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Joe Martens
Commissioner

June 26, 2014

Kevin Bowman
Project Manager
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Constitution Pipeline/FERC CP13-499, Upland Forest Mitigation Plan

Dear Mr. Bowman,

I want to take the opportunity to update you on the New York State Department of Environmental Conservation's (Department or NYSDEC) review of the "Migratory Bird and Upland Forest Plan" (Plan) drafted by Constitution and filed with the Federal Energy Regulatory Commission (FERC) on 6 May 2014. As you recall, Constitution filed the Plan in response to FERC's request in Section 5.2 of the Draft Environmental Impact Statement (draft EIS), to provide, "a draft Upland Forest Mitigation Plan developed **in consultation with** the FWS, the NYSDEC, the PADCNR, and the Pennsylvania Game Commission," prior to the end of the draft EIS comment period. Despite FERC's specific request, NYSDEC was not consulted regarding the content of the Plan prior to receipt of a draft dated 28 April 2014, and Department staff was not able to review and provide comment to Constitution before its submission to FERC on 6 May. Additionally, NYSDEC recently became aware that discussions have been held separately between Constitution and the federal resource agencies and follow-up information has not been provided simultaneously to all of the agencies listed in FERC's draft EIS request. NYSDEC staff respectfully requests that it be fully involved in this process as it moves forward, with all subsequent communication concurrently shared with Department staff and the listed agencies. We recognize that developing a meaningful forest interior mitigation plan is a difficult task that requires a robust and active dialogue between Constitution and all the natural resource agencies to arrive at an appropriate conclusion.

NYSDEC is deeply concerned about impacts on forest interior habitats from the construction and operation of the Constitution Pipeline, particularly along the proposed preferred route, in addition to future development that may be induced by the creation of this cleared corridor, such as additional gas transmission lines or distribution lines. This region of New York State currently contains extensive areas of large forest tracts which provide important habitat for a number of forest-dependent breeding bird species, some of which are in decline and considered by New York State to be "species of special concern." Increasing fragmentation of forests in New York, and throughout the northeast, is a major contributor to the decline of these species. Forest fragmentation not only reduces the physical amount of habitat available to birds when trees are cut, it also provides corridors for parasitic and invasive species, such as brown-headed cowbird, European starling, and emerald ash borer, to penetrate further into quality interior forest habitat. Invasive species often directly compete for nesting sites and food resources, introduce diseases, decrease breeding success, and can alter the habitat itself.

Department staff has conducted a review of the Plan filed with FERC on 6 May. As presented, the Plan focuses mainly on how habitat types and breeding bird diversity will increase as a result of the project, but it does not include sufficient discussion of reducing impacts to forest interior nesting birds and mitigation options for addressing unavoidable impacts to these important habitats. For example, the draft Plan does not include a complete list of all the potential forest interior breeding birds of conservation concern that likely occur in the project area. The Plan contains many unsupported and inconsistent statements about how birds will react to forest clearing, permanent conversion to non-forest cover, habitat loss, and increased human activity along the proposed pipeline corridor. There is little scientific support provided for statements concerning likely direct and indirect impacts to forest interior nesting birds, the minimum interior forest block size for nesting birds, or the criteria that will be used to determine the suitability of potential mitigation parcels. In addition, the "high", "moderate", and "low" habitat quality indicators used in the plan, as well as the total acreage of interior forest habitat directly impacted by construction and operation used in portions of the document, are not supported with descriptions for what these designations mean or how they were calculated. A revised plan should include detailed explanations, tables, maps, citations and other supporting information to describe the expected impacts to forests and the birds that depend on this sensitive habitat.

Constitution has contacted the natural resource agencies to meet and discuss the draft Plan. To avoid confusion as to what version of the document is made available for review, we request by copy of this letter that Constitution provide a revised draft Plan simultaneously to all natural resources agencies (USFWS, NYSDEC, PADCNR, and the Pennsylvania Game Commission) well in advance of a meeting. This revised draft Plan should incorporate all previous comments provided by the natural resource agencies and should provide additional support for assertions made regarding the anticipated impacts on forest interior birds, as well as additional details to mitigate for those impacts.

Thank you for your attention to these issues. Please feel free to contact me if you have any questions.

Sincerely,

Stephen Tomasik
Project Manager
Major Projects Management Section

cc: Linda Schubring, Constitution
Tim Sullivan, USFWS
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