

HENRY BONILLA
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Congress of the United States
House of Representatives
Washington, DC 20515-4323

COMMITTEE ON APPROPRIATIONS
CHAIRMAN—SUBCOMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON DEFENSE
SUBCOMMITTEE ON FOREIGN OPERATIONS

October 22, 2004

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423

Case#: 2028573

*received
10/26/04*

FD 34284

Dear Secretary Williams:

Please find attached correspondence from my constituent, Dr. Robert T. Fitzgerald, President of the Medina County Environmental Action Association (MCEAA). Dr. Fitzgerald on behalf of the MCEAA members has requested that I submit their letter of October 13, 2004, to the Surface Transportation Board (STB). They request the STB's consideration on three matters concerning the proposed construction of the Vulcan Materials, Southwest Gulf Railroad Company's rail line in Medina County.

I thank you in advance for your consideration and cooperation through this process. I ask that you please respond to both the MCEAA and me at my San Antonio district office regarding their concerns. My District Director, Mr. Richard Martinez and Constituent Liaison, Mr. Gabriel Lozano, will be working with me on this matter; should you have any questions regarding the MCEAA's inquiry please feel free to contact my staff at my San Antonio office.

Sincerely,


Henry Bonilla
Member of Congress

HB:gl
Enclosure

PLEASE REPLY TO:

☒ 11120 WURZBACH, SUITE 300
SAN ANTONIO, TX 78230
(210) 697-9055

☐ 1300 MATAMOROS STREET, SUITE 1138
LAREDO, TX 78040
(956) 728-4682

☐ 111 EAST BROADWAY, SUITE 101
DEL RIO, TX 78840
(830) 774-8547

☐ 107 WEST AVENUE E, #14
ALPINE, TX 79830
(432) 837-1313

<http://www.house.gov/bonilla>

The Medina County Environmental Action Association, Inc.

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Phone 830-741-5040

Fax 830-426-2060

VIA FAX

210-697-9185

October 20, 2004

The Honorable Henry Bonilla
11120 Wurzbach, Suite 300
San Antonio, TX 78230

Dear Congressman Bonilla:

In a recent letter to you on October 13, 2004, expressing some of MCEAA's concerns regarding Vulcan Materials/Southwest Gulf Railroad, we inadvertently omitted a request for you to relay these concerns to the Surface Transportation Board, SEA Section. We respectfully request that you do so as soon as possible.

We thank you for all your past support, and appreciate your attention to this important matter.

Sincerely,

Robert T. Fitzgerald

Dr. Robert T. Fitzgerald, President
MCEAA, Inc.

MCEAA, Inc., for your Home, Health, and Heritage

**MEDINA COUNTY
ENVIRONMENTAL ACTION ASSOCIATION, Inc.
202 CR 450
Hondo, TX 78861
(830) 741-5040 p / (830) 426-2060 f**

October 13, 2004

VIA FAX and regular mail

**The Honorable Henry Bonilla
U. S. House of Representatives
11120 Wurzbach, Suite 300
San Antonio, TX 78230**

Dear Representative Bonilla:

RE:

**U.S. Surface Transportation Board, Finance Docket No. 34284
SOUTHWEST GULF RAILROAD COMPANY
CONSTRUCTION AND OPERATION—MEDINA COUNTY, TX**

We are landowners, constituents and long time supporters of yours requesting assistance in the proceeding captioned above—the as-yet unpermitted and unconstructed quarry of the Vulcan Materials Company and a proposed rail line wholly controlled and operated by the same company.

We have written previously concerning the significant adverse effects that this project would bring to Medina County and to our small ranching, hunting, agricultural and retirement community. For many who have served this country with honor at bases in nearby San Antonio, the position of the applicant, Vulcan, is contrary not only to law, but to what we thought this nation was about and the values that you have always represented to us. We are making a stand on these values today.

Presently, there are three remarkable features of this project, on issues important to you, that we simply ask for your voice on: (1) Attempted land condemnation that is not for a "public use"; (2) Recent attempts by Vulcan to pressure a federal agency into a compromised legal position to suit its needs, contrary to principles of good government; and (3) the need for the U.S. EPA to enforce the law in a common sense manner.
Condemnation not for "public use"

You have long been a strong advocate for private property rights and for holding the government to its burden of showing a "public use" when using the eminent domain power.

Yet in this proceeding, Vulcan, an aggregate materials company, has formed a "shell" or "paper" rail company solely to obtain a common carrier license from the U.S. Surface Transportation Board (STB). However, Vulcan owns no land along its proposed route where other shippers besides itself could locate or have expressed intent to locate. It is not going to be a common carrier at all; it has admitted, in its own correspondence with

the STB, that it will serve only itself. Yet with a common carrier license from the STB, Vulcan would then qualify as a railroad under Texas law, with corresponding eminent domain power delegated by the Texas Legislature to condemn land.

How can this be? How can a private corporation that is not even a railroad and that will serve only its own facility condemn the land of private citizens? We understand that the U.S. Supreme Court will soon take up a case on the scope of condemnation for "public use." Going forward, you will undoubtedly have opportunities to talk about that case, property rights, and your concern about the scope of "public use." *When you do, please remember and mention this case in Medina County.*

Pressuring a federal agency into a compromised legal position

You may have been rightly taken aback by the idea of a company that is not even a railroad obtaining a common carrier license from the U.S. Surface Transportation Board (STB). Indeed, Vulcan has misrepresented the scope of its project to the STB from the start.

Currently, the STB is preparing an environmental impact statement (EIS) on Vulcan's proposed action. As part of that process, the agency must determine the scope of the action to analyze. There is no dispute—in fact, Vulcan conceded in a January 2004 letter to the STB—that Vulcan's planned quarry will be the only facility foreseeably served by Vulcan's wholly owned and operated rail system:

While the line will be operated as a common carrier line and thus open to use by other shippers, SGR has no information at this time about other shippers that may locate in the area. Accordingly, any assessment of the level of commercial and industrial development that could develop along the line is speculative.

Letter from David H. Coburn, Steptoe & Johnson LLP, to Victoria J. Rutson, Chief of Section of Environmental Analysis, STB 1 (January 5, 2004) (Document E1-423) (emphasis added).

The proposed rail line has no utility without the planned quarry. Under the National Environmental Policy Act governing the EIS, regulations (40 C.F.R. 1508.25(a)) clearly state that "interdependent parts of a larger action and depend on the larger action for their justification" must be analyzed as part of the proposed action.

Rather than conceding this obvious point, Vulcan has continued to pressure the STB into taking a compromised position to avoid analyzing the quarry. On March 10, 2004, Vulcan submitted a letter without basis in the law, a letter that we have now fully repudiated twice. Yet still Vulcan continues to pressure the STB and its section of environmental analysis staff, who issued the "Final Scope of Study" (69 Fed. Reg. 25657 (May 7, 2004)) deferring the question of whether the quarry should be analyzed. To date, the agency will not publicly repudiate Vulcan's meritless position, and may wind up having to defend it in court.

This issue is directly related to the issue of condemnation power. By misrepresenting the scope of its project to the STB, Vulcan is having it both ways: it is pretending to be a common carrier railroad, without having to provide us, your constituents, with the full EIS analysis that it would otherwise be subject to because it is not a common carrier. Because Vulcan wants to give us a quarry and a rail line, we think it is only right that the consequences of both—increased flooding, reduced air quality, and traffic impacts, among others—be disclosed.

The pressure that Vulcan is exerting is directly contrary to the principles of good government that you have always stood for. *We request that you let the Section of Environmental Analysis staff at the STB hear your voice concerning the need to repudiate Vulcan's pressure tactics and to analyze the quarry and the railroad together.*

The need for the U.S. EPA to enforce the law in a common sense manner

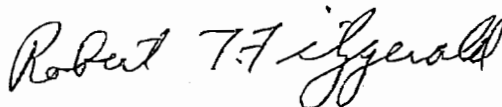
Finally, we have always recognized that you have been a voice for common sense environmental regulation that works for everyday citizens. An opportunity will soon arise where that voice would be most helpful.

When the STB issues its environmental impact statement (before the end of 2004), the U.S. EPA, Region 6 (Michael P. Jansky, Regional Environmental Review Coordinator) will review it. Even if the STB does not stand up to Vulcan's pressure, it is likely that the EPA may, especially if the STB does not follow the law on analyzing the quarry and the rail line together.

This is one case where we could really use their help. *A letter to Mr. Jansky urging his consideration of Vulcan's quarry and railroad together, as a single connected action, would send a clear message that common sense must carry the day. The EPA needs to know that Vulcan can't have it "both ways."*

We appreciate whatever assistance you are able to provide. Please do not hesitate to contact us at the numbers above if you would like more information or would like us to flesh out the courses of action. Thank you again for your assistance and willingness to listen on this important matter.

Sincerely,



Dr. Robert T. Fitzgerald, President
MCEAA, Inc.