

STEPTOE & JOHNSON ^{LLP}
ATTORNEYS AT LAW

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David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

April 10, 2007

VIA HAND DELIVERY

Ms. Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

**Re: STB Finance Docket No. 34284, Southwest Gulf Railroad Company –
Construction and Operation Exemption – Medina County, TX**

Dear Ms. Rutson:

This letter will reply on behalf of Southwest Gulf Railroad (SGR) to the January 21, January 29 and February 22, 2007 comments submitted by the Medina County Environmental Action Association in response to the Supplemental Draft Environmental Impact Statement (SDEIS) issued in this proceeding. Before turning to those comments, however, SGR notes that several dozen comments have been filed in response to Draft Supplemental EIS. These include two separate petitions signed by over 490 persons expressing support for Vulcan's project. (see EI-2772 and EI 2773). While SGR recognizes and agrees that this proceeding is not a "popularity contest", the views of this large number of persons should not be overlooked by SEA or the Board.

While a great number of persons support the SGR project, which will bring jobs and tax revenues to an area where there are currently few economic opportunities, SGR also recognizes that a number of landowners in the area are opposed. SGR appreciates the views of those who oppose its proposal and understands their concerns. At the same time, some of the opposition stems from perceptions about the impact of the railroad on the immediate area that are overblown and/or not accurate. SGR intends to be a good neighbor and to make its rail line as unobtrusive as possible. In that regard, SGR notes that it will be subject to dozens of mitigation measures, including voluntary measures, which will address many of the concerns that have been raised. SGR also believes that the environmental work done to date does a good job in

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identifying and addressing the concerns that have been raised. SGR will of course be pleased to respond to any specific questions that SEA may have as the process moves toward a Final EIS.

It also merits note that there are numerous landowners who have submitted comments in opposition to the Eastern Routes ~~that are the~~ focus of the Supplemental EIS. This is not surprising as the Eastern Routes have spawned the same type of “put the railroad somewhere else” opposition that was evident in the comments of those whose homes are located near the SGR-favored Proposed Route. As with the Proposed Route, SGR does not believe that any of these comments of Eastern Route landowners disqualify the Eastern Routes, or that the concerns raised by these commenters cannot be addressed through the proposed mitigation measures. But it should not be overlooked that the Eastern Routes predictably have bred their own opposition, just as the Proposed Route has done. In assessing which routes are environmentally preferable, SGR submits that SEA should not dismiss the Proposed Route, particularly in light of the additional voluntary mitigation that has been offered to address the cultural resources concerns relative to that Route.

We now turn to the MCEAA Comments, which SGR will address in chronological order of their submission.

MCEAA January 21 Comments –

Road improvement issues – MCEAA claims that Vulcan will use more trucks for local service than has been acknowledged to date. The number of trucks that will be utilized for local service will ultimately be driven by local demand, which could grow over time. Vulcan’s estimate of 100,000 tons per year is within the range of what is reasonable and possible for the reasonably foreseeable early years of quarry operations.

Whatever the actual volume of local shipments, Vulcan has consistently expressed its willingness to work with County officials to upgrade county roads necessary for accessing the quarry from FM 2676, and has in fact engaged in such discussions toward that end. The degree of such upgrading will not necessarily vary in any significant way based on the precise number of trucks that will be used as the roads will need to be widened and repaved regardless of the exact number of trucks. Vulcan intends to move forward with its discussions with the County and is confident that it will come to terms. In any event, MCEAA’s concern about road improvements has nothing to do with the issue before SEA, which is the rail line. To the extent that MCEAA appears to favor the no build option, its policy would result in the operation of many more trucks over local roads than MCEAA assumes in its January 21 letter.

Plans for UP to operate over SGR Line – MCEAA raises issues and questions that turn on its assumption that Union Pacific will operate trains on the SGR line. SGR currently has no agreement in place with UP to operate over the line. Whether UP operates the line in the future or not is not at issue in this proceeding, which involves SGR’s petition to build and operate the line. Further, SGR knows nothing about any refusal of UP to build the line at issue.

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Location of Fuel Storage and Maintenance Facility – MCEAA claims that the fuel storage and maintenance facility should be moved to the southern terminus of the line, claiming that the planned location near the quarry threatens the Edwards Aquifer. Vulcan and SGR have opted to have one central facility near the quarry site for the storage of fuel and for maintenance since a centralized facility could serve both the quarry and the railroad. Moving this facility to the south terminus of the rail line makes it totally impractical to serve the quarry from that point, and would mean having two facilities (one for the railroad and one for the quarry), which would only increase whatever minimal security and safety risks are posed by such a facility, not to mention the additional unnecessary economic cost of duplicate facilities.

The location of the fuel and maintenance facility has been approved by the TCEQ. The fuel/maintenance facility will not be located over the Edwards Aquifer Recharge Zone. Neither will the facility be located over the transition zone. Further, the facility also will not be located in the floodplains of either Elm or Pole Cat creek. In addition, there will be measures taken to prevent spills as per the Spill Prevention, Containment and Countermeasures Control Plan that SGR is required to develop under proposed Mitigation Measure 16 and EPA rules. SGR is also obligated by the proposed mitigation to “monitor stream beds, land and water quality in the vicinity of the rail line for indications of diesel and gasoline releases, . . . take appropriate action to prevent diesel or gasoline releases and . . . remediate any contaminated soils as soon as practicable.” See Mitigation Measure 18. Further, the fuel tanks will be double walled and, in addition, reside within a concrete containment structure. Thus, the risks of a spill will be greatly reduced. Workers at the quarry plant, including those who will work at the fuel/maintenance facility, will receive training in the handling of fuel and in spill prevention as required by federal rules.

Ground Water Issues – MCEAA once again raises the issue of vibration from quarry blasting damaging wells. However, the Draft Supplemental EIS determined that “damaging or perceptible quarry-activity-related ground vibration, including blasting vibration, would not propagate outside the quarry boundary.” DSEIS at 4-26.

As to the availability of water, SGR has consistently advised SEA that it may acquire water from sources other than the Edwards Aquifer. At this stage, it is not certain that SGR will need to do so and thus the location of where this water might be obtained cannot be identified at this time. In any event, MCEAA has no grounds to complain if SGR obtains water from sources other than the Edwards Aquifer.

As to water that Vulcan might need for quarry operations, that issue is beyond the scope of this proceeding. Nonetheless, SGR notes that MCEAA has misread the October 12, 2006 letter to SEA. That letter states that Vulcan may opt to purchase Edwards Aquifer water rights from others to supplement its own, existing water rights. The potential acquisition of such supplemental water rights is not unusual and has been contemplated all along. SGR’s October 12 letter was prompted by a potential (but not adopted) mitigation measure that would limit SGR to using Vulcan’s existing Edwards Aquifer rights. It bears note that the total amount of water that can be drawn from the Edwards Aquifer is capped by law, so even if Vulcan were to

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purchase additional usage rights it would not result in any net increase in water drawn from the Edwards Aquifer.

Finally, Vulcan's possible use of well water in the surrounding area and the means for the transportation of such water to the quarry site has nothing to do with the SGR rail line, MCEAA's inquiries notwithstanding. Should Vulcan decide to drill a well into the Trinity Aquifer, it will seek an appropriate permit to do so.

MCEAA January 29 Comments –

Much of MCEAA's January 29 Comments consists of misinformed rhetoric critical of SEA's processes and threats of a lawsuit if SEA were to recommend the Proposed Route among others. Neither the rhetoric nor the threats warrant a reply; SEA is well-informed regarding the licensing process for new railroads. It is also well-informed about its considerable body of precedent in which it has recommended more than a single environmentally acceptable route over which an applicant can choose to build its railroad. As long as SEA adheres to the requirements of NEPA and the National Historic Preservation Act, it should not be concerned with threats of lawsuits.

Programmatic Agreement -- MCEAA claims that the Programmatic Agreement needs to be re-written, and claims that SEA has so stated in the SDEIS. The document speaks for itself in that regard, and does not recommend that a new PA be written. Regardless of which alignment SGR eventually uses to build its railroad (if any), SGR believes that the same PA terms now in place will be sufficient to ensure appropriate mitigation of currently unknown resources. If any change is needed to the PA, it is to take into account the landscape work that has already been done and ensure that it is not redone. SGR looks forward to the views of the other planned signatories to the PA – THC, the Advisory Council and SEA – about any such changes that they believe may be warranted. To the extent that other parties have constructive comments to offer about specific edits, they are free to offer them.

Gerdes Ranch – MCEAA notes that the Proposed Route would bisect the Gerdes Family Land Heritage Ranch, whereas the Eastern Routes will not. SGR has offered to modify the Proposed Route to avoid bisecting this property, and traverse along the eastern edge of County Road 353, which is currently the eastern boundary of that property. This proposed voluntary mitigation is depicted on one of the maps submitted to SEA under cover of a letter from undersigned counsel to SEA dated March 29, 2007. Further, this voluntary mitigation is also described in the April 5 letter from MCEAA to SEA, THC and the Advisory Council.

Gas Pipeline – MCEAA claims that there are dangers in locating a railroad in a pipeline right of way. MCEAA cites a document submitted by Union Pacific in response to a discovery response in another Texas rail construction case (Bayport Loop) in an effort to show the dangers of pipeline/rail crossings.

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UP, which is party to over 100,000 pipeline crossing agreements, in fact expressly agreed with SEA's Draft EIS in that proceeding "that railroads and pipelines can safely co-exist." See February 21, 2003 Comments of Union Pacific Railroad Company at page 1, submitted in Finance Docket No. 34079, *San Jacinto Rail Limited – Authority to Construct, etc.* UP proceeded to state at pages 1-2 of those Comments as follows:

When appropriate care is taken in the construction, operation and maintenance of pipelines that cross or are near rail lines – as well as rail lines that cross or are near pipelines – damage to pipelines can be prevented and safety can be assured. When adequate safeguards are employed pipelines can be protected from damage due to derailments and the many other activities essential to the operation of railroads, such as use of excavating equipment to build and maintain railroad lines, the loadings associated with passing trains, and operation of vehicles by railroad employees who operate and maintain the railroad.

Here, SEA has proposed that SGR be subject to a mitigation measure requiring that it consult with the owner of the only active pipeline in the area prior to beginning construction and to modify the design of the railroad so as to make sure that it will not adversely affect the pipeline's integrity at the point where the railroad crosses the pipeline. (Mitigation Measure No. 2). SGR would also be subject to a requirement that it consult with the pipeline owner to ensure that the integrity of the pipeline is not adversely affected by vibration. (Mitigation Measure 41). In addition, SGR intends to engineer its railroad in conformity with recognized rail industry engineering standards that are geared to address the safety pipeline/rail crossings and of pipelines and railroads that run parallel to one another. In short, MCEAA has offered no basis for SEA to reconsider its determination that the pipeline can be safely crossed by the SGR line, as is the case with tens of thousands of such crossings that exist throughout the United States.

Cumulative Impacts of Vibration and Noise – MCEAA repeats the same arguments it has made to date about cumulative quarry and rail vibration and noise impacts. The SDEIS found that none of these impacts would lead to a significant adverse impact. The mitigation proposed in the SDEIS, which SGR is prepared to implement on any of the routes, adequately addresses these issues.

Flooding – MCEAA remains dissatisfied because it wants SEA to conclude that the construction of SGR's rail bridges will result in flooding. SGR will engineer the bridges to ensure that this does not happen – for its own benefit and for that of the surrounding community. SGR also stands by its voluntary mitigation to do sophisticated hydrological studies to ensure the proper design of its bridges. SGR will work closely with the County Floodplain Administrator and, as warranted, the Corps of Engineers to ensure that its stream crossings do not result in flooding.

San Antonio Rail Issues – MCEAA apparently asks SEA to acknowledge that there is congestion on the UP line in the San Antonio area and that the addition of SGR's traffic could

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add to that congestion. While SGR does not agree that the impact of SGR's traffic on the UP line is a matter within the proper scope of this proceeding (to which UP is not even a party), MCEAA appears to acknowledge that improvements to the rail system in the San Antonio area make "further cumulative analysis of this issue unnecessary in this EIS." SGR does not disagree with MCEAA's contention.

No action alternative – MCEAA seems to argue that because Vulcan has not yet begun quarry operations and not yet used trucking to support those operations, this proves that the quarry is a connected action relative to the rail line. SEA has already laid this issue to rest, and properly so. The quarry can be served by truck or it could be served by rail, and both options remain on the table. Vulcan will of necessity consider the trucking (no action) alternative since that alternative may end up being considerably more economical than building any of the Eastern Routes, at least for a period of years until the quarry ramps up to full production. That analysis will come at a later point. At the same time, SGR has consistently stated that it prefers the rail option and the Draft SEIS underscores that this is a more environmentally friendly option for the community as well.

MCEAA February 22 Letter --

In this letter, MCEAA comments on SGR's proposals on certain of the mitigation measures. SGR will respond here.

Measure 15A – SGR proposed that it implement SEA's proposed track lubricant program for the loading loop only if the Edwards Aquifer Authority does not object. MCEAA does not seem to object to this modification, but raises the same issue noted above regarding the location of the fuel/maintenance facility. Such a relocation, and resulting duplication of facilities, was rejected by SGR and Vulcan for the reasons stated above.

Measure 3 – SGR has volunteered to use continuously welded rail for its rail line as a means of mitigating noise. As SGR advised SEA in its January 10, 2005 comments, it has been informed by a rail engineering firm that the use of such rail on the loading loop may not be possible and thus SGR has clarified that its willingness to voluntarily use welded rail extends to all of the line except the loading area. Any noise will be minimized since the trains in the area will be moving very slowly, and SGR will use track lubricants if permitted to do so.

Measure 6 -- SGR has proposed that this mitigation measure, which currently requires "appropriate" grade crossing warning devices at at-grade crossings, be revised to clarify that what is appropriate will be that type of warning device that is "consistent with recognized highway safety standards taking into account the level of highway traffic at the crossing." SGR's proposed language is not designed to reduce the level of protection, but simply to make note of the recognized standards that govern the determination of the nature of the crossing. Further, as this measure provides, SGR will consult with TxDOT and the County on protective measures. SGR is fully committed to safe grade crossings. Grade crossing safety is as much in SGR's interest as that of County residents.

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Measure 24 – MCEAA claims that SGR's proposed modification of this mitigation measure regarding conducting studies for the County Flood Plain Administration and obtaining a permit from the County would render the mitigation meaningless or unenforceable. That is not true. SGR simply asks that the measure be re-worded to require that it conduct floodplain studies for the County Floodplain Administrator and consult with the Administrator to ensure that permitting standards are met with respect to the crossing of the floodplain. MCEAA simply doesn't believe that the floodplain can be crossed in a way that is consistent with those standards and that will not result in flooding. It believes too that the Administrator is likely to be misled by SGR's engineers, as will FEMA and the STB. MCEAA does not explain why SGR would wish to even attempt to mislead all of these agencies if the end result would be the flooding of its own rail line.

Measure 30 – This proposed mitigation measure would require SGR to avoid placing fill material or other structures in the ordinary high water mark of a creek channel. SGR has asked that SEA consider revising the mitigation measure to provide that SGR comply with any Corps requirement relative to placing fill materials in the ordinary high water mark of any stream crossings. MCEAA's comments in response to SGR are merely to repeat its assertion that SGR cannot build bridges across the creeks without causing flooding. The assertion has been answered previously. Further, to the extent that a Corps of Engineers permit will be required for any stream crossing, SGR will be obligated to obtain such a permit prior to construction. Any such Corps permit will address the use of fill materials.

Measure 32 – MCEAA expresses concern that changing the slope ratio from 4:1 to 2:1 for graded embankments will heighten the risk of derailments or degrade safety. There is no evidence that this is the case. Graded embankments using a 2:1 ratio are common practice in the rail industry.

Measure 33 -- MCEAA criticizes SGR's proposal that it use best management practices to avoid or minimize disturbing natural buffers in the area during construction. MCEAA's criticism is without foundation.

Measure 41 -- MCEAA's comment on this mitigation measure, which SEA has recommended be replaced with measure 17A, finds no basis in the record of this proceeding. SGR concurs in SEA's recommendation that it conduct a pre-construction survey to locate wells and to monitor vibration levels at the wells during construction.

Measure 45 – We have previously commented on the PA. SGR looks forward to any constructive comments that MCEAA or others may have on the PA.

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We look forward to any questions that SEA may have on the above.

Respectfully,



David H. Coburn
Attorney for Southwest Gulf Railroad

cc: Ms. Diana Wood
Ms. Jaya Zyman-Ponebshek