



United States Department of the Interior



FISH AND WILDLIFE SERVICE Mountain-Prairie Region

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Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Subject: Endangered Species Act Section 7 Formal Consultation for the Ruby Pipeline Project (Docket Number CP09-54-000)

Dear Ms. Bose:

Enclosed you will find a biological opinion (BO) and Letter of Concurrence on the effects of the Federal Energy Regulatory Commission's (FERC) proposed issuance of a final license for the Ruby Pipeline Project (Project), which is located in Wyoming, Utah, Nevada, and Oregon. This BO results from a positive and collaborative consultation process and we appreciate the efforts of your staff and the applicant in working productively with the Fish and Wildlife Service (Service) to complete this consultation.

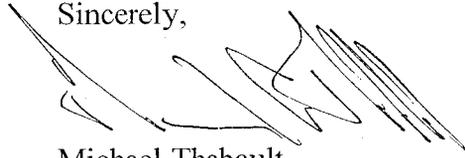
Your request for formal consultation was received by the Service on January 20, 2010. The BO was prepared by the Service's Oregon Fish and Wildlife Office in coordination with Service Regional Offices in Regions 1, 6, and 8, as well as the Wyoming, Utah, Nevada, Oregon, and Klamath Falls Field Offices of the Service, with important involvement of the Service's Office of the Solicitor. The Service's Region 6 has lead responsibility for this BO. Representatives of FERC, the applicant, Bureau of Land Management, and Army Corps of Engineers were provided with a draft version of this BO and their comments were taken into consideration as we finalized the document.

In the accompanying document, we concur with the Project's conclusion that the proposed action may affect, but is not likely to adversely affect black-footed ferret (*Mustela nigripes*) and Ute ladies'-tresses (*Spiranthes diluvialis*). We conclude that the proposed action is likely to adversely affect (LAA) Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), razorback sucker (*Xyrauchen texanus*), bonytail chub (*Gila elegans*), Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*), Warner sucker (*Catostomus warnerensis*), Modoc sucker (*Catostomus microps*), Lost River sucker (*Deltistes luxatus*), and shortnose sucker (*Chasmistes brevirostris*), and designated critical habitat for the Warner sucker and the four Colorado River

fishes referenced above. Furthermore, we provide a conference opinion on the Project effects to proposed critical habitat for the Lost River sucker and the shortnose sucker. Through our analysis we determined that the Project would adversely affect the nine fish species and five designated critical habitats included in the consultation, but the action would not jeopardize these species or adversely modify their critical habitat. The Project impacts of greatest concern to the Service and these species are the effects associated with pipeline waterbody crossings. At the conclusion of this BO we provide an Incidental Take Statement with mandatory Terms and Conditions and monitoring requirements. Additionally, we provide a voluntary conservation recommendation towards long term Project support of ESA conservation activities

Thank you for the cooperation and effort that your agency put forth in conducting this consultation. If you have any questions regarding this communication or the attached BO, please contact Sarena Selbo or Tim Modde at the Fish and Wildlife Service, Mountain-Prairie Region P.O. Box 25486, DFC Denver, Colorado 80225-0486, or (303) 236-4046.

Sincerely,



Michael Thabault
Assistant Regional Director, Ecological Services

cc: David Swearingen, FERC
J. Rich McGuire, FERC Chief, Gas Branch 1 Division of Gas – Environment and Engineering
Mark Mackiewicz, BLM
Kristine Hansen, Corps of Engineers
Project Leaders FWS Field Offices – WY, UT, NV, OR, Klamath Falls
Regional Directors and Section 7 coordinators FWS Regions 1,6,8 - ES
Floyd Robertson, Ruby
USFS – Fremont-Winema National Forest