



CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

March 22, 2018

OFFICERS

Harry T. Lester
CHAIR

Jane P. Batten
VICE CHAIR

Carolyn Groobey
VICE CHAIR

William C. Baker
PRESIDENT

Alan R. Griffith
TREASURER

William A. Agee
SECRETARY

TRUSTEES

R. Bruce Bradley

George L. Bunting Jr.

W. Russell G. Byers Jr.

D. Keith Campbell

Michael J. Chiaramonte

Thomas M. Davis III

Robert S. Evans

Lauri Fitz-Pegado

Harry S. Gruner

Ann Fritz Hackett

Michael J. Hanley

Christian Hodges

Jeanne Trimble Hoffman

Mark J. Hourigan

Otis S. Jones

Robert A. Kinsley II

Burks B. Lapham

Katie Z. Leavy

Pamela B. Murphy

Devan B. Ogburn

Elizabeth Oliver-Farrow

Mark S. Ordan

Arnold I. Richman

Anne B. Shumadine

J. Sedwick Sollers III

Sandra E. Taylor

Molly Joseph Ward

Susan P. Willmerding

Peter L. Woicke

HONORARY
TRUSTEES

Donald F. Boesch, Ph.D.

Louisa C. Duemling

Richard L. Franyo

Alan R. Griffith

C.A. Porter Hopkins

Robert A. Kinsley

T. Gaylon Layfield III

H.F. Lenfest

Byron F. Marchant

M. Lee Marston

Wayne A. Mills

Marie W. Ridder

James E. Rogers

Truman T. Semans

Simon Sidamon-Eristoff

Jennifer Stanley

Thomas H. Stoner

Bishop Eugene Taylor Sutton

Alan L. Wurtzel

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Opposition to request for modification to time of year restrictions for tree felling restrictions for Atlantic Coast Pipeline; Docket Nos. CP15-554-000, CP15-554-001, and CP15-555-000

Dear Secretary Bose:

The Chesapeake Bay Foundation, Inc., objects to the request by Atlantic Coast Pipeline, LLC and Dominion Energy Transmission, Inc. (collectively ACP), to modify the time of year restrictions for tree felling for the following reasons. In addition, we join in the comments submitted to you on March 17, 2018 by the Southern Environmental Law Center (SELC) and Appalachian Mountain Advocates.

FERC granted ACP a limited notice to proceed with tree felling activities on January 19, 2018, the day after receiving ACP's skip tracking table and construction constraint and tree-felling maps.¹ The limited notice to proceed required that all tree cutting activities in Virginia cease on March 15, 2018 and not resume until August 31. Such activities were to cease in North Carolina and West Virginia on April 1 and not resume until August 31. ACP now asks to allow vast areas of forest destruction to continue in all three states until May 15, 2018.

FERC's decision to approve the pipeline construction was predicated, in part, upon ACP's representations in its September 2017 Migratory Bird Plan ("Bird Plan"). ACP now wants to deviate from that plan because to continue tree cutting "limits the amount and frequency of disturbance in the general area, benefiting landowners." ACP letter of March 15, 2018, p. 3. There is no support for such a statement. ACP wants to continue destroying acres of trees for one reason, to save money. That is not an

¹ These constraints and maps are the subject of CBF's January 26, 2018, FOIA request to FERC. FOIA# 2018-42. The agency was to respond to the request by February 26, 2018. On February 23, FERC extended that deadline until March 12, 2018. On March 9, FERC determined that the tree felling maps are not subject to ACP's asserted privilege and were to be released to CBF no sooner than March 14, 2018. To date, no documents have been produced.

acceptable reason to harm the thousands of bats and birds migrating through, foraging in, and nesting in or near the pipeline path and access roads.

ACP refers to the FWS October 16, 2017 Biological Opinion but it provides no support for ACP's request as it does not address any bird species. What is more relevant is the Fish and Wildlife Service's letter of June 2, 2016 addressing impacts to migratory birds and the several instances in which ACP failed to follow the Service's recommendations to avoid impacts to important bird species. Attached. It is important to note that the Bird Plan does not focus on all migratory birds subject to the Migratory Bird Treaty Act, *see* 50 C.F.R. § 10.13, that migrate to the areas along the pipeline corridor. There are close to a hundred such bird species, almost all of which will be adversely impacted by ACP's proposed destruction of trees.

Deviating from the current restrictions undercuts the analysis conducted by other federal agencies and FERC. In its Final EIS, FERC identified numerous migratory birds that are dependent upon shrubland habitat and mature forests in the pipeline path, *e.g.*, Kentucky warbler, indigo bunting, blackburnian warbler, mourning warbler, cerulean warbler, wood thrush. FEIS Table 4.5.3-1. Attached.

Moreover, ACP's Bird Plan provides that tree cutting was to occur in November 2017 and 2018 when birds do not nest. Bird Plan table 3.1.1-1, Migratory Bird Nests in the ACP Project Area. However, tree cutting began in January 2018 and continued until March 15, dangerously close to the time of year migratory birds return to the region and begin nesting. Raptors have already returned and begun nesting using trees and rock ledges in forested areas as nest sites. Several other migratory bird species subject to the Migratory Bird Treaty Act have returned to the area, *e.g.*, Red-winged Blackbird and Golden-winged Warbler. The destruction of trees limits the availability of nest sites for those species that nest in trees. Moreover, tree cutting done by squads of people with loud chain saws disturbs courtship and nesting behavior in forests and along their edges.

The pipeline path crosses ten Important Bird Areas including the Monongahela and George Washington National Forests and the Allegheny and Shenandoah mountains. Bird Plan, p. 16; Figure 3.1-1, Table 3.2-1; <http://www.audubon.org/important-bird-areas/allegheny-highlands> These areas have been identified by the National Audubon Society as providing "essential habitat for one or more bird species." *Id.* Several species of importance have been identified including the Golden-winged warbler, Northern Goshawk, and Loggerhead Shrike. The Golden-winged warbler is on the "Red Watch List" and has returned to the region as part of its spring migration and will begin to build nests along the edge of forests. https://www.allaboutbirds.org/guide/Golden-winged_Warbler *See* Appendix 1.

In addition, numerous neo-tropical birds have begun their annual migration back to the region. For example, Red-winged Blackbirds, Tree Swallows and several species of Warblers have been reported in Augusta and Nelson Counties, VA through which pipeline section AP-1 will pass. Tree felling has already occurred there. *See* attached photos, Appendix 2; ACP Notice to Proceed Skip Tracking Table, January 18, 2018.

Examples of three bird species that are dependent upon mature forests or forest edges which will be harmed if time of year restrictions are altered are the Golden-winged Warbler, Northern Goshawk, and Red-Cockaded Woodpecker. The Golden-winged Warbler, Prothonotary Warbler, Wood Thrush, and Northern Goshawk are dependent upon mature forests such as those found in pipeline section AP-1 and are nesting now. The Red-Cockaded Woodpecker lives year-round in pine forests along the pipeline path AP-3 and breeds during the spring. The destruction of trees reduces foraging, nesting and roosting habitat for these birds. The reduction of habitat contributes to the reduction of bird populations.²

Several other species of birds of Continental Importance that are in steep decline and migrate through the pipeline path include Bicknell's Thrush, Connecticut Warbler, Evening Grosbeak, and Olive-sided Flycatcher. Appendix 3, p. 87. Several species of owls are nesting now and fledging chicks; Great Horned Owl, Barred Owl, and Screech Owl. These birds will be harmed if roosting and nesting trees are disturbed which will occur if ACP is allowed to continue destroying trees through May 15, 2018.

For these reasons and those stated by SELC and Appalachian Mountain Advocates in their letter to FERC of March 17, 2018, CBF urges FERC to reject ACP's request to modify the time of year restrictions on tree cutting and construction.

Sincerely,



Jon A. Mueller
Vice President for Litigation

Attachment

² Descriptions of the life histories of the Golden-winged Warbler, Northern Goshawk, and Red-cockaded Woodpecker and the causes of their reduced populations – disturbance and loss of trees – are provided in Appendix 1. *See also*, Appendix 3, Partners in Flight pages 36-39.