Comments on Constitution's Migratory Bird and Upland Forest Plan

1. Section 3.0, Habitat Assessment – Please define the abbreviation ER. Also, define the term "special use" as it relates to land use. Explain why this and the other five land use types do not provide significant breeding habitat for migratory birds. Define significant.

2. Section 3.2, Canonsville-Mill Stream Important Bird Area – Please italicize all latin names. Eliminate double use of the word "the". Instead of saying that the habitat areas that will be bisected by the project will continue to be large, please use actual acreage numbers that can demonstrate these fragments are indeed of a large size and thus, can support the bird species mentioned.

3. Section 3.3 Birds of Conservation Concern – A citation should be included that support the statement that blue-winged warbler, golden-winged warblers and black-billed cuckoos use edge habitat or use scrub-shrub habitat for breeding. Edge habitat and scrub-shrub habitat are different and should not be lumped together. Scrub-shrub habitats are areas where the vegetation is dominated by small, woody plants (e.g., shrubs, young trees) and often occur within the forest environment. There is evidence that scrub–shrub birds are less abundant near edges (Schlossberg and King 2008) and predation on scrub–shrub nests is higher near edges (Weldon and Haddad 2005). This contradicts your statement that the permanent ROW will provide a net benefit.

4. Table 1 – Clarify whether the column called County/State includes where the species is confirmed to breed or is likely to breed. Eliminate the word "undisturbed" from the description of bald eagle habitat. With the rise in population numbers, birds have been found nesting in areas with heavy human disturbance such as military ship yards, retirement communities, and at prison sites. Add a column that states the breeding dates for each bird species. This information for Pennsylvania can be found in Appendix F in Wilson et al. 2013. When you do this, it will be very clear why you will need to make some adjustments to your avoidance and minimization measures.

5. Section 4.0, Impacts to migratory birds and upland forests –

- The migratory bird breeding season is <u>01 April through 31 August</u> in Pennsylvania. Our field office has been using these dates in all correspondence for the past several years. I am uncertain of where the dates "early April through late July" originated. Please change this to say "early April through late August". It may also be a good idea to clarify that raptors often start breeding much earlier than April. For instance, bald eagles will begin establishing territories and pair bonding in December with nest building and egg incubation in January.
- I appreciate the addition of citations to try to support Constitution choice of a minimum 35-acre forest block size; however, the text still does not explain where the choice of 10% of 350 acres comes from. You state that the choice of a 350-acre minimum forest block is based on the average size of interior forest breeding species according to Robbins et al 1989. But then there is a reference to the State of Maryland's forest block sizes that does not seem to be related to the Robbins article or Constitution's conclusion. Why did you choose 10% of the average forest size to be the appropriate minimum for this project?

- Stating that the "bird species identified in the project area are adaptive to changing habitat conditions and possess the capability to expand or shift their home ranges to find alternative sources of food, water, and shelter until the disturbed habitat becomes re-established" is very misleading. These bird species are on the Birds of Conservation Concern list because of declining populations. Assuming that they can adapt quickly enough to changing conditions such that there will not be an impact is unsupported. The reference used, DeGraaf et al 1992, is a document specific to New England, which does not have the same habitat as the Mid-Atlantic region, and it is intended to be used to develop silviculture management strategies to increase biodiversity. It does not provide experimental evidence suggesting that these bird species can adapt successfully to disturbance from construction and operation of a pipeline until their habitat has become re-established. It also does not consider that their habitat will not actually be re-established in this pipeline scenario.
- We continue to object to the statement that direct disturbances during active construction will be temporary. Death is permanent. You will be clearing vegetation during the breeding season and eggs and chicks cannot disperse out of the area to avoid mortality. The migratory bird breeding season is 01 April through 31 August and if you look at the breeding season for the birds highlighted in Table 1, all of them except the bald eagle are breeding between 01 May and 25 August. The bald eagle breeds from January through mid-late July.
- Define "sufficient" when you say that sufficient interior forests will remain undisturbed in areas outside the construction right of way. Provide evidence that the birds displaced by your project will be able to relocate into adjacent areas with "sufficient" interior forest. It is possible that these territories will be established already preventing the displaced birds from reproducing that season.
- What was the rationale for needing to assign high, moderate and low values to habitat qualitatively? Were quantitative measures considered? The analyses for these criteria are unclear.

6. Section 5.1, General avoidance and impact minimization measures
   - The statement regarding the maximum migratory bird nesting season is inaccurate and should be removed. It currently states that the maximum nesting season is from mid-March to late July. As previously stated, the migratory bird breeding season is 01 April through 31 August and there are birds listed in Table 1 in this document that do breed well into August. The best possible timing for vegetation clearing is outside of the migratory bird breeding season and it is my understanding that Constitution will be clearing within that time frame, thus it is also inaccurate to say that Constitution will avoid impacts to most nesting birds. If Constitution intends to buffer active nests to reduce impacts to birds, then we request that survey and monitoring protocols be established and provided to our offices for review, and appropriate buffer sizes around nests be determined in advance of clearing activities.
   - Constitution states that "the majority of the remaining tracts of contiguous forest outside the construction right of way will remain large enough to maintain interior forest habitat'. Do you have data to support this such as the patch sizes of species specific to that region or know what activities are planned in that area such that they will not further reduce the amount of forest?

- Once again, turkeys are not protected under the MBTA and our goal for this project is not to create wild turkey habitat. There are more appropriate non-governmental associations that can be of assistance in seed mixes for early successional species.

7. Section 5.2, Bald eagles – Please state what types of noise reduction barriers may be used to minimize disturbance. While noise is certainly a factor in disturbance from blasting, the vibrations that travel through the ground are also a concern because they can cause disturbance. Do you have any conservation measures to try to reduce this?

8. Section 5.3, Post-construction activities – Please remove the phrase "to the extent practicable" when referring to the use of native species. Provide a justification for why you think you cannot revegetate using plant species native to Pennsylvania and New York. Also define the abbreviation "ECP".

9. Section 5.4, Upland forest conservation – Please remove the Northern long-eared bat from the list of research projects as we would like efforts for this plan to focus on migratory birds. Also, who will determine the appropriate amount of funding and how will it be decided? Before a third party becomes involved, we recommend clearly outlining all responsibilities of each party involved.

Section 6.0 Contacts – Please remove the word "Regional" from the name of both USFWS offices. Also, the Pennsylvania Field Office is in Suite 322, not Suite 300.

References:

Schlossberg, S.R., King, D.I., 2008. Are shrubland birds edge-specialists? Ecological Applications 18, 1325–1330.

Weldon, A.J., Haddad, N.M., 2005. The effects of patch shape on Indigo Buntings: evidence for an ecological trap. Ecology 86, 1422–1431.