



## ENDANGERED SPECIES:

### Appeals court orders new study on gas pipeline's impacts

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A federal appeals court has ruled that the Fish and Wildlife Service must take another look at the potential impact on endangered species of a 678-mile natural gas pipeline.

The 9th U.S. Circuit Court of Appeals held in a ruling yesterday that the service needs to issue a new biological opinion after finding that the original study did not take into account various factors.

Kinder Morgan Inc.'s Ruby pipeline stretches from Wyoming to Oregon. The court said the fact the pipeline is already up and running is irrelevant, as it would still be possible to mitigate the line's environmental impact.

The Center for Biological Diversity, Defenders of Wildlife and Summit Lake Paiute Tribe had raised claims under the Endangered Species Act in relation to several species of fish.

The three-judge panel agreed that the biological opinion was flawed on two counts: Its finding that there would be "no jeopardy" incorrectly relied on a conservation plan that could not be enforced under the Endangered Species Act, and it did not take into account the fact that 337.8 million gallons of groundwater would be withdrawn from 64 wells along the pipeline.

On the conservation plan question -- the "central argument" made by the challengers, according to the court -- Judge Marsha Berzon agreed that it was not appropriate for FWS to rely upon it in reaching its conclusions because "a conservation agreement entered into by the action agency to mitigate the impact of a contemplated action on listed species must be enforceable" under the Endangered Species Act to factor into FWS's biological opinion analysis.

A Kinder Morgan spokesman said the company is reviewing the ruling. The pipeline "is continuing to transport gas and remains in operation," he added.

Washington attorney Eric Glitzenstein, who argued the case on behalf of the challengers, said the ruling "reaffirms a principle that is vital to the proper functioning" of the Endangered Species Act.