

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

David H. Coburn
202.429.8063
dcoburn@steptoe.com

11E1-7883
DHW
FD-34284
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

July 7, 2008



Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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

Dear Secretary Quinlan:

This letter is written on behalf of Southwest Gulf Railroad ("SGR"), petitioner in the above exemption proceeding. In this proceeding, SGR seeks an exemption to build and operate a common carrier rail line in Medina County, TX linking a Union Pacific line at a point near Dunlay, TX with a limestone quarry to be operated by SGR's parent company, Vulcan Construction Materials, LP ("Vulcan"). The line would serve Vulcan and also any area shipper that may tender freight for rail transport. SGR filed its exemption petition on February 27, 2003. On May 19, 2003, the STB conditionally granted that petition, subject only to the environmental review which was already underway at the time of the conditional decision. In issuing its decision conditionally granting the petition, the Board found that construction and operation of the rail line would advance the goals of the national rail transportation policy (unless determined otherwise during environmental analysis) and that regulation is not necessary to protect shippers from an abuse of market power. The Board further stated that, "After the environmental review process has been completed, we will issue a further decision addressing the environmental issues, and making the exemption effective at that time if appropriate, subject to mitigation conditions if necessary."¹

¹ A petition seeking revocation of the conditional exemption was denied in a Board decision issued August 21, 2003.

The time-consuming environmental review undertaken in this case is now completed and a May 30, 2008 Final Environmental Impact Statement ("FEIS") has been issued finding that three proposed alternative alignments for the SGR line are environmentally acceptable. The thirty day waiting period triggered by the June 6, 2008 EPA publication of the notice of that FEIS terminates on July 7, 2008. This proceeding is thus now ripe for issuance of a decision making final the Board's May 2003 conditional grant of an exemption. In that regard, SGR notes that the May 30, 2008 decision of the Section of Environmental Analysis ("SEA") announcing the issuance of the FEIS states as follows with respect to the issuance of a final decision in this proceeding: "In the interest of bringing this matter to closure, the Board will act as promptly as possible."

SGR agrees with SEA that this case – which has been on the Board's docket since 2003 – is ripe for prompt issuance of a decision. There are no unresolved issues on the merits of the SGR proposal, the time for such issues to have been raised and resolved having long passed. The completion of the environmental review satisfies the sole remaining obstacle to issuance of a final decision granting SGR's petition, subject only to environmental mitigation conditions. Such a final decision will allow SGR to move forward with this project, which will bring jobs and economic development opportunities to an area in need of both. Moreover, a final decision in favor of SGR's petition will allow for the most efficient transportation of the limestone from the fully-permitted quarry that Vulcan is developing and for the use of that aggregate for important, job-inducing infrastructure projects in Texas and elsewhere.

In connection with the issuance of the final decision favored by SGR in this proceeding, SGR offers the following additional views. First, SGR favors two of the three alignments for its rail line identified as environmentally acceptable in the FEIS – the so-called Eastern Bypass Route (which SGR had previously identified to SEA as its newly preferred alternative) and the Modified Eastern Bypass Route. While SGR has not favored construction along a third alternative alignment also found by SEA to be environmentally acceptable – the so-called Medina Dam Alternative – it also does not oppose Board approval of that third optional alternative alignment, together with the other two alternatives. Assuming that the Board approves construction on all of these three alternative alignments, SGR will then choose a final alignment from among these alignments based on its assessment of the relative advantages of each. This approach will allow SGR the maximum flexibility to choose among alternatives that careful study has shown are environmentally acceptable.

Second, in the past several weeks, SGR has carefully reviewed each of the 91 mitigation measures recommended in the FEIS, several of which SGR saw for the first time when the Final EIS was issued. (Several of these measures were voluntarily offered by SGR and SGR had a prior opportunity to comment on several other of these measures, which had previously been issued in connection with the Draft and Supplemental Draft EISs prepared

in this proceeding.) While SGR is not opposed to the recommended measures, there are a small number of measures as to which it seeks modification. SGR has informally discussed its concerns with SEA, which it believes does not oppose any of the proposed modifications to these measures described below.

The proposed modifications are as follows:

- Mitigation Measure F-28. The current text of F-28 provides: "SGR shall ensure that all wells within the rail line right-of-way are properly abandoned prior to beginning rail construction activities." While SGR agrees that impacted wells should be abandoned, SGR understands that some wells within the right-of-way will not be impacted by construction or operation of the line and therefore will not need to be abandoned. A pre-construction survey would identify those wells that may or may not need to be abandoned. SGR therefore proposes the following new terms to replace the current text of F-28 text:

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.

- Mitigation Measure F-31. This measure currently provides: "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 understands that this measure was originally drafted due to concerns regarding the fueling and maintenance facility being located within or adjacent to the Elm Creek floodplain. The proposed fueling and maintenance facility, however, will not be located on the floodplain. See EI#-3225 in Appendix D of the FEIS. In addition, SGR will be required to take steps to protect water quality, including appropriate sampling under the National Pollutant Discharge Elimination System (NPDES) storm water permit it will be required to obtain from the state. Moreover, mitigation measure F-21 already requires SGR to have a Stormwater Pollution Prevention Program Plan (STPPP), and measure F-24 requires a spill prevention and response plan. SGR therefore requests that F-31 should be revised to read as follows:

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

As so revised, this measure will protect water quality consistent with the intent of the measure as initially drafted.

- Mitigation Measure F-32. This measure calls for SGR to use “CONVAULT-type Above Ground Storage Tanks (ASTs) at its fueling and maintenance facility.” SGR will use dual wall above ground storage tanks with secondary containment, but intends to use steel tanks, which is standard in the industry, rather than the concrete “CONVAULT-type” tanks listed in F-32. SGR therefore proposes to revise the first two sentences of the mitigation measures as follows:

SGR shall use ~~CONVAULT-type~~ Above Ground Storage Tanks (ASTs) at its fueling 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. [The remainder of F-32 would remain unchanged.]

These revisions will not result in any diminution in the safety of the storage tanks – they will, as the mitigation measure requires, still have dual walls and secondary containment.

- Mitigation Measure F-61. This measure currently provides “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.” This measure was imposed in response to concerns regarding the potential dust generated by the limestone during rail transportation. SGR believes this measure is unnecessary because the limestone generally has a natural moisture content that would prevent dust dispersion at the slow speeds that will be used during rail transport on the SGR line. Also, the limestone is moistened during processing at the quarry. Moreover, SGR has concerns about wetting the limestone after it has been loaded onto railcars because repeated soaking can lead to deterioration of the cars and track. SGR therefore proposes to replace this measure with a new voluntary mitigation measures measure as follows:

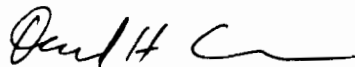
As agreed to by SGR, SGR shall conduct appropriate visual monitoring of the moisture content of the limestone prior to or during loading of the rail cars. If necessary to prevent the dispersion of limestone dust during rail transportation, SGR shall wet the surface of the limestone prior to transportation.

Honorable Anne Quinlan
July 7, 2008
Page 5

STEEPLE & JOHNSON LLP

SGR believes the above modifications will better tailor the mitigation measures to the project while continuing to meet the measures' original intent. SGR therefore respectfully requests that the Board adopt these minor changes to these four mitigation measures in its final decision, and that it issue that final decision as soon as possible.

Respectfully,

A handwritten signature in black ink, appearing to read "David H. Coburn", followed by a long horizontal flourish.

David H. Coburn
Attorney for Southwest Gulf Railroad

cc: All parties of record
Ms. Victoria Rutson, SEA