

The Recorder

Inclusive, independent, indispensable.

More work needed protect from pipeline construction

October 11, 2018

Editor's note: The following letter was sent Oct. 2 to Phil Phifer, assistant regional director of U.S. Fish and Wildlife Service Ecological Services, Northeast Region, regarding the revised biological opinion on endangered species for the proposed Atlantic Coast Pipeline.

Mr. Phifer:

I have reviewed the U.S. Fish and Wildlife Service revised biological opinion and incidental take statement of Sept. 11 regarding impacts from the proposed Atlantic Coast Pipeline to our endangered species.

I believe that this document is seriously flawed. This document should be rescinded, and further study should be completed prior to re-issuance of a biological opinion, and incidental take statement for the ACP.

My wife and I own property in Little Valley, Bath County, Virginia, that would be directly impacted by over 3,000 feet of construction right of way for the ACP, and the rusty patched bumble bee, Indiana bat, and Northern long-eared bat would be further threatened and negatively impacted by the pipeline on our property and nearby properties.

The endangered bee has recently been found on our property. Additional bees were also recently found at Duncan Knob just to our south, elsewhere in Little Valley, and in Highland County to our north. A total of three, and possibly four bees were found on our property. Steven Johnson, a wildlife photographer, and professor at Eastern Mennonite University, photographed a rusty patched bumble bee in our back yard on July 28.

Images that I took in our back yard on July 31 indicated a single bee or possibly two separate bees. These images were identified by Dr. Steven Roble of the Virginia Department of Conservation and Recreation. A team led by Dr. Roble netted a single bee in early August near our home.

These bees were found on wingstem flowers and on thistle flowers within approximately 600 feet of the proposed centerline for the ACP on our property between mileposts 93 and 94. Construction of the ACP through our property and Little Valley will further threaten this gravely endangered species.

Additionally, I believe the potential for the endangered Indiana bat and Northern long-eared bat to be present on our property and surrounding properties has not been properly assessed.

In fact, the biological opinion and incidental take statement does not acknowledge the Northern long-eared bat in the ACP action area in Virginia. This is incorrect. The Northern long-eared bat was found by a bat expert in Breathing Cave in the Burnsville Cove area of Bath County within the past several years.

Our property and surrounding properties contain a large tract of old growth forest with a large number of trees with exfoliating and deeply fissured bark, making them excellent bat shelter trees. Our property is located just several miles west of the Burnsville Cove where Indiana bats and Northern long-eared bats are present.

Professional forester Mark Sims and the Virginia Department of Conservation and Recreation have both determined that a large part of this old growth forest is extremely rare, never been cut, virgin forest.

DCR has stated that it has a very high biodiversity rating and is one of the finest oak-hickory forests they have ever seen in Virginia. They have designated this area as the Little Valley Slope Conservation Site.

The proposed ACP construction right of way and an access road would cut right through the center of it.

We are confident that more than 300 trees averaging over six feet in circumference would be removed from our property if the ACP is constructed as currently proposed. More large trees would be removed in adjacent areas of the Little Valley Slope Conservation Site. Most of these trees are excellent bat shelter trees with deep fissures in the bark and exfoliating bark. Due to the proximity of Indiana bats and Northern long-eared bats, and the possibility that they inhabit this forest, I believe removal of these trees would further endanger these species.

I have attempted to have experts come to our property to assess the significance of these trees, to no avail thus far.

When ACP bat surveyors came to our property, I asked them to assess these trees. They did not. They simply set up a sonar station near the edge of the old growth forest on our property, which recorded no endangered bats. They did not walk through the remaining 3,000- foot right of way through our property to assess the bat shelter trees.

This summer we found a dead bat at our home, and requested that the Virginia Department of Game and Inland Fisheries come to our property to identify the bat, and assess the bat shelter

trees. An employee came to our property to identify the bat, a big brown bat, but he refused to walk over to the proposed right of way to assess the bat shelter trees, even though VDGIF is engaged in a program to develop an inventory of bat shelter trees.

Last fall, after reading the original biological opinion, I asked Cindy Schultz of your Virginia office to have a staff member come to our property to assess the bat shelter trees. She advised that would not be possible due to staff shortages.

I am once again requesting that a USFWS staff member come to our property and the Little Valley Slope Conservation Site to determine if Indiana bats and Northern long-eared bats are present, and to assess these old growth trees for their potential to help sustain the viability of these endangered species. Please contact me to coordinate this assessment.

In regards to your most recent biological opinion and incidental take statement,

I have the following comments:

- Rusty patched bumblebee — Table 3 shows the nearest bumblebee capture location to the construction right of way as 0.2 kilometers. This is incorrect. According to the ACP, our well is 600 feet from the proposed centerline of the pipeline through our property. The construction right of way would extend 85 feet closer. Several bumblebees were captured in the vicinity of the well, or less than 0.16 kilometers from the construction right of way.

The opinion states the status of the colonies and the population in the High Potential Zone are unknown. It also states that it is not practical to estimate or monitor the total number of workers and queen bees that may be killed or harmed as a result of the proposed action, but does state that a well-informed worst case scenario concludes that up to eight overwintering queens would be killed.

If, in fact, this information is unavailable, then the USFWS should err on the side of caution for this gravely endangered species, which you are required to protect on behalf of the American people, and conclude the project will act against conservation of the rusty patched bumblebee, and unacceptably risks extinction.

Figure 5 shows approximately one mile of construction right of way and between two and three miles of access roads in the high potential zone.

A minor route adjustment, such as moving the route to the north along Dominion's existing, and already disturbed right of way, would eliminate all impacts to the high potential zone.

The search for the rusty patched bumblebee in 2017 involved only one hour, and that specimen was found on June 6. The search in 2018 found one specimen on July 19, and another on July 28, but the bulk of the searches occurred in August, when the number of foraging bees was rapidly declining. Neither the 2017, nor the 2018 search was completed with sufficient time involved during the time of the season when the bees would be most prevalent, and therefore, these

searches do not constitute an adequate assessment of the prevalence of the bumble bee in this area.

An extensive search and assessment for the bee should be conducted in 2019 in Bath and Highland counties, and elsewhere along the proposed route of the ACP during the entire foraging season.

- Indiana bats — Figure 11 shows that 11 miles of construction right of way and approximately six miles of access roads would impact known use spring staging and fall swarming habitat on our property and nearby properties. The same route adjustment mentioned above would eliminate this impact.
- Northern long-eared bat — Additional studies of the presence of this endangered species should be completed in Virginia, and particularly in the Burnsville Cove cave system.

The opinion does not analyze the impacts from increased climate change this project would bring to these endangered species. An analysis of the amount of greenhouse gas emissions for the projected life of this project must be made, along with an analysis of the impact that these emissions will have on climate change, and its impacts to temperature, storm intensity, flooding, precipitation patterns, regional moisture regimes, vegetation, and other species with which the endangered species interact.

There is no question this project will hasten and increase climate change, and that climate change is detrimental to almost all species, including the endangered species discussed in this biological opinion.

In fact, the biological analysis lists climate change as a factor in the decline of the rusty patched bumblebee, Indiana bat, and running buffalo clover, but it does not analyze the increased climate change that this project will bring, its impact on these species, or the other endangered species listed in the opinion.

I hereby comment on the reasonable and prudent measures in the biological opinion as follows:

- Indiana bat — “Provide information to individuals involved in project construction on how to avoid and minimize potential effects to the Indiana bat.” The chance of workers being adequately educated and actually acting to avoid and minimize impacts are near zero. The ACP is already well behind schedule, and workers will be pushed to complete pipeline installation as quickly as possible. This measure is virtually meaningless.
- Rusty patched bumblebee — “Minimize preconstruction clearing and ground disturbance.” I do not understand this measure. Prior to construction there will be no vegetative removal or ground disturbance.
- “Use native plants in restoration activities.” The native plant species for restoration should be indicated, as well as a required maintenance regime for their long-term survival. The use of

herbicides or pesticides should be prohibited. It is very likely that invasives will quickly populate the disturbed areas and prevent the viability of native plants.

- “Maintain suitable habitat within the permanent right of way.” Same as above.

I hereby comment on the terms and conditions as follows:

- Rusty patched bumblebee (comments cover all four conditions) — Any re-seeding must be properly maintained and monitored to assure long-term viability.

My property in the construction right of way, and the proposed access road contain very old and mature rhododendron and mountain laurel bushes. Planting native flowering shrub species will not mitigate for the loss of these established flowering plants, which are an important food source for the bumblebee. Even if these specific species are planted, maintained, and monitored to assure long-term viability, the loss of the original mature species will not be adequately compensated for. It is likely that invasives will quickly take over the disturbed areas, and prevent planted species from surviving. The loss of the existing mature food sources will further endanger the bee, with or without invasive species influence.

- Indiana bat — Same as above.

I hereby comment on the monitoring and reporting requirements: All of these stated requirements must be verified by USFWS inspection. Substantial penalties, including penalties to individual persons, and “stop work” orders must be enacted in full for any violation of these requirements. The penalties must be sufficient to insure that the applicant does not violate the requirements as a cost of doing business.

I hereby comment on the conservation recommendations:

- Rusty patched bumblebee — This should also assure long-term viability of pollinator friendly native seed mixes through monitoring and treatment as needed. Nevertheless, I believe that invasives will dominate most of the permanent and temporary right of way.
- Indiana and Northern long-eared bats — A specific and substantial amount of funding and specific research requirements should be specified. Planting native trees with exfoliating bark in the temporary right of way in no way mitigates the loss of mature trees, including the old growth and virgin forest trees on my property that would be lost under the current proposed project.

In general, the mitigation procedures involving replanting existing grasses, plants, and trees to make up for those mature plants, that sustain these endangered species, that are lost to the project is not a reasonable approach to saving these species. The replanted species long-term viability is highly questionable, and even if they survive, the loss of the natural plant environment of these species, while the new plants mature will likely result in the further decline of these endangered species, and could lead to their extinction.

Please inform me if USFWS staff have visited the proposed action area of the ACP in the formulation of this biological opinion. If so, please specify which parts of the proposed project were inspected, the person hours involved, the reason for the inspection, and the inspection findings.

Please inform me as well, as required by the Endangered Species Act, if the applicant submitted a conservation plan specific to endangered species that specifies what alternative actions, including choice of route the applicant considered, and the reasons why such alternative actions are not being utilized.

Please also provide me a copy of that conservation plan, if one was submitted. I did not see that alternative actions, including, but not limited to alternative routing of the existing proposed route was discussed for the project in Virginia and North Carolina.

I am again requesting that you, or appropriately trained USFWS staff contact me to arrange a site visit in my presence to the old growth and virgin forest on my property, and to also inspect in my presence the old growth rhododendron and mountain laurel locations that would be lost for the proposed access road along U.S. Forest Service Road 124. I believe it is essential for USFWS staff to inspect these areas to have an adequate understanding of the impacts to endangered species in this area from the proposed

Atlantic Coast Pipeline.

Thank you for your work in protecting our endangered species.

Thank you as well for your public service.

William F. Limpert
Warm Springs, Va.