New York State Department of Environmental Conservation
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Joe Martens
Commissioner

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, D.C. 20426

April 7, 2014

Ms. Jodi M, McDonald, Chief
Regulatory Branch,
US Army Corps of Engineers
New York District, CENAN-OP-R
Upstate Regulatory Field Office
Buffington Street, Bldg. 10, 3rd Floor
Watervliet, New York 12189-4

Re: FERC Docket Nos. 13-499-000. CP 13-502-000. Constitution Pipeline Project and Wright Interconnect Project/ NYSDEC Comments, Draft Environmental Impact Statement

Dear Secretary Bose and Ms. McDonald,

The New York State Department of Environmental Conservation (NYSDEC or Department) respectfully submits the following preliminary comments on the Draft Environmental Impact Statement (DEIS) submitted by the Federal Energy Regulatory Commission (FERC) on behalf of Constitution Pipeline Company, LLC and Iroquois Gas Transmission System, LP (collectively, Applicant or Constitution). Specifically, the first part of these comments will provide a detailed analysis of Alternative M and the second part will consist of miscellaneous comments on a variety of environmental issues.

Analysis of Alternative M, DEIS Section 3

First and foremost, NYSDEC staff contends that the DEIS prematurely eliminates further consideration of all or portions of Alternative M which would significantly reduce environmental impacts and serve to promote the FERC's policy to use, widen or extend existing rights-of-way (ROW) when locating proposed facilities.[1] The elimination of Alternative M is inconsistent with FERC's licensing requirements under 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, and with 40 C.F.R Parts 1500-1508.[2] Based on an independent

[1] See 18 C.F.R. Section 380.15 (d) FERC regulations implementing NEPA, siting and maintenance requirements.

[2] See 15 U.S.C. Section 717 (NGA), 40 C.F.R. Parts 1500-1508 (CEQ). Specifically, 40 C.F.R. §1500.2 (Policy) states that : Federal agencies shall to the fullest extent possible: (a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations. (b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by

comparison of the preferred alternative with Alternative M, Department staff concludes that Alternative M offers many environmental benefits, particularly those which reduce impacts on fish and wildlife habitat.[3] In general, these benefits stem from locating the pipeline near or within the existing Interstate 88 (I-88) corridor where fewer sensitive habitats are located. NYSDEC staff has determined that Alternative M, with two minor routing modifications, results in substantially fewer impacts to three critically important fish and wildlife habitats: interior forests; wetlands; and streams. Accordingly, the Department requests that FERC require Applicants to conduct additional analysis outlined below and, thereafter, reevaluate its conclusions regarding Alternative M.

Interior Forest Habitats

Large blocks of forest provide critical interior forest habitat for many declining species in New York. Linear projects, like gas pipelines, can have a disproportionate impact on these habitats by fragmenting large blocks of habitat into smaller blocks that provide little or no value to these declining species. To evaluate the potential impact on this important habitat type, Department staff compared the linear distances of pipeline through interior forest habitat under three scenarios (See Table 1 below). Staff compared the preferred alternative with Alternative M and a third scenario that includes 2 relatively short - but environmentally significant - modifications to Alternative M (See Figure 1). This third scenario avoids bisecting a large block of forest interior habitat (>6,000 acres) and avoids ecological and recreational impacts to the Robert V. Ridell State Park. For this analysis, forest interior habitats are defined as blocks of forest greater than or equal to 150 acres. That size is based on studies of minimum forest patch sizes for forest breeding birds (Roberts and Norment 1999, Hoover et al. 1995, Robbins 1979) and studies that show negative impacts along a forest edge can extend between 200-500 feet into the forest interior (Rosenburg et al. 1999, Robinson et al. 1995).

Significantly, results from NYSDEC staff's analysis show almost a 14% reduction in potential impacts to forest interior habitats could be achieved by choosing Alternative M over the preferred route and a 30% reduction in impacts by choosing Alternative M with modifications. This analysis does not differentiate between disturbances along edges of 150 acre blocks (as could be expected along the I-88 corridor) from locations in the core of 150 acre blocks. Thus, biological benefits of either Alternative M scenario could be even more pronounced when considering proximity to I-88.

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evidence that agencies have made the necessary environmental analyses. (c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively. (d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment. (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. (f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

[3] Review of certificate applications requires examination of environmental impacts of the action in compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321 et seq. and associated regulations by the Council of Environmental Quality (CEQ), 40 C.F.R. Sections 1500-1508.

Table 1. Comparison of interior forest impacts in New York between the preferred route, Alternative M, and a modified Alternative M for the proposed Constitution Pipeline.						
	Preferred Alternative		Alternative M		Alt M w/ 2 potential modifications	
	Length (miles)[1]	Area (acres)[2]	Length (miles)[1]	Area (acres)[2]	Length (miles)[1]	Area (acres)[2]
Direct Impacts	41.1	498.2	35.4	429.1	29.1	352.7
Indirect Impacts	41.1	3,487.3	35.4	3,003.6	29.1	2,469.1

[1] approximate length of pipeline through patches of forest ≥150 acres in size, based on air photo interpretation
[2] based on 100 foot wide work area for direct impacts(DEIS pg 4-70) and an additional 300 foot wide area of indirect impacts from each side of work area (Howell et al. 2007, Maryland DNR 2000, Rosenburg et al. 1999, Robinson et al. 1995, Therris 1992)

Wetland Habitats

To evaluate the potential impact on wetland habitats, NYSDEC staff compared the linear distances of pipeline through wetlands under the same three scenarios considered for forest interior habitats (See Table 2 below). While field delineation of wetland boundaries is the only method that can accurately quantify the extent of wetlands potentially impacted by the Project, air photo interpretation was used for this analysis because site specific data are not available for the entire length of Alternative M nor are they available for approximately 20% of the preferred route. NYSDEC staff's analysis included a comparison of the "quantity" of habitat potentially impacted, as well as a comparison of the relative "quality" of these habitats. The habitat quality was based on a categorization of each wetland area potentially impacted, considering proximity to existing development and the amount of natural vegetation. Generally speaking, areas adjacent to agricultural fields, residential development, and roads were ranked "average" while wetlands in undisturbed areas were ranked as "high." As demonstrated in Table 2, below, results show that impacts to wetlands were more than 25% lower for each Alternative M scenario compared with the preferred alternative.

Table 2. Comparison of wetland disturbance in New York between the preferred route, Alternative M, and a modified Alternative M for the proposed Constitution Pipeline.						
	Preferred Alternative		Alternative M		Alt M w/ 2 potential modifications	
	Length (ft)[1]	Area (acres)[2]	Length (ft)[1]	Area (acres)[2]	Length (ft)[1]	Area (acres)[2]
Disturbance to DEC Wetlands						
High Quality	2,505	4.3	510	0.9	390	0.7
Elevated Quality	1,160	2.0	0	0	0	0
Average Quality	0	0	0	0	0	0
DEC Wetlands Total	3,665	6.3	510	0.9	390	0.7
Disturbance to Other Wetlands						
High Quality	2,910	5.0	3,000	5.2	3,000	5.2
Elevated Quality	5,175	8.9	1,260	2.2	2,050	3.5
Average Quality	12,320	21.2	10,740	18.5	11,945	20.6
Other Wetlands Total	20,405	35.1	15,000	25.8	16,995	29.3
All wetlands	24,070	41.1	15,510	26.7	17,385	29.9

[1] approximate length of pipeline in wetlands, based on air photo interpretation
[2] based on 75 foot work area (DEIS pg 4-61)

Stream Habitats

Likewise, to evaluate the potential impact on stream habitats, Department staff compared pipeline crossings under the same three scenarios considered for forest interior and wetland habitats (See Table 3 below). Staff compared not just the numbers of potential stream crossings, but also considered the sensitivity of these streams to disturbance by categorizing each stream crossing location based on the water quality classification of the stream, the gradient of the stream, and the cover type surrounding the stream. Trout spawning streams with a high gradient and evergreen riparian areas were ranked "high", while non-trout waters on low gradient streams in open areas were ranked "average." Further, both Alternative M scenarios were clearly better than the preferred alternative for streams with a high sensitivity to disturbance.

Table 3. Comparison of stream crossings in New York between the preferred route, Alternative M, and a modified Alternative M for the proposed Constitution Pipeline.

	Preferred Alternative	Alternative M	Alt M w/ 2 potential modifications
Stream Crossings			
High Sensitivity	60	37	36
Elevated Sensitivity	19	27	31
Average Sensitivity	5	6	6
All Streams	84	70	73

Potential Use of I-88 Rights-of-Way for Additional Reductions in Habitat Impacts

It is premature to conclude that no part of the pipeline route could fall within the controlled access area of I-88. The DEIS conclusion on page 3-31 is primarily based on a faulty assumption that federal rules regarding accommodation of utilities contained in 23 CFR 625, Subpart B, explicitly prohibit use of road ROWs when there are alternative sites to locate the utility. These federal rules contain such a requirement only for above ground installations (23 CFR 625.209(b)). In fact, the regulations at 23 CFR 625.205 explicitly state that it is in the public interest for utility facilities to be accommodated on the right-of-way.

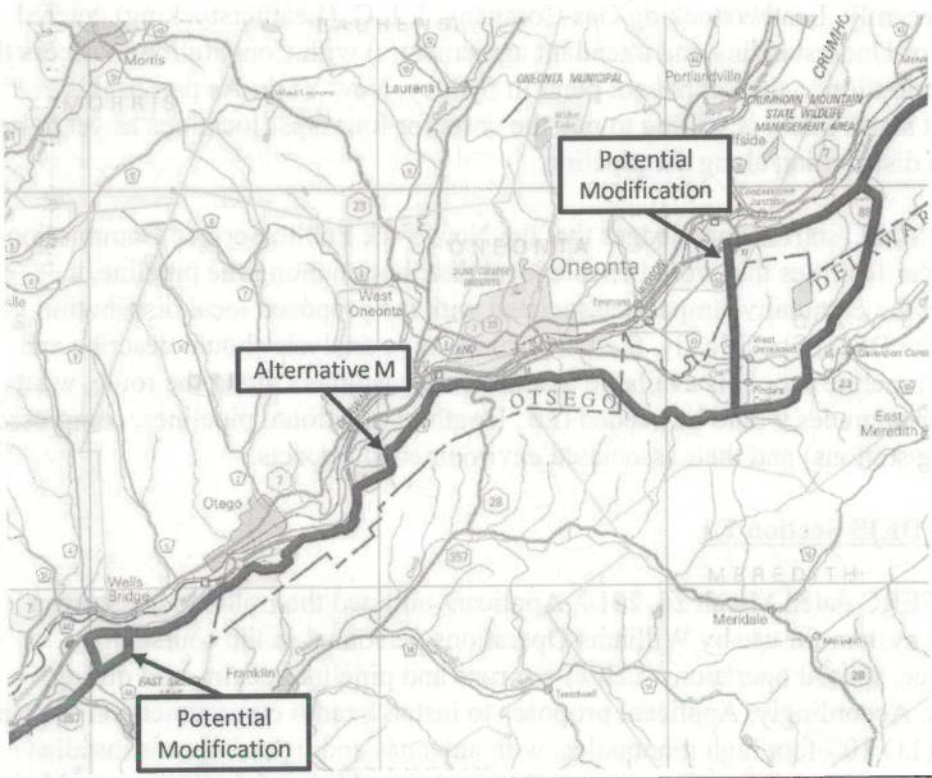
NYSDEC acknowledges that the Federal Highway Administration (FHWA) and the New York State Department of Transportation (NYSDOT) must have detailed plans from potential developers to evaluate the affected parameters and make an informed determination regarding any potential use of the I-88 controlled access area. Although NYSDEC is engaged in a discussion with Applicants to complete a more thorough evaluation of Alternative M, including the potential use of portions of the I-88 controlled access area, the Applicant has unfortunately not submitted detailed information nor has it presented any detailed proposals or plans to NYSDOT or FHWA for review.

Unfortunately, only a list of potential constraints are presented in the DEIS without any detailed evaluation of the actual extent of these constraints or any evaluation of engineering and construction practices available to reduce or mitigate these challenges. For example, the DEIS

states that I-88 was constructed along rocky cliffs and bluffs and speculates that these areas render Alternative M infeasible. Yet Applicant's engineers, as part of their analysis of Alternative M in the application, came to a different conclusion and found that installing the pipeline immediately adjacent to the ROW was feasible and constructable in many locations. Surely, the potential for enhancing the benefits of an already environmentally attractive alternative warrants further evaluation of Alternative M and potentially installing portions of the pipeline within the I-88 controlled access area. Not only is this consistent with FERC policy, this is also required by FERC's regulations implementing NEPA and NEPA regulations cited above.

The Department believes that just such an analysis should be conducted and has requested Constitution to provide additional analysis of Alternative M to determine the feasibility of several modifications to the route and to evaluate where placement in the controlled access could provide environmental and engineering benefits (See NYSDEC Letter to Constitution, Attachment A). NYSDEC further believes that the use of all or portions of Alternative M will provide significant environmental benefits and promote the important policy to use, widen or extend existing rights-of-way (ROW) when locating proposed facilities throughout the State.

Figure 1. Potential modifications to Alternative M of the proposed Constitution Pipeline.



NYSDEC staff also offers the following preliminary comments regarding specific DEIS sections outlined below.

Purpose and Scope, DEIS Section 1.2

1) NYSDEC staff agrees with the DEIS statement, "…it is likely that a substantial number of the outstanding surveys for Constitution's project (and associated agency permitting) would have to be completed after issuance of the Certificate." Particularly, NYSDEC is responsible for review and approval of a number of federally-delegated and State permits that are required prior to commencement of construction. These authorizations are generally described in DEC's comment letter on the Draft Scope dated November 7, 2012. NYSDEC has not received all necessary permit applications and has informed the Applicant that outstanding surveys will be needed following the issuance of a FERC Certificate to complete its permit review process.

Non-Jurisdictional Facilities, DEIS Section 1.4

2) On November 7, 2012, NYSDEC's comments on the DEIS Draft Scope stated that the DEIS cumulative analysis must evaluate whether the pipeline would be reasonably available for supply and distribution for communities along the pipeline route and whether the pipeline could reasonably serve as a collector line for additional supply from New York Marcellus and Utica Shale formations. Recently, Leatherstocking Gas Company, L.L.C. (Leatherstocking) entered into a Memorandum of Understanding and attendant agreement(s) with Constitution to access the pipeline for local distribution to the Amphenol plant in Sydney, New York. As part of this agreement, Applicant states that it is willing to pay the costs for four taps (locations as yet to be determined) for local distribution along the pipeline.

Although NYSDEC staff acknowledges that the New York Public Service Commission retains jurisdiction over facilities that would enable local distribution along the pipeline, a detailed discussion of the cumulative impacts associated with the proposed local distribution must be included in the DEIS. Specifically, the DEIS cumulative analysis should describe and evaluate whether the pipeline supply is available to additional customers along the route, what additional facilities or upgrades would be needed (i.e., length of additional pipelines, compressor stations, and metering stations) and their associated environmental impacts.

Proposed Facilities, DEIS Section 2.1

3) In a letter to FERC dated March 26, 2014, Applicant outlined their plan to construct a radio communication system for use by Williams Operations personnel in the course of operation, maintenance, special operations such as pig runs and pipeline repairs, and during emergency situations. Accordingly, Applicant proposes to install a radio communication system consisting of eleven (11) 100-foot high monopoles, with antennas and lightning rods installed near the top of each pole. NYSDEC staff recommends that these additional facilities are added to the DEIS scope of work and reviewed for the following: a) visual impacts to inventoried sensitive visual receptors[4]; b) increased area of Project footprint, including additional impacts to

[4] See, *Assessing and Mitigating Visual Impacts - Program Policy*. DEP-00-2. July 31, 2000. http://www.dec.ny.gov/permits/36860.html.

interior forests, wetlands, streams or other resources; c) need for additional access roads or road length; and d) alternative locations including the potential to site communication lines with underground cable.

Construction Procedures, DEIS Section 2.3

4) The DEIS comment period deadline established by FERC does not allow NYSDEC staff sufficient time to conduct a thorough review of the State specific Environmental Construction Plans (ECPs); however, staff plans to submit supplemental comments to address any issues of concern in the ECP and to provide alternate recommendations for Best Management Practices (BMPs) if warranted.

Water Use and Quality, Groundwater Impact and Mitigation, DEIS Section 4.3.2.1

5) The DEIS states that Constitution would monitor water quantity parameters including water column height, flow rate of existing equipment, water column drawdown, rebound time, volatile organic compounds, total petroleum hydrocarbons, and compounds used in blasting. This statement should be amended to include that laboratory environmental analyses are required to be performed at a NYS Environmental Laboratory Approval Program (ELAP) approved laboratory when there is an ELAP approved method for the target analyte.

6) The DEIS state that Constitution's water supply well testing plans would comply with NYSDOH recommendations (2006). The referenced document is DOH Fact Sheet 3, *Individual Water Supply Well Fact Sheet for Recommended Residential Water Quality Testing*. Rather than simply refer to this document by reference, NYSDEC staff recommends that the analytes included in the DOH guidance document are listed to provide landowners with specific information regarding the parameters included in the proposed testing.

7) NYSDEC staff agrees with the intent to include VOCs as part of the analytical list and methane should be included. The list of analytes should also include all constituents reasonably expected to be of potential concern (including blasting-related compounds in areas where blasting is to occur) in both pre-construction and post-construction sampling.

8) Chain of custody documentation should be required for water sample analyses.

9) Qualifications and training of persons who will be performing well water sampling, and the expert field assessment of seeps and springs within 150 feet of construction workspaces should be provided.

10) Identify which local, State or federal agencies, in addition to "the Secretary," will be provided results of well testing as well as when they will be notified.

11) Clarify whether the 150 feet of the proposed construction workspace includes areas where blasting would occur.

12) In general, the criteria that will be used to determine when well owners would be provided an alternative water source or receive compensation should be defined in detail and agreed upon. Please define what criteria will be used to determine if the integrity of any water supply well will be impacted during construction.

13) The DEIS states that Constitution has also agreed to file with the Secretary, within 30 days after completion of construction, a report describing landowner complaints received regarding well quality and yield and how those complaints were resolved. In addition, Constitution would conduct additional pre-and post-construction monitoring for water quality and yield for wells and springs within karst areas.

This statement provides a time frame for a report regarding landowner complaints. In addition, Applicant should provide a time frame for water well sampling after construction and a time period when re-sampling would occur in response to a complaint.

14) The DEIS should be amended to included the following information: 1) when Applicant will provide homeowners with the pre-construction testing results before post-construction sampling data are in; b) Applicant's proposed plan of action when the pre-construction testing identifies a problem with a private well; and c) when homeowners will be notified of any water quality issues identified with a private well.

Interior Forest Habitat, DEIS Section 4.5

15) Pursuant to FERC's request, Constitution must file a draft Upland Forest Mitigation Plan in consultation with agencies including NYSDEC. To date, NYSDEC has not engaged in such consultations with Applicant. The Applicant must explore aggressive measures to avoid impacts to interior forest habitat, particularly where Constitution indicates that it would not reduce the ROW width in areas where steep slopes or other constraints exist for safety reasons.

The DEIS indicates that Constitution would bisect 129 interior forest blocks greater than 35 acres, creating 55 forested blocks less than 35 acres in size. For these 129 interior forest blocks, the use of horizontal directional drilling (HDD) must be evaluated to determine if it can be used as a feasible method to completely avoid interior forest fragmentation and maintain as many areas of unbroken forest as possible. Constitution proposes to use this method at one location between milepost 54.23 and 55.18 to reduce surface disturbance at a steep slope (soil type E) in an AA watershed area, but the Applicant should consider HDD for this highly sensitive resource including all 129 interior forest blocks.

Special Status Species, DEIS Section 4.7

16) The reference document cited for information regarding the yellow lampmussel is incorrect both here and in DEIS Appendix Q. Instead of New York State Office of Parks, Recreation, and Historic Preservation (NYS-OPRHP), the reference should be New York Natural Heritage Program (NYNHP).

17) In response to a consultation letter from Constitution, dated October 23, 2013, NYSDEC provided a memorandum dated November 13, 2013 (see Attachment B) clarifying its concerns for this species. Constitution reported that at the proposed pipeline crossing of the Schoharie Creek, sediment laden water prevented a visual survey for this species; therefore a determination regarding the presence or absence of this species at this location was not able to be made.

NYSDEC staff believes that healthy and diverse mussel beds are present both upstream and downstream of the pipeline crossing point; therefore mussels are likely to be present in the proposed crossing area as well. Although yellow lampmussel is not a State-listed rare, endangered, threatened or special concern species, it is of conservation concern and is considered to be vulnerable in New York and legally protected under the ECL. Specifically, ECL Article 11 requires a permit to "take" such "shellfish" that include oysters, scallops, and all kinds of clams and mussels.

NYSDEC staff will consider the potential for impacts to this species and would include conditions in the Article 15 stream disturbance permit to avoid, minimize or mitigate potential impacts. Given the limitations of the survey conducted for this species, Constitution proposes to rely on an avoidance plan that includes: a) crossing the Schoharie Creek using a Direct Pipe method that would not disturb the streambank or streambed, thereby avoiding all impacts to this species; and b) if the Direct Pipe method is not feasible at this location, Applicant would implement a Dry Cut Trench method to isolate and dewater the proposed workspace. NYSDEC staff generally agrees that the Direct Pipe method is preferable to the Dry Cut Trench method, and if determined to be feasible and implemented without incident, would avoid impacts to yellow lampmussel in the creek. Further, the Dry Cut Trench would require a permit under Article 15 of the ECL, for excavation or placement of fill in a navigable waterway.

Fisheries of Special Concern, DEIS Section 4.6.2.2

18) The DEIS incorrectly states that the he NYSDEC-recommended allowable construction window is from June 15 through September 30. On the basis of this statement, FERC recommends that Constitution should construct in-stream crossings of all trout and trout spawning waterbodies in New York between June 15 and September 30, or file the NYSDEC's approval to cross these waterbodies outside of the allowable construction window.

NYSDEC recently provided a letter to Applicant dated March 21, 2014 clarifying that the correct work window is June 1 to September 30 for trout and trout spawning ("t" or "ts) (see Attachment C).

Air Quality and Noise, DEIS Section 4.11

19) In DEIS Table 4.11.1-6, Combined Existing Wright Compressor Station and Proposed Compressor Station Operations Emissions, the value for nitrogen oxides (NOx) at the 2 Existing Solar Taurus 60 Turbines is shown as 551.6 tons per year (tpy). This appears to be a typographical error since the total for NOx at "Existing facilities" shown farther down on the table is 54.2 tpy. If the first value is replaced with 51.6 tpy, the resulting total for existing facilities would be 54.37 tpy.

20) The value for total carbon monoxide (CO) at the existing facilities should be 64.069 tpy instead of 64.0 tpy.

21) The value for total carbon dioxide (CO_2e) at the existing facilities should be 69,536.9 tpy instead of 69,304 tpy.

Real Property Tax Law Section 480(a), DEIS Section 4.8.4.3

22) On page 4-127, the DEIS uses incorrect terms relating to New York Real Property Tax Law (RPTL) Sections 480 and 480-a and 6 New York Code Rules & Regulations Part 199. Specifically, "tax exception" should be replaced with "real property tax exemption" in the following sentence appearing on page 4-127 of the DEIS:

> "The 480 and 480a Real Property Tax program provides tax exceptions for certain forest lands of at least 50 eligible acres for Section 480a or 15 acres for Section 480 in New York State."

23) In addition, the following paragraph on page 4-127 of the DEIS relating to tax penalties makes a partial statement of the law which could be misleading. This language should be replaced with exact language from the regulation for full meaning and effect of the law. The DEIS states that the Applicant does not believe based on NYSDEC regulation Title 6 New York Codes, Rules and Regulations Part 199, that the tracts enrolled in the program would be subject to fees or penalties as a result of the pipeline ROW or easement. This language in the DEIS should be clarified because in the general application of this law, penalties may result from voluntary proceedings establishing rights-of-way.

Specifically, the following sentence should be deleted: "[t]his provision states that owners of certified tracts shall not be penalized by the taking, voluntary or not, for the establishment of rights-of-way" and be replaced with exact language from 6 NYCRR Section 199.11[a] as follows: "The owner of a certified tract shall not be subject to any penalty that would otherwise apply because such tract or any portion thereof is converted to a use other than forest crop production by virtue of a voluntary proceeding, providing such proceeding involves the establishment of rights-of-way for public highway or energy transmission purposes wherein such corridors have been established subsequent to public hearing as needed in the public interest and are environmentally compatible." Finally, it should be noted that any amendment of a management plan must be approved by the Department in order for the certified tract to remain enrolled in the Forest Tax Law program.

NYSDEC staff appreciates your consideration of the important comments to the DIES expressed herein. Please feel free to contact me with any questions or comments that you may have.

Very truly yours,

Patricia J. Desnoyers, Esq.

Attachments
CC: Parties List

Attachment A

New York State Department of Environmental Conservation
Division of Environmental Permits
625 Broadway, Albany, NY 12233-1750
Phone: (518) 402-9167 • **Fax:** (518) 402-9168
Website: www.dec.ny.gov

Joe Martens
Commissioner

March 17, 2014

Lynda Schubring, PMP
Sr. Environmental Scientist
Williams
2800 Post Oak Blvd., Level 17
Houston, TX 77056

Dear Ms. Schubring:

Please find attached the revised Scope of Work for further evaluation of Alternative M prepared by the Department of Environmental Conservation (DEC) in response to the Scope of Work submitted by Constitution on January 29, 2014. As you are aware, the purpose of the work plan is to further evaluate routing sections of Alternative M within the I-88 controlled access area and is the result of the continuing dialog with DEC and other state and federal agencies regarding the feasibility of the proposed Alternative M. This revised Scope was prepared in consultation with staff from the U.S Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Environmental Protection Agency, Region 2.

As you are likely aware, 40 CFR 1502.14 requires that an Environmental Impact Statement: (a) [r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study; briefly discuss the reasons for their having been eliminated; (b) [d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits. As such, the Department would like to continue to work with Constitution to fully develop the record on Alternative M in order to meet this requirement.

Please let me know if you would like to set up a meeting to further discuss moving ahead with this analysis. If you have any questions or comments, please contact me by phone at (518) 486-9955, or by email at smtomasi@gw.dec.state.ny.us.

Sincerely,

Stephen Tomasik
Project Manager
Major Projects Management Section
Division of Environmental Permits

Attachment

cc: K. Silliman, VHB
K. Bruce, USACE
L. Knutson, EPA, Region 2
Tim Sullivan, USFWS
K. Bowman, FERC
DEC Review Team

Constitution Pipeline: Analysis of Routing within the I-88 Controlled Access Area

I. Study Objectives and Scope of Work

a) Determine if the pipeline is physically constructable within the modifications of Alternative M described in IV(a) below and depicted on Maps 1 and 2. The goal of these modifications is to reduce environmental impacts.

b) Determine where potential placement in the I-88 controlled access area would reduce the amount of side-slope construction or provide other engineering and environmental benefits over the existing Alternative M configuration. This analysis should be limited to those areas identified in IV(b) below and should address the parameters listed in Table 3.4.1-2 of the DEIS (page 3-34 and 3-35).

c) Determine the constructability of necessary access roads to those portions of the potential modifications identified in a) and b), above.

II. Geographic Scope

a) The geographic scope of this study will include the controlled access areas on the eastern and western side of I-88, potential highway cross-over sites, and potential modifications of Alternative M that would reduce forest impacts, including interior forests. Work should focus on the segments described in IV below and depicted on the attached maps.

III. Presentation of Results

Provide written reports to include the following elements:

a) A re-designed Alternative M to include, wherever practicable, those portions of the I-88 controlled access area and other modifications identified in the Study Objectives described above. Include two mapsets at 1:10,000 scale that show the currently proposed and the re-designed Alternative M together with: a mapset using aerial photography as the base; and a separate mapset using USGS quadrangle maps as the base.

b) Compare the re-designed Alternative M to the currently proposed Alternative M according to parameters used in DEIS Tables 3.4.1-2 through 3.4.1-6.

c) A table similar to Table 3.4.1-2 with a column for preferred route, existing Alternative M, and revised Alternative M using I-88 controlled access areas and other modifications.

IV. Evaluation Parameters

a) Evaluate the constructability of rerouting Alternative M in each of the following areas, as depicted on Maps 1 and 2:

Between C and D, as shown by the orange line on the map

Between F and G, as shown by the orange line on the map

Between H and the currently proposed Alternative M line (approximately location I)

Between K and the currently proposed Alternative M line (approximately location J)

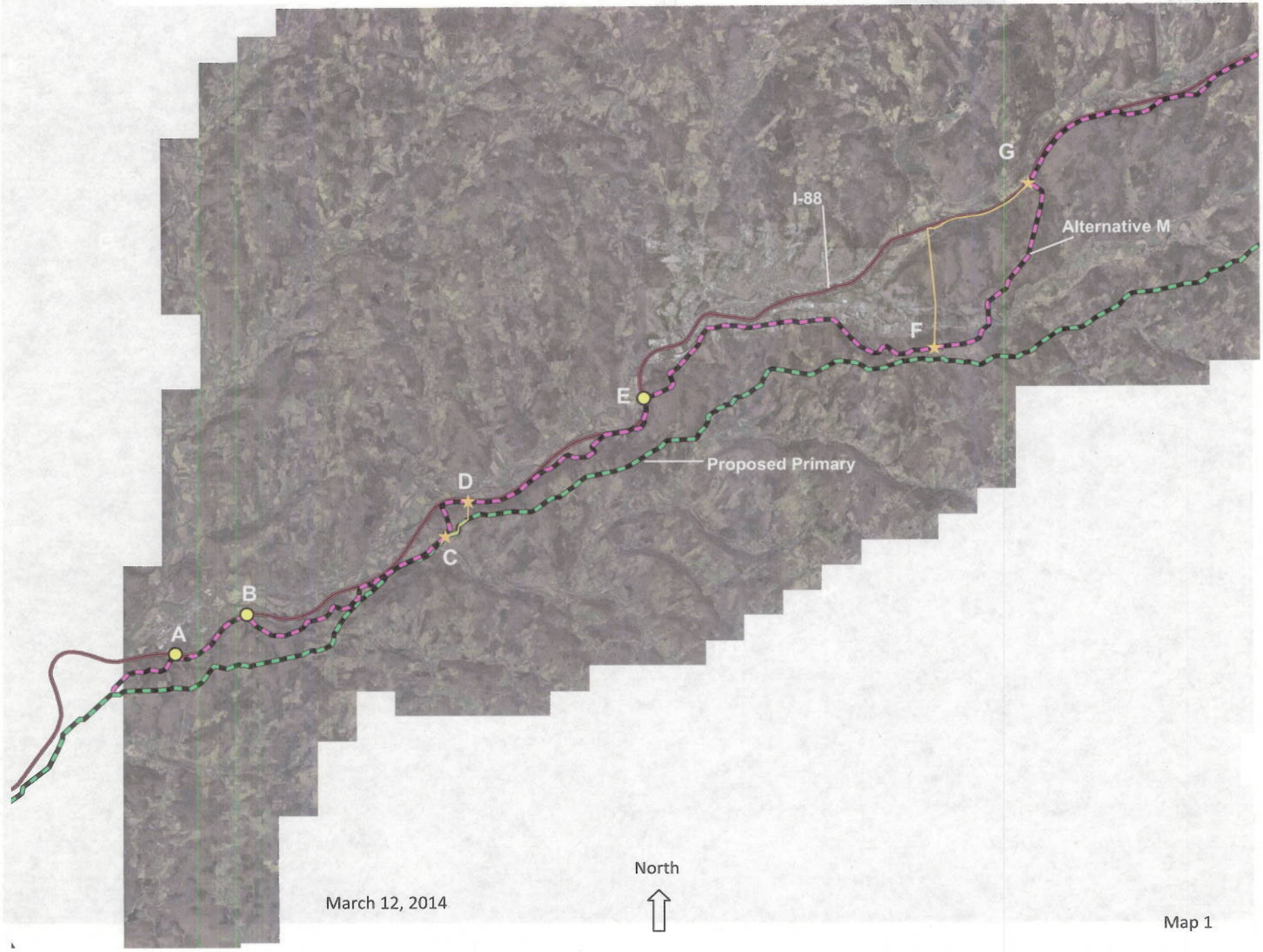
b) Evaluate constructability and benefits of placing the pipeline in the I-88 controlled access area in any locations, between each of the following points depicted on Maps 1 and 2, where doing so will enhance constructability and avoid obstacles including steep side slopes.

A and B

D and E

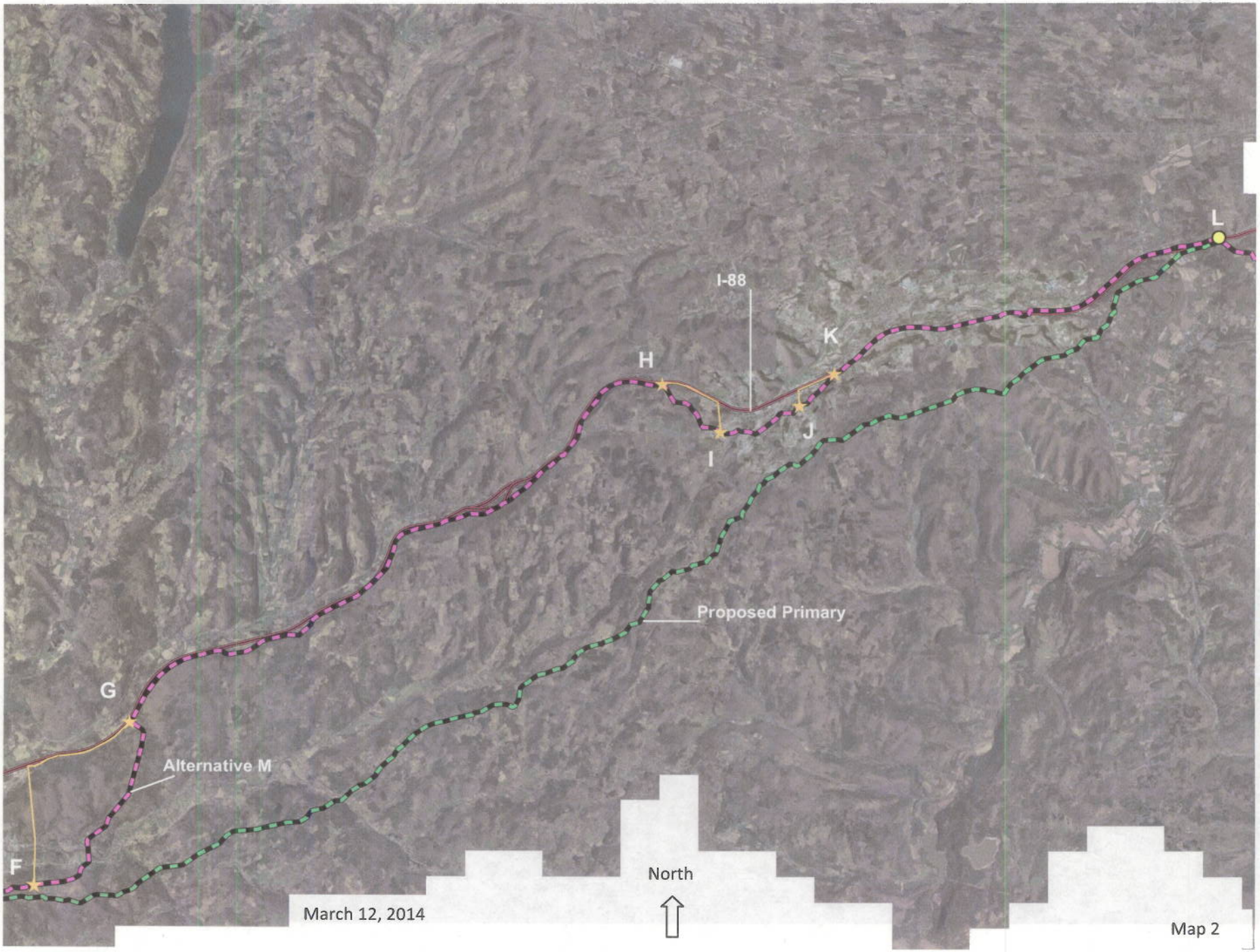
G and H

K and L



March 12, 2014

Map 1


L
I-88
K
H
J
I
Proposed Primary
G
Alternative M
F
North
March 12, 2014
Map 2

Attachment B

New York State Department of Environmental Conservation
Division of Environmental Permits
625 Broadway, Albany, NY 12233-1750
Phone: (518) 402-9167 • **Fax:** (518) 402-9168
Website: www.dec.ny.gov

Joe Martens
Commissioner

MEMORANDUM

TO: Mr. Greg Hufnagel
Senior Project Manager
AECOM
4 Neshaminy Interplex, Suite 300
Trevose, PA 19053-6940

FROM: Stephen Tomasik
Project Manager
Major Projects Management Section
Division of Environmental Permits
NYS Department of Environmental Conservation
625 Broadway - 4th Floor
Albany, New York 12233-1750

RE: Yellow Lampmussel Presence-Absence Surveys in Schoharie Creek
Constitution Pipeline
Town of Schoharie, Schoharie County, New York

DATE: November 13, 2013

This memo is in response to your letter dated October 23, 2013 regarding efforts conducted by Constitution Pipeline Company to survey and assess the habitat of the Yellow Lampmussel (*Lampsilis cariosa*) at the proposed pipeline crossing of the Schoharie Creek in Schoharie County, New York. In your letter, you reported that sediment laden water prevented a visual survey for this species; therefore you are not able to determine the presence or absence of this species at this location. DEC staff have reviewed this letter, and have reported that there are healthy and diverse mussel beds known from both upstream and downstream of the pipeline crossing point, therefore it likely that there are mussels in the proposed crossing area as well.

Your letter indicates that the yellow lampmussel is not a state-listed rare, endangered, threatened or special concern species, but is of conservation concern and considered to be vulnerable in New York. This does not mean, however, that this species does not have legal protection in the state. All mussels are protected under the Environmental Conservation Law

(ECL) and their taking requires a permit from the Department. Article 11 of the ECL, § 11-0103, states that "Shellfish" means oysters, scallops, and all kinds of clams and mussels. "Taking" and "take" include pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish, wildlife, game, shellfish, crustacea and protected insects, and all lesser acts such as ***disturbing***, harrying or worrying, or placing, setting, drawing or using any net or other device commonly used to take any such animal. ***No person shall, at any time of the year, pursue, take, wound or kill in any manner, number or quantity***, any fish protected by law, game, protected wildlife, ***shellfish***, harbor seals, crustacea protected by law, or protected insects, ***except as permitted by the Fish and Wildlife Law***. In this situation, DEC would consider the potential for impacts to this species and include conditions in the Article 15 stream disturbance permit to avoid, minimize or mitigate these potential impacts.

Given the limitations of the survey conducted for this species, Constitution proposes to rely on an avoidance plan that includes the following elements:

- Crossing the Schoharie Creek using a "Direct Pipe" method that would not disturb the streambank or streambed, thereby avoiding all impacts to this species;

- If it is determined that the Direct Pipe method is not feasible at this location, implementation of a "dry cut trench method" to isolate and dewater the proposed workspace.

Regarding the proposed Direct Pipe method, DEC generally agrees that this proposed method is preferable to the cut trench method, and if determined to be feasible and implemented without incident, would avoid impacts to Unionid mussel species, including yellow lampmussel in the creek. However, if a "fracking out" incident occurs, and there is a release of drilling mud into the waterway, a great deal of physical harm both lethal and chronic to finfish and mussels would be expected. If this crossing method is chosen, DEC will require a contingency plan as part of the Article 15 permit to minimize and mitigate impacts that may result from a frack-out incident.

Use of the "dry cut trench method" would require a permit under Article 15 of the ECL, for excavation or placement of fill in a navigable waterway. If it is determined that the Direct Pipe crossing method is infeasible, Constitution will need to submit a modification to the Joint Application for Permit to include the feasibility review of the Direct Pipe method showing why it is not feasible, details regarding the proposed crossing activity, assessment of the presence/absence of mussels at this location, and proposed removal and relocation methods.

If you have additional questions, please send them to me and I will direct them to the appropriate DEC staff.

cc: K. Bowman, FERC
K. Bruce, USACE
T. Sullivan, USFWS
DEC Review Team

Attachment C

New York State Department of Environmental Conservation
Division of Environmental Permits
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Joe Martens
Commissioner

March 21, 2014

Ms. Lynda Schubring, PMP
Sr. Environmental Scientist
Williams
2800 Post Oak Blvd., Level 17
Houston, TX 77056

Dear Ms. Schubring:

This letter is being submitted in response to your letter dated March 7, 2014 with a request that the New York State Department of Environmental Conservation (NYSDEC) clarify the specific calendar dates for seasonal in-stream construction work windows applicable to streams and waterbodies with a NYSDEC water quality standard designation of (T) or (TS). Following review of this request by the Division of Fish, Wildlife and Marine Resources, Stream Protection Program, NYSDEC concurs that allowable in-stream construction window for activities associated with this project is June 1 through September 30.

If you have any questions, please contact me by phone at (518) 486-9955, or by email at smtomasi@gw.dec.state.ny.us.

Sincerely,

Stephen Tomasik
Project Manager
Major Projects Management Section

cc: G. Hufnagel, AECOM
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DEC Review Team