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STATE OF NEW MEXICO
DEPARTMENT OF WILDLIFE

One Wildlife Way, Santa Fe, NM 87507

Tel: (505) 476-8000 | Fax: (505) 476-8180

For information call: (888) 248-6866

https://wildlife.dgf.nm.gov

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3 August 2026

Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission (FERC)
12225 Wilkins Avenue
Rockville, MD 20852

RE: Desert Southwest Expansion Pipeline Project, Transwestern Pipeline Company, LLC. FERC Docket No. PF26-9-000. NMDOW No. NMERT-6261.

Dear Ms. Reese,

The New Mexico Department of Wildlife (Department) has reviewed the Desert Southwest Expansion Pipeline Project and appreciates the opportunity to participate in the initial scoping process required by the National Environmental Policy Act (NEPA). Transwestern Pipeline Company, LLC (Transwestern) is proposing to expand its existing pipeline system by constructing and operating a 48-inch diameter mainline pipeline, lateral pipelines, compressor stations, meter stations, and other above-ground facilities in Arizona, New Mexico, and Texas. The Department provides the following comments and recommendations to minimize potential impacts to wildlife during pipeline construction activities.

All migratory birds are protected against direct take under the federal Migratory Bird Treaty Act (16 U.S.C. Sections 703-712), and hawks, falcons, vultures, owls, songbirds, and other insect-eating birds are protected under New Mexico State Statutes (17-2-13 and 17-2-14 NMSA), unless permitted by the applicable regulatory agency. To minimize the likelihood of adverse impacts to migratory birds, nests, eggs, or nestlings, the Department recommends that ground disturbance and vegetation removal activities be conducted outside of the primary migratory bird breeding season of April 15-September 1. Breeding season may begin earlier for raptors or when working in low-elevation habitats such as deserts. If ground-disturbing and clearing activities must be conducted during the breeding season, the area should be surveyed for active nest sites (with birds or eggs present in the nesting territory) and avoid disturbing active nests until young have fledged. For active nests, establish adequate buffer zones to minimize disturbance to nesting birds. Buffer distances should be at least 100 feet from songbird and raven nests; 0.25 miles from most raptor nests; and 0.5 miles for ferruginous hawk (*Buteo regalis*), golden eagle (*Aquila chrysaetos canadensis*), peregrine falcon (*Falco peregrinus*), and prairie falcon (*Falco mexicanus*) nests. Active nest sites in trees or shrubs that must be removed should be mitigated by qualified, permitted biologists or wildlife rehabilitators. Department biologists are available to consult on nest site mitigation and can facilitate contact with qualified personnel. Removal of active nests of state-protected species may require a scientific collection permit; contact the Department's Wildlife Permits Manager

at dgf.permits@dgf.nm.gov for more information. The Wild Take Unit at the USFWS, which issues take and relocation permits for migratory birds, can be reached at MBPermits_take@fws.gov.

The list of New Mexico Species of Greatest Conservation Need (SGCN) (see link, page 18, table 5) and the federal list of Birds of Conservation Concern should be reviewed to fully evaluate potential effects to migratory birds from your proposed project. Federal agencies are also required under Executive Order 13186 to implement standards and practices that lessen the amount of unintentional take attributable to agency actions. These conservation measures are strongly recommended to ensure persistence of migratory bird species whose populations are small and/or declining within New Mexico.

Please also consider impacts to pollinating insects from the removal of flowering plants and ground-disturbing activities. If possible, avoid removing flowering plants when bees and other insect pollinators are most actively foraging (March-October), including early flowering native tree and shrub species. Also avoid any observed bumble bee (*Bombus* spp.) nest sites using a buffer of at least 30 feet. Implement measures to prevent the spread of noxious weeds and invasive plants, including removing dirt, debris, and plant parts from equipment before bringing it on site.

Open trenches excavated for underground oil and gas pipelines, powerlines, and other underground infrastructure can unintentionally entrap and cause the unnecessary mortality of amphibians, reptiles, and small mammals, can cause injury to large mammals, and can damage underground bee nests. Trapped animals can die from exposure, starvation, crushing from pipe-laying, entombment from trenching backfilling, drowning, and predation. This unnecessary wildlife mortality can be avoided by implementing conservation measures, including concurrent trenching, pipe-laying, and backfilling operations to minimize the amount of trench left open overnight or longer; construction of escape ramps; and employing biological monitors to remove trapped animals. Periods of highest activity for amphibians and reptiles vulnerable to entrapment include summer months and wet weather, and they can be active both day and night. Small mammals subject to entrapment are active yearround and generally most active at night. Conducting pre-trenching wildlife surveys, especially for bumble bee (*Bombus* spp.) nests, which may occur in abandoned rodent holes and other cavities and be present yearround, and active burrows, can aid in avoiding nest and burrow destruction. The Bumble Bee Nest Quest project provides some information on what to look for when searching for bumble bee nests.

Implementing the general trenching conservation measures outlined in the Department's *Trenching Project Guidelines* will help minimize unnecessary mortality of wildlife. Best management practices should include, at minimum, the following mitigation measures.

- Whenever possible, locate trenching activities within previously disturbed areas, such as existing road or pipeline right-of-ways. To the extent possible, avoid trenching in undisturbed habitat.
- Trench during the cooler months (October – March).
- Utilize concurrent trenching, pipe- or cable-laying, and backfilling. Keep trenching, pipe- or cable-laying, and backfilling crews as close together as possible to minimize the amount of open trench at any given time. When trenching activities are temporarily halted (e.g., overnight, weekends, holidays, weather shutdowns), protect wildlife from accessing any open trench between digging and backfilling operations by using one or more of the methods described below.
- Avoid leaving trenches open overnight. When trenches cannot be backfilled immediately, escape ramps should be constructed at least every 90 meters and preferably 30 meters.

Escape ramps can be constructed parallel or perpendicular to the existing trench. The escape ramp slope should be less than 45 degrees (1:1). If pipe or cable has been installed but backfilling has not occurred, escape ramps may need to be constructed on both sides of the trench, since, unless the pipe is elevated enough to allow animals to move underneath it, the pipe or cable may block access of amphibians, reptiles, and small mammals to the ramps if only constructed on one side.

- Trenches that have been left open overnight should be inspected the following day by a qualified, permitted biological monitor and trapped animals removed as soon as possible, especially where state- or federally listed threatened or endangered amphibians, reptiles, or small mammals occur. Untrained personnel should not attempt to remove trapped wildlife because of the potential to injure animals and the possibility of injury from venomous snakes. Required tools for removal will include snake tongs for removing snakes and a dip net for capturing and removing amphibians and small mammals. Many animals trapped in a trench will burrow under loose soil. To the extent possible, the biological monitor should disturb loose soil in the trench to uncover and remove trapped animals. Animals should be relocated at least 50 meters away from the open trench in undisturbed habitat. Capture and relocation of all state-protected animals, and even of unprotected animals using a dip net, may require a scientific collection permit; contact the Department's Wildlife Permits Manager at dgf.permits@dgf.nm.gov for more information.
- When pipe has been laid in the trench, end caps should be placed on the open end(s) of the pipe to preclude animals from entering. Pipe staged outside the trench should be capped until placed in the trench or checked for wildlife before being placed into the trench.
- Most wildlife can be protected by constructing silt fence completely around the open trench. Silt fence should be supported from sagging by t-posts, rebar, or stakes and buried at the base to preclude animals from moving below the fence. If construction of a silt fence is a required best management practice for erosion control, then, to preclude the need for a biological monitor, escape ramps, and concurrent backfilling, the guidelines for silt fence installation and maintenance in the *Trenching Project Guidelines* should be followed.

The Department assumes (and recommends) employing standard horizontal directional-drilling techniques for installing the pipeline under the Rio Grande. The pipeline should pass under the riverbed at sufficient depth so that the pipeline is not at risk of being exposed due to riverbed scouring from severe flood events. The drilling area footprint, including pipeline entrance and exit holes, should be located so that riparian vegetation is left undisturbed. The drilling site should also be set back far enough from the river so that site-specific best management practices can be implemented to prevent any potential inadvertent release of drilling fluids into the river. Because riparian areas are important wildlife habitats, the project footprint should avoid removing any riparian vegetation or creating ground disturbance either directly within or affecting the riparian area, unless the project is intended to restore riparian habitat through non-native plant removal and replanting with native species. If your project involves removal of non-native riparian trees or planting of native riparian vegetation, please refer to the Department's project guidelines for *Habitat Restoration and Management of Native and Non-native Trees in Southwestern Riparian Ecosystems*. In addition to these guidelines, consider planting a diversity of flowering native plants, including shrubs, and plants that provide bee nesting sites including pithy or hollow-stemmed species. The New Mexico Riparian Habitat Map (NMRipMap) may also provide useful information on local riparian habitat composition and structure.

The Department recommends that Transwestern contact Erika Rowe (Erika.Rowe@emnrd.nm.gov) at the New Mexico Endangered Plant Program of the Energy,

Minerals, and Natural Resources Department regarding potential presence and conservation needs for state-listed plants. The state endangered plants Sneed's pincushion cactus (*Escobaria sneedii var. sneedii*), sand prickly-pear cactus (*Opuntia arenaria*), night-blooming cereus (*Peniocereus greggii var. greggii*), and Chihuahua scurfpea (*Pediomelum pentaphyllum*) may occur near or within the pipeline project area footprint and may need to be considered and/or mitigated for while designing and implementing project activities.

The highly invasive noxious weed African rue (*Peganum harmala*) has been documented along the I-10 Interstate Highway corridor and could occur within the pipeline project area. African rue thrives on disturbed sites and along roadsides. It is extremely drought-tolerant and will undergo rapid vegetative growth when soil moisture is available. African rue is extremely toxic to horses, sheep, cattle, and humans, containing at least four types of poisonous alkaloids. In addition, most parts of the plant contain allelopathic chemicals that will reduce the growth of surrounding native plants. To help control its spread, the Department recommends that any vehicles and equipment arriving on site be thoroughly cleaned of all visible dirt and mud in a manner that will help contain and control the potential spread of weed seeds. Transwestern should also initiate a weed management program that includes a commitment to aggressive control of African rue on the project site.

For post-construction reclamation of the pipeline project area, the Department recommends that only native plant species are used in the reclamation seed mix and, unless there is concern regarding potential for pesticide, especially neonicotinoid, presence, that the mix is designed to enhance local pollinator habitat. If pesticides are known to be present or in use, then attracting pollinators to the site is not recommended. For pollinating insects, including a diversity of flowering plants with different colors and shapes and flowering times that span spring through fall (March-October), rarer plants, perennials, native bunch grasses and thistles, some plants with pithy and woody stems, some bare ground, and high-nutrient or value plants (e.g., goldenrods [*Solidago* spp.], gumweed [*Grindelia* spp.], or sunflowers [*Helianthus* spp.]) may be beneficial. Ideally, at least three different species should be flowering at all times between March and October. Consult pollinator-friendly plant species lists provided by the Xerces Society for Invertebrate Conservation or other appropriate resources, including the Ecological Revegetation Application. No-till drills may be more effective than broadcast seeding for establishing flowering plants. Plants that may attract pollinating insects should not be used within 15 feet of roadways if planting in the right-of-way. The Department also recommends that the seed mix and mulch be certified weed-free to avoid inadvertently introducing non-native species to the reclamation site and that sterile non-native seed sources not be used. If using mulch, a shallow layer of pebbles or compost, leaf litter, plant debris, or wood are preferred over plastic mulch. Any alternate plant species, used to substitute for primary plant species that are unavailable at the time of reclamation, should also be native. When possible, the Department recommends using seeds that are sourced from the same region and habitat type as the reclamation site and suggests including seeds from a region that represents potential future climatic conditions at the site. Include as much locally appropriate genetic diversity in seed sources as possible.

Thank you for the opportunity to review and comment on the proposed pipeline construction activities. If you have any questions, please contact Ron Kellermueller, Mining and Energy Habitat Specialist, at (505) 270-6612 or ronald.kellermueller@dgf.nm.gov.

Sincerely,

Virginia Seamster

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Date: 2026.08.03 19:06:08 -06'00'

Virginia Seamster, Ph.D.
Assistant Chief for Technical Guidance
Wildlife Management Division, Ecological and Environmental Planning Section

cc: USFWS NMES Field Office