

## **DWR working on plan to temporarily restore flow to Barn Pond**

By Finn McNally  
Herald Reporter

Colorado Division of Water Resources (DWR) engineer Rachel Zancarella said that she is working on a proposal to temporarily and expeditiously restore flow to Barn Pond in Twin Lakes.

Zancarella is currently investigating the waterway to determine if it is a natural stream or a man-made waterway. The channel stems from the West Fork of Bartlett Gulch which splits into two streams above Twin Lake Village. The stream was cut off on May 11, 2024, when Alan Elias, owner of the AngelView development, deepened the other channel.

Elias has been involved with DWR and Zancarella for years. When he purchased the AngelView property and his second property in Gordon Acres back in 2018, DWR notified Elias that water channels on and connected to his properties were considered illegal diversions from the natural Bartlett Gulch stream.

Uphill from AngelView and Twin Lakes Village, Bartlett Gulch splits into the East Fork, leading to a lake on the AngelView property, and the West Fork, leading towards Twin Lakes Village. Just north of the village, the West Fork splits again with one channel heading east through Elias' Gordon Acres property and the other, often referred to as Berrier Creek, leading through the village to Barn Pond.

The water in the Arkansas River Basin, like much of Colorado, is over-appropriated, meaning that there are more water rights than there is water. All of the senior water rights, those that take priority, in the Arkansas River Basin are held by downstream owners. DWR is in charge of administering water rights and does not allow undecreed diversions from waterways. DWR determined that the East Fork of Bartlett Gulch was a man-made ditch with no decree. Zancarella said they believed that the split-off of the West Fork which leads to Barn Pond is also an undecreed man-made ditch. Zancarella said that in the late 1800s, it would not be uncommon for miners to have made diversions for their purposes. She also said that the water here is owned by downstream entities because of the "first in time, first in right" doctrine that was employed at that time period.

In order to gain the right to use the East Fork channel to fill his AngelView Lake, Elias litigated with DWR for years to obtain a decree which was filed on April 15, 2024. The decree grants him water rights to six cubic feet per second to fill his lake and two ponds at AngelView. The water now flows onto his property, into the lake and then through ditches which lead to Twin Lakes. The decree also grants him a water right to a pump station from the split channel on his Gordon Acres property. Elias said that decree costs him \$25,000 a year.

Elias said that when he deepened the Gordon Acres channel, cutting off the Barn Pond channel, he was attempting to prevent flooding on the property of nearby residents. Jim and Jo Pustizzi, whose home sits along the stream, had reached out to Elias with concern that high runoff would cause their property to flood. After the stream was deepened, they confirmed in an email on July 14 that they were given permission by Ray and Judy Kilmer, whose property abuts the split, to deepen the creek and were thankful to AngelView LLC for completing the work.

"We, Jim and Jo Pustizzi, were given permission to mitigate the creek next to our cabin, and I quote from the email, 'Certainly, go ahead and cut the ditch/creek deeper, and clean the brush and grass from that channel,'" the email read. "We are so thankful to AngelView's team for quickly stepping up, showing their sincere care and concern for us, their neighbors, to help us circumvent this potential disaster."

After Berrier Creek was cut off, Barn Pond began drying up. The pond, which sits between Colorado Highway 82 and Twin Lakes on the eastern side of Twin Lakes Village, is, in Elias' own words, an "iconic" feature of Twin Lakes.

Prior to the announcement of her temporary restoration plan, Zancarella held a town hall in Twin Lakes on June 10. At the town hall, many residents expressed that Barn Pond is important to the town and the cutting off of Berrier Creek is unacceptable. Zancarella told town hall attendees that if Elias had not cut off the creek, she would've had it done herself.

Despite this stance, Zancarella said that she and DWR have not made an official determination as to whether Berrier Creek is a natural stream or a man-made ditch. The distinction is crucial as a natural stream cannot be altered without decree regardless of water rights. In addition to the town hall, Zancarella was also in town to conduct a site analysis. Zancarella later told the *Herald* that topography, historical records, water court applications and more would be considered for her determination, which may take some time to complete.

Rick Akin, a resident of Twin Lakes, said that Elias' actions were violations of the Clean Water Act and that Berrier Creek is the natural flow of Bartlett Gulch, not a man-made stream. Under section 404 of the Clean Water Act, a permit is required for any dredging or filling activities that could impact waters of the United States.

After reports from community members, the Army Corps of Engineers conducted a site walk on June 10. Daniel Delgado of the Army Corps of Engineers reported to Lake County Community Planning and Development that Elias' actions on the East Fork had violated section 404 and informed Elias as well. Elias said he had asked the Colorado District 11 water commissioner if he needed permission and was misinformed that he did not. Delgado confirmed that this was true. He also said he is in the process of drafting a notice of violation letter but that it could take 90 to 120 days. As far as the dredging activities at the West Fork Bartlett Gulch split, Delgado said they are still under investigation.

Akin supports his belief that Berrier Creek is a natural stream with a document called the Hayden Gulch Survey. The survey was drawn in 1891 based on studies from 1879, 1880, 1881 and 1889. It shows the West Fork of Bartlett Gulch as it runs into Twin Lakes but does not show the second split, only one continuous stream that appears to take a path closer to that of Berrier Creek than the stream on Gordon Acres.

Elias believes that Berrier Creek is a man-made ditch. He hired a water engineer, Craig Lis, to analyze the area's waterways and sent his findings to DWR. Lis said that the channel follows topographic lines rather than a direct downhill path and cuts through a ridge in a way he said is unnatural. He described the chances that Berrier Creek formed naturally as "impossible."

Elias said he cares about restoring Barn Pond even though he said that it is not historic. At the town hall, Twin Lakes business owner Misti Cureton announced that she and Elias had formed a group called the Twin Lakes Business Alliance, intended to advocate for local businesses.

Elias said the alliance has worked on an alternative plan to restore Barn Pond if the stream leading to it is not restored. The plan is to line the pond and fill it with water from a nearby well, and if that doesn't work, to truck in water to fill it. Akin said that the plan is not feasible as accessing the well would require U.S. Forest Service permission and trucking in water would be expensive and disruptive.

Elias said that the reaction to the plan and the business alliance was hostile and that the residents opposing his development and his actions in the West Fork of Bartlett Gulch are acting in their own interests with no intention for collaboration.

Lisa Boehmke said that Elias has not acted neighborly and has antagonized the community. Elias owns property that sits between Twin Lakes and Boehmke's house, the road to which crosses Elias' property. In 2023, Elias placed boulders on the road along the border of his property which blocked any access. The Board of County Commissioners (BOCC) ruled that the road is a public county road and forced Elias to remove the boulders; however, Elias said he still believes the road is a private driveway.

Around the time of the town hall, Elias' construction crew began piling dirt, sticks and other debris roughly 10 feet high on his property. The dirt pile now blocks Boehmke's view of Twin Lakes. She said she has been outspoken against Elias' actions in the West Fork and believes the boulders and the dirt mound to be retaliation.

"He's pissed he hasn't sold any lots yet, he's getting exposed for his ill behavior and he's getting more aggressive, period," Boehmke said. "We had no problem with development. We had a problem when it was all merely about him and his profit. He has never cared about the community once and as soon as he goes in and does something awful, he tries to correct it. His theory is, 'I will go in and do what I want instead of asking permission. Then I will ask for forgiveness.'"

Elias said that the mound is debris from deepening the channel and that he plans to remove it. He described Boehmke's allegation as a "witch hunt."

The final plat for the AngelView development in Twin Lakes was approved by BOCC on Tuesday, July 16. AngelView LLC can now begin selling lots on the development. Lake County Community Planning and Development Director Anne Schneider said that approval of the plat was only dependent on AngelView's compliance with development code and that the issues regarding Barn Pond were not part of the consideration as they occurred off of the AngelView property.