



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

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FD-34284
07W

MEMORANDUM

September 9, 2008

TO: David Konschnik, Director
Office of Proceedings

FROM: Victoria Rutson, Chief
Section of Environmental Analysis

SUBJECT: **Docket No. FD-34284, Southwest Gulf Railroad Company – Construction and Operation Exemption – in Medina County, TX**

On May 30, 2008, the Section of Environmental Analysis (SEA) issued the Final Environmental Impact Statement (FEIS) for a proposal of Southwest Gulf Railroad Company (SGR) to construct and operate a rail line in Medina County, Texas. In making its final decision on the proposed project, the Board will consider the transportation merits of the proposal and the entire environmental record, comprised of all public comments, the Draft Environmental Impact Statement (DEIS), the Supplemental Environmental Impact Statement (SDEIS), the FEIS, and SEA's final recommended mitigation.¹

Following issuance of the FEIS, the following correspondence was submitted to the Board:

(1) SGR filed a letter asking the Board to modify four of the 91 environmental mitigation measures (F-28, F-31, F-32, and F-61) recommended for approval in the FEIS;

(2) the Medina County Environmental Action Association (MCEAA) filed a letter asking the Board to retain SEA's proposed mitigation in measures F-31 and F-61 rather than adopting SGR's proposed modifications;

¹ SEA distributed the FEIS to all parties of record (interested Federally recognized tribes; appropriate Federal, state, and local agencies and elected officials; and persons expressing an interest in receiving a copy of the FEIS or participating in the environmental review process for this proceeding).

(3) MCEAA also filed a letter requesting that the Board delay its decision on the FEIS, pending completion of a Memorandum of Understanding (MOU) between SGR and Medina County for infrastructure improvements in the project area; and

(4) the U.S. Fish and Wildlife Service (USFWS) filed a letter requesting additional information and consultation in connection with the golden-cheeked warbler (*Dendroica chrysoparia*), a Federally-listed endangered species under the Endangered Species Act (ESA).

This memo provides SEA's recommendations on how to respond to the issues raised by these submissions.

1. SGR's Requests to Modify Mitigation Measures, MCEAA's Responses, and SEA's Recommendations.

Mitigation Measure F-28.

SEA's current language for proposed mitigation measure F-28:

SGR shall ensure that all wells within the rail line right-of-way are properly abandoned prior to beginning rail construction activities.

SGR's proposed modification:

SGR shall conduct a survey prior to construction to locate all wells within the rail line right-of-way. SGR shall ensure that all functioning wells within the right-of-way are protected from damage and contamination to the extent reasonably possible during construction. Where damage or contamination to a functioning well is unavoidable, SGR shall ensure that the well is properly abandoned prior to beginning rail construction activities.

SGR's revision, if imposed, would require that SGR first conduct a survey to determine probable impacts from construction activities to all the wells within the right-of-way, and second that SGR abandon only those that would be impacted. MCEAA has not expressed opposition to SGR's proposed modification of this condition.

SEA believes this modification is reasonable because it would ensure that viable wells located within the right-of-way, but outside the area of impact, would remain in service. Moreover, the wells would be protected from damage due to vibrations under mitigation measure F-75, which would require SGR to identify nearby wells and monitor vibration levels during any pile driving activities.

Mitigation Measure F-31.

SEA's current language for proposed mitigation measure F-31:

SGR shall select and monitor appropriate points along Quihi Creek and/or along Cherry Creek that would capture any pollution that may flow downstream from the Quihi, Polecat, Elm Creek, and Cherry Creek watersheds as a result of this project. The monitoring shall include, at a minimum, analyses for oil and grease, total petroleum hydrocarbons, and total suspended solids.

SGR's proposed modification:

SGR shall ensure compliance with its NPDES stormwater permit during construction, including any sampling requirements imposed under the permit.

SEA's proposed language for this mitigation measure was developed in response to concerns about runoff from the fueling and maintenance facility and the rail loading loop, both of which were initially located in or adjacent to the floodplain. However, SGR has agreed to relocate both outside of the floodplain limits, a move that would substantially reduce likely potential impacts to surrounding creeks. In light of the changed circumstances and reduced risks, SGR argues that SEA's proposed mitigation would impose water monitoring requirements in excess of what SGR will be required to carry out under the National Pollutant Discharge Elimination System (NPDES) permitting program, administered by the Texas Commission on Environmental Quality (TCEQ, and that requiring compliance with the NPDES requirements should be sufficient.²

MCEAA asks that SEA's proposed mitigation pertaining to monitoring for total suspended solids be retained, despite the relocation of the rail loading loop. According to MCEAA, the new location was not evaluated in the approved Water Pollution Abatement Plan (WPAP). Therefore, MCEAA contends, construction and operation of the rail loop in its new location would cause an increase in pollutant loads to the surrounding creeks. MCEAA does not address the extent to which this area would be subject to water quality/quantity controls under the NPDES permits both for the quarry, and for the fueling and maintenance facility and loading loop.

SEA finds SGR's request to be reasonable, and recommends that the Board adopt the modified language. Given the change in location of the fueling and maintenance facility and the loading loop, SEA's originally proposed mitigation measure, although supported by MCEAA, would now be unreasonably burdensome. While MCEAA would prefer the original mitigation measure, compliance with the NPDES permit requirements for quarry operations would require SGR to sample water quality at the rail loading loop and at the fueling/maintenance facility. In

² Vulcan is also required to obtain NPDES permits – one to construct the quarry, and the other to operate the quarry.

addition, SGR would be required to maintain a state-required Spill Prevention, Control and Countermeasure Plan (SPCC).

Further, SGR would be subject to 25 additional mitigation measures recommended in the FEIS that should satisfy all issues related to water quality, and potential impacts due to stormwater and spills. Of particular note, SGR would be subject to numerous other mitigation measures designed to protect water quality/quantity in the watersheds surrounding this project.³ In these circumstances, SEA recommends that SGR's proposed modification to mitigation measure F-31 is reasonable, should the Board decide to approve the proposed transaction.

Mitigation Measure F-32.

SEA's current language for proposed mitigation measure F-32:

SGR shall use "CONVAULT-type" Above Ground Storage Tanks (ASTs) at its fueling

³ See: mitigation measure F-VM1 (under which SGR has agreed to conduct all maintenance and fueling activities at a designated area off the Edwards Aquifer Recharge Zone (EARZ) and to ensure that the fueling and maintenance activities occur at a facility with secondary containment that meets the requirements of an approved WPAP, and a Spill Prevention, Containment, and Countermeasure Plan (SPCC)); mitigation measure F-30 (which would require SGR to determine the exact boundaries of the Edwards Aquifer recharge zone, in order to locate the fueling and maintenance area completely away from this area); mitigation measure F-35 (which would require SGR to use best management practices (BMPs) during rail construction, operation, and maintenance activities to minimize soil erosion and reduce the potential for oil and fuel spills); mitigation measure F-37 (which would require SGR to design and implement site-specific "scour and instability countermeasures" to minimize local and downstream instability from stream crossings); mitigation measure F-40 (which would require SGR to use environmentally-friendly solvents and/or absorbent pads to minimize ground contact by the materials used to clean excess oil from lubricated parts of the train); mitigation measure F-43 (which would require SGR to incorporate specific BMPs into the SPCC to address the possibility of sediment runoff or diesel spills flowing into privately owned stock watering ponds); and mitigation measure F-44 (which would require SGR to use span bridges where possible to minimize impacts to streams, including all perennial streams; take precautions to avoid channel degradation, such as ensuring that grades at the culverts and bridges remain at their existing elevation to minimize impacts to the riparian corridor; minimize bank erosion and areas with exposed soil, and reduce silt from entering streams; stabilize and revegetate bare soil as soon as possible; inspect and maintain BMPs as needed after each rainfall; use reinforced measures as necessary, such a multiple rows of silt fences, along steep slopes; and avoid using wetlands or forested floodplains for staging areas or for borrow areas).

and maintenance facility. These ASTs are above-ground, concrete, full-storage tanks that have dual wall construction to provide maximum protection in the event of a leak. These ASTs are also equipped with sensors that will "alarm" if leakage is detected and that have instruments to show fuel level and multiple safety devices to prevent overfilling and rupture, and superior flame-arrested venting ports. These ASTs shall also be located within a third concrete-walled container that holds 1-1/2 times the volume of the AST maximum volume to provide extra protection to contain a fuel leak in the unlikely event of multiple containment failures. All ASTs shall be located off of the EARZ and on areas where fuels from an unlikely catastrophic release would flow away from the EARZ (generally areas south of the Balcones Escarpment on outcrops of Del Rio Clay, as determined by a geologist). SGR's fueling and maintenance facility shall also have an established SPCC in place in addition to any STPPP appropriate to the location.

SGR's proposed modification:

SGR shall use Above Ground Storage Tanks (ASTs) at its fueling and maintenance facility. These ASTs are above-ground full-storage tanks that dual wall construction to provide maximum protection in the event of a leak. These ASTs are also equipped with sensors that will "alarm" if leakage is detected and that have instruments to show fuel level and multiple safety devices to prevent overfilling and rupture, and superior flame-arrested venting ports. These ASTs shall also be located within a third concrete-walled container that holds 1-1/2 times the volume of the AST maximum volume to provide extra protection to contain a fuel leak in the unlikely event of multiple containment failures. All ASTs shall be located off of the EARZ and on areas where fuels from an unlikely catastrophic release would flow away from the EARZ (generally areas south of the Balcones Escarpment on outcrops of Del Rio Clay, as determined by a geologist). SGR's fueling and maintenance facility shall also have an established SPCC in place in addition to any STPPP appropriate to the location.

SGR requests only one change to Mitigation Measure F-32: instead of being required to use an above ground storage tank made of concrete at its fueling and maintenance facility, SGR proposes to use a tank made from other materials with the same fire, safety, and environmental specifications by a different manufacturer. MCEAA does not oppose the proposed modification.

SEA believes that SGR's request is reasonable; as the overall integrity of the tank should be the same, and recommends that the Board impose the modified condition in any decision approving the proposed transaction.

Mitigation Measure F-61.

SEA's current language for proposed mitigation measure F-61:

SGR shall check the moisture content of the rail car loads of limestone prior to transportation and shall wet the surface of the rail car loads that appear to be dry prior to

transporting them.

SGR's proposed modification:

As agreed to by SGR, SGR shall conduct appropriate visual monitoring of the moisture content of the limestone prior to or during loading of the rail cars. If necessary, to prevent the dispersion of limestone dust during rail transportation, SGR shall wet the surface of the limestone prior to transportation.

SEA's original proposed mitigation condition was developed in response to concerns raised over the possibility of limestone dust being dispersed during rail transportation. In requesting that the monitoring protocols for the wetting of limestone prior to transport be modified, SGR states that repeated soaking of the loaded cars could lead to deterioration of the cars and track, and explains that this process is unnecessary because the limestone would already have been moistened at the quarry during processing. SGR's proposed language would give it the option of checking the loads prior to or during loading of the rail cars, and would only require wetting the limestone when necessary.

MCEAA raises concerns about the possible dispersion of limestone dust during transport, and argues that SGR should not be allowed to self-police this process. However, SEA believes that SGR's request is reasonable, and recommends that the Board impose the modified condition should it decide to approve SGR's proposal. There is no reason not to allow SGR latitude in determining when wetting the limestone is necessary to prevent dust dispersion. The Board would be able to address any concerns that might arise under this approach because mitigation measure F-80 would require SGR to submit quarterly reports to SEA during rail construction and for three years after operations on the progress of implementing the mitigation measures. Moreover, mitigation measure F-81 would require SGR to retain a community liaison to work with the community in addressing any concerns related to construction, including concerns related to the dispersion of dust during rail transportation. In these circumstances, SEA agrees with SGR that its proposed modified mitigation condition is reasonable and should be substituted for the condition in the FEIS.

2. Memorandum of Understanding

MCEAA has asked the Board to delay its final decision in this case, pending approval of an MOU between SGR and Medina County regarding infrastructure improvements. Among other things, the MOU would address roadway crossings, maintenance of warning devices, and road upgrades.

By way of background, SEA discussed the potential impacts of the proposed rail line construction and operation on transportation and traffic safety in Section 4.1 of the DEIS, Section 3.1 of the SDEIS, and Section 2.5 of the FEIS. Based on its analysis, SEA concluded that impacts to transportation and traffic safety from the proposed rail line construction and operation (including at-grade crossings) would not be significant. However, to address concerns raised by

the public, SEA recommended several mitigation measures in the FEIS that would require SGR to consult with Medina County and the Texas Department of Transportation (TxDOT) prior to initiating construction of the proposed rail line. For instance, mitigation measure F-4 would require SGR to consult with Medina County prior to beginning rail line construction regarding the rail line crossing of county roads and to adhere to Medina County's reasonable recommendations regarding the design of these crossings. Mitigation measure F-5 would require SGR to consult with the TxDOT and Medina County prior to initiating construction on minimizing vehicular traffic delay during rail line construction across roadways. Mitigation measure F-8 would require SGR to consult with TxDOT and Medina County prior to initiating construction to develop a plan that specifies the responsibility of each party concerning the maintenance and repair of grade-crossing warning devices and the grade crossings along the new rail line, consistent with recognized highway safety standards, taking into account the level of highway traffic at the crossing.

The Board is not a party to the MOU currently being negotiated and has no control over the timing of when the parties (Vulcan, SGR, and the County) can come to terms. Although the parties have been in discussions for many months now over a number of issues, including grade crossings, safety and road improvements, no resolution has been reached at this time. SEA believes that the recommended mitigation measures F-4, F-5, and F-8 in the FEIS, if imposed, would be sufficient to address the environmental concerns that the MOU would address. Therefore, SEA does not recommend that the Board delay issuance of its final decision, or the date on which construction could begin (should the proposed construction be approved), until after an MOU has been reached.

3. USFWS – Section 7 Consultation

Finally, in a letter dated July 15, 2008, USFWS asked SEA for additional survey information regarding the golden-cheeked warbler, an endangered bird under the ESA that nests only in the mixed oak-juniper and ash woodlands of central Texas. USFWS stated that it was not aware that any survey work had previously been done in the project area to document the golden-cheeked warbler, and that, following a site visit by a USFWS biologist, USFWS was concerned that the proposed quarry and rail loading loop might fall within a relatively large swath of oak-juniper woodland that may support breeding pairs of golden-cheeked warbler. USFWS recommended that the Board consider any direct or indirect impacts that the project area would have on the golden-cheeked warbler in accordance with Section 7 of the ESA. USFWS also requested that SGR consider impacts to the quarry under Section 10 (non-Federal actions) of the ESA. In a follow-up conversation with USFWS, SEA learned that the site visit on which USFWS had based its request was to a property located to the north of phase 5 of the quarry, which exhibited woodland cover suitable enough to support the golden-cheeked warbler.⁴

⁴ The proposed quarry has 5 phases, beginning with phase 1 at the southern end and ending with phase 5 along the northern end. Phase 1 contains the rail loading loop track and will be the first phase to be developed. According to SGR, Vulcan will not develop phase 5 for at least 20 years.

In fact, prior to the July 15, 2008 letter, USFWS had determined that the proposed project would not likely have an adverse effect on the golden-cheeked warbler. This information was included in the DEIS and SDEIS, as was SEA's correspondence with USFWS between 2003 and 2006, which is summarized below.

- **DEIS** - USFWS submitted a letter, dated April 22, 2003, indicating that the golden-cheeked warbler was not present in the area of the Proposed Route and Alternatives, but did conclude that the proposed rail loading loop track, located in the quarry, contained woodland that could provide suitable habitat for the species.
- **SDEIS** - USFWS submitted a letter, dated April 12, 2006, indicating that the Eastern Alternatives may provide suitable habitat for the golden-cheeked warbler and other species. SEA conducted pedestrian surveys on April 11, 12, and 20, 2006, which revealed that marginal habitat for the golden-cheeked warbler was present at the terminus of the MCEAA Medina Dam Alternative Route, the Eastern Bypass Route, and SGR's Modified Medina Dam Route, near the rail loading loop track area on the quarry site.

Previously, in 2000, 2001, 2002, and 2003, Vulcan had intensely surveyed the area of the proposed Plant Maintenance Facility, Fuel Storage Area, and rail loading loop track for the proposed quarry and concluded that it was unlikely that activities in the surveyed area would adversely affect the golden-cheeked warbler or its habitat. By letter dated October 17, 2003, USFWS informed Vulcan that Vulcan and USFWS would work together throughout the quarry project to avoid impacts to the species in question.

Based on SEA's field surveys of the Eastern Alternatives and Vulcan's detailed surveys, on July 18, 2006, SEA requested concurrence from USFWS that the construction and operation of any of the Eastern Alternatives would not be likely to adversely affect Federally-listed species or designated critical habitat, pursuant to Section 7 of the ESA. On July 24, 2006, USFWS provided concurrence on the letter via a "No Action" stamp.

- **FEIS** - SEA concluded that the environmental impacts on biological resources from construction and operation of the Modified Eastern Bypass Route would be similar to those listed in the SDEIS, and concluded that impacts to the habitat of the golden-cheeked warbler would be minimal.

SGR and Vulcan provided all of the above-referenced documentation to USFWS and arranged to meet with the agency to explain the project and review the documentation. In that August 21, 2008 meeting, USFWS advised SGR/Vulcan that it may proceed to build the railroad and the rail loading loop track without further consultation under the ESA. USFWS determined that the relevant area of concern is located in phases well north of phase 1 of the proposed quarry project, not within the area of the proposed rail line or rail loading loop track. USFWS informed Vulcan, however, that that it will be required to undertake additional surveys before later phases of the quarry can be developed.

USFWS related this information to SEA in a telephone call on August 26, 2008, and advised SEA that a letter confirming its favorable determination concerning the project will be forthcoming shortly. Therefore, SEA concludes that the issues raised by USFWS in its July 15, 2008 letter have been resolved and are not cause to delay issuance of a final decision on the proposed transaction.