

To: Bureau of Land Management – Royal Gorge Field Office
RE: Applicant’s “Over the River” Proposal
Comments on FEIS – August 29, 2011

From: Carol Neville
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Thank you for your work on the consideration of the proposal and application for “Over the River.” There are some improvements evident in the FEIS, mostly pertaining to the number of days lanes would be closed on Highway 50. However, there remain many questions and substantial concerns.

Due to the limited timeframe to read and respond to the FEIS, my comments herein are directed toward the expressed Preferred Alternative 1a and to impacts common to all alternatives except “No Action.”

Economic Impacts

FEIS at 4.14.2.3 - Alternative 1a Summary

“The fishing industry and the hunting industry in the PAA are likely the only sectors of the local economy that would experience a loss of business and a loss of revenue because of OTR activities.” [*p.144, underline added*]

According to the FEIS, part of BLM’s Purpose is “providing support to the local and regional economy.” [*Appendix F, page 8, item#19*]

The Other Side of Temporary

The OTR proposal is largely being considered because of its promotion as being temporary. However, the “temporary” tag can play both ways. It also means that any promised gains in jobs and economies will also be temporary.

“Impacts to employment and personal income levels as a result of OTR installation and removal activities would be *minor, beneficial, and short term.* [*FEIS 4.14.2.1, p.4-127. emphasis added.*]

The FEIS is arranged in such a way that it is very difficult for the lay person to see how the temporary estimated benefits have been weighed (or not) directly against the long-term, permanent economic contributors OTR will injure. A notable example: Is the OTR jobs benefit the total project contribution, or is it the net after subtracting the displaced contribution of the existing characteristics of the PAA, SAA, and the state (as described in Chapter 3.0)?

“NEPA requires that the description of impacts should identify how short-term uses of the environment would affect long-term productivity of resources (or, actions that would

result in trade-offs between short-term uses and long-term productivity).” [FEIS 4.30, p.346]

Economic Losses to Fishing Industry, Outfitters, Guides

BLM’s response to DEIS comments on economic inequities is “No socioeconomic mitigation measures were identified...in the DEIS, and no additions... in the FEIS. Economic impacts will be positive for certain groups and negative for others, but the aggregate impact will still be positive.” [FEIS Appendix F, p.62 #5]

Anglers and the fishing industry hear BLM’s statement as “There will be negative impacts from OTR, but it’s a sacrifice we are willing for you to make.”

Losses foreseen in the fishing industry and its personnel are listed on FEIS pages 4-129 and 4-136. These figures total \$225,000 for PAA outfitters and guides for the entire span of OTR’s activity and presence. Though possibly still underestimated, at least this amount was raised some for the FEIS as compared to the DEIS. However, the economic harm to individual guides is still sorely understated.

First, look at the fishing industry’s individual average incomes: [FEIS 3.14.1.3, p. 133]
Chaffee County: \$15,737 Fremont County \$19,697

For guides, this amount does not consider that the job has no benefits – no health insurance, no paid vacations – and guides are responsible to cover all the expenses of their trips, transportation and gear. On top of that, of course, it is seasonal employment.

Now subtract these further losses as listed at FEIS 4.14.2.1a, p.129:

- Hours of employment for a small number of fishing guides might be reduced.
- Industry-wide losses would be minor and short term.
- Moderate impacts to income are likely to be experienced by outfitters and guides located in the PAA.
- Additional economic losses could be experienced by the fishing industry if anglers ...are deterred from visiting the area.

Conclusion: Economic impacts to guides and other fishing employees cannot possibly be categorized as “minor” or “moderate.” There is no margin for loss. Even the least amount subtracted from the earnings listed above is significant.

Adding insult to injury, this is a sector that is a permitted partner with BLM and AHRA. Their activity is specifically noted in both the DEIS and again in the FEIS as an important part of the area’s economy. The FEIS claims OTR will bring more benefit than harm, but does not detail any specific benefit(s), certainly none that can offset this level of harm.

Bringing the Impact Home

As a Flyfishing Guide on the Arkansas River, mine is one of the faces of Over the River's impacts. I am at a point in my life that I cannot recover from the losses you and I both see coming in the next three years if this project is allowed to take place. The decisions many of us are now facing in the specter of OTR (Stay and hope things work out? Move? Get a second job? Retire?) will affect the rest of our lives.

I also wonder about my younger colleagues in the fishing industry who have children to support. They chose this place as their permanent homes and to raise their families in an environment that treasures the unique natural values of this area. Their livelihood is based on the economics of a fully functioning fishing industry.

Now someone who has no stake in Colorado, who has only a temporary interest here for his own profit, wants to force those of us who are committed here long-term to change our lives for his temporary vision.

The only responsible choice in light of this economic reality is the No Action Alternative.

Purpose and Need - BLM

FEIS offers a response to comments questioning the proposed project fulfillment of BLM's Purpose and Need [*Appendix F, page 8, item#19*]. The first element for BLM is "a need to make a decision in response to an application for a land use authorization." An application does not require (need) approval. "NO" is a valid answer, as indicated by the option of selecting the "No Action Alternative." This response does not explain BLM's Need for this proposed project.

The second element "is to advance the objective of providing a broad range of recreational opportunities on public lands." OTR's proposed location is an area specifically valued, managed and used for its outdoor adventure and natural scenic resources. As art is not commonly considered an "outdoor recreational" activity, the FEIS has not shown any directive to approve this application's requisite years of construction and disruption to the existing activities and resources that, in fact, *are* specified in agency Management Plans.

Purpose and Need – AHRA

Concluding that OTR "is within the range of activities that are discussed" in the AHRA vision statement suffers from the same lack as stated for BLM, above. In addition, offering that it "is not specifically excluded" is on par with a small child who offers that same excuse in hope of getting away with some infraction by side-stepping the point. ("You said I couldn't have a cookie before dinner; you didn't say I couldn't have candy!")

This fault is compounded when the impacts on fishing – cited [*FEIS at 4.14.2.3, p.144*] as the activity and industry that will be most injured by this project -- are dismissed. Though specifically noted as a priority recreation in AHRA's mission statement, fishing is set

aside in favor of something that isn't even mentioned as part of AHRA's mission or vision.

Fish and the Fishery

1. The FEIS states at 4.10.2.1, p.4-82, "Riverbank disturbance would be minimized during all phases of the project." How is drilling over 9000 anchor holes of 1.75"-4" in diameter, and installing the anchors and frames "minimizing" riverbank disturbance?

2. The FEIS continues to minimize effects of riverside construction activity during months that coincide with trout spawning. Any disturbance to spawning activity would result in fewer fish and reduced age classes over subsequent years. The assumption cannot be made that OTR construction and removal will cause little or no disturbance to spawning fish.

a. Rainbow Trout

Appendix F records the following BLM response to comment:

"Based on feedback from CDOW, stocked rainbow trout (Hofer x Tasmanian strain) could possibly spawn in the spring of 2011. No project activities are planned for the spring when this species could spawn."

[FEIS Appendix F, p.43, item #10]

BLM missed the obvious point of the concern. Hofer rainbows were expected to *start* spawning in Spring 2011. With a successful maturation to spawning capability, the Hofer rainbows will continue to spawn every Spring, including 2012, 2013, 2014 – the latter two of those years involving OTR construction and other presence along the riverbanks. Any interruptions to this fledgling process could set back the expected progress, affecting early population numbers and the ensuing age classes necessary for stabilizing the new species over the critical startup years. OTR construction schedules should either be adjusted accordingly or prohibited altogether.

b. Brown Trout

"Removal activities at some locations, such as Spikebuck, Maytag, and Parkdale, would overlap with brown trout spawning in October and November. The short-term duration of activities at any particular location near or on the river would not be expected to disturb fish off spawning gravels." [FEIS @4.3.2.3, p.4-35]

Activity does not need to be in the water to disturb spawning fish. Spawning takes place when the river level is very low and the water is clear. Noise and vibrations from drilling, people and equipment moving around the bank, shadows cast, even movement on the road level edge generally spooks fish. Progressing at increments along the riverbank may result in coming up on spawning fish that have already entered the egg-laying and milting (fertilizing) stage. Though fish are often more tenacious in holding their egg-bed (redd) at

this point, if fish are observed being “nervous” or displaced, work should stop at that location immediately!

c. In-Water Activity During Spawn Months

“There would be no direct effects to brown trout spawning. There would be no in-water project activities.” [FEIS Appendix F, p.42, Item #7]

FEIS work schedules say otherwise:

4.9.2.1 Installation

[p.72] Heavy equipment, including flatbed trucks, flatbed rail cars, drill rigs, and a crane, would be used to install anchors. Five flatbed trucks, two coordination vans, one rail vehicle, line guns, and **rafts or boats would be used to install cables and fabric panels.** [emphasis added]

4.9.2.4 Removal

[p.74] Cables would be hauled on-site using flatbed trucks, a rail vehicle, winches, line guns, and **rafts or boats.** [emphasis added]

Traffic and Travel

Lane Closures

1. Number of lane closure days

“It is estimated that U.S. Highway 50 (US 50) lane closures would occur on 177 days over the 28-month installation period when crews are working on the highway side of the river.” [FEIS Summary p. S-8]

Compare with installation schedule p.2-35, Table 2-6: Anchor drilling alone adds up to 458 days. Anchor drilling will require lane closures. How does the 458 total in this table coordinate with the Summary statement, above, and lane closure days in Chapter 2?

2. Anchor/ATF schedule

“Anchors and ATFs for Alternative 1a would be installed over an approximately **18-month** period. [FEIS at 2.6.1, p.2-61, emphasis added]

Compare with:

Table 2-5. Alternative 1a Installation Timeframes

Anchor Drilling	16 months	Est. beginning July 2012
ATF Install.	5 months	Est. beginning September 2013

[FEIS 2.6.2.1, p.2-32, emphasis added]

3. 400' Lane Closures

In nearly all cases throughout the FEIS, the 400' construction activity area is still called the "lane closure" length. This is misleading and confusing.

"During work phases, any lane closures required on westbound US 50 for construction would be limited to one lane for up to 400 feet per activity location."
[FEIS at 2.4.1.5 p. 13 and many others]

Table 2-15 Design Features, page 2-67, #37 is the one place where this is completely and correctly referenced:

"During work phases, any closures required on US 50 for construction would be limited to one lane for up to 400 feet per activity location, **exclusive of tapers, flaggers, signage, etc. as required by CDOT.**" [emphasis added]

4. Major changes with no public analysis or comment

"Over the River" engineers submitted an entirely new equipment and travel lane plan at nearly the "closing bell" of the public comment period for the DEIS. This timing essentially denied any public knowledge or comment on this major change.

Of further concern is that OTR introduced this complete overhaul and new equipment as a "clarification" and "additional information." The FEIS continues to refer to this entirely new equipment choice as a clarification, the comment tucked unobtrusively in a secondary phrase of a list:

"Clarifications on construction methods and equipment were also incorporated."
[FEIS Summary at p.5, "KEY CHANGES FROM DRAFT TO FINAL EIS"]

Since independent public analysis revealed the drastic shortcomings of OTR's original plans, it is extremely important that this new version also be reviewed. Further changes made by OTR were a Revised Construction Plan dated December 24, 2010, and Revised Cable Installation Schedule, January, 2010. These also merit review.

The original equipment, construction and traffic management plan's analysis and report took the two of us nearly 4 months to accomplish. The 30-day review and comment period for the FEIS makes a reasonable analysis on the new information virtually impossible. There are, however, some questions and concerns that are evident on cursory view. Some of these items include:

1. Equipment and road presence

The new construction equipment introduced by Hayward-Baker at the DEIS comment deadline included drawings to show the equipment's placement on the highway work zones and travel lane for traffic. These stark images did not depict the mostly narrow,

winding mountain canyon conditions that actually exist in the proposed project area. Rather, they showed

- a. Straight road
- b. Flat grade
- c. Wide open perimeter (no high rock canyon walls)
- d. No trailer on the semi-tractor truck, nor other larger vehicles to depict scale and clearances.

2. Moving traffic in work zones

OTR proposes the inclusion of road shoulders as part of the lane for live traffic through the work zones. Road shoulders are neither safe nor adequate in most of the canyon. They have pavement drop-offs, uneven grades and water erosion, inadequate width against canyon walls, rocks in the Spring and Summer and snow in the winter. How will these road shoulders accommodate:

- a. Wide or tall loads
- b. Loads that shift, e.g. hay, livestock
- c. RVs (mirror width of 10'6") and service vehicles?

The description and schedule of lane shifts using lane shoulders appears at FEIS Appendix 17, p.65. The description implies using areas that have paved shoulders, but does not specify that is the case. OTR's plan submitted September, 2010, specifically states use of unpaved 1'-2' shoulders for moving traffic through the 400' work zones.

3. Public Safety

There is not a single mention I could find of the risk to drivers and their passengers of rockfall on Highway 50 during any phase of the project as traffic is lane-shifted to the south lane next to or including the shoulder on the south side of the road. A variety of wording searches returned only 1 instance of any recognition of risk to the public travelers on the highway. [FEIS Ch. 4 at 4.15.2.2, p.204]. This referred to both workers and visitors during the exhibition period only. Driving along the road shoulder would not apply in this instance. In all other text mentioning rockfall risk on pages 21-240 of Chapter 4, only workers or their vehicles were included (and those risks were deemed minimal). Moreover, all but a couple of those instances referred to the anchor and ATF work areas between the north edge of the highway and the river. Not one mention is made of the rockfall risk – either as a falling hazard or driving impediment on the driving lane – inherent in OTR's plan to shift traffic to the south lane and shoulder through the work areas.

FEIS Chapter 4, p.103 recounts the significant rockfall which "occurred on February 14, 2011, approximately 30 miles west of Cañon City (one mile west of Cotopaxi) at Mile Post 244... US 50 was closed to through traffic for a week."

FEIS acknowledges "Natural disturbances to the Project Area are varied by nature. They include the potential for summertime flashfloods, **rockfall**, hail and lightning, erratic

winds and localized micro-bursts, as well as the risk of fire.” [FEIS at 4.15.2.2, p.204, *emphasis added*]

How is it, then, that BLM has included no mention, no mitigation, no risk assessment for such a prominent occurrence in the proposed project area as it applies to the traveling public? Whether the traffic and work area plan of the DEIS is the active plan to be implemented, the new plan submitted in September, 2010, or the revisions of December, 2010, and January, 2011, BLM has not included this rockfall risk to the traveling public in either the DEIS nor FEIS.

There are many aspects of rockfall along Highway 50 canyon road that call for a full analysis. These include, but are not limited to:

- a. Rocks or other fallen debris on road as impediment to safe driving;
- b. Potential damage to vehicles;
- c. Danger to drivers/passengers (injury, death – as occurred 2011 on U.S. Hwy 40);
- d. Traffic management in Installation/Removal work areas when clearing rockfall, snowfall or other impediments in the south lane and/or shoulder. This necessary maintenance would block the entire highway in the work areas for an unspecified amount of time.

These considerations are not included in the FEIS.

New Information

My understanding of the NEPA and EIS process is that new information requires a supplemental EIS to a final EIS if information is presented that is:

1. Significant
2. New (either new information or new circumstances)
3. Relevant to Environmental Concerns
4. Has bearing on the proposed action or its impacts.

The new construction equipment and traffic lane management documents submitted by the Applicant’s engineers at the close of DEIS public comment period was not a “clarification” of equipment and construction processes as the applicant indicated (and FEIS reiterates at Summary, p.S-5); it was a totally new set of information, replacing information published and examined in the Draft EIS document and process. The impacted public has had no opportunity for analysis or comment on the new equipment and its increased risks until the FEIS.

Revisions were made relative to the construction/installation process in December, 2010, and January, 2011. The content and impacts of these changes have not been made available to the public, who, indeed, did not know about these revisions until the FEIS. Neither proponents nor opponents of the Proposed Action know how these additions and revisions affect the project and its anticipated impacts.

The FEIS has not included rockfall, rockslide, and other common and naturally occurring highway hazards to Project corridor travelers during Installation (construction) and Removal phases in its environmental impact analysis. I believe I have presented this to BLM as new information, thus requiring either a supplemental EIS or selection of the “No Action” Alternative.

The Applicant’s new equipment choices and related lane shift adjustments are the direct cause of increased risk from rockfall, rockslide, and other common and naturally occurring highway hazards to Project corridor travelers during Installation (construction) and Removal phases. I believe I have presented this to BLM as new information, thus requiring either a supplemental EIS or selection of the “No Action” Alternative.

There are many other concerns, questions and objections that I could express to BLM about the “Over the River” proposal. I leave other points, such as Bighorn Sheep and the proposed mitigation plan, impacts to other critical flora and fauna, resident safety and access, and more, to those who are experts in those studies. Taken together, I submit that the “No Action” Alternative is the only responsible choice.

Respectfully,

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