

August 29, 2011

BLM Royal Gorge Field Office
Over The River FEIS Comments
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Canon City, CO 81212
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Dear BLM Decision Makers:

I am providing the comments regarding the OTR FEIS document as follows:

Introduction:

I am a certified wildlife biologist who served the Colorado Division of Wildlife for approx. 32 years. During my career, I intensively managed bighorn sheep (7 years), and provided input and review of resource management plans for BLM and USFS, and for actions by US Army, USAF, BOR and others. I worked extensively with local governments on land use planning and environmental protection matters. I was a charter member of the Front Range Resource Advisory Committee where I helped develop the Land Health Standards used to analyze grazing and recreation on BLM lands. And I wrote the draft for the AHRA Mission Statement as a part of their adoption of a management plan for the administration of the Arkansas River, a joint operation of BLM and Colorado State Parks. During the development of AHRA recreation sites along the Arkansas, I provided environmental impact analysis, supervised the GIS vegetation analysis/identification of wetland and riparian vegetation, worked on the 11 mile mine drainage project and much more. I am now retired and live in Salida where I provide input to local governments on land use planning. I also provide assistance on environmental issues to non-profit conservation organizations and groups such as ROAR. I co-founded Land Trust of the Upper Arkansas 10 yrs. ago and continue to contribute to this organization in an advisory and special project basis. My interest in OTR is to see that BLM and State Parks (now Parks and Wildlife) properly manage the Arkansas River according to FLPMA and properly execute the EIS processes according to NEPA and the CEQ regulations. If proper management is provided, the unique resources of the Arkansas will be protected and enhanced as is appropriate for the river in general and for the Arkansas Canyonlands ACEC.

Non Conformance/Purpose and Need

In the most seminal and critical point of decision making regarding the OTR proposal, BLM failed and continues to fail via the FEIS to show conformance to its mission under FLPMA, the existing RGRMP, and AHRA Mission Statement and Management Plan. Indeed, BLM continues to rationalize “broad conformance” via an earlier NORA and ROD wherein a “temporary” real estate lease permit for the OTR project was given approval.

Then and now, BLM states that the proposed art project will “...enhance recreational opportunities”, and that it, BLM, is “...emphasizing a balance between resource protection and tourism” a phrase from the RGRMP (1996).

However, in reality, BLM’s decision to issue a permit without conformance to any existing land use/management plan, and its selection of Alternative 1a, are actions which will result in significant resource impacts (contrary to the FEIS findings). The result will be a total imbalance in favor of “tourism” –tourism of a nature and scope heretofore not experienced on the Arkansas River or accommodated in the Royal Gorge Management Area. This recommendation similarly contradicts BLM’s assertion that OTR satisfies or meets its Purposes and Needs.

For example, the RGMP (1996) designates the Arkansas Canyonlands ACEC where “Sensitive resources will be managed to protect, enhance, and interpret the significant scenic, historic, and archaeological values, peregrine falcon, key raptor habitat area, bighorn sheep habitat, and important fisheries.” In fact, by selecting Alternative 1a, BLM will allow OTR to negatively impact all of those values and species, not protect or enhance them. While, BLM attempts to rationalize their decision by pointing to claims of minimizing impacts through the imposition of various restrictions and best management practices (BMPs), the reasonable man can easily see that the industrial level drilling, art display materials, and the duration and scope of the project from initiation to final deconstruction and mitigation, will indeed irreparably violate and damage many resources and values which should be protected. One can only conclude that BLM’s Needs and Purposes in this matter are not met, but have become those of the project proponent.

Interests of Cooperating Agencies/Citizen Participation Violated

The egregious nature and hypocrisy of this matter is easily illustrated by examination of the AHRA Mission Statement and Management Plan which was developed by the BLM in conjunction with cooperating agencies such as a Colorado Division of Wildlife (CDOW) and stakeholders such as businesses (guided fishing and rafting) who make up the Citizen’s Task Force (CTF). In the AHRA Mission Statement, and I paraphrase as the primary author, ‘...where competing interests come into play, a decision is to be made in deference to natural resources...’ This statement was specifically written to provide guidance for making decisions when proposed uses would detract from the natural values and resources on the river. The intent was to manage the river in deference to the existing uses such as fishing, rafting, camping, hunting and wildlife watching/education. Indeed, in May of this year when the Colorado Wildlife Commission (oversight board for CDOW) was presented with information about wildlife impacts and impacts to constituents that will occur with OTR, they voted unanimously (9-0) to recommend denial of any permit, whether with reduced development and/or mitigation measures. They made this recommendation knowing full well that the many impacts to wildlife would result from OTR and that those impacts could not be reasonably mitigated.

It is very important to note that they had just listened to a lengthy presentation from CDOW personal regarding a bighorn sheep mitigation plan for the Arkansas North River herd. This is the plan referenced in the FEIS and which the BLM uses as its basis for downgrading the impacts to bighorn sheep from “significant” to “moderate”.

Areas of Critical Environmental Concern (ACECs) and Visual Resource Management (VRM)

The egregious and hypocritical nature of the FEIS findings regarding natural and scenic resources is worth further examination. The Arkansas Canyonlands Area ACEC where Visual Resource Management designation (VRM Class II) applies, constitutes the “Parkdale” stretch of the river, approximately 4 miles of the almost 6 miles total of the Arkansas to be “draped” in fabric. This is the most sensitive stretch along the 42 miles of river considered for the project. As stated earlier, this stretch of the river is to be managed “...to protect, enhance and interpret the significant scenic, historic, and archaeological values, the threatened and endangered peregrine falcon, key raptor habitat area, bighorn sheep habitat, and important fisheries” (RGRMP 1996). The scenic quality is defined as “...the degree of harmony, contrast and variety that influences the overall impression of the landscape”. FLPMA 1976 states “...public lands will be managed in a manner which will protect the quality of the scenic (visual) values of these lands.” BLM has brushed aside this very clear language to state that these resources and values within the Parkdale stretch will only be impacted in a way as not to cause “irreparable damage”. That is to say that the impacts/damages can be made minimal to moderate versus significant via mitigation efforts to take place over a period of up to five years.

However, there is nothing other than vague promises from the project proponent, inadequate mitigation required, and subjective opinions by BLM to rationalize to this conclusion.

In contrast, the reasonable man can immediately intuit, based on a brief viewing of this stretch of the canyon, that the industrial sized aspect of this project (with the vast majority of the over 9,000 concrete block anchor placements going in, and later to be removed or left in place), cannot take place without significant visual impact/damage to the natural terrain.

Bighorn Sheep Impacts-North River Herd

The bighorn sheep mitigation plan presented to BLM by CDOW and detailed in the FEIS is based on the premise that, habitat enhancement, to increase forage and to provide alternative water sources (guzzlers), and provided prior to the project, will minimize impacts to the North River Herd. It is predicted by BLM in the FEIS that this mitigation work will result in changing “significant” impacts to “moderate” impacts. Further, if sheep losses within this herd are greater than those compared to a “control” herd, more habitat enhancement will be initiated based on a proportionate number of acres to the number of sheep lost. Finally, if up to 50% of the herd is lost, CDOW will initiate transplants to start rebuilding the herd.

There are some major fallacies to this plan and CDOW and BLM were alerted to these fallacies months prior to the release of the FEIS. They are as follows:

- (1) This plan goes first to minimization and mitigation vs. avoidance in regard to OTR. If Alternative 1a is not implemented, the North River Herd would not be impacted significantly and this mitigation plan would not be necessary.
- (2) The response of sheep to OTR perturbations, especially over a three year period of time, will result in significant stress, and the abandonment or a major change in use of primary/essential habitat. This will result in poorer nutrition, health, reproductive health and/or survival. These disturbance effects and more are well documented in the DEIS and FEIS.
- (3) The plan is a guess; a gamble that these impacts will be lessened by the sheep mitigation plan. While some of what is planned by CDOW would be beneficial, it is improbable that the impacts that are predicted can be offset effectively. For example, the sheep will continue to prefer free flowing water to relatively stagnate water in a guzzler/watering tank. Thus, as sheep try to water at the river and are interrupted, even with more edible vegetation at hand, they will experience reduced health, reduced natal health, reduced survival rates and reduced sustainability. Also, the rate of animal losses and causes of losses will be most difficult to document in comparison to the control areas as planned.
- (4) When sheep numbers decline--the assumed correlation/conclusion that additional acres of habitat enhancement will result in replacing a set number of sheep lost, is totally undocumented and basically conjecture. This assumption is unsupported by any logic or science. Thus, sheep will be lost, to be followed by a belated effort of habitat improvement, which will bring additional disturbance to the sheep herd, and result in greater stress and health/survival impacts. In the real world, one would manage the sheep best by doing the maximum amount of habitat improvement in the area of concern up front, with one effort (materials, man power, equipment, reseeding, etc.) and get out. Minor follow up work to tweak the project could be done on a small unobtrusive basis, but multiple habitat projects should be avoided.
- (5) The number of sheep which can be lost, up to 50% of the herd, before replacement begins is totally unacceptable. The herd would go from 50-60 sheep to half that, 25 for instance, before transplants begin. That is a prescription for losing the herd, or struggling for decades to get back to the base population level. Decades of previous work with this herd basically prove this. Instead, and most importantly and responsibly, with a herd this size, any loss beyond the ordinary, documented rate of annual of losses, should cause project activity in that area to cease. Better yet, the trigger for a cease and desist of the project in the Alternative 1a, Parkdale section given the well documented correlation of disturbance related stress on sheep to poor health and survival, should be the documentation of sheep being displaced from watering successfully each

day. Similarly, this should apply to sheep being displaced from feeding areas, resting areas, or in regard to finding cover or escape cover.

These are my basic concerns/issues and recommendations in regard to the sheep plan. They are based on years of sheep management experience with CDOW. In summary BLM is absolutely wrong to say that the impacts to bighorn sheep should be downgraded from significant to moderate by requiring OTR to implement and pay for the proposed bighorn sheep mitigation plan.

Wildlife Species other than Bighorn Sheep

Basically, for many of the species, BLM provides good documentation for how the various species will be impacted, but relies on the proponent to document losses of dead birds or bats, for instance. But there is no requirement to establish or analyze in the same way as for the sheep, the base line population levels for protected species or species of special concern. Nor does BLM have a plan for documenting what happens to species from project implementation to final tear down and mitigation of habitat impacts. For instance, there is no requirement for "takings" in regard to migratory bird species such as peregrine falcons, bald eagles, black phoebe, etc. via the Migratory Bird Treaty Act. BLM states that these losses should be reported, but there is to be no disinterested third party contractor to monitor and do the work suggested. BLM should require this, and the assessment and monitoring of bat hibernacula (Townsend's big-eared bat). The loss of a hibernacula would be very significant, but BLM has provided no credible information to say that a hibernacula, in the vicinity of the project, will not be disturbed and thus lost. How will that resource be replaced? BLM has not addressed this question. Yet, in this instance, and with many species where impacts are predicted in the FEIS, BLM subjectively and improperly represents these impacts as minor or moderate.

Wetland and Riparian Vegetation

I am amazed that BLM has taken the position that USCOE will be consulted only after the fact, if there are impacts to the wetland vegetation and waters of the US below the ordinary high water mark. BLM has estimated that these impacts will basically be nonexistent or negligible. BLM is saying that no fill material from drilling or other project activities will reach the water. This is unlikely to be the case with the many anchors to be installed on steep and unstable slopes along the river. BMPs which will help catch materials are commendable but not likely to be uniformly effective. With this in mind, there should be monitoring by USCOE personnel prior to and as the project progresses to determine the need for a Nationwide Permit.

Similarly, since CDOT will be providing a permit to OTR to use highway right of way for the panel installation work, and since the Arkansas is a fishing stream, CDOT must obtain an SB-40 permit from CDOW for impacts that will likely occur to the stream. Typically, when a USCOE permit is required, COE will also stipulate that an SB-40 consultation take place as a part of that permit. BLM should also require that an independent third party be involved to document wetland and riparian vegetation and river fill. This should be done before and after impacts, and throughout mitigation processes, by photo documentation and by the provision of actual measurements. Soil disturbance, revegetation success, and weed control, should also be documented. Up front bond monies for this work should be required as should a working budget.

Cumulative Impacts

I am unable to find in the FEIS where BLM has done an analysis of cumulative impacts for natural resource impacts alone, or collectively with those impacts to businesses, public safety, etc. Tables showing a list of species and with an x in a square indicating minor to moderate impact for each, does not constitute a cumulative impact analysis. I assert that NEPA and regulations via the CEQ require a more vigorous analysis which looks at all impacts to the human environment, cumulatively and holistically. Were this examination properly carried out, one would certainly see a plethora of impacts, a number of which are significant and unmitigated, i.e. impacts to guided fishing businesses, and those to public safety.

These impacts taken as a whole, along with those to wildlife, constitute a significant and unacceptable level of disturbance to the natural environment and our small communities. Further, were these externalities properly weighed against the undocumented claims of financial benefit to the local communities, one would question the actual costs to benefits predicted. I have not seen such an analysis.

Summary

The OTR project, Alternative 1a, is not in conformance with BLM's mission, RGMP, AHRA Mission and Management Plan or with FLPMA as it defines and provides for protection of ACECs and Visual resources. BLM has improperly determined that OTR is "broadly in conformance" with the RGMP. But nowhere is BLM able to show this in the record of their land use planning processes, until the issuance of a NORA and ROD and via the DEIS and FEIS processes. This is not the proper process by which to determine conformance to management/land use plans. Even so, it is quite clear that OTR will violate all of the management plans in place. And it is obvious to all who examine the context of how the Arkansas River has been historically managed by BLM/State Parks and the cooperating agencies, that OTR is hopelessly out of conformance. Since OTR is so contrary and damaging to the resources to be protected by BLM/State Parks and the cooperating agencies, the reasonable man must conclude that a great injustice is being done, and that a dangerous precedent is being set for Arkansas River management and for other BLM lands if OTR/Alternative 1a is approved.

While many requirements, restrictions and BMPs are being imposed by BLM as conditions of project approval, the preferred alternative, Alternative 1a, will be determined, if properly examined, to present significant impacts which cannot be mitigated. As such BLM must determine that Alternative 1a is unacceptable. Indeed, the No Action Alternative is the only acceptable conclusion that BLM can support, and which can withstand judicial review.

In conclusion, the work and credibility of BLM/State Parks, cooperating agencies and collaborative advisory groups is being put aside in order to give OTR questionable and illogical standing as a legitimate activity under the RGMP. BLM must change its direction and determine through the FEIS that the only correct conclusion and ROD is for the No Action Alternative.

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