

**CONSERVATION AGREEMENT FOR RUBY
PIPELINE PROJECT LIMITED OPERATING
PERIOD ENCROACHMENTS IN NEVADA**

**Bureau of Land Management, Nevada Department of Wildlife,
and Ruby Pipeline, LLC**

July 2010

I. Introduction

The purpose of this Conservation Agreement for Ruby Pipeline Project Limited Operating Period Encroachments in Nevada (Agreement) between the Bureau of Land Management (BLM), the Nevada Department of Wildlife (NDOW), and Ruby Pipeline LLC (Ruby) (collectively, Parties) is to describe Ruby's commitment to fund conservation measures to mitigate potential impacts that may result from unavoidable encroachments into sage-grouse and big game seasonal ranges during Limited Operating Periods (LOPs) during the construction and operation of the Ruby Pipeline Project (Project). The terms of this Agreement will be an enforceable term and condition of any right-of-way granted by the BLM to Ruby for the Project and will be a contingency for the issuance of any notice to proceed with construction or other ground-disturbing activities in connection with the Project within the state of Nevada. The measures described in this Agreement are in addition to those described in the Ruby Project Cooperative Conservation Agreement for the Greater Sage-Grouse and Pygmy Rabbit (CA).

The Project consists of a 675-mile, 42-inch diameter natural gas pipeline, along with associated compression and measurement facilities, located between Opal, Wyoming and Malin, Oregon. An approximate 2.6-mile lateral would also be constructed north from the pipeline's termination point just north of the Oregon-California border to the Malin Hub in Klamath County, Oregon. The pipeline right-of-way would cross four states: Wyoming, Utah, Nevada, and Oregon. Four new compressor stations would also be installed as part of the Project.

Along the Nevada portion of the Project, BLM, and NDOW described LOPs for sage-grouse and big game species, which encompassed the entire suite of seasonal ranges of critical importance to the life histories of these species. The LOPs were identified during Nevada's Habitat Characterization Matrix process as described in Appendix B of the CA. Subsequently, during the process of developing construction timelines, Ruby indicated to Nevada BLM that some pipeline construction spreads would encroach on certain of these LOPs due to various logistical complexities. After detailed discussions between BLM, NDOW, and Ruby, and numerous timeline adjustments by Ruby to accommodate these LOPs to the maximum extent possible, Ruby has agreed to the compensation formula described in this Agreement for providing additional conservation funding to offset these potential impacts.

II. Points of Contact

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Bureau of Land Management
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Nicole Pedigo
Ruby Pipeline, LLC
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Management
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III. Authority

The Federal Land Policy and Management Act (43 U.S.C. § 1737), which provides overall direction to the BLM for management of public lands, allows the BLM to participate in conservation agreements. The BLM Manual, Section 6840 (Special Status Species Management), provides overall policy direction to BLM managers to conserve listed threatened or endangered species on BLM administered lands, and to ensure that actions authorized on BLM-administered lands do not contribute to the need to list species deemed by the BLM to be “sensitive.”

This Agreement is also consistent with the land use plans applicable to the BLM-managed lands in Nevada that are crossed by the Project. The Paradise-Denio Management Framework Plan (1982) directs BLM to take measures to protect wildlife concentration areas and sage-grouse strutting, nesting, and brooding areas. The Sonoma-Gerlach Management Framework Plan (1982) directs BLM to consider and protect sage-grouse strutting grounds and associated areas during permitting of projects such as pipelines. The Elko Resource Management Plan (1987) directs BLM to prepare habitat management plans “focused on maintenance and improvement of wildlife habitat through actions including water developments, grazing management, fencing, and vegetation treatments.” The Surprise Resource Management Plan (2008) indicates that LOPs and buffer zones would be implemented as necessary to reduce disturbances to state- and BLM-listed sensitive species. Notably, the applicable land use plans do not mandate any specific LOPs. As noted above, the LOPs applied to the Project were identified during the planning process for the Project.

The Nevada Department of Wildlife has the authority to “enter into cooperative or reciprocal agreements with the Federal Government or any agency thereof, any other state or any agency thereof, any other agency of this state, any county or other political subdivision of this state, to the extent permitted by the provisions of chapter 277 of NRS, any public or private corporation, or any person, in accordance with and for the purpose of carrying out the policy of the Commission.” Nev. Rev. Stat. § 501.351.

IV. Limited Operating Periods

LOPs in Nevada were defined site specifically and vary based on observed seasons of use. The following table identifies the LOPs utilized for this Agreement.

Nevada-Specific Limited Operating Periods		
Species	Habitat Type	Limited Operating Period*
Sage-grouse	Lek, strutting	March 1 – May 15
	Nesting/early brood	May 15 – June 30
	Late brood	June 30 – September 15
	Winter	December 1 – February 15
Mule deer	Fall migration	October 1 – November 30
	Spring migration/ yearling habitat	March 1 – April 30
		March 15 – May 15
		April 1 – May 15
	Winter movement corridor	November 15 – December 31 November 15 – January 31
Crucial winter range	December 1 – March 15	
Crucial summer range/fawning	May 15 – August 31	
Bighorn sheep	Lambing area	April 1 – May 31
Elk	Crucial winter range	December 1 – February 28
	Crucial summer range/calving	May 15 – August 31
Pronghorn	Crucial summer range	June 15 – September 30

* More than one date range for a particular habitat type may identified due to geographical differences and variance in species use along the Project route. Only one date range per habitat type applies to any given segment of the Project. BLM, NDOW, and Ruby have coordinated to identify specific Project mileposts where specific LOPs apply.

V. Mitigation Funding for Encroachment on Limited Operating Periods

BLM, NDOW, and Ruby recognize the nature of LOP encroachments to be highly variable in their impacts to wildlife. This variability depends, among a multitude of potential factors, on conditions of weather, current habitat availability, and the natural variation in seasonal habitat utilization by these species. Unlike a finite computation of ground disturbance, the impact of an LOP encroachment may range from population-level to negligible in extent. Affixing a compensation value to these impacts was achieved through negotiation between BLM, NDOW, and Ruby at a straight per-acre

value of \$759, which is derived from and consistent with the compensation values outlined in Appendix B of the CA.

The per-acre compensation value will be applied to lengths of project right-of-way within construction spreads where LOP encroachments occur similar to the valuations in the CA for direct habitat impacts to species. For each mile of pipeline where construction will be occurring during a prescribed LOP, 14 acres will be assessed at the rate of \$759 per acre. No mitigation ratios will be applied to this number in deference to the aforementioned variability.

Prior to commencing construction in Nevada, Ruby will supply to BLM a “march chart” showing the sequences and timeframes for all Nevada construction spreads. Ruby will overlay this operational timeline with the prescribed LOPs for sage-grouse and big game. Areas of encroachment will be clearly defined by milepost and calculated using the \$759 per-acre value. The Parties recognize that other operational adjustments may occur during construction, which could either increase or decrease this calculation. However, for sake of implementation efficiency, Ruby, the BLM, and NDOW agree to abide by a binding compensation amount based on the final schedule provided at least 10 days prior to construction. Ruby shall not commence any construction or other ground-disturbing activities in the state of Nevada in connection with the Project until the BLM approves the aforementioned “march chart” and notifies Ruby of the calculated LOP compensation.

Ruby shall deposit the funds as designated in Appendix A to this Agreement, within 30 days of notification from BLM of the calculated LOP compensation. Such notification shall be by letter to Ruby and will outline the basis for the final compensation per this Agreement. However, if there are any legal challenges to the BLM right-of-way or other Project authorization that prevent Ruby from commencing construction for more than 30 days after the anticipated construction start date used to develop the march chart, Ruby will not be required to deposit the amount of the initial calculated LOP compensation. Once any legal challenges are resolved and Ruby is authorized to commence construction, Ruby will submit to BLM a revised march chart based on the new construction start date. Ruby shall deposit the required funds within 30 days of notification BLM of the revised calculated LOP compensation. Once deposited, neither the BLM nor NDOW shall have any obligation to refund or reimburse the funds received from Ruby through this Agreement for any reason.

VI. Duration of Agreement

This Agreement will become effective upon BLM’s issuance of a right-of-way grant to Ruby for the Project and will remain in effect for five years following the date that Ruby deposits the funds described in Section V of this Agreement into the account specified in Appendix A to this Agreement. The Agreement may be extended beyond the specified terms prior to expiration upon the Agreement of the Parties. *Provided*, if the BLM or NDOW determines that the projects funded pursuant to this Agreement have not been completed by the Agreement’s expiration date, the Parties agree that the Agreement

should be extended for additional years at one year increments of time until the BLM and NDOW concur that the funded projects have been completed.

VII. Modification of the Agreement

Any party may modify this Agreement by providing written notice to, and obtaining the written concurrence of, the other Parties. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will not become effective unless and until all of the other Parties' provide written concurrence, except as provided in Paragraph VI.

VIII. Termination of the Agreement

This entire Agreement will be incorporated into and made a condition of BLM's right-of-way grant. Thus, it is enforceable against Ruby as a term and condition of the BLM's right-of-way grant. Ruby may not terminate its participation in this Agreement, in whole or in part, at any time before the date of expiration, without the written concurrence of BLM and revision of the right-of-way grant.

IX. Dispute Resolution

- A. The Parties agree to work together in good faith to resolve any disputes related to implementation of this Agreement, including Appendix A.
- B. If a dispute arises between the BLM and NDOW, BLM and NDOW agree to utilize the dispute resolution processes described in Appendix A to this Agreement.
- C. If a dispute arises between Ruby and one or both of the other Parties, the disputing Parties will provide written notice to the other Parties of the dispute as soon as possible. The disputing Parties will meet within 30 days of notice of dispute and attempt to resolve the dispute. If agreement cannot be reached within 30 days of the dispute resolution meeting, then the dispute will be elevated to the Vice President, Ruby Pipeline LLC, the Nevada BLM State Director, and Director of NDOW for resolution. If the dispute cannot be resolved within 60 days of elevation, any Party may withdraw from the Agreement and take any action authorized by law.

X. Succession and Transfer

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees.

XI. No Third-Party Beneficiaries

This Agreement does not create any new right or interest in any member of the public or any State as a third-party beneficiary, nor shall it authorize anyone not a party

to this Agreement to maintain a suit for injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

XII. Notices and Reports

Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed in Section II above.

XIII. Availability and Use of Funds

Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that BLM and NDOW will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

No funds disbursed by Ruby pursuant to this Agreement may be used by any agency to unlawfully augment any agency's federal appropriations, whether in violation of the United States Constitution, Title 31, U.S.C. Section 1301(a) (the "Purpose Statute"), Title 31, U.S.C. Section 3302(b) (the "Miscellaneous Receipts Act"), or other applicable law.

XIV. Duplicate Originals

This Agreement may be executed by facsimile signatures and in counterparts, each of which when so executed, shall constitute an original, and all of which taken together shall constitute one and the same document. This Agreement may also be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the parties hereto.

XV. Relationship To Authorities

The terms of this Agreement shall be governed by and construed in accordance with applicable federal law. Nothing in this Agreement is intended to limit the authority of the BLM to fulfill its responsibilities under federal laws or the authority of NDOW to fulfill its responsibilities under state law. All activities undertaken pursuant to this Agreement must be in compliance with all applicable state and federal laws and regulations.

XVI. Sovereign Immunity

The State of Nevada and the Bureau of Land Management do not waive their sovereign immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.

In signing this Agreement I hereby acknowledge my acceptance of and agreement with the Conservation Agreement for Ruby Pipeline Project Limited Operating Period Encroachments in Nevada.

Ron Wenker, Director
Bureau of Land Management
Nevada State Office
1340 Financial Blvd
Reno, NV 89502

Date

William H. Healy, Jr.,
Vice President
Colorado Interstate Gas Pipeline Services Co.
Acting as an agent for Ruby Pipeline, LLC
Two N. Nevada Avenue
Colorado Springs, CO 80903

Date

Kenneth Mayer, Director
Nevada Department of Wildlife
1100 Valley Road
Reno, NV 89512

Date

Appendix A

All funds received from Ruby pursuant to the Conservation Agreement for Ruby Pipeline Project Limited Operating Period Encroachments in Nevada will be deposited in an NDOW account for projects designed to enhance sagebrush and other big game habitat crossed by the Ruby Pipeline Project, add to the state of knowledge of sage-grouse and big game species, or protect high-quality habitat by acquisition. This account will be interest-bearing and the funds will be available for appropriate matching to enhance project capabilities. Use of the funds must be used directly to offset impacts to sage-grouse and big game species resulting from LOP encroachment by the Ruby Pipeline Project and may not be used for any other purpose.

Project Process

Funds would be separated into three sub-accounts (Elko, Winnemucca, and Surprise) based upon the amount of acres of LOP encroachment calculated in each of those areas for the Project. A technical team of resource specialists comprised of representatives from both agencies in each area will recommend projects to the Management Team, which will be composed of the Nevada BLM Deputy State Director for Natural Resources, Land and Planning and the NDOW Habitat Division Chief. Project recommendations may also come from the Nevada Partners for Conservation and Development for consideration. Proposed projects may be located on federal or non-federal lands, but must address impacts to sage-grouse and/or big game resulting from LOP encroachment.

The Management Team will review all proposed projects. Any project to be funded through the Agreement and located on public land must be approved by the Nevada BLM Deputy State Director for Natural Resources, Land and Planning. Any project to be funded through the Agreement but will not be located on public land must be approved by the NDOW Habitat Division Chief. No project shall be funded until it is approved.

If any dispute arises under the Agreement between the Nevada BLM Deputy State Director for Natural Resources, Land and Planning and the NDOW Habitat Division Chief, the matter will be elevated to the Nevada BLM State Director and the Director of NDOW for resolution. For any dispute referred to the Nevada BLM State Director and the NDOW Director, a final decision must be reached within 60 days of referral.

Projects may be managed by either agency or the Nevada Partners for Conservation and Development depending upon the details of the project, the location of the project, and the ability of that agency/organization to provide project management support. It is understood that a portion of the supplied project funding will support project administration, National Environmental Policy Act compliance, materials, contract fees, appraisals, and other direct project-related purchases.

The BLM will ensure that project activities located on public lands are in compliance with the National Environmental Policy Act and land management plans for the specific project location.

The managing entity will provide a full accounting of expenditures and a report of project completion that will be supplied to Ruby annually within eight weeks of the end of the federal fiscal year.

All funds supplied by Ruby will be expended within five years of receipt by NDOW, unless the Agreement's duration is extended in accordance with section VI of the Agreement.