From: Tammy Daly [mailto:tammyldaly@gmail.com]
Sent: Tuesday, August 22, 2017 1:45 PM
Subject: Fwd: Nexus- Objection to Magistrate

Neighbors,

Attached: The objection to the magistrate's recommendation. It was filed in court yesterday.

Now we wait for Judge Adams to rule ... will he follow the recommendation of the magistrate or will our objection point him in the right direction?

IN OTHER NEWS:

Second Circuit Court of Appeals Affirms States' Power to Reject Pipelines

by Larissa Liebmann
August 18, 2017

The Second Circuit Court of Appeals denied a petition from Constitution Pipeline Company and, in the process, upheld the authority of states to reject projects that impact state water quality standards. This victory is an important reminder to all states that they have the power to stop harmful pipeline projects. Waterkeeper Alliance joined an Amicus Brief with NRDC and other groups that supported the New York State Department of Environmental Conservation's (DEC) decision and urged the court to deny the company's petition.

The pipeline company sought to overturn the New York State DEC's denial of a "Section 401 Water Quality Certification" for the Constitution Pipeline. Section 401 of the Clean Water Act reserves authority to the states to determine whether a federally-approved project will adversely impact water quality. If the project will not cause or contribute to violations of state water quality standards, the state issues a "401 Certification" allowing the project to go forward. The proposed Constitution Pipeline was a 124-mile natural gas pipeline that would have impacted 251 streams, nearly 500 acres of forests, and over 85 acres of wetlands in New York State.

During DEC's Section 401 review of the pipeline, it found that the company did not provide enough information to assure the agency that the pipeline would comply with New York's Water Quality Standards. The DEC ultimately declined to issue a 401 Certification for the pipeline. This blocked the construction of the pipeline through the state of New York, despite the Federal Energy Regulatory Commission's (FERC) prior approval of the project.

By allowing DEC's decision to stand, the Second Circuit confirmed that Section 401 of the Clean Water act conveys real power to states. In the context of pipelines, this means that FERC's approval of a pipeline project will not diminish a state's responsibilities and authority under Section 401. States have a responsibility to review the water quality impacts of the project, and the authority to reject a pipeline that threatens water quality.

We applaud DEC for its careful consideration of the impacts of this dangerous and damaging project and for taking its responsibility to protect New York's water resources so seriously. We congratulate Hudson Riverkeeper and all the other advocacy groups that fought to make this victory possible. In particular, we applaud the efforts of Stop the Pipeline, a group of local landowners and advocates along the proposed pipeline route who identified at the beginning of this permit process that Section 401 could be a real vulnerability and fiercely advocated for years that DEC should deny the water quality certification. This effort was led by Anne Marie Garti and professors and law students at the Pace Environmental Litigation Clinic. All New Yorkers should be grateful for their strategic planning and perseverance!

http://waterkeeper.org/second-circuit-court-of-appeals-affirms-states-power-to-reject-pipelines/

By comparison Nexus will according to the FEIS

"..... cross 16 Wellhead Protection Areas (WHPA) at 26 locations.
.....

A total of 245 wells and 6 springs were identified within 150 feet of the Projects. Additionally, the

The Projects [Nexus and Teal] would cross a total of 478 waterbodies (216 perennial, 155 intermittent, 93 ephemeral, 11 ponds, and 3 reservoirs). The applicants would use the HDD method to cross 30 waterbodies at 16 HDD locations, including all Section 10 navigable, National River Inventory-designated, and Ohio Environmental Protection Agency (Ohio EPA) -designated outstanding and superior water quality streams.
The applicants would use the conventional bore method to cross 69 waterbodies. The remaining waterbodies would be crossed using dry (dam-and-pump or flume) and open-cut wet crossing methods.

The Projects would cross 12 surface water protection areas and 5 waterbodies that have public water intakes within 3 miles downstream.

Construction of the pipeline facilities associated with the Projects would temporarily affect a total of 199.7 acres of wetlands. Approximately 41.1 acres would be converted from forested or scrub-shrub wetland to emergent or scrub-shrub wetland.

In addition,

Construction of the Projects would affect 371.5 acres of forested upland, 43.3 acres of forested wetland, 571.8 acres of open upland, 43.8 acres of emergent wetland, and 19.5 acres of scrub-shrub wetland.
The remaining 4,202.7 acres are agricultural land, developed land, or open water. Operation of the Projects would affect 148.0 acres of forested upland, 26.7 acres of forested wetland, 154.5 acres of open upland,
21.0 acres of emergent wetland, and 10.0 acres of scrub-shrub wetland.

You would think if the Second Circuit Court of Appeals denied a petition from Constitution Pipeline Company and, in the process, upheld the authority of states to reject projects that impact state water quality standards, we could get the Sixth Circuit Court to do likewise.

What do you think?

Paul L Gierosky
mobile: 216-469-5206
email: plgierosky@gmail.com

We are in a David Vs Goliath Fight against a $350 million dollar a year federal agency and the largest oil and gas company in North America. CoRN has legal fees from three lawyers. A blast zone expert-witness alone will cost $20,000.

Donate to: "Coalition To Reroute Nexus"
* Deposit: Any Huntington Bank. Acct #...9150
* Mail: c/o 919 East Turkeyfoot Lake Rd, Suite B, Akron, OH, 44312
*Mail: c/o 7782 Spieth Rd, Medina, OH 44256
* Paypal: www.facebook.com/MedinaNoNexus/
* Credit Card: www.CrowdJustice.com/case/reroute-nexus/