



## **“Rags Over the Arkansas River”**

**ROAR**  
www.roarcolorado.org

To preserve and protect the headwaters of the Arkansas River, the Bighorn Sheep Canyon, its inhabitants and the communities that depend upon them.

### **ROAR’s Supplemental Comments for consideration by the Fremont County Commissioners February 9, 2012**

#### **Regarding the OTR application for Temporary Use Permit**

Rags Over the Arkansas River, Inc. (“ROAR”) hereby submits the following supplemental comments regarding the OTR Corporation’s (“OTR”) application for a Temporary Use Permit for the Over the River Project (“Project”).

Mindful of the instructions on the County’s OTR permit website, ROAR submitted written comments on the Project, but did not overly dwell on the same themes in its oral comments at the OTR hearings on February 1 and 2, 2012, in order to try to avoid duplication. At the two hearings, however, several commissioners expressed to ROAR representatives the desire to see a written version of oral comments made at such hearings, and ROAR representatives separately complied with such requests. After consideration of OTR’s presentation, statements and responses to Commissioners’ questions at the hearings on February 1 and February 2, 2012, ROAR submits these comments in response to rebut OTR’s misstatements and raise new concerns. Some of the comments below supplement comments raised previously or address OTR’s response to these concerns. Some repetition is necessary to provide context to our comments, but they are not submitted in an attempt to duplicate previous submissions. These supplemental comments are in addition to ROAR’s initial written comments, and a summary of Vice President Ellen Bauder’s oral comments at the two hearings, all submitted electronically on February 6, 2012.

#### **INTRODUCTION**

One of ROAR’s over-arching concerns is the manner in which OTR attempts to deflect honest citizen concerns with the Project. Time and time again OTR publicly ridicules concerns with the Project, and in many cases misstates, misrepresents, or fabricates concerns that OTR’s public relations team then easily dismisses.

For example, OTR has noted time and time again that the Canyon is not “pristine” and has been impacted by the highway, the railroad, towns, mining, etc. Contrary to OTR’s PR machine, ROAR has never contended that the Canyon is pristine. In fact, many of us live there. What OTR fails to acknowledge, however, is that OTR does not want to construct the Project in the areas that have been most affected by mining and other development, but rather in the parts of the Canyon that ARE the

most pristine, in comparison to the rest. In fact, this area is so scenic and so sensitive that BLM has designated it an “area of critical environmental concern” (a category just short of a wilderness study area) and adjacent to two wilderness study areas.

Another example is OTR’s reliance on an incomplete and faulty FEIS. Time and time again OTR representatives invoked the FEIS in answer to the Commissioners’ questions, regardless of whether the FEIS addressed such Commissioners’ questions or not. The Commission should have taken note that while the FEIS was regularly invoked, OTR rarely pointed out just where in the 4 volume FEIS the Commissioners could find where their concerns are allegedly addressed. Further, the FEIS actually does NOT adequately address most of the concerns expressed by the Commission at its hearings. Specific examples are identified below.

These are just two examples of OTR’s tendency to answer its own questions, while avoiding answering concerns actually raised. In reviewing the application and the hearing testimony, the County should be particularly mindful of promises made, and defenses asserted, that really do not address the real concerns the County should have with the Project. Other red herrings are addressed in the topical sections below.

OTR has also demonstrated its propensity to make its own rules. For example, when a Commissioner questioned OTR about its refusal to pay a County invoice, the OTR representative stated that reimbursement for prior work on the EIS process “wasn’t a part of the deal” and that OTR reimbursement for County time only started to run when the Temporary Use Permit application was submitted. First, OTR wants the County to rely on the FEIS in approving its permit applications, but refuses to reimburse the County for its work as a cooperating agency reviewing and commenting on the DEIS and FEIS, which strikes ROAR as wanting to have it both ways. Second, this statement completely contradicts Christo’s and OTR’s repeated public statements that OTR will pay for ALL the costs and that taxpayer money will not be used. Apparently, in OTR’s view, “all” does not in fact mean “all.”

In light of OTR’s narrow, legalistic and contradictory statements, the Commission should be wary of accepting any OTR statements at face value, but must rather probe the meaning of OTR’s actual intentions in order to know what OTR does, in fact, plan to do. The Commission should also remember that Christo ignored the California Coastal Commission and constructed the Running Fence project into the ocean without a required CCC permit. While Christo paid a fine, it was just a cost of doing business for him. The Commissioners must ensure that OTR does not do that here – ignore permit conditions and simply pay a nominal fine later.

OTR’s nimble maneuvering at the hearing should also give the Commission pause about the immensity of the task and cost of monitoring OTR’s compliance. Given OTR’s demeanor while seeking a discretionary permit from the County, the Commission should worry about OTR’s willingness to work with the County to comply with a permit after one is issued. At a minimum, the Commission should not give OTR a blank check type of permit that locks in OTR’s entitlements, but leaves OTR free to change what they are going to do long after the permit is issued.

Specific issues are presented below.

## I. PROJECT SAFETY AND DESIGN

A. Sangre De Cristo Electric power lines may be threatened by the installation of the anchors. Two proposed panel sections are under power lines. What effect would this have on Fremont County services? (No electricity, no water for all those on their own wells, possible injury or death.). This issue was not addressed in BLM's EIS despite comments on this issue. At the hearings, OTR representatives stated that the Sangre de Cristo representative was using outdated maps, and that the panels had been moved and now avoided power lines. A comparison of the maps provided by the OTR representative at the hearing with the maps in the FEIS show no changes relative to the power lines. This is just one example of how OTR publicly states that they have taken care of an issue when, upon further investigation, it is clear they have not. We urge the Commissioners to address the power line issues with SDCE and OTR and require OTR to move all panel sections and construction zones at an appropriate distance from power lines to comply with applicable utility and equipment manufacturer guidelines. See specifically the guidelines for OTR's proposed equipment at [http://www.manitowoccranes.com/MCG\\_NAT/Products/EN/series500e.asp](http://www.manitowoccranes.com/MCG_NAT/Products/EN/series500e.asp).

B. Wind tests on the fabric panels were only conducted to 42 mph, and at the hearings, OTR defended these tests, stating that they were conducted "scientifically." It does not take a wind scientist to understand that wind tests, even *if* scientifically sound, are inadequate if **they test for the wrong set of parameters**. The tests are useless if they don't simulate real world conditions. The FEIS discloses (without much backup) that average 1-minute wind speeds of 53 mph could occur during a 10-year period, but a 42 mph wind speed is "more representative." Recently observed wind speeds have ranged from 60 mph to over 100 mph. It is not reasonable for either BLM or the County to rely on wind tests that are meaningless to assess the actual potential hazards of wind acting on the panels. Christo's engineering has been inadequate before (the Umbrellas, Rifle Gap). OTR's inexplicable use of the wrong parameters in its wind testing demonstrates that nothing has changed.

C. The Project design seems to be constantly changing. For example, at the hearings an OTR representative stated that the anchor transition frames ("ATFs") will be made of wood. The FEIS states that they would be steel. ROAR respectfully suggests that wood ATFs would not be as stable and safe as steel. The County should clarify whether this was an OTR mis-statement, or whether OTR has again changed its Project design. In addition, the Project design provides for a release mechanism 12 inches below ground surface in order to allow the above-ground portions of the anchors to be removed and the remaining 10 to 30 feet of anchor left in place. This component that allows OTR to just "unhook" from the 10-30 anchor, then, is a significant weak link. OTR should be required to demonstrate that it is safe to have a removable portion of the anchor just one foot from the surface and that there is little risk of accidental release.

## II. ECONOMIC IMPACTS

A. OTR representatives disclosed during the hearings that they have no concrete plans to hire local workers or companies, and that the only thought yet given to workforce considerations is the utilization of prison labor to begin work on the Bighorn Sheep mitigation plan. ROAR respectfully suggests that use of prison labor may have little benefit to the local, non-incarcerated workforce or businesses. Upon

questioning, OTR further disclosed that it has performed no inquiry into the capability of local businesses for surveying, drilling, construction, etc., that would provide the higher paying jobs (if any) associated with the Project. Instead, OTR suggested that they would use local companies if any are around and capable. ROAR mistakenly presumed that the support from several chambers of commerce might have indicated that discussions about specifics may have already taken place to form a basis for OTR's economic benefit claims. Given the disclosures at the hearings, it appears that no specifics have been discussed, and that the chambers' support may be based upon vague promises and little substance. This also further calls into question the results of OTR's economic analysis. If no consideration has been given to the capabilities of local businesses and workforce, on what assumption are the economic claims actually based?

B. As a reminder, the FEIS actually discloses that canyon businesses and residents can expect a probable **LOSS** of revenue of at least \$836,000. The Project would likely put the angling industry out of business by driving away clients for up to 4 years (construction period, exhibition, and reclamation). This is due to the construction/traffic issues during the spring and fall, plus virtually all summer the year of the exhibit. This will prevent the anglers from getting to the fishing areas and boat ramps. General fishing visitors will be reduced because of noise, crowds, traffic and perception of undesirable conditions. It may take years for anglers to return to the Arkansas River after finding new places to pursue their interests.

C. The employment projections are also suspect and vary by press release and forum in which they are discussed. The jobs associated with the project have recently been reduced to 279 temporary jobs during the construction period, with an additional 71 jobs during the exhibition period. Since OTR has no idea of the skill sets of the local workforce, it has not given much thought as to where these workers will come from, other than the prison workforce working on mitigation, and the art students it solicits on its website. At a minimum, the Commissioners should require OTR to give preference to Fremont and Chaffee County residents for Project employment, otherwise the economic benefit claims are empty promises.

### **III. TRAFFIC**

A. Much discussion took place at the hearings about the fact that the FEIS misapplies the required methodology in the Highway Capacity Manual (2000) to evaluate traffic impacts. This fact completely invalidates the FEIS traffic analysis, and demonstrates the unreliability of the FEIS. The County cannot reasonably rely on the FEIS for its own analysis of traffic impacts, especially in light of the fact that there still is no traffic plan. At this point, no reliable traffic plan can be prepared, because the traffic impacts will not be known until a proper traffic analysis, using the correct methodology, has been prepared. At the hearing, OTR stated that that was the FEIS contractor's fault, not OTR's and that they can't be held responsible for that mistake. Fault for the error is irrelevant. Who is at fault is a contractual issue for the BLM, OTR and BLM's contractor. The fact is that the traffic analysis is wrong and the County cannot reasonably approve the Project permit unless and until the error is fixed.

B. At the hearing, OTR dismissed ROAR's assertion that OTR's equipment and construction proposal is so flawed that it wouldn't work. OTR's representative stated that "we have addressed this issue and

have a letter to prove it.” OTR, of course, did not provide such a letter nor identify it. ROAR presumes that the “letter” is OTR’s comment letter on the Draft EIS, in which it purported to change its construction methods and equipment to address ROAR’s earlier demonstration that the original equipment would not work in the Canyon.

For all of OTR’s purported expertise, it took the efforts of volunteer citizens to analyze the original plan, and demonstrate that the original plan had traffic impacts so prohibitive that OTR’s engineers were compelled to completely overhaul their construction and equipment plans. The new plan was submitted to the BLM in written comments that BLM did not widely publish, and therefore were never subject to the same kind of public review as the initial plan and were only publicly disclosed in the FEIS.

ROAR’s earlier written comments, and its presentation at the hearing, however, were not in reference to the original plan – but that the **NEW** equipment suffers from the same problems as the original proposal. To be clear, OTR Corp.’s revised construction plan as presented in the FEIS, ROD **and OTR’s temporary use permit application**, depicts single-lane drilling rigs with no outriggers. ROAR representatives talked directly to the equipment manufacturer for the most problematic **currently proposed** equipment, the Manitowoc crane. The manufacturer’s specifications show that the crane rigs cannot be used without fully extending the outriggers, making the operating width over 20 ft. on the 24 ft. highway. OTR proposes to use the equipment in a manner that is off-specification, raising questions of stability and safety. **Contrary to OTR’s statements at the hearings, ROAR’s critique of the NEW equipment has never been addressed by OTR.** Proper use of this equipment requires nearly complete blockage of both lanes of traffic. This was raised with BLM, and it punted on this issue; the County should not follow suit. A simple call from the County to the manufacturer would reveal what ROAR discovered.

Due to past engineering failures, the Commissioners need to be especially wary of OTR’s bald, unsupported dismissals of these concerns. Since there is a substantive disagreement about the ability of OTR’s proposed equipment to be safely utilized as OTR desires, the Commissioners should require OTR to obtain manufacturer certifications that their equipment can be safely used without outriggers and in the manner described in the permit application. Failure to require a guarantee means that either the highway will be closed when OTR finds that counterweights won’t work, or raises the spectre of a crane in the river if OTR goes ahead without outriggers.

#### IV. **BIGHORN SHEEP**

OTR touts its Bighorn sheep mitigation plan as a way to actually improve the Canyon herds. Sheep experts, however, (including some of those that participated in developing the mitigation plan), say they have no idea how the sheep will respond to the project and that the outcome of the prescribed mitigation measures is uncertain. The mitigation plan allows up to fifty percent herd loss before sheep replacement is required. After the ROD was issued, OTR has magically morphed anticipated sheep losses into herd increases. There is, however, no scientific support for OTR’s happy talk. Repeatedly saying something does not make it so.

## V. GENERAL

A. In the application, OTR states, “Because the County was a cooperating agency in the EIS process, the County is already very well informed about the Project.” As noted above, the EIS and Record of Decision punt on the same key components that OTR wants the County to ignore as well: providing a traffic management plan, an emergency management plan, and an event management plan. OTR’s mantra seems to be “**approve now, evaluate later**” on these key components. Submittal of these items prior to approval is a legal requirement of the Zoning Resolution.

B. As to OTR’s invocation of the public interest to coerce the County into adhering to OTR’s project schedule, we have previously noted that a delayed start date will not change effects to the public. We also noted that OTR has lost interest in this project more than once over the years, restarting the review process more than once and then abandoning those efforts. In fact, Christo is currently off to the Middle East on another project. When Christo left to pursue the Gates project, the OTR Project was put on hold for several years. OTR’s schedule is based solely on its own whim, not the public interest.

## VI. CONCLUSIONS

This Project is not in the best interests of County residents, and OTR has only so far presented its intention to submit the required plans to address and mitigate Project impacts. It has not actually prepared and submitted them. This is just not how the Commissioners should allow a business to operate in Fremont County. What other business would even have the nerve to ask the County to approve a permit for a Project that keeps changing (in fact OTR does not even know where the panels and anchors will actually be located, as no surveying for placement or geotechnical issues have yet been performed)? What other business would ask the County to approve a permit, but only promise to submit required plans later, resist cost-recovery to reimburse taxpayers for County review of complicated and moving targets, and resist County insistence on adapting permit conditions to observed impacts and conditions? Apparently, in OTR’s view, flexibility only runs one direction – toward OTR.

The County has the authority to, and ROAR believes it should, deny the Temporary Use Permit application outright, based on the concerns noted above and in ROAR’s previous submissions. At a minimum, the Commissioners should table the application until OTR submits a complete application and the County knows how traffic and other issues will be handled. It is not sufficient for the County to approve now and figure out what OTR will do later.

Submitted by

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