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BUREAU OF LAND MANAGEMENT

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And WYW-171168 (W0350)

RECORD OF DECISION
Ruby Pipeline Project
Decision to Reissue Right-of-Way Grant

Lincoln and Uinta Counties, Wyoming
Rich, Cache, and Box Elder Counties Utah
Elko, Humboldt and Washoe Counties, Nevada
Lake and Klamath Counties, Oregon

U.S. Department of the Interior

Bureau of Land Management
Nevada State Office
Kemmerer Field Office, Wyoming
Salt Lake Field Office, Utah
Elko and Winnemucca District Offices, Nevada
Lakeview Resource Area and Klamath Falls Resource Area, Oregon
Surprise Field Office, California

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Introduction

This document constitutes the Record of Decision (ROD) of the U.S. Department of the Interior, Bureau of Land Management (BLM), Nevada State Office, for the Ruby Pipeline Project (Project). It documents the BLM's decision to reissue the right-of-way granted to Ruby Pipeline, LLC (Ruby) and includes a summary of public involvement in the decision making process and the basis for making this decision.

The ROD is based on the analyses contained in the Final Environmental Impact Statement (EIS), the Draft Supplemental Environmental Impact Statement (SEIS) and the Final SEIS for the Project. It also relies on the U.S. Fish and Wildlife Service's (FWS) Revision to the June 8, 2010 Ruby Pipeline Biological Opinion (BiOp). On July 5, 2013, the Revised BiOp was published on the Federal Energy Regulatory Commission's (FERC) website (www.ferc.gov). The Revised BiOp is also attached as Attachment A.

This document meets the requirements for a ROD, as provided in Council on Environmental Quality (CEQ) regulations codified at 40 Code of Federal Regulations (CFR) § 1505.2, and follows the guidance found in 40 CFR § 1506.10 and BLM Handbook H-1790-1 § 9.7. As explained in more detail below, this ROD can be appealed to the Interior Board of Land Appeals (or to an appropriate United States Court of Appeals), so the BLM is releasing the Final SEIS and ROD on the same date. Review of the Final SEIS and the opportunity to seek review of the ROD run concurrently.

Background

The Project is a 678-mile-long, 42-inch-diameter interstate natural gas pipeline beginning near Opal, Wyoming, running through northern Utah and northern Nevada, and terminating near Malin, Oregon. The project crosses about 368 miles of federal land.

The FERC is the federal agency responsible for evaluating applications to construct and operate interstate natural gas pipeline facilities. Section 7(c) of the Natural Gas Act (NGA) authorizes the FERC to issue a Certificate of Public Convenience and Necessity (Certificate) if it determines that the proposed service is required for the public convenience and necessity [15 United States Code (U.S.C.) 717f(c)]. On January 27, 2009, Ruby filed an application with the FERC for a Certificate of Public Convenience and Necessity for the Project. The FERC prepared an EIS to assess the environmental impacts associated with the proposed Project. The BLM, Bureau of Reclamation (Reclamation), FWS, U.S. Forest Service (USFS), Natural Resource Conservation Service, Army Corps of Engineers, Utah Public Lands Policy Coordination Office, and Lincoln County (Wyoming) Board of County Commissioners participated as cooperating agencies in the preparation of the EIS because of jurisdiction over part of the project area or because of special expertise with respect to environmental resources in the project area.

The BLM adopted the Final EIS for the Project in accordance with 40 CFR, § 1506.3 to meet its responsibilities under the National Environmental Policy Act (NEPA).

The Project was approved by the FERC on April 5, 2010 and the BLM issued a ROD granting rights-of-way and temporary use permits to Ruby for the construction, operation, maintenance, and termination of the Project on July 12, 2010. The ROW authorized the use of Federal lands under jurisdiction of the BLM, the USFS, Reclamation, and the FWS in Wyoming, Utah, Nevada, and Oregon. Since July 12, 2010, the BLM has issued four additional decisions regarding the grant:

- the December 10, 2010 decision is for the Summit Lake Route Variance in Humboldt County, Nevada, and accepts the final Winter Construction Plan as Appendix V of Ruby's Plan of Development (POD);
- the February 24, 2011 decision is for the Klamath County Reroute in Oregon;
- the December 7, 2011decision approves four above ground cathode sites and fifteen roads to mainline valves;
- the July 27, 2012 decision incorporates documents that reflect the final pipeline as built and approval of the Long Term Monitoring Plan as Appendix W of POD.

Construction of the pipeline commenced in the summer of 2010 and was completed in the summer of 2011. The pipeline went into service on July 28, 2011.

The Center for Biological Diversity, Defenders of Wildlife, and Summit Lake Paiute Tribe, among other entities, filed petitions for review of the 2010 BiOp and the BLM's ROD in the Ninth Circuit Court of Appeals case nos. 10-72356, 10-72552, 10-72762, 10-72768, and 10-72775 (consolidated). In October 2012, the court denied most of the petitioners' claims, including all claims brought under the National Historic Preservation Act, Federal Land Policy and Management Act, and Clean Water Act, but found the 2010 BiOp and BLM ROD to be inadequate.

In a published opinion, the court remanded and vacated the 2010 BiOp to the FWS. The court held that FWS's consideration of Ruby's Endangered Species Act (ESA) Conservation Action Plan (CAP) as cumulative effects in the 2010 BiOp was arbitrary and capricious. The court also found that the 2010 BiOp did not adequately consider whether groundwater withdrawals associated with hydrostatic testing and dust abatement would impact listed fish that occur in surface waters. The court remanded and vacated the BLM's ROD because it relied on the 2010 BiOp.

In an unpublished opinion, the court found that the Final EIS for the Project did not provide sufficient quantified or detailed data about the cumulative loss of sagebrush steppe vegetation and habitat and did not provide information on how much acreage sagebrush steppe used to occupy, or what percentage has been destroyed. Thus, the court remanded the ROD to the BLM for further analysis of cumulative impacts to sage brush steppe vegetation and habitat. The court subsequently stayed vacature of the 2010 BiOp until the FWS issued the Revised BiOp and stayed vacature of the BLM's ROD until the BLM issues a new ROD.

The Bureau of Land Management's Decision

The BLM's decision is to reissue the July 12, 2010 right-of-way, as previously amended, for the Project. The BLM will not require additional post-construction mitigation or changes to the

right-of-way grant. All elements of the July 12, 2010 ROD and subsequent BLM decisions (see above) remain in full force and effect, including all stipulations, monitoring, and mitigation measures.

Reasons for the Decision

In making this decision, the BLM reviewed and carefully considered pertinent Federal laws, impacts identified in the Final EIS, Revised BiOp and Final SEIS, relevant issues and concerns, and input from agencies, Native American tribes, and the public received throughout the SEIS public review process, including comments on the Draft SEIS. The BLM's assessment of cumulative impacts to sage brush steppe in the Final SEIS and the FWS's conclusions in the Revised BiOp are summarized below.

The Final EIS addresses the court's direction to provide quantified and detailed data about the cumulative loss of sagebrush steppe vegetation and habitat and information on how much acreage sagebrush steppe use to occupy, and what percentage has been destroyed. It also includes detailed information on past, present, and reasonably foreseeable actions within the cumulative impact area, as defined in the Final EIS for the Project, which have resulted in and may in the future cause significant impacts.

The direct and indirect impacts of the Project remain the same as those discussed in the Final EIS. The Final SEIS is consistent with the Final EIS in concluding that clearing of sagebrush steppe for the Project could result in long-term impacts on the environment because this vegetation type could take as long as 50 years or more to return to preconstruction conditions. The mitigation required by the FERC Certificate and the BLM ROD is intended to address these significant, long-term impacts. The mitigation described in the Final EIS and includes, but is not limited to, activities such as segregating topsoil from subsoil during construction to preserve the native seed bank in the topsoil; reseeding areas disturbed by construction with species similar to those in the surrounding natural plant communities; planting shrubs to aid in the reestablishment of sagebrush and other shrubby species; implementing measures to control the spread of invasive and noxious weeds during and after construction; and fund for off-site mitigation, such as the restoration and habitat improvement projects described in Table 1 of the Final SEIS.

The 2010 BiOp found that the proposed action was not likely to jeopardize the continuing existence of any of the listed species or result in destruction or adverse modification of designated critical habitats. The findings of the Revised BiOp, described below, are consistent with those reached in the 2010BiOp.

> *"After reviewing the current status of Lahontan cutthroat trout, Warner sucker, Modoc sucker, Lost River sucker, shortnose sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub, and designated critical habitat for Warner sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub, the environmental baseline for these listed fishes and their designated critical habitats within the action area, the effects of the proposed action and cumulative effects, it is the FWS' biological opinion that the Project is not likely to jeopardize the continued existence of Lahontan cutthroat trout, Warner sucker, Modoc*

sucker, Lost River sucker, shortnose sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub (Revised BiOp, Page 15). "

The FWS also affirmed the accuracy of the incidental take statement found in the 2010 BiOp and incorporated it by reference. Those conclusions were drawn without consideration of or reliance on the ESA CAP. The conservation recommendations described in the 2010 BiOp were reviewed by the FWS, were determined to stand as written, and were incorporated by reference.

Mitigation and Monitoring

The CEQ regulations require agencies to identify in their ROD any mitigation measures that are necessary to minimize environmental harm from the alternative selected [40 CFR § 1505.2(c)]. The regulations further state that a monitoring and enforcement program shall be adopted where applicable for any mitigation (40 CFR § 1505.3).[1]

As explained above, the Project's impacts remain are consistent with those disclosed in the Final EIS. The Final SEIS thoroughly discusses the cumulative impacts to sage brush steppe habitat within the cumulative impact area and summarizes the substantial mitigation required by the BLM's July 12, 2010 ROD (and the FERC's Certificate). The mitigation measures required by the ROD are intended to address the significant long- term impacts to sage-brush steppe habitat related to the Project. All elements of the July 12, 2010 ROD and subsequent BLM decisions remain in full force and effect, including all stipulations, monitoring, and mitigation measures. The BLM concludes that those mitigation measures are adequate and additional mitigation measures are not required.

Summary of Agency and Tribal Consultation and Public Involvement

The BLM sent a certified letter, dated March 13, 2013, notifying 36 Native American tribes of BLM'S intent to develop an SEIS for the Project and to initiate government-to-government consultation. Follow-up phone calls were made to the tribes and project information was also distributed and discussed as part of government-to-government consultation between the tribes and the BLM. A summary of Native American consultation and coordination on this effort is provided in the SEIS.

On April 8, 2013, the BLM invited eight federal and state entities to be cooperating agencies for the development of the Ruby Pipeline SEIS. As defined by CEQ regulations at 40 CFR § 1508.5, a cooperating agency is one that has special expertise with respect to an environmental issue and/or has jurisdiction by law. The following agencies accepted the invitation and signed a Memorandum of Understanding with the BLM as cooperating agencies:

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[1] CEQ's regulations also require a ROD to discuss alternatives considered by the agency in making its decision. 40 CFR § 1506.2. However, in this case, the pipeline is constructed and has been operational pursuant to a FERC-issued Certificate since July 28, 2011. Thus, as stated by the Ninth Circuit Court of Appeals, "[a]t this point, an analysis of alternatives would no longer inform decision-making regarding the pipeline's location." *Center for Biological Diversity, et al. v. BLM, et al.*, Case No. 10-72356, at 5 (2012) (unpublished opinion).

- U.S. Department of Agriculture, Forest Service, Fremont-Winema National Forest;
- Utah Division of Wildlife Resources (via Utah Public Lands Policy Coordination Office);
- Nevada Department of Wildlife; and
- Wyoming Game and Fish Department.

On April 30, 2013 the Environmental Protection Agency (EPA) published the "*Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement for the Ruby Pipeline Project*" in the *Federal Register* (78 FR 25301). In addition, the BLM Nevada State Office issued a press release and postcards notifying the public of this effort

The BLM sent a certified letter, dated July 1, 2013, notifying 36 tribes of the public comment period on the Draft SEIS and to again extend the offer of government-to-government consultation. The BLM included a digital copy of the Draft SEIS and a hard copy, if previously requested. The BLM followed-up with tribes and distributed additional information, as requested, as part of government-to-government consultations with the tribes.

On July 5, 2013, the BLM and EPA published the "Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Ruby Pipeline Project" in the *Federal Register* (78 FR 40496) announcing the availability of the Draft SEIS for public review and comment. In addition, the BLM issued a press release and sent post card notifications to the revised Project mailing list. The release of the Draft SEIS initiated a formal 45-day public comment period that ended on August 19, 2013. The public was encouraged to submit substantive comments via email, regular mail, and the ePlanning NEPA Register.

The Draft SEIS was made available to the public via the BLM Ruby Project website: http://www.blm.gov/nv/st/en/info/nepa/ruby_pipeline_project.html, and the ePlanning NEPA Register at: http://on.doi.gov/10QtaTb. Consistent with the Final EIS distribution, the Draft SEIS was available at libraries and other locations. The list of additional locations can be found on the Project website.

The BLM received 31comment submissions on the Draft SEIS from the public, agencies, tribes, organizations, and businesses during the comment period. Substantive comments were considered during preparation of this Final SEIS. Appendix A of the Final SEIS summarizes the comments and the responses to those comments.

Publication and distribution of the ROD and public notification of the release of the Final SEIS was consistent with the approach used for the Draft SEIS.

Summary of Public Comment on the Draft SEIS

During the Draft SEIS public comment period, the BLM received 31 written comments (letter, email, or via the NEPA ePlanning Register). Comments from Native American tribes, federal, state, and local agencies, and the public were analyzed and considered in preparation of the Final SEIS and this ROD.

While comments on the Draft SEIS were wide ranging, the majority of comments were focused on three topics. First, commenters questioned the BLM's distinction that the impacts of the

Project would not be significant to sagebrush steppe habitat when considering present and reasonably foreseeable future actions, but cumulative impacts to sagebrush steppe would be significant when considering past, present, and reasonably foreseeable future actions. Commenters suggested that, when considering present and reasonably foreseeable future actions, the impacts from Ruby should be considered significant. Second, commenters requested either that the BLM report back to the public on the effectiveness of on-site and off-site restoration and mitigation efforts or include additional mitigation to address recommended changes to the significance determination and the effectiveness of current restoration efforts. Third, commenters requested additional information and discussion on livestock, wild horses and burros.

Regarding the significance determination, the Draft and Final SEIS acknowledge that past actions have had a significant cumulative impact on the sage brush steppe habitat. The Final SEIS was revised to note that cumulative impacts from present and reasonably foreseeable future actions also may be significant. The impacts of the Ruby Pipeline Project remain the same as those discussed in the Final EIS. As explained above, the BLM has determined that existing mitigation measures required in the ROD and Certificate are adequate and no additional mitigation is required. Regarding restoration, the Final SEIS was revised to include a more detailed discussion of: (1) Ruby's obligations regarding restoration, monitoring, and reporting; and (2) the BLM's role in determining when restoration goals have been met, the possibility of extending monitoring if goals are not being met, and the release of the bond submitted by Ruby when goals are met. Moreover, restoration efforts pertain to implementation of the ROD and are not germane to the court's direction to provide a more robust discussion of the cumulative impacts to sagebrush steppe vegetation and habitat. The BLM and FERC will continue to enforce applicable restoration and monitoring requirements. Finally, discussion and analysis in the Cumulative Effects and Existing Environment sections regarding livestock and wild horses and burros was updated and revised in response to comments.

Some commenters also requested that the BLM incorporate other additional actions, such as connecting pipeline projects, into the cumulative impacts analysis. BLM reviewed specific actions and incorporated them as appropriate, given the scope of the Final SEIS and cumulative impact area defined in the Final EIS. The Final SEIS also included minor revisions in response to comments. Several commenters requested the BLM to consider topics outside of the scope of the analysis as described in the Purpose and Need. The BLM's responses to the substantive comments and a summary of additional comments received during the comment period are included in the Final SEIS (Attachment A, Draft Ruby SEIS Comment Response Report).

Some tribes submitted comments similar to those discussed above. Some tribes also questioned the seed mixes used during restoration, affirmed their right to government-to-government consultation, and stressed the cultural and religious significance of sagebrush steppe habitat to Native American tribes. The BLM appreciates those comments, and the BLM has responded to them in the Final SEIS (Attachment A, Draft Ruby SEIS Comment Response Report).

Appeal Rights

By regulation, 43 CFR § 28810.1(b), this ROD is effective pending appeal. This ROD may be appealed to the Interior Board of Land Appeals (IBLA) in accordance with that regulation, the provisions of 43 CFR § 4, and the enclosed Form 1842-1. Alternatively, you may seek judicial review of this ROD by filing a petition for review with an appropriate United States Court of Appeals pursuant to 43 CFR § 4.21(c) and Section 313(b) of the Energy Policy Act of 2005 (EPAct), which amended Section 19 of the Natural Gas Act (NGA) and is codified in relevant part at 15 U.S.C. § 717r.

Appeals to the IBLA

If you decide to file an appeal with the IBLA, your Notice of Appeal must be addressed to the Nevada State Director and served on the Office of the Regional Solicitor at the addresses below within 30 days of the date of the publication of the EPA's NOA of the ROD and Final SEIS in the *Federal Register*. The appellant has the burden of showing that the decision appealed from is in error.

Nevada State Director
BLM Nevada State Office
1340 Financial Boulevard
Reno, NV 89502

Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, E-1712
Sacramento, CA 95825

Within 30 days of filing the Notice of Appeal, you must file a complete statement of the reasons why you are appealing. This must be filed with the IBLA at the following address with a copy to the Office of the Regional Solicitor at the address above. If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary.

Interior Board of Land Appeals
Office of Hearings and Appeals
801 North Quincy Street, MS 300-QC
Arlington, VA 22203

If you wish to file a petition, pursuant to 43 CFR §§ 2881.10(b) and 43 CFR § 4.21(b), for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your Notice of Appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and petition for a stay must also be submitted to each party named in this decision, the IBLA, and the Office of the Regional Solicitor (see 43 CFR §§ 4.413) at the same time the original documents are filed at the office of the Nevada State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Petitions for Judicial Review

Section 19 of the NGA states, "The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as "permit") required under Federal law, other than the Coastal Zone Management Act of 1972." 15 U.S.C. § 717r(d)(1).

This ROD is an order or action of a Federal agency issuing a permit, as that term is used in 15 U.S.C. § 717r(d)(l) because it is an agency decision to issue and condition a BLM ROW grant for the use of Federal lands involved in the Ruby Pipeline Project, which is a facility that has been constructed and will be operated pursuant to 15 U.S.C. § 717f. Accordingly, this ROD is appealable directly to an appropriate United States Court of Appeal s in accordance with 15 U.S.C. § 717r(d)(1) and the Federal Rules of Appellate Procedure.

Approval Signature

Approved By: _____ Date: NOV 1 3 2013

Amy Lueders
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