UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Constitution Pipeline Company, LLC Docket Nos. CP13-499-006
Iroquois Gas Transmission System, L.P. CP13-502-003

ENVIRONMENTAL ASSESSMENT COMMENTS

Catskill Mountainkeeper; Clean Air Council; Delaware-Otsego Audubon Society; Delaware Riverkeeper Network; Maya K. van Rossum, the Delaware Riverkeeper; Food & Water Watch; Riverkeeper, Inc.; Sierra Club; and Waterkeeper Alliance ("Intervenors"), joined by Natural Resources Defense Council, hereby submit comments on the Environmental Assessment ("EA")[1] for Constitution Pipeline Company LLC's ("Constitution") Constitution Pipeline Project and Iroquois Gas Transmission System, L.P.'s ("Iroquois Gas") Wright Interconnect Project (collectively the "Project"). Intervenors' EA comments supplement their April 7, 2014, comments[2] on the 2014 Draft Environmental Impact Statement, which are fully incorporated by reference in these EA comments. As with the Federal Energy Regulatory Commission's ("FERC" or "the Commission") 2014 Final Environmental Impact Statement ("FEIS"), the improperly conducted EA fails to adequately assess and mitigate impacts to air, water, species, and natural resources, and fails to adequately consider cumulative impacts and less harmful alternatives.

We also note that the 30-day comment period is wholly inadequate for this matter, which involves roughly 15 years of studies, an FEIS and the current EA, as well as project variations and major changes in environmental conditions. Intervenors, supported by the State of New York and other commenters, requested a 40-day extension of the comment period, which FERC has thus far inexplicably declined to adjudicate. The difficulty in preparing meaningful and adequate comments in that limited time frame was compounded by the comment period including the end of summer when several attorneys and clients had prescheduled vacations, and then by observance of Jewish high holidays. By failing to extend this plainly inadequate and truncated comment period, FERC only weakens the EA and undermines its own consideration of the Project.

I. Intervenors Continue to Object to FERC's Consideration of the Petitions for Reissuance Instead of Requiring New Applications Under Section 7.

Intervenors maintain, as explained in their previous filings in the above-captioned dockets,[3] that the process FERC is undertaking to "reissue" a certificate of public convenience

[1] Constitution Pipeline and Wright Interconnect Projects Environmental Assessment, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-006, CP13-502-003, Accession No. 20260821-3005 (Aug. 21, 2026) (hereinafter "EA").
[2] Comments of Catskill Mountainkeeper, et al., *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-000, CP13-502-000, Accession No. 20140407-5417 (Apr. 7, 2014) (hereinafter "DEIS Comments").
[3] Letter to Robert Solomon, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-000, CP13-502-000, CP18-5-004, Accession No. 20260116-5126 (Jan. 16, 2026); Motion to Dismiss and Protest, *Constitution Pipeline Company, LLC*, Docket Nos. CP13-499-006, CP18-5-004, Accession No. 20260129-5417 (Jan. 29, 2026) (hereinafter "Constitution Protest"); Motion to Dismiss and Protest, *Iroquois Gas*

and necessity for this Project is unlawful and that FERC should dismiss the Petitions[4] for reissuance. The Natural Gas Act grants FERC the authority to issue a certificate only in response to a full application, 15 U.S.C. § 717f, and the Petitions Constitution and Iroquois Gas submitted requesting reissuance fail to comply with all statutory and regulatory requirements for applications. Furthermore, the certificate that Constitution and Iroquois Gas ask FERC to reissue was vacated by the U.S. Court of Appeals for the Second Circuit and must be treated as a legal nullity. FERC must, therefore, dismiss the Petitions and require new applications for certificates to be filed. Because new applications for certificates are required, a new review of the Project under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332, and new applications for state water quality certifications under Section 401 of the Clean Water Act ("CWA"), 33 U.S.C. § 1341, are required. FERC's previous declaratory order finding that the State of New York waived its CWA Section 401 authority as to the Constitution Project has been vacated by the U.S. Court of Appeals for the Second Circuit and therefore has no legal effect. Even if it were not vacated, the declaratory order is irrelevant because a new application for a certificate under the Natural Gas Act, which Constitution must be required to submit in order to revive its pipeline Project, triggers a new CWA Section 401 process. In any event, FERC was incorrect that New York waived its authority in 2015.

By submitting comments on the EA, Intervenors do not waive the above objections to FERC's failure to dismiss the Petitions. The instant NEPA process is being wrongly conducted under a docket that should have been closed years ago and pursuant to petitions for reissuance that FERC was required to dismiss out of hand. In order to ensure preservation of all of their arguments, Intervenors provide the following comments in response to FERC's EA.

II. The Project's Benefits Are Speculative and There Is No Demonstrated Need for the Project.

While the question of market need for the Project is beyond the scope of what Commission staff evaluate in a NEPA review and is ultimately determined in an order by the Commission, Intervenors raise it here because of the way information developed during NEPA review is used in weighing harms and benefits in FERC's ultimate decisionmaking under the NGA and because of how the market need for the Project informs the purpose need defined for the NEPA review.

FERC uses a multi-step process, starting with market need, to determine whether a Project is "required by the present or future public convenience and necessity," 15 U.S.C. § 717f(e), and thus can be granted a Certificate of Public Convenience and Necessity. First,

---

Transmission System, L.P., Docket No. CP13-502-003, Accession No. 20260317-5105 (Mar. 17, 2026); Request for Rehearing of January 23, 2026 Order on Remand, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-007, CP13-502-004, CP18-5-005, Accession No. 20260223-5160 (Feb. 23, 2026); Scoping Comments of Catskill Mountainkeeper et al., *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-006, CP13-502-003, Accession No. 20260504-5201 (May 4, 2026) (hereinafter "CMK Scoping Comments").

[4] Pet. of Constitution Pipeline Co., LLC for Reissuance of Certificate and Reaffirmance of Waiver Determination, *Constitution Pipeline Co., LLC*, Docket Nos. CP13-499-006, CP18-5-004, Accession No. 20251219-5626 (Dec. 19, 2025) (hereinafter "Constitution Petition"); Pet. of Iroquois Gas Transmission System, L.P. for Expedited Reissuance of Certificate Authority and Approval of Capacity Lease Agreement, *Iroquois Gas Transmission System, L.P.*, Docket No. CP13-502-003, Accession No. 20260213-5321 (Feb. 13, 2026).

FERC determines whether the Project can move forward without subsidization by existing customers, which requires a showing of market need. *New Jersey Conservation Found. v. FERC*, 111 F.4th 42, 50 (D.C. Cir. 2024). "Relevant factors for determining market need may include, but are not limited to, 'precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.'" *Id.* (quoting Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227, ¶ 61,747 (Sept. 15, 1999), *clarified*, 90 FERC ¶ 61,128 (Feb. 9, 2000), *further clarified*, 92 FERC ¶ 61,094 (July 28, 2000)). "If FERC finds a market need, it moves on to the second step, where it must determine whether adverse impacts are outweighed by public benefits." *Id.* If the public benefits outweigh the harms, then FERC moves on to complete an environmental analysis and to weigh all harms, including environmental harms, against the Project's benefits. *Id.* at 51. *See also Transcontinental Gas Pipe Line Company, LLC*, Order Issuing Certificate, 192 FERC ¶ 61,184, P 24 (Aug. 28, 2025) (describing multi-step process).

The "goal" of NEPA review is "to inform agency decisionmaking," *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 173 (2025); therefore, the goal of FERC's NEPA review is to inform its ultimate decision about whether "a project's public benefits (such as meeting unserved market demand) outweigh its adverse effects (such as deleterious environmental impact on the surrounding community)," as is required to grant a Certificate under Section 7 of the NGA. *See City of Oberlin, Ohio v. FERC*, 937 F.3d 599, 602 (D.C. Cir. 2019).

FERC need not reach the step of weighing the Project's full suite of harms, including environmental harms, against its benefits, however, because there has been no showing of market need on the docket. To date, nine months after filing its Petition for Reissuance, Constitution still has no precedent agreements. As explained in Intervenors' Protest,[5] precedent agreements are considered the most important evidence of market need for a project, so the absence of *any* precedent agreements for *any* of the Project's capacity should be taken as important evidence of the *lack* of market need. Without precedent agreements, the only evidence of the alleged market need in the record are Constitution's conclusory assertions of the Project's predicted benefits in its Petition for Reissuance and the S&P Global study (Attachment A to Constitution's Petition) that purports to support Constitution's assertions but, as explained in Intervenors' Protest,[6] does not actually establish that the gas carried by the pipeline would have the downstream benefits asserted. If there is, in fact, no market need for the Project and it would not create any public benefits, then even minimal environmental harms would outweigh the Project's non-existent benefits, meaning FERC could not approve it.

The purpose and need stated in the EA relates back to the question of market need. The EA quotes Constitution in stating that the purpose of the Constitution Pipeline is to "increase supply diversity and improve operational performance, system flexibility, and reliability in the New York and New England market areas."[7] The EA states that the purpose of the Wright Interconnect Project "is to provide 650,000 dekatherms per day of leased firm transportation capacity for natural gas from the terminus of the CPP in Wright, New York, to downstream

[5] Constitution Protest at 27–33.
[6] *Id*. at 33–42.
[7] EA at 3.

customers in Iroquois's existing system through the addition of system compression, interconnections (including with the Tennessee Gas Pipeline system), and other necessary infrastructure."[8] It is the stated purpose and need against which any alternatives are evaluated during NEPA review. That stated purpose and need, however, assumes that there is a market need for the Project. If there is no market need for the Project, then the proposed Project would provide no benefits relative to the no action alternative of denying the Petitions. Additionally, the stated purpose assumes that the Project would be able to deliver additional transportation capacity to downstream customers, which, as explained in Intervenors' Protest, the Project appears unable to do.[9]

III. FERC Must Prepare an EIS for the Project.

FERC must prepare an Environmental Impact Statement ("EIS"), rather than an EA, because the Project is likely to have reasonably foreseeable significant impacts and because FERC's regulations require preparation of an EIS for major pipeline projects that, like the Constitution Pipeline, create new rights-of-way. In 2014, FERC recognized that the Constitution Pipeline and Wright Interconnect Project would have foreseeable significant impacts that required preparation of an EIS. Although there is no evidence indicating that the Project's impacts will be less significant more than a decade later, FERC prepared only an EA.

NEPA requires all federal agencies to prepare an EIS examining the "reasonably foreseeable environmental effects of the proposed agency action" before taking any agency action "significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C); *see also* 42 U.S.C. § 4336(b)(1). An agency may prepare an EA only if the proposed agency action "does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown." 42 U.S.C. § 4336(b)(2). The impacts of constructing and operating the Project are likely to be significant and their significance is not unknown or unknowable. Therefore, an EIS is required.

In order to serve its purpose of adequately informing FERC's substantive decisionmaking, *Seven Cnty., Colorado*, 605 U.S. at 173, FERC's NEPA review must take the form of an EIS that fully evaluates the Project's impacts, including the relative impacts of alternatives, and analyzes potential mitigation measures that FERC may impose as conditions on a Certificate. FERC must be fully informed about a Project's environmental impacts in order to determine that the Project's benefits outweigh its harms as is required for FERC to grant a Certificate. *New Jersey Conservation Found.*, 111 F.4th at 62; *City of Oberlin*, 937 F.3d at 602. FERC must also be fully informed about whether to exercise its "power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require," 15 U.S.C. § 717f(e), including, as FERC's regulations require, consideration of mitigation measures, including ones an applicant did not propose, but which could be more effective than those proposed, 18 C.F.R. § 380.7.

FERC's regulations also state that an EIS will "normally" be prepared for "[m]ajor pipeline construction projects under section 7 of the Natural Gas Act using rights-of-way in

[8] *Id.*
[9] Constitution Protest at 33–42.

which there is no existing natural gas pipeline." 18 C.F.R. § 380.6(a)(3). The EA states that of the 125 miles of the Constitution pipeline, only 14.2 miles would be co-located with existing rights-of-way, and some of those miles appear to be co-located with electric transmission lines, not other gas pipelines.[10] FERC has not explained why this regulation does not require completion of an EIS for the Constitution pipeline, given that nearly 90% of its route will use a right-of-way in which there is no existing gas pipeline.

IV. FERC Has Not Corrected the Errors in the FEIS.

FERC has claimed that the Commission "will ultimately determine in the Order whether the prior and current NEPA analyses are sufficient to fulfill its NEPA obligations."[11] As Intervenors highlighted in their Scoping Comments, the FEIS contained serious errors that have not been corrected.[12] FERC has continued to rely heavily on this flawed FEIS despite its reliance on incomplete information, its flawed and inadequate analysis, and the changed factual and legal landscape. In fact, FERC relied on the outdated and flawed FEIS analysis entirely for seven of the fourteen resource areas considered and significantly in many other areas of analysis.[13] As indicated by the Intervenors' Scoping Comments, the FEIS inadequately analyzed the Project's impacts on water resources, wetlands, soils, wildlife, air quality, blasting activities, and mud pits, as well as missing data and incomplete mitigation planning.[14] Furthermore, the FEIS failed to properly evaluate reasonable alternatives, including a meaningful "no action" option, and several environmental impacts were understated or excluded from public review.[15]

Intervenors incorporate the entirety of their Scoping Comment here. To the extent that the EA continues to rely on the flawed underlying analysis of the FEIS, this analysis must be redone to satisfy its NEPA obligations.

V. FERC Is Incorrect That There Have Been No Changes Since the FEIS for Certain Resources Not Carried Forward.

Since issuance of the 2014 FEIS, conditions along the proposed Constitution Pipeline and Wright Interconnect Projects have materially changed in several respects. Although the EA acknowledges many of these changes, it repeatedly concludes that the FEIS remains valid and that impacts would not substantially differ from those analyzed in the FEIS. In doing so, the EA relies on generalized statements rather than undertaking a comprehensive reassessment of environmental consequences and accordingly fails to adequately account for the effects of changed environmental conditions, updated scientific information, altered land uses, and newly identified sensitive resources.

[10] EA at 14–15, tbl. A.5-1.
[11] *Id.* at 9, tbl. A.4-1.
[12] CMK Scoping Comments.
[13] EA at 6, tbl. A.3-1; *see generally id.*
[14] CMK Scoping Comments at 3–5.
[15] *Id.*

A. Impacts That Have Changed Without New Analysis.

FERC notes in the EA several environmental impacts that have changed significantly in the twelve years since the FEIS was published, including but not limited to:

1. **Construction and operational acreage increased:** The EA acknowledges a substantial increase in the Project footprint from 1,859.0 to 1,970.5 construction acres and from 757.0 to 855.3 operational acres.[16] Despite this substantial increase in land disturbance and permanent encumbrance, the EA does not provide an updated analysis of the environmental consequences associated with the enlarged footprint.
2. **New landslide areas identified:** The EA identifies nine new potential landslide areas along the route that were not identified during preparation of the FEIS.[17] Rather than evaluating the significance of these newly discovered geologic hazards or reassessing impacts under current conditions, the EA only notes that additional studies will occur later and concludes that FEIS findings remain valid.[18]
3. **Vegetation previously cleared has regenerated:** The EA recognizes that previously cleared Pennsylvania right-of-way has undergone vegetation regeneration, altering baseline site conditions as explained further in the updated report by Intervenors' expert, Kevin Heatley.[19] However, it does not reevaluate ecological impacts under current vegetation conditions.[20]
4. **Limestone woodland rank changed:** The EA also acknowledges that a limestone woodland community crossed by the project has received an updated New York conservation ranking of S2S3, indicating that it is now considered either very vulnerable or vulnerable to extirpation.[21] Nevertheless, the EA concludes that impacts would remain unchanged because the location of the resource has not changed.[22]
5. **Cumulative Development Over the Last 12 Years**: Twelve years have passed since the FEIS was finalized and there have likely been shifts in land use and local development during that time. There is a significant amount of data available to perform this desktop analysis through the Annual NLCD Land Cover Dataset.[23] This analysis should be a part of any environmental review for this Project to account for increases in development land use, impervious surfaces, farm land, and other potential factors.

FERC has not adequately evaluated the impacts of these changed conditions.

---

[16] EA at 14.
[17] *Id*. at 4, tbl. A.3-1.
[18] *Id*. at 4, tbl. A.3-1.
[19] *Id*. at 5, tbl. A.3-1; Kevin Heatley, M.EPC, LEED AP, *Professional Review & Comment on Environmental Assessment Constitution Pipeline and Wright Interconnection Projects* at 8-10 (Sept. 17, 2026) (hereinafter "Heatley EA Report") (attached as Ex. 1)
[20] *Id*. at 5, tbl. A.3-1.
[21] *Id*. at 5, tbl. A.3-1.
[22] *Id*. at 4.
[23] USGS, *Annual NLCD Data Access* (Sept. 26, 2024), https://www.usgs.gov/centers/eros/science/annual-nlcd-data-access.

B. Impacts That Have Changed with Inadequate Analysis.

The EA includes discussion of additional changed factual conditions and potential environmental impacts of the Project but does not meaningfully address the implications of these changes on the Commission's analysis of the Project. These changes, which are also discussed in greater detail in their corresponding sections below, include:

1. **New principal aquifer crossing:** The EA identifies a newly recognized principal aquifer crossing but never considered whether the Project posed any risks to the quality of water found within this aquifer.[24]
2. **Additional drinking water wells identified:** Additional private drinking water wells have been identified near the route, yet the EA largely relies entirely on existing mitigation commitments rather than assessing new risks posed by the Project.[25]
3. **Stream classifications changed:** Pennsylvania and New York stream classifications have been upgraded, reflecting greater resource sensitivity.[26] However, the EA provides no specific plans for how these sensitive streams will be crossed to protect the habitat.[27] FERC only indicates that any waterbody crossing methods would either be the same as previously proposed or require future review and approval.[28]
4. **Additional FEMA flood hazard areas identified:** Three new flood hazard crossings have been identified but have not prompted a fresh flood-risk analysis, and the EA relies on the same mitigation measures outlined for other, different, flood hazard areas in the FEIS.[29]
5. **Species status and presence changes:** Several species previously considered are no longer present in agency databases, while newly proposed-listed species and state-sensitive species have emerged. The EA largely treats these developments as an extension of prior consultation instead of undertaking a comprehensive reassessment.[30]
6. **Timber rattlesnake habitat concern:** The Pennsylvania Game Commission ("PGC") and the Pennsylvania Fish and Boat Commission ("PFBC") requested updated habitat assessments on the potential impacts of the Project on timber rattlesnake habitat—an assessment that had not been completed by the time of the EA.[31] Nevertheless, FERC concluded that the Project would not result in significant effects on state-listed special status species.[32]
7. **Potential NLEB hibernacula discovered:** FERC found that the Project is likely to adversely affect the northern long-eared bat hibernacula but the U.S. Fish and Wildlife

[24] EA at 23.
[25] *Id*. at 23–24.
[26] *Id*. at 24.
[27] *Id*. at 24.
[28] *Id*. at 24.
[29] *Id*. at 26.
[30] *Id*. at 27–32, 33–34.
[31] *Id*. at 34.
[32] *Id*. at 34.

Service ("USFWS") had not yet confirmed that the mitigation measures proposed by the Commission will be valid.[33] Furthermore, Constitution has not yet conducted any required surveys and must still consult with the New York State Natural Heritage Program ("NYSNHP") and USFWS.[34]

8. **Historic resources may have aged in:** FERC indicates that there are potential cultural resources that were not eligible in 2014 for National Register protection that may now qualify for National Register protection, yet the EA did not update these inventories.[35]
9. **Previously unsurveyed acreage remains:** Approximately 12.6 acres remain unsurveyed for archaeological resources, leaving unresolved information gaps.[36]
10. **Prime farmland acreage increased dramatically:** Affected prime farmland increased from 636.1 to 1,026.4 acres, yet the EA does not reconsider whether expanded impacts warrant additional mitigation.[37]
11. **Updated climate science basis:** The EA relies on much newer climate science documenting intensified climate risks but does not meaningfully revisit project vulnerability or environmental consequences in light of those findings.[38]

FERC has not sufficiently evaluated the impacts of these changed conditions and must do so to comply with its NEPA obligations.

VI. FERC Must Adequately Consider Less Harmful Alternatives, Including Compressor Station Electrification.

Both NEPA and the NGA require FERC to consider alternatives, including: the no-action alternative of denying the application; granting only part of the application, such as approving a smaller capacity project than proposed; or imposing conditions upon any certificate granted, such as requiring compressor stations to be powered by electricity to minimize air pollution.[39]

The Natural Gas Act provides that, in response to an application under Section 7, the Commission may issue a certificate "authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that . . . the proposed [activity], to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). The Commission also has "the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require." *Id.* Section 7 therefore imposes upon the Commission a requirement to consider what conditions the public convenience and necessity may require and whether to, in the alternative,

[33] *Id*. at 32.
[34] *Id*. at 32.
[35] *Id*. at 34–35.
[36] *Id*. at 34.
[37] *Id*. at 40.
[38] *Id*. at 52–53.
[39] Intervenors are not endorsing any alternative other than the no-action alternative of denying the certificate, nor are Intervenors suggesting that any other alternative would adequately mitigate or reduce environmental impacts to insignificant levels such that an EIS is not required.

grant only part of an application. *See Minisink Residents for Env't Pres. & Safety v. FERC*, 762 F.3d 97, 107 (D.C. Cir. 2014) (holding that Section 7 of the Natural Gas Act imposes a requirement to consider alternatives).

Because the "goal" of NEPA review is "to inform agency decisionmaking," *Seven Cnty.*, 605 U.S. at 173, FERC must develop sufficient information about alternatives through the NEPA process, 42 U.S.C. § 4332(C)(iii), (F), to enable it to determine whether it is necessary to attach any conditions to a certificate or to approve only part of the requested activity. Indeed, the Supreme Court has confirmed that whether an agency properly "has addressed . . . feasible alternatives" in its NEPA review is among the issues that courts must review to ensure NEPA compliance. *See Seven Cnty.*, 605 U.S. at 180.

A. Electric Compressors Alternative

While FERC finds that using an electric compressor station, instead of gas turbine powered compression, for the Wright Interconnect Project "would be technically feasible,"[40] FERC arbitrarily rejects that alternative without adequate consideration. FERC's reasons for rejecting that alternative are: (1) that based on information that Iroquois Gassubmitted,[41] "it would not be economically practical and would not meet WIP's objectives due to the increased time" and (2) that FERC "cannot conclude that the alternative would provide a significant environmental advantage due to the required powerline construction and in light of the current proposal's demonstrated compliance with the [National Ambient Air Quality Standards] NAAQS."[42] These reasons are unsupported in the record, and FERC has not provided information about the relative benefits of electric and gas powered compressors in a way that allows the public to meaningfully compare these alternatives.

As to economic feasibility, Iroquois Gas did not provide any substantiation for its estimates that installing an electric compressor station (and the additional 3-mile power line required for it) would add 6 years of additional time to the project, $32 million in construction costs, and $4.5 million in annual cost for electrical service.[43] Nor did FERC or Iroquois Gas address whether some of those costs, the timeline, or the required footprint for any additional transmission line could be reduced by using onsite renewable generation paired with batteries to provide some of the electricity required.

As to environmental advantages, FERC is incorrect to suggest that there would be no environmental advantage to electrification merely because the Wright Interconnect Project, as proposed with gas-powered compressor units, is modeled to comply with the NAAQS. As explained further below, *see infra* Section VII, substantial health benefits can be achieved by reducing pollution even further below the NAAQS because pollution, even at levels below the NAAQS, causes health impacts such as asthma attacks or even premature death. While the D.C. Circuit has recently affirmed FERC's practice of using NAAQS compliance as a metric to

[40] EA at 68.
[41] Response of Iroquois Gas Transmission System, L.P. to June 25, 2026 Data Request, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-006, CP13-502-003, Accession No. 20260710-5195 (July 7, 2026).
[42] EA at 68.
[43] Response of Iroquois Gas Transmission System, L.P. to June 25, 2026 Data Request at 5; EA at 68.

determine whether air pollution impacts are "significant" for NEPA purposes, the Court made clear that "[it does] not doubt that achieving an emissions level below the NAAQS may result in additional benefits." *For a Better Bayou v. FERC*, No. 24-1291 (D.C. Circuit, Aug. 25, 2026), Slip Op. 32. And there is no NAAQS for greenhouse gas emissions, making reference to the NAAQS irrelevant for the compressor station's carbon dioxide equivalent (CO_2e) emissions.

The EA does not even discuss Iroquois Gas's estimate, calculated using EPA's AVERT tool, of the pollution that would be emitted by the generation of electricity to power an electrified compressor station[44] or compare these emissions to the anticipated emissions of the planned gas-powered compressor station. The EA provides estimates of the ambient concentrations of air pollutants that will result from the operation of the gas-powered compressor station,[45] derived from Iroquois Gas's air pollution modeling,[46] but does not disclose the total yearly emissions of each pollutant that are anticipated. Nor does any of the documentation filed in support of Iroquois Gas's Petition for Reissuance clearly lay out the yearly total emissions now expected from the gas compressors for any air pollutants other than CO_2e.

The EA is also unclear about whether the estimated yearly emissions totals in the FEIS[47] remain valid[48] for pollutants other than CO_2e (Iroquois Gas recently provided a new estimate of the gas compressors' yearly operational CO_2e emissions, which is lower than the FEIS's estimate[49]). The air modeling that Iroquois Gas submitted to substantiate its estimates of the Wright Interconnect's impacts on ambient pollution levels lists grams/second emissions rates of pollutants including $PM_{2.5}$, SO_2, and NO_2 for the compressor station's emission sources[50] and states that the long-term modeling assumes 100 hours/year of operation.[51] Without the expected emissions from both electric and gas-powered compressors presented in the same units, the public is unable to clearly compare the two alternatives, and it is not apparent whether FERC calculated the emissions reductions from electrification and weighed them against the downsides (alleged costs, alleged delay, additional land impacts for any needed new transmission lines) of an electrified compressor station. The public should not be left to guess whether FERC is continuing to rely on the FEIS's numbers or to comb though Iroquois Gas's filings and untangle how the grams/second emissions rates and assumptions about hours of operation relate to estimated yearly total emissions; FERC should have presented the emissions for both alternatives side by side, in the same units, and provided a comparison of the relative benefits and costs of each. FERC must disclose the data and analysis on which it rests its NGA decisionmaking in a

[44] Response of Iroquois Gas Transmission System, L.P. to June 25, 2026 Data Request at 6.
[45] EA at 49–51, tbls. B.6-2, B.6-3, B.6-4.
[46] Civil & Env't Consultants, Inc, Air Dispersion Modeling Report: Wright Compressor Station, 320 Westfall Road, Delanson, New York 12053 (July 2026) (hereinafter "Air Dispersion Modeling Report") (Attachment to Response of Iroquois Gas Transmission System, L.P. to May 5, 2026 Data Request, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-006, CP13-502-003, Accession No. 20260724-5309 (July 24, 2026)).
[47] Final Environmental Impact Statement at 4-183 tbl. 4.11.1-6, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-000, CP13-502-000, Accession No. 20141024-4001 (Oct. 2014) ("Proposed facilities total" numbers) (hereinafter "FEIS").
[48] EA at 49 ("Iroquois stated that it was still assessing potential changes needed to update its air permit application.").
[49] Response of Iroquois Gas Transmission System, L.P. to May 5, 2026 Data Request at 2, tbl. 2.
[50] Air Dispersion Modeling Report at 8, tbl. 2.2-3.
[51] *Id.* at 6.

NEPA document, not merely in an order or in applicants' filings. *City of Port Isabel v. FERC*, 111 F.4th 1198, 1210–11 (D.C. Cir. 2024), *on reh'g in part*, 130 F.4th 1034 (D.C. Cir. 2025).

The emissions estimates in the record do, however, appear to demonstrate that electrifying the compressor station would produce emission reductions and attendant health benefits, but the magnitude is difficult to determine without knowing whether the FEIS's yearly totals remain valid. The emissions numbers Iroquois Gas calculated using AVERT for the electricity needed to power electric compressor include 11.5 tons/year of CO_2e, 1.7 tons/year of SO_2, 7.3 tons/year of NOx, 2.3 tons/year of $PM_{2.5}$, and 1.3 tons/year of VOCs.[52] This means that an electric compressor station would avoid 87,622.5 tons/year of CO_2e, compared to Iroquois Gas's recently-provided new estimate of the gas compressors' yearly operational CO_2e emissions.[53] An electric compressor station could reduce operational emissions by 37.9 tons per year of NO_x, 10.8 tons per year of $PM_{2.5}$, and 10.9 tons per year of VOCs, compared to the numbers in the FEIS.[54] While the FEIS estimated that yearly operational emissions of SO_2 from the compressor station would be 0 tons/year,[55] the EA discusses Iroquois Gas's recent modeling of SO_2 impacts from the compressor station,[56] and it is unclear if this discrepancy stems from rounding down to zero. An adequate assessment of SO_2 emissions would clarify this issue and, as should be done for other pollutants, compare the emission level for the proposed compressor with an estimate of the SO_2 level with electrification.

Additionally, Iroquois Gas's estimate of emissions attributable to an electric compressor station may understate the potential benefits of electrification by overestimating emissions. First, "AVERT is driven entirely by historical, publicly available data reported to EPA and the U.S. Department of Energy's (DOE's) Energy Information Administration (EIA). It uses statistically driven 'behavior simulation' to estimate near-term future emissions changes based on the recorded historical behavior of existing EGUs in the recent past."[57] Therefore, AVERT may not fully account for the reduced emissions from grid-provided electricity that would result as New York's grid transitions to a higher percentage of renewable generation over the lifetime of the Wright Interconnect. "EPA recommends that users restrict their analyses to a five-year time horizon from the year of the [Regional Data File]. Analyses that extend past this window may intersect with years when the operation and composition of the grid is substantially different from the baseline year. . ."[58] The most recent version of AVERT appears to use Regional Data Files from 2023,[59] meaning that EPA's recommended 5-year time horizon would extend only to 2028. Second, neither Iroquois Gas nor FERC has examined the potential of using onsite

[52] Calculated by converting the pounds/year numbers in Response of Iroquois Gas Transmission System, L.P. to June 25, 2026 Data Request at 6, to tons/year.
[53] EA at 54 (estimating 87,634 tons/year); Response of Iroquois Gas Transmission System, L.P. to May 5, 2026 Data Request at 2, tbl. 2 (same).
[54] FEIS at 4-183 tbl. 4.11.1-6 ("Proposed facilities total" numbers of 45.1 tons/year of NO_x, 13.1 tons/year of $PM_{2.5}$, and 12.1 tons year of VOCs).
[55] *Id*. ("Proposed facilities total" of 0 tons/year for SO_2).
[56] EA at 49, tbl. B.6-2.
[57] EPA, *AVoided Emissions and geneRation Tool (AVERT) User Manual Version 4.3* at 11 (April 2024), https://www.epa.gov/avert/avert-user-manual.
[58] *Id.* at 101.
[59] *Id.* at 1.

renewable generation along with battery storage[60] to provide at least some of the power for the compressor station, which could substantially reduce emissions from the electricity powering the compressor station, thus changing the relative balance of harms and benefits of electrification.

B. No Action Alternative

The FEIS's evaluation of the no action alternative was inadequate, and the EA's perfunctory evaluation of the no action alternative is inadequate as well. The EA merely rejects the no action alternative for failing to meet the stated purpose and need.[61] As explained, *supra* Section II, it has not been established that there is any need for the Project or that the Project as proposed could, in fact, meet the asserted purpose and need. And, as explained further below, FERC has not adequately evaluated whether non-natural gas alternatives, such as renewable energy, which would constitute the no action alternative of denying the certificate, would be able to provide equal or greater benefits to downstream energy users while avoiding all of the Project's environmental harms.

C. Alternatives Inadequately Evaluated in the FEIS

For most other alternatives, FERC relies on the evaluation in the FEIS, which was inadequate. The EA states that "energy conservation and efficiency, non-natural gas energy alternatives, system alternatives, major and minor route alternatives such as collocation with Interstate 88, and aboveground facility alternatives . . . were all addressed in the FEIS in sections 3.1.1, 3.1.2, 3.2, 3.3, 3.4.1, 3.4.2, and 3.5 . . . [and] are not considered further in this EA." [62]

It was unreasonable for FERC to fail to update its analysis of non-natural gas alternatives, including renewable energy and battery storage that could meet end users' purported energy needs while avoiding the habitat destruction, species impacts, water impacts, gas price volatility, and the construction, operational, and upstream and downstream emissions of greenhouse gases and other health-harming air pollution that this Project would create. While the costs associated with gas-fired generation have recently spiked, the technology and economic feasibility of renewable energy and battery storage options have evolved greatly in the past twelve years,[63] and it was arbitrary for FERC to entirely ignore these developments and the benefits they could create. FERC's failure to consider these issues, including potential cost savings that could flow

[60] Massive energy users, such as data centers, are synergizing renewable energy with battery storage to provide powerful carbon-free energy solutions. Notably, Google recently announced an agreement with Xcel Energy to deploy a 30 GWh multi-day iron-air battery storage system for a data center in Minnesota. Ryan Kennedy, *Google to Deploy World's Largest Iron-air Battery for Minnesota Data Center*, pv magazine USA (February 24, 2026), https://pv-magazine-usa.com/2026/02/24/google-to-deploy-worlds-largest-iron-air-battery-for-minnesota-data-center/.

[61] EA at 66.

[62] *Id*. at 66.

[63] *See, e.g.,* Comments of Institute for Energy Economics and Financial Analysis (IEEFA), *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-006, CP13-502-003, Accession No. 20260918-5090 (Sept. 18, 2026). We adopt here, by reference, IEFFA's comments in their section entitled "FERC must analyze the alternatives to the pipeline project and the long-term impacts of locking in fossil fuel as an energy source." *Id.* at 5–7.

from renewable energy projects, is compounded by ongoing price volatility in the fossil fuel markets which contributes to inflation and a broad variety of economic and security risks.[64]

The FEIS failed to take a hard look at co-locating substantial portions of the Project with Interstate 88, identified in the FEIS as Alternative M.[65] In particular, the FEIS underestimated the difference between the impacts of the proposed Project to interior forest habitat versus the impacts of the Interstate 88 alternative.[66] An alternative co-locating additional mileage of the Project could have substantial environmental benefits and should be fully explored[67] in order to inform FERC's determination whether the Project, either the proposed alternative or as modified via any feasible alternative, has benefits which outweigh its harms.

In addition, the FEIS failed to adequately evaluate other options for co-locating the pipeline with existing rights-of-way, the benefits or feasibility of wetland creation, 20-1 tree replacement, long-term monitoring of stormwater impacts or invasive species proliferation, alternative construction techniques, equipment options, or fuel sources to mitigate the Project's climate impacts.

VII. FERC Must Consider the Harms from Air Pollution, Even if Pollution Does Not Exceed the NAAQS or the SILs, and Alternatives and Conditions That Can Reduce This Harm.

FERC cannot rationally ignore the harm a project's air pollution would cause in its Natural Gas Act decisionmaking, including its decisionmaking about whether to impose conditions on the Certificate or whether to adopt a less-polluting alternative, *see supra* Section VI.A, merely because pollution would not cause a violation of the NAAQS or would be at levels below EPA's Significant Impact Levels ("SILs") used in Clean Air Act permitting. The NGA requires consideration of environmental harms, *City of Oberlin*, 937 F.3d at 602, and FERC must also consider whether to exercise its power to impose conditions on the Certificate to reduce environmental harms, 15 U.S.C. § 717f(e), and must consider mitigation measures, including

---

[64] *See e.g.,* Generation Investment Management, *Tragic Conflicts and Climate Impacts Have Made the Case for the Energy Transition Impossible to Ignore* (Sept. 17, 2026), https://www.morningstar.com/news/pr-newswire/20260917ln49403/tragic-conflicts-and-climate-impacts-have-made-the-case-for-the-energy-transition-impossible-to-ignore ("[D]isruption to global energy markets following conflicts in the Middle East and Europe has exposed the economic, security and humanitarian risks of continued dependence on fossil fuels . . . Fossil fuel dependence, once seen primarily as an environmental challenge, is now increasingly understood as a question of energy security, food security, national resilience and the rising cost of living."); Roosevelt Institute; *Fossil Fuel–Driven Price Volatility Demonstrates the Need for a Renewable Transition* (Nov. 21, 2023), https://rooseveltinstitute.org/publications/fossil-fuel-driven-price-volatility-demonstrates-the-need-for-a-renewable-transition/.

[65] *See* DEIS Comments at 26, which also apply to the substantially unchanged analysis in the FEIS and which Intervenors incorporate here. *See also* U.S. Army Corps of Eng'rs Comments on Draft EIS at 2, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-000, CP13-502-000, Accession No. 20140408-5149 (Apr. 8, 2014) (noting Army Corps' "concerns that Alternative M has not been fully explored").

[66] DEIS Comments at 26.

[67] *See* Town of Sidney Official Municipal Filing — Request for Evaluation of the Interstate 88 Transportation Corridor, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-000, CP13-502-000, Accession No. 20260831-0005 (Aug. 13, 2026) (requesting a comprehensive evaluation of the Interstate-88 route alternative and comparison to the currently proposed alignment).

ones the applicant did not propose, but which could be more effective than those proposed, 18 C.F.R. § 380.7. Because NEPA review is intended to inform substantive decision-making, *Seven Cnty.*, 605 U.S. at 173, FERC must also evaluate this pollution as part of its NEPA review.

Pollution below the NAAQS can still cause health harms, and FERC cannot ignore these harms in its NGA decisionmaking or in comparing alternatives. EPA repeatedly has stated that while the NAAQS provide a "margin of safety," 42 U.S.C. § 7409(b)(1), the NAAQS are not set at a level "below which . . . pollutants are known to be harmless." *Am. Trucking Ass'ns, Inc. v. EPA*, 283 F.3d 355, 360 (D.C. Cir. 2002). Indeed, in setting the NAAQS for $PM_{2.5}$ and NO_2, EPA stated that there was no evidence of a threshold below which those pollutants are harmless.[68] When setting the NAAQS for ozone, EPA similarly stated that if there was a threshold below which ozone is harmless, studies indicated that it must be below 40 or even 30 parts per billion, well below the 70 parts per billion NAAQS.[69] EPA has also determined that it is appropriate to consider harms arising from pollution below the NAAQS when making decisions outside the Clean Air Act's Prevention of Significant Deterioration program.[70] Further, emission limits that reduce pollution below the NAAQS have health co-benefits that EPA has predicted, quantified, and monetized: EPA concluded that its 2012 Mercury and Air Toxics Standards rule would provide $33 to $81 billion of co-benefits, largely from avoided premature deaths, by reducing $PM_{2.5}$ and SO_2 (which contributes to secondary formation of $PM_{2.5}$).[71] EPA reaffirmed that "there is a substantial body of scientific evidence supporting the existence of health impacts from exposure to $PM_{2.5}$, even at low concentrations below the NAAQS," that "there is no scientific basis for ignoring health benefits" of further reducing $PM_{2.5}$, and that the NAAQS did not limit EPA's ability to consider harm caused by pollution below the NAAQS in other regulatory contexts.[72] EPA's User Manual for its Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool explicitly states EPA's determination that pollution below the NAAQS can cause foreseeable harm. EPA provides an example in which, in a particular county, the difference between annual $PM_{2.5}$ levels of 7.7 and 7.8 $\mu g/m^3$ (a 0.04 $\mu g/m^3$ change, rounded) for one year equates to 2.4 to 4.2 statistical adult premature deaths caused or avoided.[73]

Pollution below the SILs similarly can cause health harms.[74] EPA's Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool user manual provides an example of a

[68] EPA, Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16202, 16226 (Mar. 6, 2024); EPA, Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6474, 6480 (Feb. 9, 2010).
[69] National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292, 65303–04, 65306, 65309 (Oct. 26, 2015).
[70] *See, e.g.,* EPA, Supplemental Finding That It Is Appropriate and Necessary to Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units, 81 Fed. Reg. 24420, 24427, 24440 (Apr. 25, 2016).
[71] EPA, National Emission Standards for Hazardous Air Pollutants from Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial Institutional, and Small Industrial Commercial-Institutional Steam Generating Units, 77 Fed. Reg. 9304, 9305–06 (Feb. 16, 2012).
[72] 81 Fed. Reg. at 24440.
[73] EPA, *User's Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA) Version: 5.2*, at 39 (Mar. 2025), https://www.epa.gov/system/files/documents/2025-03/cobra-usermanual-v5.2.pdf.
[74] EPA, Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 88 Fed. Reg. 9336, 9372 (Feb. 13, 2023).

project that would cause a 0.04 μg/m^3 change in annual PM2.5,[75] a change well below the 0.13 μg/m^3 SIL, with detrimental health impacts.[76] Rather than argue that a modeled change this small has no effects, EPA explains how the modeling tool can be used to foresee health impacts that would result from this seemingly small change, including, for the location and emission types used in the example case study, "2.4 to 4.2 adult premature deaths" per year of exposure.[77]

VIII. FERC Must Consider GHG Emissions in Its NGA Decisionmaking.

The EA recognizes that "construction and operation of the Projects would increase the atmospheric concentration of GHGs in combination with past, current, and future emissions from all other sources globally and contribute incrementally to future climate change impacts."[78] However, the EA claims that FERC staff have not been able to determine a "threshold" for significance for GHG emissions or identify "a methodology to attribute discrete, quantifiable, physical effects on the environment" to an individual project's GHG emissions.[79] Staff's professed lack of ability in this respect does not absolve FERC of its obligation to consider these emissions as part of the weighing of harms and benefits that is required under the NGA. *New Jersey Conservation Found.*, 111 F.4th at 62; *City of Oberlin*, 937 F.3d at 602. The D.C. Circuit has held that when FERC quantified GHG emissions, but "then seemingly swept the issue under the rug in its balancing, stopping short of explaining how anticipated GHG emissions factored in weighing the potential adverse impact against the potential benefit of the Project," it "f[ell] short of what is required by the NGA." *New Jersey Conservation Found.*, 111 F.4th at 410–11. Here, in order to avoid making a similar legal error, FERC must take into account the Project's GHG emissions when weighing whether the Project's benefits outweigh its harms and thus warrant the grant of a certificate, when comparing the Project to alternatives, and when considering mitigation conditions it could attach to the certificate.

IX. FERC Must Adequately Consider the Harms to Water Resources and Aquatic Habitat.

Intervenors have identified serious inadequacies in the EA's analysis of the extent to which the Project will impact water resources. Many of these concerns and inadequacies can be traced back to the DEIS and have remained in the current project analyses despite the comments of Intervenors and others. The EA relies heavily on environmental analyses prepared more than a decade ago while failing to adequately account for new information, changed environmental conditions, and updated regulatory requirements.

The EA still fails to adequately evaluate soil compaction, erosion, sedimentation, and the ramifications of these effects on water quality and aquatic habitat. The EA has wrongly underestimated or fails to consider the Project's impacts of forest fragmentation, stream temperature increases, fisheries resources, trout habitat, newly listed or protected species, and

[75] *COBRA User Manual* at 39.
[76] EPA, *Supplement to the Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program*, at 6 (Apr. 30, 2024), https://www.epa.gov/system/files/documents/2024-08/silguidance_july_2024.pdf.
[77] *COBRA User Manual* at 39.
[78] EA at 54.
[79] *Id.*

newly identified potentially impacted water resources. The Commission has continued to permit Constitution to defer providing critical information regarding stream and wetland crossings including crossing methods, burial depth, and the potential use of in-stream blasting, preventing a meaningful evaluation of site-specific impacts and public engagement. The EA does not provide an adequate evaluation of the Project's impacts on wetlands in light of incomplete delineations and significant changes in New York's wetland regulatory requirements.

These inadequacies are compounded by FERC and Constitution's history of wrongfully seeking to deprive New York State of its authority to grant or deny a water quality certification for the Project under Section 401 of the Clean Water Act, therefore also depriving the state of the ability to impose mitigation conditions on such a certification. In the potential absence of that meaningful review by local officials who have specialized expertise in those resources, FERC's inadequate FEIS and EA could be the only potentially protective environmental assessment conducted of the Project's impacts on water quality in New York.

A. Soil Impacts

FERC acknowledged that the Project will increase soil compaction, erosion, and sedimentation, all of which have the potential to adversely impact surface water quality and habitat.[80] Intervenors' expert, Marc Henderson, a water resources engineer at Meliora Environmental Design, LLC, extensively outlined in his expert report (the "Meliora Report"), the serious problems with the DEIS's analysis of the Project's impacts on soils and the effect the soil impacts will have on water quality and water habitat. Specifically, the Meliora Report outlines how FERC's analysis dramatically underestimates the extent to which the Project's construction activities will cause the compaction of soils and fails to adequately analyze the impacts to water quality associated with construction activities in areas with steep slopes and highly erodible soils.[81] Additionally, the attached expert report of Kevin Heatley (the "Heatley EA Report"),[82] a restoration ecologist who assessed both the DEIS and EA, describes a type of soil degradation that occurs in edge habitat created by clear-cutting interior forest, noting that the rich top layer of the soil will dry out resulting in bacterial rather than fungal decomposition.[83] Mr. Heatley opines that this change would result in adverse impacts on vertebrate and invertebrate species as well as tree regeneration.[84] Despite the serious inadequacies in the FEIS and EA's analysis and the resulting potential adverse impact on water quality and habitat, FERC did not substantially update its analysis in the FEIS and wholly adopted the FEIS's analysis of soil impacts in its

[80] FEIS at 4-24 ("The proposed pipeline would impact 29.6 acres of soils considered to have high compaction potential."), 4-54 ("Clearing and grading of streambanks, in-stream trenching, trench dewatering, and backfilling could result in . . . increased sedimentation . . ."), 4-55 ("The clearing and grading of streambanks could expose soil to erosional forces and would reduce riparian vegetation along the cleared section of the waterbody."), 4-21 ("The proposed pipeline would impact 49.9 acres of soils that are classified as having very severe or severe water erosion potential classifications."); DEIS Comments Ex. A at 3 ("Once rainfall is not infiltrated [via soil compaction] and vegetation cover is decreased or inhibited, runoff volume and rate will increase. With these increases, accelerated erosion and sediment transport can occur more frequently and in larger amounts, causing irreparable damage to local wetlands, streams, and other waterbodies.").
[81] DEIS Comments at 6.
[82] Heatley EA Report.
[83] *Id*. at 6.
[84] *Id.*

EA.[85] Intervenors incorporate the entirety of their comment on the DEIS, the Meliora Report, and Heatley DEIS and EA Reports.[86]

B. Aquatic Resources and Wildlife

The EA relies on the flawed analysis of the FEIS in evaluating the Project's impacts on aquatic wildlife and resources.[87] Intervenors expert, Kevin Heatley, extensively outlined in his expert report on the DEIS (the "Heatley DEIS Report") the serious problems with the DEIS's analysis of the Project's impacts on aquatic resources and wildlife by failing to quantify the loss of interior forest habitat and the long-term effects of forest fragmentation and edge creation on migratory birds and other sensitive species.[88] Furthermore, the DEIS did not analyze watershed-scale hydrologic changes, permanent reductions in stream shading from forest clearing, potential increases in water temperature and decreases in dissolved oxygen, or broader fisheries impacts beyond individual stream crossings.[89] Despite these serious inadequacies of analysis and resulting potential adverse impact on water quality and habitat, FERC did not substantially update its analysis in the FEIS and wholly adopted the FEIS's analysis in its EA.[90] Intervenors incorporate the entirety of their comments on the DEIS and the Heatley DEIS Report.[91]

Additionally, FERC has not considered the impacts of the Project, specifically forest fragmentation and stream disturbances, on trout and other aquatic wildlife habitat, despite the revision of Pennsylvania's Title 25 Chapter 93 Water Quality Standards and New York's stream classification upgrades.[92] These upgrades were not considered by FERC and must not be disturbed or degraded by the Project's stream crossing activities.

Construction of the Project through a stream corridor may permanently affect:

- spawning substrate quality and quantity;
- benthic macroinvertebrate community dynamics (prey for trout);
- fish passage (improperly buried and/or exposed pipeline obstruction preventing upstream/downstream movement);
- water temperature through riparian clearing (increased water temperature from reduced riparian shading);
- sediment loads (exposed pipeline obstructing natural sediment distribution);
- bank stability (altered flow increasing bank erosion);
- pool/riffle morphology (altered substrate shifting mesohabitat type); and

[85] EA at 4, tbl. A.3-1.
[86] *See generally,* Meliora Report. Intervenors further respond that FERC's statement that only wetlands would be decompacted as necessary ignores the remainder of the soil impacts identified by the Meliora Report. *See* FEIS at CO41-16.
[87] EA at 6, tbl. A.3-1.
[88] DEIS Comments Ex. B at 11–13.
[89] *Id.* at 13–15.
[90] EA at 4, tbl. A.3-1.
[91] *See generally,* Heatley DEIS Report. Intervenors maintain that FERC's responses to its comments and the referenced updates to the FEIS are inadequate to address these concerns. *See* FEIS at CO41.
[92] EA at 24.

- groundwater/surface-water interactions (HDD/Direct Pipe installation effects on water quality).

The Project's impacts to trout habitat, including cold water streams, are not adequately examined in the EA. Even short-term construction disturbances associated with the Project may have disproportionately large consequences in small cold-water tributaries, particularly where trout reproduction depends on clean gravel and stable flows.[93] Additionally, trout are especially vulnerable to temperatures above a certain threshold, which may be caused by construction activities, flow impacts, and reduced forest cover. Warm waters often have reduced oxygen content that may lead to trout mortality. Facing climate change, fish mortality events from higher-than-average temperatures are becoming more common in the region—even as far north as Canada.[94] The FEIS and EA do not assess the water temperature impacts in trout streams that would result from clearcutting forested areas that overlap with and provide shade for trout streams. Consequently, there is no meaningful baseline from which to assess the impact of warming waters on trout or other fish populations along the Project route. Local municipalities, businesses,[95] anglers and tourists in the Project area rely on trout and other fishing as a valuable source of food, income, and/or recreation. Trout and other fish mortality in the Project area would likely lead to significant economic, cultural and recreational impacts that FERC has completely failed to assess.

Since the FEIS was issued in 2014, there have been several changes to the New York State Endangered, Threatened and Special Concern species status lists that warrant consideration under a new EIS.

- 5 species have been added to the Endangered species status including: the Atlantic coast leopard frog, the Atlantic sturgeon, northern long-eared bat, northern riffleshell and salamander mussel.
- 10 species were either added or elevated to Threatened status including: ironcolor shiner, longsolid mussel, round hickorynut mussel, longnose sucker, tonguetied minnow, bigeye chub, swallowtail shiner, comely shiner, northern sunfish, and red knot.

---

[93] Lévesque, L.M., Dubé, M.G. *Review of the effects of in-stream pipeline crossing construction on aquatic ecosystems and examination of Canadian methodologies for impact assessment.* Environ Monit Assess 132, 395–409 (2007).

[94] *See* George, S. D., Baldigo, B. P., Smith, M. J., McKeown, D. M., & Faulring, J. W.*, Variations in water temperature and implications for trout populations in the Upper Schoharie Creek and West Kill, New York, USA.* Journal of Freshwater Ecology, 31(1), 93–108 (2016); EPA, *Seasonally Warm Habitats May Help Cold Water Fish Adapt to Climate Change* (Nov. 1, 2021), https://www.epa.gov/sciencematters/seasonally-warm-habitats-may-help-cold-water-fish-adapt-climate-change; *see also* Md. Fazle Rabbe, *When the Water Heats Up, Brown Trout Pay the Price*, 13 Conservation Physiology 1 (October 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12526874/; William G. Kimmel, *Thermal Sensitivity Reveals Different Susceptibility to Climate Warming for Brook Trout (Salvelinus fontinalis) Streams in Close Proximity*, 75 Environmental Management 9 (September 2025), https://pubmed.ncbi.nlm.nih.gov/40478468/.

[95] For example, according to PFBC, recreational trout and other fishing related businesses in Pennsylvania are estimated to bring in $4-5 billion annually. *See Trout Season Boosts Businesses Across Pa.*, Fox43 (April 6, 2026), https://www.fox43.com/article/news/local/trout-season-economic-impact-pennsylvania/521-03398f08-f725-479a-b4e0-a054c1110daf.

- 9 more species are now classified as Special Concern including: the lake chub, blackchin shiner, American eel, eastern pirate perch, black bullhead, lake whitefish, bloater, sauger, and burbot.

Of these additions, many of these species' range are within this project's sphere of influence.

The Project will directly intersect the watersheds of the longnose sucker, swallowtail shiner, comely shiner, blackchin shiner, American eel, lake whitefish, and burbot fish species. The Atlantic sturgeon and lake chub fish species inhabit the larger Hudson River watershed, which the Schoharie Creek and Mohawk River watersheds flow into. In the event a leak or spill were to occur, the species not only in the direct vicinity would be impacted, but aquatic species downstream in the Hudson River watershed could be impacted as well.

It is important to preserve New York State's incredible biodiversity through the protection of these species. Among these imperiled fish species are the iconic American eel and Atlantic sturgeon. Both species were once two of the most sought after commercial species in the country and their populations are now at historic lows, with their Atlantic Coast stocks considered "Depleted" by the Atlantic States Marine Fisheries Commission.[96] Freshwater fish species account for approximately half of the fish diversity on the planet, and over the past 150-200 years the freshwater fish extinction rate is estimated to have increased by over 100 times the natural rate.[97] During an era of climate change and unprecedented freshwater diversity losses, it is increasingly important to ensure this project undergoes a new EIS.

C. Changed Water Resources That Were Not Adequately Studied

As discussed *supra* Section V, there were several water conditions that changed since the FEIS was published that FERC did not adequately address in the EA.

First, FERC identified additional private drinking water wells that may be affected by the Project but did not study or address how these newly identified wells might be impacted by the Project.[98] Furthermore, the EA's proposed mitigation measure that Constitution would "provide an alternative water source or a mutually agreeable solution in the event of construction-related impacts" is vague and inadequate.[99] *Second*, FERC identified an additional New York principal surficial aquifer in the Project area.[100] As a principal aquifer, this aquifer is entitled to special protection by New York State regulations, yet the EA provides no site-specific analysis of the potential impacts of the Project or site-specific mitigation measures. The EA does not indicate whether this aquifer may be used as a drinking water source. *Third,* FERC has not adequately analyzed the risks posed by the Project to previously or newly identified flood hazard areas.[101] As indicated by other commentors, FERC has not provided at least one site-specific flood risk

[96] Atlantic States Marine Fisheries Commission, *Atlantic Sturgeon*, https://asmfc.org/species/atlantic-sturgeon/ (last visited Sept. 18, 2026); Atlantic States Marine Fisheries Commission, *American Eel*, https://asmfc.org/species/american-eel/ (last visited Sept. 18, 2026).
[97] Leonidas Vardakas, et al., *Global Patterns and Drivers of Freshwater Fish Extinctions: Can We Learn From Our Losses?*, 31.5 Global Change Bio. (May 2025).
[98] EA at 23.
[99] *Id*.
[100] *Id*.
[101] *Id*. at 26.

analysis where the Project intersects with the Career and Technical Education ("CTE") center located at 174 State Route 30A, Schoharie, New York.[102] The EA has failed to address these flood risks and FERC must complete a full analysis of the site-specific risks posed by the Project in both previously and newly identified flood hazard zones.

D. Stream and Wetland Crossings

The Project would include over 300 waterbody crossings; despite Intervenors' comments on the DEIS that the Commission must evaluate individual crossings and the impact associated with the crossing method proposed for each stream, FERC has still not done so.[103] The lack of stream-specific analysis persists despite the upgraded protections required for streams in Pennsylvania and updated classifications for most streams in New York.

Intervenors and other commentators have recommended that surface water quality testing be conducted prior to any waterbody crossing in order to obtain a baseline against which post-construction water quality conditions could be measured.[104] The Commission has repeatedly ignored this recommendation.

As indicated by Intervenors previously, trenchless crossing techniques do not disturb the streambed or impact water flow, nor do they increase turbidity, thus minimizing adverse environmental impacts compared to open trench methods.[105] However, FERC has not required Constitution to implement this crossing method, instead permitting Constitution to further investigate and provide necessary information at a later date and proceed with other crossing methods for the vast majority of waterbody crossings.[106] The impacts of the Project cannot be evaluated without a determination of the crossing methods to be implemented by Constitution for each of the Project's stream crossings.

Furthermore, the EA does not specify the stream-crossing depth where applicable. Inadequate burial depth (under six feet) could result in the pipeline becoming exposed in streambeds, requiring future corrective work and creating additional disturbances that the EA and FEIS do not account for. Despite the importance of this information to assessing the Project's impacts, Constitution did not provide the burial depth for the majority of stream crossings.

Even more concerning is that the EA suggests that Constitution may proceed with in-stream blasting where it deems appropriate, requiring Constitution to seek review and approval, but not prohibiting this harmful practice.[107] As Intervenors have repeatedly raised, Constitution's failure to make any final determination on the need for blasting until the time of construction, and only at that point to develop site-specific blasting plans, effectively removes such plans and

[102] Capital Region BOCES, *Comments on Environmental Assessment*, Docket Nos. CP13-499-006 and CP13-502-003, Accession No. 20260915-5041 (Sept. 15, 2026). Intervenors fully incorporate this comment by reference.
[103] *Id*. at 24; DEIS Comments at 6. To the extent FERC has not updated the analysis of the stream and wetland crossing impacts since the DEIS, Intervenors incorporate the entirety of their DEIS Comments indicating the outstanding analyses and inadequately or unconsidered impacts here.
[104] DEIS Comments at 8.
[105] *Id*. at 6.
[106] EA at 24.
[107] *Id*. at 75.

the potential impacts of the activity from public review and comment. Moreover, it circumvents the purpose of environmental review, which is to help the Commission determine the Project's likely environmental impacts. The Commission cannot evaluate the significance of the potential impacts of in-stream blasting, absent the provision of site-specific information.

E. Groundwater Contamination

The Project may threaten ground and surface drinking water resources in a manner not adequately accounted for thus far in FERC's assessments. The FEIS and EA identify two aquifers that would be crossed by the Project: the Clinton Street Ballpark Aquifer and the newly identified New York principal aquifer.[108] The Clinton Street Ballpark Aquifer is critical because it is an EPA-designated Sole Source Aquifer, meaning that it supplies at least 50% of drinking water in the service area and there are no reasonable alternatives for its use should be it contaminated.[109] Its service area includes many cities and towns, including Binghamton, New York. In analyzing the potential impacts on both aquifers, FERC improperly relies on a generic discussion of impacts to water resources rather than a site-specific best management practice plan, as recommended by Intervenors, that would address actual risks in the context of local conditions.[110] FERC must assess the specific threats to these two aquifers and address specific measures to avoid, minimize, or mitigate those threats.

F. Wetlands

The EA acknowledges that the wetlands are still not fully delineated, and therefore, FERC cannot conclude that the Project will have no significant impacts without a complete and accurate delineation.[111] Furthermore, to the extent that the Commission maintains the impacts of the Project's temporary work spaces would be insignificant because wetlands would "return to pre-construction conditions following construction," this assumption ignores the reality that the heavy-duty construction activities utilized to install a pipeline of this scale, even if short-lived, can cause long-term impacts.[112]

Further, the FEIS and EA do not take account of New York State's increased authority under the 2022 Amendments to the Freshwater Wetlands Act. When the FEIS was issued, DEC had more limited authority to regulate wetlands than it does today.[113] Specifically, the 2022 Amendments grant NYDEC authority to regulate wetlands that have not been previously mapped

---

[108] FEIS at 4-38, 4-43; EA at 23.
[109] USEPA, Sole Source Aquifer Program, https://www.epa.gov/dwssa/overview-drinking-water-sole-source-aquifer-program#What_Is_SSA; USEPA, Sole Source Aquifers Mapping Page, https://experience.arcgis.com/experience/1bfab371d71e4b868fc9ae7df62a16fe (Clinton Street Ballpark Valley Aquifer SSA appearing along the New York side of the border of Pennsylvania).
[110] DEIS Comments at 10–11. Intervenors incorporate their DEIS Comment's discussion of groundwater impacts here.
[111] EA at 26–27.
[112] DEIS Comments at 10. To the extent the EA relies on any analysis that has not been updated since the DEIS, Intervenors incorporate the entirety of their comments regarding wetland impacts as analyzed and discussed in the DEIS.
[113] N.Y. ECL Art. 24; Philip Weinberg et al., 9 A N.Y. Prac., Env't L. & Reg. N.Y. §§ 11:9, 11:10 (2d ed. Aug. 2025). Though DEC's regulations were struck down in *Chautauqua Lake Prop, Owners Ass'n, Inc. v. New York*, 258 N.Y.S.3d 427 (N.Y. Sup. Ct. 2026), the statutory amendments to the Freshwater Wetlands Act remain intact.

and expands wetlands that have "unusual importance."[114] The EA does not account for the potential additional areas that may be protected by the DEC and the Freshwater Wetland Act's protections. The EA further does not account for any additional permits or consultations that may be required in these newly protected wetland areas.

X. FERC Must Adequately Consider Endangered and Threatened Species Impacts.

The EA contains a brief discussion of impacts on wildlife and aquatic resources (not carried forward), migratory birds (not carried forward), and special status species (carried forward). At the outset, Intervenors reiterate, as discussed above in Section V, that the EA's conclusory statements indicating that potential project impacts for the areas not carried forward "would be essentially the same" as described in the FEIS are not supported by the record. Intervenors also reiterate, and incorporate by reference, Intervenors' prior comments in response to the DEIS with respect to the Project's likely impacts on various species.[115] This section addresses inadequacies in the EA as to species not already discussed in the aquatic resources section above.

The EA relies heavily on the U.S. Fish and Wildlife Service ("USFWS") Biological Opinion ("Biological Opinion") from December 31, 2015.[116] Given the passage of over a decade since the Biological Opinion was issued, it was insufficient for Constitution and FERC to simply engage in "informal" consultation with USFWS regarding the Project.[117] FERC should have engaged in formal consultation and requested a fresh and adequate Biological Opinion from USFWS.[118] It was particularly obvious that a new opinion was needed given the content of USFWS' July 17, 2026 response to FERC, which detailed several changes in species' statuses, as discussed further below, including species that were not even considered in the Biological Opinion, or were only considered at a lower threat level long ago.[119] FERC's failure to request and obtain a new Biological Opinion undermines all of its conclusions in the EA regarding endangered or special status species.

Section 3.0 of the EA addresses special status and protected species, including those federally protected under the Endangered Species Act ("ESA"), those under consideration for listing by federal agencies, and species that are state-listed as threatened or endangered. Overall, the FEIS and EA fail to adequately assess the presence of these species in the Project area and the potential adverse impacts to these species and fail to include appropriate mitigation measures.

---

[114] ECL § 24-0301.
[115] Notably, Intervenors reiterate their prior comments' concerns regarding migratory and resident bids (DEIS Comments at 14-15), which are not repeated in the instant comments.
[116] USFWS Biological Opinion, Accession Number 20160105-4002 (Dec. 31, 2015) (hereinafter "Biological Opinion").
[117] *See* EA, 27-28; 50 C.F.R. Part 402, Subpart B (requirements and purposes of informal and formal consultation, and required contents of biological opinions in 50 C.F.R. 402.14(h)); 18 C.F.R. 380.13 (requirements for informal and formal consultation in projects where the sponsor is designated as a non-federal representative to USFWS or National Marine Fisheries Service and biological assessment requirements).
[118] *See* 50 C.F.R. 402.16(a).
[119] USFWS Letter, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-000, CP13-502-000, Accession No. 20260721-5205 (July 17, 2026).

Northern Long-Eared Bat

The EA identifies a federally listed endangered species, the northern long-eared bat ("NLEB"), as occurring or possibly occurring in the project area.[120] The NLEB was uplisted from threatened to endangered in 2022 after the USFWS found that "[n]umbers of northern long-eared bats, gathered from hibernacula counts, have declined by 97 to 100% across the species' range."[121] Habit loss and climate change, each of which the Project contributes to, are identified by USFWS as threats to the species' viability.[122] Indeed, the EA admits that the Project is "likely to adversely affect" the NLEB, but claims that the species' "continued existence" is not threatened because "[n]o critical habitat has been designated" and therefore none can be affected.[123] This logical fallacy posits that the lack of protective government action in designating habitat means that the endangered species' existence will not be threatened. The EA's position in that respect is undermined by its own finding that white-nose syndrome ("WNS"), a deadly fungal infection, is a "primary threat" to the NLEB. The EA bases its conclusion on a USFWS Biological Opinion from December 31, 2015, before the species was designated as endangered under the ESA.[124] Nevertheless, the Biological Opinion acknowledged that New York and Pennsylvania were two of the most populous states for the NLEB.[125] Further, it found that "WNS has been particularly devastating for NLEBs in the Northeast, where the species was believed to be the most abundant."[126] However, the EA does not update population numbers or locations relative to the project, nor does it even attempt to give substantive consideration to the current threat level.[127] Notwithstanding the serious WNS risk to the NLEB, and potential harms caused by forest fragmentation, habitat loss, climate change, and invasive species, the EA improperly relies on technicalities to find that the species will not be threatened by the Project.

The proposed mitigation measures in the EA are also insufficient to protect the NLEB. Individually and collectively, they do not counteract or address the long-term loss of habitat and the invasive species impacts caused by forest clearing and the resulting habit loss, which contribute to increased WNS risk and attendant mortality for the NLEB.

Tricolored Bat

The same problems, and others, hold true as to the EA's very limited discussion of the tricolored bat (perimyotis subflavus). USFWS recently informed FERC that this species is

---

[120] *Id*. at Section 3.1.1.
[121] USFWS, *Myotis Septentrionalis*, https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis (last visited Sept. 18, 2026).
[122] USFWS, *Special Status Assessment Report for the Northern Long-Eared Bat (Myotis Septentrionalis)* (Aug. 2022) at 40-41, Appendix 4 (C & D). https://www.fws.gov/sites/default/files/documents/Species%20Status%20Assessment%20Report%20for%20the%20Northern%20long-eared%20bat-%20Version%201.2.pdf (last visited Sept. 18, 2026). This USFWS document includes post-2014 research not considered in the EA.
[123] EA at 29.
[124] *Id.* (citing Biological Opinion).
[125] Biological Opinion at 11.
[126] *Id.* at 12.
[127] Intervenors' comments on the DEIS noted that Constitution did not conduct any bat surveys along the 99.2-mile portion of the project in New York State. DEIS Comments at 13-14.

known to be in the Project area, was proposed as an endangered species in 2022, and was not considered in the 2015 Biological Opinion.[128] Further, USFWS notes that the Project is proposed to be built near multiple hibernacula used by the tricolored bat, and there are no proposed critical habitat areas at this time. Nevertheless, the EA summarily dismisses concerns related to the tricolored bat without conducting further research, population surveys or habitat studies and finds that the Project is not likely to jeopardize the species, in large part because "tree clearing within the CPP area represents only a small percentage of the available forest habitat in the Project area."[129] According to USFWS, this species is also threatened by WNS and severe habitat loss.[130] Specifically, USFWS found that "[f]orest removal may result in the following impacts to tricolored bats: loss of suitable roosting or foraging habitat, longer flights between suitable roosting and foraging due to habitat fragmentation of remaining forest patches, fragmentation of maternity colonies due to removal of travel corridors, and direct injury or mortality (during active season tree removal)."[131] USFWS recognized that "[w]hile temporary or permanent habitat loss may occur throughout the species' range, impacts to tricolored bat and its habitat typically occur at a *more local scale* (i.e., individuals and potentially colonies)."[132] Consequently, localized assessments of this species' habitat in the Project area are essential. Disturbance to, and forced movement of, the species would result in increased energy expenditure and additional risk of disease and mortality.[133] In sum, the EA's conclusory and unscientific finding that this species will not be jeopardized because, in essence, there will still be a lot of trees left in the forest, is wholly inadequate.

Timber Rattlesnake

Intervenors' Scoping Comments and DEIS Comments also identified a number of state-listed species for further evaluation, but the EA has failed to adequately address these species. For example, since the FEIS, New York State has updated its lists of threatened and endangered species including species such as the timber rattlesnake (Crotalus horridus) and bog turtle (Glyptemys muhlenbergii) (6 N.Y.C.R.R. Part 182), potentially expanding the number of protected species present within the Project area.

With respect to the timber rattlesnake, the EA essentially admits that Constitution and Iroquois Gas dropped the ball, and then FERC fumbled it. In July 2025, the Pennsylvania Fish and Boat Commission ("PFBC") informed Constitution that given the species' proximity to the Project, an updated habitat assessment should be conducted.[134] Notwithstanding that over a year has gone by, Constitution has not submitted such an assessment, and therefore the Project's

[128] USFWS Letter, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, Docket Nos. CP13-499-000, CP13-502-000, Accession No. 20260721-5205 (July 17, 2026).
[129] EA at 30.
[130] USFWS, *Perimyotis Subflavus*, https://www.fws.gov/species/tricolored-bat-perimyotis-subflavus (last visited Sept. 18, 2026).
[131] 87 Fed. Reg. 56381.
[132] *Id*. (emphasis added).
[133] *Id.* ("Additionally, disturbance (*e.g.,* human entry) during hibernation results in increased arousals in tricolored bat, which leads to increased energy expenditure at a time when food and water resources are scarce or unavailable." "Human disturbance at hibernacula can cause bats to arouse more frequently, causing premature energy store depletion and starvation (Thomas 1995, p. 944; Speakman et al. 1991, p. 1103), leading to marked reductions in bat populations (Tuttle 1979, p. 3) and increased susceptibility to disease.")
[134] EA at 34.

impacts on the species cannot be adequately understood at this time, nor can effective mitigation measures be planned. Similarly, Constitution restarted consultation with the New York Natural Heritage Program ("NYNHP") on June 27, 2025, but did not provide further information to FERC.[135] And Iroquois Gas, for some inexplicable reason, informed FERC that it waited until only a few months ago (May 2026) to consult NYNHP.[136] No meaningful recent information concerning the status of the species, and threats to it in the Project area, is in the record before FERC. Under the proposed EA, the species' fate is subject to hollow assurances from Constitution and Iroquois Gas that they will evaluate, consult, and mitigate as needed. But this approach undermines the critical evaluative role an EA or EIS is meant to serve and is yet another reason that a full, updated, and adequate EIS should be conducted.

Eastern Hellbender Salamander

Additionally, while New York has long identified the eastern hellbender salamander as a species of "special concern," in 2024 the USFWS proposed to add the species to the endangered species list under the ESA.[137] In a November 2024 Special Status Assessment Report, USFWS details how several populations across the range (including New York and Pennsylvania) are likely extinct while others are declining.[138] Notably, the Special Status Assessment Report included an extensive discussion of research on the species, and threats to it, that postdates the FEIS.[139] Notwithstanding this serious action by USFWS, the EA maintains the FEIS' conclusions with no further consideration of this species that was recently deemed to be at risk for extinction.[140]

Bog Turtle

Furthermore, since the FEIS, New York State listed the bog turtle (Glyptemys muhlenbergii) as endangered.[141] The bog turtle is also listed as a federally threatened species, and is discussed in the FEIS, which identified only one bog turtle site within the Project area, which it claimed would not be affected because riverine habitat would not be used by the contractor at that site in Otsego County, New York.[142] Notwithstanding this 12 year-old conclusion (based on older data from 2012 and 2013),[143] the EA does not consider any more recent data or population studies of the bog turtle, nor does it discuss New York's reasons for upgrading its protection status. NYSDEC notes that the bog turtle is difficult to find, is "secretive in nature," and is found at a decreasing number of sites.[144] In New York, given its current status, various permittees now submit detailed studies to NYSDEC to survey for and evaluate potential impact to bog turtle habitats. One recent contractor-conducted study found that invasive plant

---

[135] *Id.*
[136] *Id.*
[137] 89 Fed. Reg. 100934.
[138] USFWS, *Eastern Hellbender (Cryptobranchus Alleganiensis Alleganiensis) Species Status Assessment Report, Version 2.1*(Nov. 2024), https://iris.fws.gov/APPS/ServCat/DownloadFile/263350.
[139] *Id.* at 30-56, 72-96 (Literature Cited).
[140] EA at 10, tbl. A.4-1 (merely referencing "[e]ffects on amphibians" with no discussion of the Eastern Hellbender).
[141] 6 N.Y.C.R.R. Part 182; NYSDEC, *Bog Turtle*, https://dec.ny.gov/nature/animals-fish-plants/bog-turtle (last visited Sept. 18, 2026).
[142] EA at 28 (citing FEIS Sec. 4.7.2.).
[143] FEIS at 4-104.
[144] Bog Turtle, *supra* n. 140.

species (like those that appear in edge habitat created by forest clearing) contribute to habitat degradation for the bog turtle.[145] Consequently, full and current surveys of the elusive bog turtle habitats along the Project route should be conducted to assess current impacts and potential mitigation measures.

Bald Eagle

Intervenors' Comments on the DEIS also expressed concern regarding the lack of adequate bald eagle surveys and a mitigation plan.[146] These concerns remain. The EA, in Table A.3-1, without adequate explanation, indicates that it maintains the conclusions from the FEIS with respect to migratory birds and bald eagles and golden eagles. The bald eagle is federally protected under the Bald and Golden Eagle Protection Act[147] and is listed as threatened in New York and protected in Pennsylvania.[148] The EA staff recommendations indicate that Constitution will conduct final bald eagle surveys, create a mitigation plan, and consult with the relevant regulators, before construction.[149] The FEIS notes that in 2013, NYSDEC provided locations for three bald eagle nests in the project area, and that Constitution did not identify additional nests but observed one bald eagle flying in Susquehanna County, Pennsylvania. Considering that this data is 13 years old, and the lifespan of a bald eagle is roughly 30 years, there is a high probability that both species populations and nest locations have changed.[150] But the EA does not discuss any more recent survey data for the bald eagle. FERC cannot formulate adequate mitigation measures for the bald eagle without a present understanding of the bald eagle population in the Project area, which would inform substantive consideration of potential Project impacts and necessary mitigation measures. In the absence of any current or actionable data, the EA proposes generic mitigation measures that focus on impact and nest avoidance, which do nothing to address the loss of habitat and the potential loss of food sources and appropriate nesting areas caused by forest fragmentation.[151] Constitution should be required to file updated surveys and an appropriate mitigation plan, which should be incorporated into a new EIS after providing such information for public comment.

XI. FERC Must Adequately Consider Invasive Species Impacts and Degradation of Interior Forest Land.

Intervenors' DEIS Comments included a discussion of the DEIS' failure to adequately assess and mitigate invasive species that will inevitably move into many miles of clearcut

---

[145] TRC Eng'rs, Inc., *Bog Turtle Habitat (Phase 1) Survey Report, Cross-County Sanitary/Kessman Landfill* (July 2020), https://extapps.dec.ny.gov/data/DecDocs/340011/Report.HW.340011.2020-07-15.Bog%20Turtle%20Habitat%20(Phase%20I)%20Survey%20Report.pdf.
[146] DEIS Comments at 5.
[147] The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), enacted in 1940, as amended, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts (including feathers), nests, or eggs. *See* USFWS, *Bald and Golden Eagle Protection Act*, https://www.fws.gov/law/bald-and-golden-eagle-protection-act (last visited Sept. 18, 2026).
[148] Pennsylvania Game Commission, *Bald Eagle*, https://www.pa.gov/agencies/pgc/wildlife/discover-pa-wildlife/bald-eagles (last visited Sept. 18, 2026); NYNHP, *Bald Eagle*, https://guides.nynhp.org/bald-eagle/ (last updated May 19, 2026).
[149] EA at 76 (Staff Recommendation no. 33).
[150] NYSDEC, *Bald Eagle*, https://dec.ny.gov/nature/animals-fish-plants/bald-eagle (last visited Sept. 18, 2026).
[151] *Id.*

interior forest that will be disturbed by the Project. Those DEIS Comments included an expert report from Kevin Heatley, M.EPC, LEED AP. Mr. Heatley has supplemented his comments in the attached Heatley EA Report.[152] Mr. Heatley has extensive experience both as a restoration ecologist and as a federal agency manager who has been responsible for overseeing NEPA reviews for several major projects. His opinions are summarized as follows:

1) The Scope of EA (section 3.0) is flawed as it fails to recognize the substantial changes to the vegetation patterns that have likely occurred along the proposed ROW over the last 12 years since the DEIS. Of particular concern, the EA discounts the significance of the clearcutting that Constitution undertook along the Pennsylvania portion (over a fifth of the total Project length) of the pipeline over a decade ago. As this area was subsequently abandoned and did not undergo any systematic revegetation effort, substantial ecological changes, including the propagation of invasive species, are to be expected. As such, it is not reasonable, nor defensible, for FERC to assume previously proposed mitigation measures are adequate. A new analysis of vegetation impacts must be included and addressed in a full EIS.
2. The New York and Pennsylvania Invasive Species Management Plans both fail to include quantifiable metrics for invasive suppression success. These plans both fail to account for latent seedbank generation of invasive plants within the construction disturbance zone beyond the three-year timeframe of treatment & monitoring.
3. The New York and Pennsylvania Invasive Species Management Plans both fail to account for the increase in vectoring in of invasive plant seeds and propagules[153] because of the creation, and perpetuation of, edge habitat during the operational lifespan of the Project.
4. The creation and perpetuation of an early successional, forest edge habitat is a primary structural feature of this Project. As with the mechanical suppression of woody species via mowing and herbicide application, the treatment and suppression of invasive plants must be undertaken throughout the lifespan of the Project. A failure to do so will eventually result in cascading ecological effects that will require costly management interventions if the ecosystem benefits and services currently provided by the biotic communities along this route are to be protected. Those costs, which will likely fall to neighboring landowners and local governments, are not assessed in the EA, and the EA does not propose that Constitution pay those costs as a measure of mitigating likely adverse impacts.

Forests filter contaminants, moderate stream temperatures, and buffer flow volumes associated with precipitation events. They are the structural foundation upon which the ecological integrity and health of this region's biological resources are built. The link between percent forest cover and water quality is clearly established in scientific literature. As an example, reductions in forest cover are directly correlated with negative changes in water chemistry, such as increases in nitrogen, phosphorus, sodium, chlorides, and sulfates, and with reductions in stream marcroinvertebrate diversity.[154]

[152] Heatley EA Report.
[153] A propagule is any biological material—such as a seed, spore, or cutting—that helps an organism disperse and grow into a new life stage or a new individual.
[154] Heatley EA Report at 5.

Forest fragmentation because of anthropogenic landscape modification is well recognized within biogeographic theory and conservation biology as a leading cause of local species extinctions. It can also cause dramatic shifts in the floral and faunal composition of woodland communities. Sub-lethal impacts to floral and faunal populations (population isolation, reduced genetic fitness and diversity) have also been associated with disruptions to forest connectivity.[155] The USGS has documented a disproportionate level of interior forest loss (two to three times greater than overall forest loss) over the last several years from natural gas infrastructure construction in areas such as Susquehanna County, PA.[156] Pipeline corridors have proven to be the primary contributing factor in the loss of interior forest.

Fragmentation creates an increase in the amount of forest edge (the interface between forest and non-forest). This transitional zone or "ecotone" is fundamentally different in structure and functionality from an interior forest system. Edge habitat is characterized by increased light levels on the forest floor, reduced soil moisture, and a high degree of biological invasion from non-native invasive organisms. Dramatic changes can occur in the soil chemistry and the associated micro biota. The top layer of the soil profile, the rich organic duff, begins to dry out and the primary decomposition community begins to shift from fungal to bacterial. This transition in the decomposition community has direct implications for a host of vertebrate and invertebrate species that depend upon this rich organic humus for survival and reproduction. It also directly affects the type and quality of tree regeneration in the ecotone. Typically extending up to 300 feet into the forest, edge impacts are more than mere esoteric considerations of interest to the scientific community, these changes have direct economic implications for both landowners (including state and local governments) and society.

In addition to the impacts to species and the natural environment, recent estimates have placed the annual costs to the U.S. economy from the biological invasion of invasive species at approximately $21 billion dollars.[157] Invasive organisms within terrestrial forest environments tend to be early successional species that respond favorably to site disturbance. Disruption of native plant cover and the exposure of the forest floor to sunlight provides an opportunity for these organisms to establish satellite populations. These populations eventually radiate into the adjacent forest, displacing native species and retarding desirable tree regeneration.[158] Dispersal (vectoring) mechanisms and/or corridors are required for these non-native species to colonize new locations and access roads, pipelines, and vehicular traffic associated with natural gas infrastructure is ideally configured to serve this function.

For years after decommissioning, the landscape legacy of forest edge from pipeline corridors, access roads and other infrastructure will continue to disrupt ecosystem functioning as non-native organisms repeatedly colonize exposed areas and impede desirable tree regeneration. Invasive species suppression and the eventual restoration of these disturbed sites to forested systems will require resources of a significant financial and temporal scale. While published information is scarce, it is in the professional experience of restoration practitioners in this region that the reasonable reconstruction of forest canopy and understory diversity can cost between $5,700 and $14,200 per acre. The suppression of invasive plant species is also a major, recurring

[155] *Id*. at 5–6.
[156] *Id*. at 6.
[157] *Id*.
[158] *Id*. at 7.

expense with the initial years' treatment often incurring costs between $1,400 and $3,500 per acre. Invasive treatment in subsequent years typically drops in cost by approximately 50% per year over the first three years. The EA fails to adequately assess these costs and does not propose that the Project sponsors bear or mitigate such economic impacts. The limited compensatory mitigation proposed in the FEIS and EA contemplates funding third-party groups to conduct mitigation activities, but such activities do not mitigate economic or other harms (i.e. recreation and loss of uses) to impacted landowners.

As the effects of forest fragmentation may not immediately manifest themselves following the disturbance, monitoring is often suggested as a methodology to balance and modify the level of fragmenting activity in accordance with the conservation of forest-related ecosystem services. Unfortunately, these effects may not be linear in nature and thus are not always amenable to an adaptive management approach. Biological systems may possess thresholds that provide little indication of impending adverse impacts until sudden system collapse. The EA fails to carry forward the vegetation resource for analysis.[159] Twelve years have transpired since the FEIS, and it is unreasonable to assume that substantial changes have not occurred in the vegetative communities located within the impact area of the Constitution Pipeline. As an example - more than one fifth of the Project right of way (the Pennsylvania section) was clearcut over a decade ago by Constitution contractors and then subsequently abandoned without restoration or active management, this vegetative community has absolutely undergone significant modification. FERC assumes that the cleared areas have begun to regenerate and that invasive plant species "may have" colonized these areas. FERC also indicates in the Environmental Information Request No. 2 (June 25th, 2026), that Constitution has committed to updating the invasive species surveys following reinstatement of the Certificate Order. This is circular reasoning as a determination that the vegetation has not undergone "substantial changes" can only be made after a survey. The successional trajectory of the forest systems that have been clearcut and then abandoned for over a decade will display a species composition and habitat type radically different from the previous cover type. The introduction and colonization of invasive species into a disturbed linear corridor of over 25 miles that lacks active management will, in all probability, be significant. Wind, water, human and animal vectoring will have distributed seed and plant propagules across this area. A newly cleared linear corridor is extremely attractive to off-road vehicles–a frequent contributor to invasive plant dispersal and continual site disruption.

Given the clearcutting and the temporal lag between the FEIS and the EA, a new vegetation analysis must be a component of the Environmental Assessment. Invasive Species Management Plans FERC utilizes the state-specific Invasive Species Management Plans (ISMPs) as a component of the rationale for not carrying forward vegetation in the EA analysis. As such, it is important to highlight the major deficits in these plans. Given the high degree of commonality between both the New York and Pennsylvania plans, the concerns detailed here are applicable to both documents. The ISMPs stated goal is to goal is to "…control the invasive species to the extent that wetlands and uplands are not dominated by the invasive species to the point where the functions and values of the systems/habitats are adversely compromised." However, there are no measurable metrics indicated in the documents that would allow for quantitative assessment of progress towards that goal. It is common practice in invasive control

[159] EA tbl. A.3-1.

contracts for the land management entity to require a certain percentage of invasive cover reduction be achieved after a given time frame. This provides a clear benchmark whereby project success can be measured. Constitution's Plan lacks such a requirement.

While the ISMPs acknowledge the difficulty in achieving eradication of invasive species due to issues such as seed drift and/or colonization from off-site locations, they fail to mention two critical vectoring mechanisms that are of extreme importance when dealing with right-of-way construction and maintenance: (1) the latent seed bank residing in the soil (2) the chronic encouragement of invasive colonization due to the expansion of edge habitat.

Depending upon the species, invasive seeds and propagules can survive in the soil for years. Japanese stiltgrass (Microstegium vimineum) and Autumn Olive (Elaeagnus umbellate) have both been frequently found within the proposed Project right-of-way. These species have a seed viability in the soil (the timeframe in which they can lay dormant) that exceeds five years. This latent seed bank germination cannot be addressed within the brief three-year time frame in which Constitution intends for treatment and monitoring. Constitution recognizes in the Preliminary Migratory Bird and Upland Forest Plan that in the construction of the Project, a significant amount of interior forest will be converted to edge forest. The nature of edge habitat – disturbed areas of high light penetration, creates ideal conditions for biological invasion. One of the primary transport mechanisms for invasive plants are birds that preferentially roost at the forest edge and subsequently defecate invasive seeds into the understory. It is important to recognize that, until such time that the forest canopy closes over the right-of-way, the edge habitat that has been created will be highly susceptible to invasive colonization. Once established, small populations can expand into off-right-of-way properties and disrupt forest regeneration, soil chemistry, habitat, hydrology, and ultimately land value. Recognizing the chronic nature of the biological invasion threat that is promoted by the creation and perpetuation of edge habitat, it is obvious that the EA's proposed treatment timeframe that only lasts for three years is wholly inadequate. Invasive suppression needs to continue for the Project lifespan as the perpetuation of edge habitat via the three-year mowing and suppression of tree canopy in the ROW will create ideal conditions for repeated infestation. The ISMPs clearly state that Constitution "will not" treat areas outside its proposed construction right-of-way for invasive species. This is highly problematic given that the edge habitat created by the Constitution Project will encourage biological invasion in the adjacent forest lands for the entire service life of the right-of-way. Suppression costs will eventually fall upon the adjacent property owner should an infestation become established.

In sum, the EA for the Constitution Pipeline project is flawed as it fails to analyze vegetation resources that have, in all probability, substantially changed in twelve years since the Final Environmental Impact Statement was produced. In addition, the EA relies upon inadequate ISMPs as part of the rationale for avoiding updating the vegetation analysis. Without an updated invasive plant survey and vegetation analysis, mitigation and management strategies cannot be effectively developed and implemented. Should the Certificate of Public Convenience and Necessity be issued by FERC without a proper analysis, widespread disruption of forest ecosystems and local watershed resources will occur. Restoration of these systems following the eventual cessation of natural gas transmission will be a monumental cost incurred by both the taxpaying public and adjacent private property owners.

XII. FERC Must Adequately Consider Cumulative Impacts.

FERC's environmental review of the Project falls short of its obligation to assess cumulative impacts. None of the recent legal developments in NEPA law, such as the Council on Environmental Quality's ("CEQ") recission of its NEPA regulations, removes the obligation to consider cumulative impacts. The EA is not even clear on whether it is carrying forward cumulative impacts as a category to be assessed anew in 2026 versus relying solely on the FEIS. To the extent that the EA gestures at cumulative impacts analysis, its analysis falls short of the hard look required by NEPA. To the extent it relies on the FEIS, the FEIS's analysis of cumulative impacts was insufficient.[160]

A. FERC Has a Legal Obligation to Consider Cumulative Impacts.

A proposed action's consequences can only be understood in context. A cumulative impact is an impact of the project under review—in particular, it is "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" reviews those other actions. *El Puente v. U.S. Army Corps of Eng'rs*, 100 F.4th 236, 249–50 (D.C. Cir. 2024) (quoting 40 C.F.R. § 1508.7) (emphasis added). A cumulative-impacts analysis thus includes consideration of the effects of the project at hand alongside the effects of other reasonably foreseeable future projects whose effects will overlap with the same geographic area as the proposed action's effects. *El Puente*, 100 F.4th at 249; *TOMAC, Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006). Without considering cumulative effects, agencies may not realize that a proposed project would "represent the straw that breaks the back of the environmental camel." *Grand Canyon Tr. v. FAA*, 290 F.3d 339, 343 (D.C. Cir. 2002) (quoting *Hanly v. Kleindienst*, 471 F.2d 823, 831 (2d Cir. 1972), and noting that *Hanly* preceded the CEQ regulations implementing NEPA and interpreted NEPA itself).

Withdrawal of CEQ regulations regarding NEPA did not eliminate the requirement to consider cumulative effects. That is because cumulative effects, like other kinds of effects, are just as much "reasonably foreseeable environmental effects of the proposed agency action." 42 U.S.C. § 4332(C)(i). Cases reviewing agency actions that preceded the CEQ regulations found that NEPA itself imposes the obligation. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (stating that when multiple proposals for related actions "that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together"); *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 106–07 (1983) ("NEPA requires an EIS to disclose the significant health, socioeconomic and cumulative consequences of the environmental impact of a proposed action.").

CEQ, for its part, agrees that NEPA itself requires consideration of cumulative effects. CEQ's post-withdrawal guidance encourages agencies to continue considering all "reasonably foreseeable" effects, "regardless of whether or not those effects might be characterized as

[160] DEIS Comments at 21–24.

'cumulative.'"[161] In prior guidance, CEQ had emphasized that "cumulative effects analysis is essential to effectively managing the consequences of human activities on the environment."[162] Cumulative effects are not just *an* important part of the problem, but can be *the most important* issue: "[e]vidence is increasing that the most devastating environmental effects may result not from the direct effects of a particular action, but from the combination of individually minor effects of multiple actions over time."[163] Although CEQ's interpretation of NEPA does not bind FERC or the courts, CEQ's expertise, developed over decades of administering NEPA, warrants persuasive weight. *See, e.g., Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024) (quoting *Bureau of Alcohol, Tobacco and Firearms v. FLRA*, 464 U.S. 89, 98, n.8 (1983)).

Nor did *Seven County* eliminate the requirement to analyze cumulative effects. *Seven County* concerned indirect effects—particularly, effects "separate in time or place from the . . . project at hand." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 186 (2025). *Seven County* did not discuss cumulative effects—effects that are impacts of the project under review, "result[ing] from the *incremental impact of the action* when added to other past, present, and reasonably foreseeable future actions regardless of what agency" reviews those other actions, *El Puente*, 100 F.4th at 249 (quoting 40 C.F.R. § 1508.7) (emphasis added), rather than occurring elsewhere in "time and place," and which provide context needed to understand the "single project within the authority of the agency," *Seven Cnty.*, 605 U.S. at 190.

B. The EA Does Not Adequately Evaluate Cumulative Impacts.

As an initial matter, the EA is not actually clear whether it is carrying forward cumulative impacts review or is relying entirely on the FEIS's cumulative impacts review. The "Summary of Resources and Effects Analyzed,"[164] which specifies which resources were carried forward and which were not, does not list Cumulative Impacts. The EA says that "[p]rojects that could affect the environmental baseline are broadly similar to the types of other projects described in section 4.13.6 of the FEIS and include oil and gas development and transmission in Susquehanna County, Pennsylvania, and electric generation and transmission, renewable energy, transportation, and commercial and residential development in all five of the counties encompassing the Project Area."[165] This statement suggests that FERC is relying on the FEIS's assessment of cumulative impacts (contained in FEIS section 4.13.16), however a statement that projects are "similar" is not sufficient to absolve FERC of its duty to evaluate the cumulative impacts of this Project in combination with those identified projects to determine whether they are significant. At the same time, however, FERC seems to indicate that it has identified new projects with potential cumulative impacts and considered them: "Several reasonably foreseeable planned activities were identified in the watersheds and/or counties in the Project Area that may influence the environmental baseline in which the Projects would be constructed."[166] The public

[161] CEQ, *Memorandum for Heads of Federal Departments and Agencies: Implementation of the National Environmental Policy Act* at 5 (Feb. 19, 2025), https://nepa.gov/sites/default/files/documents/CEQ%20Memo-Implementation%20of%20NEPA%2002.19.2025.pdf.
[162] CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 3 (Jan. 1997), https://nepa.gov/sites/default/files/documents/Considering%20Cumulative%20Effects%20Under%20NEPA_0.pdf.
[163] *Id.* at 1.
[164] EA at 4–7, tbl. A.3-1.
[165] *Id*. at 22.
[166] *Id*.

is left to wonder what planned activities FERC assessed, their relation to the Project, and whether they will impact environmental or other conditions.

Without a clear understanding of what FERC has or has not evaluated, the public cannot meaningfully assess and comment on FERC's cumulative impacts analysis. Informing the public and providing meaningful opportunity for public comments are key purposes of NEPA review. *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (stating that NEPA review is designed to "provide a springboard for public comment" (citation modified)); *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). FERC's lack of clarity undermines those key purposes.

To the extent that the EA does make a half-hearted attempt at cumulative impacts review, without using the word "cumulative," that review falls far short of the required hard look. First, FERC fails to actually identify the "reasonably foreseeable planned activities" it mentions in the EA. The EA describes these activities at a very high level of generality, for example listing "20 transportation projects in Susquehanna, Broome, Delaware, and Schoharie Counties; and 4 industrial developments located in Delaware and Schoharie Counties, and 11 other projects."[167] The EA refers readers to several filings Constitution made for the specifics of the projects.[168] It again points to Constitution's filings for the specifics of the "new developments, identified after issuance of the FEIS . . . as overlapping or immediately adjacent to the CPP, including a quarry near milepost (MP) 6.2 and an industrial facility near MP 120."[169] This lack of specificity and explanation within the EA itself undermines the public's ability to understand FERC's analysis and meaningfully comment on it.

Second, FERC's evaluation of the cumulative impacts of these projects is superficial and acknowledges only cumulative impacts during construction, while ignoring ongoing cumulative impacts during the operational life of the Project. FERC acknowledges only that "[d]uring construction, these projects would affect resources within the same subwatersheds and/or counties as the Projects, including groundwater resources through excavations and potential groundwater withdrawals, biological resources through vegetation clearing and habitat disturbance, and surface water and wetland disturbances through crossings, import of fill, or erosion events." [170] FERC further notes that it "expect[s] these effects would be temporary and localized."[171] FERC does not explain how impacts from vegetation clearing and habitat disturbance would be only temporary if projects, including the Project at issue here, permanently alter the landscape. *See supra* Section IX.B. Nor does it justify treating water and wetland impacts as only temporary when construction of projects often permanently alters the water flow through streams and wetlands and tree clearing can lead to ongoing increased erosion throughout the life of a project.

[167] *Id*.
[168] *Id*., n.62 (citing Constitution, Environmental Consistency Summary (Attachment I) at Attachment D, Accession No. 20251219-5626 (Dec. 19, 2025), and Constitution, EIR No. 31 and Revised Attachment D, Accession No. 20260717-5214 (July 17, 2026)).
[169] *Id*., n.63 (citing Constitution section 1.3.3 at page 1-73. FERC Accession No. 20260130-5465 (Jan. 30, 2026)).
[170] *Id*. at 22.
[171] *Id*.

Dated: September 21, 2026

Respectfully submitted,

/s/ Matthew Silverman
Matthew Silverman
Moneen Nasmith
Perri Haser
EARTHJUSTICE
48 Wall Street, 15th Floor
New York, NY 10005
917-410-8765
msilverman@earthjustice.org
mnasmith@earthjustice.org
phaser@earthjustice.org

Ann Jaworski
EARTHJUSTICE
311 S. Wacker Drive, Suite 1400
Chicago, IL 60606
ajaworski@earthjustice.org
773-245-0837

Counsel for Catskill Mountainkeeper, Clean Air Council, Delaware-Otsego Audubon Society, Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, Food & Water Watch, Riverkeeper, Inc., Sierra Club, and Waterkeeper Alliance

/s Gillian Giannetti
Gillian Giannetti
Senior Attorney & Director of Fossil Strategy
Natural Resources Defense Council
1152 15th Street, NW
Suite 300
Washington, DC 20005
ggiannetti@nrdc.org

Counsel for Natural Resources Defense Council

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 21st day of September, 2026.

/s/ Matthew Silverman
Matthew Silverman
EARTHJUSTICE
48 Wall Street, 15th Floor
New York, NY 10005
917-410-8765
msilverman@earthjustice.org

Counsel for Catskill Mountainkeeper, Clean Air Council, Delaware-Otsego Audubon Society, Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, Food & Water Watch, Riverkeeper, Inc., Sierra Club, and Waterkeeper Alliance

Exhibit 1

Kevin Heatley

3706 Pine Tree Drive, Klamath Falls, OR | 570-419-0310 | kevinh25@windstream.net

Qualifications

I am an environmental professional with national experience in policy development, program implementation, restoration ecology and invasive species management. A proven capacity for complex project management, organizational leadership, budgetary forecasting, supervision & training of employees, vendor selection, contract administration and stakeholder engagement. Extensive public & private sector experience in educational outreach, dynamic partnership building, and media relations.

Education

Masters Environmental Pollution Control, Penn State University, Harrisburg, PA, 2006
B.S., Natural Resource Management, Cook College, Rutgers University, New Brunswick, New Jersey

Experience

Public Sector

January 2025 – May 2025 (Retired)– **Park Superintendent, 0025, GS-14, 40 hours per week, National Park Service, Crater Lake, Oregon.**
· Serve as Park Superintendent at Crater Lake National Park, a 183,224-acre contiguous land unit that contains the deepest lake in the United States
· Supervise and recruit senior level employees who oversee facility operations, natural resource management, visitor protection/law enforcement, interpretation, concessions, cultural resources (including multiple historic buildings and districts), administration, media relations and fee collection.
· Function as primary point-of-contact and NPS representative for multiple stakeholder groups and park partners including but not limited to; the Crater Lake Trust, the Crater Lake Natural History Association, the Friends of Crater Lake, Travel Oregon, Discover Klamath, USFS, USGS, the State of Oregon and two international sister parks.
· Primary representative of the United States in government-to-government consultation with multiple tribal nations each of whom have ancestral ties to Crater Lake.
· Responsible for strategic park planning, budget utilization and capital improvement projects
Supervisor – Randy Lavasseur (415) 623-2106

November 2023 – January 2025 – **Deputy Chief/Program Manager, 0301, GS-14, 40 hours per week, Bureau of Land Management, Washington, DC.**
· Serve as Deputy Chief in Headquarters Directorate of Resources & Planning
· Senior advisor to executive leadership for development and implementation of strategic plans in support of program objectives
· Supervise and recruit senior level employees who oversee national level Bureau programs including - geospatial, socioeconomic, adaptation, mitigation banking, CADR, land health & restoration monitoring and NEPA protest resolution.
· Oversee budget formulation, expenditure tracking and budget forecasting. Supervise senior budget analyst.
· Facilitate and coordinate Directorate communications with regional, state and local BLM offices.
· Represent Directorate and engage with a variety of interagency partners and external stakeholders
· Coordinate senior staff in support of Bureau initiatives and policies (ex – Public Land Rule, Restoration, Regional Land Use Plans & BIL/IRA funded projects).
· Provided direct technical support for Public Lands Rule restoration guidance
· Serve as Acting Division Chief as needed
Supervisor – Heather Bernier (541) 591-1572

June 2020 – November 2023 - **Field Manager, 0301, GS 13, 40 hours per week, Bureau of Land Management, Klamath Falls, OR**

· Supervise and provide leadership direction to administrative, technical and professional resource staff in Klamath Falls Office, Lakeview Oregon District.
· Direct and coordinate preparation of various NEPA and land use planning documents associated with grazing allotment permit renewals, O&C timber program, ROW requests, wetland restoration and recreational use.
· Administer and direct programs related to, O&C timber, range management, fisheries, archeology, wildlife, hydrology, GIS, wild horses, wilderness, recreation, fuels, noxious weed management, and large renewable energy projects.
· Coordinate and oversee hiring actions and recruitment for both seasonal and permanent staff positions.
· Develop and implement program budget and expenditures for entire resource management area.
· Serve as primary point of contact with local stakeholder community including (but not limited to) Tribal Nations, County Commissioners, Natural Resource Advisory Council, USFS, USF&W, NMFS, ODF&W and local timber companies.
· Designated an Agency Administrator for fire suppression actions on District

Primary OR/WASH BLM POC on the Klamath River Dams Removal Project . As the BLM POC for the largest dam removal project in the history of North America, I successfully negotiated with the Klamath River Renewal Corporation for full restoration of all BLM lands impacted by the infrastructure removal, coordinated all BLM FERC comment submissions, served on the WSR Section 7a determination panel, and represented BLM in the development of an interagency vision strategy for the Klamath River system.

Steering Committee Cascade -Siskiyou National Monument (CSNM) RMP. Served as primary POC for the Klamath Falls resource area on the recently completed CSNM plan evaluation. Currently serving on Steering Committee in the development of an updated Resource Management Plan that addresses the Monument management post-expansion.

Primary BLM POC on the Swan Lake Pumped Hydropower Project . A complex, multi-faceted undertaking, the Swan Lake Pumped Hydropower Project is the largest construction project to be undertaken in Oregon in the last 30 years. I have successfully coordinated the BLM review of all project FERC submissions, supervised the BLM response to out of compliance project actions, and have negotiated innovative cultural mitigation strategies to address tribal concerns.

Supervisor – Todd Forbes (541) 219-6633

Sept 2019 – Dec 2019 – **Field Manager (120 day Detail Assignment), 0301, GS 13, 40 hours per week, Bureau of Land Management, Challis, ID**

· Supervise and provide leadership direction to administrative, technical and professional resource staff in Challis resource area of Idaho Falls, ID District.
· Direct and coordinate preparation of various NEPA planning documents associated with grazing allotment permit renewals, mining proposals, ROW requests and recreational use.
· Administer and direct programs related to range management, fisheries, mining, archeology, wildlife, hydrology, GIS, wild horses, wilderness, recreation and noxious weed management.
· Coordinate and oversee hiring actions and recruitment for both seasonal and permanent staff positions.
· Develop and implement program budget and expenditures for entire resource management area.
· Serve as primary point of contact with local stakeholder community including (but not limited to); County Commissioners, Natural Resource Advisory Council, USFS, USF&W, NMFS, and local Trails Association
· **Successfully served as primary Administrator for 2019 Challis Horse Gather.** Conducted on the Challis Herd Management Area, this operation targeted the removal of 244 excess wild horses out of a population of 429 animals.

Supervisor – Mary D'Versa 208-524-7540

Sept 2018 – May 2020 – **Assistant Field Manager (Natural Resources), 0301, GS 12, 40 hours per week Bureau of Land Management, Grants Pass, OR**
· Supervise and provide leadership direction to administrative, technical and professional natural resources staff in Grants Pass resource area of Medford OR District.
· Direct and coordinate preparation of various NEPA planning documents associated with timber sales, stream restoration, mining claims, prescribed burning and ROW actions.
· Administer and direct programs related to botany, invasive species, fisheries, mining, archeology, wildlife, hydrology and GIS.
· Coordinate and oversee hiring actions and recruitment for both seasonal and permanent staff positions.
· Develop and implement program budget and expenditures for resource management program.
· Successfully served two month detail as **Acting Field Manager, GS 13, (April – May 2019)**
· Designated an Agency Administrator for fire suppression actions on District
Supervisors – William Dean (Retired FM)) 541-471-6532, Jennifer Smith (Deputy District Manager) 541-618-2260

March 2018 – Sept 2018 – **Supervisory Natural Resource Manager, 0401, GS 12, 40 hours per week, U.S. Army Corps of Engineers, Conchas Dam, NM**.
· Strategically allocate budgetary resources in order to meet flood reduction, recreational, and environmental stewardship mission objectives for the Conchas Dam Lake Project
· Direct and coordinate preparation of various planning documents
· Administer and direct programs related to public safety, law enforcement, pest control, shoreline management, volunteer labor, mineral development, rescue operations, fish & wildlife management, public recreation and the interpretation of natural, historical, and cultural features of the project.
· Supervise labor allocation, schedules, and activities of subordinate project staff
· Oversee various service and minor construction projects including, but not limited to, vegetation management, potable water supply, sewage treatment, dam and building maintenance, and refuse collection.
· Determine and approve short and long-range project objectives which serve as the principal framework for determining budget and personnel requirements for the lake.
· Coordinate all conservation, preservation and lake restoration efforts in accordance with project mission objectives.
Supervisor – Felton Prosper 505-342-3270

Nov 2015 – Aug 2017 **Supervisory Natural Resource Manager, 0401, GS 12, 40 hours per week, U.S. Army Corps of Engineers, Deerfield, OH**.
· Strategically allocate budgetary resources in order to meet flood reduction, recreational, and environmental stewardship mission objectives for the Berlin Lake Project
· Direct and coordinate preparation of various planning documents
· Administer and direct programs related to public safety, law enforcement, pest control, shoreline management, volunteer labor, mineral development, rescue operations, fish & wildlife management, public recreation and the interpretation of natural, historical, and cultural features of the project.
· Supervise labor allocation, schedules, and activities of subordinate project staff
· Oversee various service and minor construction projects including, but not limited to, vegetation management, potable water supply, sewage treatment, dam and building maintenance, and refuse collection.
· Determine and approve short and long-range project objectives which serve as the principal framework for determining budget and personnel requirements for the lake.
· Coordinate all conservation, preservation and lake restoration efforts in accordance with project mission objectives.
March 2017 - Awarded Civilian Medal of Achievement for developing three-year cultural resources survey partnership with Kent State University.

Sept 2014 – March 2015 **Director of Conservation, 40 hours per week, NYC Dept. Parks & Recreation, New York, NY**.
· Technical and administrative lead for Parks natural resource sciences team
· **Chair – NYC Interagency Deer Management Task Force**
· **Chair JFK-LGS Wildlife Hazard Task Force**
· Oversee conservation, natural area protection and adaptive management programs.
· Review proposals, designs and impact statements in relation to the Parks' 10,000 acres of forests, wetlands, and grasslands.
· Supervise monitoring of active projects constructed by other divisions, agencies and private entities impacting natural areas.
· **Lead Supervisor – endangered piping plover recovery effort**

Private Sector

Jan 2010 – Feb 2014 **Senior Scientist, 40 hours per week, Biohabitats, Inc., Baltimore, MD**.
· Supervisory & Technical Lead on ecological restoration and forest sustainability projects across continental United States
· **Project Manager on $25 million, multi-year, National Park Service Eastern States Revegetation Contract**
· Responsible for project scope development, budget construction, subcontractor coordination, employee training, permitting, stakeholder engagement, technical writing, and educational outreach
· Primary technical expert on invasive species, ecosystem services valuation, and forest ecology
· Produced professional lectures and webinars on a wide variety of natural resource topics
· Extensive ecosystem characterization and mapping experience.

Jan 2006 – Jan 2010 **Vice President, 40 hours per week, Biohabitats Invasive Species Management, Inc., Baltimore, MD.**
· Responsible for technical consulting, business development, budget construction, project management, subcontractor coordination, and employee supervision on invasive species projects across the continental United States and the Caribbean.
· **Designed the first, fully-integrated invasive species treatment prioritization model in the United States for Fairfax County, Va**
· Extensive supervisory experience with chemical, biological, and cultural interventions for suppression of invasive plants and invertebrates.

July 2005 - Jan 2006 **Director of Development Northeast Region, 40 hours per week, Invasive Plant Control, Inc., Nashville, TN.**
· Developed and coordinated invasive plant suppression projects in Northeastern United States · Responsible for public outreach and technical presentations

May 1997 – July 2005 **Senior Forester / Regional Manager, 40 hours per week, ACRT Inc., Akron, OH.**
· Project Manager and Technical Lead on community forestry and parklands projects across the continental United States
· Developed technical specifications, project budgets, and stakeholder outreach efforts
· Responsible for employee recruitment, training and supervision
· Successfully imbedded resource valuation modeling into strategic and budgetary management plans for a variety of land management entities and major municipalities across the United States.
· Provided conceptual design for a leading, GIS-based, asset management software system.

Nonprofit Sector

October 2025 – Current. **Board of Directors, Crater Lake & Oregon Caves Natural History Association**
- Serving on the Board of Directors of the Crater Lake & Oregon Caves Natural History Association, a nonprofit organization that partners with the National Park Service to foster public understanding and generate financial support for the natural and cultural resources of these two iconic National Park locations.

June 2025 – Current. **Board of Directors, Oregon Parks Forever, Portland OR.**
- Serving on the Board of Directors of Oregon Parks Forever, a nonprofit organization dedicated to enhancing and preserving the special places and experiences associated with federal, state and local parks in the State of Oregon.

2012 – 2014. **Board of Directors, Responsible Drilling Alliance, Williamsport, PA.**
- Served on the Board of Directors for a regional nonprofit dedicated to understanding and educating the public and elected officials as to the environmental and social impacts associated with unconventional natural gas development.

2013 – 2015. **Board of Directors, Shale Justice, Williamsport, PA.**
- Founding member of a nonprofit coalition of grassroots organizations addressing the environmental and social impacts associated with unconventional gas drilling both nationally and internationally.
- Hosted delegations from South Africa and Australia interested in touring the natural gas fields of the Marcellus Shale in PA
- Performed presentations at conferences in multiple states.

2014-2015. **Board of Directors, Pennsylvania Community Rights Association**
- Served on the Board of Directors for Pennsylvania nonprofit dedicated to expanding local autonomy of municipalities with respect to environmental regulation.

Representative Project Experience

Primary OR/WASH BLM POC on the Klamath River Dams Removal Project. As the BLM POC for the largest dam removal project in the history of North America, I successfully negotiated with the Klamath River Renewal Corporation for full restoration of all BLM lands impacted by the infrastructure removal, coordinated all BLM FERC comment submissions, served on the WSR Section 7a determination panel, and represented BLM in the development of an interagency vision strategy for the Klamath River system.
Supervisor – Todd Forbes (541) 219-6633

.

Primary BLM POC on the Swan Lake Pumped Hydropower Project. The Swan Lake Pumped Hydropower Facility is the largest construction project to be undertaken in Oregon in the last 30 years. I successfully coordinated the BLM review of all project FERC submissions, supervised the BLM response to out of compliance project actions, and negotiated innovative cultural mitigation strategies to address tribal concerns.
Supervisor – Todd Forbes (541) 219-6633

Professional References

Chris Burnette, NPS Transportation & Trails Program Manager, 970-404-2911
Heather Bernier, BLM Chief Division of NEPA, Planning & Decision Support (retired) 541-821-3553
Ted Wise, Oregon Dept Fish & Wildlife Hydropower Project Lead (retired) 541-610-5383

Document Accession #: 20260921-5240 Filed Date: 09/21/2026

Professional Review & Comment on Environmental Assessment Constitution Pipeline and Wright Interconnect Projects (August 2026) FERC Docket No. CP13-499-006

Prepared for:

Earthjustice as Counsel to Intervenors Catskill Mountainkeeper; Clean Air Council; Delaware-Otsego Audubon Society; Delaware Riverkeeper Network; Maya K. van Rossum, the Delaware Riverkeeper; Food & Water Watch; Riverkeeper, Inc.; Sierra Club; and Waterkeeper Alliance

Prepared by:

Kevin Heatley, M.EPC LEED AP

Restoration Ecologist

BACKGROUND and EXPERTISE

This report was prepared by Mr. Kevin Heatley, a natural resource professional with over 40 years of experience in applied ecology. An expert in invasive species and restoration ecology, Mr. Heatley has worked across the continental United States in both the public and the private sectors. At the federal level he functioned in leadership roles at the US Army Corps of Engineers, the Bureau of Land Management (BLM), and the National Park Service. He has worked extensively on National Environmental Policy Act (NEPA) documents associated with energy development on public lands and served as the primary BLM representative on the largest dam removal project in US history – the Klamath Dam Removal Project. He was previously retained by Earthjustice in 2014 to review the Constitution Pipeline Project and submitted a professional report at the Draft Environmental Impact Statement stage. His resume is attached in the appendix.

EXECUTIVE SUMMARY

This review of the Environmental Assessment (EA) for the proposed Constitution Pipeline project was prepared in response to a request by Earthjustice to provide expert opinion on issues of terrestrial and restoration ecology. In addition to the EA, the review included supporting documents developed by the project proponent, the Constitution Pipeline Company, LLC (Constitution) for the Federal Energy Regulatory Commission (FERC).

These documents included, but were not limited to;

1) Final Environmental Impact Statement (FEIS) for the Constitution Pipeline and Wright Interconnect Projects. Docket No CP13-499 (October 24, 2014)

2) Constitution Pipeline New York Invasive Species Management Plan (November 2013)

3) Constitution Pipeline Pennsylvania Invasive Species Management Plan (November 2013)

4) Constitution Environmental Construction Plan, Construction Activities in New York (November 2013)

5) Constitution Soil Erosion & Sediment Control Narrative & Environmental Construction Plan, Construction Activities in Pennsylvania (November 2013)

6) Preliminary Migratory Bird and Upland Forest Plan (May 2014)

7) Constitution Pipeline and Wright Interconnect Project Environmental Assessment (August 2026)

8) Professional Review & Comment on Draft Environmental Impact Statement for Constitution Pipeline Project – Heatley Report (February 2014)

Findings:

- The Scope of the Environmental Assessment (section 3.0) is flawed as it fails to recognize the substantial changes to the vegetation patterns that potentially have occurred along the proposed ROW over the last 12 years. Of particular concern, it discounts the significance of the clearcutting that Constitution undertook along the Pennsylvania portion (over a fifth of the total project length) of the pipeline over a decade ago. As this area was subsequently abandoned and did not undergo any systematic revegetation effort, substantial ecological changes are to be expected. As such, it is not reasonable, nor defensible, for FERC to assume previously developed mitigation plans are adequate. A new analysis of vegetation impacts should be included in the EA.

- The New York and Pennsylvania Invasive Species Management Plans both fail to include <u>quantifiable</u> metrics for invasive suppression success.

- The New York and Pennsylvania Invasive Species Management Plans both fail to account for latent seedbank generation of invasive plants within the construction disturbance zone beyond the three-year timeframe of treatment & monitoring.

- The New York and Pennsylvania Invasive Species Management Plans both fail to account for the increase in vectoring in of invasive plant seeds and propagules (non-seed plant parts that can become rooted) because of the creation, and perpetuation of, edge habitat during the operational lifespan of the project.

- The creation and perpetuation of an early successional, forest edge habitat is a primary structural feature of this project. FERC acknowledges in section 4.5.3 of the Final Environmental Impact Statement that this project will have indirect impacts on approximately 2,618 acres of interior forest as the result of the creation of edge habitat. This area will be predisposed to biological invasion because of this project. As with the mechanical suppression of woody species via mowing and herbicide application, the treatment and suppression of invasive plants must be undertaken throughout the lifespan of the project. A failure to do so will eventually result in cascading ecological effects that will require costly management interventions if the ecosystem benefits and services currently provided by the biotic communities along this route are to be protected.

DISCUSSION

A careful review and analysis of the EA and the associated materials submitted by Constitution reveals several areas of concern with respect to the maintenance of the ecological integrity of terrestrial ecosystems and the corresponding impacts upon aquatic resources. The plans in the FEIS, to the extent supplemented by the EA, do not adequately provide for protection and sustainable regeneration of forest systems along the proposed pipeline route. The canopy cover provided by the forested lands through which the proposed pipeline cuts is of extreme importance to both the quality and quantity of water that flows within the regional drainages.

Background

Forests filter contaminants, moderate stream temperatures and buffer flow volumes associated with precipitation events. They are the structural foundation upon which the ecological integrity and health of this region's biological resources are built. The link between percent forest cover and water quality is clearly established in the scientific literature. As an example, reductions in forest cover are directly correlated with negative changes in water chemistry, such as increases in nitrogen, phosphorus, sodium, chlorides, and sulfates, and with reductions in stream marcroinvertebrate diversity (Jackson and Sweeny 2010).

Forest fragmentation because of anthropogenic landscape modification is well recognized within biogeographic theory and conservation biology as a leading cause of local species extinctions (extirpation). It can also cause dramatic shifts in the floral and faunal composition of woodland communities. Sub-lethal impacts to floral and faunal

populations (population isolation, reduced genetic fitness and diversity) have also been associated with disruptions to forest connectivity (Clark, et al. 2010). The USGS has documented a disproportionate level of interior forest loss (two to three times greater than overall forest loss) over the last several years from natural gas infrastructure construction in areas such as Susquehanna County, PA (Slonecker 2013). Pipeline corridors have proven to be the primary contributing factor in the loss of interior forest.

Fragmentation creates an increase in the amount of forest edge (the interface between forest and non-forest). This transitional zone or "ecotone" is fundamentally different in structure and functionality from an interior forest system. Edge habitat is characterized by increased light levels on the forest floor, reduced soil moisture, and a high degree of biological invasion from non-native invasive organisms. Dramatic changes can occur in the soil chemistry and the associated micro biota. The top layer of the soil profile, the rich organic duff, begins to dry out and the primary decomposition community begins to shift from fungal to bacterial. This transition in the decomposition community has direct implications for a host of vertebrate and invertebrate species that depend upon this rich organic humus for survival and reproduction. It also directly affects the type and quality of tree regeneration in the ecotone.

Typically extending up to 300 feet into the forest, edge impacts are more than mere esoteric considerations of interest to the scientific community, these changes have direct economic implications for both landowners and society. Recent estimates have placed the annual costs to the U.S. economy from the biological invasion of invasive species at approximately $21 billion dollars (Fantle-Lepczyk et al. 2022).

Invasive organisms within terrestrial forest environments tend to be early successional species that respond favorably to site disturbance. Disruption of native plant cover and the exposure of the forest floor to sunlight provides an opportunity for these organisms to establish satellite populations. These populations eventually radiate out into the adjacent forest, displacing native species and retarding desirable tree regeneration (Bennet et al. 2011). Dispersal (vectoring) mechanisms and/or corridors are required for these non-native species to colonize new locations and the right-of-way corridors associated with natural gas pipelines are ideally configured to serve this function.

For years into the future after decommissioning, the landscape legacy of forest edge from pipeline corridors, access roads and other infrastructure will continue to disrupt ecosystem functioning as non-native organisms repeatedly colonize exposed areas and impede desirable tree regeneration.

Invasive species suppression and the eventual restoration of these disturbed sites to forested systems will require resources of a significant financial and temporal scale. While published information is scarce, it is in the professional experience of restoration practitioners in this region that the reasonable reconstruction of forest canopy and understory diversity can cost between $5,700 and $14,200 per acre. The suppression of invasive plant species is also a major, recurring expense with the initial years' treatment often incurring costs between $1,400 and $3,500 per acre. Invasive treatment in subsequent years typically drops in cost by approximately 50% per year over the first three years.

As the effects of forest fragmentation may not immediately manifest themselves following the disturbance, monitoring is often suggested as a methodology to balance and modify

the level of fragmenting activity in accordance with the conservation of forest-related ecosystem services. Unfortunately, these effects may not be linear in nature and thus are not always amendable to an adaptive management approach. Biological systems may possess thresholds that provide little indication of impending adverse impacts until sudden system collapse. It is from within this conceptual framework that a review of the Constitution Pipeline EA and supporting submissions were undertaken and the following concerns identified.

Comments - Constitution Pipeline Environmental Analysis

VEGETATION

Section 5 - Scope of Environmental Assessment

FERC fails to carry forward the vegetation resource for analysis in the Environmental Assessment. Twelve years have transpired since the Final Environmental Impact Statement was published in 2014, and it is unreasonable to assume that substantial changes have not occurred in the vegetative communities located within the impact area of the Constitution Pipeline. As an example, in the Environmental Assessment FERC indicates that the Pennsylvania section of the project was clearcut over a decade ago by Constitution contractors and then subsequently abandoned without restoration or active management. The Pennsylvania section represents over one fifth of the project length. As a result of clearcutting and subsequent abandonment, this vegetative community has absolutely undergone significant modification.

FERC assumes that the cleared areas have begun to regenerate and that invasive plant species "may have" colonized these areas. FERC also indicates in the Environmental Information Request No. 2 (June 25th, 2026), that Constitution has committed to updating the invasive species surveys following reinstatement of the Certificate Order. This is circular reasoning as a determination that the vegetation has not undergone "substantial changes" can only be made after a survey. Undertaking a new survey of this area would help inform planning and mitigation strategies in a new Environmental Impact Statement as it serves as a test case for the vegetation changes that can be anticipated should the project be constructed.

The successional trajectory of the forest systems that have been clearcut and then abandoned for over a decade will display a species composition and habitat type radically different from the previous cover type. The introduction and colonization of invasive species into a disturbed linear corridor of over 25 miles that lacks active management will, in all probability, be significant. Wind, water, human and animal vectoring will have distributed seed and plant propagules across this area. A newly cleared linear corridor is extremely attractive to off-road vehicles – a frequent contributor to invasive plant dispersal and continual site disruption. It will also attract white-tail deer, a known vector for the distribution of Japanese Stiltgrass. Both tires and hooves easily facilitate seed dispersal.

Given the clearcutting and the temporal lag between the FEIS and the EA, a new vegetation analysis must be a component of the Environmental Assessment. FERC failed to conduct such an analysis, a critical component to have before the Constitution Project moves forward. Without a proper understanding of current conditions, it is impossible to assess and disclose project impacts. The premature issuance of a Certificate would thus be

unjustified and undermine the goal of the NEPA process.

Invasive Species Management Plans

FERC utilizes the state-specific Invasive Species Management Plans (ISMPs) as a component of the rationale for not carrying forward vegetation in the EA analysis. As such, it is important to highlight the major deficits in these plans. Given the high degree of commonality between both the New York and Pennsylvania plans, the concerns detailed here are applicable to both documents.

The ISMPs stated goal is to goal is to, *"…control the invasive species to the extent that wetlands and uplands are not dominated by the invasive species to the point where the functions and values of the systems/habitats are adversely compromised"*. However, there are no measurable metrics indicated in the documents that would allow for quantitative assessment of progress towards that goal. It is common practice in invasive control contracts for the land management entity to require a certain percentage of invasive cover reduction be achieved after a given time frame. This provides a clear benchmark whereby project success can be measured. Constitution's Plan lacks such a requirement.

While the ISMPs acknowledge the difficulty in achieving eradication of invasive species due to issues such as seed drift and/or colonization from off-site locations, they fail to mention two critical vectoring mechanisms that are of extreme importance when dealing with right-of-way construction and maintenance:

(1) the latent seed bank residing in the soil

(2) the chronic encouragement of invasive colonization due to the expansion of edge habitat.

Depending upon the species, invasive seeds and propagules can survive in the soil for years. Japanese stiltgrass (*Microstegium vimineum*) and Autumn Olive (*Elaeagnus umbellate*) have both been frequently found within the proposed project ROW. These species have a seed viability in the soil (the timeframe in which they can lay dormant) that exceeds five years. This latent seed bank germination cannot be addressed within the brief three-year time frame in which Constitution intends for treatment and monitoring.

Constitution recognizes in the Preliminary Migratory Bird and Upland Forest Plan that in the construction of the project, a significant amount of interior forest will be converted to edge forest. The nature of edge habitat – disturbed areas of high light penetration, creates ideal conditions for biological invasion. One of the primary transport mechanisms for invasive plants are birds that preferentially roost at the forest edge and subsequently defecate invasive seeds into the understory. It is important to recognize that, until such time that the forest canopy closes over the right-of-way, the edge habitat that has been created will be highly susceptible to invasive colonization. Once established, small populations can expand into off-right-of-way properties and disrupt forest regeneration, soil chemistry, habitat, hydrology, and ultimately land value. Recognizing the chronic nature of the biological invasion threat that is promoted by the creation and perpetuation of edge habitat, it is obvious that a treatment timeframe that only lasts for three years is wholly inadequate. Invasive suppression needs to continue for the project lifespan as the perpetuation of edge habitat via the three-year mowing and suppression of tree canopy in the ROW will create ideal conditions for repeated infestation.

The ISMPs clearly state that Constitution “will not” treat areas outside its proposed construction right-of-way for invasive species. This is highly problematic given that the edge habitat created by the Constitution project will encourage biological invasion in the adjacent forest lands for the entire service life of the right-of-way. Suppression costs will eventually fall upon the adjacent property owner should an infestation become established. As invasive plants can directly impact native tree regeneration, landowners who are managing their forests for sustainable timber production and/or wildlife will suffer impacts that have not been properly disclosed by FERC in this EA. While the compensatory mitigation fund that Constitution agrees to in the FEIS helps to offset some of the impacts associated with the creation of forest edge, these funds will be directed towards third parties, not to the adjacent landowner. In effect, the neighboring property owner will bear the full costs for managing invasive plant infestations, infestations that are a direct result of the existence of the ROW.

CONCLUSION

The current Environmental Assessment for the Constitution Pipeline project is flawed as it fails to analyze vegetation resources that have, in all probability, substantially changed in twelve years since the Final Environmental Impact Statement was produced. In addition, the EA relies upon inadequate Invasive Species Management Plans as part of the rationale for avoiding updating the vegetation analysis.

Without an updated invasive plant survey and vegetation analysis, mitigation and management strategies cannot be effectively developed and implemented. Should the Certificate of Public Convenience and Necessity be issued by FERC without a proper analysis widespread disruption of forest ecosystems and local watershed resources will occur. Restoration of these systems following the eventual cessation of natural gas transmission will be a monumental cost incurred by both the taxpaying public and adjacent private property owners.

x Kevin Heatley 9/17/2026

Kevin Heatley
Restoration Ecologist

REFERENCES

1. Bennet, A.E., Thomsen, M., Strauss, S. Y. Multiple mechanisms enable invasive species to suppress native species. American Journal of Botany, 98:1086-1094. 2011.

2. Clark,R.W., Brown, W.S., Stechert R.S., Zamudio, K.R. Roads, Interrupted Dispersal, and Genetic Diversity in Timber Rattlesnakes. Conservation Biology, 24:1059-1069. 2010.

3. Fantle-Lepczyk, J.E., Haubrock, P.J., Kramer, A.M., Cuthbert, R.N., Turbelin, A.J., Crystal-Ornelas, R., Diagne, C., Courchamp, F. (2022). Economic costs of biological invasions in the United States. Science of The Total Environment, 806(3), 151318. https://doi.org/10.1016/j.scitotenv.2021.151318

4. Jackson, J.K., Sweeney, B.W. Expert Report on the Relationship Between Land Use and Stream Condition (as Measured by Water Chemistry and Aquatic Macroinvertebrates) in the Delaware River Basin. DRBC Contribution Number 2010011. Stroud Water Research Center, Avondale, PA. 2010.

5. Slonecker, E.T., Milheim, L.E., Roig-Silva, C.M., and Malizia, A.R., 2013, Landscape Consequences of Natural Gas Extraction in Allegheny and Susquehanna Counties, Pennsylvania, 2004–2010, U.S. Geological Survey Open-File Report 2013–1025, http://pubs.usgs.gov/of/2013/1025.

Document Content(s)

2026.09.21 EA Comments.pdf 1
Ex 1. Heatley EA Report.pdf.....36