



May 15, 2018

Tim Sullivan
Fish and Wildlife Biologist
USFWS New York Field Office
3817 Luker Road
Cortland, NY 13045

Re: Active Bald Eagle Nest on the Neversink River | Millennium Pipeline Company, LLC (FERC Docket CP16-486-000) - Urgent Attention Warranted

Dear Mr. Sullivan,

On March 28, 2018, representatives from the Delaware Riverkeeper Network (DRN) spoke to you and Tom Wittig on a conference call regarding an active bald eagle nest along the Neversink River in the vicinity of the Millennium Pipeline Company, LLC (Millennium) Eastern System Upgrade Project (ESU). Video footage of the nest was emailed to you on that same date but there has been little to no active, appropriate response from USFWS or NYSDEC. Asking Millennium and their consultants for more assurances without conducting the appropriate fieldwork does not constitute an active, appropriate response. Since March 28, more evidence of bald eagle activity has been obtained that we feel needs to be taken into account by USFWS and NYSDEC. First, on April 1, 2018, video footage was taken of a bald eagle sitting in the nest. On May 6, 2018, more video footage was taken of at least two eaglets in the nest and an adult bald eagle feeding them. During the conference call, questions were raised by the agency as to whether this nest was actually being used or if bald eagles were simply flying near it. These two pieces of video footage make it clear that this nest is undeniably active.

Millennium's final bald eagle survey took place in spring 2017, a year before this nest was active. Millennium was never required to do a full survey for the breeding season of 2017-18 beginning in the late fall 2017 to the present. This active bald eagle nest needs to be accounted for because the old survey results are an inaccurate representation of current bald eagle activity. USFWS stated in the July 19, 2017 concurrence letter to FERC that, "*Millennium has committed to conducting a bald eagle nest search prior to work near the Neversink River and indicated that if a new nest is found near the project area it will coordinate with the Service and follow our National Bald Eagle Management Guidelines.*"

DELAWARE RIVERKEEPER NETWORK
925 Canal Street, Suite 3701
Bristol, PA 19007
Office: (215) 369-1188
fax: (215) 369-1181
drm@delawareriverkeeper.org
www.delawareriverkeeper.org

If Millennium were actually committed to following the guidelines, it would not be able to produce loud and intermittent noises (regardless if from blasting or HDD noise) within a half mile of this active bald eagle nest. As a reminder, this nest is located approximately 1,700 feet from the construction activity, while a half mile is 2,640 feet. In an email from April 20, 2018, Tom Wittig stated that, "*With regard to HDD activities, the sound is expected to attenuate to a level that is comparable or below ambient noise levels at the nest and is similarly unlikely to result in disturbance.*" This seems difficult to know for sure because the only noise analysis we are aware of is the HDD Noise Analysis Report dated December 2017 that only considers noise impacts to residences and not bald eagles. Neither USFWS nor NYSDEC have been to the site recently to witness this active nest, yet both agencies continue to adhere to Millennium's 2017 surveys and not the current survey results that we are providing. In addition, on the March 28, 2018 conference call, we were told that NYSDEC had a blasting plan that considered bald eagles and even included this particular nest.

We requested this blasting plan from both USFWS and NYSDEC on four separate occasions collectively; twice on March 28, 2018 (once verbally on the conference call and again in an email that same date), on April 9, 2018 (email to NYSDEC), and on April 10, 2018 (email to USFWS). We have yet to receive this plan from either agency nearly two months later. Through a FOIL request, we received a blasting plan entitled "Blasting Plan for Huguenot Pipeline" prepared by MD Drilling & Blasting, Inc. that is dated April 12, 2018. Not only was this plan created after the March 28 conference call, but it also does not mention bald eagles once in the entire document. The only other blasting plan that we are aware of is the Bedrock Blasting Plan in Resource Report 1 that is dated July 2016. Once again, bald eagles are not mentioned once in that entire document either. NYSDEC has maintained that they issued their concurrence based on the HDD Noise Analysis Report dated December 2017.

However, as previously mentioned, that analysis was designed for residential home locations and not bald eagles. Further, the noise analysis was only for HDD related activities and not blasting. In the April 20, 2018 email, Tom Wittig stated that, "*the nearest blasting will be outside the standard recommended buffer of 0.5 miles*" and that it "*...is sufficient to avoid disturbance of the nest.*" Without a blasting plan specifically for bald eagles, it is difficult to pinpoint the location of the blasting in relation to the location of the nest. The USFWS keeps deferring responsibility for this nest to NYSDEC and vice versa. It is essential that the agencies communicate more effectively and take action to protect this nest because nothing is currently being done while Millennium proceeds with its pipeline uncontested. We urge the USFWS to issue a letter to Millennium to prohibit blasting and other loud and intermittent construction activities near this nest until September 1, 2018 when the fledgling young have left the nest, in addition to the 0.5-mile buffer. Failure to do so could result in disturbance to the nest, a form of take and a violation of the Bald and Golden Eagle Protection Act. Action needs to be taken before this nest is harmed or lost forever. We look forward to a timely response. Thank you for your time.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper

cc. Tom Wittig, USFWS

Karen Gaidasz, NYSDEC
Sita Crouse, NYSDEC
Lisa Burianek, NYAG