

Art Law Gallery

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["Over the River" and into the Legal Fray: Christo and Jeanne-Claude](#)

Often critics comment on the technique, the style, the grandeur of a work of art, and the dramatic and arduous so-called "artistic process". Rarely, do we study or observe how art is shaped by legal and environmental restrictions, community resistance, and bureaucratic red tape. However, unlike a painting where an artist makes choices based on subjective decisions, Christo and Jeanne-Claude's latest planned installation *Over the River* appears more akin to the construction of a bridge or dam that is shaped by government agencies, public hearings, and environmental protests. By venturing outside of the museum and gallery space, and dipping their toe in the water, their latest project *Over the River* presents a fascinating case study on the intersection of government, the law, art and the environment that will have ramifications far past the intended two week installation.

Christo first announced the plans to create *Over the River* in 1995, when he and Jeanne-Claude were in the midst of wrapping the Reichstag in Berlin with silvery fabric and bright blue rope (a project conceived in 1971). They traveled 14,000 miles and considered 89 rivers in the Rocky Mountains before settling on the Arkansas River. This latest exercise in ephemerality seeks to suspend 5.9 miles of gleaming silver semi-translucent fabric panels high above the [river](#), echoing the ebb and flow of the water, and interrupted only by existing bridges, trees, and rocks, with sunshine blinking through the [gaps](#). The installation will run along a 42 mile stretch of the water, between Salida and Cañon City in south-central Colorado, which will be visible from the US Highway 50 and to rafters, canoers, and kayakers underneath.

It takes more than artistic vision to get several miles of the Arkansas River covered in metallic fabric for a two week period in the summer. It takes cutting through reams of red tape with federal, state and local officials and endless reviews of how everything from fish to grazing sheep to ambulances and trains might be affected by the temporary art installation and the thousands of people it would doubtlessly attract. Christo has invested 19 years and \$7,000,000 so far in the realization of *Over the River*. To obtain permission for the installation, Christo applied for a land use permit from the federal Bureau of Land Management (BLM) and specifically requested a two year Environmental Impact Statement (EIS). Traditionally reserved for assessing construction such as bridges, dams or highways, an EIS is required by the National Environmental Policy Act for certain actions "significantly affecting the quality of the human environment." In light of the complexity of the project, BLM agreed an EIS would be necessary, marking the first time since the 1969 passage of the National Environmental Policy Act, that the BLM is utilizing such a document for a work of art.

It is interesting to consider a work of art vetted not on its artistic merits, but rather on its potential social, economic, and environmental impacts. The EIS survey will assess the direct, indirect, and cumulative impacts of *Over the River*, solicit feedback from the public, and consult with agencies and organizations with jurisdiction in the project area and special expertise with respect to the environmental issues. Christo is covering the costs associated with the EIS survey, which is being prepared by a third-party contractor selected by and under the direction of the BLM, which by law, is required to provide a completely objective analysis. At the heart of the EIS document, are a range of alternatives to the proposed development, these alternatives are then discussed at length in light of their impacts to threatened or endangered species, air and water quality impacts, social and

economic impacts to local communities, and a cost analysis for each alternative, including costs to mitigate expected impacts. These alternatives are all compared against a “No Action” alternative — the baseline alternative that describes what would happen if the project is not completed. The Final EIS is scheduled for release in February of this year, with the Record of Decision to be issued in April. Then, the BLM will ultimately determine whether, where, when and under what terms and conditions a BLM land use permit will be issued to Christo for *Over the River*.

The most controversial aspect of the EIS survey has been the public hearing statements required by law for preparation of the document. The BLM has held hearings in the towns along the river so that locals could debate the project’s potential impact on the environment and on their use and enjoyment of their land. In fact, the Draft EIS was released for a 45-day public review and comment period, and the BLM then issued a 15-day extension to address the outpouring of comments by affected individuals. Supporters of *Over the River* point to the global attention for Colorado, the art world élan and prestige, and most importantly, the economic impact. (*The Gates, Central Park, New York City, 1979-2005* reportedly generated an estimated \$254 million in economic activity for New York City.) Supporters also point to employment opportunities for the local residents as the artists do not accept volunteer support, but rather compensate local workers for the assembly, installation, maintenance, security and removal of the work of art. The detractors in t-shirts emblazoned with “Say No to Christo” emphasize congestion and traffic along the narrow highway, danger to the natural wildlife, and most importantly the intrusion on the Arkansas River. Given the result of the artists’ first project in Colorado – in 1972, an [orange curtain](#) stretched across Rifle Gap was torn to shreds by fierce winds a mere 28 hours after its unveiling – its hard to blame Coloradans for feeling skittish about the next one.

Mark Twain famously said “Whiskey is for drinking, water is for fighting”, and although land is plentiful in this region, water has and always will be a sensitive point of conflict. Many locals live right on the water and feel protective of their river. These naysayers, the most prominent of which is Rags Over the Arkansas River, or “ROAR”, are determined to block the project. Further, many locals and environmentalists feel betrayed by the supporters of the project which include the Sierra Club, state and local politicians, the area’s artists, Chamber of Commerce officials, river outfitters and even the local ambulance company. Yet Christo’s track record in certain fundamental ways has been remarkably consistent. Initially regarded as ridiculous, his ideas have always ultimately generated a remarkable degree of local enthusiasm.

For Christo, the complications, heated debates, detractors and legal obstacles are all part of the artistic process. This is the artist who famously wrapped Paris’s *Pont Neuf* in golden cloth and Miami’s Biscayne Bay islands in pink, dotted Japan with blue umbrellas, and New York’s Central Park with saffron gates. It took him and Jeanne-Claude 24 years to convince the German Bundestag to allow them to wrap Berlin’s Reichstag, an effort capped by a rowdy 70-minute parliamentary debate. The Biscayne Bay installation *Surrounded Islands* was delayed by Christo’s own testing procedures, the need for 10 permits from government agencies, seven public hearings, and the protesting environmentalists, who were concerned about nesting ospreys and the bay’s manatees. Jeanne-Claude, recently deceased, and Christo believe that the years spent discussing, debating and imagining the art installation, ultimately make the work more important. For the artists, the detractors are themselves a part of the work of art.

Even more than the detractors, the law and its ramifications have a powerful impact on the final realization of Christo and Jeanne-Claude’s vision. Like a master draftsman, everything has been precisely planned by Christo for *Over the River*, panels which will be specifically installed to mimic the river’s path, sections of river that will remain uncovered, open-sky moments which are precisely planned, and in the same way Christo is meticulously planning for traffic and congestion, environment, safety, wildlife and recreation concerns. The BLM can influence the length of *Over the River*, the timing of the exhibition period, and the duration of the construction. For example, in response to the Draft EIS’s concern for sheep and other wildlife, the artist has committed to modifying his original design proposal to avoid placing fabric panels in prominent watering areas. While Christo remains open to environmental and legal restrictions, the artist is unwavering in his career long

refusal to accept [sponsorship](#), public subsidy, viewing fees or outside investments of any kind. Rather, through the sale of his original preparatory drawings and collages of the installation, Christo funds all costs associated with the permitting process, manufacturing, installation and removal of *Over The River*. This includes any costs incurred during the two-week exhibition period, ranging from additional law enforcement to trash collection.

Fiercely independent and wildly imaginative, Christo and Jeanne-Claude's installations not only encourage the viewers to imagine the surrounding environment in a whole new way, but also to imagine the capacity of the law to affect and inform art. If realized, the 14 day installation will no doubt be a glorious tribute to the Arkansas River. In addition, *Over the River* will be an ode to involved constituents, administrative agencies, methodical surveys and public hearings. Either way, Christo has accomplished his goal, *Over the River* already exists in the mind of its supporters and detractors who have been discussing, thinking, and fantasizing about the project for years.