

RESOLUTION NO. 18
Series of 2012

RESOLUTION FOR TEMPORARY USE PERMIT
FILE NUMBER TUP 11-008
OVER THE RIVER CORPORATION (OTR)

WHEREAS, Over the River Corporation (hereafter "Applicant" or "OTR") has made application for approval of a Temporary Use Permit, pursuant to Section 8.16 the Zoning Resolution of Fremont County to allow a temporary work of art as follows:

Fabric panels suspended horizontally over approximately 5.9 miles of a 42.4 mile portion of the Arkansas River, more specifically 2.5 miles in the Parkdale area, 0.9 miles at Spikebuck, 0.5 miles at Three Rocks, 0.3 miles at Maytag, 0.7 miles at Texas Creek, 0.3 miles at Vallie Bridge, 0.5 miles at Tunnel and 0.3 miles at the County Line, (a portion of which will be in Chaffee County), between Cañon City and Salida, by the Over the River Corporation. The event will include providing an information center, rest stop and first aid station on the north side of US Highway 50 in the "Eight-mile Hill" area (referenced as the Fremont Road Information Center), a limited rest stop and first aid station on the north side of the Arkansas River at Texas Creek, a limited rest stop and first aid station on the north side of the Arkansas River between Coaldale and Howard at the Vallie Bridge on Fremont County Road 45. A construction staging area, "event management command post" and an emergency helicopter will be located at Texas Creek. Over the River (The "Project") is a no-fee visitor event. The Project exhibit areas are all located in the Agricultural Forestry and the Agricultural Farming & Ranching Zone Districts which allow a spectator event with the issuance of a temporary use permit. The project is expected to span approximately 3 years for installation, exhibition and removal with a restoration phase that could extend past the 3 year, depending on the success of re-vegetation.

The Project involves four phases:

1. Installation, lasting approximately two years;
2. Exhibition, lasting two weeks, currently scheduled for the first two weeks in August, 2015;
3. Removal, lasting approximately three months, dependent on weather;
4. Restoration, lasting as long as necessary to perform earth work, re-vegetation and other similar measures.

WHEREAS, the application was submitted on November 16, 2011 and was deemed complete at that time; and

WHEREAS, the Board of County Commissioners for Fremont County ("Board") determined that a public hearing should be required as a part of the review of the application; and

Re-recorded to correct signature date.

WHEREAS, a public hearing on the OTR Application was held on February 1, 2012 (Canon City) and February 2, 2012 (Cotopaxi School) at which time comments and evidence were considered, including all documents contained as part of the application and which were in the county's file concerning the application; and

WHEREAS, notice to the public of the public hearing was provided through posting on the Board's calendar and agenda, publication in the *Canon City Daily Record*, and media announcements; and

WHEREAS, public comment was submitted through February 9, 2012, and the Board has considered all comments from the public; and

WHEREAS, the Board has reviewed and considered the terms and conditions of the Draft Environmental Impact Statement dated July 16, 2010, and Final Environmental Impact Statement dated July 29, 2011, for the Over The River project and all appendices, technical reports and comments and responses thereon; the BLM's Record of Decision signed November 4, 2011, and 2920 permit dated November 8, 2011, and associated mitigation measures, authorizing the OTR project subject to enumerated conditions; and

WHEREAS, the Board has reviewed and considered comments from various Colorado agencies, including the Division of Parks and Wildlife, Department of Transportation, Public Health & Environment, State Land Board, and State Patrol; and

WHEREAS, the Board has reviewed and considered comments from various Fremont County Departments and officials, including the Sheriff, Planning & Zoning, Weed Control, Transportation, Airport, Emergency Management, Building & Environmental Health, and Engineering; and

WHEREAS, the Board believes that the approval of the application for a Temporary Use Permit, is appropriate and sufficiently supported by the evidence before the Board.

AFTER DUE CONSIDERATION OF THE RECORD IN THIS MATTER INCLUDING, BUT NOT LIMITED TO, THE WRITTEN AND VERBAL SUBMITTALS, COMMENTS, STUDIES, THE BOARD MAKES THE FOLLOWING FINDINGS AND CONCLUSIONS:

A. This approval of the Temporary Use Permit is specifically conditioned upon the terms and conditions imposed by the Board and the findings of the Board are based upon the compliance by OTR with all conditions of the TUP.

B. The procedural requirements of the Fremont County Zoning Resolution (FCZR or Zoning Resolution) have been met and the application is complete.

C. The present application was appropriately submitted and processed as an Application for a Temporary Use Permit, pursuant to Sections 8.16 of the Zoning Resolution of Fremont County.

D. The proposed use is allowed under with the provisions of the Zoning Resolution in the Agricultural Forestry and Agricultural Farming and Ranching spectator or similar events, subject to the issuance of a Temporary Use Permit.

E. The Over The River project ("OTR project") contemplates the reasonable use of County Road 157 and the bridge over the Arkansas River on County Road 157 (commonly called the Harvey Bridge). The Harvey Bridge is in poor condition and the cost of the maintenance of the bridge is the responsibility of Front Range Aggregates under the conditions of CUP 07-003. The Board finds that additional heavy or truck traffic on the Harvey Bridge could result in an undue burden under CUP 07-003 and may accelerate the deterioration of the Harvey Bridge unless appropriate maintenance and repairs are performed by OTR.

F. County roads and bridges in the vicinity of the project area may be impacted during the construction and exhibition phases, unless appropriate mitigation is implemented. The impacts may result from construction use of bridges and from local traffic seeking to avoid U.S. Highway 50 traffic congestion by using alternate routes.

G. If the OTR projection of the number of visitors to the area is accurate, then additional law enforcement personnel must be on-duty during the 6-week exhibition phase. The Board has received requests from the City of Canon City and Fremont County Sheriff regarding the need for additional law enforcement patrol officers during the display of the event and finds the requests to be reasonable in principle. The Board finds that the precise number of additional officers, the times and dates of their deployment, and the coordination of these matters with other law enforcement agencies, including the Colorado State Patrol, is an issue to be determined in the event management planning process currently underway.

H. The communications capacity in the Arkansas River canyon is limited and is easily capable of being overloaded, potentially resulting in radio communications being unavailable to local law enforcement and emergency responders.

I. The present availability of emergency medical services in the western portion of Fremont County is very limited. Increased traffic during the Exhibition Phase of the project may cause increased delays in response times for medical emergencies for all citizens in western Fremont County and not just those traveling the Highway 50 corridor.

J. The railroad tracks to be used by OTR for all phases of the project have been idle for many years. The tracks and railroad right-of-way have not been maintained in a manner designed to prevent brush, weeds, grasses and other wildfire fuels to accumulate along the tracks, thereby increasing the risk of wildfire from sparks, embers or friction resulting from use of the rails, including risk arising from actions or omissions of OTR personnel and contractors.

K. A portion of the OTR project will be constructed and displayed in the proximity of agricultural grazing lands, some of which have fences in place to control and contain livestock. The Board further finds that livestock that are not contained by fences may stray into areas occupied by the project or onto the railroad tracks.

L. Sufficient and adequate general liability insurance is required under the 2920 Permit issued by the BLM, in the amounts of \$1,000,000 per occurrence and \$10,000,000 aggregate, subject to periodic modification.

M. The allegations of a flawed traffic study are unfounded. The Board accepts and finds that the traffic study performed as part of the BLM's EIS process was objectively and independently performed.

N. The wind conditions in the Arkansas River canyon have been thoroughly studied by experts in the field. The best estimates indicate that the project will be safe in the conditions.

O. The OTR project has resulted and continues to result in an inordinate amount of time spent by county staff and elected officials to review, comment, analyze, and respond to the demands and needs presented by the project.

P. Participation in the OTR Unified Command is essential to enable Fremont County to both express concerns and offer input into the Event Management Plan and the planning and management process, which is being coordinated by the BLM, and to achieve consistency with other agencies throughout that process. The Event Management Plan (EMP) is the guiding document for the monitoring and management of the Over The River™ project from pre-construction through post-exhibit restoration. Specifically, the Board recognizes that other agencies and their subject-matter experts will be part of the Unified Command, which will be seeking input from other Unified Command member agencies, including Fremont County. Through the OTR Unified Command, the Board will have the opportunity to comment to the various agencies which exercise jurisdiction over the following matters of concern:

1. Access issues involving local residents and businesses;
2. Traffic and other issues resulting from temporary tourism-related business opportunities created by the OTR project exhibition;
3. Traffic management on state and federal highways;
4. Wildlife management;
5. Proximity of the project to public utility lines;
6. Communications planning and coordination;
7. Public Safety;
8. Recreational activities in the river canyon;
9. Potential conflicts between the OTR project and public land grazing allotments.

Q. The recommendations of the following local officials, departments, and agencies are noted and received. Those provisions that are determined by the Board to be reasonable and necessary are set forth in the conditions of this Permit:

1. Fremont County Weed Control Department (1/17/2012);
2. Fremont County Environmental Health Office (12/5/2011);
3. Fremont County Reviewing Engineer (12/13/2011);
4. Fremont County Sheriff's Office (1/26/2012);

5. Fremont County Airport (12/27/2011);
6. Fremont County Officer of Emergency Management (12/22/2011);
7. Fremont County Department of Transportation (various);
8. City of Canon City (2/1/2012).

R. In taking action on this permit application, the Board is acting with knowledge of, and incorporating herein by reference, the following: the Draft Environmental Impact Statement dated July 16, 2010, and Final Environmental Impact Statement dated July 29, 2011, for the Over The River project and all appendices, technical reports and comments and responses thereon; the BLM's Record of Decision signed November 4, 2011, and 2920 permit dated November 8, 2011, and associated mitigation measures, authorizing the OTR project subject to enumerated conditions; the Memorandum of Agreement between Colorado State Parks and OTR Corp. dated June 30, 2011; and the Other Use Lease between the Colorado State Land Board and OTR Corp., dated January 15, 2012.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF FREMONT THAT TEMPORARY USE PERMIT 11-008 IS HEREBY ISSUED, SUBJECT TO THE FOLLOWING CONDITIONS:

1. The term of permit shall be from the date of approval by the Board and shall be effective for all phases of the project with projected exhibition dates of the first two weeks of August, 2015.
2. The Department of Planning and Zoning ("Department") shall review the permit on a periodic basis throughout the project, to determine compliance with the conditions of the permit and forward it to the Board for their review as required by regulations.
3. Applicant shall conform to all plans, drawings and representations submitted with or contained within the application except as may be inconsistent with the other provisions of the permit.
4. The OTR project includes reasonable use of County Road 157 and the Harvey Bridge.
 - (a) OTR shall coordinate with Front Range Aggregates to insure that any use by OTR of the Harvey Bridge or County Road 157 does not interfere with the use of the Harvey Bridge or County Road 157 by trucks or vehicles associated with Front Range Aggregates' business, and that such trucks and vehicles will not be unreasonably delayed when entering Highway 50 from County Road 157. OTR shall provide documentation of such coordination with Front Range Aggregates to the Department.

(b) OTR shall coordinate with Front Range Aggregates, Rock n Rail, and the Royal Gorge Route Railroad, regarding any use of the railroad tracks by OTR to ensure that such use does not impede the use of the railroad tracks by Front Range Aggregates, Rock n Rail, and the Royal Gorge Route Railroad. A copy of any agreement related to this coordination shall be provided to the Department.

(c) The County will post the Harvey Bridge with "no parking" signs, and parking on the bridge shall be prohibited throughout the exhibition phase of the project.

5. On the first day of the month of the Exhibition Phase of the project, OTR shall pay to Fremont County a payment of \$40,000, to offset the impacts to county roads from the increased traffic and other aspects of the project. The funds may be used for any road purposes deemed advisable by the County.

6. OTR construction crews, contractors and subcontractors ("OTR Crews") shall observe all weight and speed limits posted on County roads and bridges and shall be financially responsible for reasonable repairs of any damage caused by use of the same by OTR Crews. This provision does not apply to ordinary wear and tear but is intended to address damage directly caused by the negligence or intentional conduct of OTR Crews. Baseline road conditions may be established by OTR, using generally accepted engineering procedures, for the Harvey Bridge and approach on CR 157, the Texas Creek Bridge and approach (CR 27), the Vallie Bridge and approach (CR 4), CR 45 from the Vallie Bridge west to the Howard Bridge crossing and approach (CR 47), and the CR 7 bridge crossing continuing east on CR 7 until it turns into CR 45 ending at a location approximately opposite US 50 Milepost 230. Fremont County Department of Transportation personnel shall be provided reasonable notice and the opportunity to accompany any OTR representative who is video-recording or otherwise performing any baseline assessment activities. Baseline road and bridge conditions, if established, shall include the condition of guardrails and signage. If the County alleges that OTR Crews caused damage to the roads or bridges listed above, it shall submit detailed written information to OTR establishing such damage and OTR's responsibility for the same. OTR shall not be responsible for conditions that existed at the commencement of project installation or for ordinary wear and tear. If OTR disputes that OTR Crews caused such damage or disputes the amounts due, such disputes shall be resolved pursuant to Condition #34 below.

7. No County road shall be restricted to only "local traffic" at any time during construction or exhibition, however, Colorado Department of Transportation may impose restrictions on use of local roads by overweight and oversized vehicles and vehicles carrying hazardous materials.

8. OTR shall reimburse Fremont County for the cost of purchase or lease, whichever is less expensive, of any additional traffic control signage or devices required for OTR traffic control on Fremont County roads and accesses during the six-week exhibition phase, if such additional traffic control signage or devices are identified and included in the Event Management Plan ("EMP") as being reasonable and necessary for the project. If the Fremont County Department of Transportation (FCDOT) determines that traffic control devices or signage is reasonable and necessary and the EMP does not provide for the same, then FCDOT shall

coordinate with OTR to allow OTR the opportunity to provide such devices or signage before incurring County expense. Reimbursement shall include cost of Fremont County staff time needed to erect and remove such signs and devices.

9. OTR shall make reasonable efforts through event management during the Exhibition Phase, to ensure that local residents in the Arkansas River corridor are advised on proper procedures for reporting and resolving problems with local access to property and for ensuring access for planned community events and for moving agricultural implements. Agricultural producers shall be assured of reasonable access to their farm fields, pastures and irrigation structures during the construction, exhibition and removal phases.

10. OTR shall enter into an agreement with the City of Canon City to reimburse the City's Police Department patrol services (personnel and equipment) during the exhibition phase of the project (including the two-week blossoming phase before the exhibition and the two-week deblossoming phase of the project, if found necessary). Documentation of the reimbursement agreement shall be provided to the Department no later than April 1, 2015.

11. OTR shall pay to the County of Fremont, the sum necessary for reimbursement of Fremont County Sheriff's office resources (personnel and equipment), specific to the project which are identified and included in the EMP as being reasonable and necessary for the project, and which are actually used in connection with the project including any overtime pay costs of "borrowed employees" from other law enforcement agencies that may be necessitated by the obligations under the EMP.

12. OTR shall reimburse the Fremont County Sheriff's Office for all reasonable and necessary time spent by law enforcement personnel in responding to and investigating fires, incidents or criminal matters which can be shown by adequate background documentation to have been directly caused by the project. Such time shall be tracked by the Sheriff's Office and invoiced to OTR on a per-incident basis in a format to be supplied by OTR. If OTR disputes any aspect of the invoice or that the incident described therein was directly caused by the project, OTR shall follow the process set forth in Condition #34.

13. To the extent that it possesses such information, OTR shall provide to the Sheriff of Fremont County and to the Canon City Police Department, all information regarding timing and changes in the traffic signaling devices along the Highway 50 corridor, which are occasioned by the event.

14. The use of communications equipment by OTR personnel and volunteers throughout the project shall be managed in a manner that does not interfere with the availability or use of radios and equipment by law enforcement and emergency responders in the county.

15. OTR shall include no restrictions in any contracts or agreements with emergency responders that would prevent such responders from assisting on a medical emergency that occurs outside of the Highway 50 corridor.

16. OTR shall maintain a water supply, a water-pumping apparatus or other fire suppression equipment on any vehicle traveling the railroad tracks in connection with the project. Spark arresters and other similar safety equipment shall be used on locomotives. Any fire suppression water supply, pumping apparatus or other equipment shall be deemed sufficient when approved by the Fremont County Sheriff, or his designee or delegate. OTR shall comply with this condition at all times when the tracks are used for any project-related work. Should any construction work on the project be conducted during "fire ban" conditions, OTR shall comply with all reasonable fire prevention recommendations of the Fremont County Sheriff.

17. Any fencing or gates that are removed, cut, or compromised by OTR staff, personnel, contractors or subcontractors in connection with the project, shall be immediately repaired, reconstructed, or replaced. OTR shall cooperate with reasonable requests for access from local ranchers who may request access to manage livestock.

18. OTR shall name Fremont County as an additional insured party on its liability insurance for the term of this permit and provide written proof of insurance to the Department.

19. OTR shall reimburse Fremont County the sum of \$7,500, which shall constitute reimbursement for all pre-application staff time spent in connection with the BLM permitting process, in which Fremont County participated as a cooperating agency.

20. OTR shall reimburse Fremont County for the reasonable and necessary time spent by County employees and the Fremont County Sheriff, to review, comment, analyze, prepare for and respond to the demands and needs presented by the OTR project, including reimbursement for attendance and participation in the OTR Unified Command and task force meetings and for reviewing any drafts of the EMP. OTR shall not be required to reimburse time for more than one employee's participation in the same Unified Command task force. Such time shall be tracked by County employees and billed to OTR on a quarterly basis in a format to be supplied by OTR. Any disputes over amounts due for staff time reimbursement will be resolved pursuant to Condition #34 below.

21. a. OTR shall deposit the sum of \$15,000 with the Fremont County Finance Office, which shall be held in an account designated specifically for staff time reimbursement in connection with OTR. When the account is depleted to the sum of \$1,500, exclusive of any sums held pursuant to objections as set forth herein, OTR shall replenish the account to an amount designated by the Board, not to exceed \$15,000. Said deposit shall be made no later than 30 days following the approval of this temporary use permit.

b. Fremont County shall present quarterly billings to OTR and OTR shall review the same. If OTR objects to the billings or any component of the billings, OTR shall proceed in accordance with Condition #34 below. If no objections are made to the billings, the full amount billed shall be transferred without restriction into the Fremont County General Fund.

c. If objections are made to all or any portion of the billing, the uncontested billing amount shall be transferred without restriction into the General Fund and the contested billing

amount shall remain in the designated account until the objection is resolved pursuant to Condition #34 below.

d. Any balance in the fund at the completion of the removal phase of the project (not including unresolved objection amounts) shall be returned to OTR.

22. OTR shall comply with the following requirements of the Fremont County Reviewing Engineer:

- a. Monitor and mitigate debris collection at several low cable locations during flood events;
- b. Submit and receive approval of drainage plans and reports for the Texas Creek staging area, the Fremont Road and Visitors Center and the Vallie Bridge site;
- c. Provide documentation from the County Engineer showing compliance with any requirements of the Fremont County Flood Damage Prevention Regulations;
- d. Monitor and assist with compliance and enforcement the "load limit" requirement for the Fremont County Road #27 bridge at Texas Creek Junction;
- e. Provide documentation regarding management of traffic flow onto and off of the Fremont Road Information Center site from Highway 50 as developed in the EMP and provided for in the Colorado Department of Transportation special use permit.

23. All water haulers used in conjunction with the drinking water plan must be licensed and must be in good standing with the Water Quality Control Division (WQCD), Colorado Department of Public Health & Environment (CDPHE).

24. Copies of contracts from the suppliers of portable chemical toilets shall be provided to the Fremont County Environmental Health Department and to Planning and Zoning.

25. OTR shall comply with any requirements of the Fremont County Building Department relating to structures on staging, work or visitor sites.

26. OTR shall comply with the requirements of the Fremont County Weed Control Manager for weed management activities on private lands in Fremont County, which conditions shall be consistent with the weed management requirements that BLM has identified in the BLM Record of Decision and the BLM 2920 permit, as described more fully in **Attachment A** hereto. To the extent that Fremont County conducts weed management activities on state lands, such activities shall satisfy the requirements of Colo. Rev. Stat. §§ 35-5.5-110 (1) – (4) regarding coordination with state boards, departments, or agencies that administer or supervise such land.

27. OTR shall comply with the requirements of all Agreements and Permits issued by local, state and federal entities in connection with the Over The River™ project, provided, however, that enforcement thereof shall remain solely within the jurisdiction of the issuing entity. Such Agreements and Permits include but are not limited to:

- a. Colorado Department of Transportation;

- b. Colorado State Patrol;
- c. Colorado Division of Parks and Wildlife;
- d. Colorado Department of Public Health & Environment, Air Quality Control Division;
- e. Colorado Department of Public Health and Environment, Water Quality Control Division - Stormwater Management Plan;
- f. Colorado State Historic Preservation Office;
- g. Colorado State Land Board;
- h. Colorado Department of Labor and Employment, Division of Oil and Public Safety (as to fuel storage);
- i. Bureau of Land Management (Final Environmental Impact Statement (FEIS), Record of Decision (ROD), and 2920 permit);
- j. Chaffee County.

28. OTR shall provide (1) a copy of the lease with the Colorado State Land Board; (2) redacted copies or memoranda of the Right of Access and use of property contract from the Union Pacific Railroad; and (3) redacted copies or memoranda of the agreements or leases with private landowners whose property will be used in association with the project, including use of the Fremont Road Information Center.

29. OTR shall provide documentation of the resolution of the appeals with the Interior Board of Land Appeals.

30. OTR shall comply with any applicable federal, state and local laws, rules and regulations, including any requirements of federal agencies with jurisdiction over an aspect of or impact from the project.

31. OTR shall provide a copy of the BLM-approved Plan of Development ("POD") for the Texas Creek staging area prior to any staging activity occurring at such location. OTR shall provide site plans for activities at the Limited Rest Stop at Texas Creek, the Fremont Road Information Center and the Limited Rest Stop at Vallie Bridge on Fremont County Road #45, prior to any project activity occurring at such location.

32. If significant changes occur to area conditions, or to the circumstances of the project, or if significant new information is discovered during the development of the EMP, which significant changes or information relate to matters within the jurisdiction of the County and results in the need for modification of this Temporary Use Permit, to protect the health, safety and welfare of the public, Fremont County may consider the addition of conditions, and modification, or deletion of one or more conditions of the TUP. Before any formal action by the Board to change the conditions of the TUP, OTR shall be provided reasonable and adequate notice and the opportunity to meet at least once with the Planning Director to address the issue before any formal action is taken by the Board. If the matter is not resolved between OTR and the Planning Director, OTR shall be provided the opportunity to appear and be heard by the Board concerning the proposed modification.

33. During times when construction is active, OTR will provide updates at every OTR Unified Command meeting, which meetings are anticipated to be held approximately once

a month and in which Fremont County is a participant. OTR will provide general updates on the project progress and a synopsis of any incidents, if any occur, and how they were addressed. These updates will be memorialized in the written meeting notes for each OTR Unified Command meeting and provided to Fremont County. OTR shall also provide Fremont County with a status report following the exhibition, removal, and restoration phases of the project.

34. The following dispute resolution process shall be employed by the County and OTR under this Permit. This process shall only apply in disputes over circumstances that may require financial reimbursement and the amount of required reimbursement.

a. Upon the issuance of this Permit, the County and OTR shall identify and agree upon one or more individuals with professional experience in mediation or alternative dispute resolution that may be called upon to resolve disagreements under this Permit ("Arbiter"), as set forth below.

b. To the extent that the County and OTR disagree on whether a party has complied with the any condition of this permit relating to financial reimbursement, including but not limited to disagreements under Conditions #6, #12, or #21 above, OTR and the County shall proceed as follows:

1. Within fifteen (15) days of receipt of information that results in an item in dispute, the disputing party shall provide notice (the "Dispute Notice") to the non-disputing party of the item in dispute, including any background documentation, as necessary.
2. Representatives from OTR and the County shall meet within fifteen (15) days after delivery of the Dispute Notice to attempt to resolve their disagreement.
3. If the parties are unable to resolve their disagreement after such meeting and reasonable efforts by both parties, either party may notify the other party of its desire to engage in informal dispute resolution. If either party so notifies the other party, then the parties shall select an Arbiter. The County and OTR shall share equally in the cost of the Arbiter.
4. The Arbiter shall meet with the parties within ten (10) days after notification to understand the positions of each party and review any background documentation. Within a reasonable time thereafter, the Arbiter shall provide a recommendation to the parties regarding a resolution of their disagreement.
5. The parties may accept the recommendation of the Arbiter or may proceed with any other remedies related to their disagreement; however, neither party may proceed with any other remedies hereunder until this dispute resolution process has been completed.

35. OTR shall provide documentation showing that the concerns raised by Sangre de Cristo Electric Association regarding potential conflicts between OTR construction activities and existing overhead power lines have been satisfactorily resolved.

BE IT FURTHER RESOLVED that all applicable provisions of the Fremont County Zoning Resolution, shall apply to all activities conducted pursuant to this permit and shall govern the process for enforcement, violations and other issues arising under the permit.

Commissioner Stiehl moved the adoption of the foregoing Resolution with a second by Commissioner Norden.

Debbie Bell	<u>AYE</u>	NAY	ABSTAIN	ABSENT
Edward H. Norden	<u>AYE</u>	NAY	ABSTAIN	ABSENT
Michael J. Stiehl	<u>AYE</u>	NAY	ABSTAIN	ABSENT

The Resolution was declared to be duly adopted.

Date: March 27, 2012 ²⁰¹³ ~~2018~~ KB

Debbie Bell
Chairman

Attest: Katie E. Barr
Clerk to the Board

ATTACHMENT A: FREMONT COUNTY NOXIOUS WEED PROVISIONS

- a. **Definitions:** For purposes of this Permit, the term “Affected Areas” shall be the areas around each OTR panel site, defined and described more completely by the maps entitled Over The River BLM Permitted Boundary Map prepared by Harris Kocher Smith and provided as Attachment B to the 2920 Land Use Permit, excluding: (1) any BLM-owned land; (2) any land not in Fremont County; and (3) any land within the Right-of-Way of the Union Pacific Railroad. The lands within Fremont County that are excluded by this definition will be subject to noxious weed management provisions as follows:
- i. BLM-owned lands are subject to the noxious weed mitigation conditions in the Record of Decision and 2920 Permit, which conditions shall be implemented by BLM in coordination with OTR Corp.
 - ii. On lands in Fremont County that are within the Union Pacific Railroad Right-of-Way, OTR will be responsible for implementing all of the BLM noxious weed mitigation conditions (*e.g.*, annual inventories and treatment, vehicle washing, reseeded with weed-free seed etc.). For these lands, OTR is identified as the responsible party in order to ensure compliance with track and maintenance usage agreements with the Railroad. Fremont County may conduct periodic site inspections of OTR’s noxious weed management activities on lands in the Union Pacific Right-of-Way.
- b. **Funding:** OTR shall reimburse Fremont County pursuant to Condition # 19 of the Permit for any costs incurred by the County as a result of the noxious weed obligations identified in this Attachment A. All time for which Fremont County seeks reimbursement shall be tracked by County employees and billed to OTR on a quarterly basis in a format to be supplied by OTR. If OTR objects to the billings or any component of the billings, OTR shall proceed in accordance with Condition #32 of the Permit.
- c. **Pre-Installation:** Before any installation activities occur within the County,
1. Fremont County Weed Control shall conduct an inventory of noxious weed species on the Affected Areas and provide a written copy of the inventory to OTR.
 2. Fremont County Weed Control shall treat infestations in the Affected Areas, as identified in the initial inventory.
 3. Fremont County Weed Control may delegate to OTR the task of conducting the inventory and/or treatment of noxious weeds.
 4. The OTR primary contractor shall attend a one day training session conducted by Fremont County for the purpose of providing provide weed identification skills and

an understanding of the local objectives of the Fremont County Weed Management Plan and other pertinent information. It is anticipated that this training session shall be conducted in coordination with BLM, consistent with Mitigation Measure NOX-4 (Orientation) in the November 2011 BLM Record of Decision for the Over The River Environmental Impact Statement.

d. **Installation, Exhibition, and Removal Phases of the Project:**

1. During the installation, exhibition, and removal phases of the OTR Project, Fremont County Weed Control will monitor Affected Areas and will provide periodic site inspections on Affected Areas to include monitoring for infestations of noxious weeds associated with increased traffic. Monitoring for new infestations and inspections are expected to occur seasonally.
2. Fremont County Weed Control shall conduct annual inventories of noxious weed species on Affected Areas through the end of the removal phase, *i.e.*, through the end of calendar year 2015. Fremont County Weed Control may delegate this task to OTR.
3. Noxious weeds identified during the annual inventories will be treated within the next growing season. Fremont County may conduct the treatment itself or may delegate this task to OTR. If the task is delegated to OTR, Fremont County may conduct periodic site inspections to verify the treatment. Treatment shall occur annually until the end of the removal phase, *i.e.*, through the end of calendar year 2015.
4. For all work in Affected Areas, OTR shall comply with Mitigation Measure NOX-3 (Equipment and Vehicle Washing) in the BLM Record of Decision. All equipment and vehicles with potential accumulations of soil, grease or vegetative matter that will be used on Affected Areas will be cleaned in an environmentally sound manner prior to entering the project area. All equipment and vehicles used in areas where noxious weeds have been inventoried will be washed in an environmentally sound manner prior to moving to areas that do not contain the identified species of noxious weeds. Verification that equipment has been cleaned properly will be conducted by an independent contractor who will send monthly reports to Fremont County Weed Control.

e. **Restoration:**

1. Following exhibition and removal activities, OTR will reclaim each area of disturbance on Affected Areas, will redistribute topsoil, and will reseed disturbed areas with appropriate seed mixes void of noxious weed seed, consistent with Mitigation Measures VEG-5 (Weed-Free Seeding) and VEG-6 (Disturbed Site Reclamation) in the BLM Record of Decision.

2. Following removal and until the BLM determines that reclamation is successful in the entire project area and releases the reclamation bond required as Mitigation Measure GENERAL-3 in the BLM Record of Decision, OTR will:
 - i. Conduct annual inventories of noxious weed species on Affected Areas; and
 - ii. Treat inventoried noxious weeds on Affected Areas.