

The logo for Rags Over the Arkansas River, Inc. (ROAR) features the word "ROAR" in a large, bold, serif font. The letters are white and set against a dark green rectangular background.

[www.roarcolorado.org](http://www.roarcolorado.org)

Rags Over the Arkansas River, Inc.

P.O. Box 786

Canon City, CO 81215

August 29, 2011

By Hand Delivery and E-mail (co otr comments@blm.gov)

Gregory P. Shoop  
District Manager, Front Range District  
Keith Berger,  
Field Manager, Royal Gorge Field Office  
Vincent Hooper, OTR NEPA Coordinator  
U.S. Bureau of Land Management  
3028 East Main Street  
Cañon City, Colorado 81212

Re: OTR FEIS Comments

Dear Messrs Shoop, Berger and Hooper:

These comments are being submitted on behalf of ROAR, and its approximately 200 members and over 5,000 supporters on the final environmental impact statement (FEIS) published July 29, 2011 for the proposed Over the River project (Project).

Unlike most BLM final environmental impact statements, the OTR FEIS wholly fails to highlight or redline the changes made in the FEIS since the draft environmental impact statement (DEIS). We also note that BLM, contrary to standard practice, has not made all of the comment letters available to the public. The public is used to seeing other comments on projects of interest and these letters are usually either printed in their entirety in the FEIS, or are made available on a BLM website. BLM only includes a summary of comments in Appendix F to the FEIS and there is no way for any member of the public to verify that all substantive comments have been addressed. In contrast, all scoping comments are available on the BLM's OTR website, thereby creating a public expectation that concerned citizens would be able to see what others have to say about the Project. At the very least, BLM should make available OTR Corp.'s own 100 pages of critical comments on the DEIS so that the public can see whether and how BLM responded to the Project proponent's own concerns.

BLM also wholly fails to organize the public comment summaries and BLM's responses in a manner that allows members of the public to locate their own concerns and to understand whether and where their concerns are addressed by BLM. This approach is incomprehensible given that AECOM, the third party EIS contractor, typically uses sophisticated software to organize comments and responses by a numbering system and by name, type of commenter and

August 29, 2011

Page 2

subject. That AECOM failed to use this software could only have been a conscious decision intended to hide the ball and mislead the public. In almost thirty days of diligent review, our members still cannot locate where most of their comments have been addressed.

Because of the complexity and length of the FEIS, the controversial nature of the project, and BLM's failure to provide a user-friendly document for review, we request a thirty day extension of the review period. In addition, for the above reasons, we consider the record open for comment until a final decision has been made and reserve the right to supplement these comments as our members continue to review the FEIS. Finally, we hereby incorporate by reference all of our previous comments, including but not limited to scoping comments, comments on the Notice of Realty Action, comments on the DEIS and our request for supplementation of the DEIS.

Most of the comments that we can locate have not been satisfactorily addressed, and we reiterate our previous reminder of your legal duty to issue a supplemental DEIS due to the numerous changes in the Project since the DEIS, as well as arbitrary and unexplained changes in BLM's conclusions on the environmental impact of the Project.

We appreciate your attention to the following comments on the FEIS:

**A. The OTR Project Does Not Conform to the BLM's Resource Management Plan**

We have made this comment before, and nothing in the FEIS has adequately addressed the profound disconnect with how BLM has told the public it will manage this area in the Royal Gorge Resource Management Plan (RMP) and the OTR Project. According to the plain language of the RMP, the Project simply does not conform, and BLM cannot legally issue authorization for the Project unless and until it amends the RMP.

The BLM's planning regulations state that the term "conformity" or "conformance" means that "... a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, **shall be clearly consistent** with the terms, conditions, and decisions of the approved plan or amendment"

43 CFR 1601.0-5(b), emphasis added.

Instead of following this clear legal mandate, the BLM states in the FEIS that:

In general, with the inclusion of appropriate constraints, stipulations, and mitigation measures, the applicants' proposal **appears to be broadly consistent** with the overall RMP objective of providing "variety of levels, methods, and mix of multiple use resource management [and] utilization," and support to the local and regional economy. . . .

FEIS 1-16, quoting the 1996 RMP, emphasis added.

August 29, 2011

Page 3

“Appears to be broadly consistent” and “shall be clearly consistent” are two completely different standards. Thus, in this portion of the FEIS, BLM agrees with ROAR that the Project does **not** meet the RMP standards. Further, BLM also admits that none of the RMP decisions allows the Project. FEIS at 1-17.

While it is not reasonable to expect an RMP to anticipate every possible use someone might propose for the land, a reasonable, clear expectation of what the RMP had in mind can be found in the document itself, including the stated recreational uses for the area. The OTR Project is grossly incompatible in numerous ways. It is out of scale, artificial, industrial in scope and implementation, will interfere with and displace accustomed uses for outdoor recreational purposes, require exemptions and exceptions from the RMP and other, multi-agency plans developed over decades and will have a negative impact on wildlife; bighorn sheep in particular.

Current recreational uses are carried out by individuals or small groups and are dispersed in both space and time. They are a sustainable source of both seasonal and full time employment. Money spent is returned directly to the affected communities. The land use is managed and regulated by laws, policies and cooperative agreements developed over decades (fishing, hunting, OHV use, mining, water use and river flows, etc.). These land uses policies are intended to deal with long term cumulative impacts, reconciliation of conflicting interests, protection of the resources in a sustainable manner, improvement of the natural resources and provisions for both economic return to the state and community and recreational uses. The current uses do not impede inter- or intra-state commerce, imperil the safety of residents or interfere with their normal activities associated with work, recreation, access to health care, education, religious or social events. The OTR Project will impede all of these existing uses.

A review of the site and issue specific management and planning decisions is given in both the DEIS at 1-17 & 18 and the FEIS at 1-17. The planning decisions mandate how BLM and other agencies must resolve conflicts:

“**will** be resolved in favor of [certain resources]”

“**protected** through elimination of conflicting uses.”

This is mandatory language, not merely suggestive.

For example, characterizing the RMP, the BLM states:

. . . [M]anagement practices and prescriptions **will favor maintaining or enhancing the natural setting** (e.g., wildlife habitat, visual resources, recreation areas, etc.). . . Necessary constraints, stipulations, and mitigating measures will be included to protect these resources from **irreversible** damage.

FEIS at 1-16, citing the 1996 RMP, emphasis added.

August 29, 2011

Page 4

OTR Corp.'s stated purpose is to construct a large-scale installation that contrasts completely with the natural setting and covers the river, obscuring what BLM acknowledges is "one of the scenic highlights of the region." FEIS at 3-234.

Further, if BLM's need is to provide additional recreational opportunities, then BLM has utterly failed. The FEIS clearly acknowledges that the area has a robust outdoor recreation based economy and that this is dependent upon the natural features of the area.

**The Arkansas River corridor has retained its natural characteristics even though it has been modified** by a railroad, a busy highway, and substantial agricultural, residential, and commercial development along much of its length. The Arkansas River has a significant and vital impact on the valley's economy and beyond because of water rights for irrigation, municipal and industrial purposes, and for the sale and storage of water. **Because of its natural beauty, biological productivity, steep gradient and diversity of river environments, the Arkansas River is very popular with recreationists.**

FEIS at 1-9 emphasis added.

The robust existing recreation in the Project area is supported as well by the AHRA use figures reported each year (<http://www.parks.state.co.us>). Activities monitored include sightseeing, boating, fishing, camping, picnicking and others. In 2009, over a quarter of a million people came to the AHRA to sightsee. According to studies reported in the FEIS, viewing wildlife is highly valued by Colorado residents. FEIS at 3-216. "In terms of vacationing or taking trips, around 85% of Coloradans were interested in taking recreational trips where the primary purpose (or a primary purpose) was to view wildlife."

Both the City of Salida and Chaffee County recognize the need to diversify their local economies and to foster sustainable sources of income. FEIS at 3-144 & 145. Chaffee County is involved in a joint effort with CDOW to focus on "watchable wildlife" as part of its development of tourism. FEIS at 3-145.

"About 86% of these tourists [to Chaffee County] visit during the summer months." FEIS at 3-125. According to Table 3-61, 48% of the lodging expenditures in Chaffee County during 2008 were made in the 3 summer months. The lowest months for lodging were October through April, with an average per month of only \$89,600 compared to the average in the 3 summer months of \$290,703. Rather than overload the capacity of the county to provide a quality tourist experience in the summer months, BLM should cultivate recreational activities associated with fall and winter, such as wildlife viewing, fishing, hunting, fall color, nature photography and winter sports. Most of these activities are low impact or are regulated to effectively reduce impacts.

Instead, BLM seems poised to approve a Project that will supplant these thriving recreational uses for at least the three year construction and demolition period. Since it has taken recreational business decades, working in tandem with BLM and state agencies, to build and sustain the recreational resource and current users, it will likely take decades to rebuild it. That long-term impact has not been addressed.

## **B. The Project is Not Temporary, Some Impacts Are Permanent**

BLM continues to assert that the Project is temporary in nature. While that might be true for the exhibition itself, BLM only grudgingly acknowledges, and then goes on to ignore, the permanent nature of the impacts of the infrastructure that BLM will allow OTR to leave installed permanently in the canyon.

BLM continually harps on the “temporary” and “short term” impacts of the Project, and lauds OTR Corp.’s “specific commitments intended to remove all project materials and improvements from BLM lands, and return the land within the project boundaries to pre-project conditions.” FEIS at 1-19. BLM knows this statement is not true. Even though OTR Corp. publicly continues to assert that it will put everything back as before, it is a breach of the public’s trust for BLM to say the same thing when it knows better. Throughout the FEIS BLM makes statements that flatly contradict statements in other sections.

For instance, BLM states here and in other FEIS sections that will “remove all project materials and improvements from BLM lands, and return the land within the project boundaries to pre-project conditions.” This statement completely contradicts other sections of the FEIS allowing OTR Corp. to leave tons of steel, cement and other anchor materials driven into the walls and banks of Bighorn Sheep Canyon as acknowledged in later sections. BLM notes that the majority of the anchors would be placed into rockfill or unconsolidated material along the banks of the river, rather than into bedrock. FEIS at 2-8.

BLM elsewhere acknowledges that the grout used to cover over the permanent placement of these anchors will eventually erode and the anchors will be exposed. Given these facts, it is arbitrary and irrational for BLM to conclude that visual and other impacts are short-term.

Now, in the FEIS, BLM has announced an entirely new permanent fixture in the Canyon as part of the Project. BLM will now allow a memorial to Christo, and the folly of BLM, to be permanently installed at the Texas Creek AHRA site. FEIS at 2-26. As if it will not be bad enough that residents will have their lives completely disrupted for over three years, and their beloved canyon permanently defaced. Due to this new Project feature, Canyon residents and visitors will also have to be reminded of this folly by a memorial to Christo and the agencies that made this disaster possible. The FEIS contains no real details about this new, permanent aspect of the Project, and no analysis of its impacts. For this reason alone BLM should have supplemented the DEIS.

**C. The FEIS Does Not Include a Reasonable Range of Alternatives**

While BLM devotes much ink and paper to alternatives allegedly considered, all except for Alternative 4 are merely cosmetic variations on the Proposed Action.

As we demonstrated in our comments on the DEIS, the FEIS alternatives are not sufficiently distinguishable from each other to represent a full range of alternatives. As we have stated previously, BLM is required to do more than rearrange the deck chairs when selecting alternatives.

**D. The “Purpose and Need” Statement Is Too Narrow and Otherwise Inadequate**

BLM’s response to comments on the DEIS purpose and need statement interprets the BLM charge and authority too narrowly.

In response to a comment about the constrained DEIS purpose and need statements, BLM made changes to the purpose and need statement in the FEIS which now reads:

By this process, the alternatives described in Section 2.3 were identified to reflect **the range of public lands that BLM would make available for OTR based on the artistic vision and in response to issues identified by the public**, BLM, and Cooperating Agencies during scoping.

FEIS at 2-1.

BLM’s “need” is thus being driven by the proponent’s “artistic vision.” BLM simply assumes that some lands **will** be made available. This shows that BLM never seriously considered the “No Action” alternative. This is also a prime example of how BLM allowed the proponent considerable influence on the language and analysis of the FEIS. A neutral document would refer to the “applicant’s proposed project” or “applicant’s desired project,” not the proponent’s “artistic vision.”

**E. The OTR Project Violates BLM’s VRM Class II RMP Requirement**

BLM has attempted to justify its improper allowance of a violation to the RMP’s VRM classification requirements by waxing poetic about expected visitors’ shared anticipation and excitement to see the Project rendering them unable to notice the crowds, the traffic, the noise, the exhaust and other unnatural intrusions on the ACEC and the Canyon. BLM cites reviews and newspaper accounts of “The Gates” project in New York’s Central Park to support this remarkable view.

The fact of the matter is that BLM is allowing a violation of the VRM classification for most, if not all, of the panel sections. Christo’s supporters continue to beat the drum about how the Canyon is not “pristine” noting development in the Canyon. This is true, the Canyon is not

entirely pristine and ROAR has never asserted that it is. But BLM, in a long and comprehensive planning effort, has designated the most pristine portion of the Canyon as an area of critical environmental concern to protect the wildlife and the beauty of this undeveloped portion. The fact of the matter is that Christo has not chosen to place his Project in developed areas, but almost entirely within the ACEC, thereby developing the only portions of the Canyon that retain a pristine quality and that BLM previously promised to protect from this type of development.

As to the quality of the artistic experience and the anticipation of visitors, ROAR does not purport, unlike apparently BLM, to be an art critic, so we cite to those with better credentials:

Conceived in the early 1990s or before, Over the River is a conceptual and environmental dinosaur, a relic from the days when some land artists and designers aspired to create iconic art without regard to its environmental cost. . . .

Blake Gopnik, Washington Post, October 22, 2008.

There's a sense that this kind of 1970s-era environmental art" has more links to heavy industry—to old fashioned well drilling and dam building—than to some more recent art that's been made with genuine ecological feeling.

J. William "Bill" Thompson, Editorial in Landscape Architecture, April 2009.

Comparison of Central Park's dense urban setting, where most residents and visitors are fully accustomed to crowds, to Bighorn Sheep Canyon is invalid. Local residents, as well as most Coloradans, associate mountains and canyons with open space and lack of crowds. We seriously doubt many visitors will come to the Over the River display "...with the anticipation of sharing the experience with others, often in very crowded situations." It has not been BLM's standard NEPA practice to allow an applicant to insert self-justifying statements in an EIS and we question the propriety of allowing it solely for this Project.

## **F. Comments on Specific Resource Analysis**

### **1. Transportation/Traffic**

BLM's estimate of traffic delays is unreasonable and not supported by adequate data. BLM's estimate is that:

Normal delays would be from 1 to 4 minutes (average delay being approximately 3 minutes) per vehicle, with red/green cycle intervals typically being 5 minutes or less. A maximum of 15 minutes of delay time for a motorist would be permitted, but this delay would be permitted as a rare exception.

FEIS at 4-214.

BLM's estimated length of traffic delay makes no sense. How could people safely slow down for a flagger or signage, drive slowly around the 400-ft closure area, move slowly back into the right lane and accelerate to the speed limit and not lose more than 1 minute?

Just as unrealistic is BLM's 5-minute parking restriction at Vallie Bridge:

An additional visitor rest stop would be provided at Vallie Bridge; however, visitor uses at this location would be limited to **restrooms**, waste disposal, and potable water provided by OTR Corp (Map 2-1). The Vallie Bridge Limited Rest Stop would be located at a **small** (<1 acre), existing AHRA recreation site. The Vallie Bridge campground would not be open to event parking. This rest stop would be staffed with approximately eight event staff to assist visitors with information and questions. This rest stop is intended for short-term use only. **Visitor parking would be limited to five minutes at this site to maintain river access for commercial rafting as well as other recreational uses of the corridor.**

FEIS at 2-15, emphasis added.

How could it be that a restroom stop could be limited in any circumstance to 5 minutes? Especially since there is likely to be more than one occupant of each car and there is likely to be a wait for facilities. Vallie Bridge is also likely to be congested as there is also a campground, and commercial rafting and angler shuttles use this area. Shuttles, campers, and local and resident traffic will utilize this road to avoid traffic. The ingress/egress at Vallie Bridge is a narrow dirt road and the intersection with Hwy 50 is on an angle.

This is just one example of BLM's apparent disregard for, or lack of understanding of, the nature of the canyon roads and existing uses that will experience long-term displacement by the project. Another example is that use of the Texas Creek command center, parking lot and restroom facilities during the exhibition has little or no analysis. Will this one-lane bridge support these uses? How can BLM justify its assertion that demand for parking at the Texas Creek parking area will not exceed the 35 spaces?

## 2. Rockfall, Landslides, and Erosion

BLM underestimates the threat of surficial deposits reaching the water. Most of the panel sections have steep slopes with loose or sandy cover. Just the fact of crews standing on the steep slopes would cause loose sand, rocks and dirt to discharge into the river.

BLM's discussion of landslides is completely inadequate. BLM only considers impacts to Project workers from landslides, but does not consider the impacts of a rockfall or landslide on motorists or others stuck in traffic during construction, or the impacts of a rockfall or landslide occurring during the exhibition. If a landslide occurs, the chances of someone getting caught increases with the congestion of the traffic. Drilling activities and other use of heavy equipment

could itself cause a landslide or rockfall. If traffic is congested, or one lane closed, people would not be able to escape. Three areas within the Canyon are within the highest hazard areas statewide for rockfalls. The potential for disaster is a significant impact.

### 3. Wildlife and Plant Species Impacts

The FEIS now says that an additional 100 to 150 monitors would be stationed throughout the corridor and distributed among the fabric panel areas during the exhibition, and that rail cars would run throughout the day to provide breaks and necessary supplies to panel monitors stationed on the railroad side of the river. FEIS at 2-20. BLM has not analyzed the impacts of these additional activities on wildlife on the railroad side during the event.

Impacts will likely occur well beyond the limited acreage BLM has calculated for the installation. The impact acreage does not include any analysis of event-related trampling and compaction. Parking areas, Texas Creek in particular, should be included in their acreage of impact. Furthermore, there's a large body of ecological science devoted to restoration that shows that BLM can't allow OTR Corp. to merely seed and walk away, especially in an arid climate. In addition, when land appears disturbed or barren, it becomes more vulnerable to additional disturbances – this is not addressed in the cumulative impacts analysis. Unlike the limited mitigation and restoration described as being required for the Project, most mitigation plans establish performance criteria, requiring an applicant to keep at it until these are met, regardless of the time it takes. Monitoring and mitigation should continue as long as it takes to restore these fragile areas. BLM requires no less from mining companies; it should not hold OTR Corp. to a lesser standard.

### 4. Construction schedules

Weather events have the potential for affecting proposed construction sites, workers and schedules. Tables are provided that include time periods for various phases of the project. *E.g.* FEIS Table 2.6. No contingencies for weather-related delays or complications are discussed. Thunderstorms with wind, heavy rain, lightning and hail could shut down summer work. Saturated soil and unstable banks could occur at any time of year. Icy, snow-packed roads, coupled with short day lengths, could increase the number of workdays in the winter, many of which are scheduled for the highway side of the river. Nor are there contingencies for other natural disturbances such as rock falls.

If the construction schedules given in Table 2.6 are off by 10%, then the workdays on the south side of the river could increase by 1½ months. A 20% error in estimation, would then increase the work period that subjects traffic to lane closures/shifts/delays by 3 months.

The number of construction days on the north side of the river has particular implications for the level of disturbance to bighorn sheep and other wildlife. On the south side of the river, the safety, economic impacts and quality of life of residents, tourists and commercial enterprises will be directly affected by the number of days of construction along Highway 50. Every day of

lane or road closures, with concomitant delays or detours, will take its toll. Poor estimates will compound the problem.

5. Emergency Response/Public Safety

Normal levels of emergency services staffing would be maintained for the BLM, State Parks, CSP, Fremont County Sheriff Department, and Chaffee County Sheriff Department. In addition, **supplementary staff and vehicle resources and emergency services** would be temporarily located in the corridor during the exhibition phase.

FEIS at 2-22.

Where will these “supplementary” resources come from? By concentrating all available emergency and public safety resources in the river corridor during the exhibition leaves the remainder of Chaffee and Fremont counties understaffed for emergencies and vulnerable for public safety issues. There are long drive times and mountainous roads necessary to reach the western, southern and northern reaches of Chaffee County, as well as the rural parts of western Fremont County north and south of Hwy 50. If “supplementary” resources are moved to the river corridor, how will the other areas of the counties be served and protected?

5. The FEIS continues to underestimate the negative economic effect on the local communities.

While BLM acknowledges that:

From a financial standpoint, these state, county, and municipal agencies are currently experiencing strains on their budgets due to the economic recession and the resulting decreases in various types of revenues. Police and fire departments, as well as medical service providers, are generally funded by tax revenues, and these agencies likely feel financial pressures on their budgets and activities during the 2008-2010 period. The pressures to reduce costs may result in the laying off of workers, reduction of hours, or cutbacks to services. **However, by the time OTR is in place, it is assumed that the recession will be over and that tax revenues to fund emergency service providers will be on the rise.**

FEIS at 3-141.

It is not adequate to limit the analysis to public safety agencies’ 2008-2010 budget when the construction and exhibition are scheduled for the period between 2012 and 2014. Given current economic projections, it is completely unreasonable for the FEIS to assume that the recession will be over within the Project time periods. Further, the only ambulance service for the Project area is not even funded by tax revenues, making this assumption even more absurd.

August 29, 2011

Page 11

In addition, BLM has not adequately accounted for likely economic losses throughout the installation/event/deconstruction. BLM has summarily dismissed, without analysis, impacts to agriculture, regional and inter-state trucking, deliveries (mail, parts and supplies, water), and the impacts of traffic throughout the Project that will discourage visitors. For example, it is well known that the FIBArk kayak event held every year in the Arkansas River corridor causes local merchants who cater to tourists to do well, and those who do not lose business.

In Chaffee County, 48% of the lodging expenditures in 2008 were made in the 3 summer months. The economic analysis in the FEIS fails to adequately acknowledge that local lodging is already full in the summer. The FEIS estimate of Project economic benefits is therefore grossly overstated.

Chaffee County has a joint program with CDOW to focus on “watchable wildlife for tourism development.” FEIS at 3-145. Surveys indicate this activity is highly valued by Colorado residents. FEIS at p. 3-216. These would bring in income in a more even and sustainable way and could support more full time rather than seasonal jobs. As it is, people shift from rafting and fishing employment in the warmer months to winter sports in order to make sufficient yearly income.

Food services are only partly supported by tourists. Most restaurants are sustained through the fall and winter months by local residents, so while the summer months have higher food service revenues, the base line of year around residents needs to be subtracted. The assumptions underlying these “total impact” figures are not presented in the FEIS, nor are those for induced/indirect economic activity.

The FEIS notes, for the first time, that “[m]aterials delivered by rail would be loaded onto rail cars from either Salida or Cañon City, depending on authorization from UPPR.” FEIS at 2-37. The FEIS does not give any description of the loading facilities at either location, where materials will be stored prior to loading, nor the volume of materials to be transported and stored at these transfer locations. Given the sheer volume of steel and fabric necessary for the Project, loading onto trains at either location has the potential to severely disrupt traffic and commerce in both cities. These are newly disclosed features of the Project with direct and cumulative impacts that have not to date been analyzed.

## **E. Supplementation/Changes in Conclusions**

ROAR reiterates and incorporates by reference its February 2011 letter regarding BLM’s legal duty to circulate a supplemental DEIS prior to finalizing its analysis and issuing a decision. The same flaws remain in the final, and there are even more changes to the project that have not been available for public comment. BLM has also provided little analysis of the difference in impacts caused by these changes.

BLM has also, without stating any reason, changed many conclusions on the nature and severity of impacts between the DEIS and the FEIS. BLM has not cited to any new studies to

August 29, 2011

Page 12

support these new conclusions, rather BLM cites the same studies it cited before for its previous conclusions. At a minimum, BLM needs to supplement the FEIS to state its reasoning for its new conclusions that formerly significant impacts are now minor to moderate.

**Summary and Conclusion/Incorporation of Other Comments**

We also endorse and adopt by reference the comments made in letters submitted on the FEIS by Carol Neville, Bruce Goforth, and Rocky Mountain Wild. We also incorporate by reference all of our previous comments to you as most of them have not yet been addressed. Thank you for your serious consideration of this matter. We request that you keep the undersigned informed of your decisions regarding this matter.

Sincerely,

Dan Ainsworth  
for ROAR, Inc.