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Meeting Summary Memorandum

To	Lynda Schubring	Page	1
CC	Meeting Attendees		
Subject	Constitution Pipeline Project – Migratory Bird Treaty Act		
From	John Zimmer - TRC		
Date	September 18, 2013		

Meeting Attendees

Williams Lynda Schubring	**Dawson & Assoc.** Bill Hartwig	**USFWS** Tim Sullivan Sarah Nystrom Sandy Durand
AECOM Greg Hufnagel	**TRC** John Zimmer	

Meeting Summary

After introductions, Williams provided an update on the Project describing the current status of the Project as well as the Federal Energy Regulatory Commission review process and general schedule for permit acquisition and construction should the Project be approved. The following are comments and/or issues brought forward and discussed during the meeting:

Seasonal Timing Restriction Conflicts Between Migratory Birds and Coldwater Fisheries
Mr. Hufnagel provided an overview of the NYSDEC field review process that was currently ongoing and focused on waterbodies designated as coldwater fisheries. Waterbodies confirmed as coldwater fisheries are protected by NYSDEC by seasonal timing restrictions for instream construction activities that prohibit work within protected streams between October 1 and May 31. This allows for instream construction activities to occur between June 1 and September 30. The majority of this timeframe directly conflicts with the seasonal timing restrictions for migratory birds (typically April 1 through August 31). In an attempt to minimize the potential conflicts, Constitution has proposed the following:

- Only conduct clearing activities during the migratory bird breeding season associated with access roads, meter stations, and waterbodies classified as coldwater fisheries within interior forest areas.
- Clear only the area and distance necessary to access the waterbody and safely install the pipeline.

Mr. Hufnagel stated that interior forest areas were determined by measuring 300 feet laterally into the forest from existing edges / disturbances. Mr. Sullivan agreed with that methodology. Mr. Hufnagel then reviewed each of the access road / waterbody crossings where clearing during the migratory bird breeding season was being proposed. Mr. Sullivan agreed to review the information provided and include any comments within the forthcoming comment letter to FERC.

Comment [TRS1]: Sandie Doran

Comment [TRS2]: Activities are separate. They are talking about removing shrubs and trees and grassland for mig birds using excavators, brushhogs, etc and in stream crossings (boring all?) which is different activity using equipment to trench and backfill and bore through streams.

The conflict may not be warranted. If they cleared vegetation one year and then went back the next year to do the stream work that would avoid both impacts.

Comment [TRS3]: This does not specifically state that the pipeline, outside of stream crossings, would be built outside of the migratory bird breeding season. This should be added to confirm.

Comment [TRS4]: While this is one way to minimize forest fragmentation and disturbance during the breeding season, it does not address impacts in other habitat types (shrub, wetland, grassland).

Comment [TRS5]: However, see second bullet under Mitigation below. The project sponsor has not yet quantified the indirect impacts of the project on forest interior habitat. This would entail measuring a distance of 300 feet into forest habitat from the edge of the proposed ROW. So far, they have only identified forest interior areas using the 300 foot distance.

Bald Eagle

- Mr. Hufnagel reviewed the Bald Eagle Survey Report which had been previously submitted to USFWS for review and comment. One eagle nest was identified within proximity to Project corridor. While a minimum of 660 feet will be maintained from the nest to the construction workspace, there is the potential for blasting activities to occur within one-half mile of the nest location.
- Constitution stated that we have identified areas of shallow depth to bedrock where there is a potential for blasting within a one-half mile radius to the known nest location. Prior to construction an assessment will be made to confirm whether or not blasting would be required or if an alternative construction method can be used. Should blasting be necessary, it would be either conducted outside of the nesting season or additional discussion regarding impact avoidance would be initiated with FWS. USFWS indicated that nests within one mile of blasting with no forested or other buffer should be identified and the sound mitigated if blasting occurs during the nesting period.
- FWS indicated that staff was reviewing the bald eagle survey report and would provide comments within the forthcoming letter to FERC.

Comment [TRS6]: There are two BE nests near the project area. They flew the corridor once last year, but only looked at the ROW, not 1 mile out. We did not ask them to fly it again because it was Feb 2013, and during the breeding season (Jan 1-Sept 1). Told them to contact DEC.

Other Rare Species

- Mr. Sullivan identified the hellbender as a species of concern and that suitable habitat was potentially present within the vicinity of the pipeline in Davenport, NY. He recommended that Constitution contact Noelle Rayman at FWS and Thomas Bell at NYSDEC to obtain additional information.
- Constitution discussed the status of the supplemental Indiana bat surveys which occurred in PA to cover the modified pipeline alignment. Mr. Hufnagel indicated that the report was currently being reviewed and would be submitted to FWS in October 2013. The results of the surveys were discussed (no Indiana bats were identified) along with the conclusion that no additional surveys or timing restrictions be required.
- Constitution provided an update on freshwater mussel surveys to be conducted in the Schoharie River for the yellow lamp mussel. Mr. Sullivan expressed interest in attending the field survey when it occurs, and Mr. Hufnagel indicated that he would contact Mr. Sullivan when the survey was scheduled. Constitution also reviewed the waterbodies crossed by the pipeline for dwarf wedgemussel habitat and determined that suitable habitat is not present within the Project area.

Comment [TRS7]: Not yet received.

Comment [TRS8]: There was no discussion of Northern long-eared bats, as the decision to list was not yet announced. We will have to discuss this topic with the project sponsor in the future and will most likely mention it in our letter to them. Similarly, we will need to discuss it with the Corps and FERC.

Comment [TRS9]: We need to review this information and determine if we agree.

Mitigation

- Mr. Sullivan raised the topic of potential mitigation for impacts to migratory bird breeding habitat and whether Constitution had discussed it with Regional FWS staff during the meeting held in November 2012. Mr. Zimmer indicated that the topic was not specifically discussed at that meeting; however impact minimization measures and the potential need for a Habitat Conservation Plan were. Mr. Hartwig stated that Constitution would be scheduling a follow-up meeting with Regional office staff to update them on the status of the Project and that topic would be discussed at that time.
- The FWS indicated that quantification of indirect impacts to forest interior would need to be assessed to determine potential mitigation requirements. Constitution stated that we will look into the quantification of indirect impacts and determine an approach.
- Constitution stated that potential impact mitigation measures could include avoidance of clearing activities during the migratory bird breeding season, habitat restoration / acquisition and funding of research projects.
- Constitution committed to working with FWS on the field office level to develop suitable impact mitigation measures.

Comment [TRS10]: It was subsequently determined that NYFO would work with Constitution on mitigation for impacts to migratory bird habitat.

Comment [TRS11]: No specifics have yet been discussed with us but NYSDEC may have provided input. SD recommended using pollinator plants in the ROW.

Action Items

1. Constitution will submit the supplemental Indiana bat survey report in October 2013.
2. Constitution will arrange a meeting with Regional FWS staff to update them on the Project status and discuss MBTA and impact mitigation.
3. Constitution will develop indirect impacts to interior forests.
4. Constitution will develop and submit a strategy for clearing proposed activities within the migratory bird breeding window to FWS including anticipated timing and direction.
5. FWS will complete and submit a comment letter to FERC.
6. FWS will review and comment on the Bald Eagle Survey Report that was submitted by Constitution.
7. Constitution will contact Tim Sullivan when the freshwater mussel survey(s) are scheduled.