DELAWARE-OTSEGO AUDUBON SOCIETY, INC.
P.O. BOX 544, ONEONTA, NY 13820

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

June 12, 2014

Dear Ms. Bose:

I am writing on behalf of our organization regarding the Draft Migratory Bird and Upland Forest Plan presented by Constitution Pipeline Company, LLC for its proposed Constitution Pipeline Project in northeastern Pennsylvania and eastern New York (Docket No. CP13-499-000).

We had earlier submitted comments on the Draft Environmental Impact Statement for this project, focusing on the impacts to birds from construction and operation. In particular, we noted the large-scale forest fragmentation resulting from the project, and the loss of important breeding habitat for numerous at-risk species, both from direct removal of forest vegetation, and also from the increased predation and nest parasitism that the cleared pipeline corridor would create.

Unfortunately, the draft plan and proposed mitigation measures are seriously flawed and would provide little, if any reduction in the well-documented negative impacts to the habitat and the birds.

The plan focuses on seven bird species identified as being of "conservation concern", of which three species use interior forest habitat that will be affected by the pipeline corridor. This narrow definition of impacted birds greatly underestimates the threats to breeding birds and avian life from the project. In New York State alone, a conservative list of birds that use interior forests in the region of the Constitution project—in most cases for breeding habitat—would total nearly 60 species. Of these, five species—Cooper's Hawk, Sharp-shinned Hawk, Northern Goshawk, Red-shouldered Hawk and Red-headed Woodpecker—are identified as Species of Special Concern by the NY State Department of Environmental Conservation (*http://www.dec.ny.gov/animals/7494.html*).

In addition, 26 of the species utilizing forest habitat are showing multi-decade population declines in New York, according to data from the US Geologic Survey's North American Breeding Bird Survey (*Sauer, J. R., J. E. Hines, J. E. Fallon, K. L. Pardieck, D. J. Ziolkowski, Jr., and W. A. Link. 2014. The North American Breeding Bird Survey, Results and Analysis*

1966 - 2012. Version 02.19.2014 USGS Patuxent Wildlife Research Center, Laurel, MD). This survey is recognized as the longest-running and most consistent census of breeding birds in the US and Canada.

A more holistic approach to the importance of a region and its habitat to at risk birds is provided by Partners in Flight (PIF) (*www.partnersinflight.org*)--a cooperative effort involving partnerships among federal, state and local government agencies, philanthropic foundations, professional organizations, conservation groups, industry, the academic community, and private individuals. PIF has developed a ranking of bird species based on the importance of a physiographic area to the overall populations of these species.

For the Allegheny Plateau region that includes the route of the Constitution Pipeline, four species utilizing northern hardwood-mixed forest habitat are identified as species either of **high regional concern**, defined as:

> "Species that are experiencing declines in the core of their range and that require immediate conservation action to reverse or stabilize trends. These are species with a combination of high area importance and declining (or unknown) population trend." (Scarlet Tanager; Black-billed Cuckoo)

Or as species of **regional responsibility**, defined as:

> "Species for which this region shares in the responsibility for long-term conservation, even if they are not currently declining or threatened. These are species of moderate overall priority with a disproportionately high percentage of their total population in the region." (Louisiana Waterthrush; Rose-breasted Grosbeak)

It can be anticipated that nearly all of the forest bird species will be negatively impacted by the pipeline corridor, through loss of foraging and breeding habitat, and increased predation and parasitism, as noted. The plan does not address these species or impacts—a glaring omission in an environmental review—and one that results in an inaccurate and incomplete assessment of the project's impacts.

The plan arbitrarily defines a minimum 35 acre forested parcel ". . . that would adequately support interior forest species . . .". This sized parcel is well-below the known minimum forest area for presence and probable successful breeding for many of these birds. For example, the Cornell University Laboratory of Ornithology has carried out two large scale research projects to find the necessary forest plot sizes for likely successful breeding for several species.

Project Tanager (*www.birds.cornell.edu/conservation/tanager/projecttanager.html*) calculated the minimum-sized forest patch required to achieve the same probability of supporting Scarlet Tanagers as a suitable, unfragmented forest. In landscapes representative of the region encompassing the Constitution Pipeline, the minimum area was found to be 148 acres—over three times the area used in the study as an adequate parcel for breeding.

Cornell's Birds in Forested Landscapes study determined even higher minimum areas needed for forest thrushes, including 435 acres for Hermit Thrush and 200 acres for Wood Thrush. For Veery, even a 400 acre patch of forest resulted in a significant decline in breeding

success compared to unfragmented forest. Again, these acreages greatly exceed the 35 acre figure used in the Constitution study.

Many other forest-dwelling birds require similar large forested areas for breeding. Use of the artificially low and scientifically indefensible minimum area, along with the study's analysis of only three forest bird species, results in a convenient minimization of forest bird impacts from the pipeline corridor.

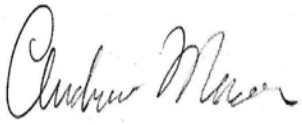
Flowing from this flawed analysis of the effects of the pipeline on forest-breeding birds is an entirely insufficient and inappropriate mitigation plan. It must be kept in mind that the impacts of the pipeline corridor will remain essentially in perpetuity. No reforestation of the corridor will occur—it will be maintained in an open state—and even if tree regeneration were permitted, it would likely take 2 or 3 human generations to revert to mature forest. Whether the corridor and surrounding forest would be repopulated by the existing bird species is questionable, and considering the ongoing decline and tenuous status of many of these birds, could be considered unlikely.

In this light, the proposed and largely undefined mitigation to compensate for impacts to 1549 acres does not approach the far-reaching and permanent impacts to forest birds along the 126 mile pipeline corridor with associated clearings and access roads. Considering that the ridgetop areas targeted for the pipeline contain much of the last remaining large unfragmented forest in the region, this project stands as the largest single act of forest disturbance in decades. The importance of these woodlands to forest birds both regionally and continent-wide in many cases, cannot be overstated. The reality is that no mitigation that would equal the loss of this habitat is possible.

We believe that this study is grossly inadequate and inaccurate and does not meet the requirements of the National Environmental Policy Act which requires agencies to take a hard look at means to mitigate adverse environmental impacts when preparing environmental impact statements. In this instance, any significant reduction in adverse impacts to forest birds would require re-routing of the pipeline to avoid large forested blocks. Proposals to route the pipeline along the I-88 corridor, or along existing utility rights-of-way are feasible and could achieve the necessary impacts reductions.

We urge the Commission to give serious consideration to these alternative routes, and at a minimum, require a complete and accurate study of the impacts of the Constitution Pipeline on forest-dwelling birds.

Sincerely,



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Mr. Stephen Tomasik - NYSDEC