seasonal closure period of November 15 to March 15. Based on FRNBES visits, observations and data collection, the wildlife populations and activities which CPW's science-based policies are intended to protect – are currently present at the habitat. Ground truthing and several years of experience monitoring this habitat confirm the threat and document the ongoing impacts.

### **EXHIBITS AND SUPPORTING DESIGNATION** (*see EX 1-8 FRNBES complaint Middle Roost pump station encroachment.pdf*)

This Complaint is supported by the following supporting documents and exhibits:

Exhibit 1: Middle Boulder Creek Roost, December, 2018

Exhibit 2: Middle Boulder Creek Roost, January, 2017

Exhibit 3: Water pumping operations as ancillary support to Crestone's Dreamweaver operations, November, 20, 2020.

Exhibit 4: Map showing Middle Boulder Creek roost trees (blue); Dreamweaver pad; and water pumping station.

[Exhibit 5: FRNBES Middle Roost Count Data from Dana Bove Testimony \(see attached WBRC Bove Testimony and CV 8.14.2020.pdf\)](#)

Exhibit 56: CPW Raptor Buffers (2008)(in effect when 2A submitted)

Exhibit 67: CPW Raptor Buffers (2020) (updated)

Exhibit 78: Middle Roost with 5 Bald Eagles at dusk, November, 7, 2020

**Testimony of Dana Bove at COGCC Mission Change Rulemaking (8/14/2020, excerpted in part below; see attached see attached file *WBRC Bove Testimony and CV 8.14.2020.pdf*)**

In sum, the Middle Roost area is about 0.7 by 0.4 miles in size, and mature cottonwood trees in the roost are used by 20 or more bald eagles primarily from the months of November thru April. The roosts area includes or is adjacent to prey habitat including several ponds for fishing and upland terrane with mammals such as prairie dogs and rabbits.

Now I'll describe FRNBES roost counts and the history of encroachment by various ancillary oil and gas operations.

In 2017, FRNBES observed the Middle Roost during the months of February, March, April, September, October and December, and recorded ten dawn/dusk counts. Total bald eagle counts ranged from 0 to 23 per observation during that time period (Exhibit 2; Exhibit 3a and 3b).

On December 5, 2017 I counted twenty-one bald eagles in the morning at the roost. We observed many of these eagles flushing the roost site (i.e., temporarily abandoning the site due to disturbance) upon arrival of oil and gas work trucks nearby. The observed disturbance was oil and gas workers accessing the area.

A large work-over drill rig and workers were present approximately 250 meters south of the core of the Middle Roost on about December 24, 2017 (Exhibit 2; #1). The rig remained in the area until middle January 2018. Dawn and dusk roost counts ranged from 0 to 3 from December 19, 2017 through January 17, 2018, which was the last winter count for that year.

Another oil and gas work-over rig set up on October 2, 2018, this time less than 100 meters from the communal roost core (Exhibit 2; #2). The drill rig remained through November 12, 2018. Backhoe activity beneath the core of the Middle Roost was observed from November 17 through November 21, 2018 (Exhibit 2; #3). At a time when early winter communal roost activity can commence, total bald eagle counts were zero for four dawn/dusk sessions.

After the backhoe activity ceased, non-breeding bald eagles again began to utilize the Middle Roost area on November 26, 2018 when 1 immature eagle was observed. Dawn/dusk counts increased to 4 eagles on November 29, and further to 13 and 11 eagles on December 1 and December 3, respectively (Exhibit 2). On December 4, 2018, while a FRNBES researcher was observing the roost, several heavy equipment trucks (related to

an oil and gas pipeline project by Extraction Oil and Gas) drove down the dirt road north of the roost (Exhibit 2; #4). Approximately five minutes later, four eagles grouped together at the site began “vocalizing” before leaving and flying north. Several days later (December 8 to December 12), there were no eagles roosting at dusk at the site, again coinciding with heavy equipment and lights related to oil and gas pipeline construction directly west of the roost area (Exhibit 2; #4). Pipeline or other construction activity was no longer present near the Middle Roost site December 19, 2018, when 3 immature eagles were counted at dusk. Counts of 4 and 8 eagles were documented on December 24 and 26, respectively. On December 26, 2018, several vehicles and a backhoe (oil and gas related work) were observed near the eastern section of the communal roost area near dusk, and at one point a FRNBES observer noted several immature eagles flushing from the roost trees nearby, and flying north (Exhibit 2; # 5). Roost counts at dusk again fell to zero on December 31, 2018, which was followed by 3 eagles counted on January 5, 2019, and zero again until a month later. On February 5, 2019, 9 eagles were counted prior to sunrise in the southern-most extent of the Middle Roost. This was after construction had again ceased. 7

An assortment of oil and gas activities were conducted near the Middle Roost from June 3, 2019 through March 13, 2020 (Exhibit 2; #6 to #9), the latter date marking the end of our winter dusk/dawn roost counts.

The earliest of these activities included construction on the Crestone multi-well Dreamweaver pad on about June 20, 2019. Sound walls were completed near the end of July 2019 (Exhibit 2; #6). The COGCC approved the Dreamweaver application on or around September 21, 2018, without any disclosure or determination by either the operator or the COGCC that the proposed location was within 1/3 mile and direct line of sight of the active bald eagle winter roost site at the Middle Roost. CPW’s Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors (2008) at that time listed the following measures to avoid adverse impacts to bald eagle winter roost sites:

Winter Night Roost: No human encroachment from November 15 through March 15 within ¼ mile radius of an active winter night roost (see ‘Definitions’ below) if there is no direct line of sight between the roost and the encroachment activities. No human encroachment from November 15 through March 15 within ½ mile radius of an active winter night roost if there is a direct line of sight between the roost and the encroachment activities. If periodic visits (such as oil well maintenance work) are required within the buffer zone after development, activity should be restricted to the period between 1000 and 1400 hours from November 15 to March 15.

Drilling at the completed Dreamweaver site was roughly coincident with two other significant oil and gas-related operations: 1) a workover drilling rig began operating within about 100 meters of the Middle Roost core on about November, 2, 2019, and remained until around December 12, 2019 (Exhibit 2; #8), and 2) water pumping operations at the core of the Middle Roost to supply water for a multi-well pad to the west were in place through most of November, 2019 (Exhibit 2; #7). These operations,

which included multiple trucks and workers, were also conducted at night and facilitated by bright lighting.

FRNBES conducted 36 dawn/dusk roost counts from November 2, 2019 to March 3, 2020 that spanned convergence of the multiple oil and gas activities described above (Exhibit 2; #6 to #9). We counted bald eagles on only 4 of those observation periods from November 30 to December 6, 2019. Zero eagles were counted for the remaining 32 dawn/dusk sessions.

Bove Testimony at page 7.

### **SIGNATURE AND CONTACT INFORMATION**

Please let me know if any additional information or supporting documentation might be helpful in responding to and resolving this complaint.

Signed and submitted November 24, 2020,

/s

Dana Bove  
1935 Tincup Court  
Boulder, Colorado, 80305  
[danajbove@gmail.com](mailto:danajbove@gmail.com)  
303-475-9947