BLM

U.S. Department of the Interior
Bureau of Land Management

Categorical Exclusion

Land Use Permit Renewal for Over the River

PREPARING OFFICE

U.S. Department of the Interior
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Land Use Permit Renewal for Over the River

DOI-BLM-CO-F020–0052 CX

Prepared by
U.S. Department of the Interior
Bureau of Land Management
Cañon City, CO

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A. Background

BLM Office:

Royal Gorge Field Office, LLCOF02

Lease/Serial/Case File No.:

COC-74484

Proposed Action Title/Type:

Application to Renew Land Use Permit for a Temporary Work of Art

Location of Proposed Action:

Fremont County, CO

6th PM, T.18S., R. 72 W., Sections 14, 15, 20, 21, 30: portion of,

6th PM, T.18S., R. 73 W., Sections 25, 26: portion of

6th PM, T.19S., R. 72 W., Sections 4, 5, 7, 8: portion of,

New Mexico PM, T.49N., R. 9 E., Section 14: NE1/4, E1/2NW1/4,

New Mexico PM, T.49N., R. 10 E., Section 28: Lots 2, 4, 5, 6, 7, 11,

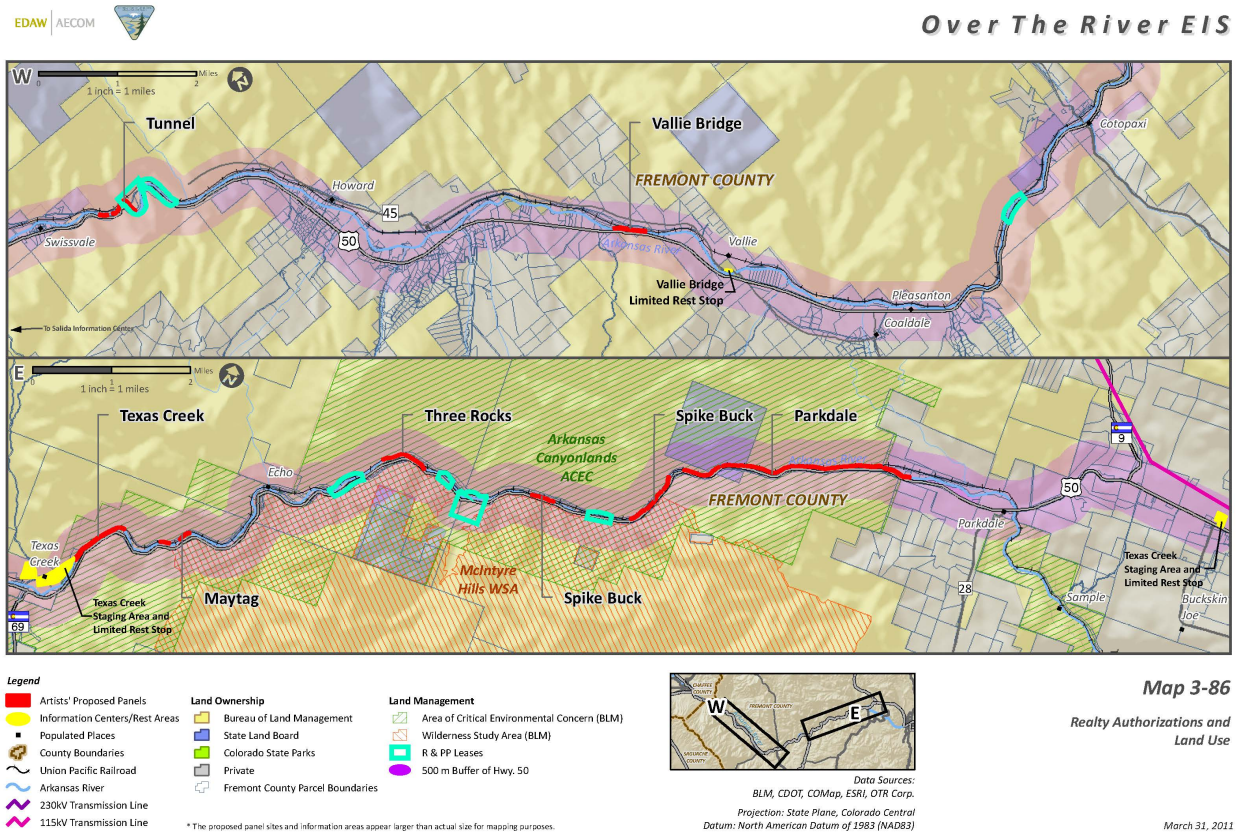
New Mexico PM, T.49N., R. 10 E.,Section 29: Lots 1,8,

New Mexico PM, T.49N., R. 11 E., Section 18: SE1/4SE1/4, E1/2NW1/4SE1/4,

New Mexico PM, T.49N., R. 12 E., Section 14: Lot 8.

Applicant: Over the River Corp.

Description of Proposed Action: The BLM action is to respond to an application received from Over the River Corp. Over the River Corp. has requested to renew their Land Use permit for the installation of a temporary work of art consisting of fabric panels suspended horizontally over approximately 5.9 miles of a 42.4 mile stretch of the Arkansas River between Cañon City and Salida, Colorado. The project would include terms, conditions, and stipulations as determined in the decision for FEIS 11–15, dated November 4, 2011.



B. Land Use Plan Conformance

Land Use Plan Name:

Name of Plan: Royal Gorge Resource Management Plan

Date Approved: May 1996

Additional NEPA Compliance:

Over The River Environmental Impact Statement

Date Approved : November 2011

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions) : Over the River™ Art Project, November 4, 2011. In general, with the inclusion of appropriate constraints, stipulations, and mitigation measures, the applicants' proposal is consistent with the overall RMP objective of providing a "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 (BLM 1996):

The overall objective of this resource management plan is to provide a variety of levels, methods, and mix of multiple use resource management, utilization, and protection… BLM lands and resources will continue to be managed to provide for needed commodities and uses to assist in the

support of local and regional economies… Generally, management 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 (BLM 1996).

C. Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 2, Appendix 1, or 516 DM 11.9,

E.9. Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted in the original authorization.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2 apply.

I considered:

CATEGORICAL EXCLUSION REVIEW: This proposed action is listed as a Categorical Exclusion in DOI Departmental Manual Part 516 Chapter 11 9 (E.9). None of the following exceptions in 516 DM 2, Appendix 2, apply.

Table 1.1. Exclusion Criteria

Exclusion Criteria	YES	NO
1. Have significant impacts on public health or safety.		X
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; lands with wilderness characteristics; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.		X
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.		X
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		X
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		X
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		X
10. Have a disproportionately high and adverse effect on low income or minority populations.		X

Exclusion Criteria	YES	NO
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.		X
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.		X

Table 1.2. Interdisciplinary Team Review

INTERDISCIPLINARY TEAM REVIEW			
NAME	**TITLE**	**AREA OF RESPONSIBILITY**	**Initials/date**
Lara Duran	Wildlife Biologist	Terrestrial Wildlife, T&E, Migratory Birds	LD, 5/12/15
Jeff Williams	Range Management Spec.	Range, Vegetation, Farmland	JW, 5/12/15
John Lamman	Range Management Spec.	Weeds	JL, 5/8/2015
Dave Gilbert	Fisheries Biologist	Aquatic Wildlife, Riparian/Wetlands	DG 5/8/15
Stephanie Carter	Geologist	Minerals, Paleontology, Waste Hazardous or Solid	SSC, 5/12/15
John Smeins	Hydrologist	Hydrology, Water Quality/Rights, Soils	JS, 5/11/2015
Ty Webb	Fire Management Officer	Air Quality	TW, 5/12/2015
Linda Skinner	Outdoor Recreation Planner	Recreation, Wilderness, LWCs, Visual, ACEC, W&S Rivers,	LS, 5/8/2015
Ken Reed	Forester	Forestry	KR, 5/11/15
Monica Weimer	Archaeologist	Cultural, Native American	MMW, 5/8/15
Rich Rotte	Realty Specialist	Realty	RAR,5/7/15
Ty Webb	Fire Management Officer	Fire	TW, 5/12/2015

REMARKS:

Cultural Resources: Pursuant to the programmatic agreement (PA) which was executed on February 22, 2011, among the BLM, Colorado SHPO, Advisory Council on Historic Preservation and the OTR Corporation, the OTR project remains in the "Pre-construction" period. The parties must continue to abide by the stipulations in the PA until its expiration in 2016. At that time, BLM will contact all parties and together they will decide whether to renew, renegotiate, or terminate the agreement.

Native American Religious Concerns: The following tribes were consulted regarding the area of potential effect: Apache Tribe of Oklahoma, Cheyenne and Arapaho Tribes of Oklahoma, Cheyenne River Sioux Tribe, Comanche Tribe of Oklahoma, Crow Creek Lakota Tribe, Jicarilla Apache Nation, Kiowa Tribe of Oklahoma, Northern Arapaho Tribe, Northern Cheyenne Tribe, Ute Tribe, Oglala Lakota Tribe, Rosebud Sioux Tribe, Shoshone Tribe, Southern Ute Indian Tribe, Standing Rock Sioux Tribe and the Ute Mountain Ute Tribe. No concerns were identified.

Threatened, Endangered, BLM Sensitive, Migratory Bird and Terrestrial Wildlife Species:

Consideration was given to threatened, endangered, BLM sensitive, migratory bird and terrestrial wildlife species with respect to new information or changed conditions since the analysis and Biological Assessment were completed for the 2011 Final Environmental Impact Statement. Changed conditions and new information with respects to these wildlife species are described in

detail in Appendix A. Despite the minor changed conditions, the effects analysis and biological determinations completed for these wildlife species remains relevant and additional analysis is not required. All mitigation measures, monitoring measures for the species analyzed remain applicable and necessary.

Aquatic Wildlife, Riparian/Wetlands

The Royal Gorge Field Office (RGFO), in coordination with Colorado Parks and wildlife (CPW), considered whether the recent designation of the Arkansas River as a "Gold Medal Water", a designation of high quality trout angling opportunity, requires additional analysis since the time of the OTR EIS. The designation came forward at a recent point in time, however the fisheries population information that supports the designation had been collected over many years prior, and RGFO was well aware of the fish population structure and the high pre Gold Medal designation angling demand. The popularity for the angling opportunity on the Arkansas River was ever present prior to designation. The designation verifies for RGFO that the careful analysis of OTR project affects upon fisheries and recreation angling was important but does not signal a requirement for further analysis. The EIS stated the environmental affects and gave recognition that anglers would be displaced during the project; now being a Gold Medal water does not alter impacts or that anglers are displaced.

D. Approval and Contact Information

NAME OF PREPARER: Rich Rotte

SUPERVISORY REVIEW: /s/ Jay Raiford

NAME OF ENVIRONMENTAL COORDINATOR: /s/ Martin Weimer

DATE: 5/13/15

DECISION AND RATIONALE: I have reviewed this Categorical Exclusion and have decided to implement the Proposed Action.

This action is listed in the Department Manual as an action that may be categorically excluded. I have evaluated the action relative to the 10 criteria listed above and have determined that it does not represent an exception and is, therefore, categorically excluded from further environmental analysis.

SIGNATURE OF AUTHORIZED OFFICIAL: /s/ Keith E. Berger

Keith E. Berger, Field Manager

DATE SIGNED: 5/13/15

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Appendix A. , Wildlife

Threatened, Endangered and Proposed Species

Since the Environmental Impact Statement (EIS) was published, Gunnison's prairie dog (*Cynomys gunnisoni*), which at the time was a candidate species for listing, was determined by the US Fish and Wildlife Service not warranted for listing as threatened or endangered (USFWS 2013). This species is still listed as a BLM sensitive species. There are no other changed circumstances regarding this species; the analysis completed in the 2011 Biological Assessment (BA) for this species is still relevant.

With regards to the two listed species carried forward in the analysis of the 2011 BA, Mexican spotted owl (*Strix occidentalis lucida*) and Greenback cutthroat trout (*Oncorhynchus clarki stomias*), there are no changed circumstances and the analysis and biological determinations for these species in the BA is still relevant. Concurrence was obtained from US Fish and Wildlife Service (USFWS) on March 21, 2011 (ES/CO:BLM/ROYAL GORGE Tails 65412-2011-I-0358).

Because there are no changed circumstances from the 2011 BA, consultation with USFWS is completed. The 2011 Biological Assessment and this review were prepared based on presently available information. If the proposed actions, including the required conservation measures described in the EIS and 2011 Record of Decision (ROD) are modified in a manner that causes effects not considered or not as disclosed, or if new information becomes available that reveals that the proposed action may impact endangered, threatened, or proposed species in a manner or to an extent not previously considered, a new or revised biological assessment would be required and consultation with USFWS may be necessary.

BLM Sensitive Species

The analysis completed for the 12 BLM sensitive species carried forward in the 2011 Final Environmental Impact Statement (FEIS) remains relevant. In that analysis, three species were carried forward in the analysis as BLM sensitive species, however are no longer considered to have that status: Yuma myotis (*Myotis yumanensis*), northern river otter (*Lutra canadensis*), and Lewis' woodpecker (*Malenerpes lewis*). The analysis for those species remains relevant regardless of this nomenclature change. There are no changed circumstances regarding any of these species that warrant additional analysis. The mitigation measure for sensitive bat species remains applicable and necessary.

Avian Wildlife Species

The analysis for the 87 bird species carried forward in the 2011 FEIS is still relevant. There are no changed circumstances regarding any of these species that warrant additional analysis. The mitigation measures identified in the 2011 Record of Decision (ROD) for avian species remain applicable and necessary. OTR has begun the following monitoring elements, which be expected to continue: 1) Bald eagle winter use, 2) Golden eagle nests.

Terrestrial Wildlife Species

The analysis completed for in the 2011 FEIS for the five large game mammals plus bats, fossorial mammals, reptiles and amphibians remains relevant.

Since the publication of the 2011 ROD, new information regarding Rocky Mountain bighorn sheep has emerged. Due to issues with disease transmission between domestic and Rocky Mountain bighorn sheep, this species was proposed for listing as a BLM Sensitive species. Since this concern does not apply to the OTR project, even if this species is added to the BLM sensitive species list, the effects analysis conducted in the 2011 FEIS would remain relevant and a status change to a sensitive species would not have bearing on this project.

In addition, Colorado Parks and Wildlife and OTR Corp began implementation of the following mitigation measures and monitoring elements: **1) WILDLIFE- 6** (Appendix G Prospectus: Over the River Bighorn Sheep Mitigation & Assessment), 2) **Bighorn Sheep Monitoring** (Appendix G Prospectus: Over the River Bighorn Sheep Mitigation & Assessment).

The monitoring elements for Rocky Mountain bighorn sheep have been on-going since 2012. Although the data is very preliminary, the information provides a more accurate estimate of the population size of bighorn sheep in the Canyon, and demographic data. The population size of northern groups of sheep is smaller than previously estimated, but both the populations for north and south groups appear to be stable. This new information does not alter the analysis that was conducted for the EIS regarding the effects proposed action on bighorn sheep. There is still a need to monitor the effects and continue with the mitigation described in the 2011 Record of Decision for Rocky Mountain bighorn sheep, which includes Appendix G Prospectus: Over the River Bighorn Sheep Mitigation & Assessment.

One of the concerns described in the EIS analysis is the effect the project would have on lamb recruitment. While this monitoring data provides a more accurate demographic assessment, it is critical to continue the monitoring so that the exact number of ewes and lambs, as well as their conditions are known to assess the effects on lamb recruitment and reproductive success.

The monitoring data collected since 2012 has demonstrated very clearly that this herd does not currently use the vertical height of the canyon walls, for instance to escape from predators, etc. It also clearly demonstrates that the bighorn sheep currently remain in close proximity to the river, probably because it serves as their only current water source and provides the best available forage. The installation of guzzlers that will be completed under the habitat improvement project were designed to provide an alternate water source in the corridor. The bighorn sheep utilize the length of the river corridor those movement patterns appear to be because they are using different habitats at different times of the year. This data does indicate that the sheep can move at a faster rate than was expected.

The vegetation removal treatment to provide an escape corridor for bighorn sheep was implemented in 2013 and finished in 2014. The monitoring data shows that the lower portion of the treatment is used by bighorn sheep, however the full length of the corridor has only been used by one ram during the rut and such forays are typical of rams at that time. . There is a need to continue the monitoring efforts as outline in the original EIS. The analysis completed for the 2011 Record of Decision for Rocky Mountain bighorn sheep remains valid in light of this information.

All mitigation measures identified for terrestrial wildlife, including Rocky Mountain bighorn sheep, remain applicable and necessary.

Literature Cited

USFWS. 2013. 12-Month Finding on a Petition To List the Gunnison's Prairie Dog as an Endangered or Threatened Species; Proposed Rule. *Federal Register* 78:68659-68685.

Appendix B. OTR 2920 Land Use Permit Renewal Review of Categorical Exclusions: Extraordinary Circumstances

May 13, 2015

Appendix 5 Categorical Exclusion: Extraordinary Circumstances of the National Environmental Policy Handbook H-1790 requires that "before any non-Energy Act CX is used, you must conduct sufficient review to determine if any of the following extraordinary circumstances apply," and that "extraordinary circumstances exist for individual actions within CX's which may:

2.1 Have significant impacts on public health or safety.

Review: The proposed OTR permit renewal will not have significant impacts to public health and safety.

Public safety was an issue identified for analysis in the 2011 OTR EIS prepared for the original OTR permit. Impacts to public health and safety were identified in the OTR EIS. Those impacts include: increased demand upon law enforcement, fire protection, emergency response; reduced response times; potential for increased crime; increased vehicular traffic; increased potential for vehicular accidents; increased accident risk to rafters & boaters. Design features proposed by the applicant and required mitigation measures have been incorporated into the original OTR permit to address these impacts.

The 2011 OTR EIS defined all of these public health and safety impacts as short term and moderate for the original OTR permit.

The renewal of this permit will not alter the moderate short-term determination. Previously defined design features and required mitigation measures will be carried over to the renewed permit.

2.2 Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

Review: The proposed OTR permit renewal will not have significant long-term impacts to natural resources or unique geographic characteristics.

Natural resources and geographic characteristics such as those listed above were issues identified for analysis in the 2011 OTR EIS prepared for the original OTR permit. Impacts to natural resources and geographic characteristics were identified in the OTR EIS. Those impacts include:

Historic or cultural resources – Section 106 and Native American consultations were conducted. No direct effects identified. Mitigation and monitoring plans will be developed and designed to negate any cumulative impacts to cultural resources. All of the direct and indirect impacts to cultural resources would be dealt with prior to and during the lifetime of the project.

Parks, recreation or refuge lands –

- Angling – significant short-term impacts were identified.
- Camping – significant short-term impacts were identified.
- Placer Mining – significant short-term impacts were identified.
- Scenic Driving – significant shot-term (both adverse & beneficial) impacts were identified.
- Other Local Attractions – Significant beneficial short-term impacts were identified.

Wilderness areas – Negligible to significant short-term impacts were identified.

Wild or scenic rivers – no impacts were identified.

National natural landmarks – no national natural landmarks identified.

Sole or principal drinking water aquifers – no adverse impacts identified.

Prime farmlands – None within project area.

Wetlands & floodplains – Minor short-term impacts.

National monuments – None within project area.

Migratory birds – moderate sort-term impacts were identified.

Other ecologically significant or critical areas – Negligible to significant short-term were identified.

Design features proposed by the applicant and required mitigation measures were incorporated into the original OTR permit to address these negative impacts.

The renewal of this permit will not alter the impact determination of the OTR EIS. Previously defined design features and required mitigation measures will be carried over to the renewed permit.

2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].

Review: While the OTR project, as an art project authorized on BLM lands, has been controversial, the effects on the environment have been clearly defined and understood. The OTR EIS contains great detail documenting the environmental effects of the project. The controversy has focused around the appropriateness of the proposed use and the acceptability of the projects impacts to specific resources and to local residents. This controversy has been addressed and resolved by the Interior Board of Appeals and the Colorado District Court in findings of fact supporting the analysis and conclusions of the OTR EIS and appropriateness of authorizing the proposed use on BLM lands.

The intensity of the impacts have been clearly defined and accepted by recognized subject matter experts. Disagreements may remain from opposition groups about the acceptability of those impacts, however no pertinent factual evidence has been accepted by the IBLA or District Court to justify those disagreements.

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

Review: The OTR EIS has gone to great lengths to document the potential effects and environmental risks of this project. Some impacts (see above) have been defined as significant but short-term. Project design features and required mitigation measures have reduced the potential for environmental impacts and risks.

While the use of BLM land's for an art project of this scale is unique, the risks are not and they are well documented.

The renewal of this permit will not alter the defined impacts or risks. Previously defined project design features and required mitigation measures address documented impacts and risks and will be carried over to the renewed permit.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

Review: There are no precedents established by this renewal action.

2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

Review: No other direct relationships to other actions have been identified or are anticipated by this renewal action.

Review: The proposed OTR permit renewal will not have significant long-term impacts on properties listed, or eligible for listing, on the National Register of Historic Places.

Impacts have been evaluated and mitigation measures have been defined and will be implemented.

2.8 Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

Review: Numerous Threatened, Endangered, and Sensitive Species have been identified within the OTR EIS study area. The EIS analysis concluded that impacts to these various species will range between negligible to moderate and will not threaten the status of those species. Renewal of this permit will not alter those conclusions. Previously defined project design features and required mitigation measures addressing T&E Species will be carried over to the renewed permit. In addition, a Biological Assessment (BA) was prepared for the original OTR permit and presented to the US Fish & Wildlife Service (USFWS) for consultation purposes. The USFWS concurred with the BA. This BA is still relevant to this permit renewal.

2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

Review: The BLM has worked closely with other Federal, State and local agencies to ensure that the issuance of the original OTR permit did not violate any environmental protection laws or requirements. Renewal of this permit will not alter that assurance.

2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

Review: The OTR EIS analyzed the projects impacts to low income and minority populations, Socioeconomic, environmental justice and social impacts and concluded no adverse human health, environmental or social impacts would be disproportionately experienced by minority or low-income groups and they would be expected to experience the same level of impacts as the nonminority or higher income groups. The OTR EIS defined the impacts to low income and minority populations as minor and short-term. Renew of this permit will not alter those conclusions.

2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).

Review: The original OTR permit analysis included consideration of Indian sacred sites and consultation with local Native American tribes. The results of this consultation were provisions for plans designed to negate any cumulative impacts to cultural resources. The renewal of the OTR Permit will continue the requirement for these provisions and not alter the implementation of those plans.

2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

Review: The potential for noxious weed and invasive species introduction and spread was evaluated in the OTR EIS as part of the analysis for the original OTR permit issuance. The OTR EIS defined the impact of noxious weeds as minor and short-term. Mitigation measures have been included in the permit authorization to avoid weed introduction and spread. These mitigation requirements will continue to be required and this permit renewal will not alter their implementation.