



June 30, 2020

**VIA ELECTRONIC MAIL**

Commissioner Katie Dykes  
Connecticut Dept. of Energy and Env'tl. Protection  
79 Elm Street  
Hartford, CT 06106  
Email: Katie.Dykes@ct.gov

**RE: Sierra Club Supplemental Comments Regarding Eversource Application for  
Section 401 Water Quality Certification for Pomfret to Killingly Pipeline  
Project**

Commissioner Dykes:

The Sierra Club respectfully submits the following supplement to its comments dated June 9, 2020 concerning the Eversource Application for Section 401 Water Quality Certification for the Pomfret to Killingly Pipeline Project.

*First*, in Sierra Club's initial comments, it raised concerns about the impact that many aspects construction of the Pomfret to Killingly Pipeline Project would have on native brook trout in Durkee Brook.<sup>1</sup> Subsequent to the filing of those comments, DEEP published the March/April 2020 issue of Connecticut Wildlife. This issue features an article detailing the decline of wild brook trout populations in Connecticut over the past 25 years.<sup>2</sup> DEEP's sampling found that wild brook trout have disappeared completely from a third of the streams originally sampled—out of 107 streams sampled from 1988-1994, wild brook trout were only detected in 68 streams in 2018-19 sampling, while 39 streams had lost their wild brook trout population entirely.<sup>3</sup> Eversource's proposed pipeline would destroy additional wild brook trout habitat in Durkee Brook, which is populated by wild brook trout according to DEEP fisheries data.<sup>4</sup> Construction of the pipeline would likely result in yet another lost brook trout population, which DEEP has the power to stop by denying 401 certification for the project. As Downstream Strategies concluded in their review of the 401 Application, "[e]rosion and resulting sedimentation in Durkee Brook... pose a significant risk to water quality and trout habitat. Even with the proper installation and maintenance of erosion and sediment control BMPs, water

---

<sup>1</sup> Sierra Club Comments on Eversource Application for Section 401 Water Quality Certification for Pomfret to Killingly Pipeline Project (June 9, 2020), at 5-9.

<sup>2</sup> Mike Beauchene and Brian Eltz (DEEP Fisheries Division), Connecticut Wildlife, *The More Things Change, The More They Change*, (March/April 2020).

<sup>3</sup> *Id.*

<sup>4</sup> Connecticut Environmental Conditions Online, *Connecticut DEEP Fish Community Data-Inland Waters Interactive map*, <https://cteco.uconn.edu/projects/fish/viewer/index.html> (2015).

quality standards are likely to be violated and trout habitat is likely to be damaged.”<sup>5</sup>. The data collected by DEEP identifying precipitous declines in the occurrence of native brook trout further highlight the inappropriate risk that the Pomfret to Killingly Pipeline Project poses to this species and to maintenance of Connecticut State Water Quality Standards. To protect the continued occurrence of this important species in Connecticut, the Water Quality Certification should be denied.

*Second*, given the adverse impacts to state endangered species discussed in Sierra Club’s initial comments,<sup>6</sup> under General Statutes of Connecticut Section 26-310(c) DEEP staff would be required to submit and obtain from you an exemption before the project can proceed. An exemption is required for any project that may threaten the continued existence of endangered species in the project area, which in the case of the Pomfret to Killingly Pipeline Project includes the American bittern and the Northern long-eared owl. Under this section, an administrative agency must request an exemption from the commissioner of DEEP if a project authorized by that agency will “threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species.”<sup>7</sup> Given that in order for a species to be considered endangered under Connecticut law there must be “no more than five occurrences in the state,”<sup>8</sup> with “occurrence” defined as “a population of a species breeding and existing within the same ecological community,”<sup>9</sup> Sierra Club anticipates that the habitat in project area is likely essential to the survival of these species. Sierra Club urges DEEP to examine whether construction of the pipeline and the resulting habitat loss would threaten essential habitat or continued existence of the multiple endangered species in the project area. If DEEP authorizes this pipeline, the agency would need to request an exemption for threatening the continued existence of endangered species in the project area, including the American bittern, the Northern long-eared owl, and any endangered plant species.

*Third*, in addition to addressing impacts to endangered and threatened wildlife species discussed above and in Sierra Club’s initial comments, DEEP must also protect endangered and threatened plant species. Plants are explicitly protected under the Connecticut Endangered Species Act, as section 26-304 (6) defines “species” to include “any species, subspecies, or variety of animal or *plant*...”. (emphasis added). The DEEP Natural Diversity Database (NDDDB) Determination included in the Eversource Application does not mention endangered or threatened plant species in the project area. However, Eversource’s application states “[the] Connecticut Natural Diversity Database were consulted on statelisted endangered, threatened, or species of special concern, *flora* and fauna.” (emphasis added). Sierra Club respectfully inquires as to whether DEEP reviewed the area for such plant species and found none, or if such a review was not undertaken. If no such review was undertaken, Sierra Club requests that DEEP issue a more complete NDDDB Determination to ensure the protection of the state’s endangered and threatened plant species. In addition, Sierra Club notes that Eversource’s current NDDDB Determination is dated July 31, 2019 and is valid for one year. If construction on the project

---

<sup>5</sup> Downstream Strategies, *Potential Impacts from Eversource’s Proposed Pomfret to Killingly Pipeline Project* (June 3, 2020), at 20.

<sup>6</sup> Sierra Club Comments on Eversource Application for Section 401 Water Quality Certification for Pomfret to Killingly Pipeline Project (June 9, 2020), at 12-13.

<sup>7</sup> Conn. Gen. Stat. § 26-310 (c).

<sup>8</sup> Conn. Gen. Stat. § 26-304 (7).

<sup>9</sup> Conn. Gen. Stat. § 26-304 (15).

does not begin before July 31, 2020, a NDDB Determination renewal would be necessary. Further, given that Northern long-eared owls have been documented in the project area consistently over the past several months, and as recently as May 2020,<sup>10</sup> Sierra Club respectfully requests that this state-listed endangered species<sup>11</sup> be included in any updated NDDB Determination.

Respectfully submitted,

Sarah Krame  
Associate Attorney  
Sierra Club Environmental Law Program  
50 F St. NW, 8th Floor  
Washington, DC 20001  
Tel: (202) 548-4597  
Fax: (202) 547-6009

Cc: Vicki Hackett (victoria.hackett@ct.gov)  
James Albis (james.albis@ct.gov)  
Alex Ericson (alexander.ericson@ct.gov)  
Betsey Wingfield (betsey.wingfield@ct.gov)  
Brian Thompson (brian.thompson@ct.gov)

---

<sup>10</sup> Personal Communication with A. Rzeznikiewicz, Land Manager, Pomfret and Trail Wood Preserves, Connecticut Audubon Society, May 15, 2020.

<sup>11</sup> Connecticut DEEP, Long-eared owl, <https://portal.ct.gov/DEEP/Wildlife/Fact-Sheets/Long-eared-Owl>.