

***You Be the Judge***  
***6<sup>th</sup> Edition***  
**January 19, 2010**  
**By: *Tracie Lynn Thompson***

As promised in the 5<sup>th</sup> edition of *You Be the Judge*, answers have been received from the directors of the Ruby Pipeline Project. So let's get right to it, shall we?

Copied directly from email correspondence with permission from Richard Wheatley, Media Relations Manager, Ruby Pipeline, LLC.

All texts shown in red are statements from Richard Wheatley, Media Relations Manager, Ruby Pipeline, LLC.)

First, let me recap our position:

The proposed Ruby Pipeline — both in its planned construction and its future operation — is and would be entirely compatible with current wild horse and burro populations in and near the Project's geographic footprint, and El Paso Corporation and Ruby are committed to minimizing any impacts from the Project. That commitment includes wild horses and burros.

Ruby takes protection of wild horses and wild burros seriously, as evidenced by our willingness to develop and implement measures to mitigate potential impacts during construction of the pipeline, if we receive government approvals to construct the pipeline. **Ruby has never discussed or in any way advocated removal of horses or burros by the Bureau of Land Management (BLM) or any other entity.**

**Ruby has never participated in any effort to remove wild horses or burros from the Project area, and no one at Ruby has had any discussion with the BLM, or any other entity, concerning any such effort.**

Ruby continues to conduct outreach with stakeholders in developing and implementing mitigation that protects this valuable resource.

Specifically, Ruby is working with the BLM and the U.S. Forest Service to limit the impact of the pipeline on wild horse and wild burro habitat and grazing areas. Examples being considered are: removing salt licks that may be close to the right of way (ROW); relocating salt licks to locations away from the right of way; and identifying additional watering areas farther away from the pipeline ROW.

Additionally, Ruby has committed to working with the BLM to find ways to limit wild horse and wild burro grazing, as well as livestock grazing under grazing permits, on the construction right of way for three years following construction of the pipeline, if it is determined that their grazing is impacting reclamation success. The sole purpose of these temporary, grazing diversion efforts is "to" facilitate responsible habitat restoration and reclamation along Ruby's right of way.

Ruby's reclamation/restoration plan includes low-palatable plant species in the seed mix to discourage wild horse and burros, as well as livestock under grazing allotments, from grazing on the newly reseeded right of way.

Another possible option would be to install temporary fencing in Herd Management Areas (HMAs) to protect horse and burro populations during construction or during reclamation efforts, if it is determined that their grazing is impacting reclamation success. Any fencing option, however, would be coordinated with/in cooperation with Ruby, the landowner or land managing agency, and the respective state wildlife agency with oversight.

**(Also, FYI -- As I mentioned last week when we first spoke, our position was taken out of context when we replied to a FERC data request on September 14, 2009. The response re-stated our position on reclamation and revegetation of the area and what related steps were being contemplated with regard to wild horse and burro grazing and their protection in the area of the right of way of the pipeline. In the Ruby response, we also acknowledged the BLM's policy to reduce wild horse populations, per its policy, in appropriate management areas. Further, we stated we consulted BLM wild horse and burro specialists in developing our management approach (regarding reclamation/revegetation, etc.). Some special interest groups took the response out of context and used it against us to allege we advocated the removal program and discussed that with the BLM to benefit the Project, which **Ruby did not nor ever has.**)**

Hope this information provides the information to your satisfaction. Call or email if you need clarification or additional information.

Best Regards,

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"Ceiling and visibility unlimited."

The questions that I asked of the directors were in response to the answers received from Gene Seidlitz, BLM District Manager, Winnemucca, NV. (See *YBTJ 5<sup>th</sup> Edition.*) Mr. Seidlitz had referenced certain points of the Ruby Pipeline Project Final EIS as part of his answers. The points and the questions with their answers in red are as follows:

In the EIS for Ruby, [Mr. Seidlitz] cited the *Conservation Measures*. The following are questions specific to those measures listed.

a. "Minimize the time the trench is open to decrease the potential of wild horse and burro entrapment."

1. Is there a way to cover the trench without impeding the movements of the wildlife so as to completely eliminate wild horse and burro entrapment? (i.e. fencing over the trench only, not across the land)

This is the pipeline construction sequence:

- Existing fences crossed by the Project will be braced and cut and temporary gates installed to keep livestock within their designated allotments;
- Right of Way (ROW) is prepared by grading the ROW to allow for the heavy and large construction equipment to safely work;
- The ditch line is excavated, crossovers (i.e. the existing earthen material that will be left in place and will be excavated immediately prior to laying the pipeline; also known as "ditch plugs") are left in place to allow for livestock, wildlife and vehicles to pass from one side of the ditch line to the other. Crossovers are installed at a maximum of every 2,500 feet or closer depending on livestock, wildlife and access requirements. Escape ramps are provided at each crossover to provide an location for livestock and wildlife to exit the ditch line
  - The open ditch line is inspected daily and often times frequently during the day by pipeline inspectors and environmental inspectors, if any livestock or wildlife are trapped in the ditch line immediate action will be taken, as needed the appropriate wildlife management agency will be notified to provide help, support or recommendations.

- The pipe is laid along the ditch line, bent to fit the cut of the ditch, welded and then lowered into the ditch; and
- After the pipe is lowered into the ditch the ditch is backfilled and then the surface is re-contoured and re-seeded.

As additional precautions, specifically for horse and burro protection and in an effort to keep them at safe distances, Ruby is working with the BLM and U.S. Forest Service to limit the impact of the pipeline on wild horse and wild burro habitat and grazing areas by the following:

- Removing any salt licks that may be close to the pipeline right of way;
- Relocating salt licks to locations away from the right of way; and
- Identifying additional watering areas farther away from the pipeline right of way to encourage horses and burros to remain clear of the work during construction.

Additionally, Ruby has committed to working with the BLM to find ways to limit wild horse and wild burro grazing, as well as livestock grazing under grazing permits, on the construction right of way for three years following construction of the pipeline, if it is determined that their grazing is impacting reclamation success.

The sole purpose of these temporary, grazing diversion efforts is facilitate responsible habitat restoration and reclamation along Ruby's right of way and, at the same time, protect habitat. This does not include participation or support for any physical removal of horses or burros.

For example, Ruby's reclamation/restoration plan includes low-palatable plant species in the seed mix we will use in the area. We want to discourage wild horse and burros, as well as livestock under grazing allotments, from grazing on the newly reseeded right of way.

Another possible option would be to install temporary fencing in Herd Management Areas (HMAs) to protect horse and burro populations during construction or during reclamation efforts, if it is determined that their grazing is, in fact, impacting reclamation success. Any fencing option will be coordinated and in cooperation between Ruby, the landowner or land managing agency and the respective State wildlife agency.

2. What measures will be taken to ensure that if a wild horse or burro *does* become entrapped that he will not remain so for unknown periods of time?

The route of the pipeline right of way will be monitored by pipeline personnel during the time that a segment of trench is open. The measures described above will assist in keeping wild horses and burros at safe distances.

Ruby will work to minimize the amount of time that a trench is open to decrease the potential for entrapment. The length of time a trench is open depends on the geographic area, type of soil (rock, sand, etc.) and weather. Ruby will

comply with the conditions in the permits it receives for the project and with regulations that apply in the states that it will cross.

Exit ramps would be installed along the trench line every 0.5 miles within HMAs to facilitate an escape path for animals that might enter a trench

In an instance where a wild horse or burro is injured because of any of the work relating to the Ruby project, or if an animal is seen to be injured or incapacitated for other reasons, personnel will notify the State Wildlife Agency and/or the Bureau of Land Management immediately, as required by law, and assist the agency and its representatives to render aid as directed by the agency in accordance with federal regulations for wild horse and burro protection.

**b.** “Leave the major horse trails across trench intact as long as possible to minimize loss of movement to habitat.”

**1.** Referencing question (a.)(1.) above, by what means physically will these trails be left intact?

Ruby will leave plugs at such locations to facilitate continued use of the trail until immediately before installation of the pipe. Once the pipe is installed, the trench will be back filled and the trail re-established.

**2.** How long is “as long as possible”?

Ruby will leave plugs at such locations to facilitate continued use of the trail until **immediately** before installation of the pipe. Once the pipe is installed, the trench will be back filled and the trail re-established.

**3.** What factors contribute to the time they are left intact?

Ruby will work to minimize the amount of time that a trench is open to decrease the potential for entrapment. The length of time a trench is open depends on the geographic area, type of soil (rock, sand, etc.) and weather. Ruby will comply with the conditions in the permits it receives for the project and with regulations that apply in the states that it will cross.

**c.** “Be sure to close the fence gaps to restrict movement outside of the HMA.”

**1.** What is the purpose of the fencing referenced in this statement?

This refers to the fencing already in existence along the project. Temporary gates are installed at these fences as construction progresses. As construction and reclamation are completed, fences are re-established or a permanent gate is installed.

**2.** Is this normal procedure when a pipeline is placed through an HMA?

This is a best practice for protection of wild horses and burros.

**d.** “Install crossovers at existing fences within the grazing allotments.”

**1.** What sort of “crossovers” will be used? i.e. traditional cattle guards?

Specifically at locations where the pipeline crosses an existing fence line is a location where livestock and wildlife trails occur, Ruby has committed to leaving crossovers at fence lines so livestock or wildlife trails will remain useable until immediately prior to installing the pipeline in the ground.

**2.** If so, what measures will be taken to prevent wild horse and burro entrapment between the bars of said crossovers?

The referenced crossovers are the existing earthen material that will be left in place and will be excavated immediately prior to laying the pipeline in the ditch.

**e.** “Ensure that workers and other site personnel are educated regarding the federal protection of wild horse and burros and are aware of the penalties associated with harassment of wild horses and burros.”

Workers will be trained in regulations relating to the protection and welfare of wild horses and burros, in addition to training they receive on safety and other matters relating to the construction process. They will be warned about penalties associated with violations of the Wild-Free Roaming Horse and Burro Act of 1971 and other regulations pertaining to wildlife and habitat protection and ecological protection.

**1.** Will the enforcement of this measure be a joint venture between BLM and Ruby? If not, please explain.

Enforcement will be a joint effort between Ruby and appropriate agencies and infractions will not be tolerated. Apparent violations will be first investigated by Ruby and reported, as required by state and federal regulations. Ruby will contract with a team of professional environmental inspectors, whose responsibility is to monitor construction activities for compliance with all project requirements, including those associated with the Roaming Horse and Burro Act.

**2.** Within Ruby’s policies, are there employment specific penalties for violation of these policies?

Yes. Willful violations can result in immediate termination.

**f.** “Post warning signs on access roads in areas known to have wild horses and burros to warn Ruby construction workers and to help minimize the risk of accidental vehicle/animal collisions.”

**1.** Same questions as (e.).

Warning signage will be posted on access roads and in areas known to have wild horse and burro populations.

**g.** What comment can you make regarding the logistical and location data of Ruby vs. the existing HMA’s its route intersects?

Ruby’s right of way, as proposed, has been planned to mitigate and minimize adverse effects on HMAs, as well as the effects on the environment, sensitive areas, threatened and endangered species, wilderness management areas, cultural resource areas, agricultural resources, wildlife and big game areas, small game areas, water bodies, and other areas identified and stipulated in the Final Environmental Impact Statement.

Ruby's proposed route crosses five HMAs south and west of the Sheldon National Wildlife Refuge in Humboldt and Washoe counties of Nevada. The five HMAs crossed by the project comprise approximately 35 total miles of HMA land in contrast to the entire area of 298,500 acres for the five HMAs.

These same questions have also been sent to personnel in the BLM, but at the time of this writing, there have been no responses. Obviously, most of the questions would have to be answered by someone like Mr. Wheatley as he is privy to the resources required for adequate explanation. However, the last question is one I would still like hear from the BLM about.

There have been many allegations about the gather schedules and which HMA's they pertain to vs. the proposed routes of the Ruby Pipeline Project. Such allegations state that the reasoning behind the scheduled gathers taking place in *those* HMA's is directly related to the proposed routes, suggesting that the herd reductions and/or removals would not otherwise take place.

As Mr. Wheatley has described in his responses above, there have also been allegations by certain advocacy groups that these reductions and/or removals were in fact *endorsed* and *advocated* by Ruby based on documents and correspondence from within the corporation. (See "*Ruby Pipeline: The Smoking Gun Behind Recent Roundups?*" and "*Crunching Calico*")

Mr. Wheatley has informed me that there will be a meeting held on Thursday, January 21, 2010 in Colorado Springs, CO between The Cloud Foundation and directors from the Land and Environmental Departments of Ruby Pipeline, LLC. The topics of discussion will be the aforementioned reports and the questions above. As soon as information and results from this meeting are released, I will post to the Mustang Project's Blog.

As we continue into the depths on this ongoing saga, it appears that there will never be enough answers to all of the resounding questions that plague this issue. Along with this bottomless pit of unanswered questions, there is the ever present fear of who to trust, and who *not* to trust. It is definitely a perfect conundrum. Consequently, there will be more sleepless nights with take-out Chinese food and research for this author.

However, if the end result is an informed public whose cries for better management options for the Wild Horses and Burros echo across the United States, then *Hot Wok* will have to just keep on cookin' my pepper steak and shrimp fried rice! Until next time my friends, I wish you all sweet dreams *not* filled with antacids!

Of course, as always, stay safe... And never give up!

Thank you,

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★The Mustang Project's Blog★  
★Working for Better Management Options and Cohabitation★  
★Through Compromise and Communication for the American Wild Mustang★

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