



February 12, 2018

David Stilwell
Field Office Supervisor
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. Stilwell,

The Delaware Riverkeeper Network (DRN) and Sullivan County Residents Against Millennium (SCRAM) have several concerns 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) that have either been minimized, not fully documented, or left unaddressed by Millennium as well as consulting agencies including USFWS.

The nest of concern is located approximately 1,700 feet from the proposed ESU horizontal directional drilling platform temporary work space (HDD TWS) and New Loop Alignment as it crosses the Neversink River near Huguenot, New York. Millennium is fully aware of this site, as demonstrated by filings with FERC. However, Millennium has discounted this nest as being of concern by failing to recognize it as a nest in current, active use. It has also been demonstrated by independent monitoring in the dead of winter during prolonged freezing that the Neversink River does not freeze, and indeed remains suitable habitat for both overwintering and nesting eagles. Further, USFWS asserts that, "*little bald eagle activity has been observed in the project area.*" These assertions/assumptions are absolutely false. This nest is currently in active use by bald eagles and is in need of agency intervention in order to ensure its full protection from construction activities associated with Millennium's ESU project.

Facts asserted by Millennium and USFWS regarding nesting and eagle activity are demonstrably wrong:

On three separate occasions spanning from early December 2017 to the end of January 2018, bald eagles have been witnessed both immediately near and fully within the nest. Both photographic and video evidence is in possession of both DRN and SCRAM that validates this fact. Further, bald eagle activity in the general vicinity of the nest throughout the Neversink Corridor has been witnessed, directly contradicting the

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USFWS statement from its July 19, 2017 concurrence letter to FERC that, “*While the Neversink River is a known overwintering area, little bald eagle activity has been observed in the project area.*”

DRN and SCRAM also possess photographic and video evidence of open, free-flowing water in the Neversink both during 15 degree Fahrenheit weather in early January and again in slightly warmer weather in late January. This contradicts the USFWS assertion from its July 19, 2017 concurrence letter that, “*The river is generally shallow in the project area and freezes during Winter. Therefore, it is expected that construction activity during the winter will not be detrimental to bald eagles.*”

As a result, blasting, HDD drilling, and associated activities that will be happening exceedingly close to and/or within the half-mile zone of concern warrant immediate agency intervention in order to ensure full protection of the eagle nesting, feeding, and sheltering activities.

Blasting is a significant threat to the eagles:

The USFWS has recommended that there should be no blasting within 0.5 mile (2,640 feet) of a bald eagle nest to avoid disturbing nesting bald eagles in accordance with the 2007 National Bald Eagle Management Guidelines. Although these guidelines are not law, failure to adhere to the 0.5 mile buffer could result in the disturbance of bald eagles, which is a form of take and a violation of the Bald and Golden Eagle Protection Act (Eagle Act).

Under the Act, “disturb” is defined as, “*to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.*”

USFWS states 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.*” Millennium has also expressed a similar commitment to adhering to the guidelines in the past on other projects, most notably during a recent United States Court of Appeals for the Second Circuit hearing (Case 17-3503) regarding Millennium’s Valley Lateral Connect project wherein Millennium opposed a motion to stay the project partly on the grounds that, “*An unoccupied eagle’s nest was recently discovered within the Project area, and work near it must be complete by December 31, 2017, in order to avoid disturbing the eagle’s habitat.*”

The July 2016 Bedrock Blasting Plan upon which USFWS partly granted its concurrence letter, does not specify the exact extent, temporal duration, or magnitude of blasting activity. Indeed, no details are publicly available whatsoever regarding Millennium’s blasting plan beyond its brief mention in the original project EA (Resource Report 6 - Geological Resources) as follows, “*However, based on field surveys, Millennium anticipates that the use of blasting will likely be required along the Huguenot Loop on the east side of the Neversink River near approximate MP 0.8 to MP 1.1.*” While this named project segment itself is indeed outside a 0.5 mile buffer proximity from the nest, it is *not significantly* outside this proximity. There has been no publicly accessible analysis of the blasting plan related to TWS, locations of blasting equipment and charges, methods, or blasting duration and intensity. Importantly, while the proposed project section alignment and related TWS between the 0.8 and 1.1 mile marker locations is outside of the 0.5 mile buffer,

it is outside only by 100-200 feet - raising the distinct possibility that either further plan details or an alteration to current plan details (if any actually exist at this time) would trigger the actionable proximities within the guidelines.

HDD, TWS & New Loop Alignment facilities and activities pose a significant threat to the eagles:

Noise impacts of this proposed project at the Neversink River are not limited to blasting. The National Bald Eagle Management Guidelines describe noise impacts as, “*Category H. Blasting and other loud, intermittent noises. Avoid blasting and other activities that produce extremely loud noises within 1/2 mile of active nests, unless greater tolerance to the activity (or similar activity) has been demonstrated by the eagles in the nesting area.*”

Both through independent observation and Millennium’s own Environmental Assessment as well as Implementation plan, this now fully active nest is located 1,700 feet (less than 0.5 miles) from the HDD, TWS, and New Loop Alignment facilities and activities, many of which will induce significant noise. Like blasting itself, the HDD process produces loud, intermittent noises from the drilling, as well as from the loud construction vehicles and trucks in the TWS and staging areas. Of further concern is the immediate terrain wherein the nest is located - steep slope terrain immediately buttressing the nest to the east that will inevitably force sound to reverberate and amplify at the nest location.

Due to the nest’s rural and remote location, bald eagles at this nest are not conditioned to loud, new, and atypical noises as eagles in more urban locations. Therefore, these particular eagles are likely more sensitive to loud noises (which again would be significantly less than 0.5 miles away) and could cause a disruption in feeding behavior or nest abandonment, both being forms of disturbance and take under the Eagle Act.

Immediate agency recognition and action are mandated:

While concerned parties are aware of the HDD Construction Noise Assessment prepared by Millennium as well as its blasting plan (bereft of any substantial details, as it may be), both documents do not take the presence of bald eagles nor this active nest into account. In fact, bald eagles are not mentioned once in either document. Given ongoing monitoring efforts and intimate familiarity with this location, DRN and SCRAM believe the ESU project would undoubtedly *negatively impact* the bald eagles in this nest. At this time, we are requesting that the USFWS acknowledge the presence of this active nest more fully and in detail, that you recognize the current eagle activity along this reach of the Neversink River, and that you halt all pipeline construction activity while a deliberative process to assess the full scale of impacts to this active nest is investigated.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper

George Billard
Co-Founder SCRAM

cc. Tim Sullivan, USFWS
Karen Gaidasz, NYSDEC
Lisa Burianek, NYAG