

DISTRICT COURT, CITY AND COUNTY OF DENVER,
COLORADO

2nd Judicial District

Denver City & County Building
1437 Bannock Street, Room 256
Denver, Colorado 80202

Phone Number: (720) 865-8301

Plaintiffs: RAGS OVER THE ARKANSAS RIVER,
INC., a Colorado not-for-profit
corporation; and

ARKANGLERS, LLC, a Colorado
limited liability company; and

ARKANSAS RIVER FLY SHOP, INC. a
Colorado corporation

v.

Defendants: COLORADO PARKS AND WILDLIFE
BOARD, f/k/a COLORADO BOARD OF
PARKS AND OUTDOOR
RECREATION; and COLORADO
DIVISION OF PARKS AND
WILDLIFE, f/k/a COLORADO
DIVISION OF PARKS AND
OUTDOOR RECREATION; and
COLORADO DEPARTMENT OF
NATURAL RESOURCES.

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COMPLAINT

Plaintiffs, Rags Over the Arkansas River, Inc. (“ROAR”), and ArkAnglers, LLC and the Arkansas River Fly Shop, Inc. (collectively, “ArkAnglers”) allege against the Colorado Board of Parks and Wildlife, formerly known as the Colorado Board of Parks and Outdoor Recreation, the Colorado Division of Parks and Wildlife, formerly known as the Colorado Division of Parks and Outdoor Recreation, and the Colorado Department of Natural Resources (collectively “Defendants”) as follows:

SUMMARY OF ALLEGATIONS

1. This lawsuit concerns Defendants’ arbitrary and capricious decision to enter into a Memorandum of Agreement with the Over the River Corporation, granting it extensive use of the Arkansas Headwaters Recreation Area, a high quality and popular public recreation area managed jointly by the United States Bureau of Land Management and Defendants, to build a temporary industrial-scale art project. The project would cover 5.9 miles of a 42-mile stretch of the Arkansas River with polypropylene panels, requiring over 9,000 industrial rock bolts to be drilled into the river’s banks using 3,000 crew work days over a 28 month construction period and a 12 month dismantling period. Despite an ongoing comprehensive environmental review process by the BLM and a finding by the Colorado Wildlife Commission that the Project is an “inappropriate action” that it could not support, the Colorado Board of Parks and Outdoor Recreation approved the Memorandum of Agreement just one week before the Colorado Wildlife Commission and Colorado Board of Parks and Outdoor Recreation were set to merge into a joint board governing the newly created Colorado Division of Parks and Wildlife. Further, the former Parks Board failed to consider the Over the River Corporation’s project under the special activities permit approval process set forth in Colorado Land and Water Regulations.

Approval of the Memorandum of Agreement in this manner was arbitrary and capricious, unsupported by the record, and not in accordance of law.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff ROAR is a citizen's group organized as a Colorado not-for-profit corporation. Its mailing address is 662 Wapiti Trail, Canon City, Colorado 81212.

3. ROAR was formed in response to the proposal by Christo and the late Jeanne-Claude Javacheff and their Over the River Corporation ("OTR Corp."), a Colorado corporation, to install an industrial-scale art exhibit over large areas of the Arkansas River between Salida and Canon City, Colorado (the "Project").

4. ROAR is dedicated to preserving and protecting the headwaters of the Arkansas River and Bighorn Sheep Canyon, where OTR Corp. proposes to build the Project, as well as the area's inhabitants and the communities that utilize and depend on the river and the canyon.

5. ROAR's members include residents of Bighorn Sheep Canyon, anglers, fishing guides, business owners, and others. ROAR's members regularly use and enjoy the facilities, access points, lands, and waters that would be affected by the Project for fishing, boating, hunting, recreation, photography, hiking, nature and wildlife study, commercial guiding for anglers, and other recreational and conservation purposes.

6. Plaintiff ArkAnglers, LLC is a Colorado limited liability company in good standing. ArkAnglers, LLC's mailing address is 7500 US Hwy 50 West, Salida, CO 81201.

7. Plaintiff Arkansas River Fly Shop, Inc. is a Colorado corporation in good standing. Arkansas River Fly Shop, Inc.'s address is 7500 US Hwy 50 West, Salida, CO 81201.

8. Arkansas River Fly Shop, Inc. and ArkAnglers, LLC were formed in 1995 and 1998 respectively and together comprise the Arkansas River's premier fly fishing businesses. ArkAnglers specialize in fly-fishing retail and professionally guided fly fishing expeditions. The natural beauty, solitude, and serenity of the Arkansas River corridor and fishery and access to same are of paramount importance to ArkAnglers' business.

9. ArkAnglers, LLC holds three agreements with the State of Colorado, Department of Natural Resources, Division of Parks and Outdoor Recreation, titled Arkansas Headwaters Recreation Area Special Use Agreement with an effective date of May 31, 2011 (hereafter "Special Use Agreement").

10. The Colorado Board of Parks and Outdoor Recreation ("Parks Board") and Colorado Division of Parks and Outdoor Recreation ("State Parks") were created by the Colorado General Assembly pursuant to C.R.S § 33-10-103. Prior to July 1, 2011, the Parks Board was responsible for establishing the regulations, standards and policies that guided

State Parks. Senate Bill 208, 68th Gen. Assemb., Reg. Sess. (Colo. 2011), attached as Exhibit A, consolidated the Parks Board and State Parks with the Colorado Wildlife Commission and the Colorado Division of Wildlife, respectively.

11. Pursuant to S.B. 208, the Colorado Division of Parks and Wildlife is the successor agency to State Parks and the Colorado Division of Wildlife. Similarly, the Parks Board has merged with the Colorado Wildlife Commission to form the Colorado Parks and Wildlife Board.

12. On June 24, 2011, the Parks Board approved a “Memorandum of Agreement” (“MOA”) with OTR Corp. allowing use of certain State Parks facilities. The MOA is attached hereto as Exhibit B.

13. MOA states that its parties are the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of State Parks, the Parks Board, and OTR Corp.

14. Defendants Colorado Parks and Wildlife Board and Colorado Division of Parks and Wildlife are successors-in-interest to State Parks and the Parks Board as to all rights and obligations of the MOA.

15. Plaintiffs participated in review of the Project by various agencies, including the June 24, 2011 Parks Board meeting, where the Parks Board approved the MOA. ROAR issued a letter to the Parks Board prior to that meeting, and one of its members testified at the meeting regarding ROAR’s objections. ArkAnglers also testified about its objections to the MOA at the meeting and published copies of its letters to the Parks Board at that time.

16. This Court has jurisdiction over the matters and parties described herein pursuant to the Colorado Administrative Procedure Act (“CAPA”), C.R.S. § 24-4-106, and C.R.S. § 33-9-108.

17. The Parks Board’s June 24, 2011 approval of the MOA constitutes final agency action under CAPA. This Complaint is timely filed pursuant to C.R.S. § 24-4-106.

18. Venue in this Court is proper pursuant to C.R.C.P. 98(b) and C.R.S. § 24-4-106.

GENERAL ALLEGATIONS

The Arkansas Headwater Recreation Area

19. The Arkansas Headwaters Recreation Area (“AHRA”) is a recreation area located in Chaffee, Lake, Pueblo, and Fremont Counties, Colorado, and is comprised of the surface of the Arkansas River, lands owned by the State of Colorado and lands owned by the United States. The AHRA is a scenic area and is considered to be one of Colorado’s most valuable natural resources. The Arkansas River, which flows through, and is the rationale for, the AHRA, is the

most popular whitewater boating river in the world and was recently designated by the former Colorado Division of Wildlife as the most popular moving water fishery in Colorado. The AHRA is used for fishing, rafting, hiking and other outdoor recreational activities. The U.S. Department of the Interior, Bureau of Land Management (“BLM”) has designated this as an Area of Critical Environmental Concern and requires special management to protect the wildlife and related resources of this area.

20. The AHRA is subject to a Cooperative Management Agreement (Agreement CO-050-90-8372, dated January 19, 2001 among U.S. Department of the Interior, Bureau of Land Management Royal Gorge Field Office; the State of Colorado, Department of Natural Resources, Colorado Division of Parks and Outdoor Recreation; the State of Colorado, Department of Natural Resources, Colorado Division of Wildlife; and U.S. Department of Agriculture, Forest Service, Pike/San Isabel National Forests & Comanche/Cimarron National Grasslands, Leadville Ranger District) (the “Cooperative Agreement”). Per the Cooperative Agreement, the AHRA is managed jointly by the BLM and State Parks.

21. The Cooperative Agreement designates State Parks as the lead agency responsible for on-the-ground management of recreational activities at the AHRA.

22. Under the Cooperative Agreement, State Parks is charged with managing the AHRA in conformance with the Arkansas River Recreation Management Plan (the “AHRA Plan”).

23. The AHRA Plan is the “product of a very comprehensive public involvement process.” AHRA Plan at 1-1.

24. State Parks managed the AHRA with the advice of a 14-member Citizen Task Force comprised of a diverse array of stakeholders representing anglers, commercial agreement holders, private boaters, riverfront property owners, local government, environmental interests and water users.

25. The AHRA Plan requires that the “Citizen Task Force members will be polled as to their opinions, and their reasons for same, regarding all decisions of substance relating to the AHRA, with the outcome of this to become a part of the public record.” AHRA Plan at 1-12.

26. The AHRA Plan also requires that the land managers, including State Parks, “protect bighorn sheep habitat and prevent user conflicts between bighorn sheep and recreation users.” AHRA Plan at 2-2. It also directs State Parks and the BLM to “strive for compatibility of sports fishermen with other recreational users” and to ensure that “[c]onflicts between fishery habitat and other values, e.g. livestock grazing, mineral development, etc...will be resolved in favor of fishery habitat.” The segments of the river known as County Line, Point Bar (Tunnels), and Red Rocks Canyon, which are slated for segments of the exhibition, are within “Section 3” of the Arkansas River, such section having a primary management objective “to protect quality of fishing resource while working to maintain resource character.” AHRA Plan at 2-44.

The Project

27. The Project as proposed by OTR Corp. is an industrial-scale art installation that would cover 5.9 miles of a 42 mile stretch of the AHRA with polypropylene fabric panels.

28. To support the suspension of several tons of polypropylene fabric over the Arkansas River, the Project depends on a complex system of industrial anchors and cables, including over 9,000 industrial rock bolts drilled into the alluvium and bedrock of the canyon walls and 1100 steel cables stretching between the canyon walls.

29. Though the Project would only be on display for two weeks, it requires approximately 28 months and 3,000 crew work days for installment and 3-12 months for dismantling for a total of between 31-40 months (close to or exceeding 3 years) for installation, display, and dismantling, according to the Draft Environmental Impact Statement prepared by the BLM (“Draft EIS”). Installing the anchor bolts and other hardware requires large drilling equipment normally used for industrial and heavy construction activities. The required equipment includes 4 hydraulic drill masts mounted on Cat 320-330 long-reach excavators, Cat M313D – M322D wheeled excavators, boom truck cranes, grouters, air compressors, water tanks, grout mixers, support trailers, steel rock anchors, anchor frames and numerous personnel and contractors to perform the construction and dismantling work.

30. The Project also requires the use, transportation, and on-site storage of a variety of hazardous materials.

31. Demolition would span an additional three months to one year. However, the demolition plan allows OTR Corp. to cut off anchor bolts just below the surface, leaving all 9,000 rock anchors permanently behind.

32. A majority of the Project will be located within a sensitive area designated by the BLM as an “Area of Critical Environmental Concern” “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.”

33. To protect sensitive wildlife habitat, the Colorado Oil and Gas Conservation Commission has also designated this area, along with other areas in the canyon affected by the Project, as restricted surface occupancy for oil and gas drilling.

34. Portions of the Project are located adjacent to the McIntyre Hills Wilderness Study Area.

35. Because the BLM determined that impacts from the Project would be significant, it is in the process of preparing a final Environmental Impact Statement (“Final EIS”) to analyze such impacts. State Parks and Colorado Division of Wildlife (“CDOW”) are among the cooperating agencies working with the BLM on the EIS. The Draft EIS was published in July 2010. Neither a Final EIS nor a record of decision has been issued by the BLM for the Project.

36. The Project will be constructed within critical habitat for bighorn sheep, including sensitive lambing areas.

37. According to BLM's analysis in the Draft EIS, the Project would have significant short and long term impacts on the highly sensitive bighorn sheep in the AHRA. Among other impacts, the Project would increase the exposure of bighorn sheep to disease, disperse sheep from their primary habitat, and likely increase the mortality rate in young lambs.

38. The BLM has found that the Project would result in the death and displacement of legally protected species, including golden and bald eagles.

39. The Colorado Wildlife Commission (the "Commission") also believed that the Project will adversely impact wildlife. For this reason, it unanimously opposed the Project. In its May 2011 letter to the BLM, the Commission expressed that it "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." According to commissioner Dorothea Farris, "this is an inappropriate action that we [the Commission] cannot support," and commissioner Robert Streeter said, "there are no redeeming values of this project from a fish and wildlife perspective."

40. The Draft EIS states that the Project would result in visitation exceeding the carrying capacity of the AHRA.

41. The AHRA facilities subject to the MOA were established for the purpose of, and are currently used for, recreational purposes. The AHRA facilities include campgrounds, picnic areas, put-in and take-out ramps for rafting and boating, parking areas for anglers and other recreational visitors, interpretive exhibits and sanitary and changing facilities to support such uses. The surface of the river and the airspace above the river's surface are utilized by boaters and anglers and these components of the AHRA are also currently managed for utilization by the public and various existing holders of SUAs within the AHRA.

42. ROAR's members will be adversely affected and aggrieved because the Project would significantly interfere with their current use of the AHRA for recreational, commercial, and conservation purposes. Therefore, ROAR and its members have legally cognizable interests which are threatened and directly injured as a result of the decision of the Parks Board in authorizing the MOA.

43. The Draft EIS notes that construction of the Project would displace anglers in the area. Therefore, the thriving fishing industry on the AHRA, in which ArkAnglers and ROAR's members participate, would be adversely impacted thus causing significant and irreparable harm to Plaintiffs' businesses.

44. The Project, if permitted, would have a devastating impact on ArkAnglers' retail and guided fly-fishing business. OTR Corp.'s construction, exhibition, and dismantling of the

proposed Project would threaten the health of the Arkansas River trout fishery and riparian environment, severely impact public access to the fishery and river corridor, inhibit and/or disallow fishing beneath the actual installation, and severely degrade the natural and social environments supportive of a quality fishing experience. These impacts would have a severe and cumulative effect on the reputation and appeal of the Arkansas River trout fishery and fishing experience, and thereby on the retail and service components of ArkAnglers' business, both during the term of the MOA and in the years that follow.

45. ArkAnglers' investment backed expectations under its Special Use Agreements would be severely impacted by the Project throughout construction, exhibition and dismantling. The noise, dust, and disruption caused by the drilling of over 9,000 anchor holes proposed by OTR Corp. and the cumulative impacts of sedimentation that will result from the installation of 1,100 cables above the river surface, the storage and use of industrial fluids within, and adjacent to, the river and riparian zone, the impacts to traffic on U.S. Highway 50 and access to public points of river ingress and egress, the restrictions on pedestrian fishing access to the designated construction areas, and the presence of hundreds of thousands of spectators would destroy the fishing experience for ArkAnglers' patrons and the fishing public, negatively impact the aquatic and riparian environments, and threaten the health of the fishery.

46. The rights and interests of ArkAnglers are directly and adversely affected by the Parks Board's approval of the MOA, and any exercise of the permissions, authorizations and rights granted thereunder. The Parks Board's action also conflicts with the Special Use Agreements between ArkAnglers, LLC and the State Parks.

47. The Parks Board's approval of the MOA will also adversely impact numerous other existing agreements and the agreement holders. These agreements allow for use of AHRA facilities for rafting and fishing ingress and egress, for use of the surface of the Arkansas River, and for the use of restroom, picnicking, and camping facilities, among others. These same facilities are also heavily used by the public throughout the year for fishing and other recreational activities. All agreement holders and members of the public pay fees to the State Parks for the use of these facilities.

48. The Project would also result in 380 days of lane closures on U.S. Highway 50, a federal highway and a primary east-west corridor through the middle of the State. ArkAnglers and many of ROAR's members, ranchers, tourists and thousands of other members of the local community, use these highways for personal, recreational, and commercial purposes. The closures would significantly interfere with that use. Such closures would also delay emergency vehicles, potentially impairing the safety and welfare of people in the area.

Statutory and Regulatory Requirements Applicable to the Project

49. Defendant Board of Parks and Wildlife is vested with all the powers, responsibilities, obligations, functions and duties that were previously under the jurisdiction of the Parks Board. Similarly, Defendant Division of Parks and Wildlife is vested with all the

powers, responsibilities, obligations, functions and duties that were previously under the jurisdiction of States Parks.

50. Prior to July 1, 2011, the Parks Board implemented Title 33, Articles 10 through 15 and Article 32 of the Colorado Revised Statutes. Among other duties, the Parks Board promulgated rules and orders relating to state parks and outdoor recreation, while State Parks controlled, managed, developed and maintained all state parks and recreation areas consistent with the State's policy to protect, preserve, enhance and manage the natural, scenic, scientific and outdoor recreation areas for the use, benefit and enjoyment of the people of this State of Colorado.

51. The Parks Board established regulations to govern the Parks Board's and the State Parks' consideration of proposals for the use of Colorado State Parks and Recreation Areas.

52. The regulations define "special activities" as "those events which have the potential for a significant adverse impact on park values or the health, safety or welfare of park visitors or which may otherwise require special planning/scheduling for proper management." 2 C.C.R. 405-1-101.

53. The Project is a "special activity" under this definition because it will have significant adverse impacts on park values, could affect the health, safety and welfare of park visitors, and, as the Parks Board has acknowledged, the Project requires special planning and scheduling for proper management.

54. Further, according to the AHRA Plan, projects or activities which are "commercial" in nature are "special activities." The Project is a commercial activity.

55. Because the Project is a special activity under 2 C.C.R. 405-1-101 and the AHRA Plan, it must be considered through the process set forth in 2 C.C.R. 405-1-703, which states that all special activities shall require a special activities permit.

56. 2 C.C.R. 405-1-703(3) requires that permits be denied when a proposed activity would have a significant adverse impact on park values, pose significant threats to the health, safety or welfare of park visitors or other persons, or when the activity is inconsistent with area management plans or intended facility use.

57. The Project would have a significant adverse impact on park values. For example, it would cause significant physical damage to the canyon, undermine its recreational value, and significantly affect wildlife and wildlife habitat, among other impacts.

58. The Project would pose a significant threat to the health, safety or welfare of park visitors. For example, if Project equipment, vehicles or materials are occupying take-outs or river access points, the Project as authorized under the MOA would prevent egress from the river in case of an emergency, and would prevent rescue crews from reaching the scene of a river

accident. According to the Draft EIS, the Project may also result in releases of hazardous materials.

59. The Project is inconsistent with the AHRA Plan. For example, the AHRA plan requires State Parks to “protect bighorn sheep habitat and prevent user conflicts between bighorn sheep and recreation users. AHRA Plan at 2-2. The Project is anticipated to have significant impacts on bighorn sheep.

60. Additionally, when it approved the MOA, the Parks Board did not comply with the ARHA Plan’s requirement that the “Citizen Task Force members will be polled as to their opinions, and their reasons for same, regarding all decisions of substance relating to the AHRA, with the outcome of this to become a part of the public record.” AHRA Plan at 1-12. In fact, each time Citizens’ Task Force members sought to weigh in on the Project, State Parks specifically intervened to prevent the taking of any formal poll or vote.

61. For activities that would exceed the carrying capacity of the recreation area – as the BLM has concluded the Project will do – 2 C.C.R. 405-1-703 requires a 30-day public comment period and a public meeting in the county where the park or recreation area is located. State Parks neither allowed for such comment period nor held such public meeting.

62. In addition to the terms of the regulations, Plaintiffs and other community members had other reasons to rely on State Parks and the Parks Board to follow its regulations and consider the Project as a “special activity.” The Draft EIS states that, among the permits the Project would need to secure, OTR Corp. would need a “Special Activity Agreement” from State Parks. Draft EIS, Table 1-1 at 1-22. Although the Draft EIS noted that the permit vehicle was subject to further review and discussion, it did not contemplate that State Parks would proceed without providing a permit at all. The Draft EIS also notes that process to obtain such permit would begin after the National Environmental Policy Act (“NEPA”) process was complete. The NEPA process for the Project will only conclude after the Final EIS is published and a Record of Decision is issued by the BLM. The BLM has not yet released its Final EIS or a Record of Decision.

Memorandum of Agreement

63. On June 23, 2011, ROAR sent a letter to the Parks Board asking them to postpone the decision on the MOA for one week, until after the merger of the Parks Board and the Commission, urging the Parks Board to wait and hear the concerns of the Commission prior to entering into such a wide-ranging MOA, and questioning the legality of the Parks Board’s last minute change in the timing and legal permitting mechanism for the Project. At the June 24, 2011 Parks Board meeting, ArkAnglers, made a similar request, adding that it was premature to enter into an MOA of this nature prior to the BLM’s issuance of a final EIS and Record of Decision.

64. On June 24, 2011, at the final meeting of the previously constituted Colorado Parks Board, and immediately prior to the consolidation of that Board with the Colorado Wildlife Commission, the Board approved the MOA.

65. The MOA permits OTR Corp.'s extensive use of AHRA recreational facilities for the purpose of constructing, preparing, exhibiting, and removing the Project.

66. The MOA places no restrictions on the type, timing, or manner of OTR Corp.'s usage of the AHRA.

67. The Parks Board approved the MOA despite the fact that it does not know how OTR Corp. will mitigate impacts, what its construction schedule is, or the contents of a required, but yet to be developed, event management plan.

68. In approving the MOA, the Parks Board exceeded its authority under C.R.S. § 33-10-107(d) to enter into cooperative agreements because the MOA is for neither the development nor the promotion of parks and outdoor recreation programs, but is for the construction of a private, commercial, large-scale, industrial art installation that will displace all of the current and intended uses of the AHRA.

69. The Parks Board abused its discretion and acted in a manner that was arbitrary and capricious, unsupported by the record, and not in accordance of law when it approved the MOA under C.R.S. § 33-10-107(d).

70. Issuance of the MOA as a cooperative agreement violates regulation 2 C.C.R. 405-1-703, which mandates that any special activity requires a special activities permit. No such permit process was undertaken and no permit was issued.

71. The Defendants abused their discretion and acted in a manner that was arbitrary and capricious, unsupported by the record, and not in accordance of law when they failed to adhere to the procedures set forth 2 C.C.R. 405-1-703.

72. The Defendants abused their discretion and acted in a manner that was arbitrary and capricious, unsupported by the record, and not in accordance of law because the MOA will have significant adverse impact on park values.

73. The Defendants abused their discretion and acted in a manner that was arbitrary and capricious, unsupported by the record, and not in accordance of law because the MOA poses significant threats to the health, safety or welfare of park visitors or other persons.

74. The Defendants abused their discretion and acted in a manner that was arbitrary and capricious, unsupported by the record and not in accordance of law because the MOA is inconsistent with the AHRA Plan and the intended use of AHRA facilities.

**FIRST CLAIM FOR RELIEF
(INJUNCTIVE RELIEF)**

75. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 74 above.

76. There exists the danger of real, immediate, and irreparable injury to Plaintiffs, which may be prevented by the injunctive relief sought herein.

77. Plaintiffs have no other plain, speedy, and adequate remedy at law that will fully address the injuries already suffered or the imminently existing danger of future injuries.

78. The issuance of an injunction will not disserve the public interest.

79. The public interest favors an injunction.

80. Plaintiffs are entitled to a permanent injunction in this case prohibiting the Defendants from exercising the permissions, authorizations, and rights provided to them by the MOA.

81. Plaintiffs are entitled to a permanent injunction prohibiting the use of AHRA lands and facilities for development of the Project as proposed.

82. Plaintiffs reserve the right to seek such further relief as may be appropriate, including without limitation, preliminary injunctive relief, temporary injunctive, and/or damages.

**SECOND CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)**

83. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 82 above.

84. In requesting this declaratory relief, Plaintiffs are requesting an interpretation of the rights, legal status and relationships of the parties under the above law and facts.

85. Such interpretation is appropriate under C.R.C.P. Rule 57 and the Uniform Declaratory Judgments Law, C.R.S. §§ 13-51-101 to 13-51-115.

86. Plaintiffs seek an order declaring that:

(a) The Project is a “special activity” under 2 C.C.R. 405-1-101 and the only legal mechanism for permitting the Project’s use of AHRA facilities is pursuant to 2 C.C.R. 405-1-703.

(b) That the Defendants’ action of entering into and approving the MOA is arbitrary and capricious, unsupported by the record, and not in accordance of law.

(c) That the MOA is void, unenforceable and not approved, issued or executed in accordance with law.

(d) That the Project may not proceed because it cannot meet the standards to obtain a special activities permit as set forth in 2 C.C.R. 405-1-703 and there is no other permitting authority available under applicable law or regulation.

87. Or, in the alternative, Plaintiffs seek an order declaring:

(a) The Project is a “special activity” under 2 C.C.R. 405-1-101 and the only legal mechanism for permitting the Project’s use of AHRA facilities is pursuant to 2 C.C.R. 405-1-703.

(b) That the Defendants’ action of entering into and approving the MOA is arbitrary and capricious, unsupported by the record, and not in accordance of law.

(c) That the MOA is void, unenforceable and not approved, issued or executed in accordance with law.

(c) That the Project may not proceed without obtaining a special activities permit as set forth in Colorado’s Land and Water Regulations.

(d) Defendants shall follow the procedures set forth in Colorado’s Land and Water Regulations to determine if OTR Corp. is entitled to a special activities permit for the Project.

WHEREFORE, Plaintiffs respectfully request from this Court:

- A. Judgment in their favor, and against the Defendants, on each of their claims for relief;
- B. Declaratory and injunctive relief as set forth in their claims;
- C. Any such further relief deemed appropriate by this Court including legal fees and costs.

Dated: July 22, 2011

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