

## **Appendix C. Appropriateness Finding.**

## FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: **Sheldon National Wildlife Refuge, Nevada**

Use: **Ruby Pipeline - Temporary Road Access, Road Improvements, and Road Rerouting**

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision criteria:	YES	NO
(a) Do we have jurisdiction over the use?	X	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	X	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	X	
(d) Is the use consistent with public safety?	X	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	X	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	X	
(g) Is the use manageable within available budget and staff?	X	
(h) Will this be manageable in the future within existing resources?	X	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	X	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	X	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes \_\_\_ No X

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate

Appropriate X

Refuge Manager: Paul F. Steblein (Paul F. Steblein)

Date: 7/9/10

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use. If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence. If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor: Robin West (Robin West)

Date: 7/12/10

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319  
02/06

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### **Justification for “Appropriate” finding.**

A public use, may be allowed on a national wildlife refuge when it is determined compatible, that is, when it is determined that the use would not materially interfere with or detract from the purposes for which the refuge was established or the mission of the National Wildlife Refuge System (NWRS or Refuge System; National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd-668ee and Compatibility policy, 603 FW 2). Prior to being evaluated for compatibility, Service policy requires a use to first be found “appropriate” (Appropriate Refuge Uses policy, 603 FW 1). Following are responses to each of the 10 specific criteria that must be addressed in an appropriateness finding for the proposal by Ruby Pipeline L.L.C. (Ruby) to use, improve, and reroute roads and routes on Sheldon National Wildlife Refuge (NWR or Refuge).

The proposed use evaluated herein for appropriateness is more fully described and evaluated in the compatibility determination for this use and the documents referenced in that compatibility determination.

**Criterion (a) Do we have jurisdiction over the use?** - The area proposed for this use includes the following roads and neighboring lands within Sheldon NWR:

- Nevada State Highway 140 (Ruby requested use of this road; commercial traffic on SH140 is regulated by Nevada Department of Transportation but is included for comprehensive listing of transportation needs),
- Washoe/Humboldt County Road 8A/Cedarville Road,
- An un-named route in the south-west corner of the Refuge (Ruby-labeled road W-1),
- Washoe/Humboldt County Badger Mountain Road/Summit Lake Road (Ruby road H-46B),
- An un-named route along the Refuge’s south-central boundary (Ruby road H-50),
- An un-named route along the Refuge’s south-central boundary (Ruby road H-46A), and
- Humboldt County Knott Creek Road/Summit Lake Road (Ruby road H-46).

Ruby has also requested incidental use of Road 34A. This appropriateness finding assumes that that use would be for emergencies only and that no changes would be made to the road or the immediately surrounding area.

The U.S. Fish and Wildlife Service (USFWS or Service) owns and administers Sheldon NWR (see “Establishing and Acquisition Authority(ies),” and “Refuge Purposes” sections of the compatibility determination). The Service has full jurisdiction over all roads and routes of travel (including two-tracks) across the Refuge with the exception of Highway 140, for which the Nevada Department of Highways has rights-of-way granting it authority to construct and operate the road for highway purposes. As a result of property ownership and consistent with Title 50 of the Code of Federal Regulations, the Service has jurisdiction over all public uses on the Refuge.

**Criterion (b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?** - Except in limited circumstances that do not apply here, the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) requires that, prior to initiating an action, a Federal agency must identify and evaluate the effects of the proposed action and alternatives to that action. This requirement was satisfied for this proposed use by the Federal

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Energy Regulatory Commission's final EIS on the Ruby Pipeline Project (Jan 2010). If the Service decides to authorize this use, a separate record of decision will be developed.

As noted earlier, the NWRS Administration Act requires that public uses first be determined compatible before they are allowed on a refuge (16 U.S.C. 668dd-668ee). In compliance with these Acts, the Service has prepared a Record of Decision and Compatibility Determination with this Appropriateness Finding on this Federal Action .

Where the use would involve developing refuge lands, graveling areas, disturbing the soil, displacing vegetation, or changing the refuge's natural biological or ecological functions or aesthetic values, the use would qualify as an economic use (*May we allow economic uses on national wildlife refuges?* Kurth, Apr 2005, and 50 C.F.R. 29.1). Ruby has proposed a number of changes to Refuge roads and adjacent lands in support of their access to and construction of the proposed off-Refuge Pipeline (FERC, Jan 2010). This includes the construction of numerous pullouts, mowing of vegetation at blind corners, laying down and compacting road base, blading, graveling, matting of a dry wash and spring, matting and bridging of culverts, and rerouting a section of road. Therefore, this proposal qualifies as an economic use of Sheldon NWR. To be authorized on a refuge, an economic use must be determined compatible and must also be determined to contribute to achievement of refuge purposes or the Refuge System mission (see attached).

Construction of road changes and increased use of Refuge roads would adversely affect the Refuge's biological resources over a 6-month period; however, in association with authorization of this use, Ruby would be required to undertake a variety of projects benefitting the Refuge's natural resources. These include control of roadside invasive plants; repair and maintenance of the southern boundary fence and gates to minimize crossing by cattle, or feral/wild horses and burros; posting of the southern Refuge boundary; rerouting a road segment that currently crosses a spring-fed, perennial stream and runs adjacent to a research enclosure; and restoration of roadside habitats, including replanting natives in areas currently invaded by exotic plants.

Ruby has proposed a number of changes to the Refuge's roads and routes, including laying down and compacting road base, blading, graveling, matting of a dry wash and spring, matting and bridging of culverts, and rerouting a section of road. These changes would enhance driver safety and improve access on these roads during times of the year when road conditions currently challenge travel. These changes would facilitate access to and management of Sheldon NWR by Refuge officials, Refuge-authorized agents, and researchers and thereby directly and indirectly contribute to achievement of Refuge purposes, goal, objectives, and the Refuge System mission. Additionally, these road improvements would facilitate access to and use of the Refuge by visitors, including the Refuge's highest priority general public users (i.e., hunters, anglers, wildlife observers, and photographers).

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In aggregate, these several actions would generate minor adverse effects and modest beneficial effects. On net, the proposed use would contribute to achievement of the Refuge's purposes and the Refuge System mission.

The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181-263) and implementing regulations (43 C.F.R. 2880) charge BLM to serve as the lead Federal agency for coordination among other Federal land-management agencies regarding the issuance of rights-of-way for projects such as Ruby's proposed natural gas Pipeline. BLM would also grant any required rights-of-way. The FERC-certificated route for the Ruby Pipeline would not cross Sheldon NWR. Yet because of the close proximity of the route to Sheldon NWR's southern boundary, Ruby has requested access to the Pipeline through the Refuge. The uses identified in this action (use of refuge roads) would be temporary and would not require an interest in real property; therefore, granting Ruby access to the Pipeline through Sheldon NWR would not require issuance of a right-of-way. The Mineral Leasing Act states, in part, that, "A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety." Therefore, as discussed further below, the Service would use a permit as the authorizing document for Ruby's temporary use of Refuge roads and associated activities. However, in a connected action to Ruby's permitted road use, a land exchange is being completed subject to applicable laws regulations.

**Criterion (c) Is the use consistent with applicable Executive orders and Department and Service policies?** - As noted above, Service policy requires that public uses, including economic uses, be found appropriate and determined compatible prior to being authorized on a refuge. The requirement for an appropriateness finding is satisfied by this document and, in light of the positive appropriateness finding, the Service will develop a separate compatibility determination for this proposed use.

As noted above, the FERC-certificated route for the Ruby Pipeline would not cross Sheldon NWR and would not require issuance of a right-of-way. Instead, Ruby's proposal is for temporary use of Refuge roads. Relevant Service policy states, in part, that, "...short term and temporary use of an existing road...can best be accommodated through special use permits" (Rights-of-Way and Road Closings, 340 FW 3).

Service policy also requires that a specialized use of a refuge, including an economic use like that proposed by Ruby, be authorized through issuance of a permit or equivalent legal document (Administration of Specialized Uses, 5 RM 17). After appropriateness, compatibility, and other compliance requirements were satisfied (e.g., those associated with the NEPA; National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; and Endangered Species Act of 1973, as amended [16 U.S.C. 1531-1544]); and if the Service decided to allow the proposed use, it would be authorized with a special-use permit.

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Service public-use policy requires that public safety be a key element in refuge visitor-services programs (General Guidelines for Wildlife-Dependent Recreation, 605 FW 1). Effects of the proposed use on public safety are addressed immediately below.

**Criterion (d) Is the use consistent with public safety?** - Ruby's proposed use would involve a substantial increase in the number and size of vehicles using Refuge roads, including windy and narrow, less-traveled roads in the more-remote areas of Sheldon NWR. Ruby's proposed road improvements listed above would enhance the safety of affected Refuge roads for all users. In addition, as a condition of their authorization, Ruby would be required to implement a traffic management program during their use of the Refuge. This program would be designed to ensure that conflicts and safety hazards associated with Ruby's vehicles and associated activities were minimized for others using these roads, including Refuge visitors. This plan would address use of cautionary road signs; flaggers; at least one, on-the-ground, traffic-safety manager; and other appropriate roadway safety measures. These requirements are in addition to the many proposals Ruby has already made to enhance safe use of the Refuge roads (e.g., speed limits, scheduled one-way traffic, pullouts or roadside mowing, and mowing at blind corners). As a result of these several measures, the proposed use would be consistent with public safety.

**Criterion (e) Is the use consistent with goals and objectives in an approved management plan or other document?** - In 1980, the Service issued the Sheldon National Wildlife Refuge Renewable Natural Resources Management Plan to guide long-term management of the Refuge's fish, wildlife, plants, and their habitats (USFWS, Aug 1980). That Plan included the following goal, "...to manage Sheldon as a representative area of high-desert habitat for optimum populations of native plants and wildlife." Ruby's proposed changes to and use of Refuge roads to access the Pipeline would displace less than one acre of habitat; temporarily increase disturbance to Refuge wildlife; and temporarily conflict with access to and use of the Refuge by visitors, Refuge officials, and others. Following Pipeline construction, the road improvements that the Service chose to retain would be permanent. These improvements would make the roads safer and easier to travel more times during the year and thereby facilitate management of Sheldon NWR by Refuge officials, Refuge-authorized agents, and researchers. Together with the compatibility stipulations, this proposed use would both minimally contribute to and minimally detract from achievement of Sheldon NWR's goal.

In 2008, the Service issued the revised, final Environmental Assessment [EA] for Horse and Burro Management at Sheldon National Wildlife Refuge (USFWS, Apr 2008). That EA established the following objectives for the Refuge's interim program to manage feral horses and burros: prevent an increase in damage to valuable and sensitive Refuge habitats, including riparian areas and areas which have experienced recent wildfires; prevent an increase in collisions with vehicles on Highway 140; and conduct gathers and adoptions in a humane manner. Ruby's proposed use of Refuge roads and related activities would result in an increase in vehicle use, including use of large and heavy vehicles, on Refuge roads and thereby increase the potential for collisions with feral horses and burros. Additionally, Ruby's use would increase the potential for gates to inadvertently be left open or for damage to occur to fences, gates, or cattle guards. These fences, gates, and guards serve as important barriers keeping domestic cattle and feral/wild horses and burros from trespassing onto the Refuge.

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Compatibility stipulations would require that Ruby: brief all Pipeline construction workers about the need to exercise care and caution while on the Refuge to minimize the likelihood that feral/wild horses and burros were inadvertently allowed onto the Refuge; manage traffic to maintain safe speeds on Refuge roads; inspect, sign, and maintain more than 30 miles of the Refuge's southern boundary fence; repair, replace, or pay the Service for the cost of repair or replacement of any damaged/destroyed fences, gates, or guards; and, if it was determined that feral/wild horses or burros trespassed onto the Refuge in association with Ruby's use, pay the Service for the cost of rounding up and removing the trespass animals. These compatibility stipulations would help ensure that Ruby's proposed use did not conflict with Refuge management objectives for feral horses and burros.

**Criterion (f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?** - This is the first time this use has been proposed on the Refuge. It has not been denied in an earlier analysis.

**Criterion (g) Is the use manageable within available budget and staff?** - The Refuge's current budget and staff are inadequate to administer this proposed use and also manage high-priority Refuge programs. Ruby has already reimbursed the Service for some costs related to the Pipeline Project and, since March 2009, has also paid for consultants (acceptable to the Service) to conduct other work associated with the Ruby Pipeline Project, including Ruby's proposed access through the Refuge. Compatibility stipulations would require that Ruby reimburse the Service for all of the Service's costs (including overhead costs) associated with consideration and administration of the Pipeline Project and road-use proposal. This includes the costs for inspection, monitoring, and law enforcement. This could occur directly (i.e., Ruby could pay the Service to perform the work) or indirectly (e.g., Ruby could contract with an independent third party - which was acceptable to the Service - to conduct the work). This work is described and the costs are estimated in the "Availability of Resources" section of the compatibility determination. With these stipulations, this use would be manageable within available budget and staff.

**Criterion (h) Will this be manageable in the future within existing resources?** - For the reasons cited immediately above, it is expected that Ruby's proposed use would also be manageable in the future within existing resources.

**Criterion (i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?** - As noted earlier, Ruby has proposed a number of changes to the Refuge's roads and routes, including laying down and compacting road base, blading, graveling, matting of a dry wash and spring, matting and bridging of culverts, and rerouting a section of road. These changes would enhance driver safety and improve access on these roads during times of the year when road conditions currently challenge travel. These changes would facilitate access to and management of Sheldon NWR by Refuge officials, Refuge-authorized agents, and researchers and thereby directly and indirectly contribute to achievement of Refuge purposes, goal, objectives, and the Refuge System mission. Additionally, these road improvements would facilitate access to and use of the Refuge by visitors, including the Refuge's highest priority general public users (i.e., hunters, anglers, wildlife observers, and photographers). Improved

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access to the Refuge could facilitate enhanced understanding or appreciation of the Refuge's natural or cultural resources by the visiting public.

In association with authorization of this use, Ruby would be required to undertake a variety of projects benefitting the Refuge's natural resources. These include control of roadside invasive plants; repair and maintenance of the southern boundary fence and gates to minimize crossing by cattle, or feral/wild horses and burros; posting of the southern Refuge boundary; rerouting a road segment that currently crosses a spring-fed, perennial stream and runs adjacent to a research enclosure; and restoration of roadside habitats, including replanting natives in areas currently invaded by exotic plants. In aggregate, these actions would generate positive benefits to Refuge habitats and biota near roads in the southwest and southern areas of the Refuge. Therefore, Ruby's proposed use could be beneficial to the Refuge's natural resources.

**Criterion (j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?** - During the 6-month period from July through December 2010 when the Pipeline would be under construction south of the Refuge, there would be a significant increase in traffic, including large and heavy vehicles, on Refuge roads. This traffic could conflict with and generate safety hazards for Refuge visitors. Specific compatibility stipulations have been developed to address these concerns. Ruby would be required to do the following: brief all Pipeline construction workers who would access the Refuge about the special status of these lands and their priority management for wildlife-dependent recreation, and the need to exercise care and caution to minimize the potential for impacts to Refuge visitors; implement a traffic management plan, including cautionary road signs and flaggers; and pay for an on-the-ground traffic safety manager and law enforcement officer. These requirements are in addition to the many proposals Ruby has already made to enhance safe use of the Refuge roads (e.g., speed limits, scheduled one-way traffic, pullouts, and mowing at blind corners). These requirements would be expected to significantly reduce potential effects of this unusual traffic on wildlife-dependent visitors to the Refuge. As discussed above, Ruby's proposed changes to the Refuge's roads would facilitate safe access and use in the future by all travelers, including individuals visiting the Refuge to participate in wildlife-dependent recreation.

It has been suggested that some of the Pipeline's construction workers might wish to camp at the Refuge. With one exception (the Virgin Valley Campground), the Refuge's campgrounds would be unable to accommodate such use without unacceptable environmental impacts and conflicts with wildlife-dependent campers. Ruby has proposed the construction of a large, full-service, temporary construction-workers camp near Vya, Nevada, approximately 20 miles from where the proposed Pipeline would pass near Sheldon's southwest corner. Therefore, there should be no reason to allow Pipeline workers to camp overnight on the Refuge. The one exception to this stipulation could involve camping at Virgin Valley Campground which is developed, easily accessible, and provides potable water, restrooms, and tables. If Ruby made a specific request and provided a strong rationale, the Service could consider allowing a prescribed number of workers to use the Virgin Valley Campground. Use by Pipeline construction workers would be limited to reduce potential conflicts with other Refuge visitors and, as an economic use, would only be authorized through issuance of a special use permit.