



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

OCT 08 2014

Regulatory Branch

SUBJECT: Permit Application Number NAN-2012-00449-UBR by Constitution Pipeline Company, LLC To Fill Approximately 137 Acres of Regulated Waters and Wetlands in New York and Pennsylvania To Enable Construction of a New 124-Mile-Long Natural Gas Pipeline

Constitution Pipeline Company, LLC
Attn: Timothy Powell
P.O. Box 1396
Houston, Texas 77251-1396

Dear Mr. Powell:

This letter is a follow-up from the meeting held on September 17, 2014, between the U.S. Army Corps of Engineers (Corps) and representatives of Constitution Pipeline Company, LLC (Constitution). The meeting was held to discuss the Corps review of Constitution's permit application requesting authorization to discharge fill material into approximately 137 acres of regulated waters of the United States, including wetlands, to facilitate the construction of a 124 mile-long, 30 inch-diameter, natural gas pipeline between Brooklyn Township, Susquehanna County, Pennsylvania and the Town of Wright, Schoharie County, New York. The discussion focused on information that must still be provided to this office, as well as agency reviews that require completion, that are necessary to conclude in order to allow this office to arrive at a permit decision on your proposed project. The following points were discussed:

Section 106 of National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal Agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. As lead Federal Agency, the Federal Energy Regulatory Commission (FERC) is responsible for fulfilling the Section 106 requirements. The applicant can facilitate the fulfillment of these requirements by ensuring archeological and historical surveys are completed in as timely a manner as possible, and by actively participating in consultation with Tribes and State Historic Preservation Officers. In order for us to conclude our review of the proposed project for a permit decision, the Section 106 process, including consultation with Native American Tribes, must be concluded in accordance with 36 CFR Part 800. Based on discussions during our meeting, this would likely include the execution of a Memorandum of Agreement (MOA) with the New York State Office of Parks, Recreation and Historic

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Preservation. This office will not make a decision on your application until any required MOA is executed by all parties.

Endangered Species Act

Section 7(a)(4) of the Endangered Species Act (ESA) requires Federal agencies to ensure that any action authorized is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of designated critical habitat for those species. FERC, as lead agency is responsible for consultation with the U.S. Fish and Wildlife Service (FWS) to ensure that the ESA requirements are met. Based on our discussion during the meeting, Constitution is participating in the consultation and is preparing a draft Biological Assessment and collecting acoustic survey data for the Northern Long-Eared Bat that will be submitted to FWS for review. It is your understanding this review will culminate with a letter from FWS that completes the consultation process. This letter will serve as documentation for us that consultation under Section 7 of the ESA is concluded. This office will not make a decision on your permit application prior to the completion of consultation with FWS.

Remote Sensing

Constitution representatives discussed that additional data has been collected on the use of remote sensing which supports the assertion that the use of this method for non-surveyed parcels generally over-estimates the aquatic resources on these sites. The additional data has been gathered by comparing aquatic resource information from remote sensed parcels prior to being ground surveyed, with the same parcels after ground surveys were conducted to identify aquatic resources. Constitution will provide for the Corps' consideration, a written comparison of this data that clearly explains how the data was derived and how it is applied to this project such that the accuracy is sufficient enough to estimate aquatic resource impacts on non-surveyed parcels. In addition, this information should present how it would be used to develop a mitigation plan that offsets impacts to aquatic resources.

Section 401 of the Clean Water Act Water Quality Certification

The Corps understands that you have received a conditional Section 401 of the Clean Water Act Water Quality Certificate from the Commonwealth of Pennsylvania on September 5, 2014.

You must also receive a Section 401 of the Clean Water Act Water Quality Certificate from the State of New York Department of Environmental Conservation before a permit decision can be made by this office.

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Mitigation

The Corps will continue its review of the mitigation plans received on August 14, 2014 and met with Constitution representatives on October 2, 2014 to discuss the plans. A letter will be prepared by the Corps and provided to Constitution identifying additional information necessary for a complete mitigation plan submittal.

We discussed avoidance and minimization of impacts prior to mitigation in relation to Constitution's proposal to replant only high quality forested wetlands where temporary impacts would occur. The Corps typically requires applicants to restore/replant all temporary impact areas as a method of minimizing impacts. Restoring the functions and services of wetlands to pre-existing conditions in the proposed temporary impact areas is preferable, and is typically easier to accomplish than off-site mitigation as is currently proposed. Please provide a written discussion of why the preferred method is not proposed and how the temporary impacts and associated temporal losses to forested wetlands would be mitigated. In addition, please provide a description of "high quality forested wetlands" and identify each wetland proposed for restoration.

Concurrently, our Office of Counsel is coordinating with other involved Corps Districts and Constitution to discuss the need, type and form of real estate documents necessary to preserve the proposed mitigation sites in perpetuity.

Alternative M

We discussed the constructability of Alternative M or portions thereof, with focus on Alternative M Segment 5/6. We requested written responses to the following items:

- Your analysis of Alternative M determined that the Primary Route would reduce the extent of environmental impacts associated with the construction and operation of the pipeline while reducing safety concerns during construction (Resource Report No. 10 - Alternatives, dated November 2013). Although the report lists minimizing environmental impacts as a factor used to select the Primary Route, it is not clear which environmental factors were considered and how heavily each factor was weighed. Please explain.
- You have stated that if the pipeline exceeded 127 miles in length, the construction of a new compressor station would be required which would have greater environmental impacts. Please explain what the environmental impacts might be and how they would be greater than the environmental impacts should the primary route be constructed.

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- The DEIS states with an increase in pressure of 1,400 pounds per square inch gauge (psig), the Constitution pipeline's maximum capacity would be 850,000 Dth/d, which is 200,000 Dth/d greater than the currently proposed level. Would an additional compressor station be required to obtain the necessary pressure to increase the flow capacity to 850,000 Dth/d? Is an increase in the pipeline capacity a reasonable expectation in the foreseeable future?
- If a new compressor station were constructed, would the pipeline still require a connection to Iroquois Pipeline Company's Wright Compressor Station?
- As the 30" diameter pipeline would not be utilized at the maximum capacity, could a smaller diameter pipeline be constructed?
- If a smaller diameter pipeline were constructed, would the 127-mile length still be a limiting factor?
- The comparison of "Primary Route Segment 5, Bridge 2 Alternative Route M Segment 6" to the Primary Route reveals this alternative is only 0.33 miles longer than the primary route, yet the added length was listed as a factor for why it was not incorporated into the primary route. The steep side slope maps depict much of this route without steep side slopes, with the majority on the east end of the route. Please explain why this route could not be incorporated as is or slightly modified, to avoid the steep side slopes on the eastern end.

In addition, Constitution explained the significance of the extended lengths of steep side slopes along Alternative M and ramifications of constructing a pipeline in these areas, including engineering/construction challenges, safety concerns, environmental concerns, and post construction problems that have been experienced on other pipelines on steep side slopes. Please provide a summary that provides details on these issues and provides examples of situations that have occurred or is occurring on other pipelines.

Cumulative Impacts

Cumulative Impacts are defined as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (Council of Environmental Quality 40 CFR Chapter V Sec. 1508.7).

Cumulative impacts must be assessed for projects that can be reasonably expected to be built in the vicinity of the proposed project, including proposed Leatherstocking Gas Company tie-ins to the Constitution pipeline and the proposed Tennessee Gas Pipeline Company's Northeast Energy Direct Project if the analysis provided in the FERC FEIS is not sufficient to meet our cumulative impacts review.

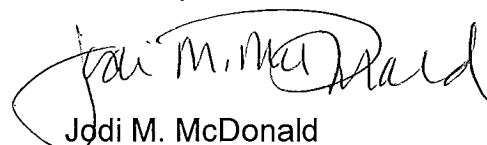
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As you can see from the attached letter, there is significant coordination, information and requirements which must be completed in order to make a decision on your permit application. The Corps understands that the applicant has a target date of January 22, 2015 to receive the Department of the Army authorization for this work. However, this office will not commit to any date at this time, due to information needs and outstanding certification and consultation requirements. If questions arise concerning this letter, please contact my Regulatory Project Manager, Kevin Bruce at (518) 266-6358.

Sincerely,



Jodi M. McDonald
Chief, Regulatory Branch

Copy furnished:

CENAN-OP-RU (K. Bruce)
CENAN-OC
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CENAB-OP-R
CENAD- Regulatory
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