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Final

Regional Environmental Impact Statement for Surface Coal and Lignite Mining in Texas

VOLUME II

Cooperating Agencies:

Office of Surface Mining, Reclamation, and Enforcement
Railroad Commission of Texas
Texas Parks and Wildlife Department
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service

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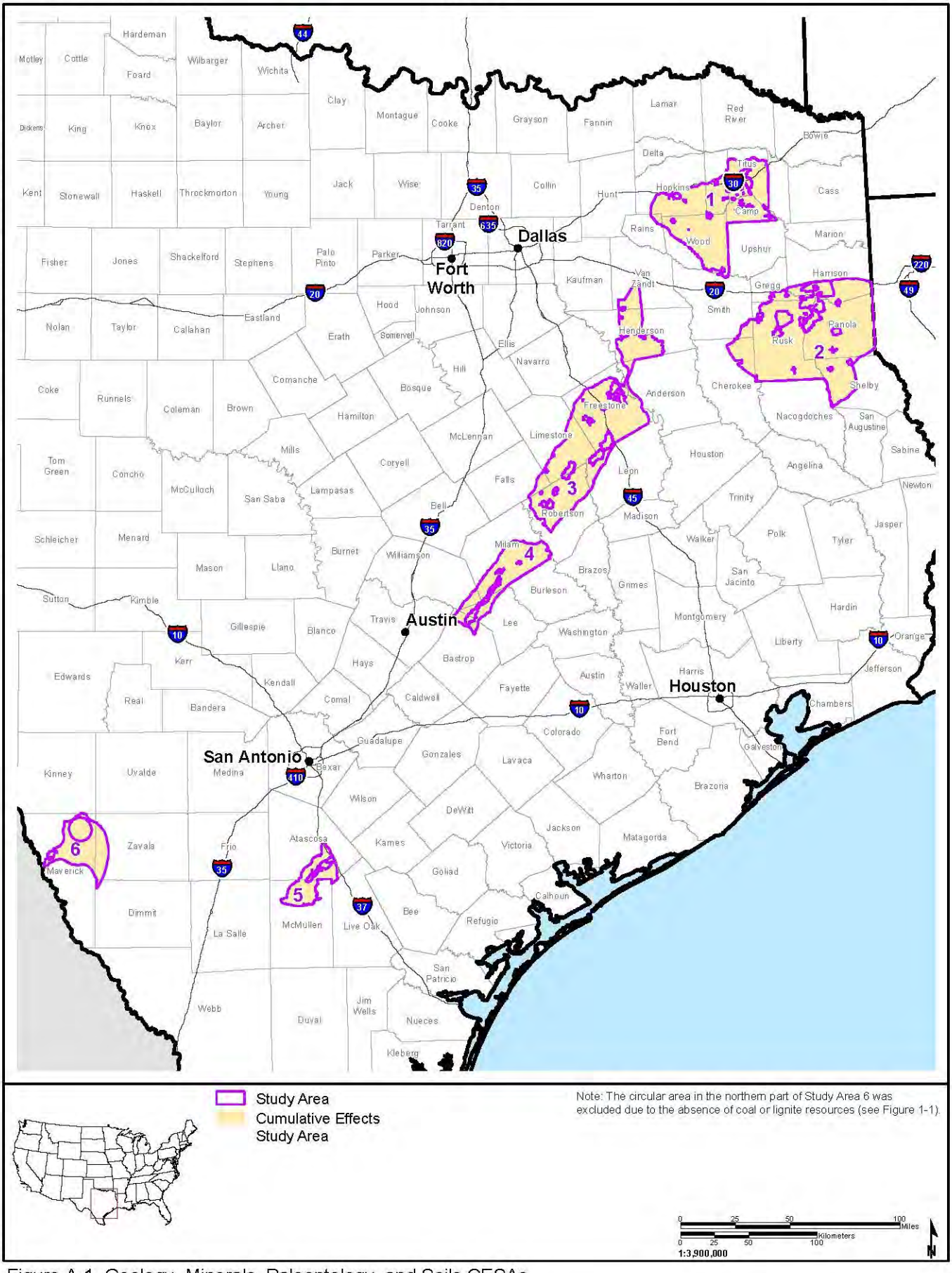

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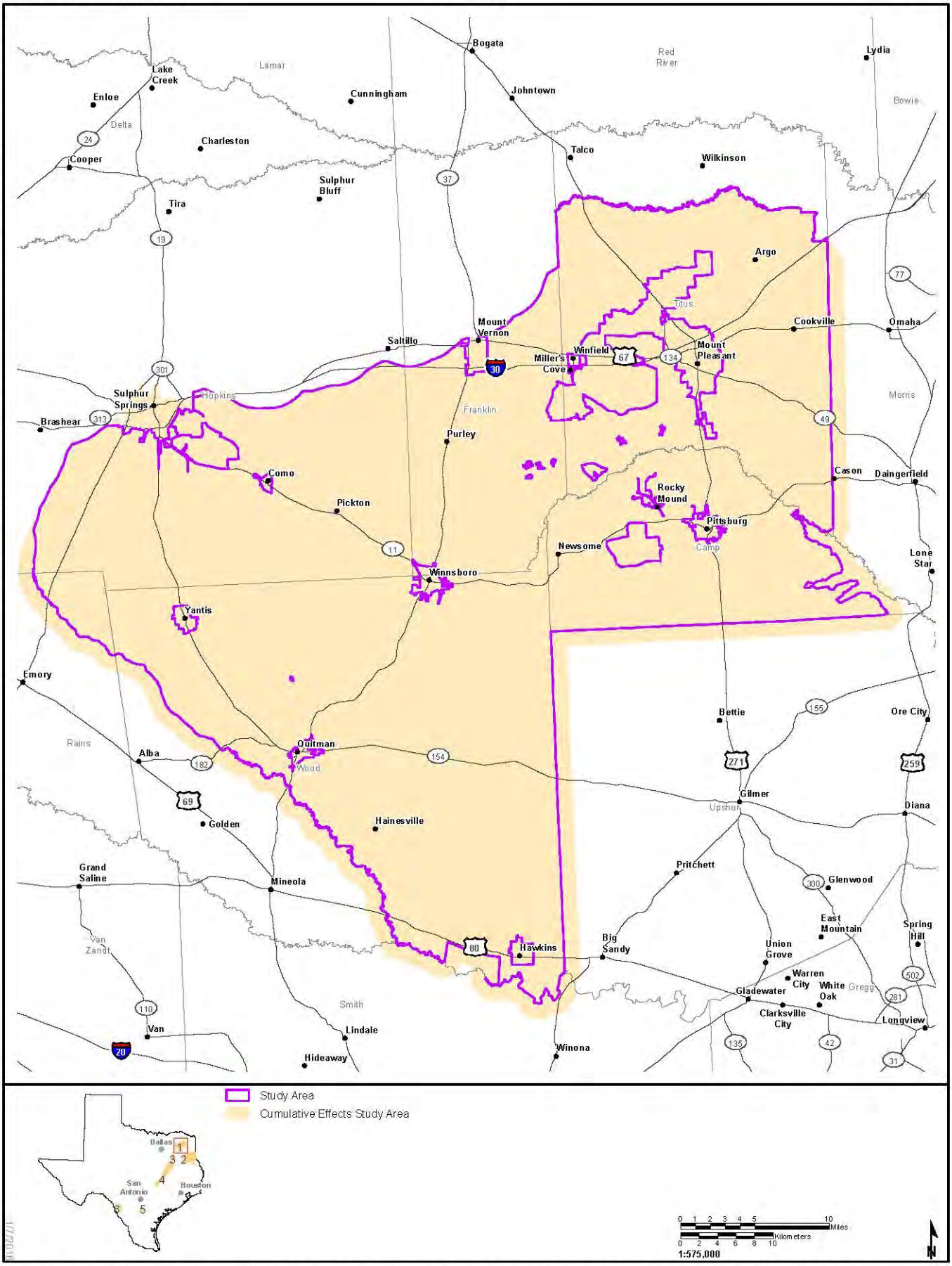

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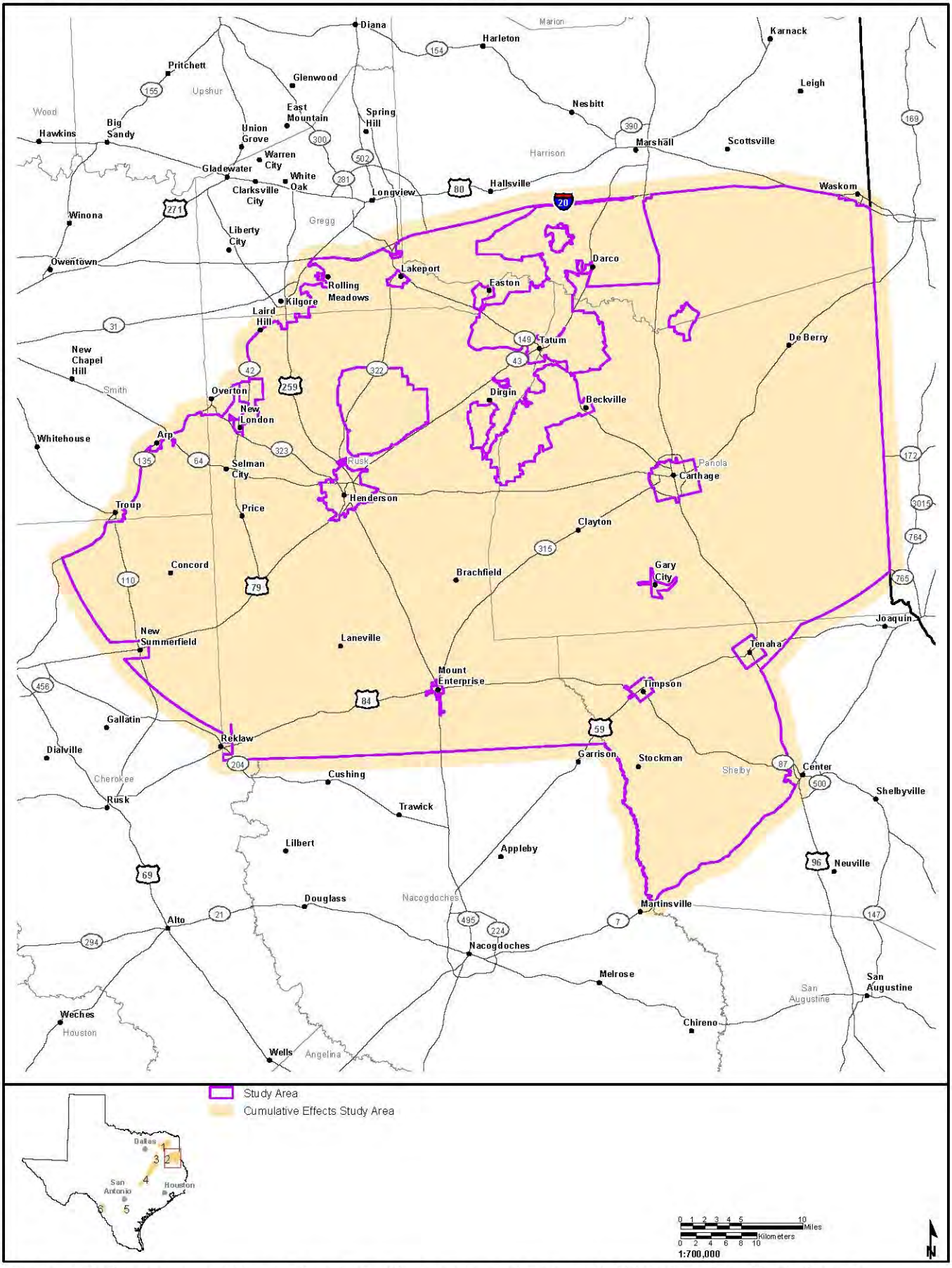

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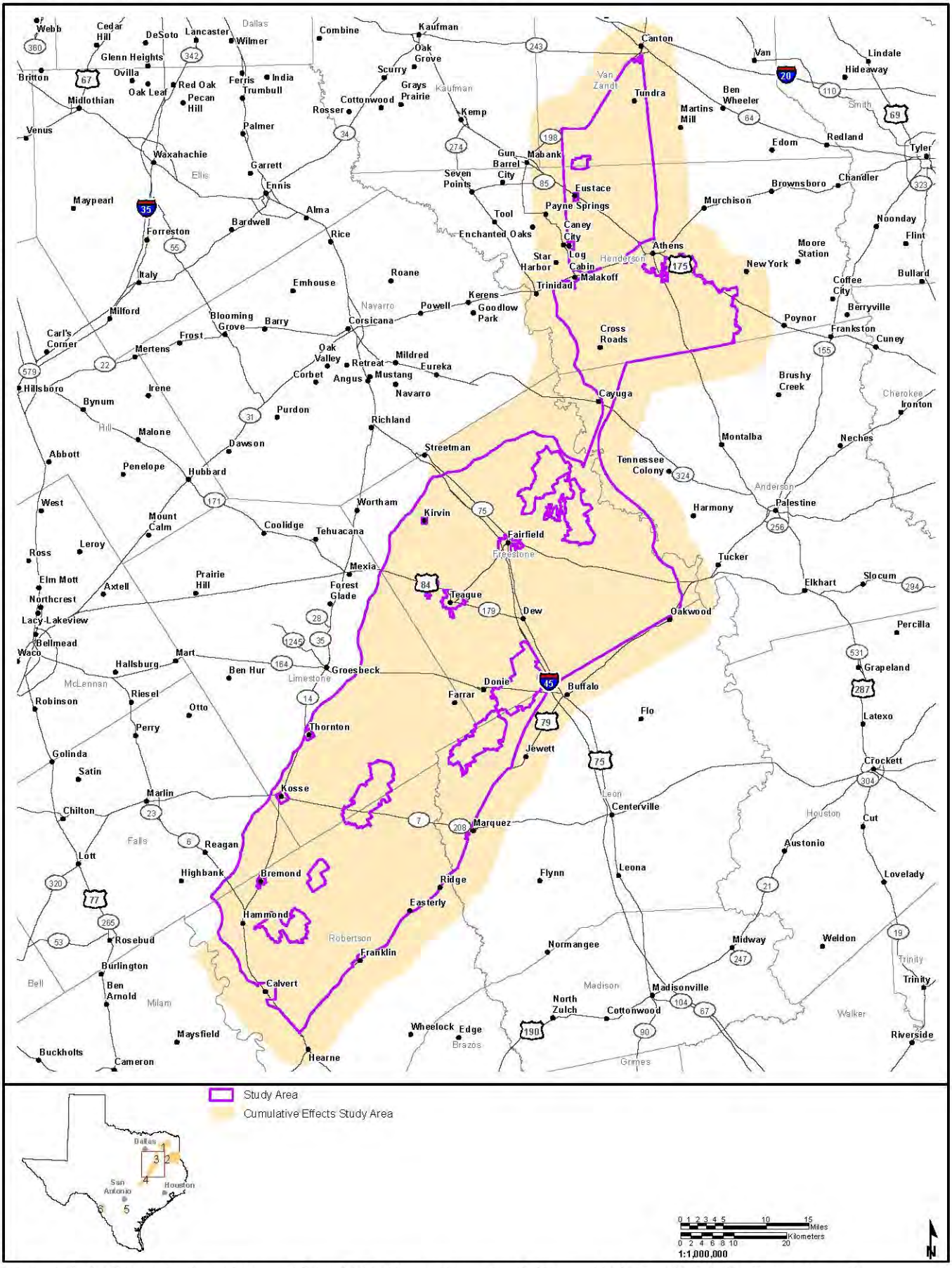

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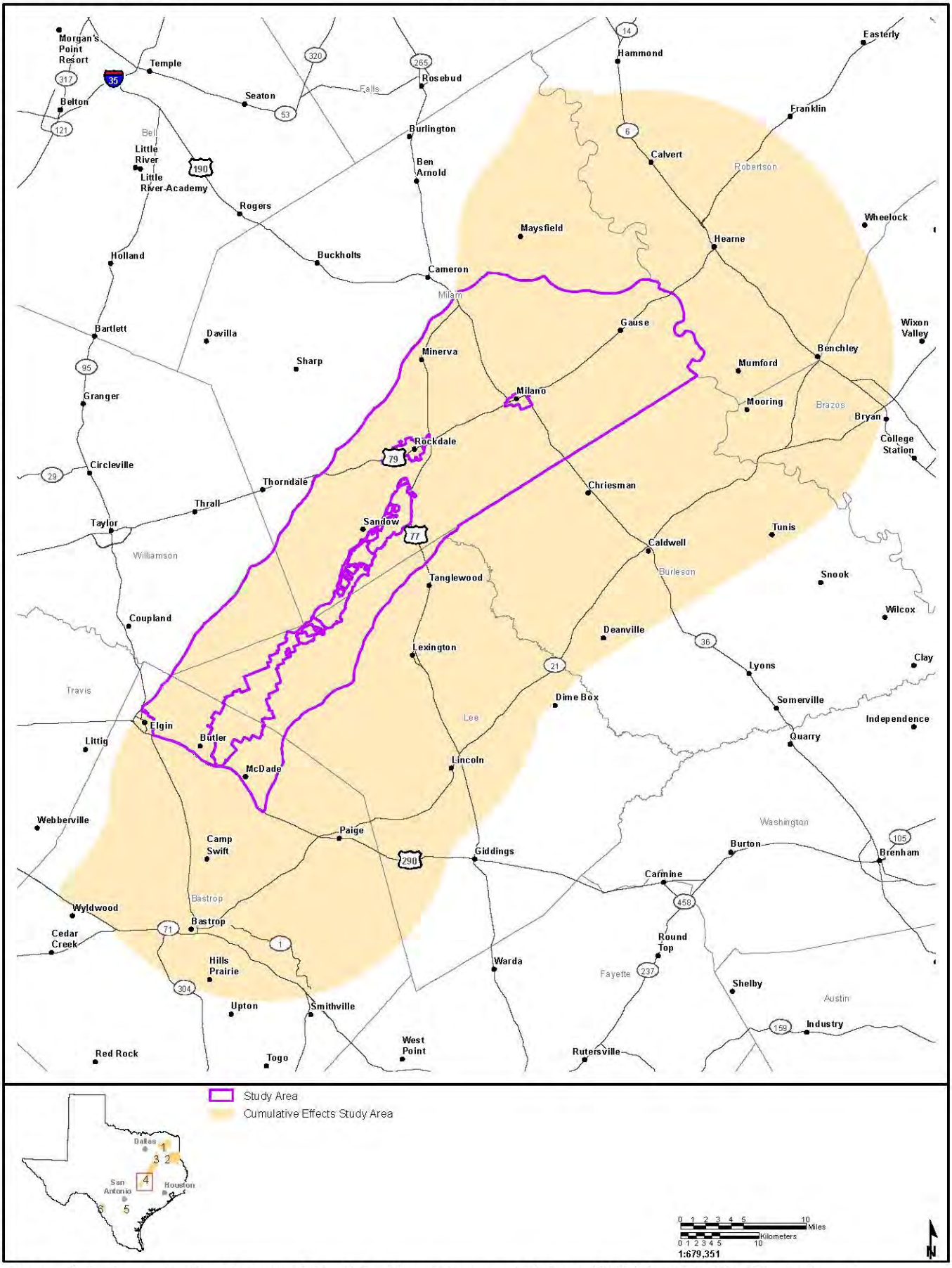

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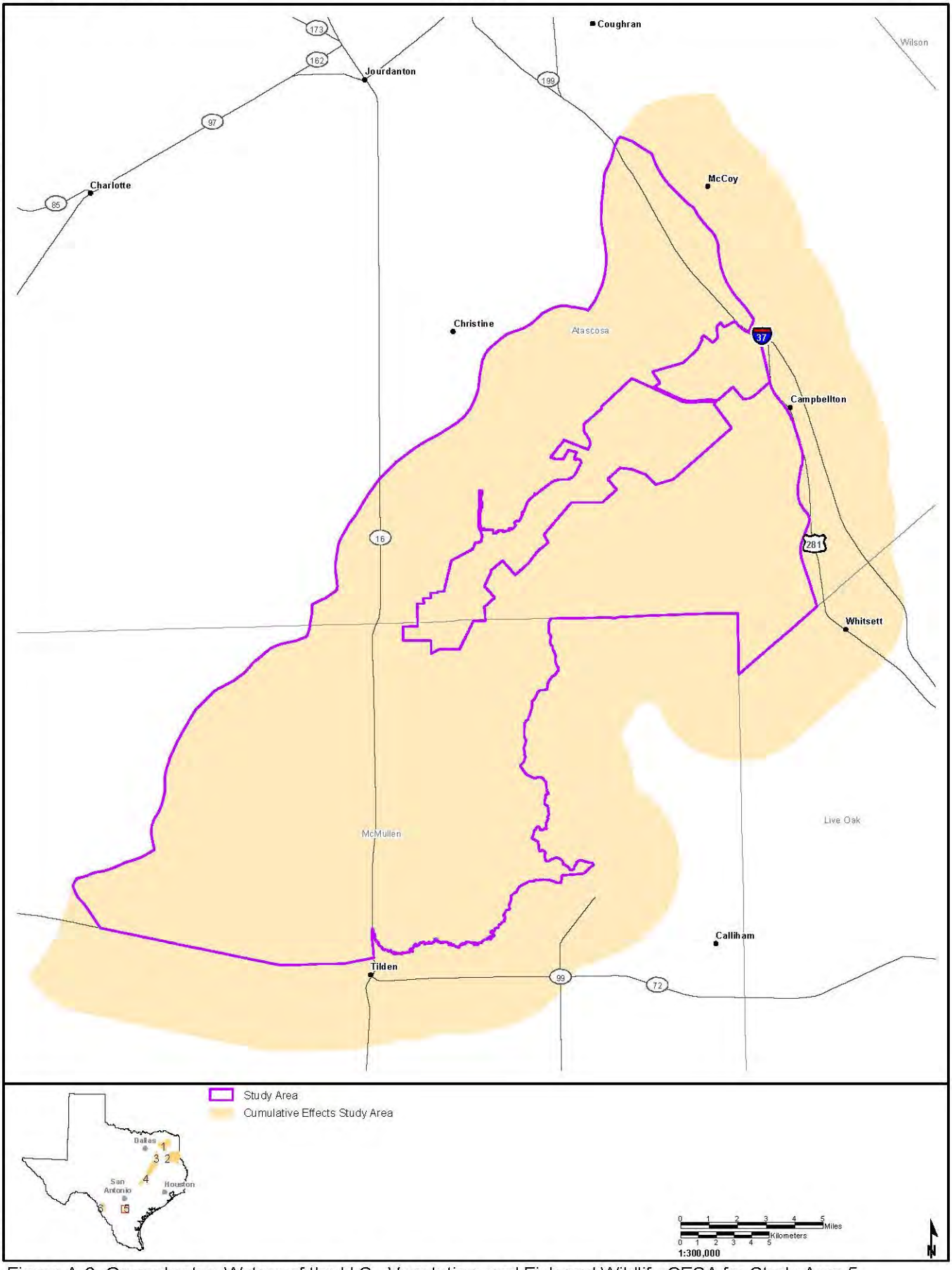

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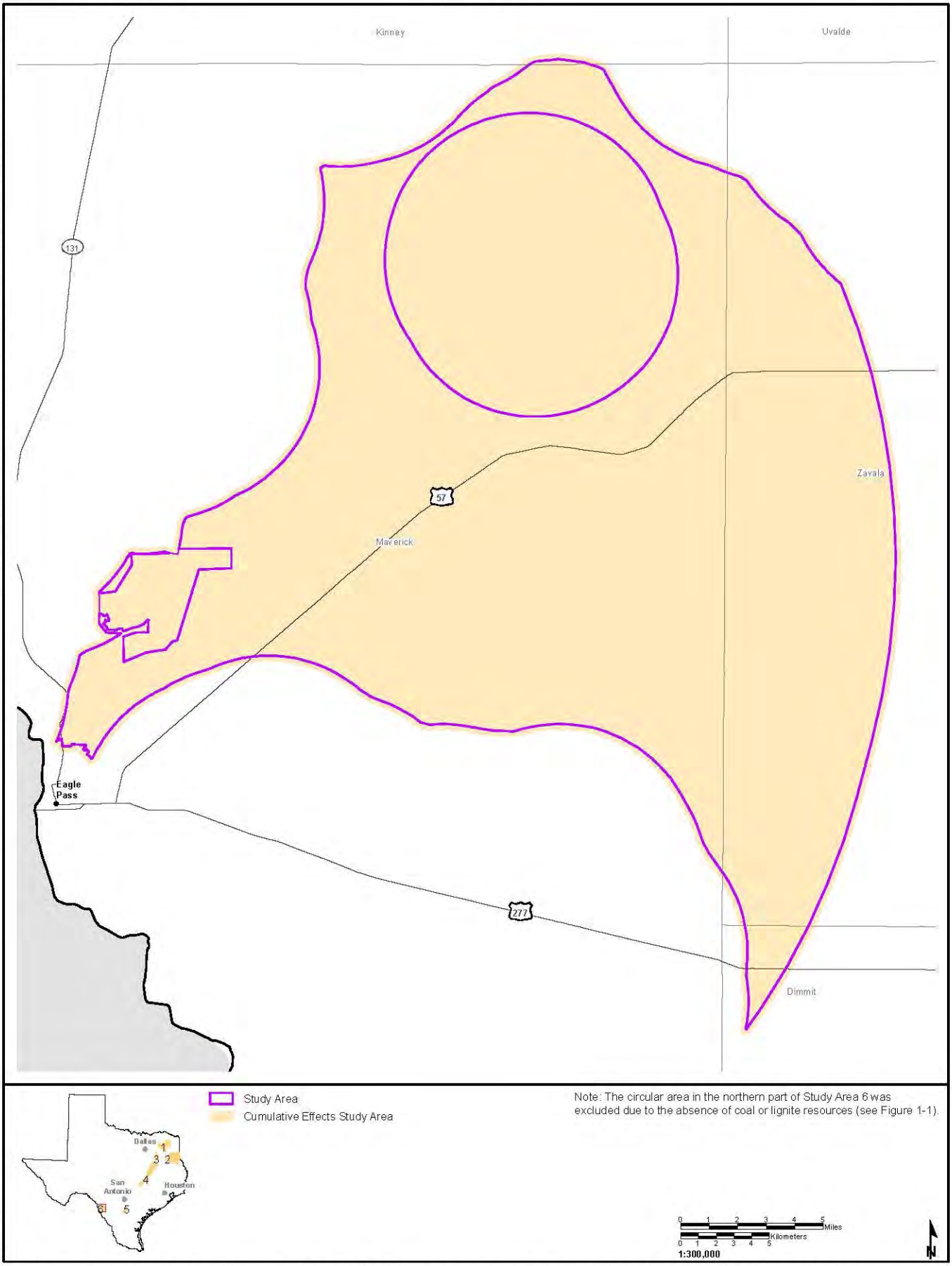

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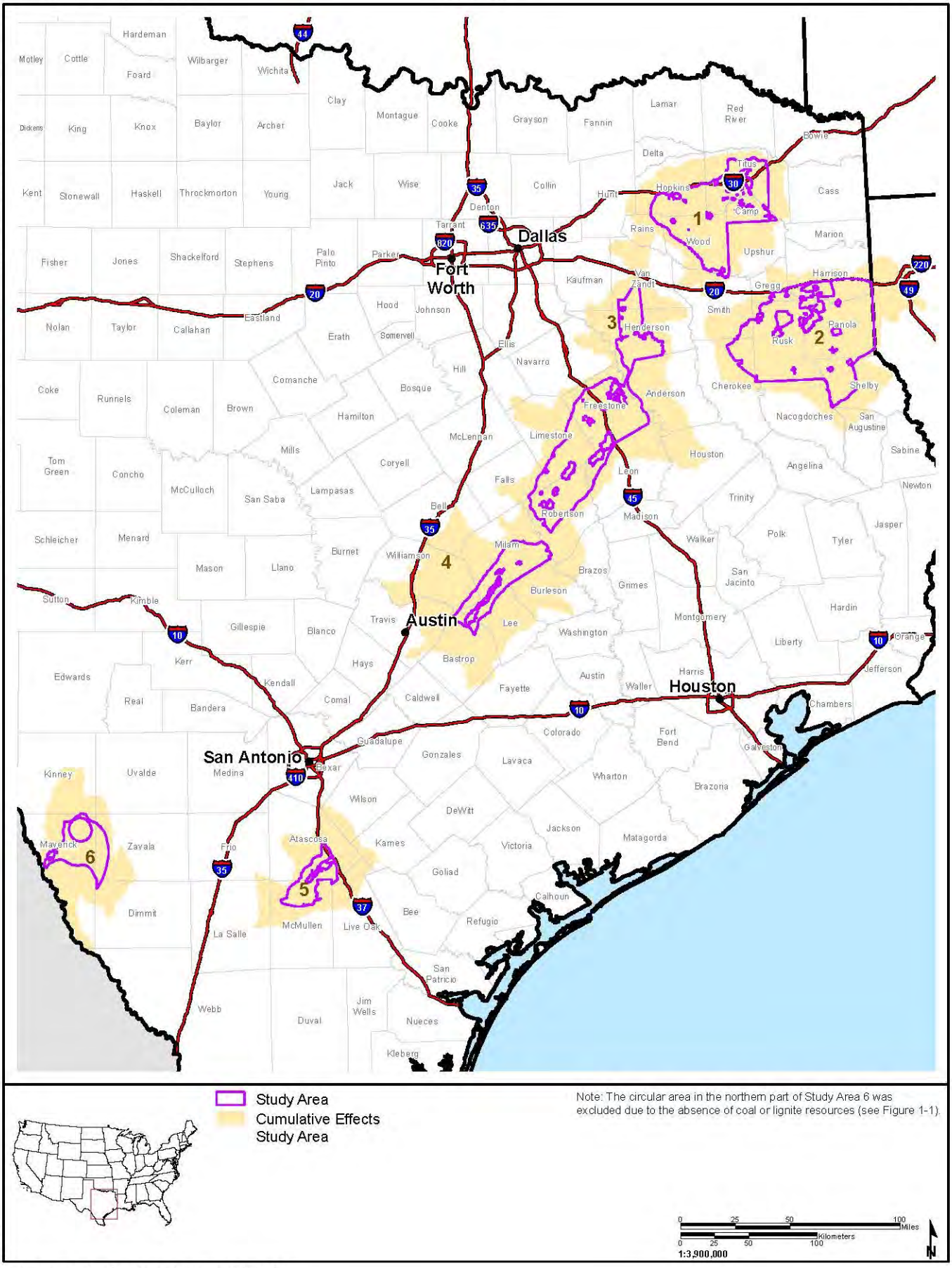

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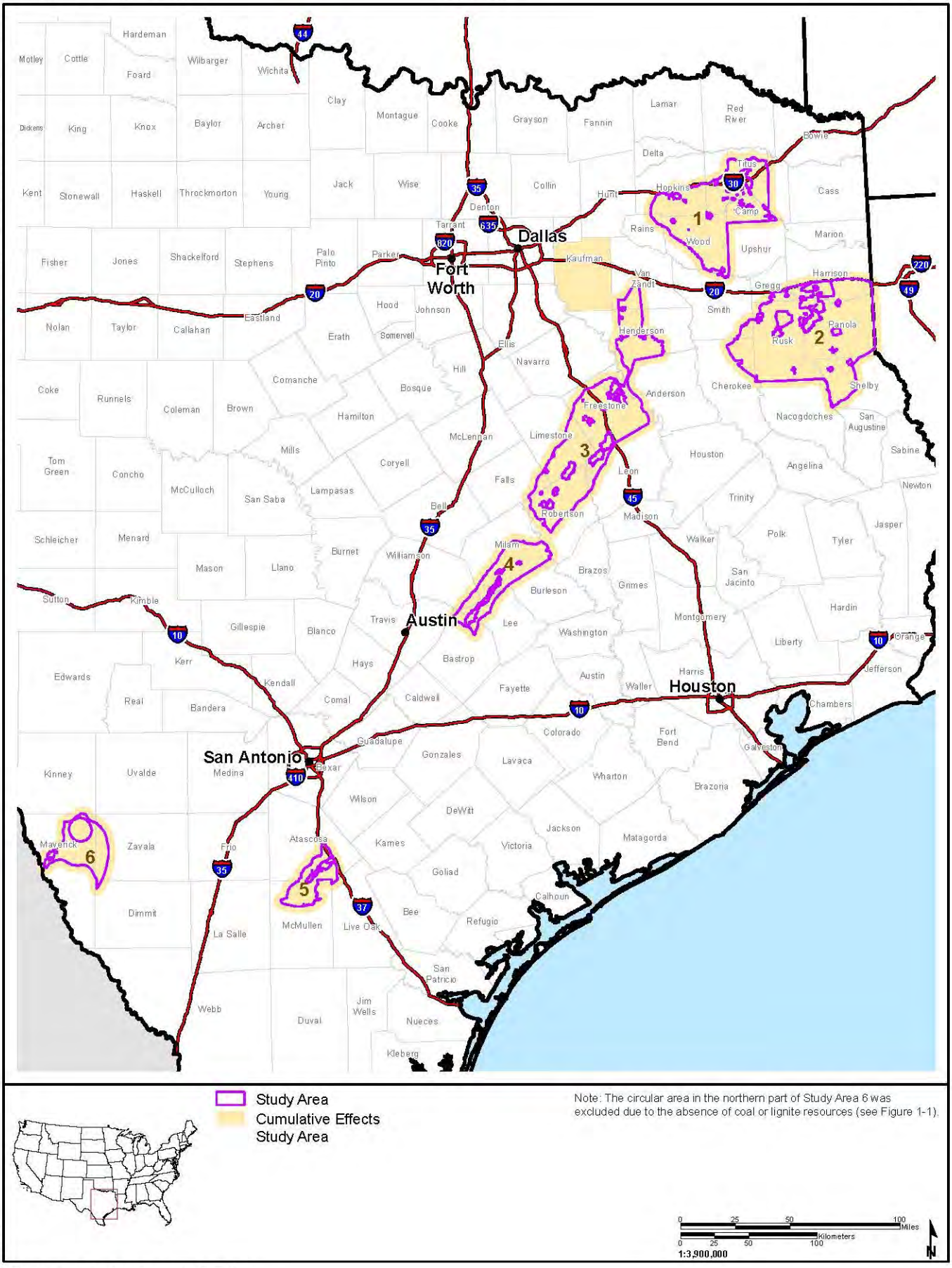

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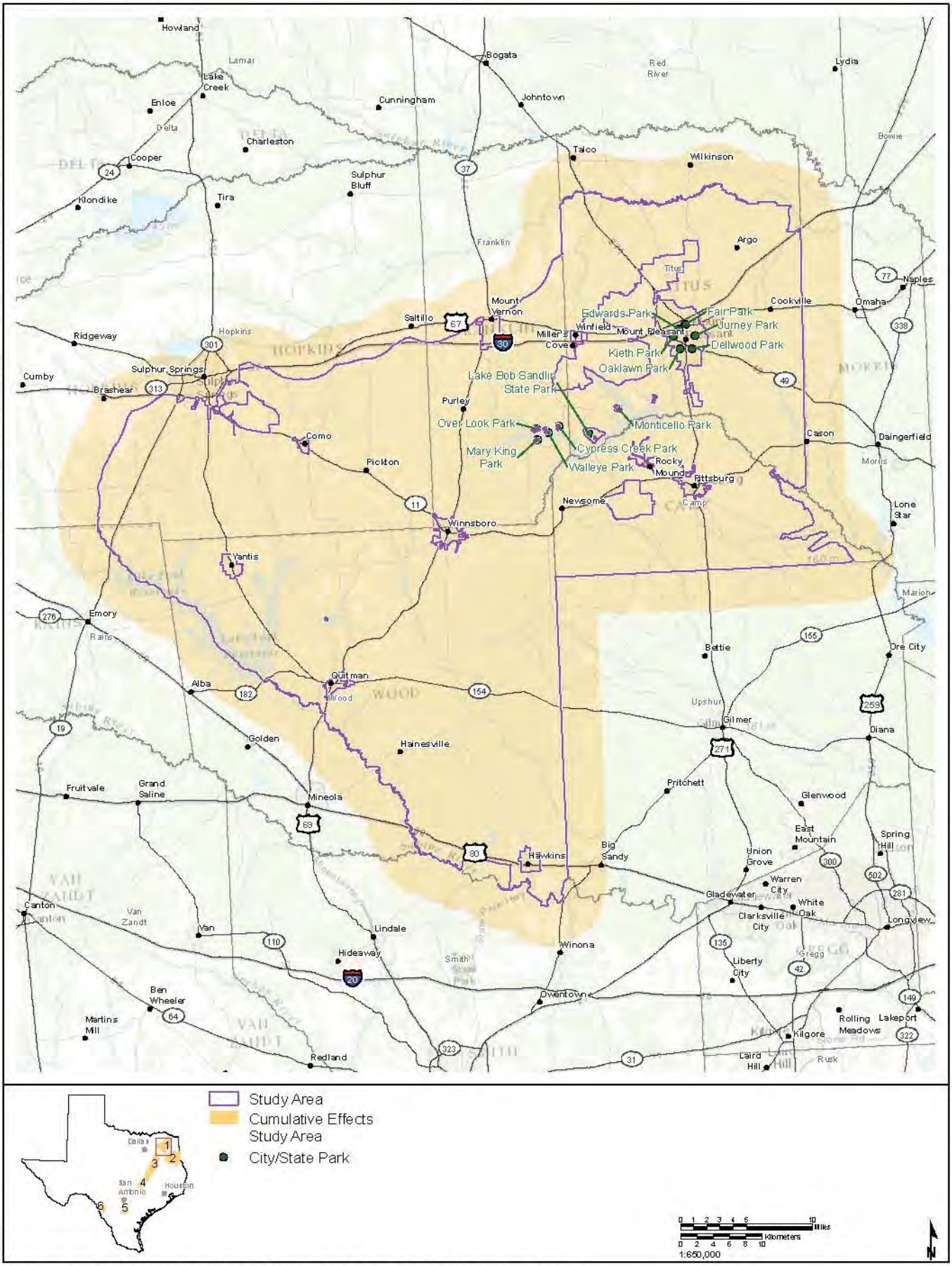

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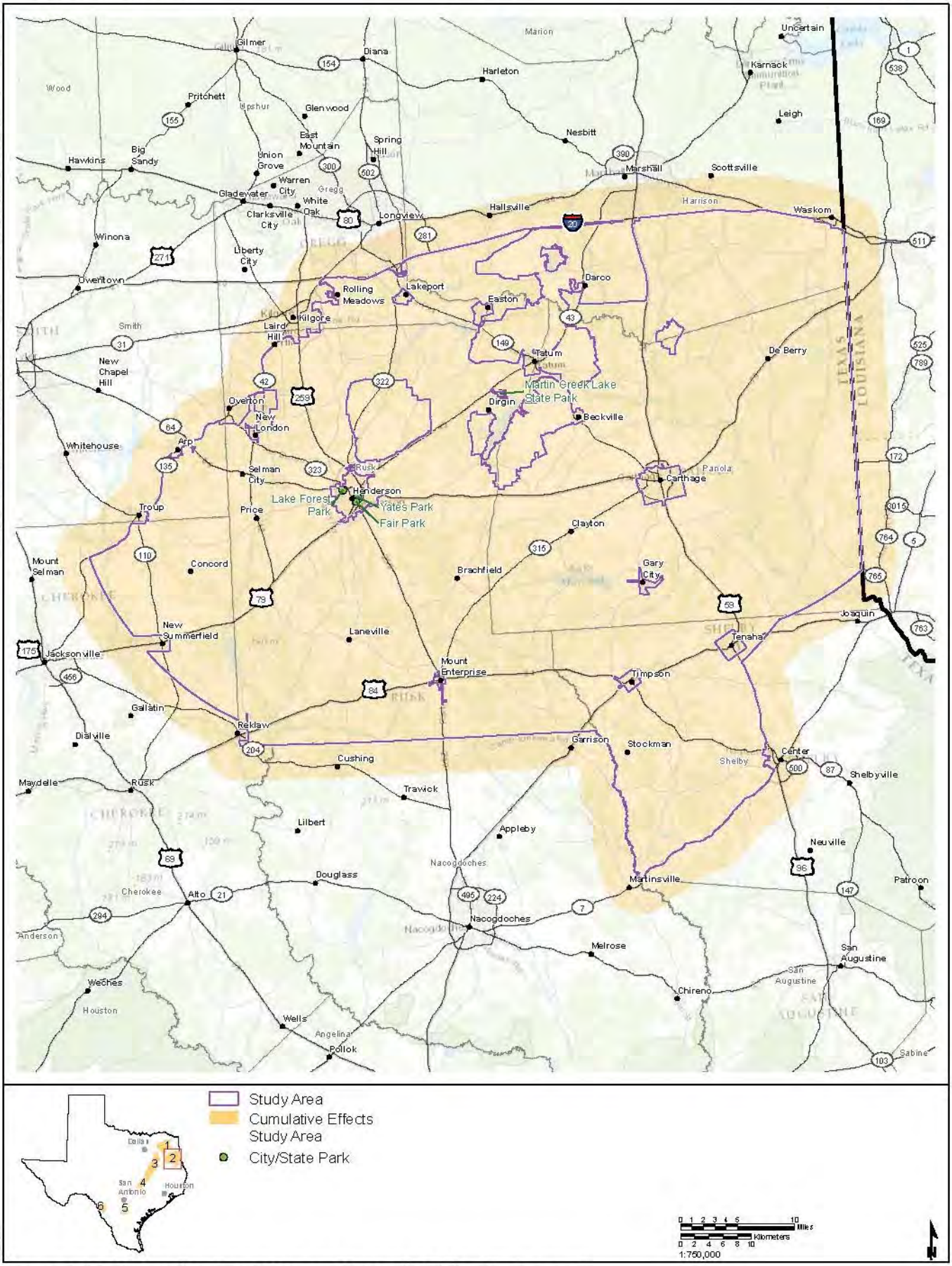

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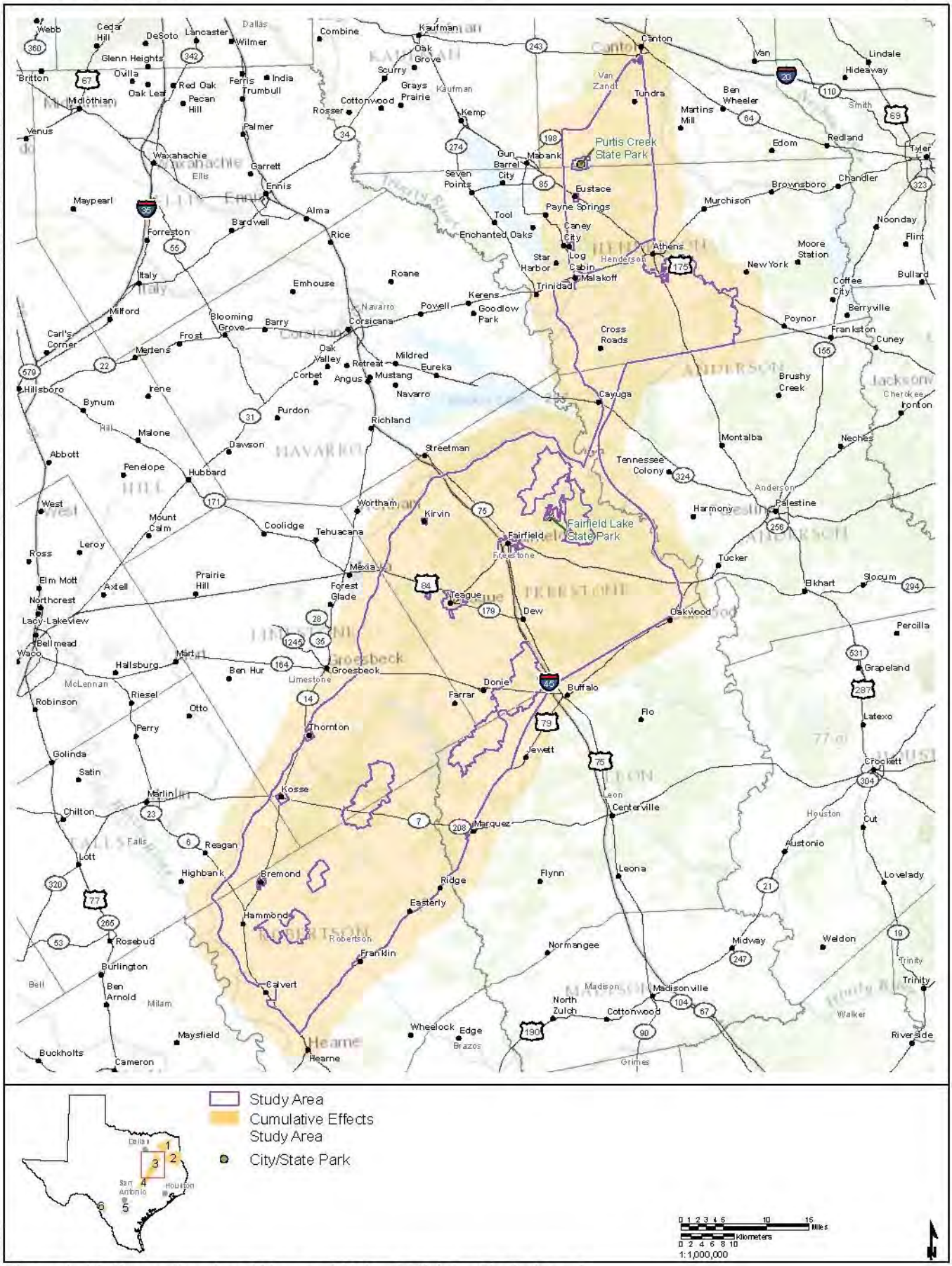

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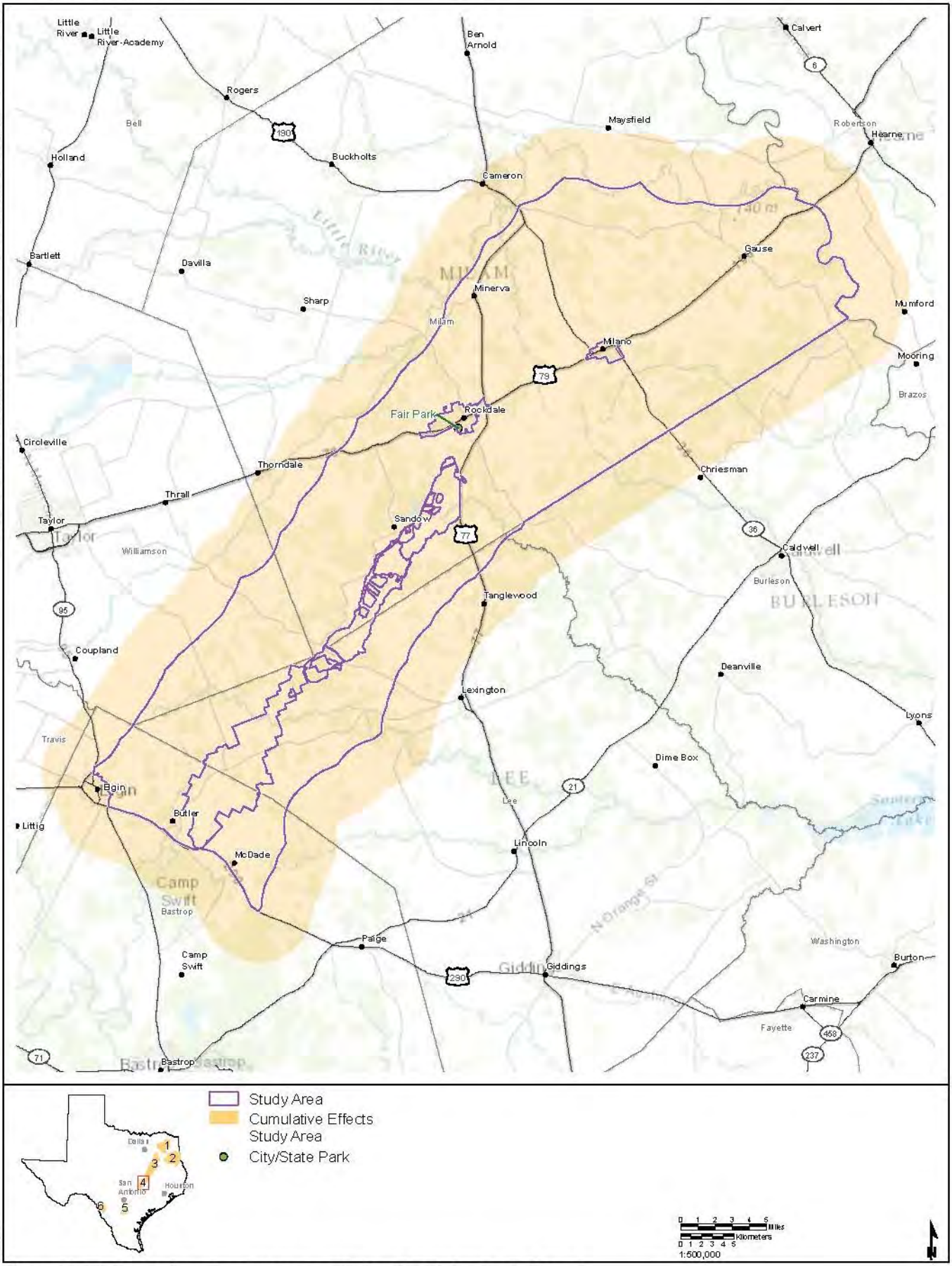

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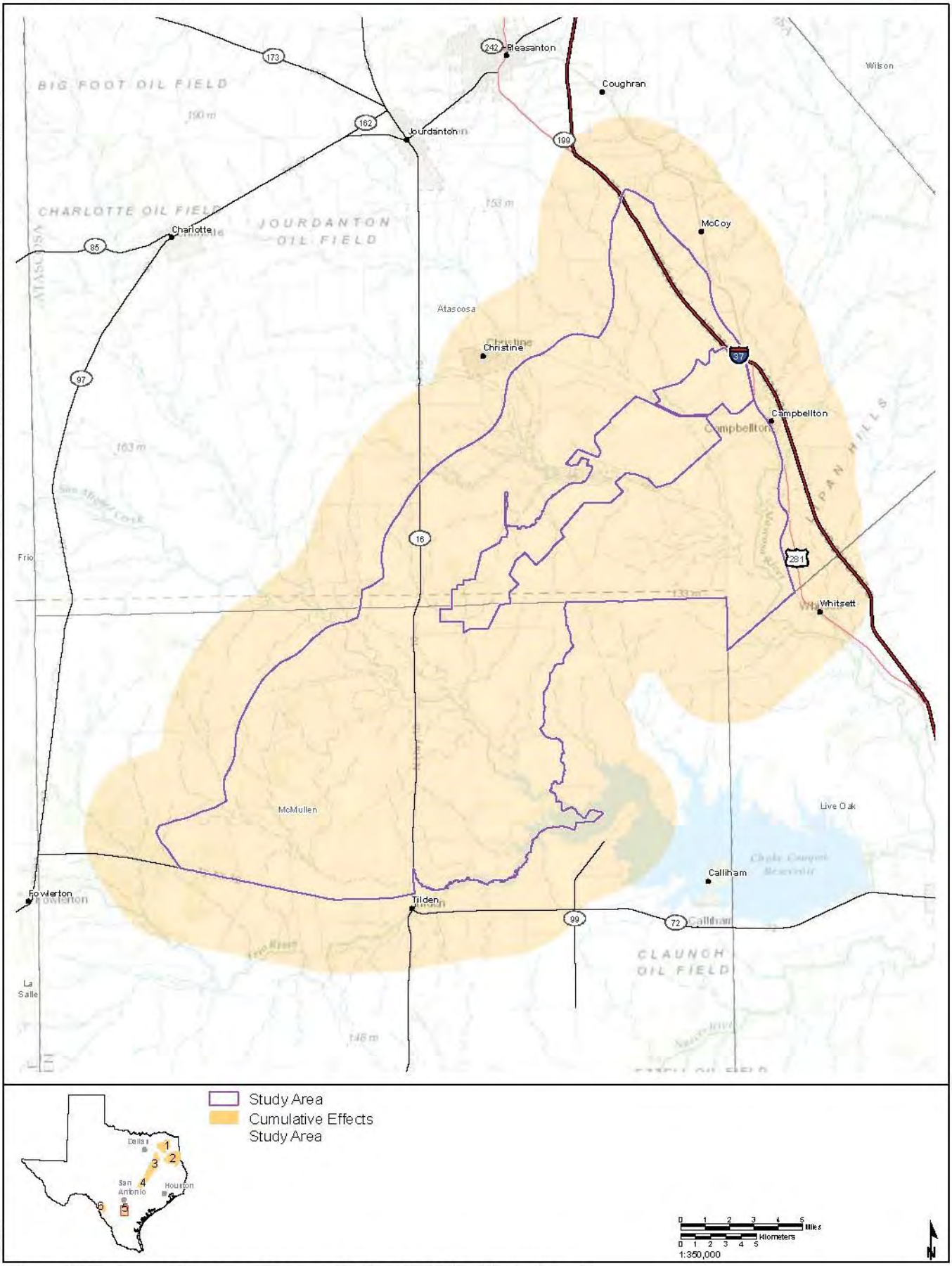

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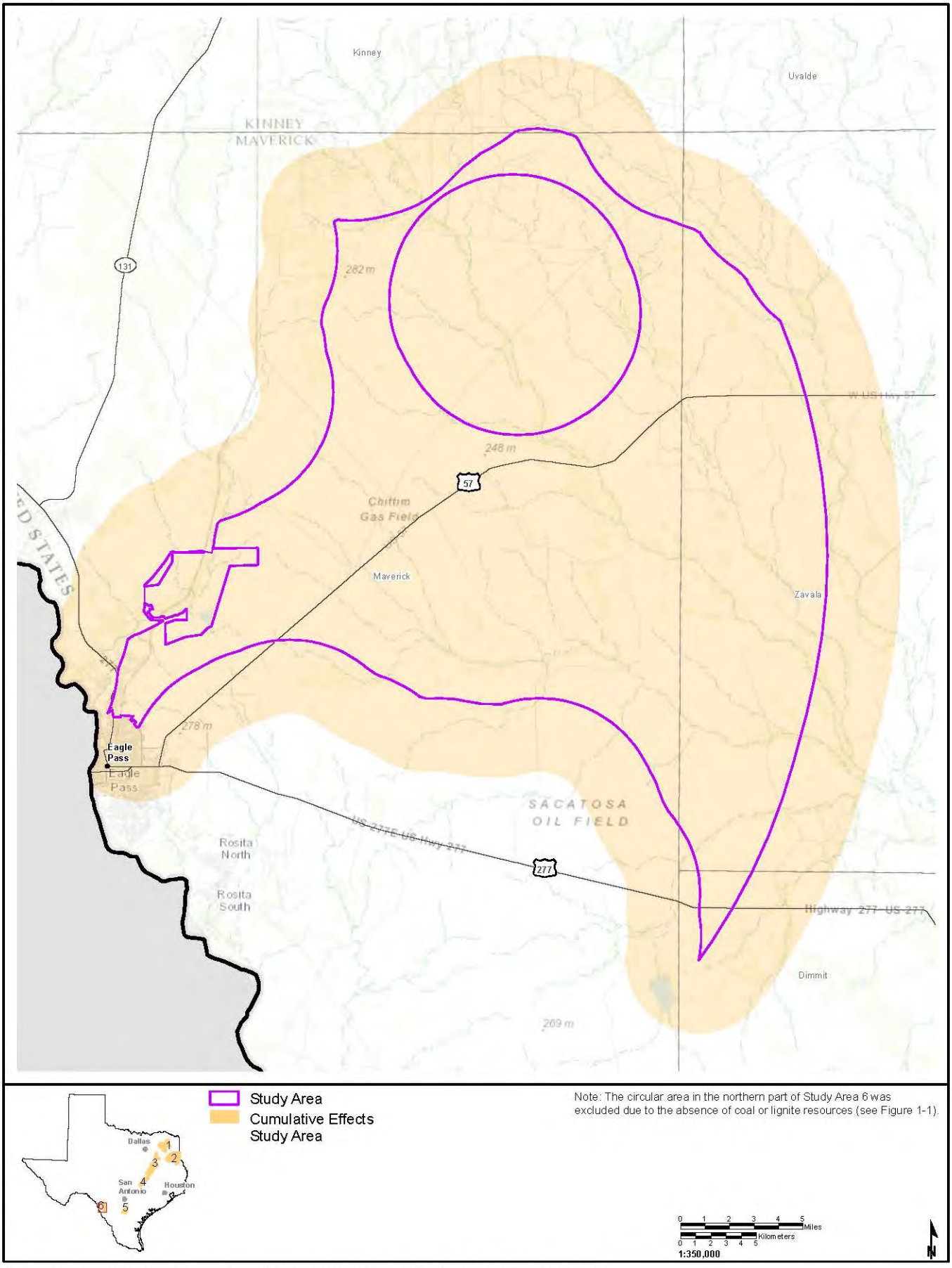

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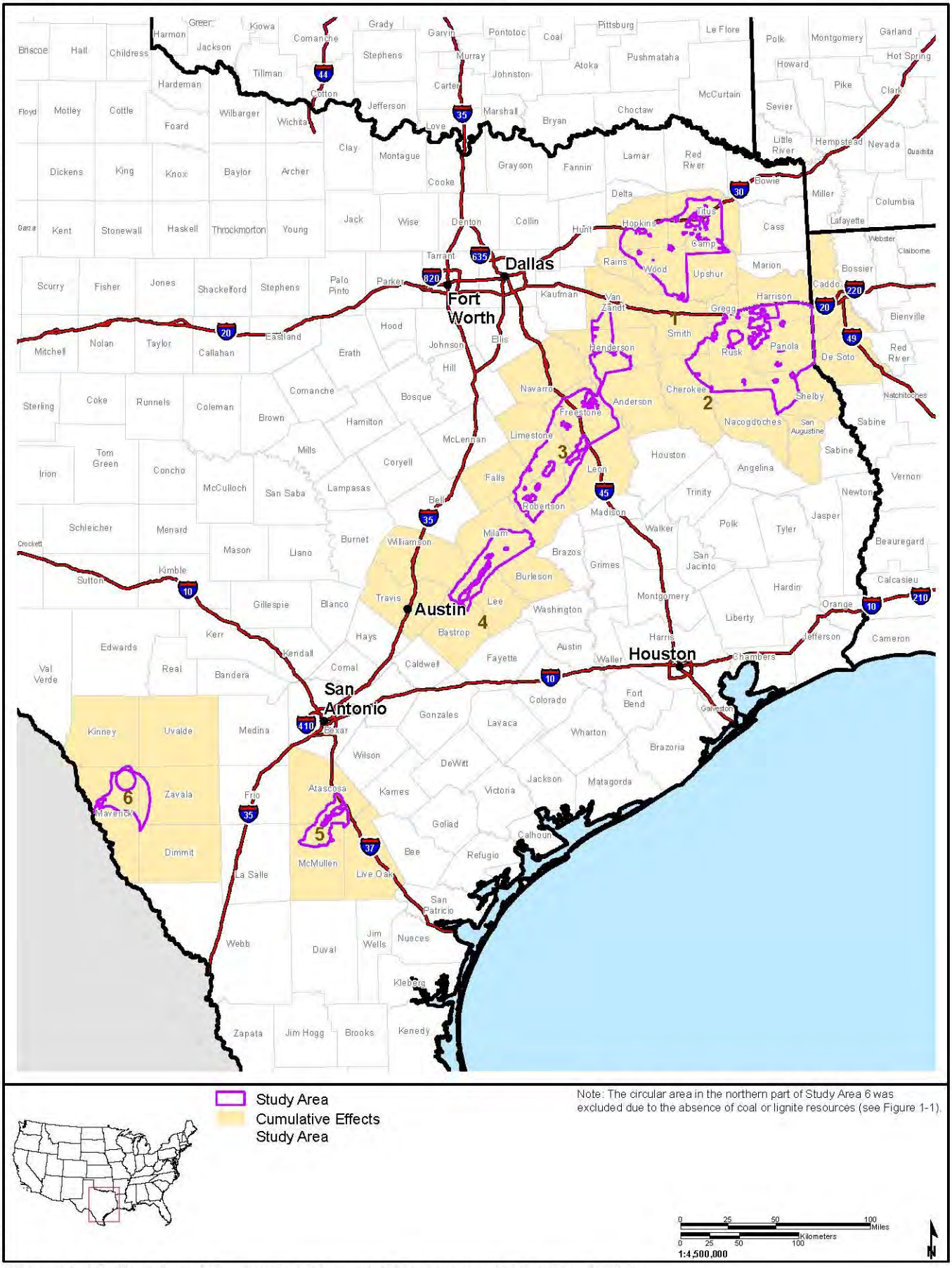

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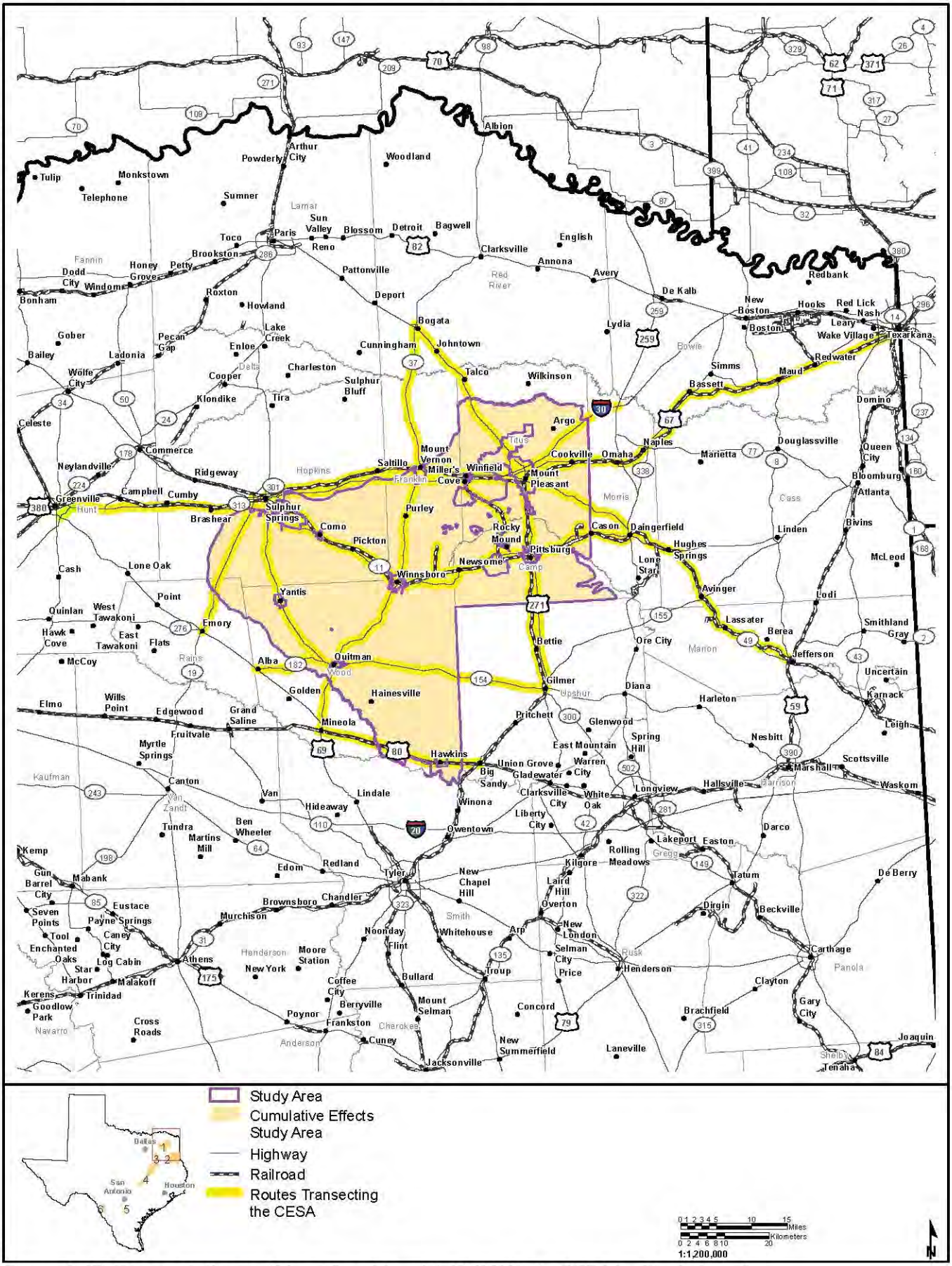

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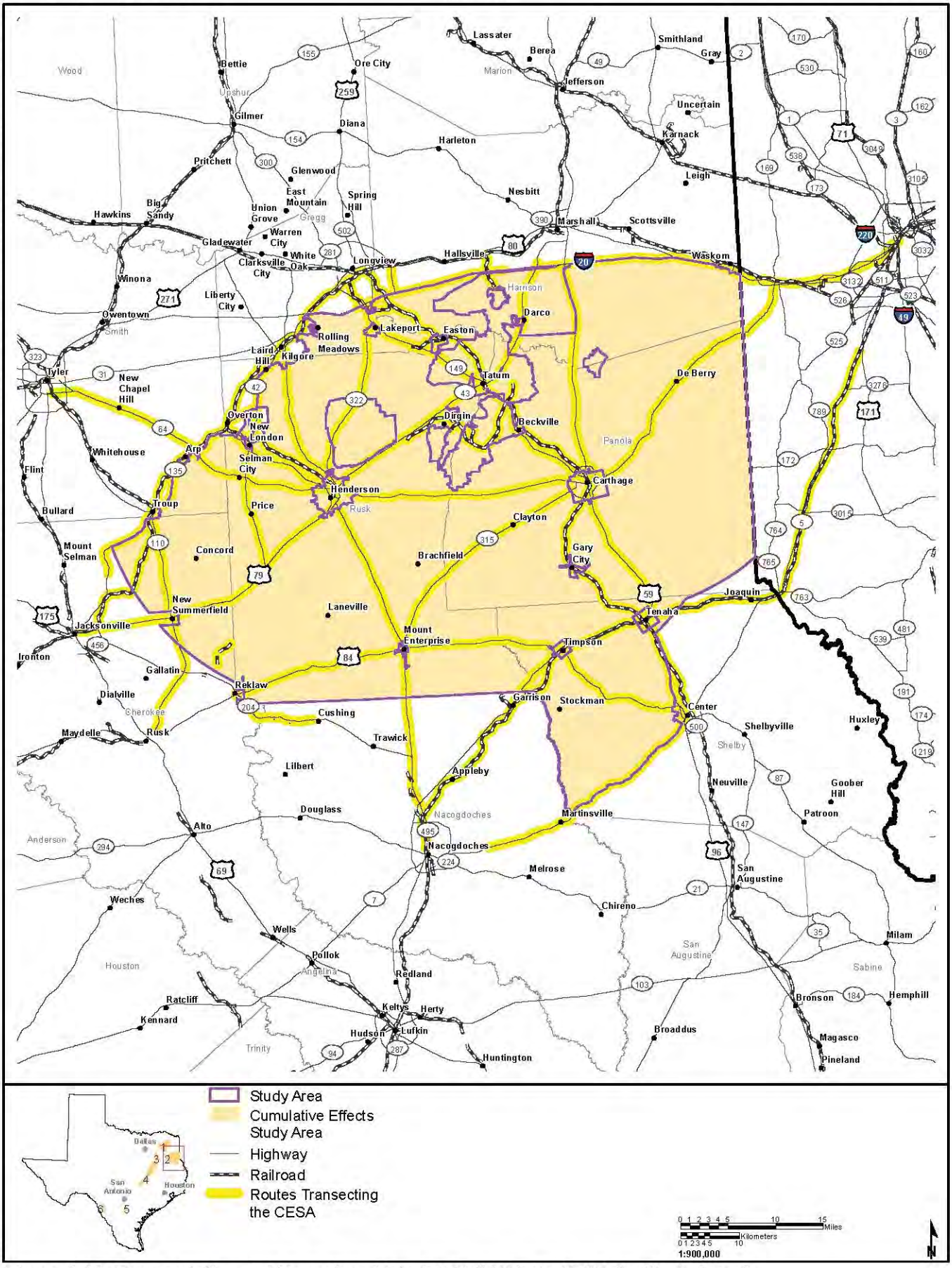

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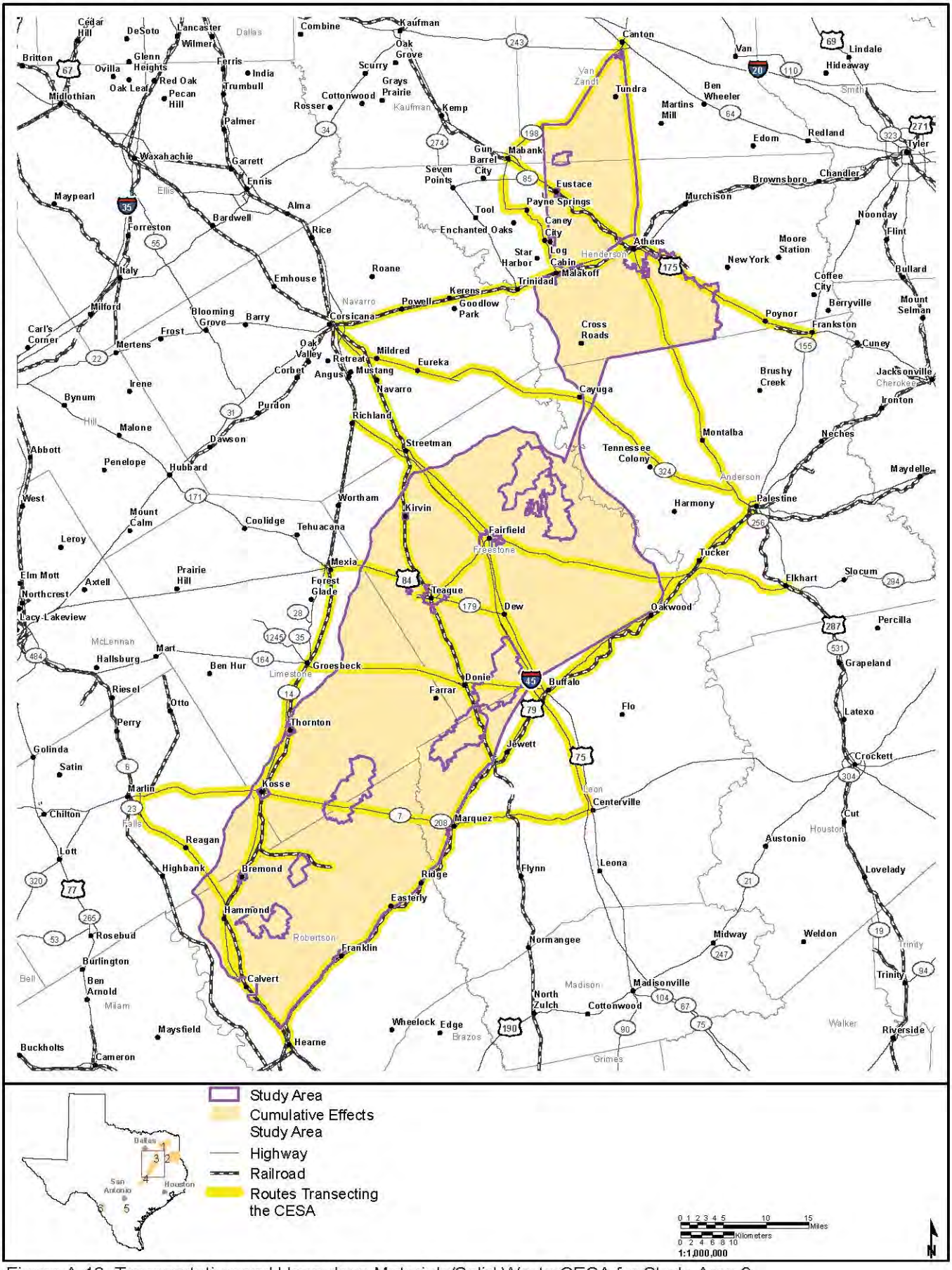

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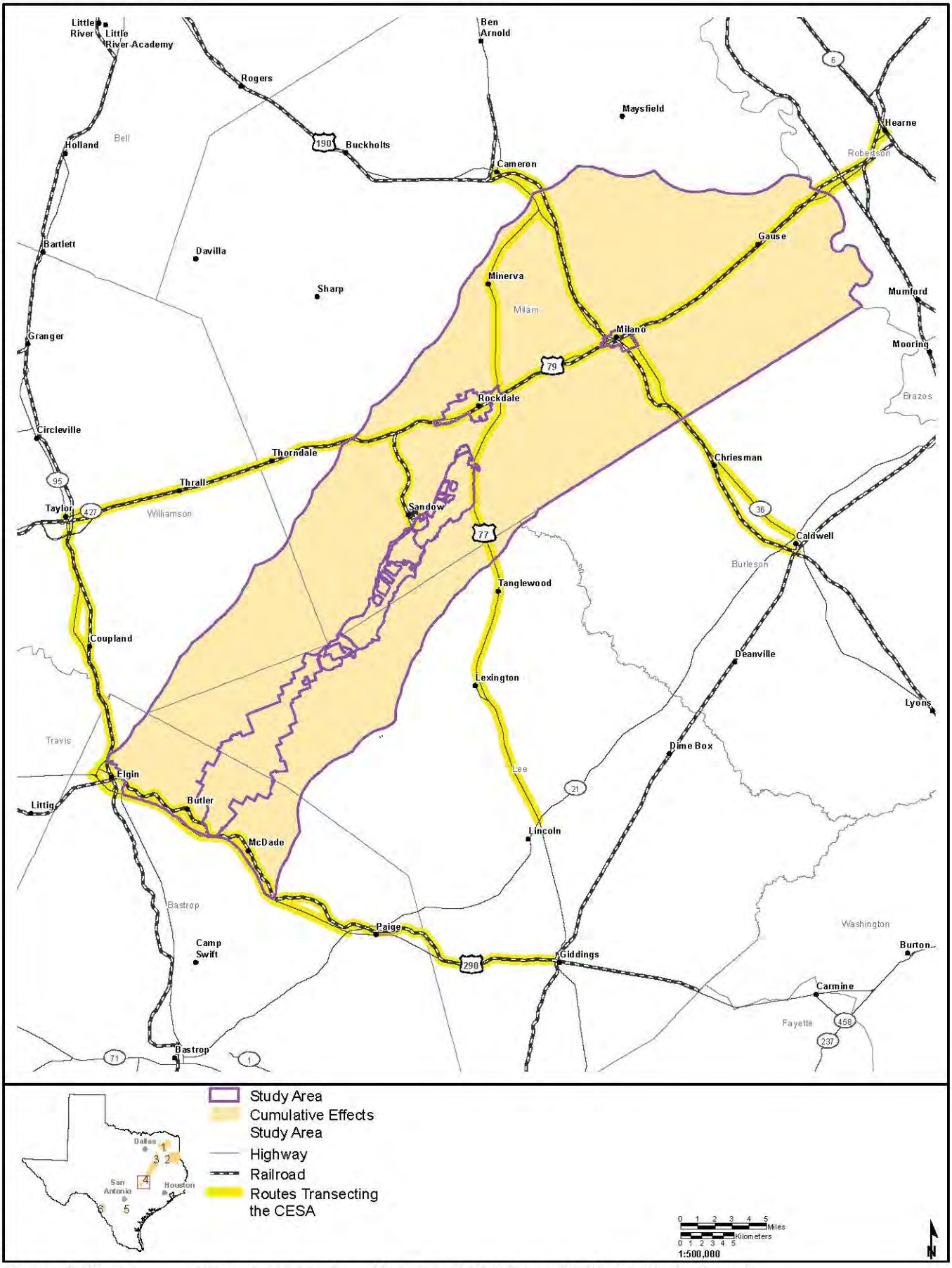

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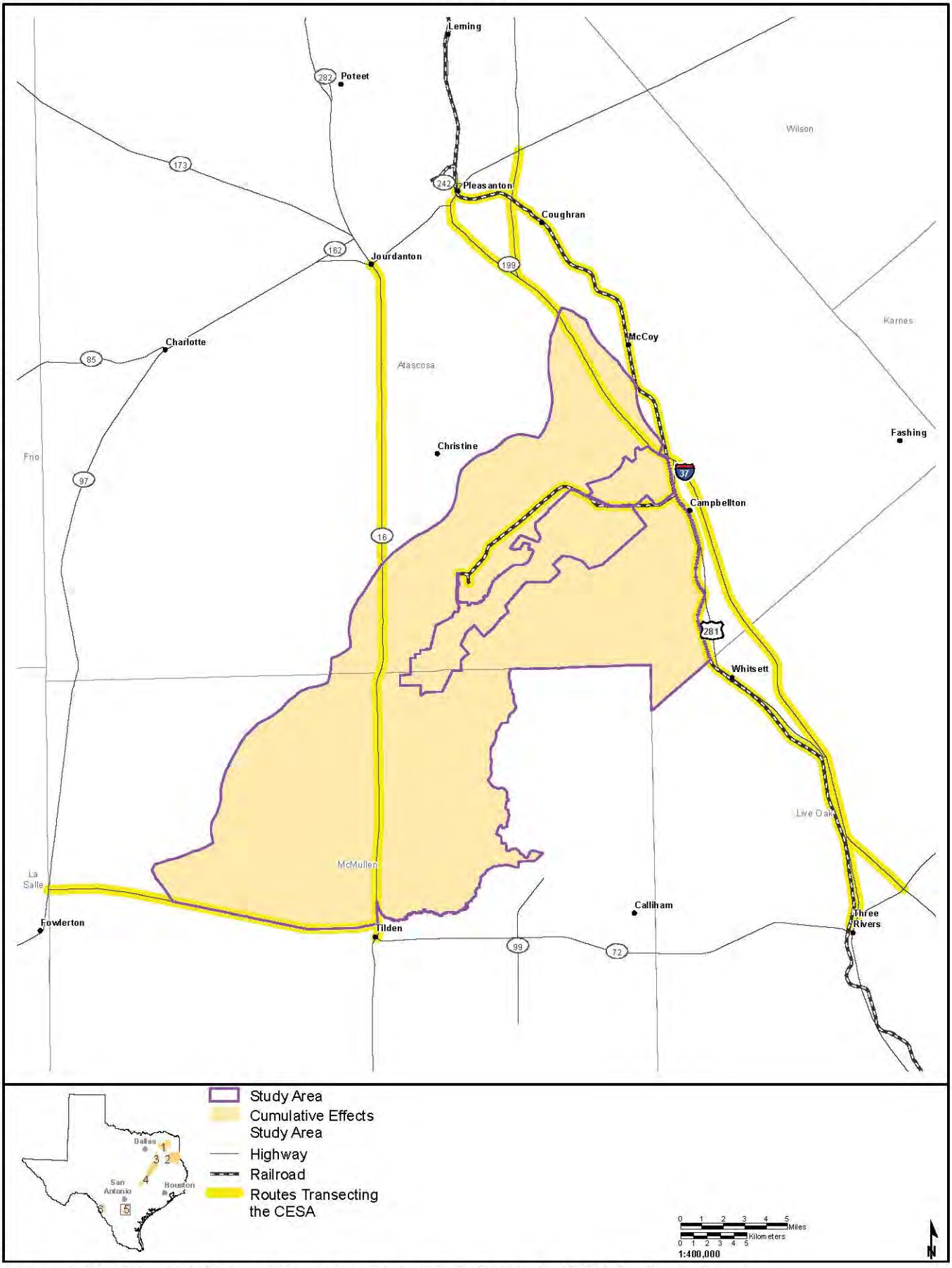

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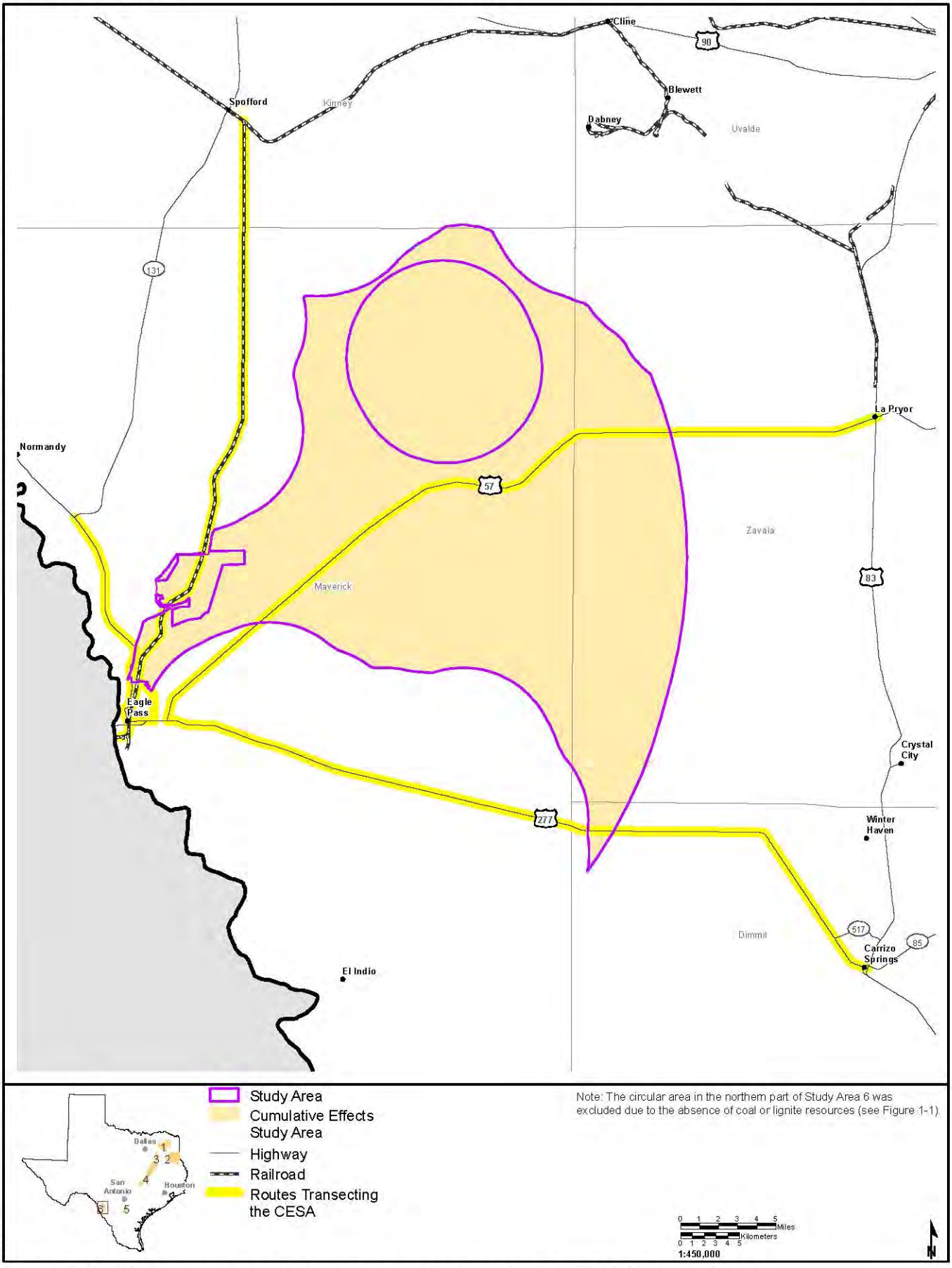

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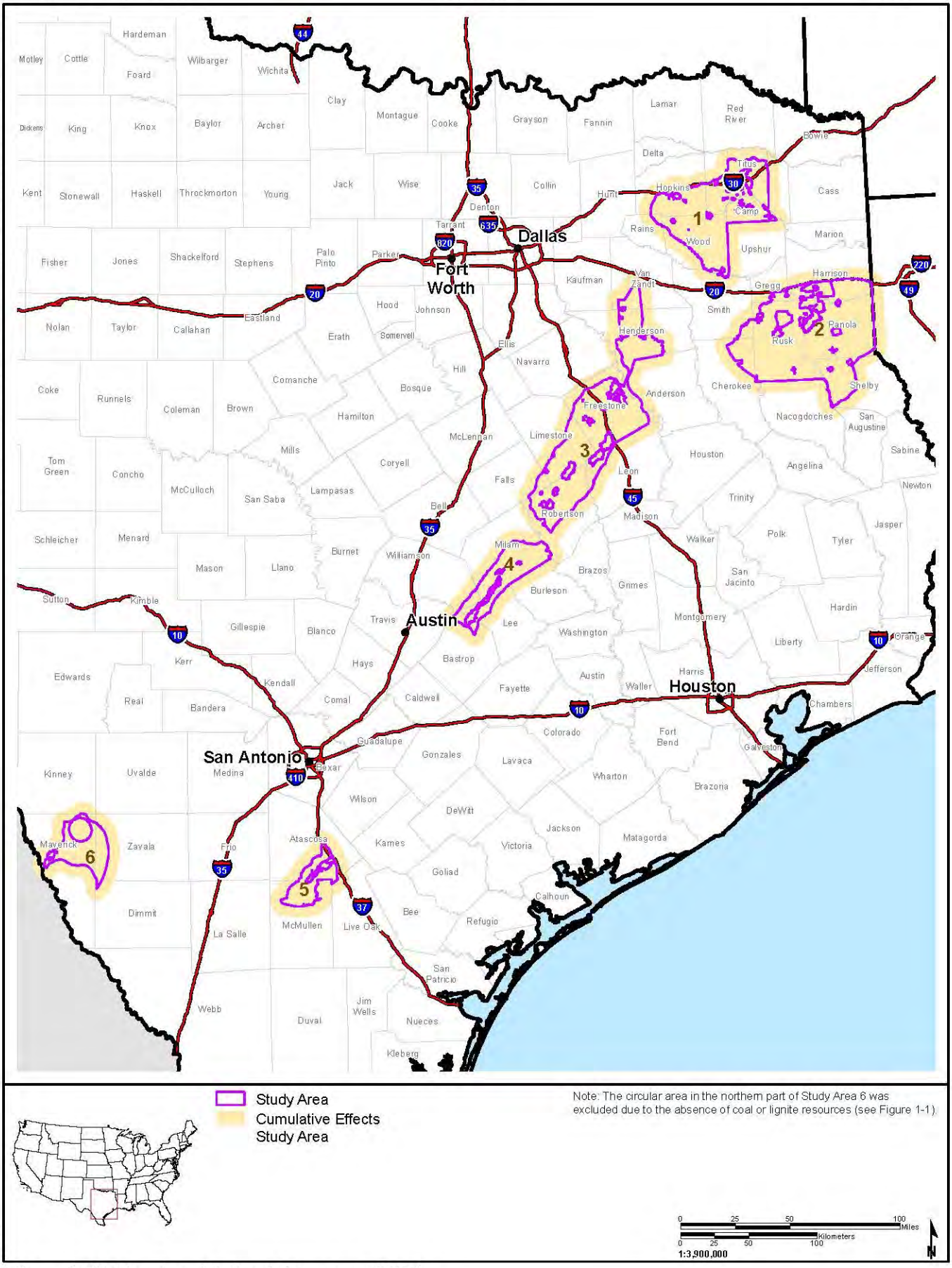

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Appendix B

Fish and Wildlife Tables

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Fish					
Blackside darter (*Percina maculata*)	ST	1,2 - Y	Species occurs in the Cypress River basin with habitat consisting of clear, gravelly streams; prefers pools with some current but also occurs in riffles with varying stream velocities.	Spawning occurs from April through May in northern states. Limited information is available regarding the Texas spawning period.	TPWD 2012-2014; Lutterbie 1979
Blue sucker (*Cycleptus elongatus*)	ST	2,3,4,6 - Y	Species occurs in large rivers such as the Sabine. Bottom substrate usually consists of exposed bedrock, usually in combination with hard clay, sand, and gravel; adults winter in deep pools.	Species spawns from April through May, upstream in riffle areas when water temperatures rise.	TPWD 2012-2014; Adams et al. 2006
Bluehead shiner (*Pteronotropis hubbsi*)	ST	1,2 - N	Species occurs in Big Cypress Bayou. Habitat consists of quiet, backwater areas of small to medium-sized, sluggish streams and oxbow lakes having mud or mud-sand bottom. The water typically is tannin-stained, and heavy growth of submergent or semi-emergent vegetation often is present.	Species spawns multiple clutches from May through July.	TPWD 2012-2014; Ranvestel and Burr 2004
Creek chubsucker (*Erimyzon oblongus*)	ST	1,2,3 - Y	Species occurs in tributaries of the, Sabine, Neches, and Trinity rivers. Habitat consists of small rivers and creeks of various types; seldom in impoundments; prefers headwaters, but seldom occurs in springs; young typically in headwater rivulets or marshes.	Species spawns from March through May in river mouths or pools, riffles, lake outlets, upstream creeks.	TPWD 2012-2014; Boschung and Mayden 2004
Devils River minnow (*Dionda diaboli*)	FT, ST	6 - N	Species occurs in Rio Grande basin tributaries such as the Devils River and San Felipe, Sycamore, Pinto, and Las Moras creeks. Habitat consists of rocky runs and flowing pools.	Species spawns from January through August.	TPWD 2012-2014; TPWD 2014b

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Fountain darter (*Etheostoma fonticola*)	FE	6 - N	Species occurs in the San Marcos and Comal river systems. Habitat consists of stream floor habitats with a mix of submergent vegetation. Species requires constant water temperatures and adequate springflow.	Species spawns year round on filamentous algae and aquatic plants.	USFWS 1996
Paddlefish (*Polydon spathula*)	ST	1,2,3 - Y	Species occurs in large, free-flowing rivers, but will frequent impoundments with access to spawning sites; spawns in fast, shallow water over gravel bars; larvae may drift from reservoir to reservoir. Historically, species occurred in most major river drainages from the Trinity River basin eastward, but its range and numbers have been significantly reduced.	Species spawns from late February through late June.	TPWD 2012-2014; Hubbs et al. 1991a; Purkett 1961
Proserpine shiner (*Cyprinella proserpina*)	ST	6 - N	Species occurs in Rio Grande River basin tributaries such as the Devils and Pecos rivers and Las Moras, Pinto, and San Felipe creeks. Habitat consists of rocky runs and pools of creeks and small rivers.	Species spawns from May through September.	TPWD 2012-2014 Bonner et al. 2008; Hubbs et al. 1991b
Pallid sturgeon (*Scaphirhychus albus*)	FE	2 - Y	Species occurs in main channel, backwaters, and flood plains of large river systems such as the Mississippi River system in Louisiana. Potential habitat occurs in the Red River (Caddo Parish).	Spawning appears to occur between March and July, with lower latitude fish spawning earlier than those in the northern portion of the range. Spawning occurs every 2 to 3 years.	USFWS 2014c
Rio Grande darter (*Etheostoma grahami*)	ST	6 - Y	Species occurs in the mainstem and spring-fed tributaries of the Rio Grande and the lower Pecos River. Habitat consists of gravel and rubble riffles of creeks and small rivers.	Species spawns from late March through early June.	TPWD 2012-2014; Harrell 1980; Hubbs et al. 2008

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Rio Grande silvery minnow (*Hybognathus amarus*)	FE, EX/NE,SE	6 - N	Historically, one of the most abundant and widespread species in the Rio Grande River basin, but was extirpated in Texas. An experimental non-essential population was reintroduced on the Rio Grande in the Big Bend area from Little Box Canyon downstream to Amistad Dam. Habitat consists of pools and backwaters of medium to large streams with low or moderate gradient in mud, sand, or gravel bottom.	Species spawns from March through June, with a peak in May.	TPWD 2012-2014; USFWS 2008; Platania and Dudley 1999
Sharpnose shiner (*Notropis oxyrhynchus*)	PE	3,4 - N	Species occurs in the Brazos River basin upstream of Possum Kingdom Reservoir. Habitat consists of large turbid rivers, with the bottom being a combination of sand, gravel, and clay-mud.	Species breeds from April through September. Spawning is synchronized with increased stream flow.	TPWD 2012-2014; USFWS 2014a,b
Smalleye shiner (*Notropis buccula*)	PE	3,4 - N	Species occurs in the Brazos River basin upstream of Possum Kingdom Reservoir. Habitat consists of medium to large prairie streams with sandy substrate and turbid to clear warm water.	Spawning occurs from April through September. Spawning is synchronized with increased stream flow.	TPWD 2012-2014; USFWS 2014a,b
Mussels					
False spike mussel (*Quadrula mitchelli*)	ST	3,4,5 - N	Historically, this species occurred in the Rio Grande, Brazos, Colorado, and Guadalupe river basins, but is now presumed to be extirpated in Texas. Habitat consists of medium to large rivers with substrates varying from mud to mixtures of sand, gravel and cobble.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Golden orb (*Quadrula aurea*)	FC, ST	5 - N	Historically, this species occurred throughout the Guadalupe-San Antonio River and Nueces-Frio River basins. Species has been eliminated from nearly the entire Nueces-Frio River Basin. Four of nine populations appear to be stable and reproducing. Habitat consists of sand, gravel or mud substrates within lentic and lotic waters.	The reproductive period is May through August.	TPWD 2012-2014; USFWS 2013; USFWS 2011
Louisiana pigtoe (*Pleurobema riddellii*)	ST	1,2,3 - N	Historically, this species occurred in the Sabine, Neches, and Trinity river basins, but is now presumed to be extirpated in Texas. Habitat consists of streams and moderate-size rivers, usually flowing water on substrates of mud, sand, and gravel; not generally known from impoundments.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014
Mexican fawnsfoot mussel (*Truncilla cognata*)	ST	6 - Y	Species occurs in the Rio Grande basin. Habitat consists of flowing rivers and streams with sand or gravel substrates.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014
Salina mucket (*Potamilus metnecktayi*)	ST	6 - Y	Species occurs in the Rio Grande basin. Habitat consists of lotic waters; submerged soft sediment (clay and silt) along river bank; other habitat requirements are poorly understood.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014
Sandbank pocket (*Lampsilis satura*)	ST	1,2,3 - Y	Species occurs in the Sabine and Neches rivers. Habitat consists of small to large rivers with moderate flows and swift current on gravel, gravel-sand, and sand bottoms.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Smooth pimpleback (*Quadrula houstonensis*)	FC, ST	3,4 - Y	Species occurs in the Brazos and Colorado River basins. Species is nearly eliminated from the entire Colorado river and has been eliminated in the upper Brazos River. Stable and reproducing populations appear in the lower Colorado River (CESA), Navasota River, and Yegua Creek (CESA). Habitat consists of small to moderate streams and rivers, as well as moderate size reservoirs with mixed mud, sand, and fine gravel substrates. Species tolerates very slow to moderate flow rates, and is sensitive to dramatic water level fluctuations, scoured bedrock substrates, or shifting sand bottoms.	The reproductive period is June through November.	TPWD 2012-2014; USFWS 2013; USFWS 2011
Southern hickorynut (*Obovaria jacksoniana*)	ST	1,2,3 - Y	Species occurs in the Neches, Sabine, and Cypress River basins. Habitat consists of medium-sized gravel substrates with low to moderate current.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014
Texas fatmucket (*Lampsilis bracteata*)	FC, ST	4 - Y	Species occurs in the Colorado River System and is extirpated from the Guadalupe River System. Populations appear in Onion Creek (CESA). Habitat consists of streams and rivers on sand, mud, and gravel substrates. Species is intolerant of impoundments, broken bedrock, and course gravel or sand in moderately flowing water.	The reproductive period is from July through October.	TPWD 2012-2014; USFWS 2011
Texas fawnsfoot (*Truncilla macrodon*)	FC, ST	3,4 - Y	Species occurs in the Brazos and Colorado River basins. Habitat likely consists of rivers and larger streams containing rice irrigation canals with sand, gravel, and perhaps sandy-mud bottoms with moderate flows. Species is intolerant of impoundments with no flow.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Texas heelsplitter (*Potamilus amphichaenus*)	ST	1,2,3 - Y	Species occurs in the Sabine, Neches, and Trinity River basins. Habitat consists of relatively quiet waters with mud or sand substrates in streams and reservoirs.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014
Texas hornshell (*Popenaias popeii*)	FC, ST	3 - Y	Species occurs in the Rio Grande basin and several rivers in Mexico. Habitat consists of ends of narrow, shallow runs over bedrock, in areas where small-grained materials collect in crevices; along river banks; and at the base of boulders. Species is not known to occur in impoundments.	The reproductive period from April through August.	TPWD 2012-2014; NautreServe 2014
Texas pigtoe (*Fusconaia askewi*)	ST	1,2,3 - Y	Species occurs in the Sabine, Trinity and San Jacinto rivers. Habitat consists of mixed mud, sand, and fine gravel substrates in protected areas associated with fallen trees or other structures.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014
Texas pimpleback (*Quadrula petrina*)	FC, ST	4 - Y	Species occurs in the Colorado and Guadalupe river basins. Habitat consists of mud, gravel and sand substrates in areas with relatively low flow conditions.	The reproductive period is June through August.	TPWD 2012-2014; Howells et al 1996a
Triangle pigtoe (*Fusconaia lananensis*)	ST	2,4 - Y	Species occurs in the Angelina River. Habitat consists of mixed mud, sand, and fine gravel substrates.	The reproductive period is in July.	TPWD 2012-2014; Howells et al 1996b
Amphibians					
Austin blind salamander (*Eurycea waterlooenis*)	FC	4 - N	Species occurs in the Barton Springs segment of the Edwards Aquifer.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014
Barton Springs salamander (*Eurycea sosorum*)	FE, SE	4 - N	Species occurs in the Barton Springs segment of the Edwards Aquifer.	Information regarding the reproductive period for this species is not available.	TPWD 2012-2014

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Black-spotted newt (*Notophthalmus meridionalis*)	ST	5 - Y	Species occurs in the Gulf Coastal Plain south of the San Antonio River. Habitat consists of wet areas or sometimes wet areas, such as arroyos, canals, ditches, or even shallow depressions. Species aestivates in the ground during dry periods.	Species breeds in shallow ephemeral ponds from March through August.	TPWD 2012-2014; Irwin and Judd 2005; Cannatella 2014a
Georgetown salamander (*Eurycea naufragia*)	FC	4 - N	Species occurs in Williamson County. Habitat consists of springs and waters in and around town of Georgetown.	Species breeds in the winter and early spring months.	TPWD 2012-2014; Pierce et al. 2014
Houston toad (*Anaxyrus houstonensis*)	FE, SE	3,4 - Y	Species occurs in the soils of the Sparta, Carrizo, Goliad, Queen City, Recklaw, Weches, and Willis geologic formations. Habitat consists of sandy substrate, water in pools, ephemeral pools, and stock tanks. Species burrows in soil of adjacent uplands when inactive.	Species breeds from February through June, especially after rains.	TPWD 2012-2014
Jollyville Plateau salamander (*Eurycea tonkawiae*)	FT	4 - N	Species occurs in the Jollyville Plateau and Brushy Creek area in Travis and Williamson counties. This species retains external gills and inhabits aquatic habitats (springs, spring-runs, and wet caves).	The breeding period is suspected to be March through August, based on the presence of small juveniles.	TPWD 2012-2014; Chippendale 2005
Salado Springs salamander (*Eurycea chisholmensis*)	FC	4 - N	Species occurs in the waters of the Salado Springs system along Salado Creek. Habitat consists of surface springs and subterranean waters of the spring system.	Information regarding the reproductive period is not available. The species uses aquatic habitat for breeding purposes.	TPWD 2012-2014
San Marcos salamander (*Eurycea nana*)	FE	6 - N	Species occurs near spring openings in Spring Lake and in the San Marcos river immediately below Spring lake (150m). Habitat consists of sand or gravel substrate with lush aquatic vegetation.	Species breeds year round, with peaks in May and June.	USFWS 1996

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
South Texas siren (*Siren* sp. 1)	ST	6 - N	Species occurs in southern Texas, south of Balcones Escarpment. Habitat consists of wet or sometimes wet areas, such as arroyos, canals, ditches, or even shallow depressions. Species aestivates in the ground during dry periods.	Species breeds from February through June.	TPWD 2012-2014
Texas blind salamander (*Typhlomolge rathbuni*)	FE	6 - N	Species occurs in subterranean waters of the Edwards Aquifer in Hays County. Habitat consists of water-filled cavernous areas in the San Marcos area of the Edwards Aquifer.	Information is not available on the breeding period. The species uses subterranean caves for breeding.	USFWS 1996
Reptiles					
Alligator snapping turtle (*Macrochelys temminckii*)	ST	1,2,3,4 - Y	Species occurs in perennial water bodies including deep water of rivers, canals, lakes, oxbows, swamps, bayous, and ponds near deep running water. Species is associated with mud bottom and abundant aquatic vegetation; may migrate several miles along rivers; active March through October.	Species breeds from April through October.	TPWD 2012-2014
Brazos River water snake (*Nerodia harteri*)	ST	3 - Y	Species occurs in the upper Brazos River drainage, with habitat consisting of shallow water and rocky substrates and rocky portions of banks.	Young are born in September and October.	TDWD 2012-2014; Cannatella 2014b
Invertebrates					
Comal Springs riffle beetle (*Heterelmis comalensis*)	FE	6 - N	Species occurs in Comal Springs and San Marcos Springs (Hays County). Habitat consists of gravel substrate and shallow riffles in spring runs	Information is not available on the breeding period.	USFWS 1997
Comal Springs dryopid beetle *Stygoparmus comalensis*	FE	6-N	Species occurs in theComal and Fern Bank springs in Hays County. The species is subterranean and does not swim.	Information is not available on the breeding period.	USFWS 1997

Table B-1 Occurrence, Habitat, and Life History Information for Federal and State Listed Fish and Aquatic Wildlife Species

Common Name (Scientific Name)	Status[1]	Potential Study Area Occurrence (Y = Yes or N = No)	Occurrence and Habitat	Life History	References
Peck's Cave amphipod (*Stygobromus* = [*stygonectes*] *pecki*)	FE	6 - N	Species occurs in the Landa Park area of the Edwards Aquifer. Habitat consists of rock and gravel crevices near spring orifices.	Information is not available on the breeding period. The species uses subterranean habitat for breeding.	USFWS 1997

[1] Status: FT = Federal threatened; FE = Federal endangered; PE = Proposed endangered; FC = Federal candidate; EX/NE = Experimental/Non-essential; ST = Texas threatened; and SE = Texas endangered.

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
Arachnids							
Bone Cave Harvestman	*Texella reyesi*	E		4	Common to all troglobites, this species spend their entire lives underground. The Bone Cave harvestman is endemic to karst formations (caves, Sinkholes, and other subterranean voids) in Travis and Williamson counties. Troglobites typically inhabit the dark zone of the cave where temperature and humidity are relatively constant. Most are usually found under rocks. Although troglobites must complete their life cycles underground, they are dependent on moisture and nutrient inputs from the surface.	No – The current range for this species is outside the analysis area. This species occurs in 69 caves (60 confirmed, 9 tentative identifications) from northern Travis to northern Williamson County, a distance of approximately 25 miles.	TPWD 2014a; USFWS 2014b, 1994
Birds							
American Peregrine Falcon	*Falco peregrinus anatum*		T	All	This species is a year-round resident and local breeder in west Texas and nests in tall cliff eyries. It is also a migrant across the state from more northern breeding areas in the U.S. and Canada and winters along the coast and farther south. The peregrine falcon occupies a wide range of habitats during migration, including urban areas and leading landscape edges (e.g., lake shores, coastlines, and barrier islands).	Yes – This species would most likely occur as a migrant through the analysis area.	TPWD 2014a

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
Bachman's Sparrow	*Aimophila aestivalis*		T	1,2,3	This species inhabits open pine woods with scattered bushes and grassy understory in the Pineywoods region. It is found within brushy or overgrown grassy hillsides, overgrown fields with thickets and brambles, grassy orchards, and remnant grasslands in the Post Oak Savannah region. Nests are constructed on the ground against grass tufts or under low shrubs. This species breeds in Texas from mid-April to late July.	Yes	Arnold 2001; TPWD 2014a
Bald Eagle	*Haliaeetus leucocephalus*		T, LA-E	1,2,3,4	This species is found primarily near rivers and large lakes. Nests are constructed in tall trees or on cliffs near water. Communal roost sites, especially in winter, are found in similar habitats.	Yes	TPWD 2014a
Black-capped Vireo	*Vireo atricapilla*	E	E	4,6	The black-capped vireo is a breeding resident within the analysis area. This species inhabits oak-juniper woodlands with distinctive patchy, two-layered aspects; shrub and tree layer with open, grassy spaces. This species requires foliage reaching to ground level for nesting cover. The black-capped vireo returns to the same territory, or one nearby, year after year to breed.	Yes	TPWD 2012a, 2014a; USFWS 1991

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					Deciduous and broad-leaved shrubs and trees provide insects for feeding. The nesting season for this species is March to late summer.		
Golden-cheeked Warbler	*Setophaga chrysoparia*	E	E	4,6	This species inhabits juniper-oak woodlands and is dependent on Ashe juniper (also known as cedar) for long fine bark strips used in nest construction that is only available from mature trees. Nests are placed in various trees other than Ashe juniper; however, only a few mature junipers or nearby cedar brakes can provide the necessary nest material. This species forages for insects in broad-leaved trees and shrubs. The golden-cheeked warbler is the only bird species that breeds exclusively in Texas. Nesting occurs from late March to early summer.	Yes	Coldren 2001; TPWD 2012a, 2014a
Interior Least Tern	*Sterna antillarum athalassos*	E	E, LA-E	1,2,3,4	The interior subspecies is listed only when inland (more than 50 miles from a coastline). It nests along sand and gravel bars within braided streams and rivers; it is also know to nest on man-made structures (e.g., inland beaches, wastewater treatment plants, gravel mines, etc).	Yes – While it is unlikely that nesting interior least terns would be present within the analysis area, **with the possible exception of mine disturbance areas,** the species potentially may occur in limited foraging habitats in the analysis area.	TPWD 2014a; USFWS 2014b, 1990

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
Peregrine Falcon	*Falco peregrinus*		T	All	The peregrine falcon migrates across Texas from more northern breeding areas in the U.S. and Canada to winter along the coast and farther south. Habitat requirements are the same as those discussed above for the subspecies F. p. anatum. Because the subspecies are not easily distinguishable at a distance, reference is generally made only to the species level.	Yes – This species would most likely occur as a migrant throughout the analysis area.	TPWD 2014a
Piping Plover	*Charadrius melodus*	T	T	1,2,3	This species is a wintering migrant along the Texas Gulf Coast occupying beaches and bayside mud or salt flat habitats.	No - The analysis area is outside of the species' breeding range. No critical habitat for this species occurs within the analysis area. The piping plover is a wintering migrant along the Texas Gulf Coast. Therefore, potential for occurrence within the project area would be considered infrequent during migration.	TPWD 2014a
Red-cockaded Woodpecker	*Picoides borealis*	E	E, LA-E	2	This species lives and forages exclusively in mature, open "park-like" pine forests. It needs older pines with sufficient heart rot present to construct its cavities. Current observations indicate cavity nests are found in older pines (60+ years) and foraging occurs in younger	Yes	USFWS 2014b, 2003; TPWD 2014a

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					pines (30+ years). Within Texas, this species prefers longleaf, shortleaf, and loblolly. These species live in groups of two to six birds, although as many as nine birds have been observed. The group may consist of only a mated pair; a mated pair with their current years' offspring; or a mated pair, their current years' offspring, and helpers. Red-cockaded woodpeckers nest from April through July.		
Red Knot	*Calidris canutus rufa*	T		All	The red know breeds in the central Canadian Arctic and migrates primarily along the Atlantic coast of North America. The Gulf of Mexico coast of Texas is one of four distinct coastal areas of the Western Hemisphere where the *C. c. rufa* subspecies winter. Along the Texas coast, red knots forage on beaches, oyster reefs, and exposed bay bottoms and roost on high sand flats, reefs, and other sites protected from high tides. Within the analysis area, red knots may use key staging and stopover areas to rest and feed for both spring and fall migrations.	No – The USFWS IPaC search identified this species as a concern only for wind energy projects.	USFWS 2014b, 2011
Sprague's Pipit	*Anthus spragueii*	C		5, 6	This species is only present in Texas during migration and in	Yes	TPWD 2014a; USFWS 2014b

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					winter from mid-September to early April. The Sprague's pipit is strongly tied to native upland prairie, can be locally common in coastal grasslands, but is uncommon to rare further west of these habitats. Additionally, the Sprague's pipit is sensitive to patch size and avoids edge habitat.		
Swallow-tailed Kite	*Elanoides forficatus*		T	2	This species is found in lowland forested regions, especially swampy areas, ranging into open woodland; marshes, along rivers, lakes, and ponds. It nests high in tall trees located in clearings or on forest woodland edges; usually in pine, cypress, or various deciduous trees. Breeding occurs from late February to early July.	Yes	TPWD 2014a; Tweit 2001a
White-faced Ibis	*Plegadis chihi*		T	3	This species prefers freshwater wetlands including marshes, sloughs, and irrigated rice fields, but will use brackish and saltwater habitats. It nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats. Breeding occurs from early April to late July.	Yes – However, in Texas, this species is a rare and localized breeder inland as far north as the Panhandle.	TPWD 2014a; Telfair II 2001
White-tailed Hawk	*Buteo albicaudatus*		T	5	Near the coast, this species is found on prairies, cordgrass flats, and scrub-live oak. Further inland, it is found on	Yes	TPWD 2014a

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					prairies, mesquite and oak savannas, and mixed savanna-chaparral. Breeding occurs from March-May.		
Whooping Crane	*Grus americana*	E	E	3,4,5	This species would occur within the analysis area as a migrant only. During spring and fall migration, the Aransas–Wood Buffalo whooping crane population migrates through the central Great Plains. Birds from the Aransas–Wood Buffalo population depart from their wintering grounds in Texas starting in late March through the beginning of May. Fall migration typically begins in mid–September, with most birds arriving on wintering grounds between late October and mid–November. Habitat used by migrating whooping cranes includes a variety of wetlands and other habitats, including inland marshes, lakes, ponds, wet meadows and rivers, and agricultural fields.	Yes - The occurrence of this species in the analysis area would be limited to migrants from the Aransas–Wood Buffalo population to and from the wintering grounds of to the coastal marshes of Aransas, Calhoun, and Refugio counties.	Canadian Wildlife Service and USFWS 2005; TPWD 2014a; USFWS 2014b, 2011
Wood Stork	*Mycteria americana*		T	1,2,3,4,5	This species forages in prairie ponds, flooded pastures or fields, ditches, and other shallow standing water, including salt-water. It usually roosts communally in tall snags, sometimes in association with other wading birds (i.e., active	Yes – However, species occurrence would be limited to foraging individuals.	TPWD 2014a

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					heronries). This species breeds in Mexico and birds move into Gulf States in search of mud flats and other wetlands, even those associated with forested areas. There have been no breeding records since 1960 in Texas.		
Zone-tailed Hawk	*Buteo albonotatus*		T	6	This species is found in arid open country including open deciduous or pine oak woodland, mesa or mountain county, often near watercourses, and wooded canyons and tree-lined rivers along middle-slopes of desert mountains. It nests in various habitats and sites including small trees in lower desert areas, large cottonwoods in riparian areas, and mature conifers in high mountain regions. The breeding range for this species in Texas includes the Davis and Chisos mountains and along the Rio Grande and Pecos rivers. Breeding occurs from March to July.	Yes – However, species occurrence would be limited to foraging individuals.	TPWD 2014a; Tweit 2001b
Insects							
Coffin Cave Mold Beetle	*Batrisodes texanus*	E		4	This resident, small, cave-adapted beetle is found in small Edwards Limestone caves in Travis and northern Williamson counties. Common to all	No – The current range for this species is outside the analysis area.	TPWD 2014a; USFWS 2014b, 1994

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					troglobites, this species spend their entire lives underground. Troglobites typically inhabit the dark zone of the cave where temperature and humidity are relatively constant. Most are usually found under rocks. Although troglobites must complete their life cycles underground, they are dependent on moisture and nutrient inputs from the surface.		
Tooth Cave Ground Beetle	*Rhadine persephone*	E		4	This resident, small, cave-adapted beetle is found in small Edwards Limestone caves in Travis and northern Williamson counties. Common to all troglobites, this species spend their entire lives underground. Troglobites typically inhabit the dark zone of the cave where temperature and humidity are relatively constant. Most are usually found under rocks. Although troglobites must complete their life cycles underground, they are dependent on moisture and nutrient inputs from the surface.	No – The current range for this species is outside the analysis area.	TPWD 2014a; USFWS 2014b, 1994
Mammals							
Black Bear	*Ursus americanus*	T/SA	T	1,2,3,5,6	This species occurs in bottomland hardwoods and large tracts of inaccessible forested areas.	Yes – However, occurrences of this species would be limited to transient individuals within	TPWD 2014a; USFWS 2014b

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
						the analysis area.	
Gray Wolf	*Canis lupus*	E	E	6	The gray wolf was formerly known throughout the western two-thirds of Texas, occupying a range of habitats including forests, brushlands, and grasslands.	No – The species is considered to be extripated.	TPWD 2014a; USFWS 2014b
Jaguarundi	*Herpailurus yaguarondi*	E	E	5,6	This species prefers natural, undisturbed forest and thick brushlands near water. Young are sometimes born twice per year, in March and August. Jaguarundis are solitary, except during mating season or when a female is raising kittens. Little is known regarding Jaguarundi reproduction in Texas, however, the mating season in Mexico is November and December.	Yes	TPWD 2014a; USFWS 2014b, 2013
Louisiana Black Bear	*Ursus americanus luteolus*	T	T	1,2,3,4	Historically present in eastern Texas, this species currently is known to occur in Louisiana and Mississippi and, although unlikely, an occasional transient individual may wander into eastern Texas. It is possible that the Louisiana black bear may be increasing in numbers, and viable populations may expand into east Texas. This species occurs in bottomland hardwoods and large tracts of inaccessible forested areas.	Yes – However, occurrences of this species would be limited to transient individuals within the analysis area.	NatureServe Explorer 2009; TPWD 2014a; USFWS 2014b, 1995

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
Margay	*Leopardus wiedii*		T	6	This species was historically found in neotropical forested areas. It was known to rest during the day in trees and forage both in trees and on the ground. The species is considered to be extripated.	No – The occurrence of this species in the analysis is extremely unlikely.	TPWD 2011
Ocelot	*Leopardus pardalis*	E	E	5,6	Typical habitat consists of mixed brush species with an interspersion of trees. Optimal habitat has at least 95 percent canopy cover of shrubs, whereas marginal habitat has 75 to 95 percent canopy cover. Preferred shrub density is where depth of vision from outside the brush line is restricted to approximately 5 feet. Tracts of at least 100 acres of isolated dense brush, or 75 acres of brush interconnected with other habitat tracts by brush corridors, are considered very important. The ocelot breeds and raises young June-November.	Yes	TPWD 2014a
Rafinesque's Big-Eared Bat	*Corynorhinus rafinesquii*		T	1,2	This species roosts in tree cavities of bottomland hardwoods, concrete culverts, and abandoned man-made structures.	Yes	TPWD 2014a; USFWS 2014b
Red Wolf	*Canis rufus*	E	E	1,2,3,5,	This species uses a wide range of habitats including open fields,	No - The occurrence of this species in the analysis is	TPWD 2014a; USFWS 2014b

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					prairies, croplands, fence rows, farmyards, forest edges, and woodlands. This species prefers wooded, brushy areas and tallgrass prairie. The species is considered to be extripated.	extremely unlikely.	
White-nosed Coati	*Nasua narica*		T	6	This species is found in woodlands, riparian corridors, and canyons. Most individuals in Texas are presumed to be transients from Mexico. The white-nosed coati is diurnal and crepuscular, and very sociable. This omnivor forages on the ground and in trees.	Yes	TPWD 2014a
Reptiles							
Louisiana Pine Snake	*Pituophis ruthveni*	C	T	1,2	This species is found in mixed deciduous-longleaf pine woodland ecosystems. The Louisiana pine snake breeds April-September.	Yes	TPWD 2014a; USFWS 2013
Northern Scarlet Snake	*Cemophora coccinea copei*		T	1,2,3	The northern scarlet snake prefers soft, sandy, or loamy soils for burrowing, occurring in forested areas as well as open areas such as agricultural fields and along borders of swamps and stream banks. It feeds on reptile eggs and is considered semi-fossorial with activity from April-September.	Yes	Herps of Texas 2014; TPWD 2014a
Reticulate Collared Lizard	*Crotaphytus reticulatus*		T	5,6	This species occupies open brush-grasslands with thorn-	Yes	TPWD 2014a

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
					scrub vegetation. It is usually associated with well-drained, rolling terrain of shallow gravel, caliche, or sandy soils. This species is often found on scattered flat rocks below escarpments or isolated rock outcrops among scattered clumps of prickly pear and mesquite.		
Texas Horned Lizard	*Phrynosoma cornutum*		T	All	This species occupies open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush, or scrubby trees. Soils may vary in texture from sandy to rocky. When inactive, this species burrows into soil, enters rodent burrows, or hides under rocks. Breeding occurs from March through September.	Yes	TPWD 2014a
Texas Indigo Snake	*Drymarchon melanurus erebennus*		T	5,6	This species is found in Texas south of the Guadalupe River and Balcones Escarpment. It inhabits riparian areas of thornbush-chaparral woodlands of south Texas. The indigo snake has also been known to do well in suburban and irrigated croplands if not molested or indirectly poisoned. This species requires moist microhabitats, such as rodent burrows, for shelter.	Yes	TPWD 2014a

Table B-2 Occurrence, Habitat, and Life History Information for Special Status Wildlife Species

Common Name	Scientific Name	ESA Status[1]	State Status[2]	Study Area[3]	Habitat[4]	Potential to Occur	References
Texas Tortoise	*Gopherus berlandieri*		T	5,6	The preferred habitat for this species includes open brush with a grass understory. Open grasslands and bare ground are avoided. When inactive, this species occupies shallow depressions at the base of bushes or cacti; sometimes in underground burrows or under objects. The longevity of the Texas tortoise is greater than 50 years. This species is active March through November and breeds April through November.	Yes	TPWD 2014a
Timber/Canebrake Rattlesnake	*Crotalus horridus*		T	1,2,3,4	This species is associated with swamps, floodplains, upland pine and deciduous woodlands, riparian zones, and abandoned farmland with limestone bluffs, sandy soil, or black clay. This species prefers dense ground cover (i.e., grapevines or palmetto).	Yes	TPWD 2014a

[1] T – Threatened; E – Endangered; PT – Proposed as Threatened; C – Candidate; T/SA – Listed as Threatened by similarity of appearance.

[2] T – Threatened in the State of Texas; E – Endangered in the State of Texas; LA-E – Endangered in the State of Louisiana.

[3] Based on USFWS IPaC, TPWD, and LDWF county list searches.

[4] Based on habitat descriptions from TPWD (2014a) county lists.

Appendix C

Programmatic Agreement

DRAFT

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, AND THE TEXAS STATE HISTORIC PRESERVATION OFFICER, REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (AS AMMENDED) FOR THE REGIONAL ENVIRONEMTNAL IMPACT STATEMENT FOR SURFACE COAL MINING UNDER SECTION 404 UNDER THE CLEAN WATER ACT

April 2016
Permit Number: 2010-00244

WHEREAS, the United States Army Corps of Engineers (USACE) plans to implement a Regional Environmental Impact Statement for Surface Coal and Lignite Mining (REIS) to analyze potential impacts within defined geographic regions in Texas that may be affected by futures USACE permit decisions for future surface coal and lignite mine expansions (Mines) within the Fort Worth District; and

WHEREAS, future expansion of the Mines may require a permit in order to comply with Section 404 of the Clean Water Act; and

WHEREAS, issuing a permit pursuant to Section 404 of the Clean Water Act requires review of the Project under Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended); and

WHEREAS, the USACE has determined that the proposed Mine expansions have the potential to adversely affect properties that are eligible for listing in the National Register of Historic Places (National Register), and has consulted with the Texas State Historic Preservation Officer (SHPO), pursuant to the Advisory Council on Historic Preservation (ACHP) regulations, *Protection of Historic Properties* (36 CFR Part 800), implementing Section 106 of the National Historic Preservation Act (54 USC 300101); 33CFR 325 (Appendix C) *Procedures for the Protection of Historic Properties*; Revised Interim Guidance for Implementing Appendix C of 33 CFR 325 with the ACHP regulations at 36 CFR 800 (2005); and

WHEREAS, the purpose of this Programmatic Agreement (PA) is to streamline compliance with the regulations by developing procedures to satisfactorily take into account the effects of future Mine expansion on historic properties, and to increase flexibility in applying the regulations and reduce redundant documentation in a manner that will allow future Mine expansion to proceed in an expeditious manner; and

WHEREAS, the USACE has consulted with the Comanche Nation of Oklahoma, Kiowa Tribe of Oklahoma, Lipan Apache Tribe of Texas, Tonkawa Tribe of Oklahoma, and Wichita and Affiliated Tribes, and invited them to sign this agreement document; and

WHEREAS, the Choctaw Nation of Oklahoma has requested to be a consulting party in the development of this Programmatic Agreement, and the federally unrecognized Pacuache Clan of Texas have requested consulting party status; and

WHEREAS, The Mines and other consulting parties have been notified and provided an opportunity to comment on and participate in consultation on this agreement document; and

WHEREAS, the public has been notified and provided an opportunity to comment on the undertaking through public meetings and comments sought under NEPA; and

WHEREAS, the USACE has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation for this Project, and the ACHP has chosen not to participate in development of this PA; and

NOW, THEREFORE; the USACE, {the ACHP} and the SHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties to satisfy the USACE's Section 106 responsibilities for this Project.

STIPULATIONS

The USACE will ensure that the following stipulations are carried out by the applicant to identify historic properties and address adverse effects to such properties that will result from expansion of surface coal mines:

I. FRAMEWORK

A. All work conducted under the PA will be performed in a manner that is consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983) as amended, or the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR 68) as appropriate.

B. The Texas Historical Commission (THC) is the agency that administers the Antiquities Code of Texas (Title 9, Chapter 191 of the Texas Natural Resources Code) and must issue an Antiquities permit prior to the initiation of archeological work, and also has responsibilities under Chapter 711 of the Texas Health and

Safety Code regarding the discovery and disposition of abandoned or unknown cemeteries.

C. Critical steps in the identification process include a literature review, tribal consultation (as appropriate), historical and archival research, consultation with other knowledgeable parties, and field investigations.

II. LITERATURE REVIEW AND RESEARCH DESIGN

A. The applicant prepared a report summarizing and synthesizing all previous archeological and architectural studies conducted at the Mine. This background research is necessary to plan the research design (RD) that will guide the survey strategy and will assist in the preparation of the scope-of-work required for the Antiquities permit. The report shall contain:

1. Full references to all previous investigations.
2. Complete list of sites identified in prior work, including National Register of Historic Places and State Antiquities Landmark status.
3. Separate tabular listings for archeological sites and above-ground architecture.
4. Summary of any identified Traditional Cultural Properties (TCPs) or Traditional Cultural Landscapes.
5. Maps of areas where historic properties have been identified.
6. Maps of areas where historic properties have not been fully inventoried.
7. Maps of any proposed recreation facilities and pipelines associated with the Mine.

B. A draft RD shall be submitted to the SHPO, appropriate Tribe(s), consulting parties and USACE. The RD may be revised based on the comments received within 30 days. The USACE shall be responsible for final comments and acceptance before implementation of the final RD. A copy of the final RD shall be made available to all signatories and concurring parties.

C. The RD will identify research questions of importance to the region that can be reasonably addressed by resources that are likely to be encountered within the proposed Mine and will set forth procedures for the identification and evaluation of these resources. These will include methods for finding and documenting archeological sites and architectural resources, analysis of data, and the curation of artifacts.

D. If all Section 106 NHPA compliance work has been completed through previous work, a summary of that work, as well as compliance documents with Railroad Commission of Texas, Texas Historic Commission, and Environmental Protection Agency shall be provided to the USACE and SHPO for review. Additional assessments or work may be required under Stipulation II (A-C) if the previous

compliance work is determined to be incomplete or inadequate to comply with Section 106 of the NHPA.

E. If the USACE and SHPO determine that previous compliance work is complete in the area of the proposed Mine expansion, no additional review under this PA shall be necessary. A summary of completed previous compliance work may be supplied to Tribe(s) requesting review.

III. IDENTIFICATION OF HISTORIC PROPERTIES

Identification efforts should follow the ACHP's Section 106 Archaeology Guidance, the Secretary of the Interior's (SOI) Standards and Guidelines for Archaeology and Historic Preservation, the SOI's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act. This includes standards defined by the Council of Texas Archeologists. For all archaeological activities and architectural assessments resulting in a written report, the SHPO, Tribe(s), and consulting parties will be afforded 30 calendar days after receipt of any document to comment on the documentation submitted by the USACE. Documents may then be revised considering the comments received. The USACE shall be responsible for final comments.

A. Phase I (Survey)

1. For Mine expansion areas defined in the final RD, the applicant will complete a pedestrian survey, including shovel-testing, augering, and backhoe trenches (as necessary) to identify archeological sites.

    a. All archeological sites and above ground architecture recorded will be assessed, if possible, for eligibility to the NRHP. This will consist of the categorization of all sites as NRHP eligible, listed, not eligible, or unevaluated. Archival research will be necessary to assess standing architecture. Sites that cannot be determined ineligible for the NRHP will be assessed by more detailed work in Phase II.

    b. A draft report shall follow reporting standards developed by the Council of Texas Archeologists, as per the Antiquities Code of Texas.

    c. The draft report shall be distributed to all signatory parties for a 30 day period of review and comment. The USACE shall ensure that comments are addressed in a final report and distributed to all signatories.

B. Phase II (Testing)

1. A testing plan that complies with the Antiquities Code of Texas shall be developed in consultation with the Tribe(s) and consulting parties. It must include at the minimum:

    a. Criteria for assessing NRHP eligibility that can be applied to every site tested.

    b. A draft report shall follow reporting standards developed by the Council of Texas Archeologists as per the Antiquities Code of Texas. This will consist of the categorization of all sites as NRHP eligible, or not eligible. For all sites determined eligible, the report should also document the effect of the project on the resource, noting whether it will be adverse or not. For all eligible sites that will suffer adverse effects, an avoidance plan (if possible) or a data recovery plan shall be included that will mitigate the adverse effects.

    c. The draft report shall be distributed to all signatory parties for a 30 day period of review and comment. The USACE shall ensure that comments are incorporated into a final report and distributed to all signatories.

The USACE will determine the NRHP eligibility of all archeological and historical resources identified within the APE of the Mine in consultation with the SHPO and the Tribe(s). If the USACE and the SHPO concur on eligibility, the USACE will proceed to a determination of effect. If the USACE and the SHPO disagree on NRHP eligibility, the matter will be referred to the Keeper of the Register in the Department of the Interior, as per 36 CFR 63. The resource will be treated as if it is eligible for inclusion in the NRHP until a decision is rendered by the Keeper. If the Keeper determines that the resource is eligible, the USACE will proceed to a determination of effect.

IV. DETERMINATION OF EFFECT

A. For all resources determined eligible for inclusion in the NRHP, the USACE will apply the Criteria of Effect to assess whether or not adverse effects will occur to historic properties as a result of the Mine. In consultation with the SHPO and Tribe(s), the USACE shall make a determination of effect. For all historic properties that will be adversely effected, an avoidance plan or mitigation plan will be developed in consultation with all consulting parties.

B. *Finding of no Adverse Effect (NAE).* USACE, in consultation with, the SHPO, and consulting parties, shall apply the criteria of adverse effect to historic properties within the APE in accordance with 36 CFR 800.5. Mine historic properties determined to have NAE shall be avoided and or protected from all

potential current and future impacts if possible. Properties with NAE designation may be adversely effected by the Mine and require re-assessment of effects.

1. The signatories to this agreement concur that all eligible historic properties identified within the APE that do not have a final determination of NAE are presumed to be adversely effected by the Mine. The USACE, in consultation with the Mine, the SHPO, Tribe(s), and other consulting parties, shall apply the criteria within the APE on a case-by-case basis in accordance with 36 CFR 800.5.

V. TREATMENT OF ADVERSE EFFECT

A. Once a data recovery plan has been approved by the USACE, SHPO, Tribe(s) and consulting parties, it may be implemented to resolve adverse effects in accordance with 36 CFR 800.6. For archeological sites, the mitigation plan will specify the areas to be excavated, the methods to be used, special samples to be collected, the specialists who will conduct specialized analyses, the problems set forth in the RD that can be addressed by data from the site being excavated, and include reporting methods and curation of artifacts and records. For architectural resources, adaptive reuse shall be considered whenever possible. For buildings and structures that will be destroyed by the Mine, the mitigation plan will specify the level of HABS-HAER drawings and photographs that will be necessary to document the resources.

B. All work conducted to treat adverse effects will be described in a draft report that shall follow reporting standards developed by the Council of Texas Archeologists as per the Antiquities Code of Texas.

C. The draft report shall be distributed to all signatory parties for a 30 day period of review and comment.

D. If the Mine, USACE, the SHPO, and Tribe(s) fail to agree on how adverse effects will be resolved, the USACE shall request that the ACHP join the consultation and provide the ACHP and all consulting parties with documentation pursuant to 36 CFR 800.11 (g).

VI. CURATION AND DISPOSITION OF RECOVERED MATERIALS, RECORDS AND REPORTS

A. *Curation.* Mine materials and associated records owned by the State of Texas or the Mine are governed by the THC Rules (Chapter 29, Rules of Management and Care of Artifacts and Collections). Therefore, the Mine shall ensure that all such materials and records that result from identification, evaluation, and treatment efforts conducted under this PA are accessioned into a curatorial facility that has been certified, or granted provisional status, by the THC in

accordance with Chapter 29.6, except as specified for human remains in Stipulation VI.

VII. TREATMENT OF HUMAN REMAINS

A. The Mine shall develop a treatment plan for human remains in consultation with the USCAE, the SHPO, Tribe(s) and other consulting parties. USACE shall ensure that consulting parties are afforded a reasonable opportunity to identify concerns, advise on identification and evaluation, and disposition of human remains.

B. INADVERTENT DISCOVERY. Immediately upon the inadvertent discovery of human remains during historic properties investigations or construction activities conducted pursuant to this PA, the Mine shall ensure that all ground disturbing activities cease in the vicinity of the human remains and any associated grave goods, and that the site is secured from further disturbance or vandalism. The Mine will be responsible for immediately notifying local law enforcement officials and a medical examiner or coroner, and if the archeologist is reasonably certain that the human remains are archeological in nature, he will discuss the matter with the medical examiner or coroner and be on site when they or their designees (e.g., police officers) are examining the remains to prevent disturbance to the remains resulting from unscientific excavation methods. Within 48 hours of the discovery, USACE shall initiate consultation with the SHPO, and consulting parties to develop a plan for resolving the adverse effects. The course of action shall comport with Title 13, Part II, Chapter 22, Cemeteries, which are the rules regarding abandoned cemeteries and the disinterment of graves, as well as any other requirements under Chapter 711 of the Texas Health and Safety Code.

   Human remains or grave goods not repatriated to a Tribe, must be curated at a state-certified repository (under the Antiquities Code of Texas), Any human remains and associated grave goods that are repatriated or sent to the curation repository, will incur expenses that shall be covered by the Mine.

VIII. INADVERTENT DISCOVERIES OF HISTORIC PROPERTIES

The Mine recognizes the possibility that inadvertent effects may occur to a recorded or previously unidentified historic property or unevaluated cultural resource. Upon such a discovery, the Mine will use the following procedures:

A. The SHPO, USACE, and Tribe(s) will be notified by the Mine immediately upon discovery that a protected or previously unidentified cultural resource has been, or could be, inadvertently effected by the Mine work.

B. If the Mine work has not been completed at the time the effect is discovered, all activities in the vicinity (minimum of 50 meters) of the discovery shall cease, and

reasonable efforts shall be taken to avoid or minimize harm to the cultural resource.

C. The Principal Investigator will evaluate the discovery, assess the effects, develop possible treatment recommendations and implement additional protection measures as necessary to prevent further harm to the cultural resource.

D. Within seven (7) days of this evaluation, the Mine will initiate consultation with the SHPO, USACE, and Tribe(s) to determine if the resource is a historic property and, if so, to develop a treatment plan to assess and mitigate any adverse effect under Stipulations II-V.

E. If work has already been concluded when an effect to a property has been discovered, the Mine, SHPO, and Tribe(s) shall develop a treatment plan under Stipulations II-V to mitigate adverse effects which the Mine must implement within a mutually agreed upon specified time period.

F. Within six months (or an alternate agreed upon schedule), of the discovery of the inadvertent effect, the Mine shall provide the SHPO, USACE, Tribe(s) and ACHP (if they are a participant) and other interested parties with a report describing the discovery, the circumstances surrounding the effects, and the results of treatment plan implementation.

IX. PROFESSIONAL QUALIFICATIONS

All historic preservation-related investigations specified in this Agreement shall be carried out by Principal Investigators meeting the pertinent professional qualifications of the Secretary of Interior's (SOI) *Professional Qualification Standards (*36 CFR Part 61) in a discipline appropriate for the task and the nature of the historic properties. Since this work will be conducted on land controlled by the Mine, principal investigators must also meet the professional qualification standards found in Title 13, Part II, Chapter 26, Rules of Practice and Procedure, and must be eligible to receive an Antiquities Permit.

X. DISPUTE RESOLUTION

Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the USACE shall consult with such party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE will:

A. CONSULT ACHP. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and

concurring parties, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.

B. FINAL DECISION. If the ACHP does not provide its advice regarding the dispute within the 30 calendar day time period, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.

C. Carry out all other actions subject to the terms of this PA that are not the subject of the dispute.

XI. DURATION, AMENDMENT, AND TERMINATION:

A. DURATION. This Agreement shall be null and void if its terms are not carried out within 10 years from the date of its execution. Prior to such time, the USACE may consult with the other signatories to reconsider the terms of the Agreement and amend in accordance with this stipulation.

B. AMMENDMENT. This Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

C. TERMINATION. If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII, above. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on any historic property work defined by the EIS, the USACE must either (a) execute a Memorandum of Agreement pursuant to 36 CFR 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. The USACE shall notify the signatories as to the course of action it will pursue.

XII. REPORTING AND MONITORING:

Upon execution of this PA, the USACE shall submit, via email, an annual update on the status of all activities covered by this PA to consulting parties other than the ACHP and other interested parties. Updates will be submitted until all activities covered by this PA have been completed.

XIII. EXECUTION:

Signature of this Agreement by the USACE, SHPO, {and the ACHP} and implementation of its terms evidence that the USACE has taken into account the effects of the Mine on historic properties and afforded the ACHP an opportunity to comment.

{Signatories}

{Concurring Parties}

Appendix D

Draft REIS Public Comments and USACE Responses

Appendix D

Draft REIS Public Comments and USACE Responses

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List of Tables

Introduction

During the 60-day public comment period for the Draft REIS, the USACE received written comments from 96 different commenters in writing and verbally at the public hearings. All comment documents, including comment cards, letters, emails, public hearing transcriptions, and form letters, were reviewed, and each distinct comment was identified and assigned a category and a response. In some cases, one comment was assigned to more than one category because it addressed multiple resources or issues.

Table D-1 presents the total number of comments with responses under each category. Because some comments were assigned to more than one category, the numbers below include some comments that were counted more than once.

Table D-1 Comments on the Draft EIS by Assigned Category

Comment Category	# of Comments
Air Quality	22
Cultural Resources	17
Cumulative Effects	17
Environmental Justice	7
Fish and Wildlife Resources (including Special Status Species)	16
General	30
Geology, Paleontology, Mineral Resources	8
Groundwater Resources	18
Hazardous Materials	2
Land Use and Recreation	7
Native American Consultation	7
NEPA Process	19
Noise and Visual Resources	5
Opinion	40
Out-of-scope	60
Procedural Concerns	14
Programmatic Agreement	1
Proposed Action	84
Public Health	17
Public Involvement	4
Purpose and Need	1
Reclamation	21
Social and Economic Values	8
Surface Water Resources	48
Transportation	4
Vegetation (including Special Status Species)	3
Waters of the U.S., including Wetlands	5
Total	**485**

Of the 105 comment documents received, there were 65 unique submittals (from 62 individuals) by all methods and 40 copies of the same form letter. **Table D-2** lists the names and organizations of the commenters who submitted unique comments. Where more than one submittal is noted, the person may have submitted multiple written comments or may have submitted written comments and oral comments at one or more of the public hearings.

The form letter comments that were identical were categorized and counted once and, therefore, received one response to each separate comment in the form letter. One person, Melissa Galindo, was selected to represent all commenters who submitted form letters (see **Table D-3**) in the comments with responses listed by category in the remainder of this appendix. Any unique comments added to a form letter by the commenter were identified and categorized, with a response included in the body of this appendix.

Table D-2 Commenters Submitting Unique Comment Documents

Last Name	First Name	Agency or Organization[1]	# of Submittals
Aguilar	Karla	Spanish Colonial Missions	1
Alvarado	Emma		1
Avila	Teresita		1
Bailie	Paul		1
Barron	Nelda		1
Baxter	George		2
Baxter	Martha		1
Beving	Rita		1
Blazer	Cherelle	Sierra Club, Beyond Coal	1
Brower	Jerry		3
Campbell	Tammy	We Can	1
Cantu	Ramsey	City of Eagle Pass	1
Chavez	Moises		1
Contreras	Terri	Maverick County Hospital District	1
Corpus	Jose		1
Cortez	David		1
De Hoyos	Evelyn	Pete Gallego Elementary	1
De La Cerda	Gabriel		1
De La Cerda	Leticia		1
Fairbanks	Brianna	Sierra Club Environmental Law Program	1
Farias	Juan	Maverick County Hospital District	1
Frederick	David	Frederick, Perales, Allmon & Rockwell PC	1
Galindo	David	Texas Commission on Environmental Quality	1
Galindo [2]	Melissa		1
Gamez	Ana		1
Guevara	Ana		1
Hardt	Diana		1
Heger	Tom	Texas Parks and Wildlife	1

Table D-2 Commenters Submitting Unique Comment Documents

Last Name	First Name	Agency or Organization[1]	# of Submittals
Hixson	Ronald	Maverick County Hospital District	1
Hook	Jonathan		2
Hoyos	Evelyn	Pete Gallego Elementary	1
Juarez	Alejandra		1
Juarez	Marylou		1
King	Joshua		1
Lentz	Brouning		1
Lopez	Jason		1
Mann	Christina	Sierra Club	1
Martinez	Hellen	Representing State Senator Carlos Uresti	1
Martinez	Luis		1
McKim	Mark		1
Mejia	Alberto		1
Mireles	Kim	Luminant	1
Mithlo	Harry		1
Morales	Jerry	Maverick County Commission	1
Newman	Bill		1
Nystrom	Thomas	USEPA Region 6	1
Ogidi	Kamene		1
Pantell	Susan		1
Price	Kimeka	USEPA, Region VI	1
Ragle	Daniel	Choctaw Nation of OK/Historic Preservation Dept	1
Reed	Cyrus	Sierra Club	1
Richter	Dwight		1
Ruiz	Luis		1
Ruiz	Ricardo		1
Salinas	Siboney		1
Smith	Darel		1
Smith	Tom	Public Citizens, Texas Office	1
Spencer	Stephen	USDI, Office of Environmental Policy and Compliance	1
Torres	Mary	The Coahuilteca Indian Tribe First Nation	3
Torres	Sofia		1
Verma	Vik	Organizing for Action East Texas	1
Ward	Tane		1
		Total Unique Submittals	**68**

[1] Where this information is blank, the commenter did not list an association with an agency or organization.

[2] This person was used to represent all commenters who submitted the one form letter.

Table D-3 Commenters Submitting a Form Letter

Last Name	First Name	Agency or Organization[1]
Aguilera	Ana	
Avila	Teresita	
Balderas	Lynn	
Bass	Julia	
Castillon	Norma	
De Hoyos	Evelyn	Pete Gallego Elementary
Elizondo	Natalie	
Flores	Nilda	
Galindo	Melissa	
Garza	Jose	
Grijalva	Melinda	
Guerrero	Raven	
Hauser	Angela	
Hernandez	Alexis	
Hernandez	Gissel	
Hernandez	Luis	
Hernandez	Marcela	
Hernandez	Mine	
Hook	Rose	
Hoyos	Evelyn	Pete Gallego Elementary
Juarez	Alejandra	
Macias	Angel	
Mata	Lindsay	
Miller	Kichael	
Parras	Juan	Texas Environmental Justice Advocacy Services
Perez	Nancy	
Perez	Rachel	
Pitasi	Angie	
Pitasi	Kevin	
Pitasi	Maya	
Puente	Jessica	
Rodriguez	Dennise	
Salas	Crystle	
Sanchez	Diana	
Santos	Nidia	

Table D-3 Commenters Submitting a Form Letter

Last Name	First Name	Agency or Organization[1]
Silva	Jessica	
Tovar	Michelle	
Trevino	Deyadira	Texas Environmental Justice Advocacy Services
Valadez	Cynthia	

[1] Where this information is blank, the commenter did not list an association with an agency or organization.

The remainder of this appendix presents the comments in each of the categories listed in **Table D-1,** followed by responses from the USACE. Where multiple comments received the same response, the comments are grouped together and sorted by the last name of the commenter, with the USACE response following the grouped comments. All USACE responses are in shaded boxes to make them easy to find. In some cases, the response is on a following page.

Where the same comment was assigned to more than one category, the comment and its response are displayed under each category. This allows a reader interested in a single category or topic to view a comment and its response under that topic without having to search to find the information. For example, a comment related to air quality may be listed under “Air Quality” and also appear under “Public Health.”

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Air Quality

Comment:

Burning coal releases large amounts of greenhouse gases. The DEIS should consider the climate impact of mining and burning of the vast amounts of lignite likely to be mined in the large area contemplated by the EIS (see Scoping Announcement, Table 1). In June, President Barack Obama launched a Climate Action Plan to cut carbon pollution, prepare communities for climate change impacts and lead similar international efforts. The Department of Defense has moved forward to implement the Action Plan through a variety of efforts, and the EIS that the Army Corps is developing should be consistent with that national policy. John Conger, the acting deputy undersecretary of defense for installations and environment has said about the recent Department of Defense Climate Change Report, "…But the piece that I think is the crux of the report is, rather than creating a stovepipe within the DOD organizational structure to deal with climate change, [the document says] we are going to integrate climate change considerations into the normal processes, the day-to-day jobs of everybody." Such language is going to be integrated into various guidance documents, he added, "and we've already started doing that."

In accordance with NEPA, the Corps must assess the significance of the direct, indirect, and cumulative GHG emissions associated with the expected expansion of lignite mining, especially considering that lignite coal is the most carbon intensive of all coals or any other traditional fossil fuel and that alternatives for power generation are readily available in Texas. With over 250 additional square miles of lignite mining contemplated, the Army Corps should fully discuss climate change impacts to a degree commensurate with the very significant impact of this mining. The DEIS, once again, fails to disclose or consider these impacts.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional analysis of potential impacts from a "typical mine" expansion area or satellite mine. Potential mine-related air quality impacts (including greenhouse gases and climate change) are discussed in Section 3.7. The analysis of power plants is outside the scope of the REIS. However, power plant emissions as authorized by other permitting authorities are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

As clarification, **Table 2-3** presents the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations within each study area, which in total is estimated at 158,600 acres.

As discussed in the introduction to Section 2.2, submittal of project-specific permit applications, development and evaluation of separate project-specific NEPA and 404(b)(1) analyses, and subsequent issuance of all required local, state, and federal permits would be required prior to development of any future surface coal or lignite mine expansion area or satellite mine in any of the study areas.

Comment:

I fear for the air that people breathe and that it will be contaminated from the ash produced by this mine, not to mention all of the wildlife that will be affected by any pollution produced by this industry.

Juarez, Alejandra

USACE Response:

No ash is produced by surface coal or lignite mining operations. Potential air quality-related public

Air Quality

health effects as result of a typical mine are discussed in Section 3.14.2.2. As discussed, with successful implementation of control measures, it is anticipated that criteria pollutant emissions from a typical mine would remain well below the NAAQS (levels determined to be protective of public health and welfare). Potential impacts to wildlife as the result of a typical mine, as well as the measures that would be implemented to minimize impacts, are discussed in Section 3.5.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Mine operations, including milling and transportation of coal and fill generate large amounts of dust that is a nuisance and health hazard to nearby residents and users of Texas public lands. The DEIS includes a short discussion of dust suppression among its listed “typical” environmental protection measures, but it is unclear whether these measures would actually be required or implemented, and the DEIS concludes that there are no public health impacts at all. DEIS 2-29; 2-54.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The typical environmental protection measures identified in Section 2.2.5 include typical permit requirements of the various federal and state agencies with jurisdiction over surface coal and lignite mining operations, as well as additional BMPs implemented by the mines as standard operating procedures. As such, they represent the measures that a typical mine would be required to implement and, therefore, are considered in the impacts analyses in accordance with NEPA. Additional environmental protection measures may be identified for potential future surface coal and lignite mine expansion areas and satellite mines at the time they are proposed, based on mine-specific and site-specific information and mine-specific permit requirements.

As discussed in Section 3.7.2, typical mine construction and operations would result in temporary localized fugitive dust emissions. However, with the use of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of “sensitive” populations such as asthmatics, children, and the elderly. As a result, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects associated with air quality as discussed in Section 3.14.2.

Comment:

Moving on to air quality, probably not a huge concern, but, again, the US Environmental Protection Agency is looking at lowering ozone standards to the extent that mining activities can impact ozone in metropolitan areas. Can the mining here impact San Antonio? That's something that I think should be assessed as well.

Reed, Cyrus; Sierra Club

USACE Response:

USEPA did strengthen the NAAQS for ground level ozone on October 1, 2015. USEPA is expected to work closely with state, local, and tribal air agencies to implement the ozone standards. The text has been updated to reflect this information. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-

Air Quality

specific information available at that time.

Comment:

Mine operations, including milling and transportation of coal and fill generate large amounts of dust that is a nuisance and health hazard to nearby residents and users of Texas public lands. The PEIS should study these impacts and their cumulative effects.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Potential air quality impacts are discussed in Section 3.7.2. As discussed, emissions from mine construction, operations, and reclamation would be transitory and limited in duration. However, with implementation of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of “sensitive” populations such as asthmatics, children, and the elderly. Potential public health effects are discussed further in Section 3.14.2.2. Potential cumulative air quality impacts are discussed in Section 3.7.4.

Comment:

My husband and I ended up living with lignite mining going on 24/7. The noise, vibration and particulates that result from lignite mining activities are horrible.

We woke up every morning with a layer of very fine granular ash, baby powder consistency, coating everything in the house. And this with all windows closed and locked. It was not lost on us that if these fine particulates were coating everything in our house that they were also getting into our lungs.

Cortez, David

Comment:

Strip mining also creates coal dust that blows onto the property of nearby landowners and near constant noise pollution from the operation of mining equipment and mills.

McKim, Mark

USACE Response:

As discussed in Section 3.7.2, typical mine construction and operations would result in temporary localized fugitive dust emissions. However, with implementation of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of “sensitive” populations such as asthmatics, children, and the elderly. As discussed in Section 3.11.2, noise levels would be temporary and transitory as pits are sequentially develop, backfilled, and reclaimed. Noise levels at any given location would depend on the distance from mining activities, terrain, and operating depth in the mine pits at any given time. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Air Quality

Comment:

Nowhere in the REIS is it stated that all of the coal mined in Study Area 6 (Maverick County) will be shipped to Mexico to be burned in the highly polluting Carbon I and II power plants in Nava (only 7 miles from Eagle Pass). Nowhere does it say that Texas will receive none of the energy benefit from this coal, only all the negative consequences from the air contamination off the mine itself, off the train that will transport the coal to Mexico every day through the middle of Eagle Pass and from the Nava power plants (whose unregulated pollution reaches Big Bend Park and the interior of the United States).

Baxter, George

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines. Furthermore, the USACE does not have statutory authority to regulate existing coal-fired power plants previously permitted by other agencies in the U.S., or in other countries.

Potential transportation-related impacts associated with a typical mine are discussed in Section 3.10.2, and potential air quality effects are discussed in section 3.7.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., proposed transport of coal or lignite) available at that time.

Comment:

What about air quality?

Lentz, Brouning

USACE Response:

Please see Section 3.7.2 for a discussion of potential air quality effects.

Comment:

So, essential conditions to make future mining safer, mines should only be allowed if the mining companies offset new greenhouse gas carbon emissions from the property, such as reforestation and methane capture.

Verma, Vik; Organizing for Action East Texas

USACE Response:

As discussed in section 3.7.2.1, the average GHG emissions per person in the U.S. is 20,750 pounds per year (USEPA 2015a); the emissions from a typical mine would be equivalent to the GHG emissions of approximately 35,000 individuals. The total global CO2e emissions is approximately 30,000 million metric tons per year. Over the period of 1 year, CO2e is essentially evenly distributed throughout the atmosphere around the earth. Since the projected total emissions of CO2e for a typical mine as shown in **Table 3.7-51** would be a tiny fraction of total global CO2e annual emissions, the potential contribution to anthropogenic global climate effects would be extremely small.

Air Quality

Comment:

Perhaps the most stunning of these are the levels of contamination in our streams and waterways with mercury coming from lignite that has ended up polluting our water, not only through air emission, but also through the leakage of mercury deposited back into the coal mines into the waterways that we all rely upon leading to significantly higher autism rates in places around northeast Texas, a number of coal mines in northwest Texas and down in south Texas where we have significant mercury contaminations around our coal mines but most are in our power plants.

Smith, Tom; Public Citizens, Texas Office

USACE Response:

The REIS presents a regional analysis of potential impacts from a "typical mine" expansion area or satellite mine. The analysis of power plants is outside the scope of the REIS. However, power plant emissions are authorized by other permitting authorities and are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

No potential for mercury emissions from a typical mine was identified in the air quality impact analysis (see Section 3.7.2.1).

As discussed in Section 2.2.4, overburden (material above the coal) and interburden (material between the coal seams) would be placed as backfill in a previously mined-out pit as mining progresses. As discussed in Sections 3.2.3.2 and 3.2.4.2, the potential for acid-forming constituents or other geochemical weathering products (e.g., metals) to affect water quality would be avoided by compliance with RCT regulations that require appropriate analyses of the material, selective handling of the overburden and interburden, and follow-up testing. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

The report claims that following closure other pollutants will return to background levels. The question of timing stands out precisely because it's explicitly left out. How long will the operations be for and how long will it take for the pollutants to return back to background levels. There's not any numbers or information about how long anything will take.

Ogidi, Kamene

USACE Response:

As discussed in Section 2.2.4, the life of a typical mine expansion would range from approximately 1 to 30 years. For a typical satellite mine, it would range from approximately 5 to 30 years. The life of potential future mines would be mine-specific and would be identified at the time they are proposed.

As discussed in Section 3.7.2.1, emissions from mine construction, operations, and reclamation would be transitory and limited in duration. The temporal impacts would be minimized with the use of control measures, such as application of water sprays and dust suppressants and implementation of concurrent reclamation to limit active disturbance areas (typically ranging from 250 to 650 acres) at any given time. Following closure and final reclamation, emissions from a mine would cease, and pollutants would return to background levels.

Air Quality

Comment:

Burning coal releases large amounts of greenhouse gases. The PEIS should consider the climate impact of mining and burning of the vast amounts of lignite likely to be mined in the large area contemplated by the EIS (*see* Scoping Announcement, Table 1). In June, President Barack Obama launched a Climate Action Plan to cut carbon pollution, prepare communities for climate change impacts and lead similar international efforts. The Department of Defense has moved forward to implement the Action Plan through a variety of efforts, and the PEIS that the Army Corps is developing should be consistent with that national policy. John Conger, the acting deputy undersecretary of defense for installations and environment has said about the recent Department of Defense Climate Change Report, "…But the piece that I think is the crux of the report is, rather than creating a stovepipe within the DOD organizational structure to deal with climate change, [the document says] we are going to integrate climate change considerations into the normal processes, the day-to-day jobs of everybody." Such language is going to be integrated into various guidance documents, he added, "and we've already started doing that."(4)

In accordance with NEPA, the Corps must assess the significance of the direct, indirect, and cumulative GHG emissions associated with the expected expansion of lignite mining, especially considering that lignite coal is the most carbon intensive of all coals or any other traditional fossil fuel and that alternatives for power generation are readily available in Texas.

(4)US Department of Defense, *DOD Wraps Climate Change Response into Master Plans, at* http://www.defense.gov/news/newsarticle.aspx?id=121237.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

The burning of Texas lignite coal has resulted in contamination of the waterways and fish with mercury. The Texas Department of -- the Texas Department of State Health Services has issued mercury fish consumption advisories across a number of lakes and streams in Texas.

In addition, continued lignite burning and mining also threatens our climate. The burning of lignite coal puts greenhouse gases in the atmosphere, and scientists are telling us that climate change could result in parts of Texas losing from 10 to 40 percent of its annual rainfall permanently.

Verma, Vik; Organizing for Action East Texas

USACE Response:

The REIS presents a regional analysis of potential impacts from a "typical mine" expansion area or satellite mine. Potential direct/indirect and cumulative air quality impacts (including greenhouse gases and climate change) as the result of a typical mine are discussed in Sections 3.7.2 and 3.7.3, respectively. The analysis of power plants is outside the scope of the REIS. However, power plant emissions as authorized by other permitting authorities are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Air Quality

Comment:

I also live a quarter of a mile away from the site, and we have specific objections to parts of this document, and they are as follows. Nowhere in the EIS does it state that all of the coal mine in the study area says will be shipped to Mexico to be burned in the highly pollutant Carbon 1 and 2 power plants in Nava, only 7 miles from Eagle Pass. Nowhere does that say Texas will receive none of the energy benefit from this coal, only of the negative consequences from the air contamination of the mine itself, of the train that will transport the coal to Mexico every day through the middle of Eagle Pass and from the Nava power plants, whose unregulated condition reaches Big Bend Park and the interior of the United States.

De La Cerda, Leticia

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines. Furthermore, the USACE does not have statutory authority to regulate existing coal-fired power plants previously permitted by other agencies in the U.S., or in other countries.

Potential transportation-related impacts associated with a typical mine are discussed in Section 3.10.2, and potential air quality effects are discussed in Section 3.7.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., proposed transport of coal or lignite) available at that time.

Comment:

With over 250 additional square miles of lignite mining contemplated, the Army Corps should fully discuss climate change impacts to a degree commensurate with the very significant impact of this mining. One initial step would be to estimate the heat content of the coal that will be mined and convert that to expected carbon dioxide emissions using an appropriate emissions factor.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional analysis of potential impacts from a "typical mine" expansion area or satellite mine. Potential mine-related air quality impacts (including greenhouse gases and climate change) are discussed in Section 3.7.2. The analysis of power plants is outside the scope of the REIS. However, power plant emissions are authorized by other permitting authorities and are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. The need for the requested type of evaluation will be determined by the permitting agency when a permit application is under consideration and mine-specific and site-specific information is available.

Air Quality

Comment:

And I know in your --you do look at air impacts; however, I would also suggest that you need to look at the potential for methane releases during the strip mining and considering the impacts of that as part of the EIS.

Reed, Cyrus; Sierra Club

USACE Response:

The potential for methane gas releases are discussed in the Uncontrolled Hazardous Materials Sites subsection under Section 3.13.2.1. It is acknowledged that methane may exist in unidentified abandoned wells that may occur in areas that may be approved for mining in the future. However, operators would be required to implement measures in accordance with RCT regulations for both identified wells and previously unidentified wells that may be encountered in proposed disturbance areas, thereby minimizing the potential for contamination and health and safety impacts.

Comment:

The "Monitoring Sites Utilized for Criteria Pollutants" (Table 3.7-2) for Study Area 6 are all located near San Antonio, some 150 miles away. This is clearly too far to be of any use. If there is no data available for Area 6, the REIS should state this.

Baxter, George

Comment:

Yes, I would like to take issue with that that there were three counties that are going to be tested in the region of Region 6, and that particular air quality report was taken over 150 miles away from that region.

Now, is there a fact that they could be possibly taken here closer to the actual area? That is up to you-all.

Ruiz, Luis

USACE Response:

Air quality assessments used to show compliance to the NAAQS often utilize air quality data from monitoring stations located beyond 150 miles from a study area to determine background pollutant concentrations. This approach is used whenever closer air quality data are not available if: 1) the data can be shown to be representative of the study area or 2) the air quality stations utilized are near urban areas. It is recognized that urban areas may show conservatively higher values than surrounding areas; therefore, agencies often rely on data from near urban areas as it likely adds a layer of conservatism to NAAQS and attainment assessments.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., air quality monitoring and modeling information) available at that time.

Air Quality

Comment:

We understand air quality is at risk with this type of mine. Hard rock mining exposes ore and rock that has lain undisturbed underground for geological eras, when crushed - the rocks will expose radioactive elements: asbestos like minerals and metallic dust into the air.

Galindo, Melissa

USACE Response:

As clarification, coal mines are soft rock mines.

Please see Section 3.7.2 for a discussion of potential air quality impacts. As discussed, fugitive dust emissions from mine construction, operations, and reclamation would be transitory and limited in duration. However, with implementation of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of “sensitive” populations such as asthmatics, children, and the elderly. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

The draft that I read and that the posters that I read claim insignificant increase in global levels of greenhouse effect due to lignite and mining, but what's really important to me are the local effects.

What about the local levels. I don't think the same claim can be made with local levels of pollution especially which Texas has well documented waters that are laced with mercury, well documented reoccurring instances of cancer and mercury poisoning in coal mining communities.

Ogidi, Kamene

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Air Quality

Comment:

And as we come to review -- this is not specific to Area 6. This is specific to all that goes on throughout the portion of the state of Texas in regards to lignite mining in the state, and I think that it's -- it's important, of course, to bring forth the concerns of mining throughout the state, but more so as representatives of this community. We bring forth concerns through the process of supporting a more stringent process of including and having a better informed community as to how exactly an expansion process goes.

Today we know that there will not be ultimately any decisions that will be rendered and any formal concerns that possibly will -- will or will not be reached to -- of course, to the quorum, but we still have so many issues that need to be addressed, issues that not only impact water, issues that also impact air pollution, issues that impact several concerns as far as the necessary permitting process for this.

And I believe that as we are here, I think that as Mayor, I expected a little bit more as far as what we were going to -- to define the process to especially to our area and to express our concerns on the expansion of Area 6. And I think from the discussions that we've had, it certainly isn't an area that we're going to be covering a lot of today, and I think that the City of Eagle Pass will be submitting its formal comment through the form of a -- a letter addressing all of those issues so that you all may also have that.

But there's many other issues that we'll be addressing. I can -- I can stand here and I can bring forth the concerns of -- of the project in question, but I believe that as far as this -- this discussion or this forum is, the only thing that we can say from the City's standpoint is that we would support a very -- more thorough process to review any coal mining in the state of Texas and more so here in Eagle Pass and Maverick County.

Cantu, Ramsey; City of Eagle Pass

USACE Response:

Comment noted. Potential groundwater, surface water, and air quality impacts associated with a typical surface coal and lignite mine are discussed in Sections 3.2.3.2, 3.2.4.2, and 3.7.2, respectively. Under each of these sections, information is presented for each study area, including Study Area 6. As discussed in Section 2.2.3, the study areas encompass locations within the coal/lignite belt in Texas that are in reasonable proximity to existing surface coal and lignite mines with potential for future expansion.

As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion area or satellite mine are proposed. As allowed under NEPA, tiered and supplemented NEPA documents for future mines within the REIS study areas would be prepared. These NEPA documents would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses. Based on the results of each future project-specific NEPA analysis, the USACE either would issue a permit, issue a permit with special conditions, or deny the permit.

Cultural Resources

Comment:

Also the Comanche Nation as well as the Lipan Apache Indians have come forward in opposition to the opening of the coal mine for very personal reasons that should be considered. These tribes have advised that:

"the area of the proposed mine will destroy historical and sacred archaeological sites of many Native American tribes which lived, hunted, and fished on Elm Creek and the Rio Grande River hundreds of years ago. Many Eagle Passans have collected historical Native American artifacts such as arrowheads and tools found on the banks of Elm Creek and Rio Grande."

Opponents also contend that the Dos Repúblicas open surface coal mine will destroy the habitat and hunting grounds of federally endangered species such as the Ocelot, Jaguaruni, and other protected cats."

Galindo, Melissa

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

Comment:

Also, no permit expansion is possible until a complete NHPA 106 assessment is completed for all of the proposed expansion area.

Hook, Jonathan

USACE Response:

As noted in several places in the REIS, including Sections 1.3, 2.2.5.6, and 3.6.1.1, compliance with NHPA Section 106 is required for all mine permit expansions and new satellite mines.

Comment:

I represent the Comanche Tribe, and the band of people that I come from are known as the Peneteka or honey eaters. We were also known as the wasp band. Our area of roaming was from Louisiana through the state of Texas into Mexico, and our people -- or my people are buried all across this country. Where? I cannot tell you. Because like I told one official a while ago that the Comanche people, when they lost a loved one either due to death or accident or warrior type, they always called upon another family to come in and bury that person so that we would not go to the grave site and cry and wail and holler. So that's why we have people buried all across the area, but I cannot tell you where. I cannot point them out.

Mithlo, Harry

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be completed as part of the future permitting process.

Cultural Resources

The Comanche Tribe is one of the federally recognized tribes that will be involved with consultation for future projects and permitting involving the USACE. The Comanche Tribe also will have the opportunity to sign the Programmatic Agreement to ensure that tribal consultation is performed and a plan for consultation, treatment, and coordination of human remains as well as other important cultural resources will be developed.

Comment:

Issue, the proposed Coal Mine will cause total destruction of Native American cultural items to include Human remains, funerary objects, sacred objects, Objects of Cultural patrimony our Ancestral Indian Lands at proposed Coal mine site are significant Historic and significant under Cultural Regulations. Issue, Dos Republicas violations under Cultural Regulations of State and National Antiques Laws Section 106. Issue, Piedras Negras City Coahuila Mexico already has a Coal Mine in operation. Issue, under section 106 uncompleted and/or not completed Natural and Cultural Resources Reports and Inventories before proposed Coal Mine and presently uncompleted and/or not completed Natural and Cultural Resources at proposed Coal Mine. Issue, the Pacuache Tribe of Texas position at proposed Coal Mine is Indian Sacred Burial Ground the entire Site is Sacred Ground of our Tribe Indian Religious Practices and Activities. Issue, The Pacuache Tribe position over more than 100 sites on a Formal Complaint Clan submitted to The Advisory Council of the Historic Preservation or The Office of Native Americans Affairs, the Department of Interior, Bureau of Indian Affairs included Southwest Regional Office, Our Tribe position on our Ancestral Sacred Site as a whole connectivity of our past Ancestral Human way of life conducted for thousands of years is eligible as a National Historic Register Site Patrimony of Humanity. Issue, violations not notifying, reporting and monitoring Sacred Site of proposed Coal Mine under NAGPRA Roberto Valencia of Yaqui Traditional Tribe and the formal Southwest Region NAGPRA Chairman. Issue, 25,000 acres that are going to be destroyed with dynamite blasting and use those (archeological sites) for highly toxic polluted water storm discharge drainages at a sacred site with many Indian burials yet to be unearthed. Issue, in addition the area of Eagle Pass leading into Mexico has very culturally rich deposits especially around the natural crossings of the Rio Grande River to include Paso Del Pacuache and Paso de Francia, which is known as the Gateway to Texas.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS.

The Draft Programmatic Agreement, Appendix C of the Draft REIS, includes proposals to ensure compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (P.L. 101-601), the American Indian Religious Freedom Act (AIRFA) of 1978 (P.L. 95–341), and the National Historic Preservation Act as amended (P.L. 89-665), among other requirements for cultural resources and tribal consultation. Compliance with these laws and permit requirements will ensure avoidance or suitable mitigation of cultural resources eligible for the National Register of Historic Places (NRHP).

Cultural Resources

Comment:

The USACE's Draft EIS for Coal Mining Expansion did not included our Tribe's Religious Practices and Religious Activities in violations by not including and/or omitting on USACE's EIS Drat the following, the Native American Religious Freedom Act, the Executive Order 13007 in the Protection of Indian Religious Sacred Burial Sites, our Tribe claims the Tribal Sovereign Immunity, the Exparte Young Doctrine.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

Comment:

The Pacuache Tribe of Texas appreciates you will inform us of REIS starting Study(s) and Report(s) conducting by the U.S. Army Corps of Engineers Environmental and Cultural Resources. Impacts already happen destruction of several archeological sites by this Dos Republicas Company and already has inflicted to our Pacuache Clan of Texas has been injured and will continue to be injured due to the wholesale destruction of our Coahuilteco Indian Sacred Sites located in and around the Mine Site.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS.

Comment:

Based on the USACE permitting guidelines and policy, the Dos Republicas permit was issued prematurely and should be immediately suspended and any consideration of an expanded permit area tabled until two criteria are met: 1) all American Indian tribal entities with an interest in the area, including the two state-acknowledged Tribes with long ties to the region, are actively engaged and have completed the consultation process and addressed any significant objections, and 2) the 106 Historic Preservation process is completed.

Hook, Jonathan

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

Cultural Resources

Comment:

The National Park Service (NPS) has identified that the El Camino Real de los Tejas National Historic Trail (ELTE) is within the Area of Potential Effect (APE) for the proposed undertaking and the proposal has the potential to adversely affect cultural resources associated with ELTE. The DREIS fails to analyze the potential effects of the proposed undertaking on the ELTE.

The ELTE is comprised of multiple routes, and all these routes run roughly northeast-southwest throughout the cumulative effects area. The ELTE is within the direct impact area for Study Areas 3, 4, 5, and 6. The ELTE and the cultural resources associated with it are afforded consideration under the National Historic Preservation Act (NHPA) and given additional protection under the National Trails System Act (NTSA). We recommend the DREIS be revised to afford consideration to potential project effects on the ELTE.

In addition to the failure to analyze the potential effects of the project on the ELTE, the DREIS also fails to acknowledge the National Trails System Act under Section 3.6.1.1 (regulatory framework discussion).

The DREIS also fails to incorporate the resource into Section 3.6.1.2 (historic context). As summarized in the comprehensive management plan for the trail:

When Spanish explorers began to travel into Texas and Western Louisiana in the 1680s, they followed already existing networks of American Indian Trails. Representatives of the Spanish Crown used these paths to reach areas where they subsequently established missions and presidios. Eventually, armies and immigrants followed these routes, which led to Euro-American settlements across the two states. Many of these roads continued to be used in later years, forming the boundaries of early Spanish and Mexican land grants. Some of these land grants became part of modern highway systems.

To exclude a discussion of the ELTE in Section 3.6.1.2 is to present a fragmentary picture of regional Texas history and may inappropriately portray associated archaeological and cultural resources as ineligible for inclusion on the National Register of Historic Places.

Spencer, Stephen; USDI-Office of Env Policy and Compliance

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be performed as part of the future permitting process. At that time, analysis of potential impacts to cultural resources such as the ELTE will be evaluated. Note that 30 CFR §761.11 is cited in Section 3.8.1.1 which states that the National System of Trails is not available for mining.

This REIS is not intended to be a detailed description of all cultural resources that may be affected, only a broad description of the resources and tribes that may need to be consulted depending on future site-specific mine proposals.

Cultural Resources

Comment:

And there are burial grounds here, and, you know, there's a very offhanded remark made about there being, you know, maybe some arc -- you know, different archeological periods of time which are affected.

Ward, Tane

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and surveys will be performed as part of the future permitting process.

Comment:

Mining destroys historical and cultural artifacts in an area of the state once densely populated by Native American communities. Areas to be mined must be comprehensively surveyed for artifacts and burial areas, and those areas must not be mined. A recent example from South Texas of the disturbance and destruction of Native American history is happening in Eagle Pass, Texas, where members of Coahuiltecan Indian Tribe, Pasquache Tilijayo Band, have been trying to stop a surface mine because of the thousands of Native American artifacts and burial grounds within the Eagle Pass Mine permit area which will be violated and disturbed. East Texas is the homelands of the Caddo Nation and other native peoples, and their burial sites and mounds are found across areas under study by the Army Corps for this DEIS. The DEIS fails to include any specific discussion of these resources, once again relying on other state and federal agencies to safeguard these cultural artifacts. DEIS at 2-29. The Corps also ignores the potential impacts to these communities when it concludes that “[n]o disproportionate effects to low income or minority populations are anticipated.” DEIS at 2-54.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

Mining destroys historical and cultural artifacts in an area of the state once densely populated by Native American communities. Areas to be mined must be comprehensively surveyed for artifacts and burial areas, and those areas must not be mined. If this analysis is more efficiently conducted on a site-specific basis, the PEIS should state that it is not making any findings regarding historic and culture artifacts. A recent example from South Texas of the disturbance and destruction of Native American history is happening in Eagle Pass, Texas, where members of Coahuiltecan Indian Tribe, Pasquache Tilijayo Band, have been trying to stop a surface mine because of the thousands of Native American artifacts and burial grounds within the Eagle Pass Mine permit area which will be violated and disturbed (6). East Texas is the homelands of the Caddo Nation and other native peoples, and their burial sites and mounds are found across areas under study by the Army Corps for this PEIS (7).

(6) http://www.epbusinessjournal.com/2013/01/controversial-open-surface-coal-mine-in-eaglepass-approved-by-split-decision-of-railroad-commission-of-texas/
(7) See http://www.nps.gov/nagpra/fed_notices/nagpradir/nic0814.html and also http://wesferguson.net/2009/area-mystery-mounds-delight-archaeologists/

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical

Cultural Resources

mine." The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be completed as part of the future permitting process. As noted in several places in the REIS, including Sections 1.3, 2.2.5.6, and 3.6.1.1, compliance with NHPA Section 106 is required for all mine permit expansions and new satellite mines.

Comment:

The Choctaw Nation of Oklahoma thanks you for the correspondence regarding the above referenced project. Rusk, Smith, and Shelby Counties, Texas lie within the Choctaw Nation of Oklahoma's area of historic interest. The Choctaw Nation of Oklahoma is only interested in Study Area #2. We are unaware of any cultural or sacred sites located within the area, however, there are several known archaeological sites throughout Study Area #2 that may contain tribal artifacts and/or remains. With that being said, we would like a copy of the field investigations whenever ground disturbing activities occur in Smith, Rusk, and Shelby Counties (Study Area #2).

Ragle, Daniel; Choctaw Nation of OK/Historic Preservation Dept

USACE Response:

Comment noted. As part of future tribal consultation for site-specific permit applications, the USACE will provide field investigations and survey reports to the interested tribes and provide opportunity for comments.

Comment:

The issue, the proposed Coal Mine will discharge under the earth underground highly toxics nitros (nitratos) these toxics are highly corrosive and will destroy every archeological site including the presence of Native American cultural items to include Human remains, funerary objects, Scared objects, Objects of cultural patrimony.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Cultural Resources

Comment:

We oppose this mine. We are Pacuache. We work more than 200 clans in this region, and we are builders of missions. San Juan Bautista is not that far away, 20 miles from here. We are the gateway Indian and we are here for our rights. You have failed to our tribe, U.S. Corps of Engineers, of what the truth is in another [inaudible]. You already destroyed many of our archeological sites with the Amistad Reservoir. Here, you will blast with dynamite our sacred sites of thousands of hundreds of years where Indians were (inaudible) for making tools, for hunting bison and, again, is sacred, and it's many burial sites, as you would, under this strata. You will destroy; you will blast it in pieces.

But the main issue is the water. That is the main issue because my family lives here. My uncle and my cousins, they live here, so we will be affected. So, again, I say you have failed to our tribe. You have failed to all the rights of the tribes, the process -- your responsibilities and the process. You have not yet consulted with our tribe and others and forwarded their concerns. The USACE EIS draft for the coal mining expansion is immediately void, invalid, not effective, where you did not first consult with our tribe and others before the design of this draft.

Our tribe opposes and rejects in its totality entirely the USACE EIS draft for coal mining expansion and to consultation urgently, immediately starts with our tribe and others where you have disrespected us. The USACE draft EIS for coal mining expansion did not include our tribe religious practices, religious activities, in violation by not including, omitting, under this draft, the Native American Freedom Act, the Executive Order 13007, and the protection of our indigenous sacred burial sites and the site that -- the tribe's own immunity on claiming and the Ex Parte Young treaty.

All USACEs have spoken between each other from federal to state. We have heard you for the last 5 years, and you have not opened consultation with us twice and that's including the Comanches. I'm not speaking on behalf of the Comanches. The National Tribe Preservation of Tribal Officers indicate that you have disrespected the tribe and you have not consulted yet with them.

And as far as I know, the Kickapoos, we know that that's an EPA officer, Antonio Garza. I don't know if he's present here. I don't know if they have a typo. It looks they don't have a typo, but you have to consult first with us. And, again, we hope that you honor our tribal immunity sovereignty because Eleventh Amendment does not apply to you and the tribal immunity sovereignty.

Is any questions or anything that you want to address because the site is going to be blast in pieces. The line will never be the same, ever.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS

Cultural Resources

Comment:

The development of this land, which has never been subject to anthropological study, will destroy historic sites that may grant us new knowledge of the ancient peoples that roamed this area even before colonization up to hundreds of years ago.

A quick look not even 45 minutes to the northeast near Del Rio, TX can give us a glimpse of the sites that will be permanently destroyed.

Barron, Nelda

USACE Response:

As noted in Section 2.2.5.6 of the Draft REIS, cultural resources surveys are required by the appropriate regulatory agencies and reports reviewed by THC as part of the permitting process for mines. As stated in Section 2.2.5.6 of the Draft REIS, “No cultural resource sites would be disturbed unless and until written authorization to proceed has been obtained from the THC, USACE, and RCT.” Newly discovered sites that are disturbed must be evaluated before a mining company can proceed with earth-moving. This procedure was implemented before issuing a permit for the Dos Republicas Mine and other existing mines in the study areas.

Comment:

On page 3.6-22, the discussion in the paragraph entitled "Study Area 6" is limited to two Indian tribes, the Mescalero Apache and Lipan Apache. The ignores the fact that the Comanches routinely raided through this area in the early 19th century and one of their main war trails passed just to the north of Eagle Pass, the area of both the present Dos Republicas mine and future mining

Baxter, George

USACE Response:

In **Table 3.6-1** on page 3.6-12 of the Draft REIS, the Comanche Nation is listed as one of the major cultures in Study Area 6 in several counties including Maverick County, the location of the referenced Dos Republicas Mine. The Comanche Nation is also listed on page 3.6-22 in the referenced paragraph as having a historical interest in Study Area 6. This REIS is not intended to be a detailed description of all cultural resources that may be affected, only a broad description of the resources and tribes that may need to be consulted depending on future site-specific mine proposals. In compliance with USACE regulations, federally recognized tribes with interest in an area for which a USACE permit is under consideration will be consulted during evaluation of future mine proposals.

Comment:

As such, we would also like to make ourselves aware -- or make you aware of the work that we've been doing and be able to give the opportunity to the panel in your process where you're at to be able to address -- to have the opportunity to better research the impact on -- on the cultural and archeological implications that are in the particular areas that you've concentrated in.

Again, I've just scanned your executive summary, but I think that it would behoove you to find those distinguished organizations that would be able to help you to have the most comprehensive answers in that regard in the most professional fashion because those are treasures that once they're blown to bits will never have those -- that history for us ever again. And it's extremely important to these tribal communities that I'm here speaking on behalf of.

Aguilar, Karla; Spanish Colonial Missions

USACE Response:

Cultural Resources

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS.

This REIS is not intended to be a detailed description of all cultural resources that may be affected, only a broad description of the resources and tribes that may need to be consulted depending on future site-specific mine proposals. In compliance with USACE regulations, federally recognized tribes with interest in an area for which a USACE permit is under consideration will be consulted during evaluation of future mine proposals.

Cumulative Effects

Comment:

Dos Repúblicas has partnered with Carbon I and Carbon II in Nava, Mexico to process this ore. The factory, located only 30 miles away, is free of US rules and regulations that protect our citizens. These twin factories are known polluters that emit an estimated 250,000 tons of sulphur dioxide per year into our shared airstream. They have been cited as a source of pollution as far away as Big Bend National Park. Due of the close proximity Eagle Pass expects smog to cross back over the river into our borders and directly affect the health of its citizens.

Galindo, Melissa

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

Comment:

Mine operations disproportionately affect minority and low-income populations who lack the resources to resist mining of their property and obtain concessions from the mine operator to reduce the area mined, associated air and noise pollution, or relocation benefits. The Corps should consider the cumulative environmental justice impacts of the expansion of lignite mining throughout the region.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

Mine operations disproportionately affect minority and low-income populations who lack the resources to resist mining of their property and obtain concessions from the mine operator to reduce the area mined, associated air and noise pollution, or relocation benefits. The Corps must consider the cumulative environmental justice impacts of the expansion of lignite mining throughout the region. Yet, the DEIS concludes that there are "[n]o disproportionate effects to low income or minority populations are anticipated." DEIS at 2-54. This statement is unsupported and belied by public comments provided to the Corps in their public hearings on this DEIS, in which members of minority and low-income populations testified on the impacts that existing and proposed mining has had and may have on their communities.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Section 3.15.3 of the Draft REIS addresses the cumulative impacts on environmental justice communities (minority and low-income) to the degree possible. As stated in this section on page 3.15-9 of the Draft REIS, "until site-specific locations for future mine expansion areas or satellite mines are proposed and are determined to be concentrated in areas in which minority or low-income populations reside," adverse impacts to these populations cannot be concluded. The NEPA analysis that will be performed to analyze site-specific mine proposals will be capable of this type of quantitative analysis.

Cumulative Effects

Comment:

The Corps must consider the burning of coal at the plants adjacent to the mines as a connected activity, and evaluate its environmental impacts. This coal combustion causes significant local air pollution of particulates, sulfur dioxide, air toxics. Burning coal also contributes to severe ozone problems in nearby parts of the state. The PEIS should study these air quality impacts in addition to the impacts of particulates directly released by the mining process.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

The Corps must consider the burning of coal at the plants adjacent to the mines as a connected activity, and evaluate its environmental impacts. This coal combustion causes significant local air pollution of particulates, sulfur dioxide, air toxics. Burning coal also contributes to severe ozone problems in nearby parts of the state. The Corps must study these air quality impacts in addition to the impacts of particulates directly released by the mining process. The DEIS did not disclose or consider these impacts within the scope of its analysis.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations and plans for potential future surface coal or lignite mines are not known at this time. Because the site-specific information related to the coal or lignite composition and quality, quantities consumed by power plants, and detailed information on the operations, equipment, and mitigation measures at each power plant are not currently known, it is impossible to model or predict the local and regional impacts to air quality at this time. This type of evaluation may be required by the permitting agency when a site-specific permit application is under consideration. Furthermore, the USACE does not have the statutory authroity to regulate air quality effects from existing coal-fired power plants previously permitted by other agencies in the U.S.

Comment:

VI. The Corps’ DEIS Is Premature and Non-Specific

The Corps’ DEIS is not accompanied by drafts of the RGP or the LOP it intends to issue. That makes it impossible for the public and agencies to evaluate what the impacts of the RGP or LOP are likely to be and to prepare meaningful comments. It also violates the CEQ regulations, which provide that the draft EIS “shall normally accompany the proposed rule.” 40 C.F.R. § 1502.5(d). As a result of this omission, the DEIS is largely just a compendium of the procedures that the Corps intends to follow. There is virtually no analysis of real-world impacts of the proposal on the six Texas study areas to which the RGP and LOP would apply. In addition, except for quantifying the number of acres of surface disturbance from past and projected future mining, there is no analysis of the actual effects of surface coal mining activities on waters in Texas. Indeed, the DEIS frankly acknowledges that “[r]esidual adverse effects to waters of the U.S., including wetlands, have not been identified.” DEIS at 3.2-97.

As a result, the DEIS is a largely academic exercise with no value to decision-makers or the public. It is so non-specific that it is impossible for the public to comment meaningfully at this stage of the process. It also fails to comply with the Corps’ duty to identify and evaluate the impacts of its proposal. 40 C.F.R. § 1502.16.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Cumulative Effects

The USACE Fort Worth District does not have statutory authority to undertake the rulemaking process. The purpose of the REIS is not to accompany a new proposed rule, but to evaluate changes to the regulatory framework that are within the USACE Fort Worth District's authority. The specifics of the new RGP and LOP are identified in the acreage and linear footage limits and resource limitations displayed in **Table 2-2** of Section 2.2.1. The limitations listed are the thresholds that would apply to these permits. All other specifics of an RGP or LOP would be based on site-specific information to be evaluated when a proposal for a mine expansion or new satellite mine is received. The value of the REIS is that it meets the purpose stated in Section 1.2 to consider a way to streamline the USACE permitting process and facilitate future tiering or supplementation in the evaluation of future project-specific Section 404/10 permit applications for surface coal and lignite mines. The site-specific impacts will be analyzed as part of future NEPA processes when permit applications are submitted. This future NEPA process will include opportunities for public comments. The REIS presents the types of potential impacts that are likely to occur due to future mining and provides some specifics using the information available while lacking site-specific proposals.

The REIS complies with the CEQ guidance "Effective Use of Programmatic NEPA Reviews" dated December 18, 2014, which states the following:
"NEPA reviews may be on a site- or project-specific level or on broader—programmatic—level. Programmatic analyses have value by setting out the broad view of environmental impacts and benefits for a proposed decision. That programmatic NEPA review can then be relied upon when agencies make decisions based on the Programmatic Environmental Assessment (PEA) or Programmatic Environmental Impact Statement (PEIS) such as a rulemaking or establishing a policy, program, or plan, as well as when decisions are based on a subsequent—tiered—NEPA review. Programmatic NEPA reviews should result in clearer and more transparent decision-making, as well as provide a better defined and more expeditious path toward decisions on proposed actions."

This same CEQ guidance also states:
"The scope and range of impacts may also be more qualitative in nature than those found in project- or site-specific NEPA reviews. It may be more difficult for an agency to analyze the environmental impacts in depth when there is no clear indication—no site- or project-specific proposal pending—for the level of activity that may follow a programmatic decision."

Cumulative Effects

Comment:

Burning coal releases large amounts of greenhouse gases. The PEIS should consider the climate impact of mining and burning of the vast amounts of lignite likely to be mined in the large area contemplated by the EIS (*see* Scoping Announcement, Table 1). In June, President Barack Obama launched a Climate Action Plan to cut carbon pollution, prepare communities for climate change impacts and lead similar international efforts. The Department of Defense has moved forward to implement the Action Plan through a variety of efforts, and the PEIS that the Army Corps is developing should be consistent with that national policy. John Conger, the acting deputy undersecretary of defense for installations and environment has said about the recent Department of Defense Climate Change Report, "…But the piece that I think is the crux of the report is, rather than creating a stovepipe within the DOD organizational structure to deal with climate change, [the document says] we are going to integrate climate change considerations into the normal processes, the day-to-day jobs of everybody." Such language is going to be integrated into various guidance documents, he added, "and we've already started doing that."(4)

In accordance with NEPA, the Corps must assess the significance of the direct, indirect, and cumulative GHG emissions associated with the expected expansion of lignite mining, especially considering that lignite coal is the most carbon intensive of all coals or any other traditional fossil fuel and that alternatives for power generation are readily available in Texas.

(4) US Department of Defense, *DOD Wraps Climate Change Response into Master Plans, at* http://www.defense.gov/news/newsarticle.aspx?id=121237.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

Burning coal releases large amounts of greenhouse gases. The DEIS should consider the climate impact of mining and burning of the vast amounts of lignite likely to be mined in the large area contemplated by the EIS (see Scoping Announcement, Table 1). In June, President Barack Obama launched a Climate Action Plan to cut carbon pollution, prepare communities for climate change impacts and lead similar international efforts. The Department of Defense has moved forward to implement the Action Plan through a variety of efforts, and the EIS that the Army Corps is developing should be consistent with that national policy. John Conger, the acting deputy undersecretary of defense for installations and environment has said about the recent Department of Defense Climate Change Report, "…But the piece that I think is the crux of the report is, rather than creating a stovepipe within the DOD organizational structure to deal with climate change, [the document says] we are going to integrate climate change considerations into the normal processes, the day-to-day jobs of everybody." Such language is going to be integrated into various guidance documents, he added, "and we've already started doing that."

In accordance with NEPA, the Corps must assess the significance of the direct, indirect, and cumulative GHG emissions associated with the expected expansion of lignite mining, especially considering that lignite coal is the most carbon intensive of all coals or any other traditional fossil fuel and that alternatives for power generation are readily available in Texas. With over 250 additional square miles of lignite mining contemplated, the Army Corps should fully discuss climate change impacts to a degree commensurate with the very significant impact of this mining. The DEIS, once again, fails to disclose or consider these impacts.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Section 3.7 of the Draft REIS characterizes the current conditions related to greenhouse gas (GHG)

Cumulative Effects

emissions and the types of impacts that may be expected from developing new satellite mines or mine expansions. To the degree possible, Section 3.7 provides quantitative data related to current data from local and regional monitoring stations as well as the potential contribution to climate change associated with a typical mine expansion area or satellite mine through release of GHGs during mine construction, operation, and reclamation activities. The Climate Action Plan advocates the use of sound science to assess and manage climate impacts. Because the site-specific mine proposals are unknown at this time, the REIS can only quantify potential direct, indirect, and cumulative GHG impacts from a typical mine. NEPA analyses of GHG emissions for site-specific mine proposals or modeling required for air quality permits will be performed for future permitting.

Comment:

The geographic boundaries of the proposed PEIS do not encompass the full regional impact of lignite mining. There are active lignite surface mines in Louisiana, within a short distance of the Texas border, such as the Dolet Hills Lignite Mine, and the Oxbow Lignite Surface Mine. As shown in Figure 1 in the Scoping Announcement, lignite and coal deposits exist in western Louisiana, yet Study Area 2 artificially terminates at the Texas-Louisiana border. As a result, this PEIS will not fully assess the cumulative impacts of this mining for watersheds, ecosystems, and communities—both wildlife and human—that bridge this border.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As displayed in **Figure 2-4**, the cumulative effects study area (CESA) extends into Louisiana, and existing surface disturbance is shown in the CESA, to enable consideration of cumulative impacts in the larger region where similar mining activities occur. Analysis of cumulative impacts for many of the resources in the REIS include the full CESA.

Comment:

The PEIS should study the cumulative impacts on recreational areas of the planned expansion of lignite mining.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The cumulative impacts on recreation are addressed in Section 3.8.3 of the Draft REIS and included in the Final REIS

Comment:

The Corps must evaluate the cumulative impact of filling small streams that are an essential part of the network of wildlife habitat and the state's water supplies and recreational resources. The Corps must look at how the destruction of so many wetlands and streams within a particular watershed affects the quality and quantity of water in the state's rivers, the overall health of aquatic populations, and the impact on downstream water users.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Cumulative Effects

Comment:

When federal actions that "will have a cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together." *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976). The Corps anticipates that there will be many surface coal mining applications pending in future years and therefore is properly intending to consider the cumulative and synergistic impacts of a vast expansion of lignite mining. "NEPA‟s purpose requires that the NEPA process be integrated with agency planning 'at the earliest possible time,' and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken." *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 815 (9th Cir. 2005). A programmatic EIS must consider the cumulative impacts of both "*past* and reasonably foreseeable future" similar projects in a geographical region. *Id.* At 815-16 (emphasis added). Accordingly, the Corps must evaluate impacts of future mines in the context of the resource degradation that has already taken place.

As described in more detail in the enclosed comments on the Martin Lake Liberty Mine expansion, originally submitted by the Sierra Club on January 27, 2012, lignite mining has already degraded thousands of acres of wetlands in Northeast Texas alone.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

To the degree possible with the available information, the "cumulative and synergistic impacts" have been considered in the cumulative impacts sections of each resource analyzed in Chapter 3 of the REIS. A summary of the past, present, and reasonably foreseeable future actions within each of the CESAs is described in Section 2.4 and this information is used as the basis for the cumulative impacts analyses. It should be noted that the USACE requires mitigation of impacts to wetlands and other waters of the U.S., as described in Section 2.2.4.3 under the heading of "Restoration of Waters of the U.S., Including Wetlands" on page 2-22 of the Draft REIS

Comment:

The Corps must evaluate the cumulative impact of filling small streams that are an essential part of the network of wildlife habitat and the state's water supplies and recreational resources. The Corps must look at how the destruction of so many wetlands and streams within a particular watershed affects the quality and quantity of water in the state's rivers, the overall health of aquatic populations, and the impact on downstream water users. The DEIS fails to analyze these cumulative impacts.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The site-specific direct, indirect, and cumulative impacts of changes to waters of the U.S. will be analyzed when there are specific mine proposals in the future. Compliance with the 2008 Mitigation Rule and the implementation of appropriate compensatory mitigation (see Section 2.1.2) is assumed in the impact analyses because it would minimize the adverse effects to water quality and quantity resulting from changes allowed with a 404 permit.

Cumulative Effects

Comment:

Coal plants are one of, if not the top contributor to Global Warming in the world. In the United States alone 1.7 billion tons of CO2 is emitted. It's one of the leading causes of smog, acid rain, and toxic air pollution. Why contribute to such a harmful form of non-renewable energy when we know there are safer and better options out there?

Galindo, Melissa

USACE Response:

The REIS presents a regional analysis of potential impacts from a “typical mine” expansion area or satellite mine. Potential mine-related air quality impacts are discussed in Section 3.7.2. The analysis of power plants is outside the scope of the REIS. However, power plant emissions are authorized by other permitting authorities and are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Comment:

The PEIS should study the cumulative impact on communities and property values associated with the impacts of lignite mining, including noise, lights, dust, air pollution, truck traffic, road closures, vibrations, and blasting.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

The Corps must study the cumulative impact on communities and property values associated with the impacts of lignite mining, including noise, lights, dust, air pollution, truck traffic, road closures, vibrations, and blasting. The DEIS fails entirely to discuss or disclose these impacts, concluding simply that “[m]ining-related noise levels would be temporary and transitory.” DEIS at 2-53.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Cumulative impacts to communities is addressed to the degree possible in Section 3.9.3 but also in the analysis of impacts under the Proposed Action (Section 3.9.2.1) because the CESAs for social and economic values use the same boundaries as the study areas for direct and indirect effects. However, details such as the impacts on specific communities can only be predicted when site-specific mine proposals are known.

Comment:

And, you know, as the doctor said, you know, there are health costs, which are incredibly important here. Asthma, cancer. Where -- where I work up in northeast Texas -- and you'll hear people saying this week -- people have lost their ability to smell. People have lost their ability to taste. Some people cannot feel properly because of the chemicals that are being burned in the air. What price are we putting on that? What -- what is -- what is that worth to the Corps to make up -- and I understand that this might be worth something to mining companies, but it's not worth something to us.

Ward, Tane

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at

Cumulative Effects

this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and evaluation of health effects will be completed as part of the future permitting process.

Environmental Justice

Comment:

A typical mine expansion area or satellite mine may displace households in any of the six study areas or counties. According to the DEIS, the displacement is not anticipated to be concentrated in one particular study area or county, and unlikely to fall disproportionately on the minority community. The DEIS also states that all residents would experience similar circumstances of noise and visual effects, depending on the locations of their properties, irrespective of their income or race. Under the No Action Alternative, the impacts on minority and low-income populations would be similar to those described for the Proposed Action.

While minority populations in some of the study areas are proportionately larger than in the state as a whole, any environmental effects that may occur from the development of mine expansion areas or satellite mines would affect the population in each study area equally, without regard to race, ethnicity, age, or income level. Without knowing the precise location of mine expansion areas or satellite mines, it is not possible to determine whether displaced residents or those living near would be members of disproportionately low-income or minority populations.

Recommendation:

FEIS should incorporate an analysis using EJSCREEN (1) or similar environmental justice databased information and resources when evaluating displacements near the mine expansion areas or satellite mines.

(1) ***EJSCREEN allows users to access high-resolution environmental and demographic information for locations in the United States, and compare their selected locations to the rest of the state, EPA region, or the nation. The tool helps users identify areas with minority and/or low-income populations, potential environmental quality issues and the combination*** *of* ***environmental and demographic indicators that is greater than usual. For more information go to:*** *http://www2.epa.gov/ejscreen.*

Price, Kimeka; USEPA, Region VI

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Mine operations disproportionately affect minority and low-income populations who lack the resources to resist mining of their property and obtain concessions from the mine operator to reduce the area mined, associated air and noise pollution, or relocation benefits. The Corps must consider the cumulative environmental justice impacts of the expansion of lignite mining throughout the region. Yet, the DEIS concludes that there are “[n]o disproportionate effects to low income or minority populations are anticipated.” DEIS at 2-54. This statement is unsupported and belied by public comments provided to the Corps in their public hearings on this DEIS, in which members of minority and low-income populations testified on the impacts that existing and proposed mining has had and may have on their communities.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Environmental Justice

Comment:

Mine operations disproportionately affect minority and low-income populations who lack the resources to resist mining of their property and obtain concessions from the mine operator to reduce the area mined, associated air and noise pollution, or relocation benefits. The Corps should consider the cumulative environmental justice impacts of the expansion of lignite mining throughout the region.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Section 3.15.3 of the Draft REIS addresses the cumulative impacts on environmental justice communities (minority and low-income) to the degree possible. As stated in this section on page 3.15-9 of the Draft REIS, “until site-specific locations for future mine expansion areas or satellite mines are proposed and are determined to be concentrated in areas in which minority or low-income populations reside,” adverse impacts to these populations cannot be concluded. The NEPA analysis that will be performed to analyze future site-specific mine proposals will be capable of this type of quantitative analysis.

Comment:

The REIS blandly states that Maverick County is not the victim of Environmental Injustice because we "do not qualify as a low income community." (page 3-15.6) This is another false assertion and it is hard to understand how this sentence could have made it into the REIS. If Maverick County, one of the 10 poorest counties in the nation in terms of per capita income and with a minority population of 95%, does not qualify for consideration under Environmental Justice criteria then no place in this country does. Likewise, the repeated assertion in this section that, since everybody in the Study Area is poor and minority, then no one will be disproportionally affected is a breathtaking distortion of the whole concept of Environmental Injustice. The entire Environmental Justice section (sec. 3-15) is erroneously written and needs to be completely redone.

Baxter, George

Comment:

The EIS plainly states that Maverick County is not the victim of environmental injustice because we do not qualify as a low income community. This is another false assertion. If Maverick County, one of the poorest in the nation with a minority population of 95 percent, does not qualify for consideration under environmental justice criteria, then no place in this country does.

De La Cerda, Leticia

USACE Response:

As described in Section 3.15.1.2, the poverty threshold was used to identify potential low-income populations within the analysis areas. Based on the 2010 U.S. Census, the poverty threshold for a three-person household was $17,373. Section 3.15.1.2 adequately discloses the median household income and level of poverty for each analysis area and county. As described in the text, the median household income in Maverick County is $27,710 and the poverty level is 39.9 percent.

As the analysis notes, Maverick County has a poverty level higher than that of the states of Louisiana and Texas. However, it has a median household income above the poverty threshold.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they

Environmental Justice

are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Mining destroys historical and cultural artifacts in an area of the state once densely populated by Native American communities. Areas to be mined must be comprehensively surveyed for artifacts and burial areas, and those areas must not be mined. A recent example from South Texas of the disturbance and destruction of Native American history is happening in Eagle Pass, Texas, where members of Coahuiltecan Indian Tribe, Pasquache Tilijayo Band, have been trying to stop a surface mine because of the thousands of Native American artifacts and burial grounds within the Eagle Pass Mine permit area which will be violated and disturbed. East Texas is the homelands of the Caddo Nation and other native peoples, and their burial sites and mounds are found across areas under study by the Army Corps for this DEIS. The DEIS fails to include any specific discussion of these resources, once again relying on other state and federal agencies to safeguard these cultural artifacts. DEIS at 2-29. The Corps also ignores the potential impacts to these communities when it concludes that "[n]o disproportionate effects to low income or minority populations are anticipated." DEIS at 2-54.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The Draft Programmatic Agreement, Appendix C of the Draft REIS, includes proposals to ensure compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (P.L. 101-601), the American Indian Religious Freedom Act (AIRFA) of 1978 (P.L. 95–341), and the National Historic Preservation Act as amended (P.L. 89-665), among other requirements for cultural resources and tribal consultation. Compliance with these laws and permit requirements will ensure avoidance or suitable mitigation of cultural resources eligible for the National Register of Historic Places (NRHP).

Section 3.15.3 of Draft REIS addresses the cumulative impacts on environmental justice communities (minority and low-income) to the degree possible. As stated in this section on page 3.15-9 of the Draft REIS, "until site-specific locations for future mine expansion areas or satellite mines are proposed and are determined to be concentrated in areas in which minority or low-income populations reside," adverse impacts to these populations cannot be concluded. The NEPA analysis that will be performed to analyze future site-specific mine proposals will be capable of this type of quantitative analysis.

Comment:

WHEREAS, According to the U.S. Census (2013), Maverick County, Texas has 55,932 citizens residing within the County, 95.1% of the citizens residing within the County are minorities of Latino/Hispanic descent, the number of citizens living below the poverty rate within the County is 30.5%, and the percentage of uninsured citizens residing within the County is 35.5%, and the Eagle Pass Mine and expansion of coal mining (surface coal and or lignite mining) as proposed in regulatory framework included in the establishment of a Regional General Permits (RGP), in revised Letter of Permission (LOP) procedures, and other permit processes that would affect Dos Republicas Coal Partnership operations in Maverick County, Texas and the environmental justice issue and an environmental and public health catastrophe for our citizens of as well as all downstream citizens living on the United States-Mexico border from Eagle Pass, Texas whose sole source of potable water is the Rio Grande River.

Farias, Juan; Maverick County Hospital District

USACE Response:

As described in Section 3.15.1.2, the poverty threshold was used to identify potential low-income

Environmental Justice

populations within the analysis areas. Based on the 2010 U.S. Census, the poverty threshold for a three-person household was $17,373. Section 3.15.1.2 adequately discloses the median household income and level of poverty for each analysis area and county. As described in the text, the median household income in Maverick County is $27,710 and the poverty level is 39.9 percent.

As the analysis notes, Maverick County has a poverty level higher than that of the states of Louisiana and Texas. However, it has a median household income above the poverty threshold.

Potential public health effects as the result of a typical mine are discussed in Section 3.14.2.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Fish and Wildlife Resources (including Special Status Species)

Comment:

There are extremely rare species of animals right around this region as well. Ocelots, jaguarundis. Rare treasures of animal growth which would be displaced due to mining. There's not a sufficient process put in place in this document of what would be the price for rebuilding habitats or removing these animals.

Ward, Tane

USACE Response:

Potential impacts to wildlife, including special status species, as a result of a typical surface coal and lignite mine expansion area or satellite mine are discussed in Section 3.5.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., sensitive species occurrence) available at that time.

Comment:

I fear for the air that people breathe and that it will be contaminated from the ash produced by this mine, not to mention all of the wildlife that will be affected by any pollution produced by this industry.

Juarez, Alejandra

USACE Response:

No ash is produced by surface coal or lignite mining operations. Potential air quality-related public health effects as result of a typical mine are discussed in Section 3.14.2.2. As discussed, with successful implementation of control measures, it is anticipated that criteria pollutant emissions from a typical mine would remain well below the NAAQS (levels determined to be protective of public health and welfare). Potential impacts to wildlife as the result of a typical mine, as well as the measures that would be implemented to minimize impacts, are discussed in Section 3.5.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

The constant noise and lights associated with strip mining operations are highly disruptive to the lives of nearby landowners, greatly diminish the value of that property, and are harmful to wildlife. The Corps must consider the impacts of multiple mines being approved near homes, the impact on the quality of life of property owners, and the impact on the property value.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Potential noise and lighting effects as the result of a typical mine are discussed in Sections 3.11.2 and 3.12.2, respectively. Potential noise and lighting effects on wildlife are discussed in Section 3.5.2. The related cumulative effects are discussed in Sections 3.11.3, 3.12.3, and 3.5.3. Information relative to related effects on property values has been added to the Population and Housing subsection under Section 3.9.2.1. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Fish and Wildlife Resources (including Special Status Species)

Comment:

Issue, our Tribe had ask the Court to block and take effect from construction this 25,000 acre Coal Mine near Eagle Pass, Texas on Final Order Travis Court did not dismiss this Issue of our Tribe. Issue, destruction of natural habitat for our Sacred Ocelot, Jaguarundi, other Sacred spices at proposed Coal Mine Site Eagle Pass Texas, the proposed Coal Mine NHPA: Section 106 [see 43 CFR 10.2 (d) NAGPRA: SECTION 3 the record show that the permitted are has at least two endangered species that roam in the permitted are sic: "Wildcat kittens have been observed suggesting that perhaps these areas could be a home range." This flagrant disregard of Federal laws given to us by the U.S. Fish and Wildlife and the Texas Parks and Wildlife should not be allowed.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future surface coal and lignite mine expansion areas and satellite mines. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations.

Comment:

Under Terrestrial Wildlife, Table 2-10 should make similar recommendations as made for vegetation: development of monitoring and mitigation; surveys for special status species, including T &E species, and their habitats, especially those species tied to aquatic or riparian habitats, such as bottomland hardwood dependent bats and alligator snapping turtles; and buffers around important habitat features.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

Please see Section 3.5.2.1 that identifies the implementation of approved reclamation plans and protection measures for special status species in accordance with RCT-required fish and wildlife plans. These plans would include the recommended mitigation measures identified under vegetation.

In addition, the REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Fish and Wildlife Resources (including Special Status Species)

Comment:

Also the Comanche Nation as well as the Lipan Apache Indians have come forward in opposition to the opening of the coal mine for very personal reasons that should be considered. These tribes have advised that:

"the area of the proposed mine will destroy historical and sacred archaeological sites of many Native American tribes which lived, hunted, and fished on Elm Creek and the Rio Grande River hundreds of years ago. Many Eagle Passans have collected historical Native American artifacts such as arrowheads and tools found on the banks of Elm Creek and Rio Grande."

Opponents also contend that the Dos Repúblicas open surface coal mine will destroy the habitat and hunting grounds of federally endangered species such as the Ocelot, Jaguaruni, and other protected cats."

Galindo, Melissa

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

Potential cultural resources and wildlife effects as the result of a typical mine are discussed in Sections 3.6.2 and 3.5.2, respectively.

Comment:

The Corps must study the habitat provided by wetlands to terrestrial species and birds, as well as aquatic life, and how the loss of wetlands over a wider area will harm those species, and decrease their range.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts to wildlife habitats and species as the result of a typical mine are discussed in Section 3.5.2, and potential cumulative impacts are discussed in Section 3.5.3. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Fish and Wildlife Resources (including Special Status Species)

Comment:

The Corps must study the habitat provided by wetlands to terrestrial species and birds, as well as aquatic life, and how the loss of wetlands over a wider area will harm those species, and decrease their range. The DEIS fails to include any detailed analysis of this issue, noting simply that "disturbance of streams that are ecologically important to fisheries and aquatic habitat is expected to occur during mine-related activities," and "compliance with state and federal permit requirements would minimize long-term impacts." DEIS at 2-48. There is a short list of "recommended" mitigation measures, but no assurance that those measures would actually be implemented.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts to terrestrial and aquatic habitats and species as the result of a typical mine are discussed in Section 3.5.2, and potential cumulative impacts are discussed in Section 3.5.3. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

In accordance with NEPA, the REIS (as well as future tiered or supplemented NEPA documents) identifies recommended mitigation measures to minimize impacts identified as a result of the impact analysis. The final mitigation measures that an applicant would be required to implement are incorporated into the agency's decision document.

Comment:

Page 3.17-2 of the DREIS states that there will be long term losses in productivity of aquatic communities, specifically macroinvertebrates, due to the loss of streams. The TCEQ expects the mitigation and replacement of all impacted streams to compensate for these losses to existing uses and preclude degradation per the TSWQS.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

Comment noted.

Comment:

Table 3.5-15 lists relevant regulations for aquatic species. As with section 1.3 above, this table overlooks several aspects of TPWD authority over introduction or relocation of non-listed species and over harmful or potentially harmful fish, shellfish, and aquatic plants.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

TPWD authority regarding the introduction or relocation of non-listed species and harmful or potentially harmful fish, shellfish, and aquatic plants was added to **Table 3.5-15**.

Comment:

Another issue is the depletion of wildlife found here that is already experiencing population decline in the state, such as the horned toad and ocelots, along with other more elusive cats.

Barron, Nelda

USACE Response:

Fish and Wildlife Resources (including Special Status Species)

Text in Section 3.5.2 has been updated to include this issue.

Comment:

Under Fisheries and Other Aquatic Biological Resources, the proposed statement regarding cleaning equipment after contact with water is inadequate. It is unlikely that adequate survey work could be done through the life of a mine and reclamation project to be certain of the absence of all potential invasive aquatic species. Current TPWD guidelines call for cleaning and drying all equipment that contacts inland water (https://tpwd.texas.gov/huntwild/wild/wildlife diversity/habitat assessment/media/WHABZebraMusselCleanDrainDryDecontaminationProcedures_Final_ 02052015.pdt). Also, the word "important" should be deleted from the second bullet item under Monitoring and Mitigation Measures. Finally, surveys for all mussel species, including state or federal listed species, should be required before disturbance in all perennial streams or pools.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

In Section 3.5.2.2, Proposed Action (page 3.5-58), the impact discussion for transfer of invasive aquatic species was revised by adding reference to the TPWD cleaning procedures. The first bullet in Section 3.5.4.2 was revised to include a summary of the steps in the TPWD procedures.

The word “important” was deleted from the second bullet in Section 3.5.4.2.

The third bullet in Section 3.5.4.2 indicates that mussel surveys would be required prior to disturbance.

Comment:

However, I'm very concerned that the process could very well compromise the safety of the environment. We use the term to -- we talk about replacing streams. We talk about replacing the earth and that sort of thing. I understand that there's a great deal of confidence that that can be done.

These things are actually ecosystems with wildlife and very much extensive systems that are --that can't be replaced. And to ignore that and to not have that in the consideration is, I think, an egregious error in general. I don't know all the specifics of the organization details that are being considered.

Newman, Bill

USACE Response:

Potential impacts to surface water resources, vegetation, and fish and wildlife, as a result of a typical surface coal and lignite mine are discussed in Sections 3.2.4.2, 3.4.2, and 3.5.2, respectively. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Fish and Wildlife Resources (including Special Status Species)

Comment:

Evaluation of the presence of important aquatic habitats in the analysis area should not be based solely upon identified Ecologically Significant Stream Segments (ESSS). ESSS designations listed in the Texas Habitat Action Plans (TCAPs) include only those segments selected by the various regional water planning groups as part of the state-wide water planning process and do not include all segments that meet the criteria for designation. An additional consideration in the evaluation of important aquatic habitats should be whether they support Species of Greatest Conservation Need (SGCN), Rare Communities, or Priority Habitats also listed in the TCAPs. In the end, all potentially impacted aquatic habitats within a proposed project area should be evaluated with a functional assessment methodology and biological sampling in order to determine the quality of the resource and the appropriate mitigation.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The habitat discussion in Section 3.5.1.2 was revised to include the known or potential occurrence of special status species as representing important aquatic habitat.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” As discussed in section 3.2.5.2, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation at the time a future surface coal or lignite mine expansion area or satellite mine is proposed. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

Monitoring, including biological assessment, should be required in order to track recovery from the long-term losses noted in this section. The USACE mitigation calculator should be used to appropriately consider temporal effects in determining required mitigation.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” As discussed in section 3.2.5.2, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation at the time a future surface coal or lignite mine expansion area or satellite mine is proposed. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses. The conditional or functional assessment (Texas Rapid Assessment Method) target scores would serve as an indicator of overall ecological function, including the health of biological components of the ecosystem.

General

Comment:

Let me state that over the past few years we have seen improvements in post-mining aquatic resource mitigation. The EIS should help to continue this trend. Our desire is that the 404 permit part of this overall process keep advancing the quality of the stream and wetland field techniques implemented by all mining companies.

Nystrom, Thomas; USEPA Region 6

USACE Response:

Comment noted.

Comment:

There was no effective notification about the Public Meeting that was held in Eagle Pass, TX on August 10, 2015. Although I had previously submitted comments during the scoping period in 2013 and had checked the box to be added to the USACE mailing list for this project, I never received any notice for this meeting, either by regular mail or email. Likewise, to my knowledge and that of everyone else in our Association, there was never a notice placed in any local newspaper by the USACE prior to the meeting. It was only by chance that I was notified by another private citizen and our organization was able to place notices in Eagle Pass newspapers and on radio. If not for that, virtually no one would have known of the meeting and few would have attended. Perhaps that was the Corps' intent.

Baxter, George

USACE Response:

The Eagle Pass meeting and all of the public comment meetings were advertised in the Eagle Pass local newspaper, The News Gram, on July 10 and 29, 2015. The commenter received a CD with the full Draft REIS when the Notice of Availability was published in advance of the public hearings. The USACE published advertisements in 18 newspapers throughout the study areas.

Comment:

Sierra Club is deeply concerned about the impact of additional strip mining in East and Central Texas. We strongly encourage the U.S. Army Corps of Engineers to assure that our waterways, lands, wetlands, groundwater, and air are protected from future mining. Unfortunately, the current round of strip mining has left a toxic scar on Texas. All of the potential environmental, public health, and cultural impacts of expanded mining should be fully analyzed and disclosed before more permits are granted for expanded coal mining. We believe that the Draft Environmental Impact Statement (DEIS) falls far short of fully analyzing and disclosing these impacts, and a full EIS should not be issued until these flaws are addressed.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

WHEREAS, it is of great concern for the public health, medical, hospital, safety, and welfare of the citizens of Maverick County, Texas of this governmental body that the USACE's draft REIS may not be stringent enough on their analyzes for potential short term and long term impacts on the resource water within the defined geographic regions in our area would be affected by future USACE permit and regulation decisions for any future surface coal and lignite mining expansions.

Farias, Juan; Maverick County Hospital District

USACE Response:

General

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be completed as part of the future permitting process.

Comment:

Hello I am voicing my concern as a citizen in Maverick county and also as a teacher at Pete Gallego Elementary. I am very close to proposed site. Please read the attached and consider not only the citizens health but also the hundred of students that will be directly negatively affected.

De Hoyos, Evelyn; Pete Gallego Elementary

Comment:

I live in the Deer Run area. I'm just one more of the many civilians worried about the proposal -- proposed coal mine being built. I fear for the health of my family, friends and environment.

Juarez, Alejandra

Comment:

And the Corps of Engineers I hope looks into this as the pursuit of happiness of the people here of this community and the area that will be damaged and the waters that will be damaged as well.

Martinez, Luis

Comment:

I just came down from Austin to express my solidarity with the community in their opposition to strip mining, to express my support for people working on more creative, less destructive solutions to the needs for energy than strip mining, and my support for the people of the Eagle Pass and other communities affected by strip mining to revise this draft and the resulting process the way they see fit and to secure their own -- their own well-being, their own lives, the lives of their children and future generations and the natural life of the area.

Mejia, Alberto

USACE Response:

The decision to be made following completion of this REIS will not modify the permit for the Eagle Pass Mine, nor will it permit any future mines directly. There will be an opportunity to comment on new permits in the future where you can voice your opinion to the lead permitting authority.

Comment:

A representative of AHMSA, the parent company of Dos Republicas, once told us that no people cannot stand in the way of this project. We hope that this is not the attitude of the Corps of Engineers also.

De La Cerda, Leticia

USACE Response:

The decision to be made following completion of this REIS will not modify the permit for the Eagle Pass Mine, nor will it permit any future mines directly. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated

General

riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

Comment:

WHEREAS, it is of great concern of this governmental body that the proposed USACE 's draft REIS may not be taking enough consideration for future potential direct and indirect and or cumulative impacts to water of the all other relevant environmental and man made impacts but yet will expedite the development of permit processing and regulation mandates for surface coal and or lignite mines in and or around the proximity of the City of Eagle Pass, Maverick County, Texas that could impair, degrade, contribute, cause, and increase public health diseases such as cancer, heart disease, stroke, and chronic obstructive pulmonary diseases (COPD) of the citizens of Maverick County, Texas as well as all downstream citizens and water users living on the United States-Mexico border downstream from Eagle Pass, Texas whose sole source of potable water is the Elm Creek, Hediondo Creek, Seco Creek, and the Rio Grande River, and numerous underwater courses (residential water wells).

Farias, Juan; Maverick County Hospital District

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be completed as part of the future permitting process. This future NEPA process will include opportunities for public comments. The REIS presents the types of potential impacts that are likely to occur due to future mining and provides some specifics using the information available while lacking site-specific proposals.

Comment:

My other concern is that I would like more information on the number of permits that come through every year and which category they fall in and which percentage of those would be impacted I'm not seeing that clearly spelled out here. I'd like to have more information on that.

Lopez, Jason

USACE Response:

This information can be requested directly from the USACE Fort Worth District.

Comment:

And so when I think about this mine and what can happen, I think about our neighbors in Laredo. I think about our neighbors in McAllen and Harlingen and Reynosa, in Matagorda, in Brownsville. I think of our neighbors who drink water, breathe air. This isn't just about us. We are part of a water cycle and the water cycle keeps coming back in a circle.

Bailie, Paul

USACE Response:

There will be an opportunity to comment on new permit applications in the future where you can provide comments to the lead permitting authority. USACE will provide opportunity to comment on any new RGP, LOP modification, or IP application.

General

Comment:

The depiction of the current Dos Republicas coal mine on some Study Area 6 maps (for instance on page 3.2-67) is incorrect. The boundaries of the mine shown are for the original 2700 acre mine originally permitted in 1994, not the current 6346 acres.

Baxter, George

USACE Response:

This boundary and the associated study area acreage have been corrected in the Final REIS.

Comment:

No coal mine in Eagle Pass!

Avila, Teresita

Comment:

We support the streamlining goal of the EIS, and the intention to provide a "cohesive framework for stream mitigation, establishment of sound performance metrics, and enhance project monitoring efforts associated with these types of activities."

Nystrom, Thomas; USEPA Region 6

USACE Response:

Comment noted.

Comment:

Please describe the duration of temporal impacts. Temporal impacts are more appropriately described as no greater than one growing season.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be completed as part of the future permitting process.

Comment:

So I'm deeply concerned about the impact of additional lignite and coal mining in east and central Texas. I strongly encourage the U.S. Army Corps of Engineers to assure that our waterways, lands, wetlands, ground water and air are protected from future mining.

McKim, Mark

Comment:

First, you know, we at Sierra Club are concerned about the impact of additional strip mining both in East Texas, Central Texas, South Texas. So we do encourage you guys to assure that our waterways, lands, wetlands, groundwater are protected if this mining should occur.

Reed, Cyrus; Sierra Club

USACE Response:

General

One purpose of the mitigation measures required through USACE permitting is to protect the waters of the U.S. and adjacent lands through minimizing adverse impacts.

Comment:

On top of page 3.2-95, there is duplication of the first two statements.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

This has been corrected in the Final REIS.

Comment:

The use of general permits and letters of permission rather than individual permits manifestly results in a permitting process that decreases public participation and decreases the level of scrutiny from the permitting agency on the specific environmental and public health impacts of the proposed action. Expanding the use of these streamlined permitting procedures to mines with larger acres of affected wetlands and streams will result in less protection for the aquatic environment in Texas than the current permitting scheme.

Yet the DEIS Executive Summary bizarrely alleges that the impacts of both alternatives will be nearly identical, and even seems to suggest that the impacts of the proposed action would be less than the no action alternative. *See* DEIS-7-18. These statements are unsupported in the DEIS by any real analysis of the consequences of dramatically expanding the application of general permits and letters of permission in the affected area. The only comparison of the alternatives takes place in a table that includes very vague and generalized descriptions of the typical impacts of lignite mines in Texas, with no citations to data or supporting scientific analysis. The table is rife with statements that certain resources "may" be impacted but that "compliance with state and federal regulations" will lessen those potential impacts. *See, e.g.,* DEIS at 2-44 ("Removal of Surface Water Features A currently unquantifiable portion of these streams may be impacted by future mining activities if during future mine-specific permitting: 1) a waiver is granted by RCT (per Section 12.355 under the Texas Coal Mining Regulations) and 2) the proposed disturbance represents the least environmentally damaging practicable alternative in accordance with the USACE's Section 404(b)(1) guidelines.")

The Corps must fully evaluate these regulatory consequences and their differential impacts on stream protection in detail for each of the six study areas. It is not enough to vaguely assert that there may be some adverse impacts, but that those impacts will be minimized by permit requirements that have not even been written yet. The DEIS currently contains no analysis of the actual environmental, public health, and cultural consequences of this proposed action, and is therefore not in compliance with NEPA or the Clean Water Act.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The comparison of alternatives table included in the Executive Summary and at the end of Chapter 2 is intended to briefly summarize the impacts of the alternatives under each resource. The details with citations and data are included in Chapter 3. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be completed as part of the future permitting process and will disclose the site-specific consequences of each satellite mine or mine expansion.

General

Comment:

Like the other person before me, we are concerned about the scarring of the land and the lack of adequate reclamation of that land.

Beving, Rita

Comment:

I have many friends and family out in Rusk County and other areas around that community where the lights are shining 24/7 where the loading station are. Same things; coal dust, noise, illness, respiratory illness.

Cortez, David

Comment:

Specifically, here today I have an interest in asking that the direct and indirect cumulative impacts on communities and land of the continued and additional strip mining across Texas is adequately addressed by our U.S. Army Corps of Engineers.

To that end, I strongly encourage the U.S. Army Corps of Engineers to assure that our most precious resources, our waterways, ground water, wetlands, our air and our liveable climate are protected from future destructive mining.

Mann, Christina; Sierra Club

Comment:

I have a lot of respect for industry and making money and all that, but I have a great deal of concern about the coal, the industry itself, what it does to the environment, what it does to people's health.

Newman, Bill

Comment:

And these operations claim to provide jobs for the communities that they work in, but there's a hidden hand leading with the grave and long-term health impacts. Like I mentioned, I have asthma and there's also cancer, mercury, fungal poisoning.

Ogidi, Kamene

Comment:

As a resident of East Texas, we are deeply concerned by the impact of additional strip mining in the east and central Texas regions. We strongly encourage the Corps of Engineers to assure that our waterways, lands, wetlands, groundwater and the air are protected from future mining.

Verma, Vik; Organizing for Action East Texas

USACE Response:

Potential environmental and health effects as the result of a “typical mine” are discussed in Chapter 3.0. Compliance with local, state, and federal permit requirements, laws, and regulations would minimize the adverse effects from potential future mining.

General

Comment:

The Regional EIS provides a critical opportunity to evaluate cumulative impacts of Texas lignite strip mining. Sierra Club urges the Corps to study the following impacts on the following “relevant resources” in the scope of the PEIS. Scoping Announcement at 1. The Corps must evaluate all environmental and community impacts. For example, the Corps‟ 2005 PEIS for Mountaintop Mining/Valley Fills in Appalachia (EPA 9-03-R-05002) extensively evaluated impacts of blasting on communities, deforestation, air quality impacts, flooding, and impacts on scenic values.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS addressed the environmental and community impacts to the degree possible with the available information and lacking any site-specific plans for new or satellite mines. In fact, the 2005 PEIS for Mountaintop Mining/Valley Fills in Appalachia referenced in the comment provides very general types of impacts with little or no quantification. This is less detailed than the analysis in the current REIS that quantifies the potential impacts from a typical mine to the extent possible.

Comment:

And we have grave concern about the operation of the coal mine and now the possibility of expansion of that permit for the coal mine.

Contreras, Terri ; Maverick County Hospital District

Comment:

One of the things that I -- I will ask you is in what way will the Environmental Impact Study for the area that you-all are going to conduct is going to be something that will help the citizens of -- of this community to make it better for us to live here.

Martinez, Luis

Comment:

We have grown without these mines. We don't need these mines to grow. Please take into consideration we don't need this.

Salinas, Siboney

USACE Response:

There will be an opportunity to comment on new permits in the future where you can voice your opinion to the lead permitting authority.

Geology, Paleontology, Mineral Resources

Comment:

The permit area has expanded to 25,000 acres, yet in your report it states that 5,369 acres will be disturbed.

Ruiz, Luis

USACE Response:

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 is not in relation to a mine permit area. As discussed in Section 2.2.3, the table presents the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations within each study area. Also, the 5,369 acres identified in **Table 3.1-1** represents the acreage of past and present surface disturbance in CESA 6. The types of past and present actions that have contributed to this disturbance are identified in **Table 2-9**.

Comment:

Rights to oil and gas and coal. Oil and gas was going to be a big issue, particularly, that there was at least a total of five oil wells in the permit area.

Ruiz, Luis

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

The number of oil and gas wells in REIS Study Area 6 (by county) is presented in **Table 3.8-19**. Typical mine-related impacts to oil and gas development are discussed in Section 3.8.2.1.

Comment:

It says in your report that fossils occur. Will there be an archeological dig or will there be something done about those?

Ruiz, Luis

USACE Response:

As discussed in Section 3.1.2.1, there is a low probability for unique of scientifically important or valuable fossils to occur. Therefore, the need for mitigation measures was not identified. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Geology, Paleontology, Mineral Resources

Comment:

Under Geology/Minerals/Paleontology, Table 2-10 states that modifications to topography would be minimized by regrading to approximate original contour but recommends no monitoring or mitigation. Successful reconstruction of stream drainages to create in-kind replacement and mitigation for the Section 404 process requires close approximation of factors such as valley slope, substrate type and depth, tributary input, bank soil structure, etc. Without monitoring requirements, how will the regulatory process assure that reclamation, under RRC requirements results in a landform capable of supporting aquatic features appropriate for Section 404 mitigation? Pre-impact assessment and reclamation monitoring should include a variety of factors such as valley slopes and widths, sub-basin sizes and slopes, substrates, etc.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As discussed in Section 2.1.2, standard language in compensatory mitigation plans require submittal of post-reclamation aquatic resource design plans to USACE and the resource agencies for review and USACE approval prior to construction. These detailed design plans would be required to take into account the regraded pit backfill that, as discussed in Section 2.2.4.3, would be leveled and graded to approximate original contour in compliance with RCT coal mining regulations and approved plans. The USACE Fort Worth District's current requirement for long-term monitoring using sound, measurable, ecologic condition-based performance metrics as success criteria for compensatory mitigation projects would also apply under the Proposed Action (see Section 2.1.2 and 2.2).

Comment:

There is a factual misstatement on Page 3.1-26 where it says that "In 2000, surface mining began at the Eagle Pass mine." This is incorrect. In fact the mine lay dormant for many years and actual mining did not begin until 2015 and none of the coal has yet been shipped out.

Baxter, George

Comment:

There is a factual misstatement made on Page 3.1-26 where it says that in 2000, surface mining began at the Eagle Pass mine. This is incorrect. In fact, the mine laid dormant for many years and actual mining did not begin until 2015, and none of the coal has yet been shipped out.

De La Cerda, Leticia

Comment:

Also, I found that in the year 2000, surface mining began at the Eagle Pass mine. I believe that there was no permit given until recently or was that something that we don't have -- that we don't have information on because this is something that I didn't know. I didn't know that mining had begun.

Ruiz, Luis

USACE Response:

As clarification, RCT issued a permit for the Eagle Pass Mine in 2000; however, mining was not initiated until 2015. The text has been revised to reflect this information.

Geology, Paleontology, Mineral Resources

Comment:

Section 3.1.1.2- Study Area Descriptions, page 3.1-10:

A discussion is needed in this section on the mineralogy of the Wilcox Group and Claiborne Group formations in each study area, including pyrite and other sulfide minerals, and the potential for overburden and interburden rock comprised of these formations to generate toxic- or acid-forming materials (e.g., acid rock drainage and metals dissolution).

Price, Kimeka; USEPA, Region VI

USACE Response:

As discussed in the Minerals subsection under Section 3.1.1.1, it is expected that the Wilcox Group, Jackson-Yegua, and the Olmos Formation have pyrite mineralization (see page 3.1-9 of the Draft REIS). A discussion relative to potential acid mine drainage as a result of the presence of pyrite is presented in the groundwater impacts analysis in Section 3.2.3.2 in the introductory paragraphs that discuss potential impacts for all of the study areas.

Groundwater Resources

Comment:

The DEIS is deficient in evaluating the potential impacts to surface water. It focuses on surface water runoff and storm water runoff, but does not adequately discuss impacts from ground water outflows. The DEIS should describe in more detail the potential flow path from contaminated ground water within backfilled mine spoils (overburden/interburden) to undisturbed ground water to surface water at areas of ground water upwelling or outflow. It should also assess the loss of surface water flow (spring flow or base flow) from dewatering and depressurizing operations (i.e., drawdown) and potential mitigation measures to address such water loss (decrease in water quantity) and water rights. The DEIS tends to minimize the importance of this issue with statements that the impacts from future mines would be confined to mine-related ground water drawdown areas. This seems irrelevant if such drawdown areas extend beyond the mine permit boundary to surface water drainages affected by spring flow or base flow.

Price, Kimeka; USEPA, Region VI

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. Therefore, the type and level of detail required to conduct the requested analysis (e.g., mine-specific dewatering/depressurization rates, site-specific hydrogeologic conditions, etc.) is not currently available. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional monitoring and mitigation may be identified during the project-specific NEPA review that would be conducted at the time future mine expansion areas or satellite mines are proposed as discussed in Section 2.5.

Groundwater drawdown areas are independent of the permit boundaries. Groundwater-related impacts from future mines would be confined to the areal extent of mine-related groundwater drawdown as noted in the REIS, regardless of whether the drawdown area is within or extends beyond a permit boundary.

Groundwater Resources

Comment:

Executive Summary, Table ES-4 - Summary of Direct and Indirect Impacts by Resource or Impact Issue and Recommended Monitoring and Mitigation:

Under Water Sources, USACE recommends no monitoring or mitigation measures for drawdown of aquifers, ground water quantity or ground water quality. EPA disagrees with this recommendation. The reasons are as follows:

a. For *drawdown of aquifers,* it is indicated for the Proposed Action Alternative that extent of drawdown could be up to 15 miles (Study Area 4), but the mine-related pumping impacts for future mines would be confined to the portion of the affected aquifers within a mine-related ground water drawdown area. It is not clear what this statement is intending to mean. Will drawdown impacts not go beyond the mine permit boundary? Is the "mine-related ground water drawdown area" to be within the mine permit boundary? There is no definition of this area in the DEIS. If drawdown goes beyond the permit boundary and impacts the availability or quantity of ground water (or surface water) for other users, then mitigation measures should be proposed. Further, monitoring of hydraulic drawdowns would be necessary to understand the changing hydrologic flow regimes during and after mining and the extent of the impacts off site.

b. For *ground water quantity,* the table states that the effects on other ground water uses would depend on the extent of the required mine depressurization and dewatering, but such impacts would be confined to the mine-related ground water drawdown area. Again, the concerns with such statements are the same as discussed in the first bullet statement above.

c. For *ground water quality,* the table states that ground water quality in mine pit backfill areas may have elevated levels of salinity, however, impacts to ground water due to increased salinity would be minimal in all study area. USA CE provides no assessment or data showing known concentrations of metals or other potential contaminants in ground water in backfill areas and undisturbed areas, yet in the REIS it is stated several times that impacts to ground water could occur from toxic- or acid-forming materials from backfill mine spoils. The recommendation for no monitoring or mitigation measures for ground water quality is not supported.

Price, Kimeka; USEPA, Region VI

USACE Response:

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on the analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional monitoring beyond that required by the jurisdictional agencies or additional mitigation may be identified during the project-specific NEPA review that would be conducted at the time future mine expansion areas or satellite mines are proposed (as discussed in Section 2.5) and would be based on the mine-specific and site-specific information available at that time.

Groundwater drawdown areas are independent of the permit boundaries. Groundwater-related impacts from future mines would be confined to the areal extent of mine-related groundwater drawdown, regardless of whether the drawdown area is within or extends beyond a permit boundary. The areal extent of future mine-related groundwater drawdown and associated impacts would be assessed during project-specific NEPA review based on mine-specific and site-specific information (e.g., mine-specific dewatering/depressurization rates, site-specific hydrogeologic conditions, etc.) that would be available at that time.

As discussed in Sections 3.2.3.2 and 3.2.4.2, the potential for acid-forming constituents or other

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geochemical weathering products to affect water quality would be avoided by compliance with RCT regulations. The regulations require analysis of overburden and underburden through appropriate acid-base accounting or other assessments and implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming material are not placed in the upper 4 feet of the backfill profile. Therefore, related impacts are not identified in the referenced table. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. That analysis would take into account the site-specific material sampling and analyses for determination of acid-forming materials that would occur as part of each surface coal and lignite mine's RCT permit application (Section 12.127 of the Coal Mining Regulations).

Comment:

With respect to water pollution, groundwater and dust and air emissions, strip mining creates water pollution in the form of sediments and heavy metals, and requires the pumping of enormous amounts of groundwater that could lower levels in the wells of nearby landowners.

Verma, Vik; Organizing for Action East Texas

USACE Response:

Please see Sections 3.2.3.2 and 3.2.4.2 for discussions relative to potential impacts to water resources and Section 3.7.2 for potential impacts to air quality. The discussions include information relative to the typical environmental protection measures (including typical permit requirements of the various federal and state agencies) that would be implemented by a typical surface coal or lignite mine expansion area or satellite mine to minimize impacts.

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Comment:

Issue, whether the proposed discharge and dust from the facility would contaminate or degrade the quality of Elm Creek Land its Tributaries and/or undisclosed natural water ways drainages which are claimed by the Pacuache Tribe of Texas (other Tribes) as our aboriginal ancestral lands. Issue whether the draft permit would allow violation of water quality standards. Issue whether the facility would cause health hazards and nuisance conditions. Issue whether the proposed discharge would contaminate drinking water sources. Issue whether Agency staff properly calculated the water quality-effluent limits and accurately concluded that the discharge would comply with Texas water quality standards exhibit by Eagle Pass Business Journal 10/29/2011 in this newspaper expressly provides that the Dos Republicas Coal Partnership's Eagle Pass Mine discharge of mine seepage and storm waters will affect the public water supply of City of Eagle Pass, aquatic life on the Elm Creek and the Rio Grande River and contact recreation areas on these waterways. Issues the permit water for mine authorizes Dos Republicas Partnership to discharge storm water and mine seepage from the active mining area subject to the following suspended solid 3.5 daily, iron 3.0 daily, manganese 2.0 daily, selenium n/a daily, in addition to these known carcinogenic chemicals the Dos Republicas is authorized to discharge into Elm Creek, unidentified and/or water natural drainages tributaries, the Rio Grande River on a daily basis the following effluent chemicals aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, trivalent chromium, hexavalent chromium, copper, cyanide, lead, mercury, nickel, selenium, silver, zinc, bod, carbonaceous biochemical oxygen, chemical oxygen, organic carbon, ammonia nitrogen, total suspended solid, nitrate nitrogen, organic nitrogen, phosphorous, oil and grease, residual chlorine, total dissolved solids, sulfate, chloride, fluoride, fecal coliform, and others. Issue when coal surfaces are exposed, pyrite (iron sulfide) comes in contact with water and air and forms sulfuric acid. As water drains from the mine, the acid moves into the waterways, and as long as rain falls on the mine tailings the sulfuric acid production continues, whether the mine is still operating or not. This process is known as acid rock drainage (ard) or acid mine drainage (amd). If the coal is trip mined, the entire exposed seam leaches sulfuric acid, leaving the subsoil infertile on the surface and begins to pollute streams by acidifying and killing fish, plants, and aquatic animals which are sensitive to drastic ph shifts, in addition surface mining can adversely impact the hydrology of a region. Deterioration of a stream quality can result from acid mine drainage, toxic trace elements, high content of dissolved solid in mine drainage water, and increased sediment loads discharged to streams, Waste piles and coal storage piles can yield sediment to streams, and leached water from these piles can be acid and contain toxic trace elements. Surface waters may be rendered unfit for agriculture, human consumption, bathing, or other household uses. Flood events can cause severe damage to improperly constructed or located coal haul roads, housing, coal crushing and washing plant facilities, waste and coal storage piles, settling basin dams, surface water diversion structures and the mine itself. Besides the danger to life and property, large amounts of sediment and poor quality water may have detrimental effects many miles downstream form a mine site after a flood. Overall, it will cause a lot of pollution drinking water. Ground water supplies may be adversely affected by surface mining. These impacts include drainage of usable water from shallow aquifers, lowering of water levels in adjacent areas and changes in flow directions within aquifers; contamination of usable aquifers below mining operations due to infiltration or percolation on spoil piles. Where coal or carbonaceous shalls are present, increased infiltration may result in increased runoff of poor quality water and erosion from spoil piles; recharge of poor quality water to shallow ground water aquifers; or poor quality water flow to nearby streams. This may contaminate both ground water and nearby streams for long periods. Issue, Leaching and leach to underground and ground water(s), soil and air contamination a proposed Coal mine site. Issue, Elm Creek pollution of Creek waters and San Miguel formation and impact in other formations or areas describe in permit sections. Issue, past Coal Mining at Eagle Pass in the 1930's there are Sink or sinking(s) Hole(s). Issue, there are Natural blue holds or holds of Ancient water also called Cenotes which they are going to be highly polluted and contamination.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

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USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Please see Chapter 3.0 of the REIS for discussions of potential impacts to surface water and groundwater quality and human health as the result of a typical surface coal or lignite mine expansion area or satellite mine.

Comment:

And that, finally, the mining company should be required to conduct pre-mining groundwater testing in the areas of mining, as well as nearby offsite areas.

Verma, Vik; Organizing for Action East Texas

USACE Response:

Mining companies are required to conduct baseline studies (including groundwater monitoring) and prepare associated documentation for proposed mines in accordance with the requirements of the various federal and state agencies with permitting authority. The required baseline data collection and pre-mine monitoring will vary greatly depending on the location of the proposed future mine, site-specific conditions, and agency requirements. Although NEPA does not require a discussion of these pre-mine activities, the results of the baseline studies are considered in mine-specific impact analyses at the time a mine is proposed.

Comment:

There is very little discussion of the applicable state or federal statutes and regulations for ensuring the protection of ground water and the abatement (or mitigation) of ground water contamination at surface coal and lignite mines. Such discussion should be included in the DEIS. It should also include regulations to protect recharge zones of aquifers. It may also be appropriate to discuss the role the Texas Water Development Board and its ground water monitoring program, regional water planning groups, ground water conservation districts (GCDs) and the GCD requirement to adopt ground water management plans under the Texas Water Code, and River Authorities.

Price, Kimeka; USEPA, Region VI

USACE Response:

NEPA does not require a detailed discussion of other permitting authorities; rather, the level of detail is tailored to support the impact analysis. The typical permits that would be required by potential future mines at the time they are proposed and the associated permitting authority are identified in **Table 1-1**. Water resources-related regulations are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections

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3.2.3.2 and 3.2.4.2, respectively), as applicable.

Comment:

Perhaps the most stunning of these are the levels of contamination in our streams and waterways with mercury coming from lignite that has ended up polluting our water, not only through air emission, but also through the leakage of mercury deposited back into the coal mines into the waterways that we all rely upon leading to significantly higher autism rates in places around northeast Texas, a number of coal mines in northwest Texas and down in south Texas where we have significant mercury contaminations around our coal mines but most are in our power plants.

Smith, Tom; Public Citizens, Texas Office

USACE Response:

The REIS presents a regional analysis of potential impacts from a "typical mine" expansion area or satellite mine. The analysis of power plants is outside the scope of the REIS. However, power plant emissions are authorized by other permitting authorities and are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

No potential for mercury emissions from a typical mine was identified in the air quality impact analysis (see Section 3.7.2.1).

As discussed in Section 2.2.4, overburden (material above the coal) and interburden (material between the coal seams) would be placed as backfill in a previously mined-out pit as mining progresses. As discussed in Sections 3.2.3.2 and 3.2.4.2, the potential for acid-forming constituents or other geochemical weathering products (e.g., metals) to affect water quality would be avoided by compliance with RCT regulations that require appropriate analyses of the material, selective handling of the overburden and interburden, and follow-up testing. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Section 3.0-Affected Environment and Environmental Consequences:

For each of the six (6) study areas the assessment tends to minimize the importance of ground water pumping and drawdown from surface coal and lignite mines with statements that the degree of ground water pumping from such mining, in comparison to other volumes of ground water pumped for municipal and agricultural purposes, are small. This seems irrelevant if there are impacts to ground water quantity as well as surface water flow that affect other potential users or aquatic habitat.

Price, Kimeka; USEPA, Region VI

USACE Response:

In accordance with NEPA, the affected environment discussions present information to support the direct/indirect impacts analyses of the Proposed Action as well as the cumulative impacts analyses. Therefore, the quantity of groundwater pumpage by use sector for each study area is included in Section 3.2.3.2. Statements that inferred comparison between current pumpage by the coal and lignite mines and the other use sectors previously were modified in response to USEPA's Cooperating Agency comments on the Preliminary Draft REIS and, therefore, were not reflected in the Draft REIS

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Comment:

The DEIS mentions the RCT requirements for "protection of the hydrologic balance" and a Hydrologic Reclamation Plan specific to local conditions. More discussion is needed on these RCT requirements.

Price, Kimeka; USEPA, Region VI

USACE Response:

NEPA does not require a detailed discussion of other permitting authorities; rather, the level of detail is tailored to support the impact analysis. A brief discussion of the RCT requirements relative to hydrologic balance is presented under the Proposed Action, Effects Common to All Study Areas subsection under Section 3.2.4.2.

Comment:

Our tap water is highly polluted as it is. For the 24 years of my life, my family and I have resorted to filling 5 gallon jugs of water to cook and drink. It is a small price to pay for peace of mind, as just a glimpse at people who have been drinking this water their entire life show signs of sickness and stunted growth. Now it will polluted more. Come taste and test if you like. I will help.

Barron, Nelda

USACE Response:

It is not clear from the comment as to the origin of the water. If from a well, groundwater may be impacted by a variety of sources or even have naturally elevated concentrations of dissolved solids and other constituents that may affect drinkability or pose health risks.

The REIS presents a regional, rather than site-specific, analysis of a “typical mine.” Potential impacts to water resources as the result of a typical mine are discussed in Sections 3.2.3.2 and 3.2.4.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

In the DEIS there is some discussion of the potential impacts to surface water and ground water from "toxic- and acid-forming materials in pit spoils and surface water runoff, but the DEIS does not identify what these materials may be, how ground water and surface water could be impacted by them, or how they would be tested and, if necessary, mitigated. The DEIS focuses on salinity (TDS) as the only significant parameter to assess impacts to ground water. This is based on potential impacts of concern identified in studies by the Railroad Commission of Texas (RCT), but the DEIS presents no analytical data on other potential contaminants such as metals. The Wilcox Group and Clairborne Group formations may have significantly high concentrations of pyrite and other sulfide minerals which, when exposed to oxygen and water in backfilled spoils, may cause acid rock drainage and the
dissolution of metals from the waste rock. Metals dissolved from waste rock by acidic water could potentially contaminate ground water at concentrations exceeding state ground water standards or federal drinking water standards. Metals and acidity could also impact surface water along ground water to surface water flow paths at concentrations exceeding state surface water standards or federal ambient water quality criteria.

Price, Kimeka; USEPA, Region VI

Groundwater Resources

Comment:

The issue, the proposed Coal Mine will discharge under the earth underground highly toxics nitros (nitratos) these toxics are highly corrosive and will destroy every archeological site including the presence of Native American cultural items to include Human remains, funerary objects, Scared objects, Objects of cultural patrimony.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." As discussed in Section 3.2, the potential for acid-forming constituents or other geochemical weathering products to affect water quality would be avoided by compliance with RCT regulations. The regulations require analysis of overburden and underburden through appropriate acid-base accounting or other assessments and implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming materials are not placed in the upper 4 feet of the backfill profile. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be further assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. The mine-specific information would include the site-specific material sampling and analyses for determination of acid-forming materials that would be required as part of each surface coal and lignite mine's RCT permit application (Section 12.127 of the Coal Mining Regulations).

Comment:

Strip mining creates water pollution in the form of sediments and heavy metals and requires the pumping of an enormous amount of ground water that can lower levels in the wells of nearby landowners.

McKim, Mark

USACE Response:

The potential need for groundwater pumping varies between the study areas, and would vary from one specific mine to another as discussed in Section 3.2.3. In accordance with RCT requirements, water supply would be replaced if water supply wells are impacted by mining operations.

As discussed in Section 2.2.4, overburden (material above the coal) and interburden (material between the coal seams) would be placed as backfill in a previously mined-out pit as mining progresses. As discussed in Sections 3.2.3.2 and 3.2.4.2, the potential for acid-forming constituents or other geochemical weathering products (e.g., metals) to affect water quality would be avoided by compliance with RCT regulation that require appropriate analyses of the material, selective handling of the overburden and interburden, and follow-up testing.

The REIS presents a regional, rather than site-specific, analysis of a "typical mine." Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

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Comment:

Section 3.2.2- Water Resources-related Regulations, page 3.2-1:

It is not clear from the regulations listed in this section which will require protection of ground water, reduce the potential for impacts to ground water, and require mitigation of ground water impacts caused by mining operations. This needs to be discussed thoroughly.

Price, Kimeka; USEPA, Region VI

USACE Response:

The applicable regulations and agency programs specific to water quality are identified in Section 3.2.2 and discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable. Further discussion of these regulations is not required under NEPA; rather, the level of detail is tailored to support the impact analysis. Regulations and agencies regulating groundwater in Texas were added to the regulatory discussion in Section 3.2.2.

Comment:

We also are very concerned that we shouldn't only be concerned about surface water, we should be concerned about the groundwater. I am going to be handing your committee a list of the aquifers in Texas. Much of your map covers the creeks of Wilcox, of which I've seen significant contamination lately in Rusk County, near the town of Reklaw, and so we feel that the groundwater districts should also be consulted on these permits, instead of just the Railroad Commission.

Beving, Rita

USACE Response:

The typical permits that would be required by potential future mines at the time they are proposed and the associated permitting authority are identified in **Table 1-1**. The applicable regulations and agency programs specific to water quality are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines (e.g., potential impacts to local water districts' water supply facilities) will be assessed as required by applicable regulatory requirements at the time they are proposed and additional mitigation identified, as needed, taking into account mine-specific and site-specific information available at that time.

Comment:

We've got water, and we've got a place that we can irrigate and what --where do you think the irrigation water is going to go?

Ruiz, Ricardo

USACE Response:

As discussed in Section 3.2.2, surface water rights are administered by TCEQ. Also, RCT regulations require protection of the hydrologic balance, including protection of water rights. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines (including water rights) will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

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Comment:

There should be discussion in the DEIS of the need to establish baseline ground water and surface water quality and hydrologic flow regimes through monitoring prior to initiation of mine development and construction activities. Without establishing baseline conditions prior to mining, it is difficult to understand the nature and extent of adverse impacts to ground water and surface water during mining and post mining and the degree of mitigation that would be required. A baseline water quality and hydro logic assessment would include the installation and sampling of upgradient and down gradient monitoring wells in overburden, coal-bearing, and underburden aquifers and the analysis of ground water and surface water samples for all potential contaminants *(e.g.,* target analyte list metals, other inorganics, total dissolved solids (TDS), pH, and uranium) for an adequate period of time to assess baseline conditions. Continued monitoring of ground water and surface water quality and hydrologic flow regimes would need to be continued throughout mining and after cessation of mining until all known impacts are mitigated.

Price, Kimeka; USEPA, Region VI

USACE Response:

Mining companies are required to prepare baseline studies/documentation for proposed mines in accordance with the requirements of the various federal and state agencies with permitting authority, and to maintain compliance with the requirements (e.g., groundwater and surface water monitoring) of the various permits obtained. The typical permits that would be required by potential future mines at the time they are proposed and the associated permitting authority are identified in **Table 1-1**. The applicable regulations and agency programs specific to water quality are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable. Further discussion of these regulations is not required under NEPA; rather, the level of detail is tailored to support the impact analysis.

Comment:

Strip mining has serious local impacts on groundwater levels and flow patterns, as vast quantities of groundwater must be pumped out to dewater the area to be mined. These groundwater withdrawals are exempt from regulations imposed by local groundwater conservation districts to conserve the groundwater resources in their jurisdictions. *See* Tex. Water Code § 36.117(b)(3) (creating exemption for “drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water”). Sierra Club members living near the mines have experienced dramatic drops in the water levels in their wells. The Corps must consider how this tremendous groundwater pumping across a wide area will affect aquifers used for drinking water and domestic use. The Corps must also evaluate, as a mitigation measure, the feasibility of constructing subsurface concrete barriers to isolate the area that must be dewatered. Yet the DEIS fails to recommend any mitigation measures for these impacts.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. Therefore, the type and level of detail required to conduct the requested analysis (e.g., mine-specific dewatering/depressurization rates, site-specific hydrogeologic conditions, etc.) is not available at this time. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be assessed as required by

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applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional or refined monitoring and mitigation may be identified during the project-specific NEPA analysis that would be conducted at the time future mine expansion areas or satellite mines are proposed as discussed in Section 2.5.

Hazardous Materials

Comment:

How do you plan to erode the pollution of this mine if it gets flooded? How will you collect all of the chemicals that will run off into the river every time it rains?

Juarez, Alejandra

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Comment:

Mine operators in Texas are allowed to use coal ash as part of the fill when reclaiming mines. The highly toxic coal ash is not encapsulated in any way, greatly increasing the risk that it will find its way to groundwater or surface water, as rainwater infiltrates the mine fill. The DEIS notes that "there are continuing concerns about the use of [coal ash] as backfill" in mining operations, including the concern "that constituents could be leached out of [the coal ash] and degrade surface and groundwater quality." DEIS at 3.1-35. Yet, in the next paragraph, the Corps concludes, without support, that "[w]ith proper handling and disposal in accordance with applicable rules and regulations, solid waste [including coal ash] would have minimal impacts." The Army Corps cannot acknowledge the continuing concerns with the use of toxic coal ash as a fill material and then conclude that it would have minimal impacts with no analysis or support.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The referenced text was in relation to public concerns. The text has been revised for clarity.

As discussed in Section 3.13.1.2, a substantial amount of the coal ash (a type of CCR produced as a by-product of burning coal in power plants) is a marketable product and does not fit the definition of solid waste (NRC 2006). With prior approval by TCEQ and RCT, bottom ash (a type of coal ash) may be used as a road surfacing material or placed as backfill in surface coal and lignite mines in Texas. Currently, use of coal ash at surface coal and lignite mines is regulated under Subtitle D of RCRA and the SMCRA (USEPA 2013). Texas surface mine rules have additional restrictions and conditions for the use of ash as a backfill material (NRC 2006). Also as discussed in Section 3.13.1.2, there are requirements under which the use can occur. These include pre-placement assessment, engineering and operational controls, and specifically excluded areas: geologic faults, floodplains, wetlands, seismic impact zones, and unstable areas. There are also long-term monitoring and financial responsibility requirements.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine," which does not include the use of bottom ash as backfill. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., use of bottom ash as backfill, geologic conditions, etc.) available at that time.

Land Use and Recreation

Comment:

This section does not address the presence of or potential impacts to publicly accessible navigable streams as defined in State statute. The navigation of Texas's inland waters is one of several "public rights and duties" specifically recognized by the Texas Constitution. Under various provisions of Texas Water Code, TPW Code, and Texas Penal Code, no person may restrict, interfere with, or limit public recreational use of a state-designated navigable stream.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

Information relative to navigable waters has been added to Section 3.8.2.1 to address this comment.

Comment:

There are thousands of jobs in the recreation industry here around this area as well, which people will be losing these types of jobs if there was an enormous mine and everything that it brings.

Ward, Tane

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts to recreation as the result of a typical mine, and the measures that would be implemented to minimize the impacts, are discussed in Section 3.8.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

For example, the land around here is -- 70 -- 7 percent of it is agricultural land, which will be adversely affected by pollution of air and water and land here. This has not taken into consideration the type of compensation that will be needed for the people.

Ward, Tane

USACE Response:

The private lands within a future mine-specific proposed disturbance area would be leased or purchased by the proponent. However, a NEPA analysis cannot address each individual financial situation; that would be beyond the scope of the NEPA process.

As discussed in Section 2.2.4.3, specific reclamation and revegetation plans for disturbance areas located outside of water of the U.S. ultimately would be completed in accordance with landowner agreements.

Comment:

Mining affects recreational areas, which in Texas often coincide with power plant cooling reservoirs.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Comment noted. Potential impacts to recreation as the result of a typical mine, and the measures that would be implemented to minimize the impacts, are discussed in Section 3.8.2.

Land Use and Recreation

Comment:

Mining operations may decrease available pastureland and have impacts on farming and ranching. The DEIS should study these impacts and their cumulative effects. The DEIS fails to discuss this issue.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts to agriculture (farming, ranching, and timber-based commodities) as the result of a typical mine, and the measures that would be implemented to minimize the impacts, are discussed in Section 3.8.2. Potential cumulative impacts are discussed in Section 3.8.3. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Under Land Use and Recreation, Table 2-10 does not address potential impacts to or mitigation for public use of state-designated navigable streams that may occur within the study areas. The navigation of Texas's inland waters is one of several "public rights and duties" specifically recognized by the Texas Constitution. Under various provisions of Texas Water Code, TPW Code, and Texas Penal Code, no person may restrict, interfere with, or limit public recreational use of a state-designated navigable stream.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The resource analyses in Chapter 3.0 discuss the potential impacts associated with a typical surface coal or lignite mine expansion area or satellite mine, as well as the potential remaining impacts following implementation of the typical environmental protection measures for a typical mine (including typical permit requirements of the various federal and state agencies). In accordance with NEPA, the need for additional mitigation is subsequently determined based on the remaining potential impacts. The impact summary in **Table 2-10** is reflective of the potential remaining impacts and mitigation measures identified in Chapter 3.0. As discussed in Section 2.5, the need for additional or refined monitoring and mitigation may be identified during the project-specific NEPA analysis that would be conducted at the time future mine expansion areas or satellite mines are proposed.

Comment:

The PEIS should study the cumulative impacts on recreational areas of the planned expansion of lignite mining.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential cumulative impacts to recreation are discussed in Section 3.8.3. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines (including cumulative impacts) will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Native American Consultation

Comment:

The Pacuache Tribe of Texas is requesting to you U.S. Army Corps of Engineers for Consulting Party Status under Section 106. The Pacuache Tribe of Texas cites NAGPRA, Native American Religious Freedom Act, Executive Order 13007, Tribal Sovereign Immunity, Exparte Young Doctrine, Native American Religious Restoration Act, 36 USC 800, The Archeological Resources Protection Act 1979 16 USC, and The Native American Freedom Religious Act 1996, 25 USC, The National Historic Preservation Act of 1966 Amended 16 USC Executive Order 13287 Preserve America Section 3 Inventory of Historic Properties required by Section 110 (a) (2) and operating procedures for compliance with Section 110 and Section 111 of the NHPA 16 USC 470 h-2 and 470 h-3 and NHPA 16 USC 470 et seq, NHPA Section 10 (d) THPO, and The National Environmental Policy Act 42 USC 4321 et seq, USACE 404.

The Pacuache Tribe of Texas cites authorities are further supplemented by the following federal authorities which gives Native American Tribes further protections and privileges see: Tribal participation as noted in the section dealing with tribal participation in general the regulations require agencies to seek information in accordance with agency planning processes from Indian tribes likely to have knowledge of or concerns with historic properties in the area as agencies begin their efforts to identify historic properties subject to effect 36 CFR 800.(a)(l)(iii). Agencies are encouraged to notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties, such as concerned tribes, if the agencies determine that no historic properties exit in the area subject to effect. Also agencies are required to notify interested persons who have made their concerns known to the Agency Official, if agencies determine that such properties do not exist but will not be affected 36 CFR 800.5(b). Tribes and others who disagree with and agency's determination can seek Council review of the determination under 36CFR 800.6(e) (l). All these provisions apply to non-Indian lands as well as to Indian Lands. The Pacuache Tribe of Texas again asks USACE to take judicial notice of the statues cited in this paragraph.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The USACE consulted with all federally recognized tribes for this REIS.

Comment:

The people who really need this 3 minutes, for example, it's not a sufficient amount of time to give public input. There's been insufficient consultation with tribes, with municipal governments county governments, stakeholders, property holders, people who drink water and breathe air specifically.

Ward, Tane

USACE Response:

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS.

Native American Consultation

Comment:

Based on the USACE permitting guidelines and policy, the Dos Republicas permit was issued prematurely and should be immediately suspended and any consideration of an expanded permit area tabled until two criteria are met: 1) all American Indian tribal entities with an interest in the area, including the two state-acknowledged Tribes with long ties to the region, are actively engaged and have completed the consultation process and addressed any significant objections, and 2) the 106 Historic Preservation process is completed.

Hook, Jonathan

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation and Section 106 process, in December 2011.

he REIS presents a regional, rather than site-specific, analysis of potential impacts from a typical mine. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed. As discussed in Section 3.6.4, in accordance with Section 106, site records searches and field investigations would be performed for potential future mines prior to any ground disturbing activities. Any identified NRHP-eligible sites would be treated in accordance with a site-specific Programmatic Agreement that would describe the actions to be taken to monitor, avoid, or mitigate sites.

Comment:

The only indication in the record that attempts were made to contact American Indian nations with an interest in the impacted areas is a list of letters sent to nine federally-recognized Tribes. Even though the Coahuiltecan Indians have been involved in the Dos Republicas for twenty years, there is no evidence that they were contacted. The USACE made an absolute commitment to consult with Tribes, which is impossible to accomplish if effective communication does not take place. This absence of communication led on August 27, 2015, to an official resolution by the elected leadership of the Comanche Nation opposing the mine and calling for authentic collaboration (attached). This act should be considered new information that triggers an immediate suspension of the existing Dos Republicas permit until all potentially affected Tribes have the opportunity to raise objections and authentic consultation takes place. What the USACOE has done so far does not meet the minimum threshold for consultation from any reasonable perspective.

Hook, Jonathan

Native American Consultation

Comment:

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249; November 6, 2000), requires regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. Although the DEIS mentions Government to Government consultation as significant and mandatory; it does not list the names of the Tribes that could potentially be affected.

Recommendation:

The FEIS should include the complete descriptions of consultation and coordination activities, including the names of all of the Tribes which could potentially be affected. These documents would demonstrate fulfillment of Tribal consultation duties by the lead agencies and Tribal government engagement.

Price, Kimeka; USEPA, Region VI

USACE Response:

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS.

Comment:

Our Tribe's Indian Religious Practices and activities opposes the construction and/or enjoined of this proposed Dos Republicas Coal Mine to be built on top of our Indian Religious Sacred Site.

As a Indian I am affected by your actions, in particular you have not never involved and consider the Indians affected concerns.

You have failed to our Tribe, have failed to others rights, the process, your responsibilities in the process you have yet not Consult with our Tribe and others and informed their concerns, the USACE EIS Draft for Coal Mining Expansion is immediately void, invalid, null, not effective and where you need first to Consult with our Tribe and others before the design of this Draft. Our Tribe opposes and rejects in its total entirety the USACE EIS Draft for Coal Mining Expansion until Consultation urgently immediately starts with our Tribe and others where you have disrespect us.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The Draft Programmatic Agreement, Appendix C of the REIS, includes proposals to ensure compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (P.L. 101-601), the American Indian Religious Freedom Act (AIRFA) of 1978 (P.L. 95–341), and the National Historic Preservation Act as amended (P.L. 89-665), among other requirements for cultural resources and tribal consultation. Compliance with these laws and permit requirements will ensure

Native American Consultation

avoidance or suitable mitigation of cultural resources eligible for the National Register of Historic Places (NRHP).

Comment:

We oppose this mine. We are Pacuache. We work more than 200 clans in this region, and we are builders of missions. San Juan Bautista is not that far away, 20 miles from here. We are the gateway Indian and we are here for our rights. You have failed to our tribe, U.S. Corps of Engineers, of what the truth is in another [inaudible]. You already destroyed many of our archeological sites with the Amistad Reservoir. Here, you will blast with dynamite our sacred sites of thousands of hundreds of years where Indians were (inaudible) for making tools, for hunting bison and, again, is sacred, and it's many burial sites, as you would, under this strata. You will destroy; you will blast it in pieces.

But the main issue is the water. That is the main issue because my family lives here. My uncle and my cousins, they live here, so we will be affected. So, again, I say you have failed to our tribe. You have failed to all the rights of the tribes, the process -- your responsibilities and the process. You have not yet consulted with our tribe and others and forwarded their concerns. The USACE EIS draft for the coal mining expansion is immediately void, invalid, not effective, where you did not first consult with our tribe and others before the design of this draft.

Our tribe opposes and rejects in its totality entirely the USACE EIS draft for coal mining expansion and to consultation urgently, immediately starts with our tribe and others where you have disrespected us. The USACE draft EIS for coal mining expansion did not include our tribe religious practices, religious activities, in violation by not including, omitting, under this draft, the Native American Freedom Act, the Executive Order 13007, and the protection of our indigenous sacred burial sites and the site that -- the tribe's own immunity on claiming and the Ex Parte Young treaty.

All USACEs have spoken between each other from federal to state. We have heard you for the last 5 years, and you have not opened consultation with us twice and that's including the Comanches. I'm not speaking on behalf of the Comanches. The National Tribe Preservation of Tribal Officers indicate that you have disrespected the tribe and you have not consulted yet with them.

And as far as I know, the Kickapoos, we know that that's an EPA officer, Antonio Garza. I don't know if he's present here. I don't know if they have a typo. It looks they don't have a typo, but you have to consult first with us. And, again, we hope that you honor our tribal immunity sovereignty because Eleventh Amendment does not apply to you and the tribal immunity sovereignty.

Is any questions or anything that you want to address because the site is going to be blast in pieces. The line will never be the same, ever.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been approved based on a Surface Coal Mining and Reclamation Permit issued by the Railroad Commission of Texas, which is the appropriate permitting authority. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS

NEPA Process

Comment:

Based on the previous two points (no. 5 and 6), our commentary would be that the Corps should abandon sponsorship of this REIS, cease trying to "streamline" the permit process, maintain the current regulatory structure and require each coal company to generate its own EIS for any future expansions.

Baxter, George

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. However, as mine proposals are submitted, site-specific permitting, NEPA analysis, and cultural resources surveys and reports will be completed as part of the future permitting process.

Comment:

And for the record, I'd also like to go on record as stating I do oppose the fact that we only have 3 minutes.

Ruiz, Luis

USACE Response:

Your comment is noted.

Comment:

did--and listen to me when I ask you to give this community a little more time and 'fine-tune' your REIS.

And you could come back before Christmas--at a much more festive time--and re-present your updated REIS.

Brower, Jerry

USACE Response:

The USACE has taken all comments into consideration and modified the REIS as appropriate. The applicable changes are reflected in the Final REIS

Comment:

We are very concerned that public participation in this process may be downgraded, as opposed to elevated. And, actually, as we have seen over the years in Texas, be it the legislature or a national permit process, we have seen citizens' ability to be able to comment and participate in public participation dialed down or almost eliminated instead of expanded.

Beving, Rita

Comment:

I strongly encourage you if they are going to expedite this process that at every step of the way you include a public comment period so people can be engaged in the process.

Cortez, David

USACE Response:

The site-specific impacts will be analyzed as part of future NEPA processes when permit

NEPA Process

applications are submitted. This future NEPA process will include opportunities for public comments.

Comment:

VI. The Corps' DEIS Is Premature and Non-Specific

The Corps' DEIS is not accompanied by drafts of the RGP or the LOP it intends to issue. That makes it impossible for the public and agencies to evaluate what the impacts of the RGP or LOP are likely to be and to prepare meaningful comments. It also violates the CEQ regulations, which provide that the draft EIS "shall normally accompany the proposed rule." 40 C.F.R. § 1502.5(d). As a result of this omission, the DEIS is largely just a compendium of the procedures that the Corps intends to follow. There is virtually no analysis of real-world impacts of the proposal on the six Texas study areas to which the RGP and LOP would apply. In addition, except for quantifying the number of acres of surface disturbance from past and projected future mining, there is no analysis of the actual effects of surface coal mining activities on waters in Texas. Indeed, the DEIS frankly acknowledges that "[r]esidual adverse effects to waters of the U.S., including wetlands, have not been identified." DEIS at 3.2-97.

As a result, the DEIS is a largely academic exercise with no value to decision-makers or the public. It is so non-specific that it is impossible for the public to comment meaningfully at this stage of the process. It also fails to comply with the Corps' duty to identify and evaluate the impacts of its proposal. 40 C.F.R. § 1502.16.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The purpose of the REIS is not to accompany a new proposed rule, but to evaluate changes to the regulatory framework that are within the USACE Fort Worth District's authority. The specifics of the new RGP and LOP are identified in the acreage and linear footage limits and resource limitations displayed in **Table 2-2** of Section 2.2.1. The limitations listed are the thresholds that would apply to these permits. All other specifics of an RGP or LOP would be based on site-specific information to be evaluated when a proposal for a mine expansion or new satellite mine is received. The value of the REIS is that it meets the purpose stated in Section 1.2 to consider a way to streamline the USACE permitting process and facilitate future tiering or supplementation in the evaluation of future project-specific Section 404/10 permit applications for surface coal and lignite mines. The site-specific impacts will be analyzed as part of future NEPA processes when permit applications are submitted. This future NEPA process will include opportunities for public comments. The REIS presents the types of potential impacts that are likely to occur due to future mining and provides some specifics using the information available while lacking site-specific proposals.

The REIS complies with the CEQ guidance "Effective Use of Programmatic NEPA Reviews" dated December 18, 2014, which states the following:
"NEPA reviews may be on a site- or project-specific level or on broader—programmatic—level. Programmatic analyses have value by setting out the broad view of environmental impacts and benefits for a proposed decision. That programmatic NEPA review can then be relied upon when agencies make decisions based on the Programmatic Environmental Assessment (PEA) or Programmatic Environmental Impact Statement (PEIS) such as a rulemaking or establishing a policy, program, or plan, as well as when decisions are based on a subsequent—tiered—NEPA review. Programmatic NEPA reviews should result in clearer and more transparent decision-making, as well as provide a better defined and more expeditious path toward decisions on proposed actions."

This same CEQ guidance also states:
"The scope and range of impacts may also be more qualitative in nature than those found in project-

NEPA Process

or site-specific NEPA reviews. It may be more difficult for an agency to analyze the environmental impacts in depth when there is no clear indication—no site- or project-specific proposal pending—for the level of activity that may follow a programmatic decision."

Comment:

Mine operators in Texas are allowed to use coal ash as part of the fill when reclaiming mines. The highly toxic coal ash is not encapsulated in any way, greatly increasing the risk that it will find its way to groundwater or surface water, as rainwater infiltrates the mine fill. The DEIS notes that "there are continuing concerns about the use of [coal ash] as backfill" in mining operations, including the concern "that constituents could be leached out of [the coal ash] and degrade surface and groundwater quality." DEIS at 3.13-5. Yet, in the next paragraph, the Corps concludes, without support, that "[w]ith proper handling and disposal in accordance with applicable rules and regulations, solid waste [including coal ash] would have minimal impacts." The Army Corps cannot acknowledge the continuing concerns with the use of toxic coal ash as a fill material and then conclude that it would have minimal impacts with no analysis or support.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As in other sections of the REIS, there is a stated assumption that mine operators will comply with federal and state regulations and the conditions of all permits. The referenced section acknowledges the concerns related to backfilling with coal ash but assumes compliance with the regulations developed to minimize adverse impacts, such as the new Disposal of Coal Combustion Residuals from Electric Utilities final rule published in the *Federal Register* (FR) on April 17, 2015.

Comment:

First, I would like to make an objection to the arbitrary 3-minute time period that's been imposed on all speakers. This was just announced to us as we came in the door, and I think this seriously impedes obtaining full comment from the people of Eagle Pass and Maverick County.

Baxter, George

Comment:

The last minute imposition of a 3 minute time limit on verbal comments at the meeting was totally arbitrary and capricious. No citizen knew of this rule until arriving at the door of the event; there was no notice of it anywhere on the Fort Worth District website. Even after several citizens, including the Mayor of Eagle Pass, appealed for a relaxation of this restriction, it was still enforced. The result was that several people who had prepared written remarks of 5 - 8 minutes, including several elected officials, were forced to severely curtail their comments, rendering them far less coherent and intelligible. This episode demonstrates such a complete lack of interest by the USACE in citizen input that it almost amounts to contempt. Instead, the imposition of this unnecessary time limit indicates a sincere desire to get an unpleasant requirement over with as soon as possible, check off the box and move on down the road.

Baxter, George

NEPA Process

Comment:

Preliminary observation regarding the public hearing held in Eagle Pass: The imposed three minute limit on oral public comments was not stated in any publication or public media announcement prior to the hearing. It served no useful purpose except for the comfort of USACE staff, and alienated many speakers and audience members unnecessarily. USACE personnel should have been prepared to stay as late as necessary or continue the next day (if that provision were pre-arranged). To impose this constraint without prior notification was unprofessional and further strained an already tenuous relationship with the community.

Hook, Jonathan

Comment:

I know as a concerned citizen or everybody who is entitled to get up here, we're not entitled to 3 minutes, we're entitled to more because this is our lives.

Ruiz, Ricardo

Comment:

First, I would like to make an objection to the arbitrary 3-minute time period that's been imposed on all speakers. This was just announced to us as we came in the door, and I think this seriously impedes obtaining full comment from the people of Eagle Pass and Maverick County.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

Comment:

The people who really need this 3 minutes, for example, it's not a sufficient amount of time to give public input. There's been insufficient consultation with tribes, with municipal governments county governments, stakeholders, property holders, people who drink water and breathe air specifically.

Ward, Tane

USACE Response:

In accordance with USACE regulations at 33 CFR §327.8, the public hearing officer has the discretion to establish a reasonable time limit for statements. The 3-minute time limit was set for the public hearing to ensure that everyone who wished to had time to be heard. If a speaker ran out of time, additional 3-minute speaking times were offered, and optionally, the hearing officer allowed a full statement to be entered into the record. Because there are multiple opportunities to submit comments, in addition to speaking at the public hearing, this does not limit the public’s opportunity to be heard.

NEPA Process

Comment:

There were 485 mail-outs and 18 newspaper notices, and 110 participants at public scoping meetings. Considering public participation, scoping activities, and the extent of the proposed project, a more comprehensive communication strategy is suggested.

Recommendation:

A more comprehensive communication strategy is recommended using other forms of media such as radio and television, as well as social media. Collaboration with federal agencies working on environmental justice action plans is also recommended.

Price, Kimeka; USEPA, Region VI

USACE Response:

The USACE has provided sufficient opportunity for agency and public involvement through completed respective scoping procedures and has communicated appropriately through the Draft REIS coordination process based on the scoping process comments. Based on public comment and input at the Uvalde, Texas, public scoping meeting, a Draft REIS open house meeting and formal public hearing were held in Eagle Pass, Texas.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

The Corps intends to "establish a cohesive framework for stream mitigation, establish sound performance metrics, and enhance monitoring efforts." Scoping Announcement at 2. To do so, and particularly to determine "sound performance metrics" the Corps must evaluate the success of mitigation to date in relation to the 2008 Mitigation Rule, which requires that not only the structure of a stream or wetland be restored, but also the ecological functions that those resources provide. As Sierra Club has previously commented, the TXRAM evaluation that the Corps has been employing is wholly inadequate for this purpose.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Compliance with the 2008 Mitigation Rule and the implementation of appropriate compensatory mitigation (see Section 2.1.2) is assumed in the impact analyses because it would minimize the adverse effects to water quality and quantity resulting from changes allowed with a 404 permit. The site-specific impacts of changes to waters of the U.S. and site-specific compensatory mitigation plans will be analyzed by the USACE and resource agencies when there are specific mine proposals in the future.

NEPA Process

Comment:

State and federal agencies have designated 24 Texas water bodies as being impaired for mercury. A large number of these lakes, creeks, rivers, and bayou's are in the geographic scope of the PEIS and are near large lignite mining operations, and/or are downwind of the power plants where the lignite is burned. The list of 24 includes Caddo Lake, Big Cyprus Creek, Black Cyprus Bayou, Lake Dainerfield, Toledo Bend Reservoir, Clear Lake, Hills Lake, Neches River, BA Steinhagan Lake, Lake Ratcliff, and many others. Health authorizes have had to step in and issue fish advisories on numerous Texas water bodies warning Texans not to consume any fish they catch there. The Corps must consider the water quality impacts of the mining in conjunction with these existing impairments and the ongoing mercury loading of these waters from the burning of coal. A key objective of the Clean Water Act is restoring and maintaining the chemical, physical and biological integrity of the Nation's waters. Before additional lignite mining and burning is allowed, the Corps should develop practices and permitting requirements on future mining that include restoration of those areas that have already been chemically and biologically impaired by lignite-sourced mercury. The DEIS, while disclosing impaired waterways in the study areas, includes no suggested actions, mitigation measures, or restoration requirements to resolve these issues before more mining is permitted.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The site-specific direct, indirect, and cumulative impacts of changes to waters of the U.S. will be analyzed when there are specific mine proposals in the future. The REIS presents the types of potential impacts that are likely to occur due to future mining and provides some specifics using the information available while lacking site-specific proposals.

Comment:

I remarked that all the qualifiers screamed out to a strong liklihood of something happening that would need mitigation. But it was just way too damn vague--a fact I mentioned in my speech but soft-peddled.

Brower, Jerry

Comment:

But, nonetheless, there are so many qualifiers, so many words like may and could and would. I don't think I've ever seen that many qualifiers ever in any document, and to me that just -- that's a red flag. Everybody should understand. They're being honest, as honest as they possibly can. They are saying stuff can happen, stuff will happen. Compensatory mitigation. This is for that.

Brower, Jerry

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" requiring qualifiers that should be answered when site-specific mine proposals are submitted and the associated NEPA analysis is developed. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

NEPA Process

Comment:

Strip mining has resulted in destruction and these communities that are affected must have a real voice in this process moving forward. And that's my personal concern here today is that this entire process adheres to restrict public participation and public input moving forward ironically, at a public forum and I understand that.

The Corps appears to be proposing shortcuts for issuing permits that we thing would cut off the public and other federal agencies from meaningful participation at each stage.

Mann, Christina; Sierra Club

USACE Response:

The site-specific impacts will be analyzed as part of future NEPA processes when permit applications are submitted. This future NEPA process will include opportunities for public comments. The REIS presents the types of potential impacts that are likely to occur due to future mining and provides some specifics using the information available while lacking site-specific proposals.

Noise and Visual Resources

Comment:

Strip mining also creates coal dust that blows onto the property of nearby landowners and near constant noise pollution from the operation of mining equipment and mills.

McKim, Mark

USACE Response:

As discussed in Section 3.7.2, typical mine construction and operations would result in temporary localized fugitive dust emissions. However, with the use of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including fugitive dust. As discussed in Section 3.11.2, noise levels would be temporary and transitory as pits are sequentially develop, backfilled, and reclaimed. Noise levels at any given location would depend on distance from mining activities, terrain, and operating depth in the mine pits at any given time. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Mining may also impact local homeowners by cracking their concrete foundations and walls resulting in serious damage to homes.

McKim, Mark

USACE Response:

As discussed in Section 3.1.2.1, the potential for blasting-related effects typically occurs where old underground mine workings are present. RCT regulations (12.135 and 12.136) require that a mine applicant determine the location of previous mining, identify the mining method, and map the extent of old mine workings. When older mine works are identified, proper precautions and procedures would be implemented to reduce blast vibrations that may weaken underground workings, causing unsafe conditions.

As discussed in Section 2.2.4, blasting typically would not be required for a surface coal or lignite mine. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

The constant noise and lights associated with strip mining operations are highly disruptive to the lives of nearby landowners, greatly diminish the value of that property, and are harmful to wildlife. The Corps must consider the impacts of multiple mines being approved near homes, the impact on the quality of life of property owners, and the impact on the property value.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Potential noise and lighting effects as the result of a typical mine are discussed in Sections 3.11.2 and 3.12.2, respectively. Potential noise and lighting effects on wildlife are discussed in Section 3.5.2. The related cumulative effects are discussed in Sections 3.11.3, 3.12.3, and 3.5.3. Information relative to related effects on property values has been added to the Population and Housing

Noise and Visual Resources

subsection under Section 3.9.2.1. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

My husband and I ended up living with lignite mining going on 24/7. The noise, vibration and particulates that result from lignite mining activities are horrible.

We woke up every morning with a layer of very fine granular ash, baby powder consistency, coating everything in the house. And this with all windows closed and locked. It was not lost on us that if these fine particulates were coating everything in our house that they were also getting into our lungs.

Cortez, David

USACE Response:

As discussed in Section 3.7.2, typical mine construction and operations would result in temporary localized fugitive dust emissions. However, with implementation of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of “sensitive” populations such as asthmatics, children, and the elderly.

As discussed in Section 3.11.2, noise levels would be temporary and transitory as pits are sequentially develop, backfilled, and reclaimed. Noise levels at any given location would depend on the distance from mining activities, terrain, and operating depth in the mine pits at any given time.

As discussed in Section 3.1.2.1, the potential for blasting-related effects (e.g., vibrations) typically occurs were old underground mine workings are present. RCT regulations (12.135 and 12.136) require that a mine applicant determine the location of previous mining, identify the mining method, and map the extent of old mine workings. When older mine works are identified, proper precautions and procedures would be implemented to reduce blast vibrations that may weaken underground workings, causing unsafe conditions. As discussed in Section 2.2.4, blasting typically would not be required for a surface coal or lignite mine.

Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

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Comment:

I think that the U.S. Corps of Army engineers has a responsibility to the people of Texas, has a responsibility to our land, our health, our well-being, our history, our cultural patrimony, and I don't think that this draft is doing sufficient in its responsibility.

Ward, Tane

USACE Response:

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

First, we take issue with the apparent purpose of this document. It appears that the reason it is being created is to facilitate and expedite any future permits for expanded coal mining in this county. We are completely opposed to this. We do not want to make the process easier and quicker for the coal industry. We want the process to be completely thorough and take as long as necessary to ensure the safety and welfare of the people of Maverick County.

Morales, Jerry ; Maverick County Commission

USACE Response:

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion area or satellite mine are proposed. As allowed under NEPA, tiered and supplemented NEPA documents for future mine expansion areas or satellite mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses.

Comment:

As outlined above, the proposed permitting framework outlined in the DEIS is both illegal under NEPA and the Clean Water Act and would cut out the public from participating in major permitting decisions made by the Army Corps. Furthermore, the Corps has not supported its decision to short-circuit the normal NEPA process with any data or figures that demonstrate a public need for such a drastic change to the permitting process for coal mines. Therefore, the Corps should not choose any of the alternatives proposed in the DEIS that reduce public participation or prevents the Corps from fully considering all of the environmental, public health, and cultural impacts of expanded mining in Texas. As there is no demonstrated public need for the proposed changes, the Corps should choose the No Action Alternative.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The USACE is not proposing changes to the NEPA process. Rather, the proposed categories discussed in Section 2.2.2 provide a general guideline as to the type of NEPA document (EA or EIS)

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that may be required in conjunction with the proposed Section 404/10 permit types for future surface coal and lignite mines in Texas. As discussed in Section 2.2.2, USACE, as the lead federal agency for NEPA compliance, would have the authority to require an EIS for any project, regardless of the Section 404/10 permit type, if the potential for significant impacts is identified, even if the impacts could be mitigated to less than a significant level. Public participation for future mine-specific NEPA documents would be conducted in accordance with NNEPA guidelines

Comment:

IV. The Corps' Preparation of a DEIS Is an Implicit Admission that the Proposed RGP Is Not Authorized Under § 404(e)

General permits under § 404(e) can only be issued for categories of activities that have minimal effects, both individually and cumulatively. 33 U.S.C. § 1344(e) (the "Secretary may … issue general permits on ... regional ... basis for any category of activities … if the Secretary determines that the activities in such category … will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment")(emphasis added). If an activity has minimal effects, no EIS is required. The Corps has consistently taken the position in litigation over NWP 21 that no EIS is required before an NWP is issued. *E.g., Kentucky Riverkeeper v. Rowlette,* 714 F.3d 402, 408 (6th Cir. 2013); *OVEC v. Hurst,* 604 F. Supp. 2d 860, 883 (S.D.W.Va. 2009) ("The NWPs do not reach the level of significance required for an EIS"). The Corps' decision to prepare an EIS on the proposed RGP is an implicit admission that its impacts are more than minimal and require an EIS. As a result, the proposed RGP would not comply with § 404(e) and cannot be issued. Instead, projects that impact more than ½ acre or 300 feet of stream bed must be evaluated as individual permits under § 404(a).

The DEIS acknowledges that individual permits and "project-specific EISs were prepared by the USACE (as the lead federal agency) for two large mine expansion areas (Three Oaks Mine and Rusk Permit Area), based on USACE's determination that these projects had the potential to result in significant impacts." DEIS at 2-1. The Three Oaks Mine proposed to impact 67 acres of waters of the U.S. and 38 miles of stream channels. FEIS at iv, vi (2003). The Rusk Permit Area proposed to impact 303 acres of waters of the U.S. and about 345,000 feet of stream channels. FEIS at 3.2-53 (2011). The same individual permit and EIS process is required for all mining projects that exceed the limits in NWP 21(b).

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

RGPs have been successfully developed and implemented in different USACE Districts. A RGP is issued for a specific geographic area by an individual USACE District. Each RGP has specific terms and conditions, all of which must be met and verified for project-specific actions. RGPs authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis.

District Engineers have the authority to develop RGPs [33 CFR 322.2(f), 325.2(e)(2), and 325.5(c)]. Actions that would be taken by the Fort Worth District are not just the proposed development of a RGP but also a modification to the current LOP process. While the development of a RGP (and the anticipated EA that would accompany such an effort) would be informed by the data and analyses in the REIS, the action itself would not authorize activities that result in more than minimal effects both individually and cumulatively. The comment focuses on the limitations included in the NWPs which reflect a national view of potential effects that may occur under those permits. RGPs are more area specific, which allows for more refined information to be developed to inform the potential impacts that can be allowed and still be concluded as minimal. Numerous RGPs exist that allow for effects greater than those allowed for under the NWPs.

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Comment:

The Regional EIS on coal mining in Texas provided a critical opportunity to evaluate cumulative impacts of Texas lignite strip mining. In its comments on the scoping announcement, Sierra Club urged the Corps to study the full impacts on the following "relevant resources" in the scope of the PEIS. *See attached* Letter to D. Messer, December 20, 2013. Unfortunately, the DEIS falls far short of the goal of fully analyzing and disclosing these cumulative environmental, public health, and cultural impacts. In fact, despite receiving public testimony and comments on these issues, the Corps denies that there are *any* public health or environmental justice impacts from the proposed action. This conclusion is demonstrably false and the DEIS is fatally flawed by its failure to disclose and analyze these impacts.

The Corps must evaluate all environmental and community impacts. For example, the Corps' 2005 PEIS for Mountaintop Mining/Valley Fills in Appalachia (EPA 9-03-R-05002) extensively evaluated impacts of blasting on communities, deforestation, air quality impacts, flooding, and impacts on scenic values. Here, the Army Corps does little more than create a list of general or "typical" environmental impacts and "typical" environmental protection measures; no effort is made to distinguish which of these impact would actually result from the proposed action and which of the "typical" mitigation and protection measures would actually be required. This is likely a result of the premature and non-specific nature of the DEIS. If the Corps hoped to actually provide a programmatic regional EIS that was useful for tiering to in future permit decisions, it would need to analyze the following issues with specificity and support its conclusions on those impacts with data and rigorous scientific analysis.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

In accordance with NEPA, the relevant resources for analysis in an EA or EIS are determined based on their presence or potential for occurrence in the resource-specific direct/indirect study areas. Typically, the USACE's area of responsibility is very narrow as compared with OSMRE's responsibility and authority delegated to the RCT.

It is not appropriate to compare the REIS with the 2005 PEIS. The REIS is not a programmatic EIS. Furthermore, the targeted coal resources, mining practices, and suite of environmental effects differ substantially from those of Appalachian coal mining. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a typical surface coal or lignite mine expansion area or satellite mine. Potential public health and environmental justice impacts (including cumulative) as a result of a typical surface coal or lignite mine and the rationale for the conclusions are discussed in Sections 3.14 and 3.15. Potential impacts to water quality, vegetation, air quality, and visual resources are discussed in Sections 3.2, 3.4, 3.7, and 3.12, respectively. The potential for blasting-related effects is discussed in Section 3.1.2.1. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

The typical environmental protection measures identified in Section 2.2.5 include typical permit requirements of the various federal and state agencies with jurisdiction over surface coal and lignite mining operations, as well as additional BMPs implemented by the mines as standard operating procedures. As such, they represent the measures that a typical mine would be required to implement and, therefore, are considered in the impacts analyses in accordance with NEPA. Additional environmental protection measures may be identified for potential future surface coal and lignite mine expansion areas and satellite mines at the time they are proposed, based on mine-specific and site-specific information and mine-specific permit requirements.

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In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical surface coal or lignite mine expansion area. The final mitigation measures would be incorporated into the agency's decision document. The need for additional or refined monitoring and mitigation may be identified during the project-specific NEPA analysis that would be conducted at the time future mine expansion areas or satellite mines are proposed as discussed in Section 2.5.

Comment:

I am here representing the Commissioners Court and the people of this county, the great majority of whom oppose the current Dos Republicas open coal mine and the future expansion of that mine.

Morales, Jerry ; Maverick County Commission

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

Comment:

We oppose the Corps' proposal to draft a regional general permit or increase the use of letters of permission in the manner that is proposed in the draft Environmental Impact Statement.

The Corps is subject to the executive order on environmental justice and to robust public participation and consultation requirements for the Clean Water Act. The Corps should be looking for more ways to meaningfully engage the public and increase public engagement and not look for shortcuts that would effectively reduce or end public participation. The administrative shortcuts proposed by the Corps are a big step in the wrong direction.

Mann, Christina; Sierra Club

USACE Response:

As stated in Section 2.2, future project-specific permit applications will still require NEPA and 404(b)(1) analyses and compliance with all other required local, state, and federal permits prior to development, offering multiple opportunities for public notice and review. Any draft RGP or LOP modification would be announced via USACE Public Notice procedures for comment on limits and specifics of the process. USACE is also required to comply with EOs 13212 and 13302 on energy-related projects. It should be noted that the most comprehensive avenue for public participation is through the RCT evaluation process.

Comment:

I just want you to know and understand that it's our right as people to say no. Somebody from another country cannot come, ask for permits and be granted them if the people from the United States of America say no. That's all I have to say.

De La Cerda, Gabriel

USACE Response:

Comment noted.

Opinion

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The USACE is required to process Section 404 and Section 10 permit applications, including the applications submitted by surface coal and lignite mines, in accordance with Section 404 of the CWA and Section 10 of the RHA. As part of the permit evaluation process associated with Section 404 and Section 10 permit authorizations, the USACE is also required to comply with the regulatory requirements of NEPA in evaluating the potential impacts of an action.

Comment:

A coal mine will make us all sick!

Avila, Teresita

USACE Response:

Comment noted. Potential public health effects as the result of a typical mine and the rationale for the conclusions are discussed in Section 3.14. As discussed, a typical mine would not be expected to result in adverse health effects. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines within the REIS study areas will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

They simply have no interest in bearing the actual cost in doing business.

That cost falls upon the communities in the form of destruction of property, premature illness among other things.

Cortez, David

USACE Response:

The potential effects to properties and tax revenues as the result of a typical surface coal or lignite mine expansion area or satellite mine are discussed in Section 3.9.2. Potential impacts to public health are discussed in Section 3.14.2.

Comment:

The only thing that we have is our people are going to suffer. It might not be now, but I'll tell you right now, I have a white fence on my property, and it's already darkened by the coal that's been supposedly not taken out of the ground yet in the past 6 months.

De La Cerda, Gabriel

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

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Please see Section 3.7.2 for a discussion relative to potential air quality impacts as the result of a typical surface coal or lignite mine expansion area or satellite mine.

Comment:

Second, it appears that this study was written solely from the viewpoint of the coal industry. Although some of the risks and hazards that surface coal mining closest to people living nearby are mentioned, the conclusion is always that steps will be taken to mitigate those problems and that there's nothing to worry about. We strongly believe that this attitude -- that this attitude permeates the entire document and shows some political bias in favor of the coal industry and disregards the legitimate concerns of local residents.

Therefore, until the entire document is rewritten to be more factual and evenhanded, we cannot possibly support it.

Morales, Jerry ; Maverick County Commission

USACE Response:

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230).

The typical environmental protection measures identified in Section 2.2.5 include typical permit requirements of the various federal and state agencies with jurisdiction over surface coal and lignite mining operations, as well as additional BMPs implemented by the mines as standard operating procedures. As such, they represent the measures that a typical mine would be required to implement and, therefore, are considered in the impacts analyses in accordance with NEPA. Additional environmental protection measures may be identified for potential future surface coal and lignite mine expansion areas and satellite mines at the time they are proposed, based on mine-specific and site-specific information and mine-specific permit requirements.

Comment:

The last thing in closing, I want to also share that our board is then opposing of this Dos Republicas and any expansion of the mine.

Contreras, Terri ; Maverick County Hospital District

Comment:

Luminant believes that the proposed changes in permitting procedures described in the Draft Regional Environmental Impact Statement for Surface Coal and Lignite Mining in Texas will be beneficial to the Section 404 permitting process while maintaining protection of the nation's jurisdictional waters.

Mireles, Kim; Luminant

Comment:

And I oppose of all of the mining. No matter how good it looks or how good it smells or whatever you think it is, it's no good for the environment.

Mithlo, Harry

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Comment:

All this stems from using these really dirty fuels. I'd like to see Texas clean, safe for people's health.

Newman, Bill

Comment:

I strongly oppose the strip mining of lignite coal. That's a very poor power source. We've got to move away from that. So any action to streamline a process for permitting of those facilities I'm strongly opposed to that.

Richter, Dwight

Comment:

And I feel that we should leave that coal and lignite where it lay and not expand the existing mines.

Smith, Darel

USACE Response:

Comment noted.

Comment:

Lignite strip mining has serious negative impacts on our waterways and land. I strongly urge the Corps of Engineers to stop strip mining practices in East and Central Texas. Our waterways, lands, wetlands, groundwater, and air must be protected from future mining. Because of the carbon dioxide and other air emissions from coal, and increasingly competitive prices of wind and solar, many coal plants are being phased out. We should not cause serious damage to our environment for an industry that is no longer supported.

Pantell, Susan

USACE Response:

The USACE is required to process Section 404 and Section 10 permit applications, including the applications submitted by surface coal and lignite mines, in accordance with Section 404 of the CWA and Section 10 of the RHA. As part of the permit evaluation process associated with Section 404 and Section 10 permit authorizations, the USACE is also required to comply with the regulatory requirements of NEPA in evaluating the potential impacts of an action.

Alternative energy sources are outside the scope of the REIS. Also, the analysis of power plants is outside the scope of the REIS. However, power plant emissions are authorized by other permitting authorities and are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Comment:

Today, we are here to make comments on the Draft Regional Environmental Impact Statement the Corps is sponsoring. The state proposes an expansion of surface coal mining in Maverick County to an additional 25,000 acres, an area six times the size of Eagle Pass itself. Needless to say, our association and the other entities I've previously mentioned are wholeheartedly opposed to this increase, which would expose our citizens to the ill effects of coal mining for the next 20 or 30 years.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

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USACE Response:

As discussed in Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230) discussed in the introduction to Section 1.0.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, the table presents the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations in each study area. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Today, we are here to make comments on the Draft Regional Environmental Impact Statement the Corps is sponsoring. The state proposes an expansion of surface coal mining in Maverick County to an additional 25,000 acres, an area six times the size of Eagle Pass itself. Needless to say, our association and the other entities I've previously mentioned are wholeheartedly opposed to this increase, which would expose our citizens to the ill effects of coal mining for the next 20 or 30 years.

Baxter, George

USACE Response:

As discussed in Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230) discussed in the introduction to Section 1.0.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, the table presents the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations in each study area. Also, as discussed in Section 2.2.4, the life of a typical mine expansion would range from approximately 1 to 30 years. For a typical satellite mine, it would range from approximately 5 to 30 years. The life of potential future mines would be mine-specific and would be identified at the time they are proposed.

Comment:

The DEIS is legally flawed and provides an incomplete and inadequate analysis of the environmental, public health, and cultural impacts of streamlined coal mining in Texas. Therefore, the Army Corps should either prepare a full EIS that includes a complete analysis of these issues and complies with the legal requirements of NEPA and the Clean Water Act, or choose the No Action Alternative.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS provides an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As allowed under NEPA, both tiered and

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supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230).

Comment:

The Board of Directors, management , and staff of the Maverick County Hospital District, will collaborate, cooperate, assist, and work together with the City of Eagle Pass, Texas, Maverick County, Texas, Eagle Pass Independent School District, Maverick County Environmental and Public Health Association, all Maverick County, Texas ranchers, farmers, and landowners, and all other individuals, governmental entities, and entities are in complete opposition to the Eagle Pass Mine of Dos Republicas Coal Partnership and disapprove any and all proposed regulatory framework that would allow any expansion of the current permits of 6,346 acres (10 square miles) to include Deer Run, Siesta Acres, and Seco Mines to additional 25,000 acres (40 square miles).

Farias, Juan; Maverick County Hospital District

USACE Response:

Comment noted. This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations.

Comment:

A representative from Altos Homos De Mexico or AHMSA, the parent company of Dos Republicas (which is 100% foreign owned), once told us that "little people cannot stand in the way of this project." We hope that this is not also the attitude of the Corps of Engineers. Many of us in this town once served in the U.S. Army or another branch of the armed forces. We took an oath to defend the people of the United States against all enemies, foreign or domestic. Accordingly, we hope instead that the U.S. Army Corps of Engineers will also defend the people of Maverick County and place their welfare, health and safety ahead of the interests of a few foreign millionaires and their foreign corporations. Either abandon sponsorship of this REIS or have it rewritten completely to be factual, balanced and conform to the President's Clean Power Plan and cease having it be just a taxpayer-funded tool to enable the coal industry.

Baxter, George

USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

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The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230).

Comment:

The reason why I'm here tonight is of first concern to Public Citizen is the fact that we see this process as maybe being expeditious for the Army Corps of Engineers and for the lignite mining companies, but we see no real benefit to the public in what you-all have proposed.

Beving, Rita

Comment:

So, we see no productive outcome of this proposal, and it might be expeditious for you, but we don't see any public benefit.

Beving, Rita

Comment:

I'd have to say that we don't approve of a streamlining of the process. We think that there should be much more -- much more room for study. We think that there should be a rethinking of the process, of strip mining.

Blazer, Cherelle; Sierra Club-Beyond Coal

Comment:

Again, I apologize for not having a written statement, but again, the permitting process, if anything, should be tightened up on these guys and should be a lot more stringent.

Richter, Dwight

Comment:

And I don't think that they should be expanded or expedited because mainly, oil has already gone to $43.00 a barrel and there's no need to tear up the land and pollute the ground water or and remove the vegetation or potentially hurt any endangered species or mess up the fossils of Native Americans.

Smith, Darel

Comment:

I think the demand for lignite is only reducing because the price of oil is down, the amount of natural gas that's been found here in Texas. So I see no need for streamlining or expediting the environmental impact statement process.

Smith, Darel

USACE Response:

Comment noted. As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion area or satellite mine are

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proposed. As allowed under NEPA, tiered and supplemented NEPA documents for future mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

It is our understanding that the contractor who wrote this study was paid by the Texas Mining and Reclamation Association and they certainly got their money's worth- a document written totally from the coal industry viewpoint with almost no acknowledgement that surface coal mining poses grave threats to the environment and human health. The first sentence in paragraph ES1.2 says it all: "Currently operating coal and lignite mines in Texas provide a long-term, reliable, continuous, and economically stable fuel source to existing nearby power plants." This sentence could have been (and perhaps was) lifted intact from a coal industry promotional brochure. This would be fine if the end result was a study openly authored by Dos Reublicas or the Texas Mining Association, but, of course, it is the Corps of Engineers name and logo that is on the cover page and the signatures of Corps officials that are on the first few pages. This means that the Corps has adopted this study on behalf of the U.S. Government and has endorsed the positions therein. We find it incredible that you would want to do so. As you know, the president just announced new EPA regulations as part of the Clean Power Plan, aimed at reducing the pollution levels emitted from coal burning power plants and, by extension, reducing the consumption of coal. How can the Fort Worth District be proposing a document that seeks to make it much easier to greatly increase coal mining, a document that runs 180 degrees counter with the rest of the administration's efforts?

Baxter, George

USACE Response:

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230).As allowed under NEPA (40 CFR 1506.5), the REIS is being prepared by a third-party contractor (AECOM) under the direction of the lead federal agency (USACE). As lead federal agency, USACE has full control and oversight over the REIS process, including, but not limited to, communication between the third-party contractor and Texas Mining and Reclamation Association and decisions relative to the technical scope, content, and outcome of the REIS.

As clarification, the USACE is required to process Section 404 and Section 10 permit applications, including the applications submitted by surface coal and lignite mines, in accordance with Section 404 of the CWA and Section 10 of the RHA. As part of the permit evaluation process associated with Section 404 and Section 10 permit authorizations, the USACE is also required to comply with the regulatory requirements of NEPA in evaluating the potential impacts of an action. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

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Comment:

I'm here representing the Maverick County Environmental and Public Health Association. Our organization was formed in 2011, that we oppose the Dos Republicas' open pit coal mine here in Maverick County.

Baxter, George

Comment:

The people of Maverick County overwhelmingly and vehemently oppose this mine and increasing its size. More than 8,000 citizens of the county have signed letters and petitions against the mine. This is more than the approximately 6,000 who voted in the 2004 state and federal elections in our county.

Senator Carlos Uresti and District Representative Poncho Nevarez also strongly oppose this mine and an expansion. Accordingly, the Maverick County Commissioners Court has passed several resolutions opposing the Dos Republicas Mine, as has the City of Eagle Pass, the Maverick County Hospital District and the Eagle Pass Independent School District.

We in Maverick County do no oppose progress. We welcome economic development based on commerce, manufacturing, agriculture and oil and gas production. But we wish to be the judge of which requests will have a positive, not a negative affect in our community.

Morales, Jerry ; Maverick County Commission

Comment:

I'm here representing the Maverick County Environmental and Public Health Association. Our organization was formed in 2011, that we oppose the Dos Republicas' open pit coal mine here in Maverick County.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

I'm opposed to easing the guidelines for environmental impact statements.

Smith, Darel

USACE Response:

Comment noted. No changes to the guidelines for preparation of NEPA documents are proposed. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and

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human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

I remarked that all the qualifiers screamed out to a strong liklihood of something happening that would need mitigation. But it was just way too damn vague--a fact I mentioned in my speech but soft-peddled.

Brower, Jerry

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Qualifiers are used in describing potential impacts where information (such as mine-specific and site-specific information) is not available to support a definitive conclusion. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Thanks for the study but too many qualifiers! Still, my choice would be for more federal oversight over any company that may or could endanger water quality (meaning: The public's and the ecosystem's health).

No expansion: Close the mine.

Brower, Jerry

USACE Response:

Comment noted.

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Qualifiers are used in describing potential impacts where information (such as mine-specific and site-specific information) is not available to support a definitive conclusion. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

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Comment:

Accordingly, we hope instead that the U.S. Corps of Engineers will also defend the people of Maverick County and place their welfare, health, safety ahead of the interests of a few foreign millionaires and the foreign corporations, either abandon sponsorship of this Environmental Impact Study or have it rewritten completely to be factual and balanced and not be just a front for the corporation.

Gamez, Ana

USACE Response:

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230).

Comment:

The Corps cannot preemptively exempt a category of projects from a full public notice and comment and full EIS without providing any basis or even defining the category with any specificity. Such thresholds do little more than create an incentive for permit applicants to artificially limit or piecemeal their applications so as to fit within the Category 1 or 2, and benefit from the “presumption” that there will be no significant impacts from that mining.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The USACE is not preemptively exempting a category of projects from a full public notice and comment and full EIS without providing any basis or even defining the category with any specificity. Any RGP or LOP modification would be developed following the NEPA process.

The REIS is a regional evaluation and includes considerations that would be relied on for subsequent NEPA reviews for the proposed development of a RGP and modified LOP process, as well as future IP applications. These subsequent NEPA reviews, relying on the REIS, should have a better defined and more expeditious path toward decisions on proposed actions than without the REIS. The REIS addresses the general environmental issues relating to the suite of projects anticipated to be forthcoming to USACE, and is being used to frame the scope of the subsequent site- and project-specific federal actions. The REIS supports planning-level decisions, because there are limitations in available information and uncertainty regarding the timing, location, and environmental impacts of potential future mining proposals and associated USACE permit decisions.

The requirements under Section 404 and NEPA would still apply and will be determined based on the site-specific permit application submitted for each project. There is no presumption of the significance of impacts from mining applied to a general category. NEPA does not allow for “piecemealing” or segregation of actions to avoid a full analysis of impacts.

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Comment:

Sierra Club supports the preparation of a Programmatic Environmental Impact Statement (“PEIS”) that fully evaluates the cumulative impact of surface coal and lignite mining in Texas. The scoping announcement prepared by the Army Corps of Engineers (“Corps”) estimates that lignite mining will disturb 158,600 acres that have not already been impacted by existing mines. This is approximately 250 square miles. These activities will have broad and permanent effects on the Texas landscape, water supplies, wildlife, and communities. Unfortunately, it appears from certain statements in the scoping announcement that the Corps is concerned more with its ability to quickly approve mining expansions across the state than with taking an honest look at the very serious harm the environment and quality of life caused by these activities. We strongly urge the Corps to keep to its stated intent of providing a “scientifically-based regional environmental analysis, including an interdisciplinary cumulative impact assessment, of all relevant resources within the defined geographic regions.”

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional analysis of potential direct, indirect, and cumulative impacts from a “typical mine” expansion area or satellite mine. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses. Cumulative effects analyses also will be included in each of the project-specific NEPA documents as required by NNEPA

Out-of-scope

Comment:

Coal plants are one of, if not the top contributor to Global Warming in the world. In the United States alone 1.7 billion tons of CO2 is emitted. It's one of the leading causes of smog, acid rain, and toxic air pollution. Why contribute to such a harmful form of non-renewable energy when we know there are safer and better options out there?

Galindo, Melissa

USACE Response:

Alternative energy sources are outside the scope of the REIS. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions

Comment:

We think that we should be looking at cleaner alternatives and alternatives that subject the land and water to less degradation.

Blazer, Cherelle; Sierra Club-Beyond Coal

Comment:

And I think it's time that we moved on from coal. I think it's time that we use clean, renewable power.

Campbell, Tammy; We Can

Comment:

It's well past type for our moneys to be invested in solar, wind and other alternative energy sources that will be less polluting, less destructive, less onerous to communities and less displacing to people and wildlife.

Cortez, David

Comment:

The PEIS should evaluate alternatives to expanding lignite mining in Texas. The most recent monthly planning report by the Texas grid operator, ERCOT, indicates that over 50,000 MW of proposed power projects are in the cue in Texas. Only a tiny fraction, 270 MW, of those proposed projects are coal. The majority of the projects, over 25,000 MW, are from wind, solar, and storage projects, with another 24,000 of projects fueled by natural gas. Texas is already the number one source of wind power in the U.S., and in recent months, for example March 2013, wind energy has provided over 30% of the power needs for the state. Before the Corps permits additional strip mine projects in Texas, with all the attendant impacts discussed below, the Corps should determine whether any expanded or new lignite mining is appropriate and necessary given the alternatives available and the changing power profile in Texas.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

If electricity and jobs are at issue, then I ask the investors of the partnership to turn away from fossil fuels and invest in wind farms or solar panels instead.

Juarez, Alejandra

Out-of-scope

Comment:

It seems like this is a very high cost to pursue and I would recommend pursuing options as my family and I have just done by investing more in solar power and putting greater prohibitions, not easing the way in which coal attraction can occur.

King, Joshua

Comment:

The wind industry has expanded greatly in Texas over the last decade. Already on an annual basis, wind power generates about 12 percent of the electricity used in the state. Also, already permitted lignite mines in Texas have the capacity to power the existing plants for the next few years.

With all these alternatives why would we move forward with decades more of lignite mining in Texas and we also have a booming solar industry as well.

McKim, Mark

Comment:

However, I really think that our efforts in general should be moving away from these dirty fuels more into clean energy and that this is very, very important.

Newman, Bill

Comment:

There are many alternatives to lignite mining in Texas. The wind industry has greatly expanded in Texas over the last decade. Already on an annual basis, wind power generates about twelve percent of electricity used in the state. In addition, already permitted lignite mines in Texas have the capacity to power existing plants for the next few years. Texas also has one of the largest solar potentials of any

Verma, Vik; Organizing for Action East Texas

Comment:

And this point of extraction is really outdated. This is not the 1800s. We have better ways of getting energy to people that is clean, that does not cause diseases, that does not displace people, that is respectful to the land and respectful to the people, and I would like to see those taken into consideration.

Ward, Tane

USACE Response:

Comment noted. Alternative energy sources are outside the scope of the REIS

Out-of-scope

Comment:

So before I run out of page: 1) HISTORICAL CONTEXT--make a chart of incidents of contamination after 1st 2 yrs., 1st 5, 1st 10, 1st 20, etc. and across from each period of time the percentage of coal mines (with records available) with proven contamination, breaches of containment, lawsuits, etc. Documented history is the only source that won't need a qualifier; 2) addend& reflecting specificity to this area; 3) more information from real scientists and environmental experts and less from corporate impact studies--which historically are full of it; and 4) call me at 513-2274 (that's 830 513 2274) for some other points because I'm running out of page and I'm sitting in a bad chair which is causing me to make a lot of mistakes.

Brower, Jerry

USACE Response:

The REIS is being prepared in accordance with the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508). In accordance with NEPA, the regional analysis in the REIS evaluates the potential impacts of the Proposed Action (described in Section 2.2.4) and No Action Alternative (described in Section 2.3). As such, the analysis of past compliance is beyond the scope of the REIS.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Qualifiers are used in describing potential impacts where information (such as mine-specific and site-specific information) is not available to support a definitive conclusion. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. During the preparation of future mine-specific NEPA analyses, the USACE will independently evaluate the information submitted by the applicant and will be responsible for its accuracy as required by NEPA (40 CFR 1506.5).

Comment:

The Corps must consider the burning of coal at the plants adjacent to the mines as a connected activity, and evaluate its environmental impacts. This coal combustion causes significant local air pollution of particulates, sulfur dioxide, air toxics. Burning coal also contributes to severe ozone problems in nearby parts of the state. The PEIS should study these air quality impacts in addition to the impacts of particulates directly released by the mining process.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional analysis of potential impacts from a “typical mine” expansion area or satellite mine. Potential mine-related air quality impacts are discussed in Section 3.7.2. The analysis of power plants is outside the scope of the REIS. However, power plant emissions as authorized by other permitting authorities are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. The need for the requested type of evaluation will be determined by the permitting agency when a permit application is under consideration and mine-specific and site-specific information is available.

Out-of-scope

Comment:

The Corps must consider the burning of coal at the plants adjacent to the mines as a connected activity, and evaluate its environmental impacts. This coal combustion causes significant local air pollution of particulates, sulfur dioxide, air toxics. Burning coal also contributes to severe ozone problems in nearby parts of the state. The Corps must study these air quality impacts in addition to the impacts of particulates directly released by the mining process. The DEIS did not disclose or consider these impacts within the scope of its analysis.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

With over 250 additional square miles of lignite mining contemplated, the Army Corps should fully discuss climate change impacts to a degree commensurate with the very significant impact of this mining. One initial step would be to estimate the heat content of the coal that will be mined and convert that to expected carbon dioxide emissions using an appropriate emissions factor.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional analysis of potential impacts from a “typical mine” expansion area or satellite mine. Potential mine-related air quality impacts are discussed in Section 3.7.2. The analysis of power plants is outside the scope of the REIS. However, power plant emissions as authorized by other permitting authorities are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. The need for the requested type of evaluation will be determined by the permitting agency when a permit application is under consideration and mine-specific and site-specific information is available.

Comment:

The Rio Grande River, another site approved for water release, is the source for the city’s municipal water supply. The river, ranked as one of the most polluted rivers in North America, makes the community already at risk from health implications from drinking from a questionable water source. Water is a most precious resource in this region. I ask you – would you put this mine water in a bottle and feed it to your baby? Would you want to bathe your child in it? Introducing more pollutants into our already overburdened water source is irresponsible. The potential loss of our water supply would be devastating to an already struggling community.

Galindo, Melissa

Out-of-scope

Comment:

According to the EPA, coal is often washed at the coal mine to remove impurities. The use of large quantities of water often adversely affects aquatic wildlife, as well as animals and people who depend on these aquatic resources. Furthermore coal mining can contaminate bodies of water with heavy metals such arsenic and lead when the water is used to clean the coal and discharged back into the environment. Dos Repúblicas has clearly stated they will release the water back into the environment, clearly validating concerns about the impact on the water quality of Elm Creek and the Rio Grande.

Galindo, Melissa

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential surface water impacts as the result of a typical mine are discussed in Section 3.2.4.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Now, there are 13 alluvial deposits that filter through eight rock formations in the Carrizo-Wilcox Aquifer and the Rio Grande recharge zones. The water study areas covers five counties and should include also Valverde County as North American Coal and Dos Republicas is trying to purchase effluent water from the City of Del Rio upstream from the Rio Grande.

Ruiz, Luis

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

As discussed in Section 2.2.3, the REIS study areas encompass locations within the coal/lignite belt in Texas that are in reasonable proximity to existing surface coal and lignite mines with potential for future expansion.

Comment:

Corps should comprehensively study the condition of remediation projects done to date at former Texas lignite mining areas as part of this Regional EIS. This analysis should include a functional analysis (similar to mitigation rule requirements) of unmined areas in rural East Texas compared to those filled, mined, and reclaimed.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Out-of-scope

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. At the time a future surface coal or lignite mine expansion area or satellite mine is proposed, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation as discussed in Section 3.2.5.2

Comment:

Water will also be used and stored in sedimentation ponds until they are ready to dump the mine wastewater into the Elm Creek and Rio Grande River which will adversely effecting Eagle Pass, Piedras Negras and other down river communities drinking water. First, it is very important to understand that both Eagle Pass and its sister city Piedras Negras have one main water source, the Rio Grande River. The dump site of this mine will be before/upriver from the water intake for both municipalities. The mine water will be directly deposited into the drinking water.

Galindo, Melissa

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential surface water impacts as the result of a typical mine are discussed in Section 3.2.4.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., air quality monitoring and modeling information) available at that time.

Comment:

Second, the records indicate that an assessment of archeological sites concluded that at least eleven may be eligible for inclusion on the National Register of Historic Places. At the minimum, these should have been discussed with Tribal Historic Preservation Officers prior to the permit being issued. These irreplaceable sites are now in danger of being destroyed. Some have already been lost. The permit should be suspended until this 106 process is complete.

Hook, Jonathan

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

Out-of-scope

Comment:

Issue, the proposed Coal Mine will cause total destruction of Native American cultural items to include Human remains, funerary objects, sacred objects, Objects of Cultural patrimony our Ancestral Indian Lands at proposed Coal mine site are significant Historic and significant under Cultural Regulations. Issue, Dos Republicas violations under Cultural Regulations of State and National Antiques Laws Section 106. Issue, Piedras Negras City Coahuila Mexico already has a Coal Mine in operation. Issue, under section 106 uncompleted and/or not completed Natural and Cultural Resources Reports and Inventories before proposed Coal Mine and presently uncompleted and/or not completed Natural and Cultural Resources at proposed Coal Mine. Issue, the Pacuache Tribe of Texas position at proposed Coal Mine is Indian Sacred Burial Ground the entire Site is Sacred Ground of our Tribe Indian Religious Practices and Activities. Issue, The Pacuache Tribe position over more than 100 sites on a Formal Complaint Clan submitted to The Advisory Council of the Historic Preservation or The Office of Native Americans Affairs, the Department of Interior, Bureau of Indian Affairs included Southwest Regional Office, Our Tribe position on our Ancestral Sacred Site as a whole connectivity of our past Ancestral Human way of life conducted for thousands of years is eligible as a National Historic Register Site Patrimony of Humanity. Issue, violations not notifying, reporting and monitoring Sacred Site of proposed Coal Mine under NAGPRA Roberto Valencia of Yaqui Traditional Tribe and the formal Southwest Region NAGPRA Chairman. Issue, 25,000 acres that are going to be destroyed with dynamite blasting and use those (archeological sites) for highly toxic polluted water storm discharge drainages at a sacred site with many Indian burials yet to be unearthed. Issue, in addition the area of Eagle Pass leading into Mexico has very culturally rich deposits especially around the natural crossings of the Rio Grande River to include Paso Del Pacuache and Paso de Francia, which is known as the Gateway to Texas.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Please see Section 3.6.2 for a discussion of potential impacts to cultural resources as the result of a typical mine, and Section 3.2 for a discussion of potential water resources impacts.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations.

Out-of-scope

Comment:

Issue, our Tribe had ask the Court to block and take effect from construction this 25,000 acre Coal Mine near Eagle Pass, Texas on Final Order Travis Court did not dismiss this Issue of our Tribe. Issue, destruction of natural habitat for our Sacred Ocelot, Jaguarundi, other Sacred spices at proposed Coal Mine Site Eagle Pass Texas, the proposed Coal Mine NHPA: Section 106 [see 43 CFR 10.2 (d) NAGPRA: SECTION 3 the record show that the permitted are has at least two endangered species that roam in the permitted are sic: "Wildcat kittens have been observed suggesting that perhaps these areas could be a home range." This flagrant disregard of Federal laws given to us by the U.S. Fish and Wildlife and the Texas Parks and Wildlife should not be allowed.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Potential wildlife habitat and species impacts as the result of a typical mine are discussed in Section 3.5.2.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations.

Comment:

This is a Mexican owned and based mine. They are coming over here, and they want to expand.

Baxter, Martha

Comment:

Eagle Pass, the county seat of Maverick County, is currently fighting a proposed open pit coal mine to be operated by Dos Repúblicas Coal Partnership. Discussions of opening the mine have been ongoing for the last 20 years, and now the project may come to fruition. I ask you to consider the following concerns of the community and revoke their permit.

Galindo, Melissa

Out-of-scope

Comment:

Dos Repúblicas has partnered with Carbon I and Carbon II in Nava, Mexico to process this ore. The factory, located only 30 miles away, is free of US rules and regulations that protect our citizens. These twin factories are known polluters that emit an estimated 250,000 tons of sulphur dioxide per year into our shared airstream. They have been cited as a source of pollution as far away as Big Bend National Park.4 Due of the close proximity Eagle Pass expects smog to cross back over the river into our borders and directly affect the health of its citizens.

Galindo, Melissa

Comment:

I formally request a suspension and reevaluation of USACE permit to the Dos Republicas coal partnership.

Juarez, Alejandra

USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

We are concerned about what the burning of lignite does to our state, as far as emissions and climate change and the degradation of our surface waters, which have already occurred.

Beving, Rita

Comment:

The burning of Texas lignite, which is the dirtiest -- it's the dirtiest seam all the way down to the Gulf coast, it's the dirtiest seam that has the most mercury in it. The burning of Texas lignite coal has resulted in contamination of waterways and fish with mercury. There are more than a dozen mercury fish consumption advisories in many of the largest lakes and streams in Texas. And it's no coincidence that many are in east and central Texas, not far from the power plants that burn the lignite and annually emit the highest volumes of mercury air pollution in the nation.

Even if the lakes don't have mercury advisories, it doesn't mean the fish don't have mercury in them, it just means that there's not money to do the test. The mercury goes up the stack or out the outfall pipes and then deposits in nearby watersheds. Before anymore permits are issued and more mining is allowed, the already contaminated lakes and streams should be remediated and annual mercury monitoring conducted in the fish and in the scarring of the land.

Campbell, Tammy; We Can

Out-of-scope

Comment:

Another issues we've danced around a lot tonight is the issue of climate change. When you burn lignite it's significantly more climate gas.

Smith, Tom; Public Citizens, Texas Office

Comment:

The burning of Texas lignite coal has resulted in contamination of the waterways and fish with mercury. The Texas Department of -- the Texas Department of State Health Services has issued mercury fish consumption advisories across a number of lakes and streams in Texas.

In addition, continued lignite burning and mining also threatens our climate. The burning of lignite coal puts greenhouse gases in the atmosphere, and scientists are telling us that climate change could result in parts of Texas losing from 10 to 40 percent of its annual rainfall permanently.

Verma, Vik; Organizing for Action East Texas

USACE Response:

The REIS presents a regional analysis of potential impacts from a “typical mine” expansion area or satellite mine. Potential mine-related air quality impacts (including greenhouse gases and climate change) are discussed in Section 3.7.2. The analysis of power plants is outside the scope of the REIS. However, power plant emissions as authorized by other permitting authorities are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Comment:

Already permitted lignite mines in Texas have capacity to power the existing plants for the next few years. In addition, over the short-term Texas plants could increase their use of coal from Wyoming (aka PRB coal) which has lower emissions of mercury, greenhouse gases, and sulfur, and fire natural gas that is available from existing wells located across Texas. Texas also has one of the largest solar potentials of any state in the U.S. Utilities such as CPS of San Antonio are beginning to build large utility scale solar plants. Together with the wind resources of the state, the solar energy produced created zero pollution, consumes no water, emits zero mercury, and puts no greenhouse gases in the air that make the Texas drought even worse. The Corps should evaluate whether there is, in fact, an public need for increased and streamlined coal mining, or whether Texas’ energy needs can be served by alternative energy sources.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Alternative energy sources are outside the scope of the REIS.

As clarification, the USACE is required to process Section 404 and Section 10 permit applications, including the applications submitted by surface coal and lignite mines, in accordance with Section 404 of the CWA and Section 10 of the RHA. As part of the permit evaluation process associated with Section 404 and Section 10 permit authorizations, the USACE is also required to comply with the regulatory requirements of NEPA in evaluating the potential impacts of an action.

Out-of-scope

Comment:

The Pacuache Tribe of Texas appreciates you will inform us of REIS starting Study(s) and Report(s) conducting by the U.S. Army Corps of Engineers Environmental and Cultural Resources.

Impacts already happen destruction of several archeological sites by this Dos Republicas Company and already has inflicted to our Pacuache Clan of Texas has been injured and will continue to be injured due to the wholesale destruction of our Coahuilteco Indian Sacred Sites located in and around the Mine Site.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

Please see Section 3.6 for information regarding potential impacts to cultural resources as the result of a typical surface coal or lignite mine expansion area.

Comment:

The issue, the proposed Coal Mine will discharge under the earth underground highly toxics nitros (nitratos) these toxics are highly corrosive and will destroy every archeological site including the presence of Native American cultural items to include Human remains, funerary objects, Scared objects, Objects of cultural patrimony.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." As discussed in Section 3.2, the potential for acid-forming constituents or other geochemical weathering products to affect water quality would be avoided by compliance with RCT regulations. The regulations require analysis of overburden and underburden through appropriate acid-base accounting or other assessments and implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming material are not placed in the upper 4 feet of the backfill profile. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be further assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. The mine-specific information would include the site-specific material sampling and analyses for determination of acid-forming materials that would be required as part of each surface coal and lignite mine's RCT permit application (Section 12.127 of the Coal Mining Regulations).

Out-of-scope

Comment:

I am an admirer and frequent visitor of Eagle Pass, Texas. I have family and friends there, and I plan to move to the area in a few months.

Every time I visit it's a pleasure, however it has come to my attention that there is plan to build a coal mine.

One that will destroy the land and drop property value for those living there. As an active citizen I beg whoever in charge to please not go through with this.

Please do not take apart eagle pass this way. This decision to do so will tear so many people apart, my family included. Please reconsider.

Juarez, Marylou

USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Information relative to potential effects on property values as the result of a typical mine has been added to the Population and Housing subsection under Section 3.9.2.1.

Comment:

And I'd like to just give a brief summary of why I'm opposed to the mine here. More than -- more than anything else, what bothered me the most about this proposal to allow this coal mine is the destruction that it will bring to our environment.

And I think we should forget for a moment where the coal will be shipped to, where the money will go to and, you know, forget about any political motives or ties. You know, the environment is all we have. The environment is what we are. We need fresh, clean air to breathe. We need healthy soil to farm in. We need clean, unpolluted water to drink from. You know, trees for oxygen and vegetation for herbs, medicines and the animals that live on them that we need for food, you know, for our survival as well.

Chavez, Moises

Out-of-scope

Comment:

I take a little research and realize that coal mining is and will be detrimental to our health, water pollution, land erosion, air pollution. These are few of the many physical health issues we will have to face in the coming years. Our children deserve better.

We the citizens of Eagle Pass, Texas, and neighboring counties are firmly opposed to the Dos Republics Coal mining. Please we beg you do not allow them to establish here in Eagle Pass detrimental effects to our environment are inevitable.

Hardt, Diana

Comment:

I welcome the U.S. Army Corps of Engineers' involvement in drafting the Regional Environmental Impact Statement, and I wish to reiterate that I sat with our community in believing the operations of a coal mine in this area, specifically, the Dos Republicas will have a detrimental impact on both our community and Texas as a whole.

I remain actively involved and continue to monitor the situation and have met with Texas Railroad Commission officials and sent letters requesting a denial of an operating permit for this mine.

I have also requested the Texas Commission on Environmental Quality to intervene and hold a public meeting in our community and appropriately understand the local concerns regarding the amended water waste discharge permit. Local officials and residents express grave concerns about potential detrimental environmental and health impacts that Dos Republicas operations could have on Eagle Pass and the region.

I echo the community's fears about possible air contamination and water pollution at this operation's water waste would be discharged into a tributary of the Rio Grande just above the drinking water intake facility for the city of Eagle Pass. I join the community in worries that this will result in negative health consequences for members of the community. I do not believe it would be in the best interests of the state or the local community for operations to go forward of the Dos Republicas and continue to stand with the county judge, the mayor and the community on this issue.

Martinez, Hellen; Representing State Senator Carlos Uresti

Comment:

And I certainly hope that we will get all of your support in not allowing the mine to be opened just for the welfare of extremely greedy, powerful people that we have seen like in Monclova that my neighbors have shared with me, that when they were young, it was a paradise and then when it was industrialized, it dried up.

Torres, Sofia

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit area.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and

Out-of-scope

human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

Additionally open pit mines, are prone to collecting ground waters and absorbing the toxic chemicals that must contained. Since the mine is located in a floodplain there is a high probability that the mine will flood and these contaminated ground waters will make it into the Elm Creek and be introduced into the environment. Floodwaters can spread into the creek and into the homes and schools along the creek. There is probability that the contamination levels of the Rio Grande will be at a much higher threshold than that what is intended by the TECQ who granted the permit, and ruin the drinking water of the communities along the border. Dos Repúblicas states in proposals that it is taking steps to contain water and control contamination by building water diversions, but at the same time it’s making plans to build within a FEMA designated flood plain, which is by nature an uncontrollable area that is prone to flooding. This is a disaster waiting to happen.

Galindo, Melissa

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Please see Section 3.2.4.2 for information relative to potential surface water impacts as the result of a typical surface coal or lignite mine expansion area or satellite mine.

Comment:

We do not want the Dos Republic Mine her in Eagle Pass.

Alvarado, Emma

Comment:

I understand Dos Republicas has spent a lot of money. This should have been taken care of 20 years ago. Why it has gotten to this point, I have yet to understand. This is not good for the area. It's not good for Eagle Pass. The only thing that's going to come out of this is they're going to get money sent to Mexico, spent in Mexico, and we get nothing. We don't get no energy out of this coal. None. Zero.

De La Cerda, Gabriel

Out-of-scope

Comment:

Please take a moment to consider these concerns. The combined communities of Maverick County have come together in opposition of this mine and we cannot understand how the voices of the people can be so quickly ignored. At our hearing on August 10th alone, every speaker unanimously was opposed to this project. These parties have stepped forward in opposition to the opening of the mine: Comanche Nation, Lipan-Apache Indians, City of Eagle Pass, Maverick County, Maverick County Hospital District, Maverick County Environmental and Public Health Association, Sierra Club, and over 60,000 citizens. Please stop this disaster and pull their permit.

Galindo, Melissa

Comment:

I live in propose -- well, it's not proposed anymore. It's mines, right? Okay. So it's a quarter of a mile from where I live. It's very difficult, it's very emotional to stand here before you, pleading, saying to deny the -- the mine.

Gamez, Ana

Comment:

Our Tribe strongly opposes this proposed Dos Republicas Coal Mine by the following:

The Pacuache Tribe of Texas position our opposition on proposed Coal Mine our Indian Clan (other Tribes) is already been injured and will continue to be injured will suffer great emotional stress, dress, and physical harm due to the wholesale destruction of our Indian Sacred Sites located in and around the proposed Coal Mine Site by Dos Republicas activities direct and indirect adverse effects at our Ancestral Sacred Site of more than 100 archeological sites since August 26, 1994.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

Comment:

Please be aware and take the message that we are asking you to please stop the mining work. We do not want this line of work. We do not need this type of work because of our current health conditions acquired due to the many jobs that we have performed and been exposed to it.

Alvarado, Emma

USACE Response:

Comment noted. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort

Out-of-scope

Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Potential public health effects as the result of a typical mine are discussed in Section 3.14.2.

Comment:

The only indication on the record that attempts were made to contact American Indian nations with an interest in the area is a list of letters sent to several fairly recognized tribes. There is no --there's no written evidence that Coahuiltecans, who have been a millennial-old presence throughout the region, or Lipan Apaches were contacted prior to the permit being issued.

The USACE made absolute commitment to consult with tribes, which is impossible to accomplish if effective communication does not take place. There's no indication that the letters sent to the tribes were received, read or discussed prior to the permit being issued.

Consequently, the permit should be suspended until all affected tribes have had the opportunity to raise objections that were not previously considered because they had not been consulted.

Hook, Jonathan

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS

Comment:

Also the Comanche Nation as well as the Lipan Apache Indians have come forward in opposition to the opening of the coal mine for very personal reasons that should be considered. These tribes have advised that:

"the area of the proposed mine will destroy historical and sacred archaeological sites of many Native American tribes which lived, hunted, and fished on Elm Creek and the Rio Grande River hundreds of years ago. Many Eagle Passans have collected historical Native American artifacts such as arrowheads and tools found on the banks of Elm Creek and Rio Grande."

Opponents also contend that the Dos Repúblicas open surface coal mine will destroy the habitat and hunting grounds of federally endangered species such as the Ocelot, Jaguaruni, and other protected cats."

Galindo, Melissa

USACE Response:

This REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos

Out-of-scope

Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

Potential cultural resources and wildlife effects as the result of a typical mine are discussed in Sections 3.6.2 and 3.5.2, respectively.

Comment:

In evaluating mitigation and remediation for expanded lignite mining, the Corps must also consider that one of the major mining operators in Texas has inadequate financial assurances to cover its remediation obligations. Luminant Mining Company has been self-bonding, but the assets put forward to back those self-bonds have been promised to senior creditors by the parent company of Luminant Mining, EFH, which is teetering on the edge of bankruptcy. Sierra Club and others are concerned that Luminant will not have the resources to meet its remediation and mitigation obligations.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As discussed in Section 2.1.2, USACE Fort Worth District Section 404 mitigation guidelines currently require financial assurances of compensatory mitigation success through an acceptable and appropriate financial instrument (e.g., escrow account, letter of credit, or performance bond). As discussed in the introduction to Section 2.2 (Proposed Action), these guidelines would continue to be implemented for future surface coal and lignite mine expansion areas and satellite mines in Texas. Financial assurances for upland reclamation would continue to be established in accordance with RCT requirements.

Out-of-scope

Comment:

Issue, whether the proposed discharge and dust from the facility would contaminate or degrade the quality of Elm Creek Land its Tributaries and/or undisclosed natural water ways drainages which are claimed by the Pacuache Tribe of Texas (other Tribes) as our aboriginal ancestral lands. Issue whether the draft permit would allow violation of water quality standards. Issue whether the facility would cause health hazards and nuisance conditions. Issue whether the proposed discharge would contaminate drinking water sources. Issue whether Agency staff properly calculated the water quality-effluent limits and accurately concluded that the discharge would comply with Texas water quality standards exhibit by Eagle Pass Business Journal 10/29/2011 in this newspaper expressly provides that the Dos Republicas Coal Partnership's Eagle Pass Mine discharge of mine seepage and storm waters will affect the public water supply of City of Eagle Pass, aquatic life on the Elm Creek and the Rio Grande River and contact recreation areas on these waterways. Issues the permit water for mine authorizes Dos Republicas Partnership to discharge storm water and mine seepage from the active mining area subject to the following suspended solid 3.5 daily, iron 3.0 daily, manganese 2.0 daily, selenium n/a daily, in addition to these known carcinogenic chemicals the Dos Republicas is authorized to discharge into Elm Creek, unidentified and/or water natural drainages tributaries, the Rio Grande River on a daily basis the following effluent chemicals aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, trivalent chromium, hexavalent chromium, copper, cyanide, lead, mercury, nickel, selenium, silver, zinc, bod, carbonaceous biochemical oxygen, chemical oxygen, organic carbon, ammonia nitrogen, total suspended solid, nitrate nitrogen, organic nitrogen, phosphorous, oil and grease, residual chlorine, total dissolved solids, sulfate, chloride, fluoride, fecal coliform, and others. Issue when coal surfaces are exposed, pyrite (iron sulfide) comes in contact with water and air and forms sulfuric acid. As water drains from the mine, the acid moves into the waterways, and as long as rain falls on the mine tailings the sulfuric acid production continues, whether the mine is still operating or not. This process is known as acid rock drainage (ard) or acid mine drainage (amd). If the coal is trip mined, the entire exposed seam leaches sulfuric acid, leaving the subsoil infertile on the surface and begins to pollute streams by acidifying and killing fish, plants, and aquatic animals which are sensitive to drastic ph shifts, in addition surface mining can adversely impact the hydrology of a region. Deterioration of a stream quality can result from acid mine drainage, toxic trace elements, high content of dissolved solid in mine drainage water, and increased sediment loads discharged to streams, Waste piles and coal storage piles can yield sediment to streams, and leached water from these piles can be acid and contain toxic trace elements. Surface waters may be rendered unfit for agriculture, human consumption, bathing, or other household uses. Flood events can cause severe damage to improperly constructed or located coal haul roads, housing, coal crushing and washing plant facilities, waste and coal storage piles, settling basin dams, surface water diversion structures and the mine itself. Besides the danger to life and property, large amounts of sediment and poor quality water may have detrimental effects many miles downstream form a mine site after a flood. Overall, it will cause a lot of pollution drinking water. Ground water supplies may be adversely affected by surface mining. These impacts include drainage of usable water from shallow aquifers, lowering of water levels in adjacent areas and changes in flow directions within aquifers; contamination of usable aquifers below mining operations due to infiltration or percolation on spoil piles. Where coal or carbonaceous shalls are present, increased infiltration may result in increased runoff of poor quality water and erosion from spoil piles; recharge of poor quality water to shallow ground water aquifers; or poor quality water flow to nearby streams. This may contaminate both ground water and nearby streams for long periods. Issue, Leaching and leach to underground and ground water(s), soil and air contamination a proposed Coal mine site. Issue, Elm Creek pollution of Creek waters and San Miguel formation and impact in other formations or areas describe in permit sections. Issue, past Coal Mining at Eagle Pass in the 1930's there are Sink or sinking(s) Hole(s). Issue, there are Natural blue holds or holds of Ancient water also called Cenotes which they are going to be highly polluted and contamination.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

Out-of-scope

USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Please see Chapter 3.0 of the REIS for discussions of potential impacts to surface water and groundwater quality and human health as the result of a typical surface coal or lignite mine expansion area or satellite mine.

Comment:

Based on the USACE permitting guidelines and policy, the Dos Republicas permit was issued prematurely and should be immediately suspended and any consideration of an expanded permit area tabled until two criteria are met: 1) all American Indian tribal entities with an interest in the area, including the two state-acknowledged Tribes with long ties to the region, are actively engaged and have completed the consultation process and addressed any significant objections, and 2) the 106 Historic Preservation process is completed.

Hook, Jonathan

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

Comment:

Some 20,000 residents have settled outside of the city limits of Eagle Pass throughout Maverick County. Elm Creek, Seco Mines and Deer Run developments have potential to be gravely effected. The mine is reported to be within one mile of Pete Gallegos Elementary and the Deer Run Subdivision, where approximately 430 school children and additional staff attend every day. Many of these children live right along the banks of Elm Creek and are a stone throw away from the mine itself. The mine is planned to encompass 25,000 acres of land for it's operations. This puts the operation and 7 times the size of Eagle Pass. It is quite a major operation and will create quite a negative impact on the environment.

Galindo, Melissa

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has

Out-of-scope

already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

The REIS presents a regional, rather than site-specific, analysis of potential future impacts from a typical surface coal or lignite mine expansion area or satellite mine. The potential impacts of a typical mine are discussed in the various resource analyses in Chapter 3.0.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations in the study area.

Comment:

Based on the USACE's own policy, the Dos Republicas permit was issued prematurely and should be immediately suspended and any consideration of an expanded permit area tabled until three criteria are met.

One, all American Indian tribal entities with an interest in the area, including the two state-acknowledged tribes with long ties to the region, are actively engaged and have completed the consultation process. Two, the 106 historic preservation process is completed. And, three, the Corps acknowledges how it will modify or rescind the permit to assess the composite effects of Dos Republicas' health and environmental impacts.

Hook, Jonathan

Comment:

The only indication in the record that attempts were made to contact American Indian nations with an interest in the impacted areas is a list of letters sent to nine federally-recognized Tribes. Even though the Coahuiltecan Indians have been involved in the Dos Republicas for twenty years, there is no evidence that they were contacted. The USACE made an absolute commitment to consult with Tribes, which is impossible to accomplish if effective communication does not take place. This absence of communication led on August 27, 2015, to an official resolution by the elected leadership of the Comanche Nation opposing the mine and calling for authentic collaboration (attached). This act should be considered new information that triggers an immediate suspension of the existing Dos Republicas permit until all potentially affected Tribes have the opportunity to raise objections and authentic consultation takes place. What the USACOE has done so far does not meet the minimum threshold for consultation from any reasonable perspective.

Hook, Jonathan

Comment:

Finally, the destruction of at least four potentially important historic sites by Dos Republicas very early in the process was documented by the state (attached). No records have been found that describe any further assessment or protection of these sites. This indicates non-compliance with permit guidelines and also causes great concern regarding future "bad acts." For these reasons, I respectfully request that the District Engineer suspend the Dos Republicas Coal Partnership permit SWF 2004-00711 until authentic Tribal consultations are completed, until the 106 Historic Preservation process is finalized, and until, to quote USACE regulations, "all significant objections to the authorized activity which were not earlier considered have been thoroughly addressed."

Hook, Jonathan

Out-of-scope

Comment:

Our Tribe's Indian Religious Practices and activities opposes the construction and/or enjoined of this proposed Dos Republicas Coal Mine to be built on top of our Indian Religious Sacred Site.

As a Indian I am affected by your actions, in particular you have not never involved and consider the Indians affected concerns.

You have failed to our Tribe, have failed to others rights, the process, your responsibilities in the process you have yet not Consult with our Tribe and others and informed their concerns, the USACE EIS Draft for Coal Mining Expansion is immediately void, invalid, null, not effective and where you need first to Consult with our Tribe and others before the design of this Draft. Our Tribe opposes and rejects in its total entirety the USACE EIS Draft for Coal Mining Expansion until Consultation urgently immediately starts with our Tribe and others where you have disrespect us.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The USACE consulted with all federally recognized tribes for this REIS. Additional information regarding the types of consultation, dates of communications, and tribes consulted has been added to Section 4.3 of the Final REIS.

Comment:

I hear a substantially different alternative that has not been considered, okay? The county judge -- the county judge here could simply pass a law that -- judge and the commissioners could simply pass a law banning coal mines in Maverick County.

Brower, Jerry

USACE Response:

Comment noted.

Out-of-scope

Comment:

In the case of the proposed Dos Repùblicas Coal Partnership mine, this reliance on rules of thumb has led the TCEQ, at least so far, to mis-characterize the aquatic life uses in at least one tributary of Elm Creek and in one tributary of Hediondo Creek, which is itself a tributary of Elm Creek. (Roughly, Elm Creek flows north-south through the would-be mine, and Hediondo Creek is on the mine's southwest border.) These tributaries were classified by TCEQ as having "limited" aquatic life uses. Maverick County hired an aquatic biologist to conduct a site-specific aquatic-life-use assessment on the Hediondo Creek tributary and on one of the Elm Creek tributaries. His assessment relied on an accepted measuring tool, the Index of Biotic Integrity, and his assessments resulted in either a "high" or "intermediate" aquatic life use for the Hediondo Creek tributary and an "intermediate" aquatic life use for the tributary of Elm Creek for which he conducted an assessment. (There are five other waste water discharges to routes that TCEQ has characterized as Elm Creek tributaries and to which it, relying on its rules of thumb, has assigned "limited" aquatic life uses. Additionally, there are four other waste water discharges to routes that TCEQ characterized as "ditches" and has assigned "minimal" aquatic life uses.)

Because the aquatic life uses were not assessed on the ground by either Dos Repùblicas Coal Partnership or TCEQ, TCEQ, following its EPA-approved *Water Quality Standards Implementation Procedures*, did not conduct Tier 2 antidegradation analyses for the tributaries to which the discharges will occur. I think TCEQ contends it did conduct a Tier 1 antidegradation analysis for each of these discharge routes, but, inasmuch as TCEQ had no solid data for existing uses in those ditches and tributaries, such a contention would seem open to dispute. Those *Implementation Procedures* deem stream segments with "intermediate" or higher aquatic life uses to merit Tier 2 analyses, while segments with "limited" or lower aquatic life uses do not.6 As a result, there has been for these tributaries no examination as to whether and to what degree water in these fishable/swimmable tributaries will be degraded by the discharges.

So, when the Corps relies on the State to issue TPDES permits for mines that protect water quality, that reliance is based on an unreliable premise.

Frederick, David; Frederick, Perales, Allmon & Rockwell PC

USACE Response:

The analysis of procedures or regulations of other agencies with permitting authority for surface coal and lignite mines in Texas is outside the scope of the USACE REIS. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" to facilitate the preparation of tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines.

For further engagement with TCEQ regarding stream classifications and associated standards, the agency has an established Continuing Planning Process, as well as procedures for reviewing and implementing water quality standards. These state programs are described at the following locations:

http://www.tceq.state.tx.us/waterquality/planning /CPPMain.html

http://www.tceq.state.tx.us/waterquality/standards/WQ_stds

In addition, guidance on water quality standards administration and participation, notably including stakeholder involvement, is available at:

http://www.tceq.state.tx.us/publications/gi/gi-351.html

Out-of-scope

Comment:

It's my knowledge that the county issued some kind of referendum, they cannot move dirt or anything in the floodplain area, and they have already started doing that already, and they are in violation of the law which we have in Maverick County.

Ruiz, Ricardo

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Procedural

Comment:

The document does not seem to shed much light on one of the major issues with the multi-jurisdictional process of authorizing surface lignite mines; namely the differences in requirements and timing of Railroad Commission of Texas (RRC) and USACE processes. The document states that USACE mitigation requirements would be applied where Section 404 authorization applies but does not give enough detail of what those requirements will be, what assessment methods would be required for pre-impact assessment or assessment of mitigation success, or how the endpoints of RRC reclamation requirements will accommodate adequate Section 404 mitigation. Current written USACE guidelines are not comprehensive so the standards that would be applied are not completely clear.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As discussed in Section 1.2, USACE Purpose and Need for Action, the USACE Fort Worth District's purpose for the REIS is to provide a NEPA-compliant environmental evaluation focusing on potential direct, indirect, and cumulative aquatic resource impacts, in addition to all other relevant environmental and human resources within the defined geographic regions in Texas that would be associated with and affected by future USACE permit decisions. Additionally, the REIS will serve to establish a cohesive framework for stream mitigation, establish sound performance metrics, and enhance project monitoring efforts.

As discussed in Section 3.2.5.2, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation at the time a future mine is proposed. As discussed in Section 2.1.2, standard language in compensatory mitigation plans require submittal of post-reclamation aquatic resource design plans to USACE and the resource agencies for review and USACE approval prior to construction. These detailed design plans would be required to take into account the regraded pit backfill that, as discussed in Section 2.2.4.3, would be leveled and graded to approximate original contour in compliance with RCT coal mining regulations and approved plans. The USACE Fort Worth District's current requirement for long-term monitoring using sound, measurable, ecologic condition-based performance metrics as success criteria for compensatory mitigation projects would also apply under the Proposed Action (see Sections 2.1.2 and 2.2).

As discussed in Section 2.2.4.3, reclamation would be conducted in accordance with the mine-specific reclamation plans that would be developed in support of each mine's required RCT permit, with the following exception. Reclamation of streams and wetlands would be conducted in accordance with USACE Fort Worth District permit criteria and would be incorporated as features within the RCT post-mine land use categories. The potential permitting of future surface coal and lignite mine expansion areas and satellite mines would continue in accordance with each agency's permitting authority and applicable regulations. For reference, the USACE Fort Worth District Section 404 mitigation guidelines that would be carried forward under the Proposed Action are discussed in Section 2.1.2. The Monitoring of the Reclaimed Site subsection under Section 2.2.4.3 provides information relative the District's mitigation success criteria as well as the RCT's revegetation success criteria.

Procedural

Comment:

It's also our understanding that the contractor who wrote this study was paid by Texas Mining & reclamation Association, and they certainly got their money's worth. A document written totally from the viewpoint of the coal industry with almost no acknowledgment that surface coal mining poses grave risk to the environment and human health.

This would be fine if the study was openly 11 titled or authored by the Texas Mining Association, but it has the Corps of Engineers' name and logo on the cover. This means the Corps has adopted this study on behalf of the U.S. Government and has enforced its results. We find it incredible that you would want to do so.

Baxter, George

Comment:

It's also our understanding that the contractor who wrote this study was paid by Texas Mining & Reclamation Association, and they certainly got their money's worth. A document written totally from the viewpoint of the coal industry with almost no acknowledgment that surface coal mining poses grave risk to the environment and human health.

This would be fine if the study was openly titled or authored by the Texas Mining Association, but it has the Corps of Engineers' name and logo on the cover. This means the Corps has adopted this study on behalf of the U.S. Government and has enforced its results. We find it incredible that you would want to do so.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230). As allowed under NEPA (40 CFR 1506.5), the REIS is being prepared by a third-party contractor (AECOM) under the direction of the lead federal agency (USACE). As lead federal agency, USACE has full control and oversight over the REIS process, including, but not limited to, communication between the third-party contractor and Texas Mining and Reclamation Association and decisions relative to the technical scope, content, and outcome of the REIS.

Comment:

So I also want to then touch on the -- the whole process of permits and regulation mandates that we spoke of. I was part of the open hearing that was addressing some of my questions and concerns. And although they answered some questions, we feel that these regulations are not stringent enough because of like what happened earlier this past week -- earlier this month with the EPA trying to do some corrections up in Denver, Colorado. And what happens is that -- the regulations and mandates are not stringent enough, and these things can happen, and this is after the fact. And being that the coal mine's in such a close proximity area to the City of Eagle Pass and then to the water --district where the water is cleansed to provide for the community, it's not enough as far as space to be able to make those corrections needed.

Contreras, Terri ; Maverick County Hospital District

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future mines. The Dos

Procedural

Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

Comment:

Table 2-10: Summary of Direct and Indirect Impacts by Resources or Impact Issues and Recommended Monitoring and Mitigation, page 2-44:

See Specific Comment No. 1, above.

Price, Kimeka; USEPA, Region VI

Comment:

The DEIS does not address most of the ground water and surface water comments originally offered by EPA on the preliminary DEIS. Additionally, there is no mention of EPA's recommendation to characterize baseline ground water quality conditions in the document entitled "Scoping Summary Report for Region EIS for Surface Coal and Lignite Mining in the State of Texas". In reviewing Appendix D - Comprehensive List of Substantive Scoping Documents of the Scoping Summary Report, EPA's recommendations on ground water and surface water do not appear to be listed.

Price, Kimeka; USEPA, Region VI

USACE Response:

USEPA comments on the Preliminary Draft REIS were received on February 5, 2015, as part of the Cooperating Agency review process. USACE responses to Cooperating Agency (including USEPA) Preliminary Draft REIS comments and applicable REIS revisions were provided to USEPA on April 17, 2015. Those revisions also were reflected in the Draft REIS. The Scoping Summary Report for the REIS reflects public and agency comments received during the public scoping period that closed on December 20, 2013. The USACE has no record of receiving scoping comments from USEPA.

Comment:

Maverick County (occasionally, hereafter, "County") generally supports the proposed action, but the County does not believe the proposed action adequately addresses monitoring and mitigation issues related to changes in water quality that would be authorized by the letters and permits that are the subject of the proposed action. In a nutshell, the Corps' proposed action places undue reliance on the water-quality protection benefits of the waste-water-discharge-permitting process(1) of the Texas Commission on Environmental Quality ("TCEQ"); because of this undue reliance, the Draft Regional EIS understates the level of monitoring and mitigation that should be included in the proposed action. (2)

(2) The additional protection for jurisdictional waters the County seeks to add to this proposed action is like the "monitoring and mitigation" terms the Corps has attributed to its proposed action in Table 2-10, p. 2-48, of the DREIS.

Frederick, David; Frederick, Perales, Allmon & Rockwell PC

USACE Response:

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical surface coal or lignite mine expansion area or satellite mine as described in Section 2.2.4. The need for additional or refined monitoring and mitigation may be identified during

Procedural

the project-specific NEPA analyses that would be conducted at the time future mine expansion areas or satellite mines are proposed (as discussed in Section 2.5), taking into consideration the mine-specific and site-specific information available at that time.

Comment:

The Corps has selected AECOM to prepare the PEIS. Sierra Club is very concerned about the possibility that AECOM has conflict of interest and will not prepare an objective study. First, the report will be funded by the Texas Mining and Reclamation Association (TMRA), which is made up of the same mining companies that will be seeking permits from the Corps with environmental analysis that "tier" off the PEIS. It is clearly in TMRA‟s interest that AECOM downplay the environmental impacts on mining activities such that less mitigation is required and proposed new mines or mining expansions are more quickly approved. Even more concerning, AECOM‟s own client base includes mining companies, including one of the largest lignite mining operators in Texas. For example, an AECOM employee is currently serving as an expert witness for Luminant Generation Corporation and Energy Future Holdings in two federal lawsuits. Did the Corps screen AECOM for conflicts prior to selecting it to prepare the PEIS? What did that screening process involve? What were the results? How can the Corps be assured that AECOM will fully evaluate the cumulative impacts of lignite mining when such information could be used to the disadvantage of its clients in Texas and across the globe? This information should be shared with the public. Sierra Club believes that the report should be prepared by an independent consultant that will not experience pressure from its clients to downplay the environmental impacts of lignite mining.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230).As allowed under NEPA (40 CFR 1506.5), the REIS is being prepared by a third-party contractor (AECOM) under the direction of the lead federal agency (USACE). As lead federal agency, USACE has full control and oversight over the REIS process, including, but not limited to, communication between the third-party contractor and Texas Mining and Reclamation Association and decisions relative to the technical scope, content, and outcome of the REIS.

The USACE followed the third-party contracting selection process in accordance with 40 CFR 1506.5 and Regulatory Guidance Letter 05-08. USACE has reviewed and evaluated the third-party contractor selection process and potential for conflict. Based on this evaluation, the USACE has determined there is no conflict of interest. USACE has advised AECOM that until the REIS process is completed, AECOM should not accept business with existing coal or lignite mine operations in Texas that are owned by TMRA members participating in the Regional EIS.

Comment:

We also are very concerned that we shouldn't only be concerned about surface water, we should be concerned about the groundwater. I am going to be handing your committee a list of the aquifers in Texas. Much of your map covers the creeks of Wilcox, of which I've seen significant contamination lately in Rusk County, near the town of Reklaw, and so we feel that the groundwater districts should also be consulted on these permits, instead of just the Railroad Commission.

Beving, Rita

USACE Response:

The typical permits that would be required by potential future mines at the time they are proposed

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and the associated permitting authority are identified in **Table 1-1**. The applicable regulations and agency programs specific to water quality are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines (e.g., potential impacts to local water districts' water supply facilities) will be assessed as required by applicable regulatory requirements at the time they are proposed and additional mitigation identified, as needed, taking into account mine-specific and site-specific information available at that time.

Comment:

In addition to that, you're supplementing a study that should be paid by Mexico and not by us here in the United States. And I would -- I would like to see that that be corrected because I think that the impact study that you are going to do also needs to take into account what Mexico's already sending to us this way by way of their coal mines.

Martinez, Luis

USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

It is our understanding that the contractor who wrote this study was paid by the Texas Mining and Reclamation Association and they certainly got their money's worth- a document written totally from the coal industry viewpoint with almost no acknowledgement that surface coal mining poses grave threats to the environment and human health. The first sentence in paragraph ES 1.2 says it all: "Currently operating coal and lignite mines in Texas provide a long-term, reliable, continuous, and economically stable fuel source to existing nearby power plants." This sentence could have been (and perhaps was) lifted intact from a coal industry promotional brochure. This would be fine if the end result was a study openly authored by Dos Reublicas or the Texas Mining Association, but, of course, it is the Corps of Engineers name and logo that is on the cover page and the signatures of Corps officials that are on the first few pages. This means that the Corps has adopted this study on behalf of the U.S. Government and has endorsed the positions therein. We find it incredible that you would want to do so. As you know, the president just announced new EPA regulations as part of the Clean Power Plan, aimed at reducing the pollution levels emitted from coal burning power plants and, by extension, reducing the consumption of coal. How can the Fort Worth District be proposing a document that seeks to make it much easier to greatly increase coal mining, a document that runs 180 degrees counter with the rest of the administration's efforts?

Baxter, George

USACE Response:

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR]

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1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230). As allowed under NEPA (40 CFR 1506.5), the REIS is being prepared by a third-party contractor (AECOM) under the direction of the lead federal agency (USACE). As lead federal agency, USACE has full control and oversight over the REIS process, including, but not limited to, communication between the third-party contractor and Texas Mining and Reclamation Association and decisions relative to the technical scope, content, and outcome of the REIS.

As clarification, the USACE is required to process Section 404 and Section 10 permit applications, including the applications submitted by surface coal and lignite mines, in accordance with Section 404 of the CWA and Section 10 of the RHA. As part of the permit evaluation process associated with Section 404 and Section 10 permit authorizations, the USACE is also required to comply with the regulatory requirements of NEPA in evaluating the potential impacts of an action. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Procedural

Comment:

Table 1-1 in this section shows a variety of state and federal permits that may also be necessary for future projects, but it overlooks some TPWD authorizations that may be required.

The Draft REIS correctly includes TPWD authority over species relocation but incorrectly lists it as authority over only threatened and endangered species. Under Texas Parks and Wildlife (TPW) Code Section 12.015, 12.019, 66.015 and Texas Administrative Code (TAC) 52.101-52.105, 52.202, 57.251-57.259, TPWD regulates the introduction and stocking of fish, shellfish, and aquatic plants into public waters of the state. The *Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters* allows for movement (i.e., introduction, stocking, transplant, relocation) of aquatic species in waters of the state. Movement of aquatic species, even within the same river or estuary, has potential natural resources risk (e.g., exotics, timing for successful survival). Therefore, a permit is required to minimize that risk. An Aquatic Resource Relocation Plan (ARRP) may be required in order to plan resource handling activities and assist in the permitting process. Information regarding this permit can be obtained at: http://www.tpwd.texas.gov/publications/fishboat/fonns/.

Disturbance or dewatering activities within public waters of the state can impact aquatic resources through stranding fish and mussels. To avoid or reduce impacts, relocating all aquatic life, including, but not limited to, fish, turtles, and mussels, to an area of suitable habitat outside the project footprint is done under the authority of the TPWD *Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters.* If dewatering activities and other project-related activities cause mortality to fish and wildlife species, then the responsible party could be subject to investigation by the TPWD Kills and Spills Team (KAST) and could be liable for the value of the lost resources under the authority of TPW Code Sections 12.0011 (b)(l) and 12.301.

Under TPW Code chapter 86 and TAC chapter 69 TPWD regulates the disturbance or take of sedimentary material within state-designated navigable streams, state-owned streams, and certain perennial streams. Activities potentially requiring a permit within jurisdictional streams include mining, dam construction, bank or channel alteration, stream stabilization or restoration, or any other disturbance of the bed or banks. Information regarding this permit can be obtained at: http://tpwd.texas.gov/fag/landwater/sand gravel/

Under TPW Code Section 66.007 and 66.0072 TPWD regulates harmful or potentially harmful fish, shellfish, and aquatic plants. Except as specifically authorized by permit, it is an offense to release into the water of this state, transport, or possess (e.g., accidental possession, transport, and introduction on improperly cleaned equipment) any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a harmful or potentially harmful exotic fish, shellfish, or aquatic plant. The list of prohibited species includes many problematic plants such as giant and common salvinia, hydrilla, Eurasian watermilfoil, and alligatorweed which cost the state millions of dollars annually to manage. The list can be found in Title 31, Chapter 57, Subchapter A of the TAC and on the TPWD website at:
http://tpwd.texas.gov/huntwild/wild/species/exotic/prohibited aquatic.phtml

Heger, Tom; Texas Parks and Wildlife

USACE Response:

Table 1-1 is not intended to present a comprehensive list of permits. Rather, it presents the typical permits that would be required by a typical surface coal or lignite mine expansion area or satellite mine. As discussed in Section 1.3, the final list of required permits and approvals for a proposed mine expansion or satellite mine would be determined at the time of permit application submittal and, in part, would depend on site-specific conditions and resources within a future proposed disturbance area.

Procedural

Comment:

Lastly, pages 4-7 thru 4-9, which are supposed to list the various organizations and people with whom the Corps has consulted on this project, have been omitted from the REIS, both on the CD and on the Corps website.

Baxter, George

Comment:

Lastly, Pages 4-7 through 4-9, which are supposed to list the various organizations and people with whom the Corps has consulted on this project have been omitted from the EIS both on the CD and on the Corps's Web site.

De La Cerda, Leticia

USACE Response:

Information relative to distribution of copies of the REIS and notifications of document availability is summarized in Section 4.5 of the Draft REIS. The table of contents referenced in this comment was in error and has been corrected in the Final REIS

Programmatic Agreement

Comment:

Greetings to you. Our Tribe requests to be a signatory for the USACE Programmatic Agreement for the proposed expansion of Coal Mines.

Our Tribe is requesting to USACE the following corrections and inclusions to the Draft Preliminary for the USACE Programmatic Agreement to the following:

DRAFT PRELIMINARY PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, THE TRIBES HISTORIC PRESERVATION OFFICERS, TEXAS STATE HISTORIC PRESERVATION OFFICER, [AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION] FOR THE PROPOSED EXPANSION OF COAL MINES

WHEREAS, The Choctaw Nation of Oklahoma has requested to be a consulting party in the development of this Programmatic Agreement, and the federally unrecognized the Pacuache Tribe of Texas have requested consulting party status; and

On Stipulations

The USACE will ensure the following stipulations are carried out concerning all historic properties affected by expansion of Mines under the REIS terms:

I. Synthesis of Previous Investigations:

A. Each mine shall develop a report summarizing and... The Report shall contain

1. Full references to all previous historic property investigations including Consultation Sacred lands with Tribes and the opinions on whether they are in concurrence or objection to the NHRP determination.

III. Phased Archeological Work and Architectural Review:

A. Phase I

1. for expansion areas defined…

a. All sites recorded will assessed, if possible, for eligibility to the NRHP. Sites that cannot be determined ineligible for the NRHP will be assessed by more detailed work in Phase II. Tribes have the right to concur or object to both findings eligible and not eligible.

b. A draft report…

c. After the final report shall be distributed to all signatory parties within 60 days of receipt by the USACE, and Consulting Parties.

B. Phase II

1. Within one year of completing Phase I, the Mine will begin Phase II…

a. Criteria for eligibility…

b. A draft report shall follow…

c. The final report shall be distributed to all signatory and Consulting Parties to this agreement within

Programmatic Agreement

60 calendar days of receiving final comments from the SHOP and USACE.

C. Phase III

Prior to implementation of the RD, a draft RD for each Mine expansion shall be submitted for a 30 day review to the SHPO, Tribes and USACE. The RD may be revised based on the comments received. Additional review time may be requested by any reviewing party. The USACE shall be responsible for final comments and acceptance before implementation of the final RD. A copy of the final RD shall be made available to all signatures and concurring parties. In the event that there's a disagreement in the implementation of the final RD Tribes shall have the right to concur or object and pursue additional Consultation if necessary to include mitigation remedies if required.

A. General

1. Each mine is responsible of beginning phased archaeological investigations for each…

2. The sequential phases of investigations are,

3. Standing architecture shall…

4. Each mine shall develop a curation agreement with the SHPO that includes protocols for artifacts recovered at prehistoric and historic sites. This includes work on sites undertaken on property owned by the mine, as well as property leased from private landowners. The curation agreement will be reviewed and approved by the SHPO prior to any fieldwork. All resulting artifact collections, images, field notes, records, digital data, and geospatial data generated by the archaeological investigations pursuant to this PA should be curated in a state repository in accordance with 36 C.F.R. Part 79. All human remains and associated funerary objects will be treated under a separate protocol (Stipulations II (b) (d).

5. A plan for Tribal consultation, treatment and coordination of human remains…the plan shall include:

a. Notification protocols from Tribes, SHPO, and USACE

b. A plan to notify Tribes that are …

c. Establishment of formal consultation with interested Tribes within 30 days of discovery. Tribes shall inform the final decision on disposition.

d. After SHPO and USACE…

1. Within six months of…

a. All NRHP eligible sites shall…

b. A draft report shall follow…

c. The final report shall be distributed to all signatory and consulting parties to this agreement within 60 days calendar days of receiving final comments from the SHPO and USACE.

D. Determination of NRHP Eligibility

1. If any archaeological resources are…

Programmatic Agreement

2. The USACE will make final determination of NRHP eligibility in consultation with the SHPO and Tribes within 60 calendar days of completing Phase II. Properties with Tribal components most be consulted on with Tribes to concur or object to NRHP determination.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

At the time future surface coal or lignite mines are proposed and potentially permitted, federally recognized tribes will be invited to be signatory to the future mine-specific Programmatic Agreements.

Proposed Action

Comment:

A PEIS must include a program statement that defines “geographic, temporal and subject matter limits.” *Environmental Defense Fund v. Adams*, 434 F. Supp. 403 (D.D.C. 1977). The Corps has not put a limit on the time period during which the PEIS will apply. As more and more areas are scarred by coal mining, the Corps will need to revisit the cumulative impacts of future projects. The Corps should place a temporal limit on the scope of the PEIS.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

The Corps states on page 2 of the scoping notice that the PEIS will **not** provide complete NEPA compliance for future proposed expansions. It is critical that the Corps undertake detailed site-specific review for each future project because there are many site-specific factors that cannot be addressed in a regional EIS process, and because there are likely to be changed circumstances between the time the EIS is issued, and the time that any particular mine expansion is proposed and permitted.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As discussed in Section 2.2.2, tiered and supplemented NEPA documents for potential future surface coal and lignite mine expansion areas or satellite mines within the REIS study areas would incorporate by reference the REIS analysis and rely on future project-specific Section 404/10 and RCT permit applications, site-specific environmental baseline field studies, and project-specific plans for life-of-mine development and reclamation/closure to provide the level of detail needed to support the future project-specific NEPA analyses. A supplemented NEPA document also would require additional information to support the analysis due to project-specific issues or updated information since preparation of the REIS (e.g., newly listed threatened or endangered species with the potential to occur in the future proposed mine area). The preparation of future tiered and supplemented NEPA documents would be in accordance with the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508).

Comment:

I see here that expansion goes from 20 acres to 25 acres. That's my understanding for the area added to existing mines.

Smith, Darel

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The locations and associated acreages of potential future surface coal and lignite mine expansion areas and satellite mines are not currently known. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., air quality monitoring and modeling information) available at that time.

As clarification, the acres identified in **Table 2-3** do not represent currently proposed disturbance; rather, they represent the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations.

Proposed Action

Comment:

It is not clear why only ephemeral streams upgradient to mined areas are mentioned in the requirement to connect reconstructed drainages on reclaimed mines, and not intermittent or perennial streams, or downgradient drainages.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As discussed in the Effects Common to All Study Areas subsection under Section 3.2.4.2, RCT regulations encourage avoidance of perennial or intermittent streams, and the USACE regulatory program mandates avoidance and minimization of impacts to waters of the U.S. Therefore, RCT and USACE regulatory programs would require review and assessment of perennial or intermittent stream diversion designs prior to their approval, minimizing the potential for adverse surface water impacts. The requirement for RCT and USACE approval of intermittent and perennial stream diversions is noted in Section 2.2.5.2.

Comment:

IP's require duplicative agency coordination and public involvement that is required under the permitting process of SMCRA. Further, IPs also require information on cultural resources, endangered species, and other resources which are duplicative of the SMCRA permitting process.

Mireles, Kim; Luminant

USACE Response:

The type and level of detail, required 404(b)(1) analyses, and public involvement for issuance of an IP for future surface coal and lignite mines in Texas would continue to be conducted in accordance with the requirements of Section 404 of the CWA and Section 10 of the RHA. The resource analyses in the associated mine-specific NEPA documents would continue to be conducted in accordance the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508). Both tiered and supplemented NEPA documents for future mines would rely on the REIS analysis plus the future project-specific permit applications (including SMCRA application) and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

The scoping notice defines Category 2 as projects that exceed the current LOP criteria, but for an undefined reason are still expected not to have significant impacts and not to require an EIS. The Scoping Announcement states that “Category 2 projects would require an [individual permit] and a more complex, robust EA with an anticipated FONSI or mitigated FONSI.” Again, the Corps must consider site-specific variables before “presuming” that a Category 2 project has no significant impact.

The Corps cannot preemptively exempt a category of projects from a full EIS without providing any basis or even defining the category with any specificity. Presumably, the PEIS process will gather data to further explain this mysterious category, but for the same reasons that the Category 1 thresholds are suspect, Sierra Club is highly skeptical that a scientifically defensible intermediate category can be developed. Such thresholds do little more than create an incentive for permit applicants to artificially limit or piecemeal their applications so as to fit within the Category 1 or 2, and benefit from the “presumption” that there will be no significant impacts from that mining.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Proposed Action

Comment:

Another current risk the REIS will reduce is that of planning for the necessary level of environmental assessment. The REIS establishes the expectation of when a basic environmental assessment (EA), a more robust EA, or an EIS will be required. By doing this, permittees have a better understanding during their planning process of the resources and time needed for permitting. The proposed changes will also provide clarity and guidance for the USACE in the level of evaluation needed in the initial stages of permit coordination with the permittee instead of waiting on detailed information provided in the application.

Mireles, Kim; Luminant

USACE Response:

The USACE is not proposing changes to the NEPA process. Rather, the proposed categories discussed in Section 2.2.2 provide a general guideline as to the type of NEPA document (EA or EIS) that may be required in conjunction with the proposed Section 404/10 permit types for future surface coal and lignite mines in Texas. As discussed in Section 2.2.2, USACE, as the lead federal agency for NEPA compliance, would have the authority to require an EIS for any project, regardless of the Section 404/10 permit type, if the potential for significant impacts is identified, even if the impacts could be mitigated to less than a significant level.

Comment:

What types or definition of "bogs" would be used to exclude projects from the proposed RGP?

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The definition of “bogs” would be the same or consistent with the definition in the Nationwide Permit Regional Conditions for Texas.

Comment:

The second thing that I'm asking is, will the additional 25 -- 25,000 acres that will be increted [phonetic], will it impact Seco Mines and some of the other areas of the community?

Martinez, Luis

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The locations of potential future surface coal or lignite mine expansion areas or satellite mines are not currently known.

As discussed in Section 2.2.3, the study areas for the regional analysis encompass locations within the coal/lignite belt in Texas that are in reasonable proximity to existing surface coal and lignite mines with potential for future expansion. The types of areas excluded from the REIS study areas also are discussed in Section 2.2.3.

The project-specific study areas for future proposed surface coal and lignite mine expansion areas and satellite mines will be defined at the time a project is proposed. Potential impacts associated with future mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Proposed Action

Comment:

B. The Proposed RGP Is Directly Inconsistent With the 2012 NWP 21

The RGP proposed by the Corps' Fort Worth office would impose an acreage limit of 0.5 to 10 acres and a stream limit of 20,000 to 30,000 linear feet. DEIS, p. 23. The proposed RGP is directly inconsistent with the Corps Headquarters' 2012 findings in NWP 21 that a ½-acre limit and a 300-foot stream limit are necessary to prevent more than minimal cumulative adverse environmental effects. In proposing the RGP, the Corps' Fort Worth office instead assumes that such limits are unnecessary, and that the acreage limit can be increased by a factor of 20 and the stream limit can be increased by a factor of 100 without causing more than minimal cumulative adverse environmental effects.

It is a fundamental contradiction to say that NWP 21(b) authorizations on a national basis must be limited to ½acre and 300 feet of stream impacts to ensure minimal effects, but RGP authorizations in Texas can violate those limits by enormous amounts and still have minimal effects. The DEIS does not explain why NWP 21(b)'s limits are necessary on a national basis but unnecessary in Texas. Nor could it, because NWP 21(b) and the proposed RGP cover the same type of surface coal mining activities with the same type of environmental effects.

"A long line of precedent has established that an agency action is considered arbitrary when the agency has offered insufficient reasons for treating similar situations differently." *Yetman v. Garvey* , 261 F.3d 664, 669 (7th Cir. 2001); *see also Mercy Catholic Med. Ctr. V. Thompson* , 380 F.3d 142, 158 (3d Cir. 2004); *Transactive Corp. v. United States* , 91 F.3d 232, 237 (D.C. Cir. 1996). Treating similar cases dissimilarly is "the paradigmatic arbitrary and capricious agency action." *SeaWorld of Florida, LLC v. Perez* , 748 F.3d 1202, 1221 (D.C. Cir. 2014) (Kavanaugh, J., dissenting). It is the essence of arbitrariness.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

District Engineers have the authority to develop RGPs [33 CFR 322.2(f), 325.2(e)(2), and 325.5(c)]. Actions that would be taken by the Fort Worth District are not just the proposed development of a RGP but also a modification to the current LOP process. While the development of a RGP (and the anticipated EA that would accompany such an effort) would be informed by the data and analyses in the REIS, the action itself would not authorize activities that result in more than minimal effects both individually and cumulatively. The comment focuses on the limitations included in the NWIs which reflect a national view of potential effects that may occur under those permits. RGPs are more area specific which allows for more refined information to be developed to inform the potential impacts that can be allowed and still be concluded as minimal. Numerous RGPs exist that allow for effects greater than those allowed for under the NWPs.

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Comment:

I. The Corps' Proposed Regional General Permit (RGP) Would Violate § 404(e) of the CWA and Would Be Arbitrary and Capricious

A. The Corps Has Determined that a ½-Acre Limit and a 300-Foot Limit Are Necessary to Prevent More than Minimal Cumulative Environmental Effects

The Clean Water Act (CWA) prohibits a person from discharging pollutants into waters of the United States unless the person obtains a specific authorization. 33 U.S.C. § 1311(a). The Corps may authorize discharges of dredged and fill material under Section 404. *Id* . § 1344. Sections 404(a) and (e) establish two separate and distinct methods of permitting. Under Section 404(a), the Corps issues individual permits on a case-by-case basis for discharges "at specified disposal sites." *Id* . § 1344(a). The Corps may only issue individual permits after public notice and opportunity for hearing. *Id* . Issuing an individual permit "requires a resource-intensive review that entails submission of voluminous application materials, extensive site-specific research and documentation, promulgation of public notice, opportunity for public comment, consultation with other federal agencies, and a formal analysis justifying the ultimate decision to issue or refuse the permit." *Crutchfield v. Cnty. of Hanover, Virginia* , 325 F.3d 211, 214 (4th Cir. 2003).

Under Section 404(e), the Corps may issue "general" permits, also after public notice and opportunity for hearing, for no more than five years on a state, regional, or nationwide basis. 33 U.S.C. § 1344(e). These permits are "for any category of activities involving discharges of dredged or fill material if the [Corps] determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment." *Id* . A general permit "acts as a standing authorization for developers to undertake an entire category of activities deemed to create only minimal environmental impact." *Crutchfield* , 325 F.3d at 214.

In February 2012, the Corps issued NWP 21, which authorizes discharges of dredged or fill material "associated with surface coal mining and reclamation operations." In the 2012 NWP 21, the Corps changed its approach for reducing environmental impacts. The Corps abandoned the approach in its 2007 NWP 21, which allowed unlimited stream filling. In 2012, the Corps decided that acreage and stream limits would be the primary mechanism to prevent more than minimal environmental impacts. Under NWP 21(b), discharges of dredged fill material associated with surface coal mining activities cannot be authorized unless they comply with several criteria, including a ½ acre limit on filling non-tidal waters and a 300 linear foot limit on filling stream beds. 77 Fed. Reg. 10184, 10274 (Feb. 21, 2012).

In issuing this NWP, the Corps explained that stream limits are "the primary tools used to encourage avoidance and minimization to qualify for NWP authorization" and that the agency had imposed such limits "because of concerns about losses of stream bed and the potential for surface coal mining activities to have more than minimal adverse effects on the aquatic environment, individually and cumulatively." NWP 21 Decision Document (NWP 21 DD) at 19.

The Corps stated that "the new terms and conditions of this NWP, including the ½ acre and 300 linear foot limits, are *necessary* to ensure that this NWP authorizes only those activities that have minimal individual and cumulative adverse effects on the aquatic environment." *Id.* At 21 (emphasis added). "The Corps has determined that the changes to NWP 21 are *necessary* to comply with the requirements of Section 404(e) of the Clean Water Act." *Id* . at 23 (emphasis added). "The substantial changes in the terms and conditions of the reissued NWP 21 will ensure that the activities authorized by this NWP result in minimal individual and cumulative adverse effects on the aquatic environment." *Id* . at 8.

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The Corps also stated that its prior approach of not using acreage or linear foot limits, and relying solely on the preconstruction notification process and permit conditions to reduce adverse effects to a minimal level, “is no longer appropriate”: Previous versions of NWP 21 did not have any acreage or linear foot limits, and relied solely on the preconstruction notification review process and permit conditions to reduce adverse effects on the aquatic environment to satisfy the minimal adverse environmental effects requirement for general permits. *We believe that approach is no longer appropriate* because of the inconsistency with other NWPs, the possibility that larger losses of waters of the United States might be authorized, and the difficulty of documenting minimal adverse effect determinations for losses of aquatic resource area and functions that exceed those allowed in other NWPs.

NWP 21 DD at 7 (emphasis added). Thus, the Corps found that the old tools of preconstruction review, permit conditions and compensatory mitigation do not ensure minimal cumulative impacts, and that new acreage and stream limits are necessary to accomplish that goal.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

A RGP is issued for a specific geographic area by an individual USACE District. Each RGP has specific terms and conditions, all of which must be met and verified for project-specific actions. RGPs authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis. NWPs, by definition, are promulgated from a nationwide perspective and do not account for specifics of regional activities.

Comment:

The DREIS states that stream designs will be submitted to the Corps and resource agencies for review prior to construction. The TCEQ recommends stream design plans of sufficient details be completed prior to the individual permit being issued to increase the probability of successful mitigation. The names and qualifications of the stream designers who will be performing the Natural Channel Design, including any past and present projects they have initiated and completed, as well as photographic documentation of these projects.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The USACE Fort Worth District current Section 404 mitigation guidelines, which also would apply under the Proposed Action, are discussed in Section 2.1.2. As discussed, standard language in compensatory mitigation plans require submittal of post-reclamation aquatic resource design plans to USACE and the resource agencies for review and USACE approval prior to construction. These detailed design plans would be required to take into account the regraded pit backfill that, as discussed in Section 2.2.4.3, would be leveled and graded to approximate original contour in compliance with RCT coal mining regulations and approved plans. The USACE Fort Worth District’s current requirement for long-term monitoring using sound, measurable, ecologic condition-based performance metrics as success criteria for compensatory mitigation projects would also apply under the Proposed Action (see Section 2.1.2 and 2.2).

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Comment:

Additionally, some aspects of the mining process are very similar across the industry and the gathering of data for subsequent evaluations would be repetitive. For example, evaluations for noise, visual effects, transportation, types of impact, etc., are similar among all surface mining in Texas. The REIS will provide documentation relating to these similar activities that can be referenced in the 404 permitting process, avoiding the cost and effort of preparing and reviewing the same information for every surface mining 404 permit submitted.

Mireles, Kim; Luminant

USACE Response:

Both tiered and supplemented NEPA documents for future mines would rely on the REIS analysis plus the future project-specific permit applications (including SMCRA and Section 404 applications) and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Comment:

And to close, I'd like that before you continue expediting or authorizing permits, the community and the working must know what they mean it's supposed to -- they got to know, you know, in the language that we can understand.

Corpus, Jose

USACE Response:

As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion area or satellite mine are proposed. As allowed under NEPA, tiered and supplemented NEPA documents for future mine expansion areas or satellite mines within the REIS study areas would be prepared. These NEPA documents would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses. Based on the results of each future project-specific NEPA analysis, the USACE either would issue a permit, issue a permit with special conditions, or deny the permit.

Comment:

Based on the previous two points (no. 5 and 6), our commentary would be that the Corps should abandon sponsorship of this REIS, cease trying to "streamline" the permit process, maintain the current regulatory structure and require each coal company to generate its own EIS for any future expansions.

Baxter, George

Comment:

Page 3.17-2 of the DREIS states that there will be long term losses in productivity of aquatic communities, specifically macroinvertebrates, due to the loss of streams. The TCEQ expects the mitigation and replacement of all impacted streams to compensate for these losses to existing uses and preclude degradation per the TSWQS.

Galindo, David; Texas Commission on Environmental Quality

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Comment:

As for the Draft PA, the Choctaw Nation of Oklahoma respectfully defers our comments to the other Tribes that have been contacted. If you have any questions, please contact me by email.

Ragle, Daniel; Choctaw Nation of OK/Historic Preservation Dept

USACE Response:

Comment noted.

Comment:

The explosives destroy the houses. Let me tell you, in that area of Mexico the houses are made from bricks and concrete and down here are made from wood. For sure they will fall.

Guevara, Ana

USACE Response:

As discussed in Section 3.1.2.1, the potential for blasting-related effects typically occurs where old underground mine workings are present. RCT regulations (12.135 and 12.136) require that a mine applicant determine the location of previous mining, identify the mining method, and map the extent of old mine workings. When older mine works are identified, proper precautions and procedures would be implemented to reduce blast vibrations that may weaken underground workings, causing unsafe conditions.

Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

VII. The DEIS Fails to Analyze and Compare the Alternatives of Individual Permits vs. Regional General Permits and Their Different Environmental Impacts

The Corps' two alternatives under § 404 are issuing either individual permits or general permits. The DEIS fails to analyze adequately or in detail the differences between these two alternatives. It contains only two sentences on this issue. The first sentence merely states that individual permits involve "a more substantive review process," and the second sentence states that this process includes "compliance with the Section 404(b)(1) guidelines." DEIS at 21, 3.2-72. In its October 9, 2001 comments on the 2002 NWP 21, EPA Region 9 stated:

Clearly, the individual permit process provides greater protection to the aquatic environment than NWPs, if for no other reason than the requirement that each individual permit comply with EPA's 404(b)(1) Guidelines. It follows, therefore, that to greatly expand the geographic applicability of the NWPs . . . will result in less regulatory scrutiny and, therefore, less protection to these waters.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS evaluates the potential impacts associated with implementation of the USACE Fort Worth District's proposed regulatory framework for surface coal and lignite mines in Texas as shown in **Table 2-2**. The District's current regulatory framework for surface coal and lignite mines in Texas is presented in **Table 2-1**.

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Comment:

Please explain how the Fort Worth District Stream Mitigation Method (October 2, 2013) will apply to stream mitigation on reclaimed streams.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

Requirements of the Fort Worth District Stream Mitigation Method apply to all permittee-responsible stream mitigation projects. Since streams restored on reclaimed mine sites typically are totally reconstructed in approximately the same location, the requirements for in-channel and riparian restoration work are met.

Comment:

The TCEQ has concerns regarding the stream impact thresholds (20,000-30,000 linear feet) for the DREIS-proposed Regional General Permit (RGP) without any agency coordination. Due to the high estimates of potential impacts, and lack of site-specific information regarding each study area, the TCEQ recommends that coordination with the state and federal resource agencies be added to the RGP.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

District Engineers have the authority to develop RGPs [33 CFR 322.2(f), 325.2(e)(2), and 325.5(c)]. Actions that would be taken by the Fort Worth District are not just the proposed development of a RGP but also a modification to the current LOP process. While the development of a RGP (and the anticipated EA that would accompany such an effort) would be informed by the data and analyses in the REIS, the action itself would not authorize activities that result in more than minimal effects both individually and cumulatively. The comment focuses on the limitations included in the NWPs which reflect a national view of potential effects that may occur under those permits. RGPs are more area specific, which allows for more refined information to be developed to inform the potential impacts that can be allowed and still be concluded as minimal. Numerous RGPs exist that allow for effects greater than those allowed for under the NWIs.

As indicated in **Table 2-2**, the proposed RGP has been modified for the Final REIS to include agency coordination.

Comment:

It is not clear why Study Areas 5 & 6 are proposed to have greater linear foot allowances under the proposed RGP. Streams in those areas may more likely be intermittent or ephemeral, or may tend to have different riparian characteristics, but they are no less valuable to the resource landscape than in other study areas.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

Based on field assessments conducted by USACE Fort Worth District during development of their Texas Rapid Assessment Method ecological assessment model, streams in Study Areas 5 and 6

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generally score lower than the other four study areas. This indicates that on a per foot basis, less ecological integrity is at stake in those areas, and therefore, greater linear foot allowances are appropriate.

Comment:

The SMCRA permitting process ensures all state and federal regulatory issues are addressed, e.g. Endangered Species Act, Clean Water Act, Clean Air Act, etc. To require that the USACE conduct the same level of review over the same information is a duplication of effort, not only for the permittee, but for the agencies who review the information.

Mireles, Kim; Luminant

USACE Response:

The type and level of detail, required 404(b)(1) analyses, and public involvement for issuance of an IP for future surface coal and lignite mines in Texas would continue to be conducted in accordance with the requirements of Section 404 of the CWA. The resource analyses in the associated mine-specific NEPA documents would continue to be conducted in accordance with the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508). Both tiered and supplemented NEPA documents for future mines would rely on the REIS analysis plus the future project-specific permit applications (including SMCRA application) and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

Anyway, having gotten my foot in, I asked Rat Guy about the mechanisms of Compensatory Mitigation and if USACE had any real power to enforce it. He told me about some methods such as going through the banks, but admitted that you consult with the company and that a lot of it depends on what they 'can' do. To me that was the most telling remark of the night spoke to me of a broken regulatory system.

Brower, Jerry

USACE Response:

As discussed in Section 2.2.4.3, waters of the U.S. (including wetlands) impacted by mining and mining-related activities would be reconstructed in locations as stipulated by the USACE Fort Worth District in future mine-specific Section 404 or Section 10 permits. Reconstruction typically would be achieved through creation, restoration, or enhancement techniques as would be outlined in a mine-specific Conceptual Mitigation Plan that would need to be developed and submitted to the USACE Fort Worth District in support of the Section 404/10 permit application. The reconstructed, restored, and/or enhanced streams, open water, and wetland resources would need to meet the USACE's criteria for waters of the U.S or other established performance metrics.

As discussed in Section 2.1.2, USACE Fort Worth District Section 404 mitigation guidelines currently require financial assurances of compensatory mitigation success through an acceptable and appropriate financial instrument (e.g., escrow account, letter of credit, or performance bond). As discussed in the introduction to Section 2.2, these guidelines would continue to be implemented for future surface coal and lignite mines in Texas.

Comment:

Information about the qualifications and experience of the stream designer(s) should be included with design plans.

Heger, Tom; Texas Parks and Wildlife

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USACE Response:

It is the applicant's decision to choose their stream design consultant. However, as discussed in the Restoration of Waters of the U.S., Including Wetlands subsection under Section 2.2.4.3, detailed stream design information would be submitted for USACE Fort Worth District and resource agency interdisciplinary review and USACE approval prior to construction of mitigation streams. Consistency with successful natural stream channel design methodologies on an ecoregion and watershed basis would be determined during these interdisciplinary reviews.

Comment:

A primary concern with the draft document is the proposed removal of projects with potentially enormous impacts from the realm of public awareness and public comment. Projects with·up to 25 acres of wetland impacts and UNLIMITED impacts to perennial, intermittent, and/or ephemeral streams are proposed to qualify for the revised LOP-3 and to require no public notice or public comment. The Letter of Permission procedure is intended to reduce administrative procedures and to expedite permit decisions for cases that include only minor work in waters of the U.S. that do not have significant individual or cumulative environmental impacts. That statement cannot be made for projects with unlimited stream impacts, or even 10-25 acres of wetland impacts. The requirement to coordinate these projects but not gain concurrence with resource agencies essentially makes these Individual Permit (IP) projects where public involvement has been sidestepped. The Draft REIS should discuss the need to exclude public involvement in the review for projects with potentially far greater adverse impacts than other projects requiring IPs.

Another significant concern is the removal from coordination with state and federal resource agencies all projects with up to 10 acres of wetland impacts and up to 20,000 or 30,000 linear feet of stream impacts through the proposed Regional General Permit (RGP). The Draft REIS should discuss the need to exclude public resource agency involvement in the review of projects with potentially significant impacts and how this is consistent with requirements of the Fish and Wildlife Coordination Act and other regulations. It is also not clear how this exclusion would work given statements in the document requiring coordination with resource agencies on mitigation stream design plans.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

It should be noted that the LOP does not allow for unlimited linear footage limits; rather the USACE Fort Worth District will review each proposed action on a case-by-case basis as noted in the footnote to **Table 2-2**. Also as shown in the table, the proposed RGP has been modified for the Final REIS to include agency coordination. Development of any RGP or LOP modification would follow established NEPA procedures and allow agencies and the public opportunity to comment on specific resource issues of special concern. The USACE is obligated to exercise discretionary authority in elevating permit applications when proposals are determined to result in more than minimal adverse effects to aquatic resources or other public interest review factors.

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Comment:

And as we come to review -- this is not specific to Area 6. This is specific to all that goes on throughout the portion of the state of Texas in regards to lignite mining in the state, and I think that it's -- it's important, of course, to bring forth the concerns of mining throughout the state, but more so as representatives of this community. We bring forth concerns through the process of supporting a more stringent process of including and having a better informed community as to how exactly an expansion process goes.

Today we know that there will not be ultimately any decisions that will be rendered and any formal concerns that possibly will -- will or will not be reached to -- of course, to the quorum, but we still have so many issues that need to be addressed, issues that not only impact water, issues that also impact air pollution, issues that impact several concerns as far as the necessary permitting process for this.

And I believe that as we are here, I think that as Mayor, I expected a little bit more as far as what we were going to -- to define the process to especially to our area and to express our concerns on the expansion of Area 6. And I think from the discussions that we've had, it certainly isn't an area that we're going to be covering a lot of today, and I think that the City of Eagle Pass will be submitting its formal comment through the form of a -- a letter addressing all of those issues so that you all may also have that.

But there's many other issues that we'll be addressing. I can -- I can stand here and I can bring forth the concerns of -- of the project in question, but I believe that as far as this -- this discussion or this forum is, the only thing that we can say from the City's standpoint is that we would support a very -- more thorough process to review any coal mining in the state of Texas and more so here in Eagle Pass and Maverick County.

Cantu, Ramsey; City of Eagle Pass

USACE Response:

Comment noted. Potential groundwater, surface water, and air quality impacts associated with a typical surface coal and lignite mine are discussed in Sections 3.2.3.2, 3.2.4.2, and 3.7.2, respectively. Under each of these sections, information is presented for each study area, including Study Area 6. As discussed in Section 2.2.3, the study areas encompass locations within the coal/lignite belt in Texas that are in reasonable proximity to existing surface coal and lignite mines with potential for future expansion.

As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion area or satellite mine are proposed. As allowed under NEPA, tiered and supplemented NEPA documents for future mines within the REIS study areas would be prepared. These NEPA documents would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses. Based on the results of each future project-specific NEPA analysis, the USACE either would issue a permit, issue a permit with special conditions, or deny the permit.

Comment:

Please include the TCEQ and other resource agencies in reference to submittal of Conceptual Mitigation Plans to the Corps on page 2-28.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

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The referenced text has been revised consistent with the language in the USACE's mitigation guidelines.

Comment:

TPWD does not agree that state and federal resource agencies should be excluded from coordination on proposed projects with up to 10 acres and/or 30,000 linear feet of aquatic habitat impacts under the proposed RGP. These are significant levels of impact to public natural resources for which these agencies are responsible and have regulatory jurisdiction. What would be the mechanism used to ensure that project sponsors are aware of other federal, state, and local requirements in the absence of notification of relevant agencies?

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As stated in Section 2.2 of the Draft REIS, project-specific permit applications will still require NEPA and 404(b)(1) analyses and compliance with all other required local, state, and federal permits prior to development, offering multiple opportunities for public notice and review. The types of NEPA analyses are detailed in Section 2.2.2. Also, the proposed RGP has been modified for the Final REIS to include agency coordination (see **Table 2-2**).

Comment:

The Fort Worth District should coordinate with adjacent Districts to properly conduct this PEIS. The fact that the Texas Mining and Reclamation Association is paying for the study should not constrain the geographic scope. There is no basis to study the impacts of mining only in Texas and ignore those just over the border. Rather, the geographic scope of similar lignite mining projects, with similar impacts, should drive the geographic scope of the PEIS.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

In accordance with NEPA, the REIS study areas were designed to meet the USACE Fort Worth District's purpose and need for action which is described in Section 1.2.

Comment:

A new section entitled "Typical Pre-Mine Development Phase" should be added before Section 2.2.4.1 (Typical Construction Phase) that discusses required activities to be initiated prior to mine development. Such activities would include the installation and sampling of monitoring wells in overburden, coal-bearing, and underburden aquifers, including alluvial aquifers if present, to fully characterize hydrologic flow regimes and develop baseline ground water quality. Pre-mine development activities would also include surface water sampling at stations upstream and downstream of mine permit areas as well as along mine reaches for baseline water quality and stream flows. Sampling stations should include areas of known ground water recharge or that would receive permitted storm water discharges pursuant to the Texas Pollutant Discharge Elimination System (TPDES) permitting program.

Price, Kimeka; USEPA, Region VI

USACE Response:

Mining companies are required to conduct baseline studies and prepare associated documentation for proposed mines in accordance with the requirements of the various federal and state agencies with permitting authority. The required baseline data collection and pre-mine monitoring will vary greatly depending on the location of the proposed future mine, site-specific conditions, and agency

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requirements. Although NEPA does not require a discussion of these pre-mine activities, the results of the baseline studies are considered in mine-specific impact analyses at the time a mine is proposed.

Comment:

The use of general permits and letters of permission rather than individual permits manifestly results in a permitting process that decreases public participation and decreases the level of scrutiny from the permitting agency on the specific environmental and public health impacts of the proposed action. Expanding the use of these streamlined permitting procedures to mines with larger acres of affected wetlands and streams will result in less protection for the aquatic environment in Texas than the current permitting scheme.

Yet the DEIS Executive Summary bizarrely alleges that the impacts of both alternatives will be nearly identical, and even seems to suggest that the impacts of the proposed action would be less than the no action alternative. *See* DEIS-7-18. These statements are unsupported in the DEIS by any real analysis of the consequences of dramatically expanding the application of general permits and letters of permission in the affected area. The only comparison of the alternatives takes place in a table that includes very vague and generalized descriptions of the typical impacts of lignite mines in Texas, with no citations to data or supporting scientific analysis. The table is rife with statements that certain resources "may" be impacted but that "compliance with state and federal regulations" will lessen those potential impacts. *See, e.g.,* DEIS at 2-44 ("Removal of Surface Water Features A currently unquantifiable portion of these streams may be impacted by future mining activities if during future mine-specific permitting: 1) a waiver is granted by RCT (per Section 12.355 under the Texas Coal Mining Regulations) and 2) the proposed disturbance represents the least environmentally damaging practicable alternative in accordance with the USACE's Section 404(b)(1) guidelines.")

The Corps must fully evaluate these regulatory consequences and their differential impacts on stream protection in detail for each of the six study areas. It is not enough to vaguely assert that there may be some adverse impacts, but that those impacts will be minimized by permit requirements that have not even been written yet. The DEIS currently contains no analysis of the actual environmental, public health, and cultural consequences of this proposed action, and is therefore not in compliance with NEPA or the Clean Water Act.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As stated in Section 2.2, future project-specific permit applications will still require NEPA and 404(b)(1) analyses and compliance with all other required local, state, and federal permits prior to development, offering multiple opportunities for public notice and review.

The REIS evaluates the potential impacts associated with implementation of the USACE Fort Worth District's proposed regulatory framework for surface coal and lignite mines in Texas as shown in **Table 2-2**. The District's current regulatory framework for surface coal and lignite mines in Texas is presented in **Table 2-1**.

The referenced impact discussion in the Executive Summary (Table ES-4) presents a summary of potential impacts. The detailed analyses of potential impacts (environmental, public health, and cultural) are presented in the resource sections in Chapter 3.0.

As discussed in the introduction to Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR]

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1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230).

Comment:

Section 2.2.4.2 - Typical Operations Phase, Overburden and Interburden Removal, page 2-17 - 2-19:

a. In lines 38 and 39 on page 2-17, the statement that the overburden would be selectively handled, as needed, to ensure placement of a minimum cover of suitable growth media (a minimum of 4 feet) is unclear. Further discussion is needed with regard to specifics on how the overburden and interburden waste rock will be managed, including regrading, revegetation, potential use of amendments, and performance standards for the 4-foot thick cover, as well as the applicable regulations governing cover placement. In addition to soil stabilization and erosion control, is the 4-foot cover to be designed to prevent precipitation from infiltrating and percolating through the overburden/interburden mine spoils that may cause acid rock drainage and metals dissolution, which could contaminate ground water? If
so, what are the performance criteria for preventing infiltration? This needs to be explained. If the cover is not intended to prevent acid rock drainage and metals dissolution to protect ground water, that should be stated as well.

b. More discussion is needed on the statement "Growth media and prime farmland soils, where present, would be hauled directly to and redistributed on regraded areas to the extent possible" in lines 39-41 on page 2-17. Are there performance standards for the growth media or soils to be used for cover and will such materials be imported if not present at the site?

c. It is recommended that the overburden/interburden material should be characterized for mineralogy, especially pyrite and other sulfide minerals, and acid generating potential.

Price, Kimeka; USEPA, Region VI

USACE Response:

Information relative to regrading, revegetation, amendments, and performance standards is presented in Section 2.2.4.3. Further discussion relative to selective handling of spoils is presented in Sections 3.2.3.2 and 3.2.4.2. As discussed, RCT Coal Mining Regulations require analysis of overburden and underburden through appropriate acid-base accounting or other assessments and implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming material are 4 feet or greater below the final grade. (See Section 12.386 of the Coal Mining Regulations for performance standards.)

As discussed under the Prime Farmland Soil and Growth Media Replacement subsection under Section 2.2.4.3, soil would be tested for suitability as outlined in the RCT-required soil testing plan. Suitability would be determined based on a comparison of the test results with RCT-approved post-mine soil performance standards. As discussed under the Prime Farmland and Growth Media Handling subsection under Section 2.2.4.1, sufficient material would be salvaged on site.

Comment:

WHEREAS, the USACE, Fort Worth, has not currently proposed changes to criteria for National Permits that may affect its regulatory framework for surface coal and or lignite mines in and or around the proximity of the City of Eagle Pass, Maverick County, Texas but are studying to add active mining acreage to an area where a large population lives along the Elm Creek, Hediondo Creek, Seco Creek, and the Rio Grande River, and along numerous underwater courses (residential water wells) and the residents of the area is at the mercy of the USACE regulations.

Farias, Juan; Maverick County Hospital District

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USACE Response:

The proposed changes to the USACE Fort Worth District's regulatory framework are discussed in Section 2.2.1. These proposed changes would apply to all future proposed surface coal and lignite mines in the REIS study areas, including Study Area 6 (see **Figure 1-1**).

As clarification, the study areas shown in **Figure 1-1** are the areas within which where future surface coal and lignite mine expansion areas and satellite mines are anticipated to be proposed. The acreages identified in **Table 2-3** do not represent currently proposed disturbance areas; rather, they provide the estimated maximum disturbance acreages associated with anticipated requests for future surface coal and lignite mining authorizations.

Comment:

III. The Corps Has Not Met the Legal Requirements to Establish a Categorical Exclusion from NEPA

The existing and proposed LOP and proposed RGP appear to act like categorical exclusions from the normal NEPA process, as all rights to public notice and comment are revoked for these projects, and the DEIS states that "Category 1 projects … that meet the criteria for a NWP, RGP, or LOP as specified … would have no net anticipated significant impacts." DEIS, 24. "Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment . . . and . . . For which, therefore, neither an environmental assessment nor an environmental impact statement is required." 40 CFR §1508.4. The Corps must consult with the Council on Environmental Quality on the adoption of a categorical exclusion, and it does not appear that the Corps has done so.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

None of the categories described in Section 2.2.2 of the Draft REIS call for a categorical exclusion under NEPA. This section identifies the required level of effort under NEPA, including an EA and Finding of No Significant Impact under Category 1, which falls within the NEPA requirements for an EA.

Comment:

And I have serious concerns about streamlining the process for environmental impact studies. I'm not really clear on what the problem statement is that you guys are trying to resolve with these change.

I understand the need for efficiency and cutting down streamlining process. I do process audits for local municipality and process improvement studies, but I didn't really hear a strong problem that's trying to be addressed here. The only problem primarily was a resource issue within the permitting process.

Lopez, Jason

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Comment:

The other problems that were stated is that this could result in a lengthy review time and might require substantial time periods for review. I understand that that seems like a problem for the users, for the customers, the people who are trying to profit off of this, but I feel like we would be skirting a really due diligence in evaluating the impact to the local environment, to the communities that it's impacting in the area and to the economies there locally not just the larger economy for the fossil fuel industry.

I really have concerns with streamlining this process as you stated.

Lopez, Jason

USACE Response:

As clarification, the Fort Worth District is undertaking the REIS to streamline the NEPA aspects of the Section 404/10 permitting process as discussed in the introduction to Chapter 1.0. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion areas or satellite mines are proposed. Both tiered and supplemented NEPA documents for future proposed mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

When you look at the size of regions that you're looking at and the number of kinds of coal and water bodies with each of those regions that are way too wide to have a single one-size-fits-all permit.

Smith, Tom; Public Citizens, Texas Office

USACE Response:

As clarification, the use of a single permit is not proposed. Proposed modifications to the USACE Fort Worth District regulatory framework for future surface coal and lignite mines in Texas, and the criteria for each, are identified in Section 2.2.1.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

On page 2-21 under Drainage Reconstruction and Sediment Control, the DREIS states that "to the extent possible", ephemeral drainages upstream of the mined area will be reconnected to the new drainages, including reestablished waters of the U.S. If waters of the U.S. are removed from jurisdictional status; they should be mitigated.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The USACE Fort Worth District current Section 404 mitigation guidelines, which also would apply under the Proposed Action, are discussed in Section 2.1.2. As discussed, the reconstructed, restored, and/or enhanced streams, open water, and wetland resources would need to meet the

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USACE's criteria for waters of the U.S or other established performance metrics.

Comment:

II. The Corps Has No Authority to Issue "Letters of Permission" under § 404

The Corps proposes to issue a new Letter of Permission (LOP) allowing the filling of 10 to 25 acres of waters of the U.S. and an unlimited amount of stream bed fill. DEIS at 24. In addition, the Corps admits that it is currently using an LOP3 that has an acreage limit of 20 acres and a stream limit of 20,000 linear feet. *Id.* 22. Under the Corps' regulations, a letter of permission "is a type of individual permit issued in accordance with the abbreviated procedures of 33 C.F.R. § 325.2(e)." 33 C.F.R. § 322.2(d). Those procedures dispense with individual public notice and comment for specific projects, as well as other procedures for individual § 404 permits. *Id.*, § 325.2(e)(1).

The Corps has no authority to issue such letters. They violate the plain language of § 404(a), which provides that individual permits may be issued only "after notice and opportunity for public hearings." 33 U.S.C. § 1344(a). Federal agencies have the authority to create exemption from statutory commands when the effects are *de minimis* and the burdens of regulation "yield a gain of trivial or no value." *Sierra Club v. E.P.A.* , 705 F.3d 458, 462 (D.C. Cir. 2013). However, that is not the case here. The statutory requirement of public notice and comment on individual § 404 permits is a function that provides clear benefits, and the statute precludes the Corps from exempting that requirement, especially where, as here, the proposed LOP and current LOP clearly authorize projects with far more than *de minimis* effects. The authorized scope of those LOPs greatly exceeds the acreage and stream limits that the Corps has imposed under NWP 21 to prevent more than minimal cumulative adverse environmental effects. The LOPs are *ultra vires* and illegal.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

District Engineers have the authority to develop LOPs and RGPs [33 CFR 322.2(f), 325.2(e)(2), and 325.5(c)]. Actions that would be taken by the Fort Worth District are not just the proposed development of a RGP but also a modification to the current LOP process. While the development of a RGP and/or LOP modification (and the anticipated EA that would accompany such an effort) would be informed by the data and analyses in the REIS, the action itself would not authorize activities that result in more than minimal effects both individually and cumulatively.

Comment:

Please explain if and how reclaimed streams will meet jurisdictional status and achieve mitigation credit. If impacts occur on leased lands that cannot be protected in perpetuity, mitigation may have to be located offsite consistent with the watershed approach as stated in the Mitigation Rule (2008) where adequate site protection can be obtained.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

As discussed in Section 2.2.4.3, waters of the U.S. (including wetlands) impacted by mining and mining-related activities would be reconstructed in locations as stipulated by the USACE Fort Worth District in future mine-specific Section 404 or Section 10 permits. Reconstruction typically would be achieved through creation, restoration, or enhancement techniques as would be outlined in a mine-specific Conceptual Mitigation Plan that would be developed and submitted in accordance with the requirements of the USACE's Section 404 permitting process. The reconstructed, restored, and/or enhanced streams, open water, and wetland resources would need to meet the USACE's criteria for waters of the U.S or other established performance metrics. Following the release from a mine's Section 404 reclamation performance bond, the reclaimed waters of the U.S., including wetlands,

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designated as compensatory mitigation would be protected by a long-term site protection instrument (e.g., a conservation easement).

Comment:

I'd have to say that we don't approve of a streamlining of the process. We think that there should be much more -- much more room for study. We think that there should be a rethinking of the process, of strip mining.

Blazer, Cherelle; Sierra Club-Beyond Coal

Comment:

Instead of loosening the regulations or making it easier to get permits, I would argue that perhaps you ought to increase the stringency of the analysis and for a couple of different reasons: The age of coal is rapidly coming to the end. We're not longer building new coal plants. We're shutting them down and those people who will continue to mine will no longer have the economic wherewithal to do the kind of reclamation that you all are relying upon them to do.

Smith, Tom; Public Citizens, Texas Office

USACE Response:

As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion area or satellite mine are proposed. Both tiered and supplemented NEPA documents for future mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

I strongly encourage you if they are going to expedite this process that at every step of the way you include a public comment period so people can be engaged in the process.

Cortez, David

Comment:

Furthermore, the Army Corp’s permit granting process should encourage and facilitate more public participation, rather than decreasing opportunities for public input. Streamlining the individual permit process for coal mining in Texas, as proposed in the DEIS, would both decrease opportunities for public comment and decrease the likelihood that the full impact of any proposed mines is fully analyzed. We urge the Army Corps to not adopt the proposed changes to the permitting process, and to require mines that do not comply with the criteria in Nationwide Permit 21 to seek individual permits.

Fairbanks, Brianna; Sierra Club Environmental Law Program

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Comment:

Strip mining has resulted in destruction and these communities that are affected must have a real voice in this process moving forward. And that's my personal concern here today is that this entire process adheres to restrict public participation and public input moving forward ironically, at a public forum and I understand that.

The Corps appears to be proposing shortcuts for issuing permits that we thing would cut off the public and other federal agencies from meaningful participation at each stage.

Mann, Christina; Sierra Club

Comment:

For my final comments, I'll just say we are concerned about the proposal on the LOP and the general permit, and we're really concerned because it could cut out the public. And locally there may be public who know about particular impacts of those proposals that could get cut out with that LOP and that regional.

Reed, Cyrus; Sierra Club

USACE Response:

As discussed in Section 2.2, project-specific permit applications would still require NEPA and 404(b)(1) analyses and compliance with all other required local, state, and federal permits prior to development, offering multiple opportunities for public notice and review. The types of NEPA analyses are detailed in Section 2.2.2.

Comment:

I also live a quarter of a mile away from the site, and we have specific objections to parts of this document, and they are as follows. Nowhere in the EIS does it state that all of the coal mine in the study area says will be shipped to Mexico to be burned in the highly pollutant Carbon 1 and 2 power plants in Nava, only 7 miles from Eagle Pass. Nowhere does that say Texas will receive none of the energy benefit from this coal, only of the negative consequences from the air contamination of the mine itself, of the train that will transport the coal to Mexico every day through the middle of Eagle Pass and from the Nava power plants, whose unregulated condition reaches Big Bend Park and the interior of the United States.

De La Cerda, Leticia

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine” expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines. Furthermore, the USACE does not have statutory authority to regulate existing coal-fired power plants previously permitted by other agencies in the U.S., or in other countries.

Potential transportation-related impacts associated with a typical mine are discussed in Section 3.10.2, and potential air quality effects are discussed in section 3.7.2 Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., proposed transport of coal or lignite) available at

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that time.

Comment:

In the best interests of Maverick County Hospital District and the public health interests of all citizens of Maverick County, Texas, the Maverick County Hospital District respectfully requests the US Army Corps of Engineers Fort Worth District to extend their time to ensure proper analyzes of potential impacts within Maverick County and to further review and do a more all-embracing risk analysis and a through mitigation plan that define our unique geographic area that may be affected by future USACE permit decision for future surface coal and lignite mine expansions that would dramatically affect the citizens living on the United States Mexico border from Eagle Pass, Texas whose sole source of potable water is the Rio Grande River.

Farias, Juan; Maverick County Hospital District

USACE Response:

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

In addition to RRC approval, intermittent and perennial stream diversions may require a sand and gravel permit from TPWD in streams meeting specific jurisdictional criteria.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

Based on the jurisdictional criteria identified in Chapter 86 of the Texas Parks and Wildlife Code, it is not anticipated that the permit would be applicable to potential future mining activities in the REIS study areas. However, if the need for a permit should be identified for potential future mines based on mine-specific and site-specific conditions, the mining company would be responsible for obtaining the permit.

Comment:

My urging to you is to do a better job and not try and loosen the kind of scrutiny that you have before these permits are issued.

Smith, Tom; Public Citizens, Texas Office

USACE Response:

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific analyses.

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Comment:

To strengthen the mitigation/stream and wetland replacement efforts we offer the following comments:

Is it enough to require that detailed stream design information be submitted for review by the Crops and agencies? We suggest that some guiding principles of natural channel design be put in place rather than just requiring the submittal of plan, profile, dimension, etc. In the past mines have relied on the use of water control structures in post-mining stream replacement projects. A clearly stated objective that natural channel design concepts for fully functioning streams (with no reliance on structures) should be incorporated into restoration of waters of the U.S. planning could prevent time delays and lead to better stream mitigation.

Another method to avoid delay and ultimately achieve improved stream mitigation could be to add regional conditions to NWP 21 and 49 setting some requirements for stream design.

The revised LOP agency coordination level from concurrence to coordination is a significant change. While there is an acreage limit, we suggest there should also be a stream Linear Footage Limit, at a slightly higher level, perhaps, than the RGP limits. Only the IP should have the No limit criteria.

Nystrom, Thomas; USEPA Region 6

USACE Response:

At the time a future surface coal or lignite mine expansion area or satellite mine is proposed, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation as discussed in Section 3.2.5.2. As discussed in Section 2.1.2, standard language in compensatory mitigation plans require submittal of post-reclamation aquatic resource design plans to USACE and the resource agencies for review and USACE approval prior to construction. These detailed design plans would be required to take into account the regraded pit backfill that, as discussed in Section 2.2.4.3, would be leveled and graded to approximate original contour in compliance with RCT coal mining regulations and approved plans. The USACE Fort Worth District's current requirement for long-term monitoring using sound, measurable, ecologic condition-based performance metrics as success criteria for compensatory mitigation projects would also apply under the Proposed Action (see Section 2.1.2 and 2.2).

Requiring agency concurrence for the issuance of an authorization gives *de facto* approval authority to other agencies. USACE is the agency charged with the statutory responsibility of administering Section 10 of the RHA and Section 404 of the CWA.

The comment concerning the stream linear footage limit for the potential LOP modification is noted and will be considered if and when a Public Notice is drafted to announce the proposal.

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Comment:

The discussion of the proposed regulatory framework does not address whether the proposed RGP or revised LOP-3 would require mitigation for the amount of waters of the U.S., including wetlands, that fall below the thresholds allowing their use.

It is not clearly stated in Table 2.2 or the text whether acreage limits refer only to wetlands and linear footage limits refer only to streams. It is also not clear whether a project can have up to both the acreage limit and the linear foot limit and still qualify for the various permit types.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

In Section 2.2 of the Draft REIS, it states that there would be "no changes to the USACE Fort Worth District's current Section 404 mitigation guidelines for surface coal and lignite mines in Texas." A footnote has been added to **Table 2-2** to clarify that a proposed project could have up to the acreage limit for wetlands and the linear foot limit for streams and still qualify for the respective permit type.

Comment:

The Draft REIS refers to the use of regional hydrographic and geomorphological data in stream designs. Reference reaches more specific to site conditions and characteristics should also be a specific requirement in addition to regional data.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

These requirements fall within the site-specific requirements that would be required at the project permitting stage. Examples of typical environmental protection measures such as stream designs are given in Section 2.2.5 of the Draft REIS. The requirement for the use of reference sites is stated at the end of Section 2.2.4.3 of the Draft REIS under the subsection titled "Developed Water Resources" on page 2-27. Also note that, in Section 2.1.2 of the Draft REIS, it states (emphasis added) "These design plans include but are not limited to plan, profile, and dimension measurements based on appropriate regional hydrographic and geomorphological data obtained from least disturbed streams and wetlands and successful as-built streams/systems on and/or near the respective mitigation site."

Comment:

Today, we are here to make comments on the Draft Regional Environmental Impact Statement the Corps is sponsoring. The state proposes an expansion of surface coal mining in Maverick County to an additional 25,000 acres, an area six times the size of Eagle Pass itself. Needless to say, our association and the other entities I've previously mentioned are wholeheartedly opposed to this increase, which would expose our citizens to the ill effects of coal mining for the next 20 or 30 years.

Baxter, George

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Comment:

Today, we are here to make comments on the Draft Regional Environmental Impact Statement the Corps is sponsoring. The state proposes an expansion of surface coal mining in Maverick County to an additional 25,000 acres, an area six times the size of Eagle Pass itself. Needless to say, our association and the other entities I've previously mentioned are wholeheartedly opposed to this increase, which would expose our citizens to the ill effects of coal mining for the next 20 or 30 years.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

As discussed in Section 1.0, the USACE, as lead federal agency, is preparing the REIS in compliance with NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the USACE Procedures for Implementing NEPA (33 CFR 230) discussed in the introduction to Section 1.0.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations. Also, as discussed in Section 2.2.4, the life of a typical mine expansion would range from approximately 1 to 30 years. For a typical satellite mine, it would range from approximately 5 to 30 years. The life of potential future mines would be mine-specific and would be identified at the time they are proposed.

Comment:

The temporal impacts to surface waters should be included in calculations of mitigation requirements. The USACE mitigation calculator should be used for impact sites from initial impact to full recovery of aquatic features and vegetation communities.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The requirements for development of a Conceptual Mitigation Plan and compliance with the 2008 Mitigation Rule will remain in effect, as stated in Section 2.1.2 of the Draft REIS. The requirement of long-term mitigation site protection through application of a conservation easement and financial assurance instruments appropriate for completing mitigation activities minimizes the need for use of the mitigation calculator.

Comment:

The scoping announcement states that one purpose of the PEIS is to "[d]evelop datasets to assist with the formulation of a categorized permit process." Any categorizations used in the permitting process must be supported by extensive data, rather than reflecting arbitrary thresholds as currently reflected in the scoping announcement.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As discussed in the introduction to Chapter 3.0, the resource-specific analyses describe the potential impacts associated with the development of a typical mine and implementation of the USACE Fort Worth District's regulatory framework. Based on the data and associated analyses, changes in limits on disturbance in some habitat settings (forests, bogs, swamps) under the USACE Fort Worth District's proposed regulatory framework in turn would reduce impacts to surface water features, quantity, and quality in those settings. In general, other potential impacts would not change

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as the result of the proposed regulatory framework.

Comment:

It is not clear whether potential mining projects not within the study areas would be subject to the requirements and criteria in the REIS for assessment, permitting, mitigation, etc.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

Only future surface coal and lignite mine expansion areas or satellite mines proposed within the REIS study areas would be able to use the REIS for future NEPA tiering or supplementation when preparing the mine-specific NEPA analyses (see Section 2.2).

Comment:

Please explain if purchasing credits from a mitigation bank will be a priority for lignite and coal mining expansions per the DREIS.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

Purchasing credits from an approved mitigation bank to compensate for aquatic resource impacts for mining projects is generally not feasible due to the scale of the project impacts and credits required for compensation. Additionally, permittee-responsible mitigation is generally preferable on a holistic watershed approach. For smaller mining projects, mitigation bank credits have been proposed and approved.

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Comment:

The DEIS states that, under the Corps' proposal, the public would not have notice and an opportunity to comment on RGP and LOP evaluations of environmental impacts:

Under the Proposed Action, the USACE Fort Worth District would consider comments from other federal, state, and local agencies during NWP 21, LOP, and IP evaluations as noted in Table 2-2 and, additionally, would consider comments from interest groups and the general public during IP evaluations.

DEIS at 3.2-76. Thus, the public could comment on individual permits, but not on authorizations using the RGP or the LOP. The public only has an opportunity to comment at the programmatic stage on the DEIS. But at that stage, no project-specific details or impacts are available. Nor is there any project-specific mitigation plan. DEIS at 3.2-97 ("As currently required, a mine-specific conceptual mitigation plan would be developed and submitted to the USACE Fort Worth District in support of the Section 404 permit application"). At the RGP and LOP stage, there would be site-specific data and evaluations, but no right to public comment.

This violates § 404(e) of the CWA. That section provides that a general permit can be issued only "after public notice and opportunity for comment," and only if the Corps makes a determination that the impacts of the general permit are minimal. The public must be aware of the full basis for the Corps' minimal effects determination in order to have a meaningful opportunity to comment. The plain language of § 404(e) ties the public participation requirement and the minimal effects determination together and requires that both be made before an NWP is issued. Furthermore, the Corps' own regulations for issuing general permits provide that:

the permitting authority shall set forth in writing an evaluation of the potential individual and cumulative impacts of the category of activities to be regulated under the General permit. While some of the information necessary for this evaluation can be obtained from potential permittees and others through the proposal of General permits for public review, *the evaluation must be completed before any General permit is issued, and the results must be published with the final permit*.

40 C.F.R. § 230.7(b) (emphasis added). Consequently, deferring this evaluation until the later case-by-case review and issuance of individual NWP authorizations violates the Corps' regulations and makes it impossible for the public to participate meaningfully in the permit process.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As stated in Section 2.2 of the Draft REIS, project-specific permit applications will still require NEPA and 404(b)(1) analyses and compliance with all other required local, state, and federal permits prior to development, offering multiple opportunities for public notice and review. The types of NEPA analyses are detailed in Section 2.2.2.

Development of any RGP or LOP modification would follow established NEPA procedures and allow agencies and the public opportunity to comment on specific resource issues of special concern. The USACE is obligated to exercise discretionary authority in elevating permit applications when proposals are determined to result in more than minimal adverse effects to aquatic resources or other public interest review factors.

The REIS is a regional evaluation and includes considerations that are to be relied on for subsequent reviews for the proposed development of a RGP and modified LOP process, as well as future IP applications. These subsequent NEPA reviews, relying on the REIS, should have a better defined and more expeditious path toward decisions on proposed actions than without the REIS.

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The REIS addresses the general environmental issues relating to the suite of projects anticipated to be forthcoming to the USACE and is being used to frame the scope of the subsequent site- and project-specific federal actions. The REIS supports planning-level decisions because there are limitations in available information and uncertainty regarding the timing, location, and environmental impacts of potential future mining proposals and associated USACE permit decisions.

Comment:

First, we question the need for this entire project. In the Executive Summary, it states that the anticipated number of future permit applications [to the Corps] could result in **lengthy review times"** and that "Historic permit evaluations associated with mine expansions have required **substantial time periods."** (page ES-1) The Executive Summary goes on to say "the USACE Fort Worth District is undertaking the REIS to **streamline** the... District's ... permitting process." (page ES-2) Among other things, the REIS proposes the creation of a Regional General Permit and to reduce the requirements for a Letter of Permission from the concurrence of other agencies to mere coordination with other agencies. The question is, why does the Corps feel the need to assist the coal industry by reducing review times, "streamlining" or speeding up the permit process and removing the requirement for other agency concurrence? Why has the Corps, or at least the Fort Worth District, decided to openly take the side of the coal mines against the citizens of Maverick County? The Corps should instead take as long as necessary to thoroughly review and investigate every new permit application in order to protect the health and welfare of the people here and not worry about how long the coal companies have to wait.

Baxter, George

Comment:

We have many reservations about this document. The first is we question the need for this entire project. An executive summary states that an anticipated number of future permit applications can result in lengthy review times. And it goes on to say the U.S. Army Corps of Engineers Fort Worth District is undertaking the REIS to streamline the district's permitting process.

Among other things, this document proposes limiting the requirements for a letter of permission from concurrence of other agencies to mere coordination with them. The question is why? Why does the Corps feel the need to lessen the requirements for the coal industry by reducing review times, streamlining or speeding up the permit process and removing the requirements for other agency concurrence?

Why has the Corps decided to take the side of the coal industry against the citizens of Maverick County? Shouldn't the Corps instead take as long as necessary to thoroughly review and investigate every new permit application in order to protect the health and welfare of the people here and not worry about how long the coal companies have to wait?

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Proposed Action

Comment:

We have many reservations about this document. The first is we question the need for this entire project. An executive summary states that an anticipated number of future permit applications can result in lengthy review times. And it goes on to say the U.S. Army Corps of Engineers Fort Worth District is undertaking the REIS to streamline the district's permitting process.

Among other things, this document proposes limiting the requirements for a letter of permission from concurrence of other agencies to mere coordination with them. The question is why? Why does the Corps feel the need to lessen the requirements for the coal industry by reducing review times, streamlining or speeding up the permit process and removing the requirements for other agency concurrence?

Why has the Corps decided to take the side of the coal industry against the citizens of Maverick County? Shouldn't the Corps instead take as long as necessary to thoroughly review and investigate every new permit application in order to protect the health and welfare of the people here and not worry about how long the coal companies have to wait?

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

As clarification, the Fort Worth District is undertaking the REIS to streamline the NEPA aspects of the Section 404/10 permitting process as discussed in the referenced text. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion areas or satellite mines are proposed. As allowed under NEPA, the tiered and supplemented NEPA documents for future proposed mines within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Requiring agency concurrence for the issuance of an authorization gives *de facto* approval authority to other agencies. USACE is the agency charged with the statutory responsibility of administering Section 10 of the RHA and Section 404 of the CWA.

Comment:

One solution to this problem is for the Corps’ staff to conduct site-specific aquatic-life-use assessments of jurisdictional water bodies that will be impacted by RGPs, LOP-3s and IPs, unless the permit applicant demonstrates that TCEQ or it has conducted the requisite site-specific aquatic-live-use assessments. Another, closely related solution would be to require the permit applicant to, itself, contract with a third party to conduct the needed assessments. If the Corps is willing go one step further to protect the quality of jurisdictional waters under its proposed RGP/LOP-3/IP practice, it could require the permit applicant to produce, as part of the permit application materials, the Tier 2 antidegradation analyses for any waters that meet or exceed the level of “intermediate” aquatic life use. Presently, those analyses are so judgmental as to be not credible, and the Corps’ review of those would, over time, lead TCEQ to produce improved Tier 2 antidegradation analyses.

Frederick, David; Frederick, Perales, Allmon & Rockwell PC

USACE Response:

The analysis of procedures or regulations of other agencies with permitting authority for surface coal and lignite mines in Texas is outside the scope of the USACE REIS. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine” to facilitate the

Proposed Action

preparation of tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines.

For further engagement with TCEQ regarding stream classifications and associated standards, the agency has an established Continuing Planning Process, as well as procedures for reviewing and implementing water quality standards. These state programs are described on the TCEQ website. Guidance on water quality standards administration and participation, notably including stakeholder involvement also is available on the website.

Comment:

As you well know, the President himself just announced new EPA resolution -- regulations aimed at reducing pollution levels emitted from coal burning power plants and by extension reducing the consumption of coal.

How can the Fort Worth District be proposing a document -- that seems to make it much easier to greatly increase coal mining, a document that runs 180 degrees counter to the risk of the administration's efforts?

Baxter, George

Comment:

As you well know, the President himself just announced new EPA resolution -- regulations aimed at reducing pollution levels emitted from coal burning power plants and by extension reducing the consumption of coal.

How can the Fort Worth District be proposing a document -- that seems to make it much easier to greatly increase coal mining, a document that runs 180 degrees counter to the risk of the administration's efforts?

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

As clarification, the USACE is required to process Section 404 and Section 10 permit applications, including the applications submitted by surface coal and lignite mines, in accordance with Section 404 of the CWA and Section 10 of the RHA. As part of the permit evaluation process associated with Section 404 and Section 10 permit authorizations, the USACE is also required to comply with the regulatory requirements of NEPA in evaluating the potential impacts of an action. The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Comment:

Potential impacts to surface waters also includes changes to wetland hydrology and stream flow status due to changes in soil structure, leading to changes in amount or duration of base hydrology supplied to surface waters. Monitoring of all intermittent and perennial aquatic features intended as Section 404 mitigation should include monitoring of groundwater connection to assure in-kind mitigation is achieved.

Heger, Tom; Texas Parks and Wildlife

Proposed Action

USACE Response:

As noted in Section 2.1.2 of the Draft REIS, the 2008 Mitigation Rule will apply and requires "long-term monitoring of sound, measurable, ecologic condition-based performance metrics as success criteria for compensatory mitigation projects." Part of the RCT evaluation of mining proposals includes a Cumulative Hydrologic Impact Assessment which assesses impacts to groundwater resources. The RCT has greater control and responsibility for impacts to groundwater resources.

Comment:

Please describe in detail how permanent ponds will be designed to promote propagation of aquatic and wetland habitats on the reclaimed landscape (page 2-29).

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

Open water ponds historically have been mitigated at replacement ratios greater than 1:1. The ponds replacements at their approximate original location and similar landscape setting would provide for appropriate conditional or functional replacment.

Comment:

Some 20,000 residents have settled outside of the city limits of Eagle Pass throughout Maverick County. Elm Creek, Seco Mines and Deer Run developments have potential to be gravely effected. The mine is reported to be within one mile of Pete Gallegos Elementary and the Deer Run Subdivision, where approximately 430 school children and additional staff attend every day. Many of these children live right along the banks of Elm Creek and are a stone throw away from the mine itself. The mine is planned to encompass 25,000 acres of land for it's operations. This puts the operation and 7 times the size of Eagle Pass. It is quite a major operation and will create quite a negative impact on the environment.

Galindo, Melissa

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

The REIS presents a regional, rather than site-specific, analysis of potential future impacts from a typical surface coal or lignite mine expansion area or satellite mine. The potential impacts of a typical mine are discussed in the various resource analyses in Chapter 3.0.

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations in the study area.

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Comment:

So before I run out of page: 1) HISTORICAL CONTEXT--make a chart of incidents of contamination after 1st 2 yrs., 1st 5, 1st 10, 1st 20, etc. and across from each period of time the percentage of coal mines (with records available) with proven contamination, breaches of containment, lawsuits, etc. Documented history is the only source that won't need a qualifier; 2) addend& reflecting specificity to this area; 3) more information from real scientists and environmental experts and less from corporate impact studies--which historically are full of it; and 4) call me at 513-2274 (that's 830 513 2274) for some other points because I'm running out of page and I'm sitting in a bad chair which is causing me to make a lot of mistakes.

Brower, Jerry

USACE Response:

The REIS is being prepared in accordance with the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508). In accordance with NEPA, the regional analysis in the REIS evaluates the potential impacts of the Proposed Action (described in Section 2.2.4) and No Action Alternative (described in Section 2.3). As such, the analysis of past compliance is beyond the scope of the REIS.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Qualifiers are used in describing potential impacts where information (such as mine-specific and site-specific information) is not available to support a definitive conclusion. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. During the preparation of future mine-specific NEPA analyses, the USACE will independently evaluate the information submitted by the applicant and will be responsible for its accuracy as required by NEPA (40 CFR 1506.5).

Comment:

Similarly, the Corps should consider that there is significant mining on both sides of the Texas-Mexico border. The Corps should consider the US impacts from mining in Mexico as it evaluates the existing degradation of resources and cumulative effects of likely future expansions in Texas. In keeping with international agreements (e.g., the La Paz Agreement of 1983 and support at the North American Council for Environmental Cooperation for considering transboundary environmental impacts), the Corps may also consider how expanded mining in South Texas would impact communities on the Mexico side of the border.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

In accordance with NEPA, the REIS study areas were designed to meet the purpose and need for action which is described in Section 1.2. Each of the cumulative effects study areas, as described in each of the resource sections in Chapter 3.0 and shown in **Appendix A**, were designed to encompass the area of temporal and spatial overlap with the resource-specific direct/indirect impacts of a typical surface coal or lignite mine expansion area or satellite mine.

Proposed Action

Comment:

The boundaries of Study Area 6 enclose several densely populated suburbs of Eagle Pass. These include Seco Mines, Siesta Acres and Deer Run. However, the names and locations of these areas are nowhere to be found on any map of Study Area 6 in the REIS. There are hundreds of homes in these areas and thousands of people live there. Two elementary schools, several churches and many businesses are also located there. Does the Corps intend to take seriously an application for the expansion of coal mining in these areas which would displace thousands of people? If not, why were they included in the study in the first place? The boundaries of Study Area 6 should be redrawn to remove this area from study and consideration.

Baxter, George

Comment:

The boundaries of Study Area 6 include our own densely populated suburbs of Eagle Pass. These include Seco Mines, Siesta Acres and Deer Run. However, the names and locations of these areas are nowhere to be found on any map of Study Area 6 in the EIS. Does the Corps intend to take seriously any application for the expansion of the coal mining in these areas which would displace thousands of people? If not, why were they included in the study in the first place? The boundaries of Study Area 6 should be redrawn to remove this area from consideration.

De La Cerda, Leticia

Comment:

Then there's a way that the boundaries of Study Area 6, the area of Maverick County being studied for the expansion of coal mining, have been debated. As presented in the EIS, Area 6 includes several heavily populated areas to the north of Eagle Pass, including Deer Run, Siesta Acres and Seco Mines.

There are hundreds of homes in this area. Thousands of people live here. Two elementary schools, several churches and businesses are located there. We want to know, why were such residential areas included in your expansion area? Why were the locations of these areas not indicated on any of the maps in your study? Why was there no consultation whatsoever with Maverick County before these were included in your study area? Did any of the people who wrote this study ever visit Maverick County before they completed the draft?

Morales, Jerry ; Maverick County Commission

Comment:

One of the things that -- I have questions here -- I want to say is it is my understanding in this area that it covers it includes our property and also Deer Run, Siesta Acres and Seco Mines, which is part of some of the area the city wants to annex. And I know the Corps of Engineers and some of the guys said they are not supposed to do that.

And you guys, you have to make the decision because that's our lives. You guys don't live here. You live in Texas, but do you live in Maverick County? We do. We are opposed to it.

Ruiz, Ricardo

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The locations of potential future surface coal or lignite mine expansion areas or satellite mines are not currently known.

Proposed Action

As discussed in Section 2.2.3, the study areas for the regional analysis encompass locations within the coal/lignite belt in Texas that are in reasonable proximity to existing surface coal and lignite mines with potential for future expansion. The types of areas excluded from the REIS study areas also are discussed in Section 2.2.3.

As discussed in the Population and Housing subsection under Section 3.9.2.1, potential future surface coal and lignite mine expansion areas and satellite mines may result in resident displacement, depending on the location of future proposed mining operations. As discussed in the Urban Growth and Infrastructure subsection under Section 3.8.2.1, the mining company would work with landowners through purchase or lease agreements to acquire properties within future mine expansion or satellite mine areas.

The project-specific study areas for future proposed surface coal and lignite mine expansion areas and satellite mines will be defined at the time a project is proposed. Potential impacts associated with future mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Proposed Action

Comment:

Section 2.2.5.2 - Water Resources (ground water, surface water, and waters of the U.S., including wetlands), page 2-28:

a. In the first bullet statement, it is stated that water supply wells impacted by mining operations would be replaced with new wells. It is recommended that other mitigation measures be considered for ground water contamination. The following is recommended: 1) an assessment of the extent of ground water contamination based on monitoring data and baseline or natural background water quality, 2) replacement of any water supply well (including private water for domestic or irrigation use), and 3) mitigation measures to restore contaminated ground water to applicable state and federal standards.

b. In the second bullet statement, it is stated that mine spoils would be selectively placed in backfill areas to ensure that naturally occurring acid- or toxic-forming materials are 4 feet or greater below final grade. First, it is noted that the extent of toxic or acidic material formation in mine waste rock that has been excavated and then backfilled into mine pits is not considered naturally occurring. The excavation and break up of overburden and interburden rock and the placement of these materials into a mine pit as spoils where they are exposed to oxygen and water and can generate toxic or acidic waters that impact ground water and surface water are the responsibility of the mine and should be stated so. It should also be stated what measures will be taken to prevent the generation of toxic- or acid-forming materials within the spoils as the pits are allowed to resaturate and mitigation measures to address such impacts within and downgradient of the spoils if they occur. The purpose and performance standards of the 4-foot soil cover for protecting ground water should be discussed as well.

c. In the fourth bullet statement, it should be made clear if the sediment control ponds will be lined to protect against infiltration of storm water or surface water effluent to ground water.

d. In the second to last bullet statement, it should be made clear what potential water quality impacts would be minimized by the stated mine-specific state-required plans. Does this pertain to surface water impacts or both surface water and ground water impacts? These plans may only protect surface water from storm water discharges and runoff.

e. In this section, similar to other sections, there should be a description of the state and federal laws and regulations for ensuring protection of water resources (including ground water) or the mitigation of water resource impacts from surface coal and lignite mining, and the regulatory authorities that enforce such laws and regulations.

Price, Kimeka; USEPA, Region VI

USACE Response:

As discussed in the introduction of Section 2.2.5, the committed environmental protection measures presented in this section would be implement by a typical mine as Best Management Practices. The potential water resources impacts associated with a typical mine, as well as the need for additional monitoring/mitigation as a result of the typical mine impact analysis, are discussed in Section 3.2. The need for further monitoring and mitigation may be identified during the project-specific NEPA review that would be conducted at the time future mine expansion areas or satellite mines are proposed (as discussed in Section 2.5) and would be based on the mine-specific and site-specific information available at that time.

As clarification, the statement relative to naturally occurring acid- or toxic-forming materials in the second bullet of Section 2.2.5 is in relation to the naturally occurring materials (e.g., pyrite) that when oxidized may result in acid mine drainage. The potential for groundwater quality impacts as a

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result of acid mine drainage is discussed in Section 3.2.3.2. As discussed, the generation of acid drainage can be mitigated by returning the spoil to reducing conditions or the presence of carbonate in the spoil. Also as discussed, mine operators are required by RCT regulations to identify overburden and underburden with strong acid generating potential through appropriate acid-base accounting or other assessments and handle such materials in a manner to reduce the acid generating potential through implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming materials are not placed in the upper 4 feet of the backfill profile. (See Section 12.386 of the Coal Mining Regulations for performance standards.)

As noted in the Surface Water Control Facilities subsection under Section 2.2.4.2, the design, construction, and operation of the sediment control ponds would be in accordance with RCT and MSHA requirements. Per Section 12.148 of Coal Mining Regulations, detailed design plans must be approved by the RCT prior to construction.

Implementation of the referenced mine-specific state-required plans would minimize potential water quality impacts as a result of sediment transport or the spill or release of a hazardous material. Depending on the substance and the quantity, timing, and location of a release, potential surface water and/or groundwater impacts could occur. The text has been revised for clarity.

The typical permits that would be required by potential future mines at the time they are proposed and the associated permitting authority are identified in **Table 1-1**. The applicable regulations and agency programs specific to water quality are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable. Further discussion of these regulations is not required under NEPA; rather, the level of detail is tailored to support the impact analysis.

Comment:

These projects are not appropriate for a categorical exclusion, or a presumption of no significant impact. The destruction of up to 25 acres of wetlands could have a very significant impact on water quality and aquatic life in small streams connected to those wetlands. The fewer than 25 acres exemption also completely ignores the quality of those wetlands, such as whether they are particularly ecologically rich, contain rare species, or their recreational use and proximity to nearby residents. Likewise, the exemption for projects with unlimited linear feet of streams ignores the quality of those streams, and the availability of nearby streams providing similar habitat. The Corps must consider all of these variables on a site-specific basis prior to determining that a project smaller than 25 acres has “no significant impact.”

The DEIS similarly defines Category 2 as projects that exceed the proposed LOP criteria, but for an undefined reason are still expected not to have significant impacts and not to require an EIS. The DEIS states that “Category 2 projects would require an [individual permit] and a more robust EA with an anticipated FONSI or mitigated FONSI.” Again, the Corps must consider site specific variables before “presuming” that a Category 2 project has no significant impact.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

There is no intention of applying a categorical exclusion for any of these projects. Should it be determined, after developing an EA, that a Category 1 or 2 project would result in significant impacts, then an EIS would be developed, as required under NEPA. The types of NEPA analyses listed in Section 2.2.2 of the Draft REIS are only provided as examples for typical projects in each category. The final determination of what type of NEPA document is required, remains with the USACE and will be determined based on the site-specific permit application submitted for each project.

Proposed Action

The LOP does not allow for unlimited linear footage limits; rather, the USACE Fort Worth District will review each proposed action on a case-by-case basis as noted in the footnote to **Table 2-2**.

District Engineers have the authority to develop RGPs [33 CFR 322.2(f), 325.2(e)(2), and 325.5(c)]. Actions that would be taken by the Fort Worth District are not just the proposed development of a RGP but also a modification to the current LOP process. While the development of a RGP (and the anticipated EA that would accompany such an effort) would be informed by the data and analyses in the REIS, the action itself will not authorize activities that result in more than minimal effects both individually and cumulatively. The comment focuses on the limitations included in the NWPs which reflect a national view of potential effects that may occur under those permits. RGPs are more area specific which allows for more refined information to be developed to inform the potential impacts that can be allowed and still be concluded as minimal. Numerous RGPs exist that allow for effects greater than those allowed for under the NWPs.

Comment:

Luminant would like to make a specific comment regarding wording in the REIS. Sections 2.1.2 and 2.2.5.2, and other areas of the document, indicated that, "...specific detailed plans would be reviewed and approved by the USACE, ...". Any structure or feature detailed designs are already reviewed and approved by the SMCRA agency. Requirements for USACE approval of such detailed designs would be redundant with the authority of the RCT's implementation of SMCRA. Luminant suggests modifying these sections by deleting "and approved" along with clarification that design plans for large areas of mitigation or mitigation for permeant streams will be reviewed.

Mireles, Kim; Luminant

USACE Response:

As discussed in Section 2.2.4.3, reclamation would be conducted in accordance with the mine-specific reclamation plans that would be developed in support of each mine's required RCT permit, with the following exception. Reclamation of streams and wetlands would be conducted in accordance with USACE Fort Worth District permit criteria and would be incorporated as features within the RCT post-mine land use categories. As discussed in Section 2.1.2, the USACE Fort Worth District's current Section 404 mitigation guidelines, which also would apply under the Proposed Action as noted in Section 2.2, require submittal of post-reclamation aquatic resource design plans to USACE and the resource agencies for review and USACE approval prior to construction.

Proposed Action

Comment:

As part of the PEIS, the Corps is proposing to exempt from substantive future NEPA analysis mining projects that will destroy less than 20 acres of wetlands, or less than 20,000 feet of linear streams.(2) This exemption would create a presumption that projects meeting these size thresholds will have no significant impact and not require a full EIS. The Corps appears to be attempting to establish a categorical exclusion for this size project. “Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment . . . and . . . for which, therefore, neither an environmental assessment nor an environmental impact statement is required.” 40 CFR §1508.4. The Corps must consult with the Council on Environmental Quality on the adoption of a categorical exclusion, and it does not appear that the Corps has done so.

These projects are not appropriate for a categorical exclusion, or even a presumption of no significant impact. The destruction of fewer than 20 acres of wetlands could have a very significant impact on water quality and aquatic life in small streams connected to those wetlands. The fewer-than-20-acres exemption also completely ignores the quality of those wetlands, such as whether they are particularly ecologically rich, contain rare species, or their recreational use and proximity to nearby residents. Likewise, the exemption for projects with less than 20,000 linear feet of streams ignores the quality of those streams, and the availability of nearby streams providing similar habitat. The Corps must consider all of these variables on a site-specific basis prior to determining that a project smaller than 20 acres has “no significant impact.”

(2) *See* Scoping Announcement, “Category 1.” This category is based on the Corps‟ January 6, 2012 Letter of Permission, which the Scoping Announcement refers to as “LOP-3.” The legal basis for LOP-3 is not evident. The Corps' regulations at 33 C.F.R. § 325.5(b)(2) state that letters of permission “will identify the permittee, the authorized work and location of the work, . . a construction time limit and a requirement for a report of completed work. “ Thus, the Corps‟ regulations indicate that a letter of permission can be issued in response to a particular application, but there is no mention of letters of permission being issued as a generally applicable categorical exclusion.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The USACE is not proposing changes to the NEPA process or the use of categorical exclusions. Rather, the proposed categories discussed in Section 2.2.2 provide a general guideline as to the type of NEPA document (EA or EIS) that may be required in conjunction with the proposed Section 404/10 permit types for future surface coal and lignite mines in Texas. As discussed in Section 2.2.2, USACE, as the lead federal agency for NEPA compliance, would have the authority to require an EIS for any project, regardless of the Section 404/10 permit type, if the potential for significant impacts is identified, even if the impacts could be mitigated to less than a significant level.

Please see **Table 2-2** for the Section 404/10 permit types included in the USACE Fort Worth District’s proposed regulatory framework.

Development of any RGP or LOP modification would follow established NEPA procedures and allow agencies and the public opportunity to comment on specific resource issues of special concern. The USACE is obligated to exercise discretionary authority in elevating permit applications when proposals are determined to result in more than minimal adverse effects to aquatic resources or other public interest review factors.

Proposed Action

Comment:

Including projects with up to 10 acres and/or 30,000 linear feet of aquatic impacts under the proposed RGP and up to 25 acres and/or unlimited linear footage of aquatic impacts under the revised LOP would potentially exclude projects with very significant amounts of aquatic impacts from public notice and public review processes. This would greatly reduce the ability of individuals and the public to be aware of and comment on projects that may have significant impacts on them.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

District Engineers have the authority to develop RGPs [33 CFR 322.2(f), 325.2(e)(2), and 325.5(c)]. Actions that would be taken by the Fort Worth District are not just the proposed development of a RGP but also a modification to the current LOP process. While the development of a RGP (and the anticipated EA that would accompany such an effort) would be informed by the data and analyses in the REIS, the action itself would not authorize activities that result in more than minimal effects both individually and cumulatively. The comment focuses on the limitations included in the NWPs which reflect a national view of potential effects that may occur under those permits. RGPs are more area specific, which allows for more refined information to be developed to inform the potential impacts that can be allowed and still be concluded as minimal. Numerous RGPs exist that allow for effects greater than those allowed for under the NWPs.

It should be noted that the LOP does not allow for unlimited linear footage limits, as shown in **Table 2-2** of the Draft REIS, rather the USACE Fort Worth District will review each proposed action on a case-by-case basis, as noted in the footnote to **Table 2-2**. Also, as stated in Section 2.2 of Draft REIS, project-specific permit applications will still require NEPA and 404(b)(1) analyses and compliance with all other required local, state, and federal permits prior to development, offering multiple opportunities for public notice and review. The types of NEPA analyses are detailed in Section 2.2.2.

Comment:

The draft Regional Environmental Impact Statement (or REIS) that the Corps of Engineers is sponsoring proposes an expansion of surface coal mining in Maverick County by an additional 25,000 acres (or 40 square miles), an area 6 times the size of Eagle Pass itself. It appears that the reason that the REIS is being created is to facilitate and expedite any future permits for this expanded coal mining in this county and elsewhere in Texas. Needless to say, our Association along with the City of Eagle Pass, Maverick County and the Maverick County Hospital District are wholeheartedly opposed to any such increase, which would expose our citizens to the ill effects of coal mining for the next 20 years, or more. We also have very many reservations about this document as it now stands and are asking that many parts of the REIS be completely rewritten or scrapped.

Baxter, George

USACE Response:

As clarification, the 25,000 acres identified in **Table 2-3** for Study Area 6 does not represent currently proposed disturbance; rather, it is the estimated maximum disturbance acreage associated with anticipated requests for future surface coal and lignite mining authorizations.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As allowed under NEPA, both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and

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satellite mines proposed within the REIS study areas would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

Now, we want the study that is being done by you to be very, very specific and for every area to get scrutinized and not just a brushstroke study. That's not fair to the people who live in the different populations across Texas in the coal mining.

Baxter, Martha

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Comment:

Proper stream design and use of reference reaches should reduce or eliminate the need for permanent in-channel erosion control or grade control measures. The Draft REIS should state that they are not preferred and must be justified. In channel check dams should not be used as permanent features.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

In-channel check dams are not considered to be acceptable natural channel design features by USACE.

Public Health

Comment:

My concern after spending 35 years in health care is that the cost of health care as it relates to the cost of coal mining has not been addressed.

One of the biggest problems that is raising costs in health care is chronic pain. Chronic pain is brought on not only by accidents, but it's brought on by illnesses. Illnesses such as upper respiratory infections, cancer and so on. These are critical issues because this is a community that is one that is filled with poverty. It's filled with a lot of apathy at times, except when it comes to talking about coal mining. It's great to see people coming and talking and voting their -- their hearts and their minds about this.

But as a member of the health care profession, I want to tell you that the profession is concerned about who's going to pay the cost in the next 10 years when the -- the people that work for the coal mines, as well as those on the sidelines, start having these problems. And I ask you today to consider the costs of these long-term illnesses and how that might impact on the community, not only in terms of social justice, but in terms of long-term costs to the -- to the community itself.

Hixson, Ronald; Maverick County Hospital District

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a typical surface coal or lignite mine expansion area or satellite mine. The potential public health effects associated with a typical mine are discussed in Section 3.14.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Mine operations, including milling and transportation of coal and fill generate large amounts of dust that is a nuisance and health hazard to nearby residents and users of Texas public lands. The PEIS should study these impacts and their cumulative effects.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Potential air quality impacts are discussed in Section 3.7.2. As discussed, emissions from mine construction, operations, and reclamation would be transitory and limited in duration. However, with implementation of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of “sensitive” populations such as asthmatics, children, and the elderly. Potential public health effects are discussed further in Section 3.14.2.2. Potential cumulative air quality impacts are discussed in Section 3.7.4.

In response to public comments, the public hearing was held in Eagle Pass rather than Uvalde to ensure that the interested public could attend. Public scoping comments and comments on the Draft REIS could be submitted via several methods, not only at public meetings. All meetings were extensively advertised in local newspapers.

Public Health

Comment:

Another reason why, we, the people do not want the mines is due to the health conditions that is being caused.

Alvarado, Emma

Comment:

The mining work causes many health problems, you and I know.

Alvarado, Emma

Comment:

Nowhere in the REIS does it say that Maverick County already has a rate of COPD (Chronic Obstructive Pulmonary Disease) two or three times the average in this state. (see attached data from the Texas Department of Health) This rate of disease can only be attributed to the constant air pollution emanating from the surface coal mines directly across the Rio Grande in Piedras Negras. As shown on the attached map, the neighboring cities of Del Rio and Laredo, with no nearby coal mines, have average or below average rates of COPD. Increased coal mining will only exacerbate this situation, subjecting our residents to an additional 20 -30 years of continuous air pollution, including coal dust and crystalline silica. Yet, the Public Health section of the REIS states that the expanded mine will cause "no adverse effects on public health." (page 3-14.2) This is merely an assertion (and a false one at that), totally unsupported by any facts. In fact, there are several studies, including one in West Virginia, which demonstrate that in coal mining counties versus counties without mining, the chances of developing kidney disease is 70% higher and the chances of developing COPD is 64% higher in the mining areas.

Baxter, George

Comment:

Hello I am voicing my concern as a citizen in Maverick county and also as a teacher at Pete Gallego Elementary. I am very close to proposed site. Please read the attached and consider not only the citizens health but also the hundred of students that will be directly negatively affected.

De Hoyos, Evelyn; Pete Gallego Elementary

Comment:

Nowhere in the EIS does it say that Maverick County already has a rate of COPD two or three times the average of this state. Increased coal mining will only exacerbate the situation, yet the public health section of the EIS states that the expanded mine will cause no adverse effects on public health. This is merely an assertion, and a false one at that, totally unsupported by any facts. In fact, there are several studies, including one in West Virginia, which demonstrate that in coal mining counties versus counties without mining, the chances of developing kidney disease is 70 percent higher and the chances of developing COPD is 64 percent higher in the mining areas.

De La Cerda, Leticia

Public Health

Comment:

WHEREAS, it is of great concern of this governmental body that Maverick County, Texas is a significantly medically underserved area or region in the State of Texas and United States of America with severe shortages and lack thereof of medical doctors, physician specialists, nurses, healthcare workers, healthcare resources, and infrastructure to handle current public health diseases as well as any increase of public health diseases such as cancer, heart disease, stroke, and chronic pulmonary diseases (COPD) which will result and/or may arise as a result of the coal mining (surface coal and or lignite mining) in and or around the proximity of the City of Eagle Pass, Maverick County, Texas and including expansion of proposed permits for Dos Republicas Coal Partnership;

Farias, Juan; Maverick County Hospital District

Comment:

Will it pay for our medical expenses should health problems arise?

Juarez, Alejandra

Comment:

My children have asthma. They have not had exasperations in 2 years. I am also a nurse, and I do see the people of Eagle Pass being affected by the mines. I do see people having lung cancer. I do see the people's health going down the drain. And am I supposed to be okay with my kids getting sick again? Am I supposed to be okay with the thought of having to fight these diseases in the future? It shouldn't be something that is my concern. I should feel safe in my home.

Salinas, Siboney

USACE Response:

As discussed in Section 3.14.2, public health issues associated with a typical surface coal or lignite mine would include potential water quality effects from the mining operation, including use of chemicals during reclamation; air quality effects from mine-related air emissions; and noise and lighting effects on sensitive receptors. The potential direct/indirect impacts to these resources are discussed in Sections 3.2.3.2, 3.2.4.2, 3.7.2, 3.11.2, and 3.12.2. Based on those resource-specific analyses, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Public Health

Comment:

I welcome the U.S. Army Corps of Engineers' involvement in drafting the Regional Environmental Impact Statement, and I wish to reiterate that I sat with our community in believing the operations of a coal mine in this area, specifically, the Dos Republicas will have a detrimental impact on both our community and Texas as a whole.

I remain actively involved and continue to monitor the situation and have met with Texas Railroad Commission officials and sent letters requesting a denial of an operating permit for this mine.

I have also requested the Texas Commission on Environmental Quality to intervene and hold a public meeting in our community and appropriately understand the local concerns regarding the amended water waste discharge permit. Local officials and residents express grave concerns about potential detrimental environmental and health impacts that Dos Republicas operations could have on Eagle Pass and the region.

I echo the community's fears about possible air contamination and water pollution at this operation's water waste would be discharged into a tributary of the Rio Grande just above the drinking water intake facility for the city of Eagle Pass. I join the community in worries that this will result in negative health consequences for members of the community. I do not believe it would be in the best interests of the state or the local community for operations to go forward of the Dos Republicas and continue to stand with the county judge, the mayor and the community on this issue.

Martinez, Hellen; Representing State Senator Carlos Uresti

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future surface coal or lignite mine expansion areas or satellite mines. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

Comment:

Another matter of concern is the unemployment. Over there many people who used to work at the mines are unemployed because they are sick. They have lung conditions, and that I know by a fact.

Guevara, Ana

USACE Response:

As discussed in Section 3.7.2, typical mine construction and operations would result in temporary localized fugitive dust emissions. However, with the use of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of "sensitive" populations such as asthmatics, children, and the elderly. As a result, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects associated with air quality as discussed in Section 3.14.2.

Public Health

Comment:

Mine operations, including milling and transportation of coal and fill generate large amounts of dust that is a nuisance and health hazard to nearby residents and users of Texas public lands. The DEIS includes a short discussion of dust suppression among its listed "typical" environmental protection measures, but it is unclear whether these measures would actually be required or implemented, and the DEIS concludes that there are no public health impacts at all. DEIS 2-29; 2-54.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As discussed in Section 2.2.5, the typical environmental protection measures include typical permit requirements of the various federal and state agencies with jurisdiction over surface coal and lignite mining operations and additional BMPs implemented by the mines as standard operating procedures. As such, they represent the measures that a typical mine would be required to implement. Additional environmental protection measures may be identified for potential future mines at the time they are proposed, based on mine-specific and site-specific information and mine-specific permit requirements.

As discussed in Section 3.7.2, typical mine construction and operations would result in temporary localized fugitive dust emissions. However, with the use of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of "sensitive" populations such as asthmatics, children, and the elderly. As a result, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects associated with air quality as discussed in Section 3.14.2.

Comment:

Hello I am voicing my concern as a citizen in Maverick county and also as a teacher at Pete Gallego Elementary. I am very close to proposed site. Please read the attached and consider not only the citizens health but also the hundred of students that will be directly negatively affected.

Hoyos, Evelyn; Pete Gallego Elementary

USACE Response:

The REIS presents a regional analysis of potential impacts from a typical surface coal or lignite mine expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

As discussed in Section 3.14.2, public health issues associated with a typical surface coal or lignite mine would include potential water quality effects from the mining operation, including use of chemicals during reclamation; air quality effects from mine-related air emissions; and noise and lighting effects on sensitive receptors. The potential direct/indirect impacts to these resources are discussed in Sections 3.2.3.2, 3.2.4.2, 3.7.2, 3.11.2, and 3.12.2. Based on those resource-specific analyses, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking

Public Health

into account mine-specific and site-specific information available at that time.

Public Health

Comment:

Issue, whether the proposed discharge and dust from the facility would contaminate or degrade the quality of Elm Creek Land its Tributaries and/or undisclosed natural water ways drainages which are claimed by the Pacuache Tribe of Texas (other Tribes) as our aboriginal ancestral lands. Issue whether the draft permit would allow violation of water quality standards. Issue whether the facility would cause health hazards and nuisance conditions. Issue whether the proposed discharge would contaminate drinking water sources. Issue whether Agency staff properly calculated the water quality-effluent limits and accurately concluded that the discharge would comply with Texas water quality standards exhibit by Eagle Pass Business Journal 10/29/2011 in this newspaper expressly provides that the Dos Republicas Coal Partnership's Eagle Pass Mine discharge of mine seepage and storm waters will affect the public water supply of City of Eagle Pass, aquatic life on the Elm Creek and the Rio Grande River and contact recreation areas on these waterways. Issues the permit water for mine authorizes Dos Republicas Partnership to discharge storm water and mine seepage from the active mining area subject to the following suspended solid 3.5 daily, iron 3.0 daily, manganese 2.0 daily, selenium n/a daily, in addition to these known carcinogenic chemicals the Dos Republicas is authorized to discharge into Elm Creek, unidentified and/or water natural drainages tributaries, the Rio Grande River on a daily basis the following effluent chemicals aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, trivalent chromium, hexavalent chromium, copper, cyanide, lead, mercury, nickel, selenium, silver, zinc, bod, carbonaceous biochemical oxygen, chemical oxygen, organic carbon, ammonia nitrogen, total suspended solid, nitrate nitrogen, organic nitrogen, phosphorous, oil and grease, residual chlorine, total dissolved solids, sulfate, chloride, fluoride, fecal coliform, and others. Issue when coal surfaces are exposed, pyrite (iron sulfide) comes in contact with water and air and forms sulfuric acid. As water drains from the mine, the acid moves into the waterways, and as long as rain falls on the mine tailings the sulfuric acid production continues, whether the mine is still operating or not. This process is known as acid rock drainage (ard) or acid mine drainage (amd). If the coal is trip mined, the entire exposed seam leaches sulfuric acid, leaving the subsoil infertile on the surface and begins to pollute streams by acidifying and killing fish, plants, and aquatic animals which are sensitive to drastic ph shifts, in addition surface mining can adversely impact the hydrology of a region. Deterioration of a stream quality can result from acid mine drainage, toxic trace elements, high content of dissolved solid in mine drainage water, and increased sediment loads discharged to streams, Waste piles and coal storage piles can yield sediment to streams, and leached water from these piles can be acid and contain toxic trace elements. Surface waters may be rendered unfit for agriculture, human consumption, bathing, or other household uses. Flood events can cause severe damage to improperly constructed or located coal haul roads, housing, coal crushing and washing plant facilities, waste and coal storage piles, settling basin dams, surface water diversion structures and the mine itself. Besides the danger to life and property, large amounts of sediment and poor quality water may have detrimental effects many miles downstream form a mine site after a flood. Overall, it will cause a lot of pollution drinking water. Ground water supplies may be adversely affected by surface mining. These impacts include drainage of usable water from shallow aquifers, lowering of water levels in adjacent areas and changes in flow directions within aquifers; contamination of usable aquifers below mining operations due to infiltration or percolation on spoil piles. Where coal or carbonaceous shalls are present, increased infiltration may result in increased runoff of poor quality water and erosion from spoil piles; recharge of poor quality water to shallow ground water aquifers; or poor quality water flow to nearby streams. This may contaminate both ground water and nearby streams for long periods. Issue, Leaching and leach to underground and ground water(s), soil and air contamination a proposed Coal mine site. Issue, Elm Creek pollution of Creek waters and San Miguel formation and impact in other formations or areas describe in permit sections. Issue, past Coal Mining at Eagle Pass in the 1930's there are Sink or sinking(s) Hole(s). Issue, there are Natural blue holds or holds of Ancient water also called Cenotes which they are going to be highly polluted and contamination.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

Public Health

USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Please see Chapter 3.0 of the REIS for discussions of potential impacts to surface water and groundwater quality and human health as the result of a typical surface coal or lignite mine expansion area or satellite mine.

Comment:

Research has shown that air pollution produced by coal mining and combustion can affect the respiratory and cardiovascular systems as well as cause abnormal neurological development in children, poor growth of the fetus before birth, and can cause cancer."(2) That being said the community is worried for the health of its citizens

Galindo, Melissa

USACE Response:

The REIS presents a regional analysis of potential impacts from a typical surface coal or lignite mine expansion area or satellite mine. The analysis of power plants is outside the scope of the REIS. However, power plant emissions are authorized by other permitting authorities and are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

As discussed in Section 3.7.2, typical mine construction and operations would result in temporary localized fugitive dust emissions. However, with the use of control measures (e.g., application of water sprays and dust suppressants, minimizing the disturbance area, etc.) and concurrent reclamation, concentrations of fugitive dust would be unlikely to cause a violation of the NAAQS. The NAAQS were established by law to protect public health and welfare from air pollutants, including the health of "sensitive" populations such as asthmatics, children, and the elderly. As a result, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects associated with air quality as discussed in Section 3.14.2.

Public Health

Comment:

Now, my worry is about is my property bad. Who's going to incur the costs of -- if I lose -- you know, I'm a real worker. I work hard for my property. I'm going to start remodeling. I live close -- 5 miles from that -- you know, that site and about 7 miles from the river, which water I'd be drinking too.

We can get into too many issues, but who's going to -- am I going to have to pay for them to profit? Am I going to look bad on my property, or if I get sick, who's going to cover for my health costs because we know that part of the -- I mean, to me, we already have health insurance, which we cannot afford. So even the hospital guy incurred those expenses and, therefore, my property tax will increase? So, you know, those things need to be addressed.

Corpus, Jose

USACE Response:

Information relative to related to potential effects on property values has been added to the Population and Housing subsection under Section 3.9.2.1.

As discussed in Section 3.14.2, public health issues associated with a typical surface coal or lignite mine would include potential water quality effects from the mining operation, including use of chemicals during reclamation; air quality effects from mine-related air emissions; and noise and lighting effects on sensitive receptors. The potential direct/indirect impacts to these resources are discussed in Sections 3.2.3.2, 3.2.4.2, 3.7.2, 3.11.2, and 3.12.2. Based on those resource-specific analyses, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Public Involvement

Comment:

The Pacuache Tribe of Texas position on USACE meetings conducted on 3, 4, 5 December 2013 many constituents residents of Eagle Pass Texas were deprived of the rights to voice opposition of proposed Coal Mine Eagle Pass City by the USACE to attended meeting on 3, December 2013, many Eagle Pass residents including parents, senior citizens, disability access for people with disabilities, veterans, other groups could not afforded to travel hour and half to commute from Eagle Pass to Uvalde where USACE meeting conducted this Scope Meeting. Mr. Messer please let know our Clan if you can consider this Request.

The Pacuache Tribe of Texas position for the interest of justice our Clan requests you the USACE a Public Meeting to be conduct at Eagle Pass Texas Community citizens for their voice to be hear in the proposed Coal mine site at Eagle Pass Texas City Community and because Eagle Pass citizens were deprived and had a hardship to attend meeting because many are parents, seniors citizens, veterans, citizens with access disabilities and were not available to travel one hour and half form Eagle Pass to Uvalde Texas to attend Meeting on December 3, 2013.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

USACE Response:

Scoping comments could be submitted by several means, not limited to attending a meeting. However, the Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, was not part of the scoping for this REIS. Issuance of the Surface Coal Mining and Reclamation Permit for the Dos Republicas Mine was made by the RCT, and is outside the scope of this REIS. The USACE issued a permit only for impacts to waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process in December 2011.

Comment:

The format of the scoping hearings did not allow the public to provide oral comments for the record. Instead, the Army Corps of Engineers provided a “science fair” format for discussions with staff and a suggestion box. Some people prefer to submit comments orally and it is standard procedure for agencies to hold public hearings on proposed actions. We request that the Army Corps of Engineers hold at least one true public hearing in which members of the public can voice their suggestions, on the record, for the Corps‟ consideration.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Public scoping comments and comments on the Draft REIS could be submitted via several methods, not only at public meetings. All meetings were extensively advertised in local newspapers. During the open house portion of the public comment meetings on the Draft REIS, a court reporter was available to take public comments orally. However, no one took advantage of that service.

Comment:

Sierra Club twice requested an extension of time for the public to provide input on the scope of the PEIS. You denied these requests without any explanation as to why the Corps must rush forward. Had the Corps provided more time for the public to share its views we are certain that the Corps would have learned more about the “relevant resources” impacted by mining in the large and diverse geographic area covered in the Scoping Announcement. Most people directly affected by these projects do not closely follow the Army Corps of Engineers website or the Federal Register and may need more time to become aware of the proposed action and provide comments.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Public Involvement

USACE Response:

The public meetings and the availability of the Draft REIS were advertised in 18 newspapers throughout the study areas and provided in a USACE Fort Worth District press release, in addition to in the Federal Register and on the USACE website. Postcards and emails were sent to all people who requested to be informed, and CDs and hard copies of the Draft REIS were distributed to those who requested them for receipt by the time the Notice of Availability was published.

Comment:

The location of the scoping meetings ignored certain areas most impacted by lignite mining in Texas. The Corps held a meeting in Uvalde where there is no current strip mining. The local communities may not yet be aware of mining impacts. The Corps would likely have gotten more public input had it held the meeting near active mining areas in South Texas. In addition, there was no meeting in Freestone County, one of the most active mining areas in the state. The nearest meetings were 1.5 hours away.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The USACE has provided sufficient opportunity for agency and public involvement through completed respective scoping procedures and has communicated appropriately through the Draft REIS coordination process based on the scoping process comments. Based on public comment and input at the Uvalde, Texas, public scoping meeting, a Draft REIS open house meeting and formal public hearing were held in Eagle Pass, Texas. In addition, public scoping comments and comments on the Draft REIS could be submitted via several methods, not only at public meetings. All meetings were extensively advertised in local newspapers throughout the study areas and provided in a USACE Fort Worth District press release, in addition to the Federal Register and on the USACE website.

Purpose and Need

Comment:

Pursuant to the CWA, an agency must "present for public scrutiny the rationale and pivotal data underlying its proposed action before the close of the comment and hearing period." *Nat'l Wildlife Fed'n v. Marsh* , 568 F.Supp. 985, 994 (D. D.C. 1983) (emphasis in original). In the statement of purpose and need in the DEIS, the Army Corps states that the Corps is considering taking action to streamline the permitting process for coal mining in Texas because expansions of existing mines may be needed in the future and because previous permitting processes for these mines "have required significant time periods." The agency alleges that many of the impacts of coal mining are similar, and thus, the District may use this region-wide EIS to assess these potential impacts and streamline future permitting processes.

The DEIS, however, provides no support for the stated need to streamline the current permitting process; there is no data provided on a projected increase in mining permits being sought in Texas, nor timelines showing that the many different existing mines will be seeking permits for expansion at the same time, creating a permitting bottleneck. Indeed, the mine life estimates provided indicate that the existing coal mines in Texas have variable estimated lifespans, with end dates varying from 2017-2043. DEIS 2-39 - 2-40. The Army Corps has not suggested that the coal mining industry or companies that operate the mines or power plants in Texas have requested a streamlined permit process or complained about lengthy permit review processes. Similarly, the Corps has not suggested that it is experiencing a dramatic decrease in resources in its permitting department.

Furthermore, the Army Corp's statement of purpose and public need for the project fails to disclose, analyze or discuss the potential alternatives to expanding ligmite coal mining in Texas. Without any discussion, the DEIS seems to assume that increased coal mining is necessary to meet Texas' energy needs, when this is not true in the current market. Energy efficiency, renewables, and demand response are all alternatives for providing energy capacity to the system without harming aquatic resources. In fact, wind and energy efficiency are both cheaper per megawatt than coal.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

There are several places in the Draft REIS and Final REIS that describe the need to streamline the USACE permitting process, including the Introduction at the beginning of Chapter 1.0, the information in Section 1.2 that describes the purpose and need for action, and the evolution of the USACE regulatory framework in Section 2.1.

The REIS also facilitates tiering or supplementation in the evaluation of future project-specific Section 404/10 permit applications for surface coal and lignite mines.

The analysis of alternative energy sources is beyond the scope of this REIS

Reclamation

Comment:

Also, it should only be allowed upon demonstrations that areas that are mind and restored have reasonably close ecosystems to the areas that were there before the mining.

Verma, Vik; Organizing for Action East Texas

USACE Response:

As discussed in Section 2.2.4.3, revegetation success would be determined in accordance with RCT's 2014 *Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas* and Sections 12.395 and 12.399 of the Texas Coal Mining Regulations. Mitigation success criteria for waters of the U.S., including wetlands, would be specified in the mine-specific Section 404 permits that may be issued by the USACE Fort Worth District in the future.

Comment:

Footnote 2 under Table 2-2 seems to be the only mention of aquatic resource functions in the context of evaluating pre-impact or post-impact site conditions and quality. The Draft REIS should address requirements and methodologies for determining site characteristics and evaluating success. Surface lignite mines are enormous projects with potentially significant direct, indirect, and cumulative impacts to aquatic resources. Even aquatic resources upgradient and downgradient from a mining project and avoided aquatic resources may be subject to significant impacts. Assessing pre-existing project conditions and post-project quality of mitigation should require functional assessment methods and measurement of biological components in order to detect these impacts and the adequacy of mitigation. Required mitigation should include, at a minimum, 1:1 replacement and protection of both function and area/length.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As discussed in Section 3.2.5.2, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation at the time a future mine is proposed.

The USACE 2008 Mitigation Rule describes requirements for appropriate compensation of aquatic resource impacts.

Comment:

Under Soils and Reclamation, Table 2-10 does not address the interaction of bank structure requirements with requirements for groundwater connection to maintain intermittent and perennial streams. Required monitoring should be sufficient to determine final flow status of mitigation streams where Section 404 mitigation calls for intermittent or perennial streams. If in-kind replacement is not achieved regarding stream flow status, additional compensation on-site or off-site should be required.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." As the location of potential future surface coal or lignite mine expansion areas or satellite mines are not known at this time, the site-specific information needed to conduct the request analysis is not currently available. Potential impacts associated with future surface coal and lignite

Reclamation

mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

In order to ensure consistent coordination with TPWD on site-specific technical standards as called for in this section, designated contact points at TPWD should be established in coordination with TPWD. The appropriate contact may vary among the Fish and Wildlife Habitat, Recreation, and Undeveloped Land sections that call for TPWD coordination.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The technical standards for reclamation success as discussed in the referenced text are as required by RCT and specified in their 2014 *Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas*.

Comment:

The TCEQ encourages the use of native plant species to recolonize disturbed post-mining areas instead of "desirable invader species" as they may become difficult to control when installing on-site mitigation

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

As discussed in Section 2.2.4.3, the mine-specific species lists, as required by RCT, would be used to develop seed mixes specific to post-mining land uses and would contain a complement of grasses and forbs as applicable to the post-mine land use. Plant species (herbaceous and woody) proposed for use in locations designated for fish and wildlife habitat and undeveloped land in the post-mine setting typically would be selected in coordination with the NRCS, USACE, USFWS, TPWD, and RCT.

Comment:

The language calling for retaining pre-mine drainage configurations and slopes expresses a beneficial concept, but the general, qualified statement seems inadequate to ensure successful construction of streams consistent with pre-mine conditions. Valley slope, channel geomorphic characteristics, substrate type and depth, tributary input, bank soil structure, and many other characters contribute to determining the flow status of a stream. The in-kind requirement for Section 404 stream mitigation should apply to streams intended for stream mitigation and monitoring should be sufficient to determine final flow status of mitigation streams.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As discussed in Section 3.2.5.2, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation at the time a future mine is proposed. As discussed in Section 2.1.2, standard language in compensatory mitigation plans require submittal of post-reclamation aquatic resource design plans to USACE and the resource agencies for review and USACE approval prior to construction. These detailed design plans based on least disturbed regional reference aquatic resources would be required to take into account the regraded pit backfill that, as discussed in Section 2.2.4.3, would be leveled and graded to

Reclamation

approximate original contour in compliance with RCT coal mining regulations and approved plans. The USACE Fort Worth District's current requirement for long-term monitoring using sound, measurable, ecologic condition-based performance metrics as success criteria for compensatory mitigation projects would also apply under the Proposed Action (see Sections 2.1.2 and 2.2).

Comment:

TPWD supports the use of appropriate reference sites in evaluating reclamation success for water resources. However, appropriate references sites should identified and assessed using a functional assessment and biological sampling prior to project impacts and the beginning of reclamation in order to guide reclamation, water resource design and restoration of site-specific features.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As discussed in Section 3.2.5.2, a conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation at the time a future mine is proposed.

Comment:

The lands and waterways that are sometimes created after restoration have nothing close to wildlife diversity of the woods and streams that are there in the first place.

McKim, Mark

USACE Response:

Potential impacts to terrestrial and aquatic habitats and species and the typical measures that would be implemented to minimize the impacts are discussed in Sections 3.5.2.1 and 3.5.2.2, respectively. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

The remediation and wetland mitigation undertaken by mine operators to date has not alleviated the harms of stream and wetland loss, as the newly created wetlands and streams are of considerably lower quality.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

As discussed in Section 2.2.4.3, mitigation success criteria would be specified in the mine-specific Section 404 permits that may be issued by the USACE Fort Worth District for future surface coal and lignite mine expansion areas and satellite mine. As discussed in Section 2.1.2 and 2.2, the USACE Fort Worth District's current requirement for long-term monitoring using sound, measurable, ecologic condition-based performance metrics as success criteria for compensatory mitigation projects would also apply under the Proposed Action. Financial assurances of compensatory mitigation success through and acceptable and appropriate financial instrument (e.g., escrow account, letter of credit, or performance bond) also would be required by the District (see Section 2.1.2 and 2.2).

Reclamation

Comment:

I live in this area which is within the mine area, and there is a creek. I personally saw when heavy equipment used for mining activities was crossing over this creek destroying all that section. Who is going to fix that?

Guevara, Ana

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Comment:

Please provide a detailed comparison of the Railroad Commission of Texas (RCT) requirements and success criteria for reclamation versus the requirements of the Corps Mitigation Rule and Fort Worth District Mitigation Guidelines. This comparison would aid in the identification and potential elimination of duplicative processes.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. As discussed in Section 2.2.4.3, reclamation would be conducted in accordance with the mine-specific reclamation plans that would be developed in support of each mine's required RCT permit, with the following exception. Reclamation of streams and wetlands would be conducted in accordance with USACE Fort Worth District permit criteria and would be incorporated as features within the RCT post-mine land use categories. The potential permitting of future surface coal and lignite mine expansion areas and satellite mines would continue in accordance with each agency's permitting authority and applicable regulations. For reference, the USACE Fort Worth District Section 404 mitigation guidelines that would be carried forward under the Proposed Action are discussed in Section 2.1.2. The Monitoring of the Reclaimed Site subsection under Section 2.2.4.3 provides information relative the District's mitigation success criteria as well as the RCT's revegetation success criteria.

Reclamation

Comment:

V. The Corps' Reliance on Compensatory Mitigation to Mitigate Environmental Impacts Is Conclusory and Erroneous

The DEIS estimates that 640.2 miles of perennial and intermittent streams could be removed or damaged by the proposal. DEIS at ES-8; 3.2-76 (Study Area 1-40.6 miles); 3.2-78 (Study Area 2-243 miles; 3.2-78 (Study Area 3-198 miles); 3.2-79 (Study Area 4-35 miles); 3.2-80 (Study Area 5-41.3 miles); 3.2-81 (Study Area 6-82.3 miles). The DEIS also estimates that 8,013 acres of wetlands could be disturbed by the proposal. DEIS at 3.2-93 (Study Area 1-1,118 acres); 3.2-94 (Study Area 2-3,655 acres); *id.* (Study Area 3-2,778 acres); 3.2-95 (Study Area 4-194 acres); *id.* (Study Area 5-110 acres); *id.* (Study Area 6-158 acres). The DEIS relies on compensatory mitigation as the basis for concluding that those streams and wetlands would be adequately protected from significant cumulative adverse environmental effects. DEIS at 3.5-75, 3.2-93, 3.2-97. The DEIS assumes that mitigation will be successful. *Id.* at 3.17-1. "These impacts would be reversible with successful implementation of a mine-specific mitigation plan." *Id.* at 3.18-2.

This conclusion is erroneous for three reasons. First, it inconsistent with the Corps' conclusion in its 2012 NWP 21 decision document (quoted above) that compensatory mitigation is inadequate to ensure cumulatively minimal environmental effects. NWP 21 DD at 7.

Second, the DEIS' discussion of mitigation is conclusory. There is no analysis of whether mitigation has been, or would be, effective in offsetting adverse stream impacts. There are no references to any studies or other documentation on the effectiveness of mitigation. The Corps simply assumes in a conclusory fashion that mitigation will succeed. Two courts vacated the 2007 NWP 21 in Kentucky and West Virginia because the Corps' reliance on mitigation was conclusory and unsupported. *Kentucky Riverkeeper v. Rowlette,* 714 F.3d at 411-13; *OVEC v. Hurst,* 604 F. Supp. 2d at 887-96. The DEIS' reliance on compensatory mitigation is therefore arbitrary and capricious.

Third, a recent study demonstrates that compensatory mitigation at mine sites is not working. The study synthesized information from 434 stream mitigation projects from 117 permits for surface mining in Appalachia. Palmer & Hondula, *Restoration As Mitigation: Analysis of Stream Mitigation for Coal Mining Impacts in Southern Appalachia* , Environ. Sci. Technol. 48: 10552-60 (2014). That study analyzed both stream restoration and stream creation projects and concluded that "the data show that mitigation efforts being implemented in southern Appalachia for coal mining are not meeting the objectives of the Clean Water Act to replace lost or degraded streams ecosystems and their functions." *Id.* , Abstract. In fact, "97% of the projects reported suboptimal or marginal habitat even after 5 years of monitoring." *Id.* Consequently, the Corps' reliance on compensatory mitigation to eliminate or reduce adverse stream effects is unsupported and erroneous.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The miles of stream potentially affected are only very coarse estimates based on the total number of streams in each study area and the estimated long-term total percentage of the study area that could be affected by future mining.

The comparison with Appalachian mitigation practices and their success is not appropriate. Field inspections of existing large-scale, on-site, permittee responsible mitigation projects in Texas have confirmed the industry's success with completing such mitigation.

Reclamation

Comment:

Dams and hard features that are not native to a site, such as riprap, should not be included as permanent control measures in water features that are intended as Section 404 mitigation.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

These features are not considered acceptable by the USACE Fort Worth District for permanent water control in reclaimed waters of the U.S, including wetlands.

Comment:

Please provide the functional assessments that will be used to determine baseline conditions and mitigation requirements for impacted wetlands and streams. A baseline and mitigation monitoring plan should also include an assessment using an index of biological integrity (Surface Water Quality Monitoring Procedures, Vol. 2, Methods for Collecting and Analyzing Biological Assemblage and Habitat Data, 2014) for streams that are perennial and intermittent with perennial pools.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The locations of potential future surface coal or lignite mine expansion areas or satellite mines are not known at this time. At the time a mine is proposed, a conditional or functional assessment would be prepared and submitted in support of each future mine’s Section 404 permit application.

Comment:

However, I'm very concerned that the process could very well compromise the safety of the environment. We use the term to -- we talk about replacing streams. We talk about replacing the earth and that sort of thing. I understand that there's a great deal of confidence that that can be done.

These things are actually ecosystems with wildlife and very much extensive systems that are --that can't be replaced. And to ignore that and to not have that in the consideration is, I think, an egregious error in general. I don't know all the specifics of the organization details that are being considered.

Newman, Bill

USACE Response:

Potential impacts to surface water resources, vegetation, and fish and wildlife, as a result of a typical surface coal and lignite mine are discussed in Sections 3.2.4.2, 3.4.2, and 3.5.2, respectively. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Reclamation

Comment:

And the other area, if they are going to start mining the area, I don't know -- that reclamated [phonetic] area -- reclamation, I just want to know is there any proposed deal? I'd like to see it because I haven't seen it.

Ruiz, Ricardo

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." The reclamation procedures for a typical mine are described in Section 2.2.4.3. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., reclamation plans) available at that time.

Comment:

In particular, the Corps must disclose in the DEIS the details of how it intends to mitigate the effects of mining on stream resources. Mitigation is a material justification for the Corps' determination in the DEIS that the proposed RGP and LOP would not cause or contribute to significate degradation of water quality. DEIS at 3.2-97. In that circumstance, the Corps has a duty under NEPA and the Clean Water Act to provide substantive mitigation information so the public can provide meaningful comments. *OVEC v. U.S. Army Corps of Eng'rs* , 674 F. Supp. 2d 783 (S.D.W.Va. 2009).

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

While the proposed regulatory framework includes changes to the thresholds for the types of Section 404 permits that may be issued for future surface coal and lignite mine expansion areas and satellite mine, the current USACE Fort Worth District Section 404 mitigation guidelines would continue to be applied as noted in Section 2.2. The current mitigation guidelines are described in Section 2.1.2.

In accordance with NEPA, the impact analyses in the REIS identify potential resource impacts and evaluate the effectiveness of agency-required mitigation in minimizing the impacts.

Reclamation

Comment:

Section 2.2.4.3 - Typical Closure and Reclamation, pages 2-19 and 2-20:

a. In lines 39-42 on page 2-19, it states that the long-term reclamation goals for a typical mine include maintaining drainage patterns and water quality and quantity. Further explanation on the intent of this statement is needed regarding water quality and quantity. Is this intended to mean surface water and ground water? What is the appropriate water quality and quantity? What are the applicable regulatory standards or criteria that define this level of reclamation or mitigation?

b. A discussion is needed in this section on the applicable state and federal laws and regulations for the protection of ground water, the abatement of ground water contamination and the protection of surface water.

c. A discussion is needed in this section on the potential for overburden and interburden mine spoils to generate acid rock drainage and metals dissolution (i.e., toxic- and acid-forming materials) and what reclamation or mitigation activities would be needed to prevent impacts to ground water, and surface water as a result of ground water outflow, or restore ground water and surface water to state and federal standards or criteria. Such discussions should also include impacts to water quantities from mine drawdown and potential reclamation/mitigation options.

d. For lines 34-36, see Specific Comment No. 3.a, above, regarding "selective handling" of overburden and interburden materials.

Price, Kimeka; USEPA, Region VI

USACE Response:

The referenced text in Section 2.2.4.3 presents the reclamation goals for a “typical mine.” The reference to water quality and quantity includes surface water and groundwater. The ability of a typical mine to meet these goals is discussed in the various resource sections in Chapter 3.0. These resource analyses take into consideration the construction, operations, and reclamation procedures and the committed environmental protection measures of a typical mine (as presented in Section 2.2.4), as well as typical permit requirements from the various agencies with permitting authority for surface coal and lignite mines in Texas. The typical permits that would be required by potential future mines at the time they are proposed and the associated permitting authority are identified in **Table 1-1**. Water resources-related regulations are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable. Further discussion of these rules, regulations, and permit requirements is not required under NEPA; rather, the level of detail is tailored to support the impact analysis.

Information relative to regrading, revegetation, amendments, and performance standards is presented in Section 2.2.4.3. Further discussion relative to selective handling of spoils is presented in Sections 3.2.3.2 and 3.2.4.2. As discussed, RCT Coal Mining Regulations require analysis of overburden and underburden through appropriate acid-base accounting or other assessments and implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming material are 4 feet or greater below the final grade. (See Section 12.386 of the Coal Mining Regulations for performance standards.)

The monitoring and mitigation measures in Chapter 3.0 of the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional monitoring and mitigation may be identified during the project-specific NEPA review that would be conducted at the time future mine expansion areas or satellite mines are proposed (as discussed in Section 2.5) and would be based on the mine-specific and site-specific information

Reclamation

available at that time.

Comment:

Under the heading of Developed Water Resources, the DREIS describes how "aquatic resource creation and/or restoration mitigation ratios would be specific to an applicant's Section 404 permit requirements." The Mitigation Rule states that aquatic resources should be mitigated at least to a 1:1ratio (applicable to both streams and wetlands). On page 2-23, the DREIS refers to ratios when discussing reclamation. How will ratios tied to reclamation be reconciled with the mitigation requirements of a functional assessment?

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

As clarification, a conditional or functional assessment does not specify mitigation requirements. Both a conditional or functional assessment and a Conceptual Mitigation Plan would be prepared and submitted in support of each future mine's Section 404 permit application. A conditional or functional assessment of the identified waters of the U.S. would be prepared to characterize the functions and quality of the waters of the U.S. to be used as an ecological baseline for evaluation of a Section 404 permit application, planning for mine reclamation, and USACE Fort Worth District compensatory mitigation at the time a future mine is proposed. A Conceptual Mitigation Plan that typically would present the proposed direct and compensatory mitigation ratios also would be prepared and submitted at the time a future mine is proposed. The required mitigation ratios for reclamation would be determined by the USACE and would be specific to the mine-specific Section 404 permit requirements.

Comment:

Revegetation success within Section 404 jurisdictional areas and buffers within all reclamation land use types should also be required to meet USACE success criteria in order to qualify as Section 404 mitigation. This should include native species, diversity, and density requirements.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

This is a requirement and is referenced in several subsections under Section 2.2.4.3 of the Draft REIS. The specific requirements would be addressed during the project evaluation stage when site-specific proposals are reviewed. These items also are addressed in the Fort Worth District Mitigation Guidelines.

Comment:

Also, the Draft REIS should designate how "successful" would be determined in evaluating as-built streams/systems. TPWD recommends use of the publications *A Function-Based Framework for Stream Assessment & Restoration Projects - EPA 843-K-12-006.* At a minimum the constructed stream should meet the "Functioning" classification for the following parameters: Bank Height Ratio, Entrenchment Ratio, Lateral Stability, Meander Width Ratio, Buffer Width (based on meander belt width), Bank Erosion Hazard Index, and Near-Bank Stress.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The requirement for the use of reference sites to evaluate reclamation success is stated at the end of Section 2.2.4.3 of the Draft REIS under the subsection titled "Developed Water Resources" on page 2-27. The details would be addressed during the project permitting stage when site-specific proposals are evaluated.

Reclamation

Success criteria typically are documented in predicted Texas Rapid Assessment Method assessment scores included in the approved mitigation plan. Specifically, predicted values are assigned to core elements of the assessments and adopted as targets for mitigation project success and are subject to compliance monitoring per the approved schedule.

Social and Economic Values

Comment:

What will my house be worth once this place has been built? Who will want to buy it? Who'll pay for this, for our relocation?

Juarez, Alejandra

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

As discussed in the Urban Growth and Infrastructure subsection under Section 3.8.2.1, the mining company would work with landowers through purchase or lease agreements to acquire properties within future proposed mine areas. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

For example, the land around here is -- 70 -- 7 percent of it is agricultural land, which will be adversely affected by pollution of air and water and land here. This has not taken into consideration the type of compensation that will be needed for the people.

Ward, Tane

USACE Response:

The private lands within a future mine-specific proposed disturbance area would be leased or purchased by the proponent. However, a NEPA analysis cannot address each individual financial situation; that would be beyond the scope of the NEPA process.

As discussed in Section 2.2.4.3, specific reclamation and revegetation plans for disturbance areas located outside of water of the U.S. ultimately would be completed in accordance with landowner agreements.

Comment:

There are thousands of jobs in the recreation industry here around this area as well, which people will be losing these types of jobs if there was an enormous mine and everything that it brings.

Ward, Tane

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts to recreation as the result of a typical mine, and the measures that would be implemented to minimize the impacts, are discussed in Section 3.8.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Social and Economic Values

Comment:

Now, my worry is about is my property bad. Who's going to incur the costs of -- if I lose -- you know, I'm a real worker. I work hard for my property. I'm going to start remodeling. I live close -- 5 miles from that -- you know, that site and about 7 miles from the river, which water I'd be drinking too.

We can get into too many issues, but who's going to -- am I going to have to pay for them to profit? Am I going to look bad on my property, or if I get sick, who's going to cover for my health costs because we know that part of the -- I mean, to me, we already have health insurance, which we cannot afford. So even the hospital guy incurred those expenses and, therefore, my property tax will increase? So, you know, those things need to be addressed.

Corpus, Jose

USACE Response:

Information relative to related to potential effects on property values has been added to the Population and Housing subsection under Section 3.9.2.1.

As discussed in Section 3.14.2, public health issues associated with a typical surface coal or lignite mine would include potential water quality effects from the mining operation, including use of chemicals during reclamation; air quality effects from mine-related air emissions; and noise and lighting effects on sensitive receptors. The potential direct/indirect impacts to these resources are discussed in Sections 3.2.3.2, 3.2.4.2, 3.7.2, 3.11.2, and 3.12.2. Based on those resource-specific analyses, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to health effects. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

In addition to the impacts on adjacent properties, mining operators often own mineral rights underlying homes, farms, and ranches. The PEIS should consider how many people will be pushed off their land as a result of the expansion of lignite mining in the state.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

As discussed in the Urban Growth and Infrastructure subsection under Section 3.8.2.1, the mining company would work with landowers through purchase or lease agreements to acquire properties within future mine expansion or satellite mine areas.

Comment:

And, unfortunately, I'm just wondering what's going to happen to my property. You know, is it going to lose value?

Corpus, Jose

USACE Response:

Social and Economic Values

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Information relative to related effects on property values as the result of a typical mine has been added to the Population and Housing subsection under Section 3.9.2.1. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

The constant noise and lights associated with strip mining operations are highly disruptive to the lives of nearby landowners, greatly diminish the value of that property, and are harmful to wildlife. The Corps must consider the impacts of multiple mines being approved near homes, the impact on the quality of life of property owners, and the impact on the property value.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Potential noise and lighting effects as the result of a typical mine are discussed in Sections 3.11.2 and 3.12.2, respectively. Potential noise and lighting effects on wildlife are discussed in Section 3.5.2. The related cumulative effects are discussed in Sections 3.11.3, 3.12.3, and 3.5.3. Information relative to related effects on property values has been added to the Population and Housing subsection under Section 3.9.2.1. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Surface Water Resources

Comment:

Please replace references to "low" aquatic life use with "minimal" aquatic life use when referring to intermittent streams for consistency with the TSWQS.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

"Low" aquatic life use listings have been changed to "Limited" in accordance with abbreviations in TSWQS Chapter 307.3(b) and cross-checked listings in Appendices A and D of the TSWQS.

Comment:

I welcome the U.S. Army Corps of Engineers' involvement in drafting the Regional Environmental Impact Statement, and I wish to reiterate that I sat with our community in believing the operations of a coal mine in this area, specifically, the Dos Republicas will have a detrimental impact on both our community and Texas as a whole.

I remain actively involved and continue to monitor the situation and have met with Texas Railroad Commission officials and sent letters requesting a denial of an operating permit for this mine.

I have also requested the Texas Commission on Environmental Quality to intervene and hold a public meeting in our community and appropriately understand the local concerns regarding the amended water waste discharge permit. Local officials and residents express grave concerns about potential detrimental environmental and health impacts that Dos Republicas operations could have on Eagle Pass and the region.

I echo the community's fears about possible air contamination and water pollution at this operation's water waste would be discharged into a tributary of the Rio Grande just above the drinking water intake facility for the city of Eagle Pass. I join the community in worries that this will result in negative health consequences for members of the community. I do not believe it would be in the best interests of the state or the local community for operations to go forward of the Dos Republicas and continue to stand with the county judge, the mayor and the community on this issue.

Martinez, Hellen; Representing State Senator Carlos Uresti

USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NNEPA analyses

Surface Water Resources

Comment:

The Rio Grande River, another site approved for water release, is the source for the city's municipal water supply. The river, ranked as one of the most polluted rivers in North America (8), makes the community already at risk from health implications from drinking from a questionable water source. Water is a most precious resource in this region. I ask you – would you put this mine water in a bottle and feed it to your baby? Would you want to bathe your child in it? Introducing more pollutants into our already overburdened water source is irresponsible. The potential loss of our water supply would be devastating to an already struggling community.

Galindo, Melissa

Comment:

I, along with people down the river, I acquire my drinking and bathing water from the river. We also use this water for our crops and cattle, which will in turn feed people from all over.

Juarez, Alejandra

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts to surface water resources as the result of a typical surface coal or lignite mine expansion area or satellite mine are described in Section 3.2.4.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

We drink this water that goes into our river. We will be drinking this water for years to come. We shower in it.

I have some land in El Indio. We irrigate with that water. We give that water to our animals. Would you feel comfortable coming back here and eating the food that we serve you, drink the water that we serve you in 3 years?

Salinas, Siboney

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely

Surface Water Resources

on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Comment:

The Corps' description (3) of the TCEQ's method of identifying the water quality to be maintained by its TPDES permitting process is generally correct, but it omits the salient fact that the surface water features in Region 64 are all, save for the Rio Grande, unclassified stream segments. Given the resource constraints that affect all governmental agencies these days, TCEQ does not normally actually gather data for site-specific assessments of the conditions of unclassified stream segments. Instead, TCEQ has elected to develop some rules of thumb for how to characterize conditions, particularly, aquatic life uses, in stream segments that are unclassified. These rules of thumb are as described in the Draft Regional EIS.(5) An alternative to these rules of thumb would be to require would-be permittees to actually assess the aquatic life uses in segments that are proposed to receive industrial waste water discharges, like the discharges from the Dos Repùblicas Coal Partnership mine.

(3)-DREIS, p. 3.2-22.

Frederick, David; Frederick, Perales, Allmon & Rockwell PC

USACE Response:

As discussed in Section 3.2.4.1 (Draft REIS page 3.2-68), the sole classified waterbody segment that occurs in Study Area 6 and its CESA is 2304 (Rio Grande River) below Amistad Reservoir, in Maverick County (TCEQ 2012). A clarifying sentence mentioning that any other stream segments are thus unclassified has been added to the text.

The analysis of procedures or regulations of other agencies with permitting authority for surface coal and lignite mines in Texas is outside the scope of the USACE REIS. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" to facilitate the preparation of tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines.

For further engagement with TCEQ regarding stream classifications and associated standards, the agency has an established Continuing Planning Process, as well as procedures for reviewing and implementing water quality standards. These state programs are described at the following sites:

http://www.tceq.state.tx.us/waterquality/planning /CPPMain.html

http://www.tceq.state.tx.us/waterquality/standards/WQ_stds

In addition, guidance on water quality standards administration and participation, notably including stakeholder involvement, is available at:

http://www.tceq.state.tx.us/publications/gi/gi-351.html

Comment:

On page 3.2-75, the DREIS states that a hydrologic reclamation plan specific to local conditions would be prepared. Please include the TCEQ as a reviewing agency.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The referenced text is in relation to RCT review and approval of hydrologic reclamation plans in

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accordance with their regulatory program.

Comment:

Please explain what the "tributary rule" is in regards to Davidson and Yegua Creeks on page 3.2-80.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The text has been modified to avoid any reference to tributary considerations in the Clean Water Act regarding waters of the U.S., navigable waters, and water quality standards. Alternately, a simple discussion of available data has been added to the text.

Comment:

State and federal agencies have designated 24 Texas water bodies as being impaired for mercury. A large number of these lakes, creeks, rivers, and bayou's are in the geographic scope of the PEIS and are near large lignite mining operations, and/or are downwind of the power plants where the lignite is burned. The list of 24 includes Caddo Lake, Big Cyprus Creek, Black Cyprus Bayou, Lake Dainerfield, Toledo Bend Reservoir, Clear Lake, Hills Lake, Neches River, BA Steinhagan Lake, Lake Ratcliff, and many others. Health authorizes have had to step in and issue fish advisories on numerous Texas water bodies warning Texans not to consume any fish they catch there. The Corps must consider the water quality impacts of the mining in conjunction with these existing impairments and the ongoing mercury loading of these waters from the burning of coal. A key objective of the Clean Water Act is restoring and maintaining the chemical, physical and biological integrity of the Nation's waters. Before additional lignite mining and burning is allowed, the Corps should develop practices and permitting requirements on future mining that include restoration of those areas that have already been chemically and biologically impaired by lignite-sourced mercury. The DEIS, while disclosing impaired waterways in the study areas, includes no suggested actions, mitigation measures, or restoration requirements to resolve these issues before more mining is permitted.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional analysis of potential impacts from a "typical mine" expansion area or satellite mine. The analysis of power plants is outside the scope of the REIS. However, power plant emissions as authorized by other permitting authorities are considered in the REIS cumulative effects analyses as part of the current air quality data (see Section 3.7, Air Quality and Climate) and would be part of the cumulative effects analyses for future permit applications.

Waterbodies that currently have fish consumption restrictions due to mercury in edible tissue are identified in the study area discussions under Section 3.2.4.1. Potential surface water quality effects as the result of a typical mine are discussed in Section 3.2.4.2. Based on the analysis, the construction, operation, and closure/reclamation activities of a typical surface coal or lignite mine would not be anticipated to contribute directly or cumulatively to mercury-related surface water quality impacts.

Potential direct/indirect and cumulative impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts

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associated with a typical mine as described in Section 2.2.4.

Comment:

They use that same water coming out Lake Amistad, that same water to irrigate. Are they going -- expected to live on that water with a lucrative mining company?

Lentz, Brouning

Comment:

It's my knowledge that the county issued some kind of referendum, they cannot move dirt or anything in the floodplain area, and they have already started doing that already, and they are in violation of the law which we have in Maverick County.

Ruiz, Ricardo

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Comment:

How do you plan to erode the pollution of this mine if it gets flooded? How will you collect all of the chemicals that will run off into the river every time it rains?

Juarez, Alejandra

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential future surface coal or lignite mine expansion areas or satellite mines. The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Comment:

We've got water, and we've got a place that we can irrigate and what --where do you think the irrigation water is going to go?

Ruiz, Ricardo

USACE Response:

As discussed in Section 3.2.2, water rights are administered by TCEQ. Also, RCT regulations require protection of the hydrologic balance, including protection of water rights. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines (including water rights) will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

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Comment:

Please revise the reference to the 2014 TSWQS as they have not yet been fully approved by the Environmental Protection Agency (EPA). Please revise to reference to the TSWQS as approved by EPA.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

Clarification of applicable water quality standards has been added to the text in Section 3.2.2.

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Comment:

Issue, whether the proposed discharge and dust from the facility would contaminate or degrade the quality of Elm Creek Land its Tributaries and/or undisclosed natural water ways drainages which are claimed by the Pacuache Tribe of Texas (other Tribes) as our aboriginal ancestral lands. Issue whether the draft permit would allow violation of water quality standards. Issue whether the facility would cause health hazards and nuisance conditions. Issue whether the proposed discharge would contaminate drinking water sources. Issue whether Agency staff properly calculated the water quality-effluent limits and accurately concluded that the discharge would comply with Texas water quality standards exhibit by Eagle Pass Business Journal 10/29/2011 in this newspaper expressly provides that the Dos Republicas Coal Partnership's Eagle Pass Mine discharge of mine seepage and storm waters will affect the public water supply of City of Eagle Pass, aquatic life on the Elm Creek and the Rio Grande River and contact recreation areas on these waterways. Issues the permit water for mine authorizes Dos Republicas Partnership to discharge storm water and mine seepage from the active mining area subject to the following suspended solid 3.5 daily, iron 3.0 daily, manganese 2.0 daily, selenium n/a daily, in addition to these known carcinogenic chemicals the Dos Republicas is authorized to discharge into Elm Creek, unidentified and/or water natural drainages tributaries, the Rio Grande River on a daily basis the following effluent chemicals aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, trivalent chromium, hexavalent chromium, copper, cyanide, lead, mercury, nickel, selenium, silver, zinc, bod, carbonaceous biochemical oxygen, chemical oxygen, organic carbon, ammonia nitrogen, total suspended solid, nitrate nitrogen, organic nitrogen, phosphorous, oil and grease, residual chlorine, total dissolved solids, sulfate, chloride, fluoride, fecal coliform, and others. Issue when coal surfaces are exposed, pyrite (iron sulfide) comes in contact with water and air and forms sulfuric acid. As water drains from the mine, the acid moves into the waterways, and as long as rain falls on the mine tailings the sulfuric acid production continues, whether the mine is still operating or not. This process is known as acid rock drainage (ard) or acid mine drainage (amd). If the coal is trip mined, the entire exposed seam leaches sulfuric acid, leaving the subsoil infertile on the surface and begins to pollute streams by acidifying and killing fish, plants, and aquatic animals which are sensitive to drastic ph shifts, in addition surface mining can adversely impact the hydrology of a region. Deterioration of a stream quality can result from acid mine drainage, toxic trace elements, high content of dissolved solid in mine drainage water, and increased sediment loads discharged to streams, Waste piles and coal storage piles can yield sediment to streams, and leached water from these piles can be acid and contain toxic trace elements. Surface waters may be rendered unfit for agriculture, human consumption, bathing, or other household uses. Flood events can cause severe damage to improperly constructed or located coal haul roads, housing, coal crushing and washing plant facilities, waste and coal storage piles, settling basin dams, surface water diversion structures and the mine itself. Besides the danger to life and property, large amounts of sediment and poor quality water may have detrimental effects many miles downstream form a mine site after a flood. Overall, it will cause a lot of pollution drinking water. Ground water supplies may be adversely affected by surface mining. These impacts include drainage of usable water from shallow aquifers, lowering of water levels in adjacent areas and changes in flow directions within aquifers; contamination of usable aquifers below mining operations due to infiltration or percolation on spoil piles. Where coal or carbonaceous shalls are present, increased infiltration may result in increased runoff of poor quality water and erosion from spoil piles; recharge of poor quality water to shallow ground water aquifers; or poor quality water flow to nearby streams. This may contaminate both ground water and nearby streams for long periods. Issue, Leaching and leach to underground and ground water(s), soil and air contamination a proposed Coal mine site. Issue, Elm Creek pollution of Creek waters and San Miguel formation and impact in other formations or areas describe in permit sections. Issue, past Coal Mining at Eagle Pass in the 1930's there are Sink or sinking(s) Hole(s). Issue, there are Natural blue holds or holds of Ancient water also called Cenotes which they are going to be highly polluted and contamination.

Torres, Mary; The Coahuilteca Indian Tribe First Nation

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USACE Response:

The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The USACE issued a permit only for modifications of waters of the U.S. for the Dos Republicas Mine after initiating a public comment period and completing the NEPA process, including tribal consultation, in December 2011.

The purpose of the REIS is to provide an evaluation of potential impacts to environmental and human resources, including the aquatic environment, that could be affected by future USACE Fort Worth District surface coal and lignite mine permit decisions. Both tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines would rely on the REIS analysis plus the future project-specific permit applications and environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses.

Please see Chapter 3.0 of the REIS for discussions of potential impacts to surface water and groundwater quality and human health as the result of a typical surface coal or lignite mine expansion area or satellite mine.

Comment:

The DREIS states that Best Management Practices and 100-foot buffers around aquatic resources will be implemented during operations. The DREIS, Section 3.2-4.2, page 3.2-73, states that the RCT may authorize disturbance closer than the buffer or in the stream, provided that state and federal water quality standards will not be violated. Please provide the conditions when such a waiver would be granted to ensure consistency with Texas Surface Water Quality Standards (TSWQS). BMPs and buffers sufficient to protect waters from the application of fertilizers, herbicides and pesticides during reclamation should also be implemented.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

As discussed in Section 3.2.4.2, RCT regulations encourage avoidance of perennial or intermittent streams, and the USACE regulatory program mandates avoidance and minimization of impacts to waters of the U.S. However, mining closer to or through a stream may occur if during future mine-specific permitting: 1) a waiver is granted by RCT (per Section 12.355 under the Texas Coal Mining Regulations) and 2) the proposed disturbance represents the least environmentally damaging practicable alternative in accordance with the USACE's Section 404(b)(1) guidelines.

As discussed in Section 2.2.4.3, the use, application, and disposal of pesticides would be conducted in accordance with all applicable federal and state regulations.

Comment:

The water study is 20-plus years old. Is there a more recent water study that you can use?

Ruiz, Luis

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address

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management of existing mines.

The regional water studies cited in the Study Area 6 subsection under Section 3.2.4.1, Surface Water Affected Environment (e.g., International Boundary Water Commission 1994), simply describe background water quality conditions in a comprehensive manner, based on compiled data and corresponding scientific interpretations for a broad area. The text has been revised for clarification. More recent regional efforts or similar published reports are not known to exist. For more specific locations in the study area, recent data and agency findings (e.g., streams that support beneficial uses or are impaired) are cited by date elsewhere in the text and tables.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

According to the EPA, coal is often washed at the coal mine to remove impurities. The use of large quantities of water often adversely affects aquatic wildlife, as well as animals and people who depend on these aquatic resources. Furthermore coal mining can contaminate bodies of water with heavy metals such arsenic and lead when the water is used to clean the coal and discharged back into the environment. Dos Repúblicas has clearly stated they will release the water back into the environment, clearly validating concerns about the impact on the water quality of Elm Creek and the Rio Grande.

Galindo, Melissa

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine” expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Please see Section 3.4.2.4 (Draft REIS page 3.2-74) for a discussion of TPDES permits with respect to coal processing and other discharges.

Comment:

Our concern is that the USACE's draft would not be stringent enough regarding the analysis it's been doing as far as potential short-term and long-term impacts on the resource water within the defined geographic area that then is utilized by our community, the City of Eagle Pass, and then the downstream area residents of that -- of -- that is directly affected.

Contreras, Terri ; Maverick County Hospital District

Comment:

Nowhere in the EIS does it state that the sole source of drinking water for the City of Eagle Pass of 50,000 people in the Rio Grande -- nowhere is there any discussion of how this water source could be contaminated by in discharge from expanded mining areas.

De La Cerda, Leticia

USACE Response:

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The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” Potential impacts to water resources near Eagle Pass as the result of a typical mine are discussed in the Study Area 6 subsection under Section 3.2.4.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines would be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Water will also be used and stored in sedimentation ponds until they are ready to dump the mine wastewater into the Elm Creek and Rio Grande River which will adversely effecting Eagle Pass, Piedras Negras and other down river communities drinking water. First, it is very important to understand that both Eagle Pass and its sister city Piedras Negras have one main water source, the Rio Grande River. The dump site of this mine will be before/upriver from the water intake for both municipalities. The mine water will be directly deposited into the drinking water.

Galindo, Melissa

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine” expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The municipal water supply intake for Eagle Pass and potential impacts to it as the result of a typical mine are discussed in Section 3.2.4.2 (Draft REIS page 3.2-82). This text has been expanded in response to comments, and a description of the supply configuration also has been added to Affected Environment discussion in the Study Area 6 subsection under Section 3.2.4.1.

Comment:

About 36, 37 years ago, I purchased more than a third of an acre of land on Elm Creek. I own land on one side and the other side of Elm Creek, and we have come to find out that, of course, there's going to be spills going through there because the ponds are not that big and so on and so forth. We've already been experiencing that.

Martinez, Luis

Comment:

Also, I don't know if it is included in your report, but the Elm Creek will be used as the dumping area for the sedimentation water. That may be something that should be included in your report.

Ruiz, Luis

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine” expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

Section 3.2.4.2 of the REIS discusses potential impacts to municipal water supplies from the Rio

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Grande or to Elm Creek, and potential future mine factors that could affect them (Draft REIS page 3.2-82). State and federal water quality regulations that govern discharges also are discussed in this section.

Potential impacts to streams, and the regulatory programs to address impacts and protect these resources, are described in Section 3.2.4.2 (Draft REIS pages 3.2-72, 3.2-74, 3.2-75, and 3.2-82). Text additions have been made to further address this issue.

Comment:

As discussed in Section 3.2, the DREIS states that sedimentation ponds could decrease downstream flows. If the flow status of a stream is converted from a perennial stream or an intermittent stream with perennial pools, to an ephemeral or intermittent stream, then impacts to instream flows should be mitigated. Hydrology specific to mitigation should be self-sustaining. Furthermore, open water is not appropriate as mitigation for wetlands.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

As clarification, the discussion relative to reduced downstream flows is part of the cumulative impacts analysis (Section 3.2.4.3) and is in relation to existing water supply reservoirs, not mine-related sediment control ponds.

As discussed in Section 2.2.4.3, the USACE typically requires in kind mitigation for each aquatic resource type.

Comment:

The DEIS mentions the RCT requirements for "protection of the hydrologic balance" and a Hydrologic Reclamation Plan specific to local conditions. More discussion is needed on these RCT requirements.

Price, Kimeka; USEPA, Region VI

USACE Response:

NEPA does not require a detailed discussion of other permitting authorities; rather, the level of detail is tailored to support the impact analysis. A brief discussion of the RCT requirements relative to hydrologic balance is presented under the Proposed Action, Effects Common to All Study Areas subsection under Section 3.2.4.2.

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Comment:

And as we come to review -- this is not specific to Area 6. This is specific to all that goes on throughout the portion of the state of Texas in regards to lignite mining in the state, and I think that it's -- it's important, of course, to bring forth the concerns of mining throughout the state, but more so as representatives of this community. We bring forth concerns through the process of supporting a more stringent process of including and having a better informed community as to how exactly an expansion process goes.

Today we know that there will not be ultimately any decisions that will be rendered and any formal concerns that possibly will -- will or will not be reached to -- of course, to the quorum, but we still have so many issues that need to be addressed, issues that not only impact water, issues that also impact air pollution, issues that impact several concerns as far as the necessary permitting process for this.

And I believe that as we are here, I think that as Mayor, I expected a little bit more as far as what we were going to -- to define the process to especially to our area and to express our concerns on the expansion of Area 6. And I think from the discussions that we've had, it certainly isn't an area that we're going to be covering a lot of today, and I think that the City of Eagle Pass will be submitting its formal comment through the form of a -- a letter addressing all of those issues so that you all may also have that.

But there's many other issues that we'll be addressing. I can -- I can stand here and I can bring forth the concerns of -- of the project in question, but I believe that as far as this -- this discussion or this forum is, the only thing that we can say from the City's standpoint is that we would support a very -- more thorough process to review any coal mining in the state of Texas and more so here in Eagle Pass and Maverick County.

Cantu, Ramsey; City of Eagle Pass

USACE Response:

Comment noted. Potential groundwater, surface water, and air quality impacts associated with a typical surface coal and lignite mine are discussed in Sections 3.2.3.2, 3.2.4.2, and 3.7.2, respectively. Under each of these sections, information is presented for each of the study areas, including Study Area 6. As discussed in Section 2.2.3, the study areas encompass locations within the coal/lignite belt in Texas that are in reasonable proximity to existing surface coal and lignite mines with potential for future expansion.

As discussed in Section 2.2.2, project-specific NEPA analyses (EA or EIS) would be prepared at the time future surface coal or lignite mine expansion area or satellite mine are proposed. As allowed under NEPA, tiered and supplemented NEPA documents for future mine expansion areas or satellite mines within the REIS study areas would be prepared. These NEPA documents would rely on the REIS analysis plus the future project-specific permit applications and required environmental baseline field studies to provide the level of detail needed to support the project-specific NEPA analyses. Based on the results of each future project-specific NEPA analysis, the USACE either would issue a permit, issue a permit with special conditions, or deny the permit.

Comment:

Our poor town could barely recover from two consecutive floods (some families have yet to recover) and yet we will somehow recover from a mining disaster such as acid drainage or something far worse?

Barron, Nelda

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USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The potential for releases of acid drainage and (possibly) associated heavy metals from mining discharges is an acknowledged issue in East and Central Texas. Research and applications to minimize these effects have been implemented since the 1980s. Similar issues are not anticipated to be substantial further southwest and along the Rio Grande due to differences in geologic factors and soil chemistry. As noted in **Table 3.3-1**, acidic and hydric soils are extensive in Study Areas 1 through 3, but are absent or nearly so in Study Areas 5 and 6. Furthermore, potential future mine pits in Study Area 6 are likely to be dry or have minimal groundwater inflows as discussed in Section 3.2.3.2. In the western study areas, these factors would help minimize off site trace element migration into receiving waters such as Elm Creek.

Mine discharges to receiving waters such as Elm Creek are governed by TPDES permit provisions, RCT water management and monitoring requirements, and TCEQ water quality standards. Sediment, metals, and metalloids can be treated with neutralizing agents, flocculants or other chemical methods to reduce concentrations. Such treatment is a consideration in all mine permitting and monitoring. In all study areas, the prior identification of potential acid-forming or toxic materials is required in site-specific investigations for an RCT permit and the associated Cumulative Hydrologic Impact Assessment (CHIA). Materials with adverse characteristics would be buried at depths as required by RCT to reduce or eliminate their effects on seepage and surface water quality. This is likely to be particularly effective in the arid study areas.

Comment:

There is very little discussion of the applicable state or federal statutes and regulations for ensuring the protection of ground water and the abatement (or mitigation) of ground water contamination at surface coal and lignite mines. Such discussion should be included in the DEIS. It should also include regulations to protect recharge zones of aquifers. It may also be appropriate to discuss the role the Texas Water Development Board and its ground water monitoring program, regional water planning groups, ground water conservation districts (GCDs) and the GCD requirement to adopt ground water management plans under the Texas Water Code, and River Authorities.

Price, Kimeka; USEPA, Region VI

USACE Response:

NEPA does not require a detailed discussion of other permitting authorities; rather, the level of detail is tailored to support the impact analysis. The typical permits that would be required by potential future mines at the time they are proposed and the associated permitting authority are identified in **Table 1-1**. Water resources-related regulations are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable.

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Comment:

The DEIS is deficient in evaluating the potential impacts to surface water. It focuses on surface water runoff and storm water runoff, but does not adequately discuss impacts from ground water outflows. The DEIS should describe in more detail the potential flow path from contaminated ground water within backfilled mine spoils (overburden/interburden) to undisturbed ground water to surface water at areas of ground water upwelling or outflow. It should also assess the loss of surface water flow (spring flow or base flow) from dewatering and depressurizing operations (i.e., drawdown) and potential mitigation measures to address such water loss (decrease in water quantity) and water rights. The DEIS tends to minimize the importance of this issue with statements that the impacts from future mines would be confined to mine-related ground water drawdown areas. This seems irrelevant if such drawdown areas extend beyond the mine permit boundary to surface water drainages affected by spring flow or base flow.

Price, Kimeka; USEPA, Region VI

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. Therefore, the type and level of detail required to conduct the requested analysis (e.g., mine-specific dewatering/depressurization rates, site-specific hydrogeologic conditions, etc.) is not available at this time. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional monitoring and mitigation may be identified during the project-specific NEPA review that would be conducted at the time future mine expansion areas or satellite mines are proposed (as discussed in Section 2.5).

Groundwater drawdown areas are independent of the permit boundaries. Groundwater-related impacts from future mines would be confined to the areal extent of mine-related groundwater drawdown as noted in the REIS, regardless of whether the drawdown area is within or extends beyond a permit boundary.

Comment:

Elm Creek Park, a treasured park is home to fishing, swimming and picnic facilities. Citizens often congregate at this park and polluting this aquatic ecosystem is not acceptable. Elm Creek also runs in close proximity to the Deer Run and Elm Creek subdivisions and banks at the doorstep Pete Gallegos Elementary. Polluting a creek that runs through such heavily populated areas would be irresponsible.

Galindo, Melissa

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine” expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE’s area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT’s area of responsibility is generally the entire mine permit

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area. The REIS is not intended to address management of existing mines.

Potential surface water impacts as the result of a typical surface coal or lignite mine expansion area or satellite mine are discussed in Section 3.2.4.2. Potential impacts associated with future mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

We have seen in Texas -- in terms of waterways, we have seen pollution that has occurred mainly due to mercury getting into waterways. Probably it's air deposition, but to the extent that mining could lead to heavy metals being in waterways, that is of particular importance to us.

Reed, Cyrus; Sierra Club

USACE Response:

The potential for releases of acid drainage and (possibly) associated heavy metals from mining discharges is an acknowledged issue in East and Central Texas. Research and applications to minimize these effects have been implemented since the 1980s. Similar issues are not anticipated to be substantial further southwest and along the Rio Grande due to differences in geologic factors and soil chemistry. As noted in **Table 3.3-1**, acidic and hydric soils are extensive in Study Areas 1 through 3, but are absent or nearly so in Study Areas 5 and 6. Furthermore, potential future mine pits in Study Area 6 are likely to be dry or have minimal groundwater inflows as discussed in Section 3.2.3.2. In the western study areas, these factors would help minimize off site trace element migration into receiving waters such as Elm Creek.

Mine discharges to receiving waters such as Elm Creek are governed by TPDES permit provisions, RCT water management and monitoring requirements, and TCEQ water quality standards. Sediment, metals, and metalloids can be treated with neutralizing agents, flocculants or other chemical methods to reduce concentrations. Such treatment is a consideration in all mine permitting and monitoring. In all study areas, the prior identification of potential acid-forming or toxic materials is required in site-specific investigations for an RCT permit and the associated Cumulative Hydrologic Impact Assessment (CHIA). Materials with adverse characteristics would be buried at depths as required by RCT to reduce or eliminate their effects on seepage and surface water quality. This is likely to be particularly effective in the arid study areas.

Comment:

Nowhere in the REIS does it state that the sole source of drinking water for the City of Eagle Pass and 50,000 people is the Rio Grande. Nowhere is there any discussion of how this water source could be contaminated by discharge from expanded mining areas.

Baxter, George

USACE Response:

The sole source drinking water classification for the Rio Grande is described in the Study Area 6, *Surface Water Uses and Quality*, subsection under Section 3.2.4.1 (Draft REIS page 3.2-68). Intakes for the City of Eagle Pass are also mentioned. A discussion of potential impacts to Elm Creek and municipal water supplies from the Rio Grande, and future mine factors that could affect them are discussed in Section 3.4.2.4 (Draft REIS page 3.2-82). Text additions have been made to Section 3.4.2.4 to further discuss USACE, TCEQ, and RCT regulatory aspects for this issue.

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Comment:

Another thing is water rights that has not been particularly touched on. I do need to find out more information on water rights. I did find -- excuse me. I did find some information, but not a lot.

Ruiz, Luis

USACE Response:

As discussed in Section 3.2.2, surface water rights are administered by TCEQ. As discussed in Section 3.2.4.2, RCT regulations require protection of the hydrologic balance, including protection of water rights. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines (including water rights) will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Executive Summary, Table ES-4 - Summary of Direct and Indirect Impacts by Resource or Impact Issue and Recommended Monitoring and Mitigation:

Under Water Sources, USACE recommends no monitoring or mitigation measures for drawdown of aquifers, ground water quantity or ground water quality. EPA disagrees with this recommendation. The reasons are as follows:

a. For *drawdown of aquifers,* it is indicated for the Proposed Action Alternative that extent of drawdown could be up to 15 miles (Study Area 4), but the mine-related pumping impacts for future mines would be confined to the portion of the affected aquifers within a mine-related ground water drawdown area. It is not clear what this statement is intending to mean. Will drawdown impacts not go beyond the mine permit boundary? Is the "mine-related ground water drawdown area" to be within the mine permit boundary? There is no definition of this area in the DEIS. If drawdown goes beyond the permit boundary and impacts the availability or quantity of ground water (or surface water) for other users, then mitigation measures should be proposed. Further, monitoring of hydraulic drawdowns would be necessary to understand the changing hydrologic flow regimes during and after mining and the extent of the impacts off site.

b. For *ground water quantity,* the table states that the effects on other ground water uses would depend on the extent of the required mine depressurization and dewatering, but such impacts would be confined to the mine-related ground water drawdown area. Again, the concerns with such statements are the same as discussed in the first bullet statement above.

c. For *ground water quality,* the table states that ground water quality in mine pit backfill areas may have elevated levels of salinity, however, impacts to ground water due to increased salinity would be minimal in all study area. USACE provides no assessment or data showing known concentrations of metals or other potential contaminants in ground water in backfill areas and undisturbed areas, yet in the REIS it is stated several times that impacts to ground water could occur from toxic- or acid-forming materials from backfill mine spoils. The recommendation for no monitoring or mitigation measures for ground water quality is not supported.

Price, Kimeka; USEPA, Region VI

USACE Response:

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on the analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential

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impacts associated with a typical mine as described in Section 2.2.4. The need for additional monitoring beyond that required by the jurisdictional agencies or additional mitigation may be identified during the project-specific NEPA review that would be conducted at the time future mine expansion areas or satellite mines are proposed (as discussed in Section 2.5) and would be based on the mine-specific and site-specific information available at that time.

Groundwater drawdown areas are independent of the permit boundaries. Groundwater-related impacts from future mines would be confined to the areal extent of mine-related groundwater drawdown, regardless of whether the drawdown area is within or extends beyond a permit boundary. The areal extent of future mine-related groundwater drawdown and associated impacts would be assessed during project-specific NEPA review based on mine-specific and site-specific information (e.g., mine-specific dewatering/depressurization rates, site-specific hydrogeologic conditions, etc.) that would be available at that time.

As discussed in Sections 3.2.3.2 and 3.2.4.2, the potential for acid-forming constituents or other geochemical weathering products to affect water quality would be avoided by compliance with RCT regulations. The regulations require analysis of overburden and underburden through appropriate acid-base accounting or other assessments and implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming material are not placed in the upper 4 feet of the backfill profile. Therefore, related impacts are not identified in the referenced table. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time. That analysis would take into account the site-specific material sampling and analyses for determination of acid-forming materials that would occur as part of each surface coal and lignite mine's RCT permit application (Section 12.127 of the Coal Mining Regulations).

Comment:

In the DEIS there is some discussion of the potential impacts to surface water and ground water from "toxic- and acid-forming materials in pit spoils and surface water runoff, but the DEIS does not identify what these materials may be, how ground water and surface water could be impacted by them, or how they would be tested and, if necessary, mitigated. The DEIS focuses on salinity (TDS) as the only significant parameter to assess impacts to ground water. This is based on potential impacts of concern identified in studies by the Railroad Commission of Texas (RCT), but the DEIS presents no analytical data on other potential contaminants such as metals. The Wilcox Group and Clairborne Group formations may have significantly high concentrations of pyrite and other sulfide minerals which, when exposed to oxygen and water in backfilled spoils, may cause acid rock drainage and the dissolution of metals from the waste rock. Metals dissolved from waste rock by acidic water could potentially contaminate ground water at concentrations exceeding state ground water standards or federal drinking water standards. Metals and acidity could also impact surface water along ground water to surface water flow paths at concentrations exceeding state surface water standards or federal ambient water quality criteria.

Price, Kimeka; USEPA, Region VI

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." As discussed in Section 3.2, the potential for acid-forming constituents or other geochemical weathering products to affect water quality would be avoided by compliance with RCT regulations. The regulations require analysis of overburden and underburden through appropriate acid-base accounting or other assessments and implementation of selective handling plans and follow-up testing to ensure that acid- or toxic-forming material are not placed in the upper 4 feet of the backfill profile. As discussed in the introduction of Section 3.2.3.2, water resources impacts from potential

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future mine expansion areas and satellite mines would be further assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Elm Creek and Deer Run communities lie along the banks of Elm Creek and are prone to flooding. A quick review of the recent years will reveal that this community has experienced flooding and evacuations regularly over the last few years. Since Elm Creek does breech it's banks from time to time it is a concern that citizens will have to contend with the toxicity of contaminated water breaching into their homes. Eagle Pass is a historically impoverished community; many residents do not have resources to aid in recovery from a devastating loss.(10) Toxicity in their homes should not be added onto the shoulders of these families.

Galindo, Melissa

USACE Response:

The potential for releases of acid drainage and (possibly) associated heavy metals from mining discharges is an acknowledged issue in East and Central Texas. Research and applications to minimize these effects have been implemented since the 1980s. Similar issues are not anticipated to be substantial further southwest and along the Rio Grande due to differences in geologic factors and soil chemistry. As noted in **Table 3.3-1**, acidic and hydric soils are extensive in Study Areas 1 through 3, but are absent or nearly so in Study Areas 5 and 6. Furthermore, potential future mine pits in Study Area 6 are likely to be dry or have minimal groundwater inflows as discussed in Section 3.2.3.2. In the western study areas, these factors would help minimize off site trace element migration into receiving waters such as Elm Creek.

Mine discharges to receiving waters such as Elm Creek are governed by TPDES permit provisions, RCT water management and monitoring requirements, and TCEQ water quality standards. Sediment, metals, and metalloids can be treated with neutralizing agents, flocculants or other chemical methods to reduce concentrations. Such treatment is a consideration in all mine permitting and monitoring. In all study areas, the prior identification of potential acid-forming or toxic materials is required in site-specific investigations for an RCT permit and the associated Cumulative Hydrologic Impact Assessment (CHIA). Materials with adverse characteristics would be buried at depths as required by RCT to reduce or eliminate their effects on seepage and surface water quality. This is likely to be particularly effective in the arid study areas.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines would be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

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Comment:

Section 3.2.4.2 - Surface Water Environmental Consequences (Study Areas 1-6):

a. Lines 40-42 on page 3.2-71 state *"Surface water quality may be adversely affected by the weathering of acid or toxic materials, and transport of weathering products in either runoff or ground water seepage."* This discussion should be expanded to identify what the potential toxic or acid materials may consist of and the sources of such materials (e.g., acid rock drainage and metals dissolution from the weathering and oxygenation of sulfide minerals in overburden/interburden waste rock spoils). The discussion also needs to specify what "weathering products" may be transported. Are metals and acidic waters transported to surface water from the mine waste spoils in the backfilled pits? How do they get to surface water? What is the meaning of "ground water seepage" as used in this context? Are there any surface water or ground water analytical data (metals data) that document the occurrence and magnitude of these effects? If there are, they should be discussed and presented in a table in the DEIS. If there are no data, it should be stated that there are no data.

b. Lines 22-24 on page 3.2-73 state *"Where groundwater pumping* is *necessary for mining, drawdown would affect aquifers within and near the permit area. In turn, this may reduce groundwater outflows discharging to springs and nearby streams."* Lines 37-39 state *"During mining, there may be some reduction of downstream surface water quality caused by discharges from mine sites to receiving waters, but existing uses and water quality sufficient to protect those existing uses must be maintained in compliance with state law."* More discussion is needed on what potential actions, if any, could be taken to minimize the impacts from ground water pumping on aquifers and springs/streams. Also, the state law should be identified.

c. Line 29 on page 3.2-73: A discussion should be included on what toxic or acidic materials could potentially form. Also, it would be appropriate to discuss the need to test for such materials (e.g., Target Analyte List for metals, other inorganic constituents, and other contaminants such as uranium in ground water and surface water san1ples). Uranium should be tested as uranium ore deposits are mined in Texas and, if present, may pose a potential concern if it is dissolved from waste rock spoils and leached to ground water at concentrations above the federal maximum contaminant level (MCL).

d. Lines 21-21 on page 3.2-74 state *"In general, the potential for adverse impacts to surface water would be reduced by complying with specific RCT requirements to avoid acid or toxic drainage ... "* A discussion is needed on the specific RCT requirements. Also, do the specifics include reducing acidic or toxic drainage from the mine waste spoils in backfilled pits to ground water? As previously discussed, such acidic drainage could impact surface water at zones of ground water discharge.

Price, Kimeka; USEPA, Region VI

USACE Response:

The referenced text in Section 3.2.4.2 has been modified in two locations for clarification relative to the weathering of acid-or toxic-forming materials. As noted in the referenced text, the transport of weathering products to surface waters would be through runoff or groundwater seepage.

As discussed in Section 3.2.4.2, the potential for acid-forming constituents or other geochemical weathering products to affect surface water quality would be avoided by compliance with RCT regulations. As discussed in Sections 3.2.3.2 and 3.2.4.2, RCT regulations require the analysis of overburden and underburden materials through appropriate acid-base accounting and other tests and the implementation of selective handling plans and follow-up testing during reclamation to ensure that acid- or toxic-forming materials are not placed in the upper 4 feet of the backfill profile.

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The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The site-specific locations for potential future surface coal or lignite mines are not known at this time. Therefore, the type and level of detail required to conduct the requested analysis (e.g., site-specific information and analyses) is not available at this time. As discussed at the beginning of Section 3.2.3.2, water resources impacts from potential future mine expansion areas and satellite mines would be assessed as required by applicable regulatory requirements at the time they are proposed.

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on the analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional monitoring beyond that required by the jurisdictional agencies or additional mitigation may be identified during the project-specific NEPA review that would be conducted at the time future mine expansion areas or satellite mines are proposed (as discussed in Section 2.5). Specific to potential future mine-related groundwater drawdown, the areal extent of groundwater drawdown, associated impacts, and the need for additional monitoring or mitigation would be assessed during project-specific NEPA review based on mine-specific and site-specific information (e.g., mine-specific dewatering/depressurization rates, site-specific hydrogeologic conditions, etc.) that would be available at that time.

Comment:

Strip mining creates water pollution in the form of sediments and heavy metals and requires the pumping of an enormous amount of ground water that can lower levels in the wells of nearby landowners.

McKim, Mark

USACE Response:

The potential for releases of acid drainage and (possibly) associated heavy metals from mining discharges is an acknowledged issue in East and Central Texas. Research and applications to minimize these effects have been implemented since the 1980s. Similar issues are not anticipated to be substantial further southwest and along the Rio Grande due to differences in geologic factors and soil chemistry. As noted in **Table 3.3-1**, acidic and hydric soils are extensive in Study Areas 1 through 3, but are absent or nearly so in Study Areas 5 and 6. Furthermore, potential future mine pits in Study Area 6 are likely to be dry or have minimal groundwater inflows as discussed in Section 3.2.3.2. In the western study areas, these factors would help minimize off site trace element migration into receiving waters such as Elm Creek.

Sediment controls and water quality management prior to discharges from a mine site are regulated by the RCT and TCEQ, as discussed in Section 3.2. Mine discharges must comply with applicable water quality standards and the provisions in their TPDES permits.

The potential need for groundwater pumping varies between the study areas, and would vary from one specific mine to another as discussed in Section 3.2.3. In accordance with RCT requirements, water supply would be replaced if water supply wells are impacted by mining operations.

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Comment:

Under Surface Water, Table 2-10 appears to recommend no mitigation for removal of surface water features such as streams, contrary to current practice and other discussions in the document. Perhaps the lack of clarity lies in the definition of "surface water feature", which is not in the glossary.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

As clarification, surface water features include streams, ponds, lakes, and reservoirs. The definition has been added to the glossary.

The resource analyses in Chapter 3.0 discuss the potential impacts associated with a typical surface coal or lignite mine expansion area or satellite mine, as well as the potential remaining impacts following implementation of the typical environmental protection measures for a typical mine (including typical permit requirements of the various federal and state agencies). In accordance with NEPA, the need for additional mitigation is subsequently determined based on the remaining potential impacts. The impact summary in **Table 2-10** is reflective of the potential remaining impacts and mitigation measures identified in Chapter 3.0. As discussed in Section 2.5, the need for additional or refined monitoring and mitigation may be identified during the project-specific NEPA analysis that would be conducted at the time future mine expansion areas or satellite mines are proposed.

Comment:

With respect to water pollution, groundwater and dust and air emissions, strip mining creates water pollution in the form of sediments and heavy metals, and requires the pumping of enormous amounts of groundwater that could lower levels in the wells of nearby landowners.

Verma, Vik; Organizing for Action East Texas

USACE Response:

Please see Sections 3.2.3.2 and 3.2.4.2 for discussions relative to potential impacts to water resources and Section 3.7.2 for potential impacts to air quality. The discussions include information relative to the typical environmental protection measures (including typical permit requirements of the various federal and state agencies) implemented by surface coal and lignite mines to minimize impacts.

Comment:

Strip mining of lignite creates significant surface water pollution as the mining exposes coal containing high levels of heavy metals, dissolved minerals and salts. The Corps must evaluate the cumulative impact of these discharges on surface waters. The Corps should not assume that because discharges from these mines are permitted by the state of Texas on a site-by-site basis that there are no significant water quality impacts. The Corps should evaluate mining discharges of pollutants to waterways at the regional level for cumulative impacts.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” As discussed in Sections 3.2.3.2 and 3.2.4.2, potential water quality impacts as the result of a typical surface coal or lignite mine expansion area or satellite mine would be minimized or avoided by compliance with RCT, USACE, and other agency permit requirements and regulations. In

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accordance with NEPA, the cumulative impact analyses in Sections 3.2.3.3 and 3.2.4.3 of the REIS evaluate a typical mine's contribution to cumulative water resources impacts based on the direct/indirect impact analyses. Potential direct/indirect and cumulative impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Please clarify what the required water quality monitoring would include in the second paragraph of page 3.2-75 of the DREIS.

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Therefore, a general discussion is provided. Agency-required water quality monitoring would be specified in the mine-specific permits at the time future mines are proposed.

Comment:

Additionally open pit mines, are prone to collecting ground waters and absorbing the toxic chemicals that must contained. Since the mine is located in a floodplain there is a high probability that the mine will flood and these contaminated ground waters will make it into the Elm Creek and be introduced into the environment. Floodwaters can spread into the creek and into the homes and schools along the creek. There is probability that the contamination levels of the Rio Grande will be at a much higher threshold than that what is intended by the TECQ who granted the permit, and ruin the drinking water of the communities along the border. Dos Repúblicas states in proposals that it is taking steps to contain water and control contamination by building water diversions, but at the same time it's making plans to build within a FEMA designated flood plain, which is by nature an uncontrollable area that is prone to flooding. This is a disaster waiting to happen.

Galindo, Melissa

USACE Response:

The Dos Republicas Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine." Potential water resources impacts as the result of a typical mine are discussed in Sections 3.2.3.2 and 3.2.4.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

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Comment:

Section 3.0-Affected Environment and Environmental Consequences:

For each of the six (6) study areas the assessment tends to minimize the importance of ground water pumping and drawdown from surface coal and lignite mines with statements that the degree of ground water pumping from such mining, in comparison to other volumes of ground water pumped for municipal and agricultural purposes, are small. This seems irrelevant if there are impacts to ground water quantity as well as surface water flow that affect other potential users or aquatic habitat.

Price, Kimeka; USEPA, Region VI

USACE Response:

In accordance with NEPA, the affected environment discussions present information to support the direct/indirect impacts analyses of the Proposed Action as well as the cumulative impacts analyses. Therefore, the quantity of groundwater pumpage by use sector for each study area is included in Section 3.2.3.2. Statements that inferred comparison between current pumpage by the coal and lignite mines and the other use sectors previously were modified in response to USEPA's Cooperating Agency comments on the Preliminary Draft REIS and, therefore, were not reflected in the Draft REIS

Comment:

There should be discussion in the DEIS of the need to establish baseline ground water and surface water quality and hydrologic flow regimes through monitoring prior to initiation of mine development and construction activities. Without establishing baseline conditions prior to mining, it is difficult to understand the nature and extent of adverse impacts to ground water and surface water during mining and post mining and the degree of mitigation that would be required. A baseline water quality and hydro logic assessment would include the installation and sampling of upgradient and down gradient monitoring wells in overburden, coal-bearing, and underburden aquifers and the analysis of ground water and surface water samples for all potential contaminants *(e.g.,* target analyte list metals, other inorganics, total dissolved solids (TDS), pH, and uranium) for an adequate period of time to assess baseline conditions. Continued monitoring of ground water and surface water quality and hydrologic flow regimes would need to be continued throughout mining and after cessation of mining until all known impacts are mitigated.

Price, Kimeka; USEPA, Region VI

USACE Response:

Mining companies are required to prepare baseline studies/documentation for proposed mines in accordance with the requirements of the various federal and state agencies with permitting authority, and to maintain compliance with the requirements (e.g., groundwater and surface water monitoring) of the various permits obtained. The typical permits that would be required by potential future mines at the time they are proposed and the associated permitting authority are identified in **Table 1-1**. The applicable regulations and agency programs specific to water quality are identified in Section 3.2.2 and are discussed further in the context of the groundwater and surface water resources impact analyses (Sections 3.2.3.2 and 3.2.4.2, respectively), as applicable. Further discussion of these regulations is not required under NEPA; rather, the level of detail is tailored to support the impact analysis.

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Comment:

The DREIS states that diversions of perennial or intermittent streams may result in sedimentation, alteration of flow depths and velocities, contributing to flooding or channel down-cutting or widening, and adversely affecting aquatic habitats. Please include the TCEQ as an agency to review and assess diversion designs prior to approval to minimize the potential for adverse surface water impacts (page 3.2-72).

Galindo, David; Texas Commission on Environmental Quality

USACE Response:

The referenced text is in relation to RCT and USACE review and approval of diversion designs for perennial and intermittent streams in accordance with their respective regulatory programs.

Comment:

In the case of the proposed Dos Repùblicas Coal Partnership mine, this reliance on rules of thumb has led the TCEQ, at least so far, to mis-characterize the aquatic life uses in at least one tributary of Elm Creek and in one tributary of Hediondo Creek, which is itself a tributary of Elm Creek. (Roughly, Elm Creek flows north-south through the would-be mine, and Hediondo Creek is on the mine's southwest border.) These tributaries were classified by TCEQ as having "limited" aquatic life uses. Maverick County hired an aquatic biologist to conduct a site-specific aquatic-life-use assessment on the Hediondo Creek tributary and on one of the Elm Creek tributaries. His assessment relied on an accepted measuring tool, the Index of Biotic Integrity, and his assessments resulted in either a "high" or "intermediate" aquatic life use for the Hediondo Creek tributary and an "intermediate" aquatic life use for the tributary of Elm Creek for which he conducted an assessment. (There are five other waste water discharges to routes that TCEQ has characterized as Elm Creek tributaries and to which it, relying on its rules of thumb, has assigned "limited" aquatic life uses. Additionally, there are four other waste water discharges to routes that TCEQ characterized as "ditches" and has assigned "minimal" aquatic life uses.)

Because the aquatic life uses were not assessed on the ground by either Dos Repùblicas Coal Partnership or TCEQ, TCEQ, following its EPA-approved *Water Quality Standards Implementation Procedures*, did not conduct Tier 2 antidegradation analyses for the tributaries to which the discharges will occur. I think TCEQ contends it did conduct a Tier 1 antidegradation analysis for each of these discharge routes, but, inasmuch as TCEQ had no solid data for existing uses in those ditches and tributaries, such a contention would seem open to dispute. Those *Implementation Procedures* deem stream segments with "intermediate" or higher aquatic life uses to merit Tier 2 analyses, while segments with "limited" or lower aquatic life uses do not.6 As a result, there has been for these tributaries no examination as to whether and to what degree water in these fishable/swimmable tributaries will be degraded by the discharges.

So, when the Corps relies on the State to issue TPDES permits for mines that protect water quality, that reliance is based on an unreliable premise.

Frederick, David; Frederick, Perales, Allmon & Rockwell PC

USACE Response:

The analysis of procedures or regulations of other agencies with permitting authority for surface coal and lignite mines in Texas is outside the scope of the USACE REIS. The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" to facilitate the preparation of tiered and supplemented NEPA documents for future surface coal and lignite mine expansion areas and satellite mines.

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For further engagement with TCEQ regarding stream classifications and associated standards, the agency has an established Continuing Planning Process, as well as procedures for reviewing and implementing water quality standards. These state programs are described at the following sites:

http://www.tceq.state.tx.us/waterquality/planning /CPPMain.html

http://www.tceq.state.tx.us/waterquality/standards/WQ_stds

In addition, guidance on water quality standards administration and participation, notably including stakeholder involvement, is available at:

http://www.tceq.state.tx.us/publications/gi/gi-351.html

Transportation

Comment:

Nowhere in the REIS is it stated that all of the coal mined in Study Area 6 (Maverick County) will be shipped to Mexico to be burned in the highly polluting Carbon I and II power plants in Nava (only 7 miles from Eagle Pass). Nowhere does it say that Texas will receive none of the energy benefit from this coal, only all the negative consequences from the air contamination off the mine itself, off the train that will transport the coal to Mexico every day through the middle of Eagle Pass and from the Nava power plants (whose unregulated pollution reaches Big Bend Park and the interior of the United States).

Baxter, George

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a "typical mine" expansion area or satellite mine. The Dos Republicas Eagle Pass Mine in Maverick County, which is the mine referenced in the comment, has already been authorized by both the USACE and the RCT. USACE's area of responsibility generally is limited to waters of the U.S. and associated riparian/fringe buffer areas, while the RCT's area of responsibility is generally the entire mine permit area. The REIS is not intended to address management of existing mines. Furthermore, the USACE does not have the statutory authority to regulate existing coal-fired power plants previously permitted by other agencies in the U.S., or in other countries.

Potential transportation-related impacts associated with a typical mine are discussed in Section 3.10.2, and potential air quality effects are discussed in section 3.7.2. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., proposed transport of coal or lignite) available at that time.

Comment:

The road alterations and closures associated with mining can also affect established property values and communities.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

Information relative to potential effects of a typical surface coal or lignite mine expansion area or satellite mine on property values has been added to the Population and Housing subsection under Section 3.9.2.1.

Comment:

Another thing is figure A-22 of the transportation and hazards materials. Will there be railcars traveling in and out of the permit area to Spofford? That is something that possibly we could look into and maybe expand the study area all the way and into Spofford.

Ruiz, Luis

USACE Response:

The direct/indirect study area for Study Area 6 is presented in **Figure 3.10-6**. As shown, the direct/indirect study area also includes the rail line to Spofford as shown in the cumulative effects study area figure referenced in the comment.

Vegetation (including Special Status Species)

Comment:

Under Vegetation, Table 2-10 should include Species of Greatest Conservation Need (SGCN), Rare Communities, and Priority Habitats listed in the Texas Habitat Action Plans (TCAPs) in the recommendation for surveys for special status species. Also, a requirement should be included for monitoring and appropriate treatment according to USACE standards for non-native and invasive plants in disturbed areas, particularly mitigation areas.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The resource analyses in Chapter 3.0 discuss the potential impacts associated with a typical surface coal or lignite mine expansion area or satellite mine, as well as the potential remaining impacts following implementation of the typical environmental protection measures for a typical mine (including typical permit requirements of the various federal and state agencies). In accordance with NEPA, the need for additional mitigation is subsequently determined based on the remaining potential impacts. The impact summary in **Table 2-10** is reflective of the potential remaining impacts for a typical mine and the associated mitigation measures as discussed in Chapter 3.0. As discussed in Section 2.5, the need for additional or refined monitoring and mitigation may be identified during the project-specific NEPA analysis that would be conducted at the time future mine expansion areas or satellite mines are proposed.

As discussed in Section 3.4.1.2, special status species are those species that are afforded legal protection under federal or state laws and regulations. Species of Greatest Conservation Need (SGCN), along with rare communities and priority habitats, lack legal protection. Some species considered SGCN are also federally and state listed and receive protection under the Endangered Species Act (ESA) and Texas laws and regulations pertaining to endangered or threatened animal species (Chapters 67 and 68 of the Texas Parks and Wildlife Code and Sections 65.171 - 65.176 of Title 31 of the TAC and plant species (Chapter 88 of the Texas Parks and Wildlife Code and Sections 69.01 - 69.9 of the TAC).

As discussed in Section 3.4.2, the establishment of noxious weeds or invasive plant species would be minimized to the extent possible through prompt revegetation and pesticide use (as discussed in Section 2.2.4.3, Typical Closure and Reclamation) and the maintenance of disturbed areas in compliance with RCT reclamation standards and USACE Fort Worth District compensatory mitigation standards.

Comment:

The Draft REIS states that mitigation measures may include surveys for special status plants, riparian areas and non-jurisdictional wetlands. No indication is given as to what conditions might indicate a need for these activities. TPWD suggests that knowledge of these features is important to accurately characterize direct and indirect impacts from potential permit actions, and recommends that these surveys instead be listed as required for future projects unless verified information is provided indicating they are not necessary. Where these features are not proposed to be directly impacted, adequate protective buffers should be provided around these features. Monitoring for degradation through the mining and reclamation phases of the project should be required, and mitigation required if impacts occur.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring

Vegetation (including Special Status Species)

and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional or refined monitoring and mitigation may be identified during the project-specific NEPA analyses that would be conducted at the time future mine expansion areas or satellite mines are proposed as discussed in Section 2.5. The final mitigation measures that an applicant would be required to implement are incorporated into the agency's decision document.

Comment:

The Draft REIS also states that relocation of select plant species (e.g. pitcherplant) may occur, depending on site-specific conditions at future mines. No indication is given as to what conditions might indicate a need for these activities. TPWD recommends that a list of special plant species and communities warranting relocation be developed in coordination with the resource agencies, or that a requirement be included that coordination occur to develop such a list on a project-specific basis as they are proposed. In the event that relocation is not feasible, harvesting propagules for restoration elsewhere or providing a protective mechanism on similar areas with the affected species should be considered.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

In accordance with NEPA, monitoring and mitigation measures are identified, as needed, to minimize potential impacts identified based on analysis of the Proposed Action. Thus, the monitoring and mitigation measures identified in the REIS were identified based on the potential impacts associated with a typical mine as described in Section 2.2.4. The need for additional or refined monitoring and mitigation may be identified during the project-specific NEPA analyses that would be conducted at the time future mine expansion areas or satellite mines are proposed as discussed in Section 2.5. The final mitigation measures that an applicant would be required to implement are incorporated into the agency's decision document.

As stated in Section 3.4.4, the relocation of select plant species would be conducted in coordination with the applicable jurisdictional agency.

Waters of the U.S., including Wetlands

Comment:

EPA was given certain responsibilities in conjunction with the Corp of Engineers for protecting the environment in CWA 404 permitting. When the lead agencies for this project apply for a CWA 404 permit, EPA will be required to comment on the USACE Public Notice at that time. Our review will seek to ensure that the EIS promotes contemporaneous wetland replacement and mitigation during the mining process, mitigation is designed to be self-sustainable, and sustainable riparian corridors are emphasized. Specifically, stream restoration efforts should avoid the use of structures and focus on establishing stream and riparian corridors with natural channel features and adequate room for the stream to develop a stable channel.

Price, Kimeka; USEPA, Region VI

USACE Response:

Comment noted.

Comment:

VI. The Corps' DEIS Is Premature and Non-Specific

The Corps' DEIS is not accompanied by drafts of the RGP or the LOP it intends to issue. That makes it impossible for the public and agencies to evaluate what the impacts of the RGP or LOP are likely to be and to prepare meaningful comments. It also violates the CEQ regulations, which provide that the draft EIS "shall normally accompany the proposed rule." 40 C.F.R. § 1502.5(d). As a result of this omission, the DEIS is largely just a compendium of the procedures that the Corps intends to follow. There is virtually no analysis of real-world impacts of the proposal on the six Texas study areas to which the RGP and LOP would apply. In addition, except for quantifying the number of acres of surface disturbance from past and projected future mining, there is no analysis of the actual effects of surface coal mining activities on waters in Texas. Indeed, the DEIS frankly acknowledges that "[r]esidual adverse effects to waters of the U.S., including wetlands, have not been identified." DEIS at 3.2-97.

As a result, the DEIS is a largely academic exercise with no value to decision-makers or the public. It is so non-specific that it is impossible for the public to comment meaningfully at this stage of the process. It also fails to comply with the Corps' duty to identify and evaluate the impacts of its proposal. 40 C.F.R. § 1502.16.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

While the proposed regulatory framework includes changes to the thresholds for the types of Section 404 permits that may be issued for future surface coal and lignite mine expansion areas and satellite mines, the current USACE Fort Worth District Section 404 mitigation guidelines would continue to be applied as noted in Section 2.2. The current mitigation guidelines are described in Section 2.1.2. In accordance with NEPA, the impact analyses in the REIS identify potential resource impacts associated with the proposed regulatory framework and evaluate the effectiveness of agency-required mitigation in minimizing the impacts.

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a typical surface coal or lignite mine expansion area or satellite mine. The site-specific locations for potential future surface coal or lignite mine expansion areas and satellite mines are not currently known. Therefore, the type and level of detail required to conduct the requested analyses is not available at this time. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they

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are proposed, taking into account mine-specific and site-specific information available at that time.

The intent of the referenced text on page 3.2-97 of the Draft REIS was to indicate that no residual adverse impacts to waters of the U.S., including wetlands, have been identified as losses would be mitigated through implementation of detailed compensatory mitigation plans that would be approved by the USACE Fort Worth District. The text has been revised for clarification.

Comment:

The DEIS should have analyzed and provided a quantitative analysis of the following issues, and should have included a comparison of the alternatives and how they would differ in their impact on these issues:

Lignite strip mining permanently destroys wetlands that provide valuable wildlife habitat and water quality benefits. Wetlands also provide flood mitigation and promote the recharge of groundwater a rare and precious resource in this increasingly arid state. The DEIS merely provides a chart with a list of how many acres the Corps anticipates may be disturbed by future coal mining activities. It fails to discuss the quality of those wetlands, how the disturbance of those wetlands would affect surrounding and connected ecosystems, or what specific mitigation measures would need to be implemented to reduce the impacts to those wetlands to less than significant levels.

Fairbanks, Brianna; Sierra Club Environmental Law Program

Comment:

Lignite strip mining permanently destroys wetlands that provide valuable wildlife habitat and water quality benefits. Wetlands also provide flood mitigation and promote the recharge of groundwater -- a rare and precious resource in this increasingly arid state. The Corps should evaluate how the expansion of 250 square miles of lignite mining, as is expected, will cumulatively impact flood mitigation and groundwater recharge.

Fairbanks, Brianna; Sierra Club Environmental Law Program

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” The locations of potential future surface coal or lignite mine expansion areas or satellite mines are not currently known. Therefore, the type of information needed to conduct the requested analyses is not currently available. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information available at that time.

Comment:

Under Waters of the U.S. it is not clear why streams are not discussed as they are clearly waters of the U.S. Between this heading and the Surface Water heading, Table 2-10 is confusing as to how various waters are categorized and treated. The table should clearly state that full compensation is required, including potentially additional on-site or off-site mitigation if reclamation alone does not provide adequate in-kind mitigation for direct, indirect, cumulative, and temporal impacts.

Heger, Tom; Texas Parks and Wildlife

USACE Response:

The REIS presents a regional, rather than site-specific, analysis of potential impacts from a “typical mine.” As discussed in Section 3.2.5.2, not all streams meet the regulatory definitions of waters of the U.S. enforced by the USACE and USEPA. Therefore, for the REIS analysis, potential impacts to

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waters of the U.S. can only be assumed to be similar to the impacts described for surface water in Section 3.2.4.2 until delineations of waters of the U.S. are performed for specific mine permits. A footnote has been added to **Tables ES-4** and **2-10** for clarification. Potential impacts associated with future surface coal and lignite mine expansion areas and satellite mines will be assessed as required by applicable regulatory requirements at the time they are proposed, taking into account mine-specific and site-specific information (e.g., waters of the U.S. delineations) available at that time.

The impact summary in **Table 2-10** is reflective of the potential impacts of a typical surface coal or lignite mine expansion area or satellite mine following implementation of the typical environmental protection measures for a typical mine (including typical permit requirements of the various federal and state agencies). Additional details are presented in Section 3.2.5.2. The required mitigation ratios for reclamation would be specific to an applicant's Section 404 permit requirements as discussed in Section 2.2.4.3.