

March 18, 2010

Steve Guertin,
Region 6 Director
U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, Colorado 80225-0486

Robyn Thorson
Region 1 Director
U.S. Fish & Wildlife Service
911 N.E. 11th Ave,
Portland, Oregon 97232-4181

Dr. Ren Lohofener
Region 8 Directory
U.S. Fish and Wildlife Service
2800 Cottage Way,
Sacramento, Calif., 95825

**Re: Letter of Commitment by Ruby Pipeline LLC regarding the
Endangered Species Act Conservation Action Plan for the Ruby
Pipeline Project**

Dear Regional Directors Guertin, Thorson and Lohofener,

This letter memorializes the commitment of Ruby Pipeline LLC (Ruby) to fund and/or implement conservation measures for the benefit of federally threatened and endangered species that occur within the Ruby Pipeline Project (Project) action area. The measures described in this letter constitute Ruby's Endangered Species Act Conservation Action Plan (Plan).

Ruby proposes to construct and operate the Ruby Pipeline Project, a natural gas pipeline that will cross portions of four western states. A number of species listed under the Endangered Species Act (ESA) and designated as well as proposed critical habitat occur in the Project area. Ruby has conducted a proactive effort, in coordination with numerous agencies and landowners, to route, construct, and maintain the pipeline and associated features in a fashion that will minimize impacts to ESA-listed species and designated and proposed critical habitats.

The Federal Energy Regulatory Commission (FERC), as lead agency for the Project, is consulting with the U.S. Fish and Wildlife Service ("Service") pursuant to Section 7(a)(2) of the ESA to ensure that the proposed agency action for the Project – authorization by FERC, issuance of a right-of-way grant by the Bureau of Land Management (BLM), amendment of two forest plans by the U.S. Forest Service, Army Corps of Engineers Section 404 authorization, and approval of an easement crossing by the Bureau of Reclamation – will not appreciably decrease the likelihood of survival and recovery of ESA-listed species, or result

in destruction or adverse modification of critical habitat, and otherwise will meet the requirements of section 7 (a)(2) of the ESA.

Separately, and not in lieu of FERC's above-mentioned Section 7 consultation responsibility, Ruby has agreed to commit to fund conservation actions that are beneficial to listed species and their habitats that occur within the Ruby Project action area, and that will contribute to the conservation and recovery of these species. The purpose of this Letter of Commitment is to establish this Plan, including the conservation measures that Ruby has committed to fund for ESA-listed species, and the process in which these actions will be implemented in the future.

This Plan is not part of the FERC proposed action for ESA consultation and also is separate from, and in addition to, any reasonable and prudent measures developed as part of the Section 7 consultation with the Service for the Project. To the extent any of the ESA conservation actions require specific analysis under the National Environmental Policy Act (NEPA), such analysis would be conducted separately from the FERC NEPA process for the Project. Finally, while Ruby has committed to fund the conservation actions identified in the Plan to conserve and assist with recovery of these listed species, the Project is not dependent on these conservation actions. Conversely, the conservation actions identified in the Plan involve projects that already had been identified by the Service and other state and federal agencies and thus could proceed regardless of whether the Project was authorized.

The conservation actions in the Plan have been extracted from listed species recovery plans, other ESA action plans, or recovery team activities, and reflect high priority actions for these listed species and critical habitat. The projects identified in this Letter of Commitment are the result of a collaborative selection and prioritization effort between the Service, and other state and federal cooperating agencies.

Ruby commits to the following actions:

- Once Ruby has received a Certificate of Public Convenience and Necessity ("Certificate") from FERC authorizing the Project and any legal challenges thereto have been resolved such that Ruby may begin construction of the Project, Ruby will fund the conservation actions described in the Plan (Attachment 1). Ruby will place all funds to support the Plan's actions into an interest bearing account before or upon receipt of the FERC Notice to Proceed. Ruby will transfer control of the fund to a Service approved non-governmental organization (NGO) who will disperse the funds to implement the actions listed in Attachment 1. Although the timing of the initiation of various conservation actions will necessarily vary based on the nature of such actions, Ruby anticipates that each of the actions will be initiated within five years of Ruby's receipt of its Certificate.
- For each conservation action identified in Attachment 1, an estimated cost, or partial cost, is provided. The total estimated cost of Ruby's contribution to the listed conservation actions is \$1,670,000, with an

additional unknown cost for the purchase of the land and conservation easement to benefit the Ute ladies'-tresses orchid. If any of these conservation actions is completed at less than the anticipated cost, Ruby will work with the Service and other agencies, as appropriate, to identify an additional conservation action to which the remaining funds can be committed, such that Ruby will commit, at a minimum, \$1,670,000 (plus the cost of the land purchase for the orchid) toward threatened and endangered species conservation actions.

- To the extent that the actual costs of any of the conservation actions, as currently described in Attachment 1 exceed the estimated costs, or where the Service is unable to obtain cost-share funding as per the Plan, Ruby will pay any reasonable costs, as determined by Ruby in its sole discretion, beyond the current estimate to ensure the identified conservation action is completed.
- If any of the conservation actions described in Attachment 1 cannot be completed for any reason, Ruby will work with the Service, other federal agencies, states and/or NGO partners to identify another ESA conservation action that will provide the same or greater conservation benefit for the same species as the conservation action that was originally identified.
- For certain ESA conservation actions, Ruby shall provide assistance to state and federal agencies or other implementing entities to contact and coordinate with private landowners as necessary, to assist with development of proposed ESA conservation actions that occur partially or completely on private lands.

It is Ruby's understanding that, within five months of project certification, a coordinating committee will be established that consists of representatives of the Service, the Bureau of Land Management, Forest Service, the state wildlife agencies in the four states crossed by the Project, and the fund management NGO to develop an implementation mechanism for the Plan. This coordinating committee will be responsible for ensuring that the conservation actions identified in Attachment 1, or substitute conservation actions agreed to by the Service and Ruby, are implemented.

Ruby recommends that the coordinating committee develop an annual report describing the status of the funding and/or implementation, as appropriate, of the conservation actions. This annual reporting should continue until all the conservation actions identified in Attachment 1, or any alternative actions agreed upon by Ruby and the Service, have been funded and/or implemented, as appropriate.

The points of contact for Ruby and the Service for the ESA Conservation Action Plan are as follows:

For Ruby Pipeline LLC

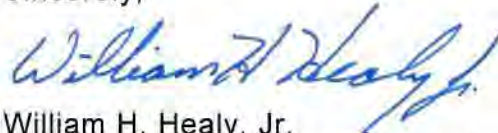
Floyd Robertson
Ruby Pipeline LLC
Two North Nevada Avenue
Colorado Springs, Colorado 80903
719-520-4455

For U.S. Fish and Wildlife Service

Tim Modde
Environmental Coordinator Region 6
U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, Colorado 80225-0486
303-236-4253

With the execution of this Letter of Commitment, Ruby agrees to be bound to the commitments it has made herein. Ruby appreciates the opportunity to collaborate with the Service and other agencies for the benefit of ESA-listed species.

Sincerely,



William H. Healy, Jr.
Vice President (Project Executive)
Ruby Pipeline LLC

cc: Dave Swearingen, FERC
Mark Mackiewicz, BLM
Director, Wyoming Game and Fish Department
Director, Utah Division of Natural Resources
Director, Nevada Department of Wildlife
Director, Oregon Department of Fish and Wildlife
Forest Supervisor, Fremont-Winema National Forest

Attachment 1
Ruby Pipeline Project
Proposed
Endangered Species Act
Conservation Action Plan:
Wyoming, Utah, Nevada, and Oregon

Species	State	Responsible Entity	Project Name	Project Description and Benefits	Implementation Options and Challenges	Estimated Cost	Total Cost
Shortnose sucker (<i>Chasmistes brevirostris</i>)	OR		Big Springs Fish Passage Evaluation	A prototype fish ladder has been installed at the Big Springs area of the Lost River to allow sucker passage around a water diversion structure. However, the fish ladder has not been evaluated to assess if it allows volitional fish passage. Assessing the effectiveness of and improving the fish ladder to allow sucker passage would enable fish to ascend the ladder to reach spawning habitat. Evaluation and improvement of this prototype ladder could be applied to other diversion structures.	Permitting – would likely require a section 10(a)(1)(A) permit for work with endangered suckers and other state or federal permits	\$300	\$70,000
					Experimental Design and Materials – requires staff time; purchasing necessary materials for manipulation of fish ladder; sampling equipment	\$29,700	
					Monitoring – subsequent monitoring of fish passage needed for several years to assess fish passage	\$40,000	
Lost River sucker (<i>Deltistes luxatus</i>) Shortnose sucker (<i>Chasmistes brevirostris</i>)	OR		Upper Lost River Basin Sucker Distribution	Extensive shortnose and Lost River sucker distribution surveys within the Upper Lost River basin have not been completed since the late 1980s. A contemporary, basin-wide status and distribution (spatial and temporal) survey would be beneficial for informing final designation of critical habitat as well as recovery planning.	Design and Equipment – complete sampling design and purchase sampling equipment	\$30,000	\$110,000
Implementation – would need to hire seasonal staff over a couple of years to complete surveys					\$80,000		
Lost River sucker (<i>Deltistes luxatus</i>) Shortnose sucker (<i>Chasmistes brevirostris</i>)	OR		Upper Lost River Basin Fish Passage Improvement	Several low head dams exist within the Upper Lost River basin. These dams were created for stock water or wetland development and act as barriers to movement of Lost River and shortnose suckers. Identifying the location of these barriers, assessing passage feasibility, and providing funds to provide sucker passage will help with recovery efforts.	Passage improvements – could require more or less costly modifications to improve passage, depending on barrier.	\$20,000	\$20,000
Modoc Sucker (<i>Catostomus microps</i>)	OR		Thomas Creek Forest Road Improvement	Forest Road 28 is adjacent to Thomas Creek on the Fremont-Winema National Forest. In Oregon, the federally endangered Modoc sucker only occurs within Thomas Creek. Forest Road 28 is aging and is in need of reconstruction and overall improvement. This will provide an opportunity to reduce road impacts to Thomas Creek, which include sedimentation. Reduced sedimentation from road improvement will benefit spawning and rearing habitats for the Modoc sucker.	Regulatory – NEPA analysis will need to be completed prior to project implementation. Permits will be required to complete road improvements.	\$25,000	\$175,000
					Project implementation and subsequent monitoring of all project work completed.	\$150,000 with remaining funds acquired via cost-share	

Species	State	Responsible Entity	Project Name	Project Description and Benefits	Implementation Options and Challenges	Estimated Cost	Total Cost
Green's Tuctoria <i>(Tuctoria greenei)</i> Slender Orcutt Grass <i>(Orcuttia tenuis)</i> (Vernal pool plants)	OR		Klamath and Lake County Vernal Pool Surveys	Little is known about the spatial distribution of the endangered Green's tuctoria and threatened Slender Orcutt grass within vernal pool habitats of Klamath and Lake counties, Oregon. An assessment of the distribution of these plants would inform recovery effort as well as where conservation efforts are best applied.	Implementation – would need to hire survey crews and provide training in proper plant identification	\$25,000	\$25,000
Warner sucker <i>(Catostomus warnerensis)</i>	OR		Fund Warner sucker spawning and rearing habitat research and monitoring	Continued monitoring of Warner sucker populations is necessary to track its status and distribution in the Warner Basin, including as fish passage structures are modified to improve connectivity in the Warner Basin.	Provide funding for research and monitoring of spawning and rearing habitat in the Warner Basin.	\$100,000	\$100,000
Warner sucker <i>(Catostomus warnerensis)</i>	OR		Dyke Diversion passage and screening	<p>Provide funding for a fish passage and screening project on the Dyke diversion on Twelvemile Creek.</p> <p>The Dyke diversion dam in the Twelvemile Creek watershed has been identified as a barrier for upstream movement of Warner suckers. The Dyke Diversion Dam and its operations influence Warner sucker critical habitat. Additionally, diverted water reduces stream flows in downstream Warner sucker habitat, and the unscreened diversion dam has the potential to entrain larval, juvenile, and adult suckers into unsuitable ditch/canal habitat.</p>		\$200,000	\$200,000
Warner sucker <i>(Catostomus warnerensis)</i>	OR		Deep Creek passage and screening	Provide cost-share funding for fish passage and screening on the Deep Creek diversion, to enhance the condition of Warner sucker habitat in the Warner Basin.	Negotiate landowner agreement as diversion is owned and operated by private water user's organization.	Ruby in-kind services	\$100,000
				The Deep Creek diversion in Adel, Oregon is a barrier for movement of Warner suckers and could entrain individuals into unsuitable habitat. The Deep Creek diversion passage and screening project would allow access to additional Warner sucker habitats.		\$100,000	

Species	State	Responsible Entity	Project Name	Project Description and Benefits	Implementation Options and Challenges	Estimated Cost	Total Cost
Colorado River Fishes: Bonytail <i>(Gila elegans)</i> Colorado pikeminnow <i>(Ptychocheilus lucius)</i> Humpback chub <i>(Gila cypha)</i> Razorback sucker <i>(Xyrauchen texanus)</i>	WY		Water Conservation and Enhancement of Riparian Habitats in the Green River Basin.	<p>The Green River Basin is the major water flow contributor to the Colorado River. Ruby will contribute to water conservation in the Green River basin by supporting initiatives to eradicate the non-native shrub, <i>Tamarix</i> spp., while restoring native riparian vegetation along select basin tributaries. Selective removal of conifers within aspen (<i>Populus</i> spp.) stands is another option for native species habitat improvement.</p> <p>Saltcedar or Tamarisk (<i>Tamarix</i> spp.) is a highly invasive non-native species well known for its ability to alter stream hydrology and morphology (Morisette et al. 2006, Zavaleta 2000). Because the transpiration rate of this non-native plant substantially exceeds that of native species, infestation of riparian areas by <i>Tamarix</i> results in an annual net water loss valued in the millions of dollars to western states.</p> <p>The Wyoming Landscape Conservation Initiative (WLCI) will administer funds and oversee implementation of native vegetation restoration funded by this project in Wyoming. The WLCI is a multi-partner, long-term, science-based cooperative (landowners, non-profits, state and federal agencies) with an established record of landscape conservation in southwest Wyoming. The mission of WLCI is to assess, monitor, and enhance aquatic and terrestrial habitats while facilitating responsible development. These proposed actions are consistent with the conservation objectives of the WLCI and similar to projects previously implemented or planned by the WLCI (http://www.wlci.gov/). Use of this existing framework will facilitate administration, oversight, implementation, monitoring, and reporting related to the native vegetation restoration activities funded under this conservation action.</p> <p>References: Morisette, J. et. al. 2006. A tamarisk habitat suitability map for the continental United States. <i>Frontiers in Ecology and the Environment</i> 4: 11-17. Zavaleta, E. 2000. The economic value of controlling an invasive shrub. <i>Ambio</i> 29: 462-467.</p>	Wyoming Heritage Foundation - third party administration of funding – overhead costs = 3.0%	\$11,000	\$130,000
					NEPA compliance - U.S. Bureau of Land Management EA completed (Invasive Plant Management – Kemmerer, Pinedale, and Rock Spring Field Office(s) - WY-090-EA09-52); EA tiered to existing programmatic EIS (Vegetation Treatments Using Herbicides on BLM lands in 17 Western States, Programmatic EIS). Treatments unlikely to require section 7 consultation.	\$0	
					Implementation – biological control, herbicide treatments, hand and mechanical removal, followed by restoration to consist of native plantings (e.g., <i>Salix</i> spp.). Mechanical removal of conifers within Aspen stands.	\$89,000	
					Tamarisk treatment – approximately \$500.00 / acre; 12.1 acres per stream mile. Cost to treat 50 stream miles = 12.1 x 50 x \$500.00; Conifer treatment – approximately \$250.00 / acre; 250 acres		
				Monitoring to consist of annual (2-5 yrs) inspection and spot treatment. Reporting on annual basis.	\$30,000		

Species	State	Responsible Entity	Project Name	Project Description and Benefits	Implementation Options and Challenges	Estimated Cost	Total Cost
<p>Black-footed ferret (<i>Mustela nigripes</i>)</p> <p>Associated Species of Concern: White-tailed prairie dog (<i>Cynomys leucurus</i>)</p>	WY		Assessment of White-Tailed Prairie Dog Colonies within the Cumberland Complex, Lincoln and Uinta Counties, Wyoming	<p>At least three complexes of white-tailed prairie dog (<i>Cynomys leucurus</i>) occur within the vicinity of the Ruby pipeline project: Carter, Cumberland, and Moxa. Recent assessments of white-tailed prairie dog colonies in these complexes have not been undertaken. Ruby will contribute to the assessment of extent and activity of white-tailed prairie dog colonies within the Cumberland Complex.</p> <p>References: U.S. Fish and Wildlife Service. 2008. Black-footed Ferret (<i>Mustela nigripes</i>) 5-Year Status Review: Summary and Evaluation. USFWS, South Dakota Ecological Services Office, Pierre, South Dakota.</p> <p>73 FR 24910- Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the White-tailed Prairie Dog (<i>Cynomys leucurus</i>) as Threatened or Endangered. <i>Federal Register</i> May 6, 2008.</p>	<p>Implementation – Consists of mapping of colony perimeters within the larger Cumberland white-tailed prairie dog complex and assessment of active burrows / prairie dog density.</p> <p>Costs related to field collection of GPS data / GIS mapping of colonies, survey transects within colonies to assess active burrow density.</p>	\$75,000	\$75,000
<p>Lahontan cutthroat trout (<i>Oncorhynchus clarki henshawi</i>)</p>	NV		Marys River Diversion Replacements	<p>This conservation project entails the replacement of one irrigation diversion that currently prevents fish passage and causes entrainment and subsequent washing of LCT onto irrigation fields. This diversion would be replaced with a structure that would allow for upstream fish passage and prevent any loss of LCT due to entrainment.</p>	<p>Landowner cooperation would need to be sought, and project permitting would be completed by DPS Team agencies.</p>	\$100,000, assuming funds can be used as a 25% cost share match with the other 75% of the estimated \$400,000 total project cost obtained from other sources	\$100,000
<p>Lahontan cutthroat trout (<i>Oncorhynchus clarki henshawi</i>)</p>	NV		North Fork Humboldt River Barrier	<p>This conservation project entails the construction of a fish migration barrier on the upper North Fork Humboldt River to protect a native LCT population from invading non-native trout.</p>	<p>A barrier location would need to be located in a suitable channel type by a qualified geomorphologist. The design would need to create a barrier adequate to hold up to peak flows and prevent movement of all non-native trout upstream. Project permitting would be completed by DPS Team agencies.</p>	\$50,000, assuming funds can be used as a 25% cost share match with the other 75% of the estimated \$200,000 total project cost obtained from other sources	\$50,000

Species	State	Responsible Entity	Project Name	Project Description and Benefits	Implementation Options and Challenges	Estimated Cost	Total Cost
Lahontan cutthroat trout <i>(Oncorhynchus clarki henshawi)</i>	NV		Willow Creek Restoration Projects	These four conservation projects entail restoration work on Rock and Willow creeks, and would allow for stream improvement and an eventual increase in LCT occupied stream miles.	Project details would be further refined and permitting would be completed by DPS Team agencies.	\$50,000 for each of four restoration projects totaling \$200,000, assuming funds can be used as a 25% cost share match with the other 75% of the estimated \$800,000 total project cost obtained from other sources	\$200,000
Lahontan cutthroat trout <i>(Oncorhynchus clarki henshawi)</i>	NV		Happy Creek Diversion Screen	This conservation project entails the installation of a fish screen on a private landowner water diversion to prevent LCT from becoming entrained in a permittee irrigation system, and reintroduction of LCT.	Landowner cooperation would need to be sought, and project permitting would be completed by DPS Team agencies.	\$6,000/cfs for diversion screen @ roughly 9cfs \$15,000, assuming funds can be used as a 25% cost share match with the other 75% of the estimated \$54,000 total project cost obtained from other sources	\$15,000

Species	State	Responsible Entity	Project Name	Project Description and Benefits	Implementation Options and Challenges	Estimated Cost	Total Cost
Ute ladies'-tresses orchid (<i>Spiranthes diluvialis</i>)	UT		Conservation Easement to Protect Occupied Habitat, Cache County, Utah	<p>One of the three primary objectives for achieving recovery in the 2005 Status Review is Protecting and managing Ute ladies'-tresses populations in wet meadow, seep, and spring habitats. A parcel of private property in Cache County, Utah, was recently found to support a population of the Federally- threatened Ute ladies'-tresses orchid (<i>Spiranthes diluvialis</i>). This is the only known population in the County. The property is 1-2 miles west of the Little Bear River, near Mendon, Utah. The site consists of two parcels, one of which contains the population of Ute ladies'-tresses and is 16.4 acres (10.1 acres of wetland), and the adjoining one to the north, 12.7 acres (9.9 acres of "potential wetland"), has not been surveyed but directly abuts the population.</p> <p>Ruby would purchase the properties from the landowners and ensure that a conservation easement is finalized with a non-profit land trust and funds provided for management and protection of the properties in perpetuity. We recommend Utah Open Lands (UOL) to be the land trust; its staff have expressed that this property would be ideal for acquisition as it meets federal criteria for preservation and contains significant ecological resources.</p> <p>Contact: Utah Open Lands Wendy Fisher, Executive Director 2188 South Highland Drive, 203 Salt Lake City, UT 84106 (801) 463-6156</p> <p>References: Fertig, W., R. Black, and P. Wolken. 2005. Rangewide status review of Ute Ladies'-Tresses (<i>Spiranthes diluvialis</i>). Prepared for the US Fish and Wildlife Service and Central Utah Water Conservancy District. 30 September 2005.</p>	Property purchases by Ruby for use as conservation easement	unknown	\$300,000
					Initial site visit: In order to determine whether a piece of property has conservation potential, a site visit must be conducted. Other visits to the property would be required in the future. As part of this site visit, an analysis of the hydrologic properties of the wetlands supporting the orchid population should be evaluated to identify how development of adjacent parcels might impact the conservation easement.	\$50,000	
					Baseline Documentation Report: In accordance with IRS regulations and in compliance with UOL monitoring guidelines, the current condition of the property must be established through a Baseline Documentation Report consisting of maps, pictures and a narrative description of the parcel.	\$25,000	
					Draft conservation easement: A draft of the conservation easement can be done by UOL staff or Ruby's attorney. A final draft is reviewed by both Ruby's attorney and UOL's attorney. Title insurance and the status of the mineral estate are necessary.	\$50,000	
					Monitoring Contribution: Costs associated with monitoring easements are significant and necessary. It is UOL's policy to ask easement donors to consider a gift to UOL's stewardship fund to ensure the monitoring and enforcement of the donated easement. Stewardship endowments from every conservation easement donation are pooled together into one account.	\$50,000	