

#EO-2666



Fw: Jerry Johnston Vulcan

Diana Wood to: Jerry Johnston JJ Ranches

09/29/2015 01:19 PM

Cc: FOIA.Privacy

Bcc: Diana Wood

Dear Mr. Johnston:

I have forwarded your FOIA request to our FOIA office for further guidance. A staff attorney will be contacting you in the near future. In response to your earlier comment of "My understanding of a common carrier is that they provide services to passengers, which the materials company does not provide," I am providing you with the definition of a common rail carrier as it relates to the Surface Transportation Board's jurisdiction.

Pursuant to 49 U.S.C. § 10102, a "rail carrier" means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation. "Railroad" includes:

(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;

(7) "rate" means a rate or charge for transportation;

(8) "State" means a State of the United States and the District of Columbia;

(9) "transportation" includes:

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

(10) "United States" means the States of the United States and the District of Columbia.

Pursuant to 49 U.S.C. § 10501, the Surface Transportation Board has jurisdiction over transportation by rail carrier that is:

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)

----- Forwarded by Diana Wood/STB on 09/29/2015 12:54 PM -----

From: Diana Wood/STB
To: "Jerry Johnston" <jerry@jjtexasranch.com>
Date: 09/29/2015 08:27 AM
Subject: Re: FW: Jerry Johnston Vulcan

Dear Mr. Johnston:

As you know, this project went through extensive review over a five year period that resulted in the approval of three routes, one of which is the Modified Bypass Route, the route that crosses your property and the route that SGR has chosen to construct. I've attached the Board's decision that approved this project subject to 81 environmental mitigation measures. SGR must comply with these measures, including water resources requirements that address the concerns you have mentioned.

For public information, you can view the incoming and outgoing environmental correspondence for this project on the Board's web site. Please go to www.stb.dot.gov, then to environmental matters, and then to environmental correspondence. Scroll down to the docket number FD 34284 and click on incoming or outgoing.

Sincerely,

Diana Wood



2008 Board Decision.pdf

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW Room 1110
Washington, DC 20423
202-245-0302 (phone)
202-245-0454 (fax)

"Jerry Johnston"

From: "Jerry Johnston" <jerry@jjetexasranch.co...

09/28/2015 03:40:15 PM

From: "Jerry Johnston" <jerry@jjetexasranch.com>
To: <Diana.Wood@stb.dot.gov>
Date: 09/28/2015 03:40 PM
Subject: FW: Jerry Johnston Vulcan

From: Jerry Johnston [mailto:jerry@jjetexasranch.com]
Sent: Monday, September 28, 2015 2:29 PM
To: 'john.northington@northingtonstrategygroup.com'
Subject: Jerry Johnston Vulcan

Destruction of [springs](#) and Habitat of Native Americans near Quihi, Medina County Texas

Dear Mrs. Wood:

Good morning. I don't want to take up too much of your time, so I'll try to keep this as short as possible. I am writing you in hopes of painting a more realistic; close up picture of my situation concerning the 9-mile rail spur Vulcan Materials (SWG) has sought STB approval for, and which is proposed to dissect a portion of my Medina County, Texas property. It is my hope we can negotiate an agreement suitable for all of the parties involved, rather than one that solely benefits a privately held corporation and seemingly one very large family farm getting the better end when it come to property damage.

As you know, my land is joined to the southeast and east by the Weiblin Family. The Weiblins not only own the large adjoining farm (it looks to be approximately 5 to 6 times the amount of acreage) but they also farm very large acreage in some other counties, as well. I would say they are one of the largest, if not *the* largest, acreage farmers in these parts.

Mrs. Woods, I am 71 years old and will be 72 on May 25, 2016. Our Quihi land is only 426 acres, but we manage to generate about \$100,000 per year from bird and deer hunting. We also have a beautiful lodge facility overlooking our lake that will accommodate 20 or so people. We host weddings, family reunions, birthday parties and events of that nature. We try very hard in our endeavor to make a living off this property. I have to point out that the proposed rail construction can damage our source of water of our largest springs and shallow well that is feeding our lake as well as several small ponds and stock tank located south of our place. Wildlife depends on this water source and it is the only water on the far east end of our land. The vegetation on these hill sides is comprised largely with very old Post Oaks; many must be 4 to 5 hundred years old.

As Dr Hester has indicated to you and the STB, the place that Vulcan will cross our land is the worst possible place in this area and will be going right over the top of our large spring. We also have a shallow well located at this spot that we use for irrigating the food plot located there in that area.

One would have to expect that if the Indian camp (41ME132) found adjacent to the small spring 500 yards to the North that there is high probability there is also a camp near the large spring, maybe even bigger. Over the years we have picked up various points and flint chips as well as various hand-held flint tools in this area. It would be a great loss as to what could be learned by an expert team of excavating archeologists in this undisturbed area. It has become very evident that this rare spring system (probably originating from the Edwards Aquifer) has been here for many thousands of years. This piece of real-estate is also the far east boundary of the 18 Century John McMullen Indian Land Grant (Rancho San Lucas) which was set aside for the local Indian tribes that were around during the days of the Spanish Missions of San Antonio Texas. As we know the purpose of the missions was to convert the local Indians to Christianity. It is documented there were Mescalero Apache, Lipan Apache, Comanche and Kiowa who frequented, lived and roamed this area for several hundred years

It is my understanding that Vulcan applied for the approval of the STB by stating they are a "common carrier". My understanding of a common carrier is that they provide services to passengers, which the materials company does not provide. All Vulcan would have to do to solve this potential problem is to move the rail line approximately 750 yards east of the originally planned route to minimize their impact to my property and my hunting business but most importantly the possibility of destroying an ancient Indian camp ground. By doing so, they would be farther away from my wells, spring water and this historical area that Dr. Hester has warned them about.

Judging by dated points found in (41 ME 132 site) this area of Medina County is a historic Indian encampment dating back in time to at least 10,800 years ago. I have included a JPEG attachment to help illustrate what I am trying to explain. I hope you will take into consideration my very deep concern,

To be quiet frank, I have lost faith in what I have been told and promised by the Vulcan staff (Erik Remmert and others) when it comes to satisfying the environmental and archeological study requirement of STB. They should have already done these things; by the way I was promised result copies of what the Vulcan hired team found, but I have not received anything. At this point I have hired my own environmental firm, which comes highly recommended. They are Frost GeoSciences, Inc. 13402 Western Oak Helotes, Texas 78023 the investigating will be lead by Ms. T.G. Bey Field Biologist (USFWS Permit # TE20166A-0)

Please consider this letter as an official FOIA request for copies of any documentation submitted to the STB by Vulcan pertaining to this project, as none has been provide to me as promised (please see the attached letter in which Vulcan promised to provide me copies of findings from their team within my property but have failed to do so as of this date.)

I hate to have to go to this extensive level; I just want to be treated fairly by Vulcan. I'm not convinced that they are a common carrier, as they have attempted to present. They will be transporting their material on their rail road to their customers at my and other land owners expense. It looks pretty plain to me.

I do have one last request. Could you possibly help me with a recommendation of a local Washington DC attorney that has worked with STB on issues such as mine? None of my many Texas attorney friends seem to know anyone up there.

Thank you so much for taking the time to read my letter and allowing me to share my thoughts and requests..... More attachments to follow

Respectfully

Jerry Johnston

210-288-1558

jerry@jtexasranch.com

<http://www.johnstontrophywhitetails.net/>

<http://www.jtexasranch.com/>

[attachment "Better New route.jpg" deleted by Diana Wood/STB] [attachment "Better Route.jpg" deleted by Diana Wood/STB] [attachment "Birds eye.jpg" deleted by Diana Wood/STB] [attachment "Why would you build a RR down in a draw that is 60 to 70 feet lower than flat area up top.JPG" deleted by Diana Wood/STB]