

TREAD Coalition: Cities, Water Authorities Issue Warning to Federal Government: Make Permian Highway Pipeline Comply with the Endangered Species Act

San Marcos, TX – The TREAD Coalition applauds a coalition of Central Texas cities and conservation organizations who are notifying the federal government they will sue if it fails to hold Kinder Morgan’s Permian Highway Pipeline (PHP) project accountable to requirements outlined in the Endangered Species Act (ESA). The cities of Kyle, Austin, and San Marcos have joined with the Barton Springs Edwards Aquifer Conservation District and the Wimberley Valley Watershed Association to issue a notice of intent (NOI) to the United States Fish and Wildlife Service (USFWS) and U.S. Army Corps of Engineers (USACE) — a formal letter required prior to filing suit to enforce violations of the law.

Earlier this year, Central Texans learned that Kinder Morgan’s (#KMI) plans to build a 42-inch, high-pressured natural gas pipeline from West Texas to the Houston area would include transporting the toxic and flammable substance through some of the most ecologically sensitive features in Central Texas and the Hill Country. The proposed route does not require approval from any state agency even though it crosses the Edwards and Edwards-Trinity Aquifers, which supply drinking water for over two million people. The pipeline will also cut directly through the habitat of endangered species such as the Golden-cheeked Warbler, the Barton Springs Salamander, and the Austin Blind Salamander, among others. All ESA-listed species are granted certain protections from such development under the ESA.

This is the second NOI issued from communities of interest along the PHP route in just three months. The concerns are similar to the one submitted over the summer, insofar as both NOIs raise legal violations concerning Kinder Morgan’s attempt to obtain a general permit from the USACE called a Nationwide 12 permit instead of seeking a more rigorous individual permit under the Clean Water Act. The TREAD Coalition believes that in doing so, Kinder Morgan is attempting to avoid the robust steps needed to fully mitigate the impact of pipeline construction and operation to the aquifers and myriad endangered species in the area. These steps include obtaining a biological opinion from USFWS as well as the preparation of an incidental take permit and the creation of a habitat conservation plan, both of which are called for when any action – direct or indirect – presents a significant threat to a species or its habitat in wetlands under the USACE’s jurisdiction as well as in uplands on private lands. A project of this size applying for an individual permit would also require review under the National Environmental Policy Act (NEPA), which would allow the impacted community to participate in a transparent

process that considers all the harms and compares alternatives in an environmental impact study.

“It is beyond legitimate scientific dispute that Kinder Morgan’s construction and operation of its large pipeline through these sensitive areas will pose a serious threat to these aquifers and the endangered and threatened species that live there,” said lead attorney William Eubanks. “As a result, there are several legal obligations that the USACE, USFWS, and Kinder Morgan must satisfy to ensure compliance with the ESA, Clean Water Act, and National Environmental Policy Act.”

“This troubling approach would subvert the carefully crafted balance Congress created between complementary provisions of the ESA,” said Eubanks.

In contrast to the previously submitted NOI which focused exclusively on the protections afforded to the ESA-listed Golden-cheeked Warbler, the new NOI emphasizes the need for legal compliance with respect to several aquifer-based species in the region that are protected by the ESA. Although the species involved in the two NOIs are different, the serious legal concerns raised by the NOIs overlap in many respects.

“This new NOI asserts that the aquifers – which are a primary source of drinking water to the region – and which provide essential habitat for the endangered species that reside therein, are under direct and indirect threat by the pipeline,” said Eubanks. “Based on information and belief, Kinder Morgan has no intention of making public its plans to mitigate the damage caused by this pipeline.”

“At this point, we are dealing with a known entity,” said TREAD spokesperson Elyse Yates. “Kinder Morgan chose this route *before* hiring an environmental consultant, and refuses to make its internal environmental studies public. We have no idea what the company knows about the impact of the pipeline on the region’s water quality and endangered species. It is simply not enough for them to tell us to trust them.”

The NOI references eight endangered and threatened species that will be affected by the PHP, including the Golden-cheeked Warbler, the Barton Springs salamander, the Austin Blind salamander, the San Marcos salamander, the Texas Blind salamander, the Fountain darter, the Comal Springs dryopid beetle, and the Comal Springs riffle beetle.

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