

BLM Royal Gorge Field Office
Over The River Comments
3028 East Main St.
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Via e-mail: co_otr_comments@blm.gov

August 29, 2011

Dear BLM,

The following are the comments of the entities listed below on the Final Environmental Impact Statement (FEIS) for the Over the River (OTR) Project. The organizations and individuals endorsing these comments are: Rocky Mountain Wild¹, High Country Citizens Alliance, Renewable Communities Alliance, Great Old Broads For Wilderness, Quiet Use Coalition, San Luis Valley Ecosystem Council, Central Colorado Wilderness Coalition, Rags Over the Arkansas River (ROAR), Bruce Goforth, Jim Lockhart, and Wild Connections.

I. INTRODUCTION. Rocky Mountain Wild (which was then Colorado Wild) and other groups submitted detailed comments on some aspects of OTR's impacts, as described in the DEIS, in a letter dated September 10, 2010. We hereby incorporate that comment letter by reference. We are most displeased to find the BLM has not adequately addressed any of the issues raised therein. We discuss some of those issues below. We also continue to believe that OTR is most inappropriate in a location such as Bighorn Sheep Canyon, where the wildlife, scenic, and other values far outweigh any benefit from an industrial scale art project.

II. THE PROPOSED PROJECT DOES NOT COMPLY WITH THE RELEVANT MANAGEMENT PLAN. As detailed in our comments on the DEIS, we believe strongly that OTR would be in clear contradiction to the requirements of the Royal Gorge Resource Area Resource Management Plan (the RMP). We argued there that the RMP requires protection of the values of the Arkansas Canyonlands Area of Critical Environmental Concern (the ACEC), and that the OTR project would severely disrupt or destroy these values. We strongly reemphasize these concerns here.

Five of the eight proposed panel locations, comprising the large majority of the length of panel placements, would be within the ACEC. FEIS at 2-33 and Map 2-3. Thus we are stunned that the BLM could misinterpret the language in the RMP so badly to find that the OTR project would comply with the RMP. See FEIS at 1-19. The agency claims that

¹ Rocky Mountain Wild was formed with the recent merger of Colorado Wild and Center For Native Ecosystems.

In general,...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, as noted in the RMP excerpt below...

FEIS at 1-16. However, the following appears in the referenced RMP quote:

Generally, management practices and prescriptions will favor maintaining or enhancing the natural setting (e.g., wildlife habitat, visual resources, recreation areas, etc.)...

Ibid.

The proposed project would clearly not maintain, let alone enhance, the natural setting. In the ACEC, there would be "significant short-term impacts to visual resources", "moderate short-term to long-term impacts to bighorn sheep", and "moderate short-term impacts to raptors" through the duration of the project. FEIS at 4-323 through 4-325. Clearly, there would be significant impacts to the ACEC.

The impact on the scenic resource would be glaring. The curtains placed over the river, would be entirely human-made and stand in great contrast to the natural setting.

As a major modification to the existing character of the landscape, the installed project would dominate the view and be the major focus of viewer attention.

FEIS at 4-309. This clearly conflicts with Visual Resource Management Class II guidance, which allows only a low level of change. See FEIS at 1-18.

Under the RMP Record of Decision (ROD), ACECs are "managed to protect and enhance their special values". ROD at 2-1-12, decision 1-66. Under the RMP, these areas "will receive special management as an ACECs (sic)". RMP, Table 3-2, p. 3-44.

The FEIS' plan conformity analysis indicates that the proposed project would conform with the plan because there would be no "irreparable" damage, due to the application of mitigation measures. FEIS at 1-19. But note that the provisions in the RMP requiring protection for various resources do not condition this protection by allowing damage that is not "irreparable". In other words, all values must be protected, period.

Also, some effects from OTR could easily be irreparable – see section III below, concerning bighorn sheep. The mitigation plan for sheep is wholly inadequate to ensure only insignificant impact. A population loss (due to sheep being forced out of good habitat by the project and dying or not returning) that continued after the project was removed, would be an irreparable loss. But even a temporary loss of sheep would violate the RMP requirement to protect the values of the ACEC.

Any mitigation for visual impacts won't come close to reducing the glaring contrast of an industrial-scale art project with the natural environment. Indeed, the proposed project "intentionally emphasize[s] contrast". FEIS at 4-307.

The BLM's finding that OTR would conform to the RMP is an egregious and inexcusable error. If it is allowed to stand, the Arkansas River Canyon will have no protection, as the BLM would not be able to deny other projects, like mining, that would damage the values the RMP says will be protected. The finding of OTR conformity with the RMP must be reversed.

III. IMPACTS TO WILDLIFE ARE POTENTIALLY SIGNIFICANT AND MAY NOT BE MITIGABLE

A. BIGHORN SHEEP. The mitigation plan for reducing impacts to bighorn sheep is little changed from the Prospectus submitted by the Division of Wildlife on December 15, 2010. See FEIS Appendix G.² This mitigation plan has a few good features, such as a seasonal closure in proposed panel placement areas near lambing areas during the lambing period (April 15 – June 30), and regularly assessing winter snow depth. Prospectus³ at 1.

However, the undersigned do not believe the proposed mitigation is sufficient to reliably reduce the impacts from OTR to a non-significant level. Sheep use the habitat near the river because there is reasonably easy access, and they are seldom bothered by humans. The railroad has not run through the canyon for about 16 years, so there is little human use of the area on the north side of the river, and the sheep can easily access the river for drinking.

Sheep are highly dependent on water. FEIS at 3-3. Since the land on the north side of the river "lacks natural springs and perennial side creeks" (FEIS at 3-5), sheep are dependent on the river for water. Thus they stay within about two miles of the river; ewes with lambs stay much closer. Ibid. In fact, more than 70 percent of the sheep observations in the canyon have been within 300 meters of the river. FEIS at 4-6. Water is critical for lactating ewes with new lambs. Id. at 3-4.

Sheep on the north side are most frequently seen in the Texas Creek to Parkdale stretch. The forage along the river and railroad tracks in this area is high quality. Id. at 3-6. The eastern portion of this area would have the most concentrated panel placement under the proposed action, alternative 1a. See FEIS map 2-3. Thus construction activity would

² One commendable change is that vegetation treatment would be limited to hand thinning. FEIS at G-3.

³ "Prospectus" and "sheep mitigation plan" are used interchangeably in this letter.

occur in this area for a considerable length of time. If, as stated at FEIS p. 4-7, drilling activity would occur for five days over each 0.25 mile panel section increment, it would occur for more than 110 days in the Three Rocks to Parkdale river section.⁴

Two areas that are considered critical for sheep access to the river, Tallahassee and Bootlegger Draws, are in the Parkdale panel section, which is nearly four miles long with no significant breaks. FEIS at 4-12. If sheep avoid the panels here, it would result in a major displacement. Ibid. The Texas Creek staging area is 0.8 miles long and would constitute “an extensive barrier to sheep seeking to reach water”. Ibid. The County Line panel site “is the most critical sheep utilization area along the river between Texas Creek and Salida” FEIS at 4-13. This area has very high sheep use and “increased stress and displacement of bighorn sheep [would be] likely to occur” with the proposed action.

Sheep might flee from the area, at least temporarily, during construction, and if so, they could be forced into marginal habitat. FEIS at 4-6. Also, they would not likely use the areas along the river that have panels because: a) their line of sight, and thus their protection from predators, would be blocked by the panels, which would cover most of the river near Parkdale, if they attempted to drink there, and b) railroad trains would be used to haul tourists in to view the panels, scaring the sheep away or even killing some of them. It is not clear if the sheep would return to the habitat along the river after deconstruction, as they would have been forced out of it for almost three years. See FEIS at 4-6.

Sheep would be stressed by various construction activities, including drilling and the use of rail-mounted trucks to deliver workers and materials to the north side of the river. See FEIS at 2-37. Use of the railroad could be especially stressful, because it has not been used much since about 1995, and is thus out of the living memory of most or all of the members of the current sheep herd.⁵ FEIS at 4-8. In any case, there is no question that stress is harmful to sheep. See FEIS at 3-6.

While project activity during the lambing period would be prohibited, it would be allowed during the rut, which is November and December. See FEIS at 3-3, 4-4. As a result, sheep reproduction could be reduced. FEIS at 4-6. For any lambs that were born, the questionable (at best) availability of water would result in: smaller lambs, less milk from the mothers, and probably lower survival of lambs. That could be significant when combined with deaths from stress and forced relocation caused by project-related activity. In other words, the north side sheep herds could suffer a considerable population loss that would likely outlive the project.

⁴ 5.7 miles of river in the section (FEIS at 2-31) X 0.25 mile per increment X 5 days per increment = 110+ days of construction activity in the area of the most heavily used bighorn sheep habitat.

⁵ If it was diligently enforced, the rail speed limit of 20 MPH (FEIS at 5-12) might reduce, but would not eliminate, collisions with sheep. Sheep would be stressed by the presence and noise of trains running at any speed.

Severe winter range for sheep exists in the canyon area, including near Parkdale. FEIS at 4-6. Project effects on sheep in a harsh winter would exacerbate stress and drain already limited energy reserves. Ibid.

It is questionable at best if a sufficient quality and quantity of habitat can be created to accommodate the sheep that are likely to be displaced from their current, most desirable habitat near the river. Any new habitat will still not have a reliable water source⁶, and may be located in areas that would make sheep more susceptible to predation. Sheep have high home range fidelity (FEIS at 4-8), so they would be reluctant to move out of habitat they use now. If they did abandon their preferred habitat, they may be forced into marginal habitat, as discussed above. In any case, they would suffer stress.

If any action alternative is approved, any treatments to increase habitat should be implemented at least three years before any project construction commences, and sheep use of the area must be monitored during this time period. If there is little to no sheep use of the new habitat by the end of this time period, it should be assumed that the habitat will not be sufficient to compensate for the impacts to sheep caused by disturbances that would be associated with OTR.

If any action alternative is approved, sheep should be monitored continuously throughout all phases of the project. If the data shows that sheep are abandoning their customary habitat near the river and not moving into adequate habitat elsewhere, project work must cease until it can be assured that sheep impacts can be reduced to an insignificant level.

The above is not at all provided in the sheep mitigation plan. In fact, the additional mitigation (beyond the proposed initial habitat improvement treatment) required if sheep are impacted is woefully inadequate. If sheep are impacted, the Prospectus requires more treatment. See Prospectus at 4. But if the initial proposed treatment did not mitigate project effects, how can it be expected that additional treatment would do so? Most egregious is the fact that no sheep replacement would be required until there had been a 50 percent decline in sheep population! Ibid. In other words, half the sheep population could be lost before OTR Corporation would be required to replace sheep! That is absolutely unacceptable. Work cessation and sheep replacement must be required at a level well below a 50 percent decline in sheep population

The cessation of work when snow depth reaches 25 cm or some specified depth should be mandatory, not discretionary. Currently, the mitigation plan says “[c]onstruction activities *should* cease...when snow fall exceeds 25 cm”. Prospectus at 1; emphasis added. We also do not find any restriction on activity based on snow depth in FEIS Table

⁶ Up to three guzzlers would be installed (FEIS at 5-13), but our understanding is that sheep use of these facilities is mixed – sometimes sheep will use them, sometimes not. And if the guzzlers are located in areas where sheep are more susceptible to predation, sheep mortality would increase even if the sheep survived the stress of relocation.

2-15, Design Features Common to All Action Alternative, at p. 2-67.

Conclusion on impacts to sheep. In light of all of the above, we believe that the impacts to sheep are likely to be significant, and that the BLM's determination that the impacts to sheep would be only moderate is unjustified, or at best premature. The FEIS provides no analysis of why the proposed mitigation plan would reduce the impact to a non-significant level; rather it only states an unsupported conclusion. See FEIS at 4-9.

The bighorn sheep herds were nearly extirpated from the project area, and have been restored over time through transplantation and supplementation. FEIS at 3-3. Such efforts took a long time and a considerable expenditure of money. It has only been the last 5-10 years that the sheep population has become stable. Ibid. The OTR project threatens to considerably reduce the population, possibly necessitating expensive future measures to restore it. Allowing a project that could cause this would simply be poor management and is unacceptable to the undersigned.

Note that the Colorado Wildlife Commission passed a resolution opposing OTR:

However, the Wildlife Commission has determined that even given the possibility of some mitigation, the Over the River project is inconsistent with the statutory obligations of the Wildlife Commission. Therefore, the Wildlife Commission wishes to state that it opposes the Over the River Project and any approval or permitting of the project by the BLM or any other jurisdiction.

Colorado Wildlife Commission, May 9, 2011 letter to the BLM.

In light of this, the proposed action should not even be considered.

B. TOWNSEND'S BIG-EARED BAT. We are still concerned about the impacts to this increasingly rare species. It is a BLM sensitive species and a State species of concern. FEIS at 3-9. Two maternity roosts exist in the project area – near the County Line and Parkdale panel locations. FEIS at 3-9. This species is known to be intolerant of humans near its roosts. If the bats are disturbed during maternity or hibernation, they could be forced from their roosts, and mothers may abandon their young. Gruver and Keinath, 2006, at 50, citations omitted. We find no mention in the FEIS of possible impacts to maternity roosts.

Thus it is questionable if OTR will comply with the RMP in this regard:

Protection and enhancement of special status animals will be continued by eliminating identified and verified land uses that conflict with these species.

RMP at 3-39.

The draft EIS stated that a fall-winter hibernaculum exists in the Parkdale area, near the middle of the longest section of proposed panel installation. DEIS at 3-9, 3-65, and 4-53. We find no mention of thus in the FEIS. Disturbance during hibernation could have a very serious impact on bat survival.

Townsend's and other bats could collide with cables or panels on their way to the river for drinking. FEIS at 4-10. The river is a prime foraging area for bats (id. at 4-11), thus feeding could be disrupted by the presence of cables and panels.

C. MULE DEER. Severe winter range for mule deer exists on the north side of the river from Parkdale to west of Texas Creek. See FEIS map 3-14. Deer could be forced to flee due to the increased presence of people and equipment, and if so, they could be forced into "lower quality habitat without good access to water". FEIS at 4-9. The FEIS should have discussed in more detail the possible impacts to deer if installation or removal of OTR occurred during a severe winter. We believe such effects would be significant, or even severe.

D. OTHER WILDLIFE. Numerous other species of wildlife nest, feed, drink, or roost near the river. These include, but are not limited to: bald eagle, golden eagle, American dipper, belted kingfisher, black phoebe, and various species of waterfowl. See FEIS at 3-7 et seq. Obviously, the use of habitat near the river for these species would be disrupted, if not eliminated, by OTR. The FEIS states that "avian collisions with cables should be expected", and that nocturnal avian species face an increased risk of collisions with cables. Id. at 4-19. Decreased nesting success for riparian species could occur. Id. at 4-20.

II. RARE PLANTS. The undersigned believe that rare plants must be protected. However, a design feature states "Known rare plant sites would be avoided where possible." FEIS at 2-68; emphasis added. Another one says "Individual populations of special status plants would be marked and avoided if practicable during the construction process". Id. at 2-69; emphasis added. Rare plants must be avoided, period! They must be fully protected from all project activities that could result in damage to any of the plants, or that would reduce opportunities for the plant populations to expand and recover to full, viable populations.

Note that the RMP states that

Special status plants will be protected with special management actions, including elimination of identified and verified conflicting uses.

RMP at 3-38. Design features must reflect this direction.

CONCLUSION. The proposed OTR project is absolutely inappropriate and unacceptable for the Arkansas River Canyon. In spite of the BLM's attempt to twist the meaning of RMP, the project clearly does not comply with the RMP. The conclusion that impacts to bighorn sheep would be no more than moderate is unjustifiable, as the proposed mitigation plan is not likely to significantly reduce impacts. There would be possibly significant impacts to other wildlife species. Visual impacts would be strong and could not be mitigated.

The BLM must not approve the OTR project.

Sincerely,

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REFERENCE

Gruver, J.C. and D.A. Keinath, 2006. Townsend's Big-eared Bat (*Corynorhinus townsendii*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region. Available at:
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