



DEPARTMENT OF THE ARMY
US Army Corps of Engineers, ATTN: CENAN-OP-RU
Upstate Regulatory Field Office
1 Buffington St., Building 10, 3rd Fl. North
Watervliet, New York 12189-4000

REPLY TO
ATTENTION OF

Upstate New York Section

October 9, 2012

SUBJECT: Request for Comments Regarding the Preparation of an Environmental Impact Statement for the Proposed Constitution Pipeline Project; Docket No. PF12-9-000

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Dear Secretary Bose:

The United States Army Corps of Engineers (USACE) respectfully submits the following comments regarding the preparation of an Environmental Impact Statement (EIS) for the proposed Constitution Pipeline project.

The list of *Currently Identified Environmental Issues* on Page 6 of your request does not include an evaluation of impacts to Federally regulated waters of the United States (WOUS), which includes wetlands. The EIS should include the information listed below which outlines USACE requirements for reviewing the project under Federal regulatory jurisdictions, which include Section 404 of the Clean Water Act (CWA) (33 U.S.C.1344) and Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403).

Section 10 of the RHA prohibits the unauthorized obstruction or alteration of any navigable WOUS. The construction of any structure in, over, or under any navigable WOUS, excavating from or depositing material in such waters, or the accomplishment of any work affecting the course, location, condition or capacity of such areas, requires a Department of the Army (DA) permit. Section 404 of the CWA regulates the excavation in and the placement of any dredged or fill material in any WOUS, including wetlands. Most waterbodies, including wetlands, ephemeral, intermittent, and perennial streams, as well as natural drainage courses, are considered to be regulated, regardless of size.

Discharge activities which will drain or flood wetlands, or significantly disturb wetland soils may require a DA permit in accordance with 33 CFR 320-332. Such activities may include, but are not limited to, staging areas, access roads, utility lines, well-pads, return flow from containment areas, stormwater management facilities, cofferdams, sediment and erosion control devices, or any

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other activities that involve the discharge of any temporary or permanent fills into wetlands or other WOUS.

When impacts are contemplated to occur within those areas of USACE jurisdiction, the boundaries of WOUS, including wetlands, must be delineated according to the current Federal methodology, including the appropriate Regional Supplement, which requires an evaluation of hydrology, vegetation, and soils present on the site. Results of the delineation should be summarized in a report and submitted to the USACE for review. An application requesting authorization to conduct work in Federally regulated WOUS, should include a detailed description of the proposed construction activities listing the individual fill requirements (in acres) for each aquatic resource proposed to be filled or substantially modified. The application must include all proposed activities that are reasonably related to the same project and that require a permit in the same permit application.

Projects that involve the discharge of dredged or fill material into WOUS are evaluated in accordance with the guidelines promulgated under Section 404(b) (1) of the CWA (40 CFR 230.10). Fundamental to these guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystem of concern. This review includes, among other factors, the consideration of all practicable alternatives, as well as cumulative and secondary effects on the aquatic ecosystem.

As described in 33 CFR 320.4, the decision whether to issue a permit authorizing work in WOUS will be based on an evaluation of the probable and cumulative impacts on the public interest. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and in general the needs and welfare of the people. The following general criteria will be considered in the evaluation of the project:

1. The relative extent of the public and private need for the proposed activity;
2. The practicality of using reasonable alternative locations and methods to accomplish the objective of the proposal; and

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3. The extent and permanence of the beneficial and/or detrimental effects which the proposed activity is likely to have on the public and private uses to which the area is suited.

In addition, Section 401(a) (1) of the CWA requires a State Water Quality Certification (WQC) or waiver before a Department of the Army Permit can be issued.

Applications requesting authorization to impact WOUS must include a statement describing how impacts would be avoided and minimized. When impacts to waters of the United States, including wetlands, are proposed, mitigation is often required. The objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to WOUS. Mitigation requirements can be found in Title 33 of the Code of Federal Regulations Part 332.

USACE recommends that the EIS include the Federal requirements for reviewing projects under Section 10 of the RHA and Section 404 of the CWA, as described above, and as they pertain to avoidance and minimization of impacts to jurisdictional WOUS, alternatives analysis, and required compensatory mitigation for impacts authorized under Section 404 of the CWA.

Sincerely,



Kevin Bruce
Project Manager
Upstate New York Section

Document Content(s)

USACE Scoping Comments.PDF.....1-3