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Surface Transportation Board
Office of Environmental Analysis
395 E Street SW
Washington, DC 20423
(202) 245-0245
Via e-mail: STBSecretary@stb.gov

Texas Commission on
Environmental Quality
401 Coordinator, MSC-150
401certs@tceq.texas.gov

Southwestern Division
1100 Commerce Street, Suite 831
Dallas, TX 75242-1317
(469) 487-7007
ceswd-pa@usace.army.mil

Re: Final Environmental Impact Statement (EIS) — Green Eagle Railroad Project, Docket No. FD 36652, Eagle Pass, Maverick County, Texas

To the Surface Transportation Board and TCEQ,

Eagle Pass Border Coalition (EPBS) is a 501(c)3 that works to ensure a future in which frontline communities are no longer isolated or voiceless from state or federal decision making that affect our home, where we have an active role in the evolution of our community and preservation of our culture. Eagle Pass Border Coalition, submits the following comments in response to the Final Environmental Impact Statement (FEIS) for the proposed Green Eagle Railroad Project (referred to as “project” throughout this comment letter), and urge the Surface Transportation Board to delay and/or deny the approval, further investigate environmental and human health impact before issuing the Record of Decision. The proposed Green Eagle Railroad Project is a 1.3 mile rail line requested in Eagle Pass that would extend from the United States/Mexico border to the existing Union Pacific Railroad (UP) mainline and is submitted by Green Eagle Railroad, LLC , referred to as the “Applicant” and is a subsidiary of Puerto Verde Holdings (PVH). Eagle Pass Border Coalition and the Western Maverick County Committee oppose the applicant's proposed project and urges the USACE and the STB to further investigate the final EIS under Section 404 and water quality certifications and not approve the project until the following concerns are addressed. The project’s environmental and human health impacts are large in scope and require further evaluation under NEPA, Section 404 and the Clean Air Act. Please note that comments relating to NEPA begin immediately below, Section 404 and Clean Water Act begins on page 3 and comments relating to 401 review begin on page 13.

NEPA

NEPA requires the preparation of an EIS to be completed for “major Federal actions significantly affecting the quality of the human environment.” 40 CFR § 1502.3 (2020 and Sep. 2020). Prior to the NEPA revisions adopted by the CEQ in September 2020, major federal action was defined under 40 CFR § 1508.18 (2020) as “actions with effects that may be major and which are potentially subject to Federal control and responsibility.” The NEPA statute uses “major federal action” as a singular term. To determine the extent to which an action is major, courts conduct a factual analysis in each case to see whether a federal agency has the power to control project decisions and outcomes. For example, if a project requires federal permitting approval or financing to move forward, it is a major action. Conversely, if a project can move forward without federal approval or the use of a significant amount of federal funding, it is not a major federal action.

According to regulations, the following actions generally require an EIS:

- (a) Feasibility reports for authorization and construction of major projects;
 - (b) Proposed changes in projects which increase size substantially or add additional purposes; and
 - (c) Proposed major changes in the operation and/or maintenance of completed projects.
- 33 C.F.R. § 230.6.

As described below, this action will have significant effects on the environment, including the impact to Seco Creek, a major creek that connects to a navigable Water of The United States, the Rio Grande River, and will have major impacts to adjacent riverine wetlands that have not been adequately identified in the Draft EIS or addressed in the final EIS. Mitigation is inadequate and not included in the Draft or Final EIS. An EIS requires the STB to “consider the environmental impacts of [its] actions in decision making,” and also ensures that it “[informs] decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

Until the requirements are met, the STB cannot grant the proposed project.

a. The Final EIS must consider the Projects cumulative Impacts

Courts routinely require the Corps and other federal agencies to consider the direct, indirect, and cumulative effects—including non-aquatic effects—of the activities the Corps’ dredge and fill permits Authorize. For example, in *Hillsdale Environmental Loss Prevention, Inc. v. U.S. Army Corps of Engineers*, 702 F.3d 1156, 1162–63 (10th Cir. 2012), the court considered the validity of the Corps’ NEPA analysis when issuing a § 404 dredge and fill permit for the construction of

an intermodal rail/truck terminal. In its NEPA analysis, the Corps “considered both [the] direct and reasonably foreseeable indirect impacts to land use, air quality, noise, traffic, water quality, threatened and endangered species, and cultural resources” from the operation of the intermodal terminal. *Id.* at 1164. The court made clear that the Corps must look beyond the effects occurring directly within its jurisdictional waters. Here, the Corps, the STB and TCEQ must consider in an EIS:

- The cumulative impacts of completed, underway, and imminent phases of the Green Eagle Rail Project
- The cumulative impacts of this project and other projects in the area
- How the project will affect water quality, especially of the Rio Grande River
- How the project will affect the Seco Creek, related wetlands, and other critical ecosystems like the Rio Grande Watershed
- How development in this area will increase flood risk locally and downstream
- How the project will increase traffic in the area with continued ongoing development of the area due to the increased development and traffic
- How the project’s occurrence in a 100 year floodplain may not be aligned with public interest
- The significant long term and short term air quality impacts on surrounding communities
- How existing wetlands near and on site have been vastly underestimated as well as the ecosystem services large tracts of wetlands and ecologically sensitive habitats provide to endangered and threatened species
- How impacts to human health with regard to air quality have been largely understudied and the cumulative impact must be addressed

Section 404 & Other Federal Review

2. Overview of the Clean Water Act

The Clean Water Act is intended to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. § 1251(a), and “to increase the quality and quantity of the Nation’s wetlands,” *id.* § 2317(a). Section 404 of the Act prohibits the discharge of soil or other materials into wetlands unless authorized by a permit issued by the Corps, 33 U.S.C. § 1344(a); 33 C.F.R. § 322.3; Parts 323, 325, and provides strict substantive limits on approving projects that degrade water quality or harm aquatic uses. As currently proposed, the STB must deny the project because the proposed discharge does not comply with Section 404(b)(1) guidelines. The Clean Water Act limits the authority of the Corps to issue permits for the discharge of fill material into the waters of the United States. 33 U.S.C. § 1344(a), (b), (d); *id.* § 1362(7) (defining “navigable waters” as “waters of the United States”); 33 C.F.R. § 328.3(a)(1), (5), (62), (4) (defining “waters of the United States” to include waters that may be used in

interstate commerce, tributaries of such waters, and wetlands adjacent to those tributaries and waters). Specifically, Section 404(b)(1) of the CWA requires the Corps to apply guidelines established by the U.S. Environmental Protection Agency (“EPA”) to restore and maintain the integrity of aquatic ecosystems. 33 U.S.C. § 1343(c)(1); 40 C.F.R. § 230.1(a). The Corps’ regulations state that a permit will be denied if the proposed discharge would not comply with the § 404(b)(1) guidelines. 33 C.F.R. § 323.6(a).

Under these guidelines, “degradation or destruction of special aquatic sites, such as filling operations in wetlands is considered to be among the most severe environmental impacts.” 40 C.F.R. § 230.1(d). Discharging fill material in wetlands often destroys habitat and vegetation, degrades water quality, and diminishes wetlands’ capacity to store floodwater and shield upland areas from erosion. *Id.* § 230.41(b). “Fundamental to [the 404(b)(1)] Guidelines is the precept that... fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact.” *Id.* § 230.1(c). Discharging fill material into waters of the United States violates the Section 404(b)(1) guidelines when (1) there is a practicable alternative that would have less adverse effect on the aquatic ecosystem; (2) the proposed filling would significantly degrade the aquatic ecosystem; or (3) the proposed filling does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem. See *id.* § 230.12(a)(3)(i)–(iii); see also *id.* § 230.10(a)–(d). If the applicant cannot avoid impacts, the Corps must decide what compensatory mitigation is required. *Id.* § 230.93(a)(1).

In applying the above criteria, the STB must make detailed factual determinations as to the potential environmental effects of the proposed discharges and environmental impacts. See *id.* §§ 230.11, 230.12(b). Crucially, these factual determinations depend on not only a project’s direct effects on aquatic ecosystems, but also the cumulative effects of other discharges and secondary effects associated with the project. See *id.* § 230.11(g), (h). Thus, while the Section 404(b)(1) guidelines apply only to the waters of the United States and coextensive aquatic ecosystems, see *id.* § 230.3(b), STB and the Corps must consider the environmental impacts from additional predictable developments, as well as those indirectly caused by a project. In making these factual determinations, STB and the Corps must evaluate the duration and physical extent of any impacts as well as the possible loss of environmental values for different waters. E.g., *id.* § 230.11.

Several specific requirements under the Section 404(b)(1) guidelines are particularly relevant here. First, the Corps may not issue a permit under Section 404 if there is any “practicable alternative” to the project with less impact on the aquatic ecosystem. 40 C.F.R. § 230.10(a). Second, no discharge can be permitted that jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act. *Id.* § 230.10(b)(3). Third, the Corps cannot issue the permit unless there is a demonstration that any discharge

from the project “will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern,” or if any discharge will result in significant adverse effects to water quality. Id. § 230.1(c). Finally, STB must determine that the project is in the “public interest” by weighing all “relevant” considerations and balancing all probable impacts of the proposed action against its alleged benefits. 33 C.F.R. § 320.4(a).

Taken together, these requirements create a “very strong” presumption “that the unnecessary alteration or destruction of critical aquatic habitats and wetlands should be discouraged as contrary to the public interest.” *Buttrey v. United States*, 690 F.2d 1170, 1180 (5th Cir. 1982) (citation omitted).

3. The materials provided do not meet Section 404’s requirements

These regulations provide that notice about an application must “include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful public comment.” 33 C.F.R. 325.3(a). The public notice and related materials do not include basic information needed to effectively evaluate the application, including:

- A detailed analysis of the impacts to aquatic resources associated with all reasonable systems alternatives, and alternative construction methods;
- A detailed analysis of the practicability of all reasonable systems alternatives, and alternative construction methods including discharge of fill material;
- Baseline descriptions of the wetlands and waterbodies that will be impacted, including a description of the functions that those waters support, including wildlife and native species, as well as whether the waters and wetlands provide any flood relief function;
- A detailed analysis of the Project’s impacts to water quality;
- A detailed comparison of the environmental impacts for each of the alternatives that the STB is considering;
- A detailed analysis of how the Project is in the public interest, as defined by 33 C.F.R. § 320.4(a).

As reflected by this list, the applicant has not given the STB enough information to evaluate and independently verify its application. The deficiencies in the information provided by the STB also make meaningful comment by the public on whether the Project complies with Section 404 impossible. The STB and/or applicant must provide additional, detailed information needed to evaluate the Project under Section 404 and provide another opportunity for public review and comment. Current Final EIS and EIS largely disregard water quality and wetland impacts to Seco Creek and Rio Grande and must be further investigated.

4. Applicant has not shown the Project’s water dependence

The Corps' role in the Section 404 process is to avoid the unnecessary destruction or alteration of waters of the United States, including wetlands, and to compensate for unavoidable losses. 40 C.F.R. § 230.10(c). Regulations require that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. 40 C.F.R. § 230.10(a).

Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. See 40 C.F.R. § 230.5(c) and § 230.10(a). The STB cannot issue a permit when an environmentally preferable, practicable alternative for the proposed discharge exists. 40 C.F.R. § 230.10(a); see also Tex. Admin. Code. § 279.11(c)(1) ("Activities that are not water dependent are presumed to have a practicable alternative, unless the applicant demonstrates otherwise.").

For proposed discharges into wetlands and other special aquatic sites, the Corps must consider whether the activity associated with the proposed discharge is "water dependent." See 40 C.F.R. § 230.10(a)(3). Water dependency is defined in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose. *Id.* According to 40 CFR § 230.10(a)(3):

[W]here the activity associated with a discharge which is proposed for a special aquatic site (as defined in subpart E) does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e. not water dependent), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the same aquatic ecosystem, unless clearly demonstrated otherwise. Wetlands are considered "special aquatic sites." 40 C.F.R. § 230.41.

A rail line that is connecting an existing rail is not inherently water dependent. The applicant has not clearly demonstrated that the Project is an exception. The applicant has also failed to demonstrate that practicable alternatives do not exist. See next section. The applicant does not explain why this development must be sited in a 100 year floodplain adjacent to the wetlands near Seco Creek to "fulfill its basic purpose." 40 CFR § 230.10(a)(3). Since the burden of proof rests with the applicant, the Corps and STB must conclude that this proposal is not water dependent. According to the regulations, non-wet practicable alternatives must then exist. See 33

C.F.R. § 230.10(3); Tex. Admin. Code. § 279.11(c)(1).

In its present form, the STB must further investigate and deny the permit.

5. The project is proposed in a 100 year flood plain and fails to provide long term safety for the communities and residents of Maverick County, Texas

As seen in the FEMA Flood Hazard map below (see figure 1), most of the site is being developed in a 100 year flood plain. This will expose many new businesses, home owners, and potential residents to future flood events and in turn fail to serve the Purpose and Needs. Not only does it fail to be a safe place for existing residents, construction and construction of industrial sites in flood prone areas impact and expose surrounding properties to increased flood risk and putting a project in a flood plain does not protect workers or the rail line carrying freight. It is not an economically viable project and must be reconsidered.

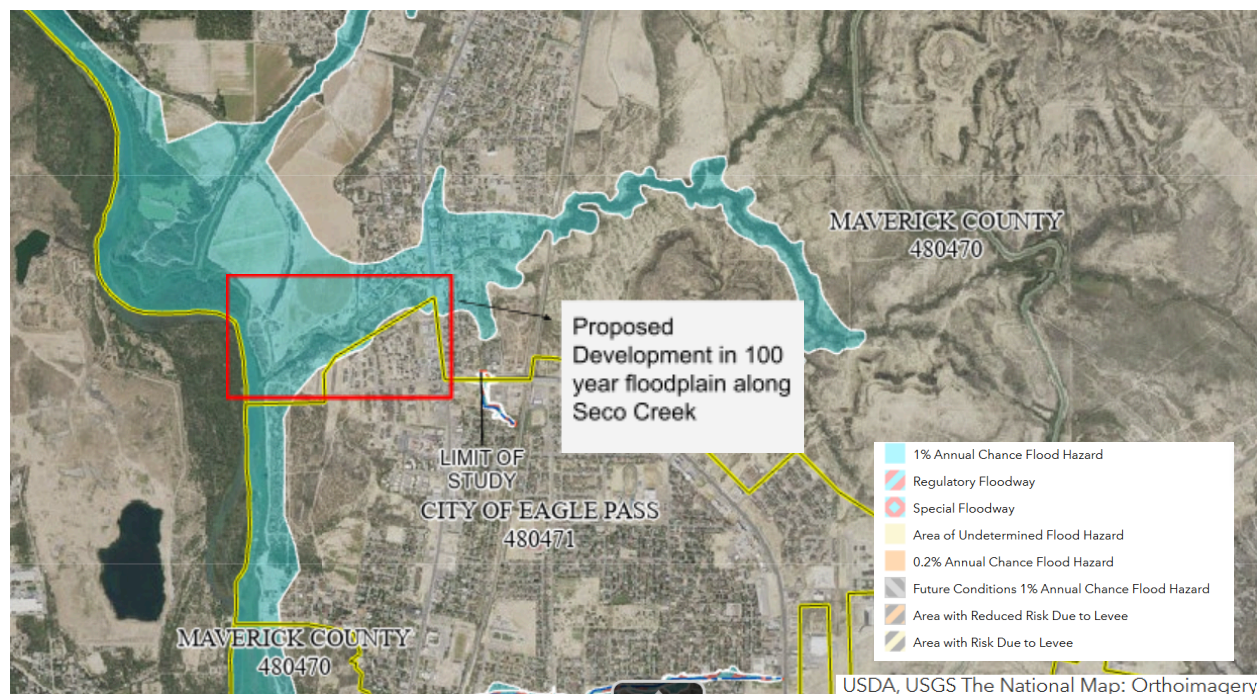


Figure 1: Above shows the proposed project to be in rectangle (red) to be located within a 100 year floodplain

6. The Project has the potential to jeopardize threatened and endangered species under the Endangered Species Act

The STB must not permit a proposed project if it causes or contributes to degradation of the environment. 40 C.F.R. § 230.10. The current analysis of environmental impacts must include an evaluation of whether the proposed project jeopardizes the continued existence of

species listed as endangered or threatened under the Endangered Species Act. 40 C.F.R. § 230.10(b)(3).

The permit application states that the development may affect the Mexican Fawnsfoot (*Truncilla cognata*). Further, based on its location and the Project's own Biological Assessment (Appendix K), the EIS identified this species during the survey conducted in September 2024. The assessment also states that transect studies “included seven Mexican Fawnsfoot and one Paper Pondshell (*Utterbackiana imbecillis*). Relic shells of Yellow Sandshell (*Lampsilis teres*) were also collected. Since live Mexican Fawnsfoot specimens were collected during the transect searches, qualitative timed searches were conducted, which found two additional Mexican Fawnsfoot adults and one adult Tampico Pearly Mussel (*Cyrtonaias tampicoensis*).”

The study also states construction related water quality will have significant impact on the habitats including “the contamination from construction equipment, such as leaked or spilled hydraulic fluid, or spilled gasoline or diesel from equipment refueling activities. These accidental events could occur despite proper planning and oversight. These water quality impacts to the two mussel species would also affect the mussels’ host fish species.” The study also states permanent impacts to in-stream habitat by the construction of the bridge pier on the Mexican side of the Rio Grande River and states “USFWS has proposed critical habitat for the Texas Hornshell, and Mexican Fawnsfoot”. For the Texas Hornshell, the action area overlaps with 4.1 acres of proposed critical habitat Subunit 5a: Eagle Pass Reach (USFWS, 2021). For the Mexican Fawnsfoot, the action area overlaps with 4.1 acres of proposed critical habitat Unit MXFF-1 (USFWS, 2023c).

The applicant’s evaluation of the impacts of its Project on these threatened and endangered species is wholly inadequate. Before issuing a decision on this permit application, the STB must require the applicant to supplement its application with information that will allow the STB to fully evaluate the threats of the Project on the continued existence of these vulnerable species and/or consult with U.S. Fish & Wildlife Services as appropriate and minimize impacts and/or deny the project.

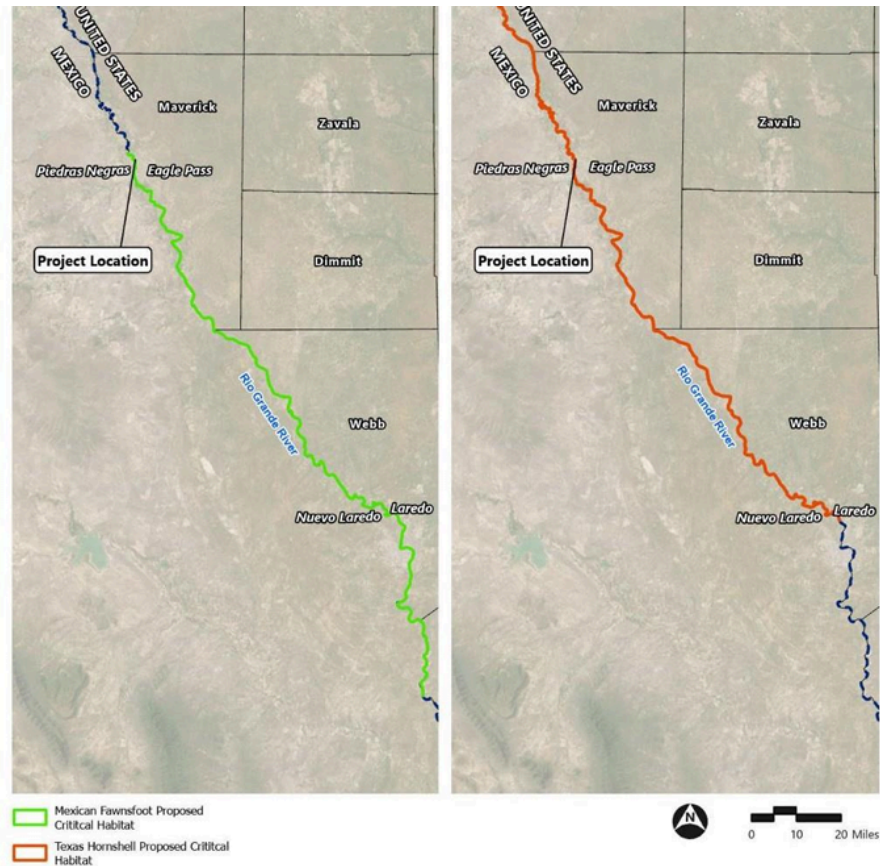


Figure 2 (above) is from Biological Assessment (Appendix K) of FEIS that shows the project's impact on critical habitat for the Mexican Fawnsfoot and the Texas Hornshell.

7. The Project underestimates impacts to wetlands

Aerial photography is a key tool for delineating wetlands, generally and under the Corps' 1987 Delineation Manual and the relevant Regional Supplement. Professional wetland scientists and others use tonal patterns on aerial photography both to make initial determinations of where wetlands are likely to occur and to determine the boundaries and extent of these wetlands. Soil moisture is widely recognized as a major factor that influences tonal patterns on aerial photography. For example, wetter soils often have a darker color than drier soils. Vegetation is also an important element of aerial photographic tonal patterns, particularly between deciduous trees and conifers. The tonal patterns of tree stands that drop their leaves in winter are markedly different from stands that do not. These two factors—soil moisture and vegetation—means that the most useful aerial photographs will be taken during the winter. Publicly available resources, including the USDA-NRCS Soil Survey, the USFWS National Wetland Inventory Maps, and USGS topographic data. Historic images such as those below show the presence of wetlands:



Figure 3 I & II(above) shows riverine wetlands and shrub habitat along Seco Creek and Rio Grande. Image from Google Earth August 10, 2016 (I) and December 25, 2008 (II); accessed September 5, 2025

The applicant discloses no wetlands as significant in its wetland delineation. NWI shows extensive riverines and creeks along the region and riparian habitats (Figure 3 above and Figure 4 below). The applicant does not propose mitigating impacts to these wetlands nor does it recognize them as wetlands. Riverine wetlands along the Rio Grande that are considered wetlands classified under the code R2UBH. This code can be further described as: System **Riverine (R)** : The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water. Subsystem **Lower Perennial (2)**: This Subsystem is characterized by a low gradient. There is no tidal influence, and some water flows all year, except during years of extreme drought. The substrate consists mainly of sand and mud. Oxygen

deficits may sometimes occur. The fauna is composed mostly of species that reach their maximum abundance in still water, and true planktonic organisms are common. The gradient is lower than that of the Upper Perennial Subsystem and the floodplain is well developed. Class **Unconsolidated Bottom (UB)**: Includes all wetlands and deepwater habitats with at least 25% cover of particles smaller than stones (less than 6-7 cm), and a vegetative cover less than 30%. Water Regime **Permanently Flooded (H)**: Water covers the substrate throughout the year in all years. The project will have a significant impact on water quality and the proposed project does not address water quality concerns raised by the public after the Draft EIS and require further investigation.

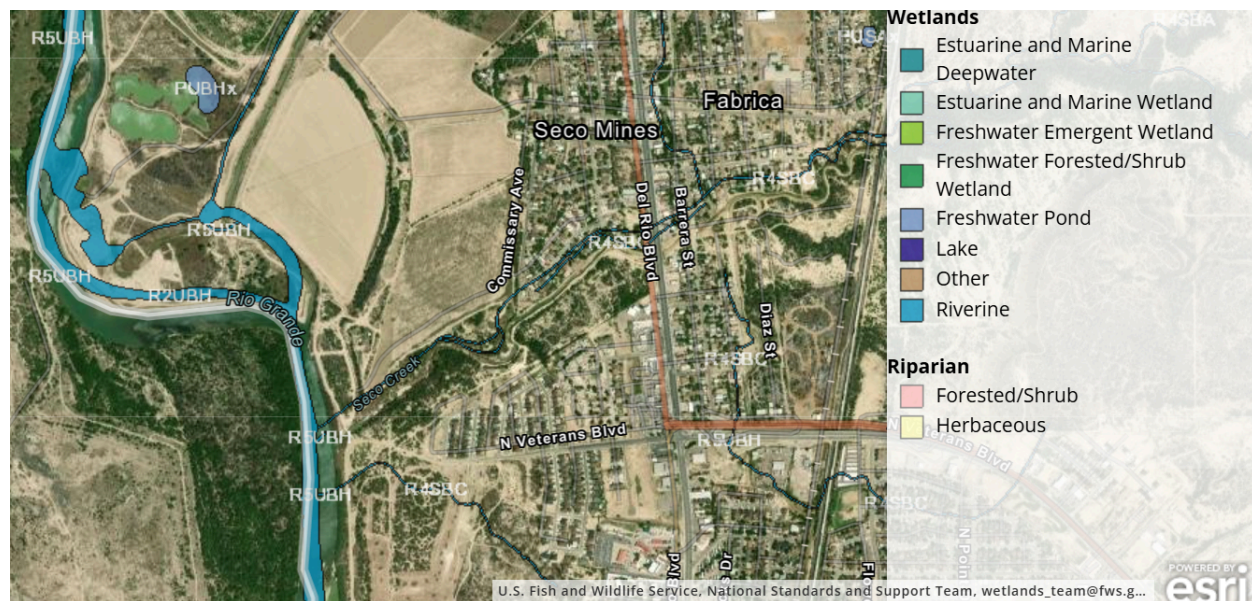


Figure 4 (above) illustrates Seto Creek, Rio Grande and surrounding tributaries as riverine with critical wetland riparian habitat.

The wetland survey report included in the Final EIS disregards the critical habitat along the Rio Grande as wetland and shrub habitat and states that Anchor QEA completed a wetlands and other waters delineation at the 217-acre survey area located along Rio Grande River and Seco Creek in Eagle Pass, Maverick County, Texas. We believe the findings of the wetland delineation are not protective of the habitat and of Seco Creek. We urge the STB to consider the concerns around water quality and habitat raised in the public comments and protect the habitats alongside the River and creeks identified in the wetland mapper on USFWS website and take a more conservative approach to protect the Rio Grande and its riparian habitat by preventing the construction of projects that are not water dependent.

8. The Project does not appear to offer any public benefit or be in the public interest

It must be determined that the project is in the “public interest” by weighing all “relevant”

considerations and balancing all probable impacts of the proposed action against its alleged benefits. 33 C.F.R. § 320.4(a)(1). Determining that the Project is in the public interest requires weighing its benefits against its costs. *Nat'l Parks Conservation Ass'n v. Semonite*, 311 F. Supp. 3d 350, 377 (D.D.C. 2018).

The Corps' regulations include a non-exhaustive list of factors that may be relevant for each individual project. 33 C.F.R. § 320.4(a)(1) states in part:

All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

Several factors show that this project is not in the public's interest:

- **Increased flood risks:** The applicant proposes a rail line within the 100-year and floodplain, as shown by FEMA flood maps (see Figure 1).
- **The applicant states that fill will be used to raise the rail line out of the floodplain;** however, this will result in a changed floodplain and flood waters traveling to nearby communities instead.
- **Conservation:** The applicant is removing and destroying critical habitat and will have sustained effect on residents of Maverick County to recreate
- **Needs and welfare of people:** Putting industry and expanding construction in 100 year floodplains is not considered safe.

9. The Project will have significant air quality and noise violation concerns

The project fails to determine why citing a railyard and rail line near a residential area like Seco Mines is environmentally sound and protective of human health. This project will not only reroute freight traffic near a residential community but will also exacerbate exposure and idling of freight trains in neighborhoods that have raised air quality concerns in the Draft EIS. It is imperative that the STB reviews and addresses the comments raised by the community. Section S.3.8 of the FEIS states the temporary emissions of criteria pollutants, hazardous air pollutants (HAPs) and greenhouse gases (GHGs) will be concentrated at the construction sites and would be below *de minimis* thresholds. This requires further investigation and a more warranted air quality analysis that is protective of human health as air pollution disperses into the atmosphere and considering the proximity to residential areas, it requires further assessment and real time air monitoring to ensure emissions are regulated and protective of human health, especially for sensitive groups. With the projected growth of the region and increased traffic, it is imperative

that TCEQ and federal agencies work to protect human health and ensure air quality concerns are addressed in this proposed project. We urge the STB to conduct a full review of the air quality impacts not only during construction but the long term impacts of rerouting freight traffic to northwest Maverick County.

Section 401 Review

9. Overview of Section 401 certification

The state carries out this policy by certifying whether a proposed application for a Section 404 permit complies with relevant state water quality requirements. “No person may conduct any activity under federal permit or license that may result in any discharge into or adjacent to water in the state unless the person has received a certification or waiver of Section 401 requirements” from the relevant state of Texas agency. 30 Tex. Admin. Code § 279.4(b).

The state of Texas only may grant certification under Section 401 if any activity “will not result in any discharge in violation of water quality standards or any other appropriate requirements...” 30 Tex. Admin. Code § 279.2(b)(1). The state “shall... deny certification for any activity that will result in a discharge in violation of water quality standards or any other appropriate requirements...” 30 Tex. Admin. Code § 279.2(b)(4).

Certification under 401 is not appropriate when:

- “there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities that are not water dependent are presumed to have a practicable alternative, unless the applicant demonstrates otherwise. For the purposes of this section compensatory mitigation is not considered an alternative.” 30 Tex. Admin. Code § 279.11(c)(1).
- “appropriate and practicable steps have [not] been taken that will minimize potential adverse impacts of the discharge on the aquatic ecosystem” 30 Tex. Admin. Code § 279.11(c)(2).
- compensatory mitigation falls short; “appropriate and practicable compensatory mitigation for all unavoidable adverse impacts that remain after all practicable avoidance and minimization have been completed. Compensatory mitigation requirements will provide for a replacement of impacted functions and values.” 30 Tex. Admin. Code § 279.11(c)(3).
- “the impacts of the project are so significant that the proposed compensatory mitigation will not accomplish the purpose and policy of [the Texas Administrative Code]. 30 Tex. Admin. Code § 279.11(c)(4).

Where a proposed permit does not adequately protect water quality, the relevant state agency also may include in its certification any effluent limitations, other limitation, standards of performance, or prohibition, effluent standard, or pretreatment standard, “and [] any other appropriate requirement of State law.” 33 U.S.C. § 1341(d); 30 Tex. Admin. Code § 279.2(b)(2) (allowing the agency to conditionally certify proposed activities with “the conditions necessary to prevent any activity that will result in a discharge from violating water quality standards or any other appropriate requirements...”). The U.S. Supreme Court has interpreted CWA section 401 as a broad delegation of conditioning authority to the states, *Pub. Util. Dist. No. 1 of Jefferson County v. Wash. Dep’t of Ecology*, 511 U.S. 700 (1994), and the Corps, as the federal permitting agency, has no authority to reject or modify the conditions included in a water quality certification. *Am. Rivers v. FERC*, 201 F.3d 1186 (9th Cir. 1999).

10. A public meeting is warranted

“The executive director may conduct a public meeting on any application for 401 certification if the executive director determines, based on public comment received during the public comment period, that such a meeting would be appropriate.” 30 Tex. Admin. Code § 279.7. The following factors warrant a public meeting:

- The scope of wetland and water impacts
- Inadequacy of mitigation and alternatives analysis
- Increased flood risks associated with the Project
- The impacts on downstream communities already facing flooding
- Increased risk of loss of home value and economic value
- Critical habitat loss and other ecosystem services

Thank you for the opportunity to provide public comment on this proposed permit application. We ask the STB to not grant GER an exemption under 49 U.S.C. § 10502 and require a full application under § 10901 and address water quality, air quality and human health risks.

Sincerely,

Jose Corpus, Eagle Pass Border Coalition

Jessie Fuentes, Eagle Pass Border Coalition

Alicia Gonzalez, Eagle Pass Border Coalition

suproc2@gmail.com

Mashal Awais, Principal Scientist

Rishab Jagetia, Environmental Analyst

Third Pole Environmental Solutions

thirdpoleenvironmental@gmail.com

Cc: All Parties of Record