

**United States Department of the Interior
BUREAU OF LAND MANAGEMENT**

**Environmental Impact Statement CP09-54-000
Case File Numbers: 2880 NVN-084650, OR-64807, UTU-82880,
And WYW-171168 (W0350)**

DECISION

**Ruby Pipeline Project
Decision to Amend Right-of-Way and Temporary Use Permit
Decision to Approve Changes to POD**

**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

With the Concurrence of:

U.S. Department of the Interior, Bureau of Reclamation, Klamath Basin Area Office
U.S. Department of the Interior, U.S. Fish and Wildlife Service, Region 6
U.S. Department of Agriculture
Fremont-Winema National Forests, Uinta-Wasatch-Cache National Forest, and Modoc National
Forest

1340 Financial Boulevard
Reno, Nevada 89502
775-861-6400

December 10, 2010

ATTACHMENTS

- Attachment A: Summit Lake Determination of National Environmental Policy Act Adequacy
- Attachment B: Winter Construction Plan
- Attachment C: Concurrence Letters
- Attachment D: DOI-BLM-NV-W000-2011-0001-CX for Winter Construction Plan
- Attachment E: Amended ROW Grant
- Attachment F: Amended TUP Grant

ACRONYMS AND ABBREVIATIONS

BLM	U.S. Department of the Interior, Bureau of Land Management
CX	Categorical Exclusion
Certificate	Certificate of Public Convenience and Necessity
COE	U.S. Army Corps of Engineers
DNA	Determination of National Environmental Policy Act Adequacy
DOI	U.S. Department of Interior
EIS	Environmental Impact Statement
FERC	Federal Energy Regulatory Commission
FLPMA	Federal Land Policy and Management Act
NEPA	National Environmental Policy Act
NGA	Natural Gas Act
MLA	Mineral Leasing Act
NGPA	Natural Gas Policy Act
NRCS	U.S. Department of Agriculture, Natural Resources Conservation Service
NRHP	National Register of Historic Places
NWR	National Wildlife Refuge
POD	Plan of Development
Reclamation	U.S. Department of the Interior, Bureau of Reclamation
ROD	Record of Decision
ROW	Right-of-Way
Ruby	Ruby Pipeline LLC
TCP	Traditional Cultural Property
TUP	Temporary Use Permit
USDA	U.S. Department of Agriculture
USFS	U.S. Department of Agriculture, Forest Service
USFWS	U.S. Department of Interior, Fish and Wildlife Service

Introduction

The Federal Energy Regulatory Commission (FERC) is responsible for authorizing construction and operation of interstate natural gas pipelines. FERC issues Certificates of Public Convenience and Necessity (Certificate) for natural gas pipelines under Section 7 of the Natural Gas Act (NGA) of 1938, as amended, and authorizes construction and siting of facilities for the import or export of natural gas under Section 3 of the NGA. FERC also authorizes construction and operation of natural gas pipelines per the Natural Gas Policy Act (NGPA) of 1978 (15 U.S.C. 3341-3348). Accordingly, FERC served as the Lead Agency for Ruby Pipeline LLC's (Ruby) application for the Ruby Pipeline Project. FERC used the Final Environmental Impact Statement (EIS) it prepared according to the National Environmental Policy Act (NEPA) to issue its Certificate for the Ruby Pipeline Project on April 5, 2010 (Attachment A in the Record of Decision [ROD], dated July 12, 2010). The Certificate authorizes Ruby to construct approximately 678.38 miles of 42-inch-diameter mainline natural gas pipeline, approximately 2.6 miles of 42-inch-diameter lateral pipeline, and related aboveground facilities.

The United States Department of the Interior (DOI), Bureau of Land Management (BLM) has primary responsibility for issuing right-of-way (ROW) grants and temporary use permits (TUPs) for natural gas pipelines across most federal lands pursuant to Section 28 of the Mineral Leasing Act (MLA) of 1920, as amended supplemented (30 U.S.C. 185 *et seq.*). The federal lands crossed or used as access for the Ruby Pipeline Project include lands managed by the DOI, BLM; DOI, Bureau of Reclamation (Reclamation); and the United States Department of Agriculture (USDA), Forest Service (USFS), specifically the Fremont-Winema National Forests, the Uinta-Wasatch-Cache National Forest, and the Modoc National Forest, and the DOI, United States Fish and Wildlife Service (USFWS), specifically the Sheldon National Wildlife Refuge (NWR).

The BLM issued a Decision on July 12, 2010 to authorize a ROW grant and TUP for the Ruby Pipeline Project was issued on July 12, 2010. The document also served as the ROD for Reclamation, the USFS and the USFWS. The ROD was prepared in accordance with NEPA, MLA, the Federal Land Policy and Management Act (FLPMA) of 1976, and other applicable federal laws and regulations. The BLM, Reclamation, USFS, USFWS, Natural Resources Conservation Service (NRCS), the United States Army Corps of Engineers (COE), the State of Utah Public Lands Policy Coordination Office, and the Board of County Commissioners in Lincoln County, Wyoming served as Cooperating Agencies in the preparation of the Ruby Pipeline Project Final EIS pursuant to Section 204 of NEPA. The BLM, USFS, and USFWS have adopted the Final EIS per Title 40 CFR Part 1506.3, and the BLM prepared the ROD based on information contained in the Final EIS for project-related actions affecting BLM, Reclamation, USFS, and USFWS lands. The decision specifically affected the federal lands detailed in Attachment B of the ROD, and described in the Final EIS for the project.

Ruby filed a proposal on September 21, 2010 to amend the ROW Grant, Serial No. NVN-084650, (July 12, 2010) to allow one project route change, as described below:

- 1) The Route Variance is 4.18 miles long, spanning the mainline route from original Milepost 519.8 to Milepost 523.5, and will encompass approximately 26.4 acres. To

avoid direct impacts [REDACTED]

[REDACTED] in Humboldt County, Nevada, Ruby proposes to shift the project route to the north, around this area. Refer to Attachment A, Summit Lake Determination of NEPA Adequacy [DNA], of this decision for legal descriptions of this Route Variation.

Ruby has also submitted the Final Winter Construction Plan (see Attachment B, Plan of Development Appendix V, dated November 2010, this decision) for inclusion in the Plan of Development (POD), originally accepted by the BLM as part of the ROD (see Decision Section, Item 14 in ROD, dated July 12, 2010).

Decision

After consideration of agency and tribal comments, and application of pertinent federal laws and policies, and in accordance with Title 43 CFR Parts 2800 and 2880, it is the decision of the BLM with concurrence from Reclamation, USFS, and USFWS to make changes to the ROD issued July 12, 2010. ROW NVN-084650 is amended to allow for the construction, operation maintenance, and termination of the Summit Lake Route Variance. The BLM, with concurrence from Reclamation, USFS, and USFWS, has also decided to amend the Plan of Development to include a Winter Construction Plan. Specifically, the BLM:

- 1) Amends ROW NVN-084650 authorizing the construction, operation and maintenance of a 42-inch-diameter natural gas pipeline on federal lands in Humboldt County, Nevada. On federal lands the amended ROW for the Summit Lake Route Variance will be 50 feet wide (including the ground occupied by the pipeline), approximately 4.18 miles long, and encompass approximately 26.4 acres (see Table 1 in Attachment A, this amendment). The amended grant will be issued for a term of thirty (30) years with the right of renewal. The commencement date for the amended grant term will be concurrent with the date of original grant. This amendment is issued under authority of the MLA, as amended and supplemented (30 USC 185 *et seq.*) and the FLPMA (43 USC 1701 *et seq.*).
- 2) Amends TUP NVN-086450 issued in association with the Ruby Pipeline Project ROW authorizing the use of a Temporary Workspace. The amended TUP will encompass an area on federal lands (in addition to the permanent 50 foot ROW) that varies from 65 feet wide in shallow sloping areas to 145 feet wide on steeper slopes and encompasses approximately 59.6 acres (See Table 1 in Attachment A, this decision). The term of the TUP will be approximately 3 years with a right of renewal. This TUP is issued under authority of the MLA, as amended and supplemented (30 USC 185 *et seq.*) and the FLPMA (43 USC 1701 *et seq.*).
- 3) In accordance with Title 43 CFR Part 2800, Ruby has provided the BLM with the Final Winter Construction Plan (see Attachment B, dated November 2010, this decision) for inclusion in the final POD (as Appendix V). The Winter Construction Plan details how the pipeline and associated facilities will be constructed in compliance with ROW/TUP terms, conditions, and stipulations during winter weather

conditions. This amendment to the POD is approved and is incorporated in and made part of the original right-of-way and temporary use permit.

This decision only addresses the Summit Lake Route Variance and the inclusion of the Winter Construction Plan in the accepted POD. Unless specifically modified by this Decision, all other elements of the July 12, 2010 Record of Decision remain in full force and effect, including all stipulations, monitoring, and mitigation measures.

Selected Alternative

Summit Lake Route Variance

The original proposed route for the Ruby pipeline was analyzed in the Ruby Pipeline Project Final EIS published in January 2010. Section 4/10 of the Final EIS provides for ongoing Section 106 consultation with the tribes. It is through such consultation with the Summit Lake Tribe that the BLM Winnemucca District Office identified concerns regarding the location of the Project's route

An alternative route was developed to avoid direct impacts to the property. A DNA was prepared (see Attachment A, this decision) and it was concluded that the Summit Lake Route Variance conformed to the applicable land use plans and that the NEPA documentation referenced in the DNA fully covers the proposed action and constitutes BLM's compliance with the requirements of the NEPA. As per the terms of the Memorandum of Agreement to mitigate affects to cultural resources eligible for inclusion in the National Register of Historic Places, Ruby would continue to collect data to ascertain direct effect to cultural resources outside of the direct area of potential effect.

The DNA specifies that, should blasting be required in the excavation of the trench, Ruby would submit the blasting plan to the BLM Winnemucca District Office of the BM for approval by the District Manager. This plan would be submitted at least two business days before its intended implementation.

Additionally, Ruby has prepared a Groundwater Monitoring Work Plan (see Attachment A, Summit Lake Determination of NEPA Adequacy [DNA]) to monitor groundwater quality and yield for

The purpose of the monitoring is to assess whether water supplies have been affected by pipeline construction activities. With the Summit Lake Paiute Tribe's (Tribe) approval, Ruby or its assigned contractor will conduct groundwater monitoring on three separate occasions; once before construction, a second time within 30 days of the completion of construction in the area of the spring, and a final time one-year following completion of construction in the area of the spring. Execution of the groundwater monitoring plan is a voluntary action by Ruby; if the Tribe's conditions of approval are not reasonable or timely, the plan will not be executed.

Winter Construction Plan, Appendix V, Plan of Development, November 2010

To reduce construction impacts during winter weather conditions, Ruby will implement its project-specific Winter Construction Plan as required by BLM. The Winter Construction Plan, as reviewed by all BLM field offices and project cooperating agencies, is included as Appendix V of the revised POD.

Construction on the Ruby Pipeline Project began in late July 2010, with completion scheduled for March 2011. Based on the current schedule, most construction activities in Wyoming and Utah are anticipated to be completed by late January, 2011. Construction activities in Nevada and Oregon are not expected to be complete until the first quarter of 2011. As a result of the changes in schedule, Ruby submitted the Winter Construction Plan for consideration and inclusion in the POD. The purpose of the Winter Construction Plan is:

- To provide guidelines for addressing the special considerations and concerns associated with construction and reclamation efforts conducted during winter conditions;
- To describe the ROW stabilization, road maintenance and repairs, and temporary erosion control measures Ruby will implement before final cleanup and reclamation activities are completed in spring or early summer 2011; and
- To describe the monitoring program that Ruby will implement during the winter months to ensure that erosion control measures remain functional and effective until final reclamation activities are complete.

Pursuant to 516 Departmental Memorandum 11.9, effects of augmenting the POD with the Winter Construction Plan were considered using Categorical Exclusion (CX) E-13. E-13 is a BLM CE in the Realty category and applies to amendments to existing ROWs, such as the upgrading of existing facilities, which entail no additional disturbances outside the ROW boundary. No extraordinary circumstances as defined in 516 DM 2.2 apply to this CX and all questions of affect were answered in the negative. Consideration of effects is documented in the attached DOI-BLM-NV-W000-2011-0001-CX (Attachment D).

Finding of No New Significant Impact (FONNSI)

The environmental impacts of the Summit Lake Route Variance were considered based on the analysis of potential environmental impacts contained in the Ruby Pipeline Project Final EIS, January 2010, and the mitigation measures that were identified in the ROD, July 2010. The proposed action will result in no new environmental effects that meet the definition of significance as defined in 40 CFR 1508.27. With the continued application of those mitigations, stipulations and terms and conditions of the original ROW and TUP grants, as well any new stipulations indicated in this decision, I have determined that the action will not have any new significant effects on the human environment.

Appeal of this Decision

Section 313(b) of the Energy Policy Act (EPA) of 2005, which amended the NGA, grants the United States Court of Appeals original and exclusive jurisdiction to review Federal decisions to issue, condition, or deny a Federal authorization for any facility that will be constructed or operated subject to 15 U.S.C. § 717b or 15 U.S.C. 717f:

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.

This Decision is an order or action of a Federal agency issuing a permit, as that term is used in EPCA, 15 U.S.C. § 717r (d)(1), 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 will be constructed and operated pursuant to 15 U.S.C. § 717f. Accordingly, this Decision is appealable directly to an appropriate United States Court of Appeals in accordance with 15 U.S.C. § 717r and the Federal Rules of Appellate Procedure (FRAP).

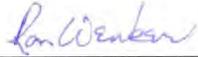
FRAP 4(a)(1)(B) states that in cases where “the United States or its officer or agency is a party, the notice of appeal may be filed by any party within sixty (60) days after the judgment or order appealed from is entered.” Similarly, the NGA requires that any party aggrieved by a FERC order on rehearing file a notice of appeal with the appropriate United States Court of Appeals within sixty (60) days, 15 U.S.C. § 717r (b). Thus, any notice of appeal of this Decision must be filed in an appropriate United States Court of Appeals within sixty (60) days of the date of this Decision.

Notification of this Decision

The following steps have been taken to notify the public of this decision:

1. Distributed a news release about the changes to the ROD to local and regional media;
2. Published the changes to the ROD on BLM and USFS web sites;
3. Provided a copy of the changes to the ROD to all who request it. Requests can be made to Mark Mackiewicz, BLM National Project Manager at mark_mackiewicz@blm.gov.

Approval Signatures



Ron Wenker
Nevada State Director
Bureau of Land Management



Date

Concurrence Letters for the following are provided in Attachment C, this Decision:
Bureau of Reclamation, Klamath Basin Area Office
Fremont-Winema National Forests
Uinta-Wasatch-Cache National Forest
Modoc National Forest
US Fish and Wildlife Service, Sheldon National Wildlife Refuge

Contact Person:
Mark A. Mackiewicz, PMP
Project Manager
Bureau of Land Management
Washington Office
125 South 600 West
Price, Utah 84501
(435) 636-3616