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08/20/2008 09:16 PM

To Vicki.Rutson@stb.dot.gov, Evelyn.Kitay@stb.dot.gov,
Virginia.Strasser@stb.dot.gov, Diana.Wood@stb.dot.gov

cc

bcc

Subject SGR -- USFWS Issue with Golden Cheeked Warbler

#E1-17498
Daw FD-34284

History: This message has been replied to and forwarded.

Vicki, Evelyn, Ginny and Diana -- In advance of the meeting that SGR has scheduled with USFWS tomorrow to discuss the Golden-Cheeked Warbler (GCW) issue that USFWS has raised, I thought it would be useful to provide you with copies of the most relevant materials relating to this matter. I have thus attached relevant excerpts from the following: (1) the discussion of the GCW in the Nov. 2004 DEIS; (2) the 2001 and 2003 Biological Assessments that are reproduced at Appendix F of Volume II of the DEIS; (3) an excerpt from the Supplemental DEIS that addresses impacts to GCW habitat; (4) reports received by SGR from Horizon in 2002-03 on their review of property in the area for the GCW; and (5) relevant correspondence between USFWS and SEA and between USFWS and SGR.

The attached materials illustrate that the area of the rail line and quarry have been studied on several occasions for the presence of the GCW, which has not been sighted in the area during any of those studies. Nor was it sighted during the more recent visit by USFWS that prompted the July 2008 letter. There was one occasion in 2003 when a bird call may have been heard, but that one call came from off the site. Further, the habitat has been consistently described as marginal and perhaps suitable only for transient use by the GCW. The habitat that might be most suitable to the GCW is the area that will be set aside by Vulcan as a buffer zone and wildlife preserve area around the quarry.

In a Oct. 17, 2003 letter to Vulcan's consultant, USFWS agreed to phased further studies of the quarry area over time given the many years over which it will take to expand the quarry. Such further studies would occur prior to expanding the quarry into new areas. The phases of the quarry development are shown on the map which appears at page F-60 of Volume II of the DEIS.

Further, until its most recent letter, USFWS has concurred in the determination that "the project as proposed is not likely to adversely affect the golden-cheeked warbler." See May 19, 2005 letter and USFWS "no action" stamp on SEA's July 18, 2006 letter.

The area visited by USFWS in July 2008 (USFWS' Allison Arnold advises that its visit to the area occurred for reasons unrelated to this proceeding) was an area adjacent to the northern boundary of the area into which the quarry might expand, probably not before 20-plus years from now. It is far from the area of the rail line and the loading loop/maintenance area. The area visited by USFWS exhibits more the of the type of trees that could support GCW habitat, but it is an area that USFWS has previously agreed could be surveyed in the future prior to any quarry expansion into the area.

Again, the area where the rail line will be built -- and thus the area as to which there is STB jurisdiction -- has been studied and USFWS has previously signed off on construction of the rail line, including the loading loop.

In light of the above, and in view of the attachments, we are hopeful that USFWS will reconsider the position taken by its staff biologist in the July 2008 letter, who may have been unaware of USFWS's prior positions. If that does not happen, we look forward to discussing with you and USFWS the possibility of an agreement that would perhaps provide for a schedule of future pre-construction surveys in the quarry area, but also provide that STB would move forward with a decision on the rail line without awaiting any further surveys and while any further consultations that may occur under Section 7 of the Endangered Species Act are proceeding.

We will keep you apprised. Regards. David

<<Draft EIS.pdf>> <<Supplemental DEIS.pdf>> <<2001 BA.pdf>> <<2003 BA.pdf>> <<FW 4-22-03.pdf>> <<10-17-03 FWS Letter.pdf>> <<FW 2-3-04.pdf>> <<FW 3-1-04.pdf>>

<<SEA 5-12-05.pdf>> <<FW 5-19-05.pdf>> <<SEA 7-18-06.pdf>> <<SEA stamped letter.pdf>>
<<020076te.doc>> <<030061te1.doc>> <<030061a01TE Layout1 (1).pdf>>

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the message and any attachments.  Draft EIS.pdf  Supplemental DEIS.pdf  2001 BA.pdf  2003 BA.pdf  FW 4-22-03.pdf

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likely began over 150 years ago. At that time, areas of native brush were cleared and used for a period of time for crops or grazing. Some of the areas were then abandoned and allowed to return to brushlands. The better crop producing soils likely have remained clear of brush and native vegetation since that time. The area now consists of a diverse mosaic of croplands, managed pasturelands, and brushlands of various stages of redevelopment. Some of the more densely wooded areas are associated with soils that are poorly adapted to agricultural use. These areas may remain in relatively original conditions, but are uncommon and appear to consist of small areas maintained as wood lots.

SEA did not identify any sensitive plant communities located within or near the proposed route or alternative routes of the rail line. This could be attributable to the extensive clearing and land use practices in the area.

3.4.2 Fauna

Animal populations in the project area consist largely of species tolerant of agricultural and land clearing activities. Songbirds such as Mockingbirds are very common due to their use of the edges between different plant communities. Other bird species such as Brown-headed cowbirds, White-wing dove, and Starlings, are attracted to agricultural activities and are abundant in the area as well. SEA did not identify any sensitive wildlife resources located within or near the proposed route or alternative routes of the rail line.

3.4.3 Endangered or Threatened Species

SEA obtained a review of species potentially occurring in Medina County currently listed as protected under the Federal Endangered Species Act, as well as state listed species, from the Wildlife Diversity Program of the Texas Parks and Wildlife Department. These are summarized in Table 3.4-1. The U.S. Fish and Wildlife Service (FWS) submitted a letter, dated April 22, 2003, indicating that the two Federally-listed songbirds, the Black-capped Vireo and the Golden-cheeked Warbler, had a possibility of occurrence in the project area. (See Appendix C.) Field surveys conducted by SEA indicate that neither the Black-capped Vireo nor the Golden-cheeked Warbler are present in the area of the proposed route and alternatives, likely due to lack of suitable habitat. The proposed loading loop or straight track would be located within the quarry area; this area is in a dispersed woodland composed largely of juniper and oaks that could provide suitable habitat for the Golden-cheeked Warbler.

Table 3.4-1. Federal and State Listed Threatened, Endangered and Protected Species in Medina County Including Additional Species of Concern Listed by Texas Parks and Wildlife Department

	Federal Status	State Status
*** AMPHIBIANS ***		
Edwards Plateau Spring Salamanders (<i>Eurycea</i> sp. 7) - endemic; troglotic; springs, seeps, cave streams, and creek headwaters; often hides under rocks and leaves in water; Edwards Plateau, from near Austin to Val Verde County		
Valdina Farms Sinkhole Salamander (<i>Eurycea troglodytes</i>) - isolated, intermittent pools of a subterranean stream; sinkhole located in Medina County		
*** ARACHNIDS ***		
Braken Bat Cave Meshweaver (Veni's Cave Spider) (<i>Cicurina venii</i>) - small, eyeless, or essentially eyeless spider; karst features in western Bexar County and eastern Medina County	LE	
Government Canyon Bat Cave Meshweaver (Vesper Cave Spider) (<i>Cicurina vespera</i>) - small, eyeless, or essentially eyeless spider; karst features in northwestern Bexar County and northeastern Medina County	LE	
Government Canyon Bat Cave Spider (Government Canyon Cave Spider) (<i>Neoleptoneta microps</i>) - small, eyeless, or essentially eyeless spider; karst features in northwestern Bexar County and northeastern Medina County	LE	
Madla Cave Meshweaver (Madla's Cave Spider) (<i>Cicurina madla</i>) - small, eyeless, or essentially eyeless spider; karst features in northern Bexar County and northeastern Medina County	LE	
*** BIRDS ***		
American Peregrine Falcon (<i>Falco peregrinus anatum</i>) - potential migrant; nests in west Texas	DL	E
Arctic Peregrine Falcon (<i>Falco peregrinus tundrius</i>) - potential migrant	DL	T
Black-capped Vireo (<i>Vireo atricapillus</i>) - oak-juniper woodlands with distinctive patchy, two-layered aspect; shrub and tree layer with open, grassy spaces; requires foliage reaching to ground level for nesting cover; return to same territory, or one nearby, year after year; deciduous & broad-leaved shrubs & trees provide insects for feeding; species composition less important than presence of adequate broad-leaved shrubs, foliage to ground level, & required structure; nests mid April-late summer	LE	E
Golden-cheeked Warbler (<i>Dendroica chrysoparia</i>) - juniper-oak woodlands; dependent on Ashe juniper (also known as cedar) for long fine bark strips, only available from mature trees, used in nest construction; nests placed in various trees other than Ashe juniper; only a few mature junipers or nearby cedar brakes can provide the necessary nest material; forage for insects in broad-leaved trees & shrubs nests late March-early summer	LE	E
Henslow's Sparrow (<i>Ammodramus henslowii</i>) - wintering individuals (not flocks) found in weedy fields or cut-over areas where lots of bunch grasses occur along with vines and brambles; a key component is bare ground for running/walking; likely to occur, but few records within this county		
Zone-tailed Hawk (<i>Buteo albonotatus</i>) - arid open country, including open deciduous or pine-oak woodland, mesa or mountain county, often near watercourses, and wooded canyons and tree-lined rivers along middle-slopes of desert mountains; nests in various habitats and sites, ranging from small trees in lower desert, giant cottonwoods in riparian areas, to mature conifers in high mountain regions		T

Table 3.4-1. (Continued)

	Federal Status	State Status
*** INSECTS ***		
A Ground Beetle (<i>Rhadine exilis</i>) - small, essentially eyeless ground beetle; karst features in northern Bexar County and northeastern Medina County	LE	
A Ground Beetle (<i>Rhadine infernalis</i>) - small, essentially eyeless ground beetle; karst features in northern and western Bexar County and northeastern Medina County.	LE	
Helotes Mold Beetle (<i>Batrisodes ventyivi</i>) - small, eyeless mold beetle; karst features in northwestern Bexar County and northeastern Medina County	LE	
Maculated Manfredo Skipper (<i>Stallingsia maculosus</i>) - most skippers are small and stout-bodied; name derives from fast, erratic flight; at rest most skippers hold front and hind wings at different angles; skipper larvae usually feed inside a leaf shelter and pupate in a cocoon made of leaves fastened together with silk		
*** MAMMALS ***		
Frio Pocket Gopher (<i>Geomys texensis bakeri</i>) - associated with nearly level Atco soil, which is well-drained and consists of sandy surface layers with loam extending to as deep as two meters		
*** REPTILES ***		
Indigo Snake (<i>Drymarchon corais</i>) - Texas south of the Guadalupe River and Balcones Escarpment; thornbush-chaparral woodlands and south Texas, in particular dense riparian corridors; can do well in suburban and irrigated croplands if not molested or indirectly poisoned; requires moist microhabitats, such as rodent burrows, for shelter		T
Keeled Earless Lizard (<i>Holbrookia propinqua</i>) - coastal dunes, barrier islands, and other sandy areas; eats insects and likely other small invertebrates; eggs laid underground March-September (most May-August)		
Spot-tailed Earless Lizard (<i>Holbrookia lacerata</i>) - central & southern Texas and Adjacent Mexico; oak-juniper woodlands & mesquite-prickly pear associations; eggs laid underground; eats small invertebrates		
Texas Garter Snake (<i>Thamnophis sirtalis annectens</i>) - wet or moist microhabitats are conducive to the species occurrence, but is not necessarily restricted to them; hibernates underground or in or under surface cover; breeds March-August		
Texas Horned Lizard (<i>Phrynosoma cornutum</i>) - open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky; burrows into soil, enters rodent burrows or hides under rock when inactive; breeds March-September		T
Texas Tortoise (<i>Geochelone berlandieri</i>) - open brush with a grass understory is preferred; open grass and bare ground are avoided; when inactive occupies shallow depressions at base of bush or cactus, sometimes in underground burrows or under objects; longevity greater than 50 years; active March-November; breeds April-November		T

Table 3.4-1. (Continued)

	Federal Status	State Status
*** VASCULAR PLANTS ***		
Bracted twistflower (<i>Streptanthus bracteatus</i>) - endemic; shallow clay soils over limestone, mostly on rocky slopes, in openings in juniper-oak woodlands; flowering April-May		
Sandhill woollywhite (<i>Hymenopappus carrizoanus</i>) - endemic; open areas in deep sands derived from Carrizo and similar Eocene formations, including disturbed areas; flowering late spring-fall		
Texas mock-orange (<i>Philadelphus texensis</i>) - endemic; limestone cliffs and boulders in mesic stream bottoms and canyons, usually in shade of mostly deciduous sloped forest; flowering April-May		

Source: Texas Parks & Wildlife Department Annotated County Lists of Rare Species for Medina County Last
Revision: 10 Mar 2003

Status Key:

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- PE,PT - Federally Proposed Endangered/Threatened
- E/SA, T/SA - Federally Endangered/Threatened by Similarity of Appearance
- C1 - Federal Candidate, Category 1; information supports proposing to list as endangered/threatened
- DL,PDL - Federally Delisted/Proposed for Delisting
- NL - Not Federally Listed
- E,T - State Endangered/Threatened
- "blank" - Rare, but with no regulatory listing status

Vulcan Construction Materials, L.P. (VCM) initiated broad-scale field surveys of Phase I of the proposed quarry in July 2000. Phase I of the quarry development would include an approximate 400-600-acre area that would include the processing and crushing plant, the loading loop/straight track area, the fuel and maintenance facility (located to the south of the quarry), the first phase of mining activities (about 10-15 years worth of reserves), and associated habitat buffers and corridors. These surveys were conducted during the spring breeding season in 2001, 2002, and 2003. VCM is planning additional surveys for the remaining quarry areas. The focus of all of these surveys is to identify potential threatened and endangered species in the quarry area.

Copies of the biological assessments conducted by VCM are presented as Appendix F. VCM identified mature Ashe juniper and hardwoods areas on the quarry site that could provide suitable habitat for the Golden-cheeked Warbler. Those areas with the highest potential to support Golden-cheeked Warbler habitat are to be set aside as buffer zones and undisturbed wildlife preserve areas surrounding the quarry operations. (See Appendix G, February 18, 2004 letter from SGR attaching letter from FWS to VCM.)

The remaining Federally-listed species are associated only with karst features (caves, sinkholes, etc.). A small portion of the proposed rail line would occur on geologic outcrops of karst forming limestone. This area is within the site of the proposed quarry and SEA did not locate observable karst features during field surveys. Additional detailed surveys conducted by VCM also did not locate karst features within the loading and/or fuel maintenance areas.

There are no Federally-listed endangered or threatened plants known to occur in Medina County.

3.5 Climate and Air Quality

Medina County has a subtropical and subhumid climate, with hot and dry summers. Annual rainfall averages 28.43 inches and the average relative humidity ranges from 81 percent at 6 a.m. to 49 percent at 6 p.m. The average low temperature is 42°F in the winter and the average high temperature is 96°F in the summer, with an annual growing season of 263 days (Handbook of Texas Online.) The heaviest amount of rainfall occurs from April through June and from September through October. In an average year, evaporation exceeds precipitation by 36 inches; mean annual free water (lake) evaporation is 62 inches. The prevailing wind circulation during the warm season is reversed during the cool season. Northerly winds predominate from November through February because of the influence of polar continental air masses, but southeasterly winds are persistent from April through September, because tropical maritime air masses from the Gulf of Mexico control the weather. (Carr, 1967 and Dittmar et al., 1977.)

Medina County is in attainment of all National Ambient Air Quality Standards established under the Federal Clean Air Act (CAA) and administered by the EPA. However, neighboring Bexar county is considered an affected county that may become a non-attainment area in the near future.

3.6 Physical Setting (Physlography)

Medina County, located in south central Texas, has an area of about 1,357 square miles, or 868,480 acres. The major streams located in the county include the following: the Medina River (San Antonio River major basin); Chacon Creek; Hondo Creek; San Francisco Perez Creek; San Geronimo Creek; Seco Creek; and Verde Creek. The Frio River flows for a short distance in the southwestern part of the county. Squirrel Creek, Seco Creek, Hondo Creek, Verde Creek, and Quihi Creek are the principal streams that drain the northern and western part

Supplemental DEIS

likely began over 150 years ago. At that time, areas of native brush were cleared and used for a period of time for crops or grazing. Some of the areas were then abandoned and allowed to return to brushlands. The better crop producing soils likely have remained clear of brush and native vegetation since that time. The area now consists of a diverse mosaic of croplands, managed pasturelands, and brushlands of various stages of redevelopment. Some of the more densely wooded areas are associated with soils that are poorly adapted to agricultural use. These areas may remain in relatively original conditions, but are uncommon and appear to consist of small areas maintained as wood lots.

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BIOLOGICAL ASSESSMENT

**PHASE I
MEDINA COUNTY PROJECT**

Submitted by:

Vulcan Materials Company

October, 2001

Phase I
Medina County Project
Biological Assessment

INTRODUCTION

The proposed Medina County Project is located approximately 5 miles north of Quihi, Texas in north central Medina County. Vulcan Materials Company (Vulcan) is currently evaluating the project in terms of economic and environmental feasibility. The proposed project would involve a multi-phased development and operation of a limestone quarry and associated crushing and screening facilities for the production and sale of construction aggregates for the building of roads, bridges, and other related construction industry needs. Due to the nature of the business and the size of the property involved, the project area has been broken into five (5) individual phases, with each phase representing an Environmental Survey Area. The Environmental Survey Areas include those areas proposed for the facility maintenance area, the production facility area, the mine area and the environmental management and buffer areas. Additional areas are currently being evaluated for a proposed rail alignment. The specific rail alignment has not been identified at this time and will not be fully delineated until access agreements have been obtained. The rail spur will be included in Phase II for the proposed project. Vulcan has obtained leased land in excess of that needed for the mining operation and is in the process of obtaining excess rail right-of-way so that adequate lands are available to allow avoidance of sensitive environmental resources and for adequate buffer areas between mining and transportation activities and those resources. Over the conceivable life of the project, implementation of each of these phases will be based upon market demands and completion of environmental surveys and any potential mitigation plans. In addition to these plans, other factors that will impact the implementation of the project phases include: availability of limestone reserves, construction suitability, access availability, and avoidance of environmental and cultural resources. Vulcan's ultimate goal is to develop an environmentally compatible project with net improvement in the local environment.

This report and assessment focuses on the initial phase of the project (Phase 1 Environmental Survey Area) as well as the establishment of baseline environmental and screening information for the entire project including all phases (Phase 2-5 Environmental Survey Areas). Using this approach, adequate data and stakeholder input can be collected to develop an overall environmentally protective project with specific data needs being developed in each Phase. Based upon the elements defined above, similar detailed assessments for the future phases will be performed at times when the field observations and studies are closer time-wise and consequently more relevant to the actual implementation of that particular phase. Vulcan, through its environmental management team, plans to continue focused environmental surveys on the initial Phase I Environmental Survey Area (receiving focused survey in 2001) and will extend those focused surveys into the remaining Phase I Environmental Survey Area. Screening

Golden-cheeked Warbler (*Dendroica chrysoparia*)-The Golden-cheeked Warbler habitat is also limited because of past land practices. The warbler does, however, depend upon Ashe juniper/hardwood cover along steep slopes and canyons. They use long fine bark strips from the mature Ashe juniper trees as nesting material, so this species must have mature juniper trees in an area where it lives. Mature Ashe juniper and hardwoods areas have been identified and are found primarily in those areas proposed as buffer areas. Aerial photographs have been used to prepare "overlays" of the project site to determine areas of potential impact and suitable buffer zones. A 200' buffer zone along each side of the drainages has been proposed for the project. Detailed surveys of the Phase I Environmental Survey Area and screening surveys of the Phase 2-5 Environmental Survey Areas were conducted in April and May, 2001 by Horizon Environmental Services, Inc., and endangered species specialists of the Technical Team. No warblers were observed or calls heard.

Vulcan's technical team met with Ms. Mary Orms and Mr. Ray Brown of the U.S.F.W.S. Austin Ecological Services Office on April 16, 2001 to discuss the endangered species survey strategy. Technical experts visited the site to map potential T&E and sensitive habitats on April 9, 2001. During the months of April and May 2001 numerous site visits were made to survey for T&E species and sensitive species by Dr. Rogers and Horizon Environmental Services, Inc., endangered species specialists. The Phase I Environmental Survey Area was visited on April 9, April 16, April 24, April 29, May 4, May 9 and May 14, 2001. A total of over 64 hours of survey time was spent in the Phase I Environmental Survey Area. Numerous additional hours were spent in screening level surveys and in delineation of habitat and potential habitat on the entire Phase 1-5 Environmental Survey Areas. Technical experts will review the proposed project features and habitat maps and will provide recommendations of areas to be avoided and potential enhancement practices. In summary, while several small areas of potential habitat exist in the over-all project area (Environmental Survey Areas 1-5), the habitat value is significantly reduced due to livestock and wildlife grazing. Aerial photographs were used to map the proposed rail corridor but these will need to be ground truthed in Phase 2 once access has been obtained. The rail alignment habitat is markedly different from that found in the Phase 1-5 Environmental Survey Areas. The general rail spur area is dominated deeper soils that support more intense agricultural and little if any potential Golden-cheeked Warbler habitat.

Karst and Cave Invertebrates

The entire range of the above listed Karst species occurs in north and/or northwest Bexar County. The species and their habitat may be threatened by destruction of habitat by construction, filling of caves, increase in impervious cover, potential contamination from septic tank effluent, sewer leaks, runoff, pesticides and competition with nonnative fire ants and vandalism. Guidelines for determining whether or not a project or activity is likely to result in the take of these invertebrates is based on review of Karst zone maps prepared by George Veni (1994). In addition, James Cokendolpher is gathering published reports by George Veni and William R. Elliot including "Caves and Karsts of Texas" for further review. Veni defines five Karst zones that reflect the likelihood of finding Karst features that may provide habitat for the above listed species as follows:

BIOLOGICAL ASSESSMENT

PHASE I MEDINA PROJECT

Submitted by:

**Vulcan Materials Company
Southwest Division
800 Isom Road
San Antonio, Texas 78216**

Principal Consultants:

*Darrell T. Brownlow, Ph.D.
Brownlow Consulting
12425 FM 775
Floresville, Texas 78114*

*William J. Rogers, Ph.D.
West Texas A&M University
WT Box 60808
Canyon, Texas 79016*

*Endangered Species Field Surveys:
Horizon Environmental Services
2600 Dellana Lane, Suite 200
Austin, Texas 78746*

August, 2003



Photograph 2: Typical habitat resulting from extensive livestock and wildlife grazing.

confirm the habitat evaluation and did not reveal any vireos sightings or calls. If, during subsequent surveys, it is determined that there is some potential for Vireo habitat, the habitat can be protected and avoided by establishing protective buffer and management areas. Based on previous assessments conducted by Dr. Loren Smith on Fort Hood, the birds seem quite tolerant of military activities and vehicle movement. Aerial photographs have been used to map the general area of proposed rail spur alignments but these will need to be ground truthed in Phase 2 once access has been obtained. As discussed above, the rail alignment habitat is markedly different from that found in the Phase 1-5 Environmental Survey Areas. The area is dominated by deeper soils which support more intense agriculture. Any areas offering potential Vireo habitat, if found, can be avoided and managed to improve habitat quality.

Golden-cheeked warbler (*Dendroica chrysoparia*)-The golden-cheeked warbler habitat is also limited because of past land practices. The warbler does, however, depend upon Ashe juniper hardwood cover along steep slopes and canyons. They use long fine bark strips from the mature Ashe juniper trees as nesting material, so this species must have mature juniper trees in an area where it lives. Mature Ashe juniper and hardwoods areas have been identified and are found primarily in those areas proposed as buffer areas. Aerial photographs (**Figure 5 and 6**)

have been used to prepare "overlays" of the project site to determine areas of potential impact and suitable buffer zones. As illustrated in **Figures 5 and 6**, a 200' buffer zone along each side of the drainages has been proposed for the project.

Drs. Rogers and Brownlow met with Ms. Mary Orms and Mr. Ray Brown of the U.S.F.W.S. Austin Ecological Services Office on April 16, 2001 to discuss the endangered species survey strategy. Drs. Smith and Rogers visited the site to map potential T&E and sensitive habitats on April 9, 2001. During the months of April and May 2001 numerous site visits were made to survey for T&E species and sensitive species by Dr. Rogers and Horizon Environmental Services, Inc., endangered species specialists. The 400-acre portion of the Phase 1 Environmental Survey Area was visited on April 9, April 16, April 24, April 29, May 4, May 9 and May 14, 2001. A total of over 64 hours of survey time was spent in the Phase 1 Environmental Survey Area. Numerous additional hours were spent in screening level surveys and in delineation of habitat and potential habitat on the entire Phase 1-5 Environmental Survey Areas. Detailed surveys of the Phase 1 Environmental Survey Area and screening surveys of the Phase 2-5 Environmental Survey areas were conducted on the following dates by Horizon Environmental Services, Inc., endangered species specialists:

2003

4/29/03	7:00 – 11:00 No T&E species heard/observed
4/16/03	7:30 – 11:30 (GCW heard off-site to northeast)
4/1/03	6:45 – 10:45 No T&E species heard/observed
3/24/03	6:40 – 10:40 No T&E species heard/observed
3/16/03	6:35 – 10:35 No T&E species heard/observed

2002

4/30/02	7:30 – 11:30 No T&E species heard/observed
4/24/02	7:30 – 11:30 No T&E species heard/observed
4/15/02	7:30 – 11:30 No T&E species heard/observed
4/9/02	7:30 – 11:30 No T&E species heard/observed
4/4/02	7:30 – 11:30 No T&E species heard/observed

2001

5/14/01	10:15 – 2:15 No T&E species heard/observed
5/9/01	9:45 – 1:45 No T&E species heard/observed
5/4/01	10:00 – 2:00 No T&E species heard/observed
4/29/01	10:00 – 2:00 No T&E species heard/observed
4/24/01	10:00 – 2:00 No T&E species heard/observed

Horizon's final report submitted on May 16, 2003 (Attached) states,

"The majority of this area does not exhibit preferred GCW habitat. However, all drainages and small mottes on the site more closely exhibiting preferred GCW habitat were surveyed."

Generally, on-site vegetation outside of the drainages is typical of South Texas rangeland with a significant grassland component and little developed canopy. Tree species include mesquite (*Prosopis glandulosa*), live oak (*Quercus fusiformis*), huisache (*Acacia farnesiana*), and coma (*Bumelia lanuginosa*). Understory species include immature Ashe juniper (*Juniperus ashei*), prickly pear (*Opuntia lindheimerii*), plantain (*Plantago* ssp.), bluebonnet (*Lupinus texensis*), and various other wildflower species. Conversely, vegetation in drainages and a few small mottes exhibit a more dense woodland component, with a developed canopy, and are composed of Ashe juniper, hackberry (*Celtis laevigata*), and live oak. Understory species include agarita (*Berberis trifoliolata*), greenbrier (*Smilax bona-nox*), devil's shoestring (*Nolina texana*), twisted-leaf yucca (*Yucca rupicola*), and various wildflowers and forbs.

GCW habitat in central Texas typically consists of mature Ashe juniper and broad-leaved oak woodlands, with a high percentage of canopy coverage within and adjacent to incised canyons (Figure 1). Therefore, Horizon concentrated the survey effort in drainages exhibiting vegetation described by the U.S.F.W.S. as being potential habitat for the GCW. However, mottes and small drainages adjacent to potential habitat were also surveyed. Horizon believes that this, along with previous survey efforts, is satisfactory to determine if GCWs are present on the site.

 **Results of this survey did not indicate use of the subject site by GCWs. No birds were observed or heard on the site.** In addition, a literature review at the Texas Biological Conservation Data System revealed no reported GCW sightings on the subject site. However, a single GCW was heard calling while surveyors were in the northeastern corner of the site on April 16, 2003. This bird was calling from off the site and was never located on the site. A subsequent survey event on April 29, as well as an on-site meeting with Dr. Jim Rogers and Dr. Darrell Brownlow on May 7, 2003, failed to locate a GCW in the area. Previous survey efforts in 2001 and 2002 also indicated no GCW utilization of the site.

 Due to low vegetational diversity, on-site habitat would generally be described as poor to marginal, with the majority of the site exhibiting no habitat. In Horizon's opinion, the low-quality habitat, coupled with negative survey results, indicates only a potential transient utilization of the site by GCWs. Horizon does not believe that development of the site will adversely affect the GCW."

In summary, while several small areas of potential habitat exist in the over-all project area (Environmental Survey Areas 1-5), the habitat value is significantly reduced due to livestock and wildlife grazing. Based on extensive surveys, following FWS protocols, and the absence of sightings or calls it is unlikely that activities in the Phase 1 areas will adversely affect golden-cheeked warblers or their habitat.

Aerial photographs were used to map the proposed rail corridor but these will need to be ground truthed in Phase 2 once access has been obtained. The rail alignment habitat is markedly different from that found in the Phase 1-5 Environmental Survey Areas. The general rail spur area is dominated deeper soils that support more intense agricultural and little, if any, potential golden-cheeked warbler habitat. Copies of the annual survey reports are attached to this report.

Karst and Cave Invertebrates (U.S.F.W.S. Listing)

The entire range of the above listed Karst species occurs in north and/or northwest Bexar County. The species and their habitat may be threatened by destruction of habitat by construction, filling of caves, increase in impervious cover, potential contamination from septic tank effluent, sewer leaks, runoff, pesticides and competition with nonnative fire ants and vandalism. Guidelines for determining whether or not a project or activity is likely to result in the take of these invertebrates is based on review of Karst zone maps prepared by George Veni (1994). In addition, James Cokendolpher is gathering published reports by George Veni and William R. Elliot including "Caves and Karsts of Texas" for further review. Veni defines five Karst zones that reflect the likelihood of finding Karst features that may provide habitat for the above listed species as follows:

Zone 1 – Areas known to contain the proposed endemic Karst invertebrates.

Zone 2 – Areas having high probability of suitable habitat for proposed or other endemic Karst invertebrates.

Zone 3 – Areas that probably do not contain proposed endemic Karst invertebrates.

Zone 4 – Areas that require further research but are generally equivalent to Zone 3, although they may include sections that could be classified as Zone 2 or Zone 5.

Zone 5 – Areas that do not contain proposed or endemic Karst invertebrates.

A review of Veni's maps indicate that the proposed project site is outside the mapped area. As such, the area does not have a classification. Any new information will be reviewed and utilized as it becomes available and will be useful in Phase 2-5 surveys. Dr. Brownlow and Dr. Rogers walked the entire Phase 1-5 Environmental Survey Areas and did not find any inclusions, caves, sinks or fissures that would harbor the above referenced species. Numerous site visits and surveys in 2001, 2002 and 2003 did not reveal suitable features for Karst species. While these areas have Karst formations, they do not support the cave and fissure habitat similar to that found in Bexar County. Discussions with James Cokendolpher, confirms that due to the lack of these



United States Department of the Interior



FISH AND WILDLIFE SERVICE

10711 Burnet Road, Suite 200

Austin, Texas 78758

(512) 490-0057

October 17, 2003

Dr. William J. Rogers
Department of Life, Earth, and Environmental Sciences
West Texas A&M University
Box 60808
Canyon, Texas 79016-0001

Consultation Number 2-15-00-I-0658

Dear Dr. Rogers:

This letter responds to your August 2003 submittal to the U.S. Fish and Wildlife Service (Service) of the "Vulcan Materials Company's Biological Assessment Report for its Medina Project in Medina County, Texas." Vulcan proposes construction of a limestone quarry on an approximately 712 hectares (1760 acres) tract approximately 8 kilometers (5 miles) north of the community of Quihi, Texas. This biological assessment (BA) assesses Phase I, the southernmost approximately 243 hectares (600 acres) of the site, and is an updated version of the Vulcan Materials Company (Vulcan) BA submitted to our office in December 2001. Four additional phases will be assessed and submitted to the Service in the future.

On October 15, 2003, Jana Milliken of our staff toured portions of the future quarry site with you and project geologist Dr. Darrell Brownlow to discuss the project's potential impacts to the endangered golden-cheeked warbler (GCW) (*Dendroica chrysoparia*). It was determined in the previous BA that potential habitat for the GCW did exist within and adjacent to the quarry site. However, those areas with the highest potential to support GCW habitat (approximately 81 hectares (200 acres) of the total Phase I area) are to be set aside as buffer zones and undisturbed wildlife "preserve" areas surrounding quarry operations. It is not clear exactly how much of the total 712 hectares (1760 acres) property will remain undisturbed over the life of the project, but estimates given during our tour suggest as much as half of the tract may be set aside

Presence/absence surveys for the GCW were initiated in the Spring of 2001. Horizon Environmental Services, Inc. was contracted to do the surveys for 2001, 2002, and 2003 field seasons. From these surveys, we understand that you have determined that "take" of GCWs is

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Dr. Rogers

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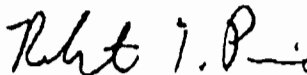
not likely to occur on the quarry site because of lack of suitable habitat. Section 9 of the Endangered Species Act of 1973, as amended (Act) defines take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Take is further defined to include "significant habitat modification where it actually kills or injures wildlife by significantly interfering with essential behavioral patterns such as breeding, feeding and sheltering" (50 Code of Federal Regulations 17.3).

We appreciate the cooperation of Vulcan with the Service over the years to design an environmentally-sound quarry project. As we discussed during our October 15, 2003, visit, we recommend Vulcan consider limiting clearing of vegetation on the quarry site to outside of the breeding season for the GCW, March 1 - August 15. This would further reduce the chance of take occurring incidental to quarry operations. In addition, we determined that if it is necessary to clear inside the breeding season, the Service would be contacted for further guidance. We appreciate the opportunity to work with Vulcan on a clearing schedule that would avoid impacting the local wildlife community to the greatest extent possible.

In a March 20, 2002, letter, we expressed concern about the phased approach that Vulcan is taking to assess potential habitat for the GCW. Generally, the Service requests that projects be assessed for habitat in their entirety prior to initiation of project activities. However, given the fact that operations will not begin in areas outside of Phase I for several years, surveys in those areas would likely need to be reinitiated to show absence. Therefore, we look forward to working with Vulcan in the future to avoid impacts to the GCW on future phases prior to quarrying activities. #

Thank you for your concern for endangered and threatened species and other natural resources. We appreciate the opportunity to comment on the proposed project. If we can be of further assistance or if you have any questions about these comments, please contact Jana Milliken at 512-490-0057, extension 243.

Sincerely,



Robert T. Pine
Supervisor

cc: Dr. Darrell Brownlow, Floresville, Texas
Mr. Tom Ransdell, Vulcan Materials Company, San Antonio, Texas



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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FEB 13 2004

Rini Ghosh
Surface Transportation Board
Case Control Unit
1925 K Street, NW
Washington, DC 20423-0001

FD 34284

Consultation # 2-15-03-I-0276

Dear Ms. Ghosh:

This responds to your January 28, 2004, request for comments from the U.S. Fish and Wildlife Service (Service) related to the Southwest Gulf Railroad Company construction of a 7-mile (11-kilometer) rail line near Dunlay, Medina County, Texas. The Surface Transportation Board (STB) Finance Docket No. is 34284. The rail line will connect the proposed Vulcan Materials, Inc. (Vulcan) limestone quarry to the existing Union Pacific Del Rio subdivision.

In our April 22, 2003, letter, we expressed concern that the proposed project may impact two endangered species, the golden-cheeked warbler (*Dendroica chrysoparia*) and the black-capped vireo (*Vireo atricapillus*). We requested a habitat assessment and, if applicable, surveys be to done particularly of the "straight loading track option". This option appears to be on or adjacent to the quarry site. We cannot determine from aerial photos if this area may support one or both of these species. Following this letter, we spoke with Rusty Mase, a consultant representing the project proponent and recommended he speak with Dr. Darrell Brownlow, a geologist representing Vulcan, and obtain biological survey information from the Vulcan quarry to help determine if additional surveys by STB are necessary. As of the date of this letter, we have not received any additional information addressing our concerns.

If assessments indicate that suitable habitat is likely to be affected either directly or indirectly, we recommend that STB consult with us further. If impacts cannot be avoided, we recommend that STB pursue formal consultation through section 7 of the Endangered Species Act of 1973, as amended. Section 7 requires that all federal agencies consult with the Service to ensure that the actions authorized, funded, or carried out by such agencies do not jeopardize the continued existence of any threatened or endangered species or adversely modify or destroy critical habitat of such species. It is the primary responsibility of STB, as the federal action agency, to determine whether any action it authorizes, funds, or carries out may affect a federally listed or proposed species.

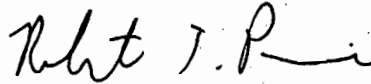
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Ms. Ghosh

- 2 -

Thank you for the opportunity to comment on the proposed project. Contact Jana Milliken at 512-490-0057, extension 243 with any additional questions or comments. Please refer to the consultation number listed above in all future correspondence with this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Pine". The signature is fluid and cursive, with the first name "Robert" and last name "Pine" clearly distinguishable.

Robert T. Pine
Supervisor

Cc: Terence N. Martin – Office of Environmental Policy and Compliance
Stephanie Nash – Branch of Federal Activities

#E1-683



Jana_Milliken@fws.gov
03/01/2004 03:39 PM

To ghoshr@stb.dot.gov
cc
bcc
Subject Biological assessment recommendations

Rini,

Per our phone conversation today, here's the link for the recommendations on the preparation of a biological assessment for a major construction activity (as defined by NEPA).

http://a257.g.akamaitech.net/7/257/2422/05dec20031700/edocket.access.gpo.gov/cfr_2003/octqtr/50cfr402.12.htm

Key in on section (f) on contents of the BA. If that link doesn't work, the regulations can be found at 50 CFR 402.12.

Also as discussed today, we can concur with this information and your determination made in an EIS. In other words, STB does not need to prepare a separate document (i.e. a BA) for concurrence.

Let me know if you have any other questions, Jana

Jana Milliken
Wildlife Biologist
US Fish & Wildlife Service
10711 Burnet Road, Suite 200
Austin, TX 78758
512-490-0057

11-EO-207
RQ

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

May 12, 2005

Robert Pine
Supervisor
U.S. Fish and Wildlife Service
10711 Burnet Road, Suite 200
Austin, TX 78758

Re: STB Finance Docket No. 34284, Southwest Gulf Railroad Company –
Construction and Operation Exemption – Medina County, TX;
Consultation # 2-15-03-I-0276

Dear Mr. Pine:

Pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. 1536, we are writing to request your agency's concurrence with our determination that Southwest Gulf Railroad Company's (SGR) proposed rail line construction and operation in Medina County, Texas is not likely to adversely affect a listed species or designated critical habitat.¹

As you know, the Surface Transportation Board's Section of Environmental Analysis (SEA) is conducting an environmental review of SGR's 7-mile proposed rail line construction and operation, pursuant to the requirements of the National Environmental Policy Act and related environmental regulations, including the Endangered Species Act. The proposed rail line would connect a proposed Vulcan Construction Materials, LP (VCM) limestone quarry and the Del Rio subdivision of the Union Pacific Railroad Company, near Dunlay, Texas. We issued a Draft Environmental Impact Statement (EIS) on November 5, 2004 (sent to you under separate cover), which includes an assessment of the potential effects of the proposed project on biological resources in the project area.

The U.S. Fish and Wildlife Service (FWS) has previously indicated to us that two Federally listed songbirds, the Black-capped Vireo and the Golden-cheeked Warbler, may occur

¹ We note that this determination is based on the scope of our analysis to date. Commenters have requested that the scope of the proposed action be expanded and that additional alternative rail routes be studied. Should we determine that additional analysis is needed regarding impacts to threatened and endangered species, we will consult further with your agency, as appropriate.

in the project area. (See Draft EIS, Volume II, pages C-17, C-18, C44, and C-45.) In the Draft EIS, we state that our field surveys,² conducted between February and May of 2003, indicate that neither the Black-capped Vireo nor the Golden-cheeked Warbler are present in the area of the proposed route or alternative routes for the rail line. This is due to the absence of habitat considered suitable for these two species. However, a proposed rail loading track that would be built as part of the proposed project on the quarry property would be located in an area that could provide potential habitat for the Golden-cheeked Warbler. (See Draft EIS, Volume I at pages 3-24 and 3-26.)

As discussed in the Draft EIS, the remaining Federally listed species in Medina County are associated with karst features. SEA did not locate observable karst features during field surveys, though the area near the loading track and a portion of the rail line that would extend approximately 1,500 feet to the south of the loading track has the potential to develop karst features. In the Draft EIS, SEA recommended a condition that if SGR identifies a significant karst feature during the grading and construction of the rail line in the area susceptible to karst feature formation, SGR shall inventory any caves for endangered species. (See Draft EIS, Volume I, pages 3-30 and 5-10.)

VCM initiated field surveys in 2000 to determine the presence or absence of threatened and endangered species in the proposed quarry area. These surveys included the proposed loading track and plant maintenance/fuel storage areas in the southern portion of the proposed quarry area. These surveys were continued in 2001, 2002, and 2003, and the results were submitted to your office. (Enclosed figure shows the area in which detailed surveys were conducted. See also Draft EIS, Volume II, Appendix F.) These detailed surveys included presence/absence surveys for the Golden-cheeked Warbler by endangered species specialists,

² As stated in the Draft EIS, SEA's field assessment of the proposed rail line route included pedestrian surveys of undeveloped lands and unimproved agricultural lands. The assessment of biological resources along the alternative rail line routes was completed by partial observation by automobile and by a more detailed review of these routes on aerial photography (Texas Digital Ortho Quadrangle False Color Infrared dated 1995), published soil maps, National Wetland Inventory Maps, and USGS 7.5 minute topographic maps.

and concluded that it is unlikely that activities in the surveyed area would adversely affect Golden-cheeked Warblers or their habitat.

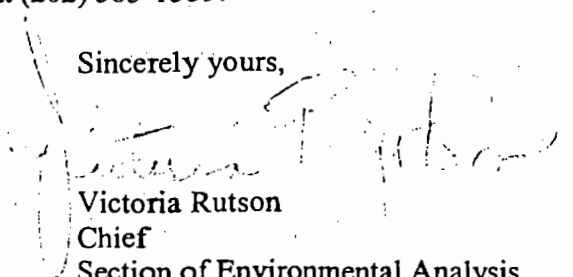
VCM indicated that areas with the highest potential to support Golden-cheeked Warblers are to be set aside as buffer zones and undisturbed wildlife preserve areas surrounding quarry operations. FWS informed VCM, by letter dated October 17, 2003 (copy enclosed), that VCM and FWS would be working together throughout the quarry project to avoid impacts to the Golden-cheeked Warbler. In addition, VCM's surveys did not find any surficial karst features that provide habitat for known threatened and endangered species.

Based on SEA's field surveys of the proposed and alternative rail line alignments, and VCM's detailed surveys of the area in which the rail loading track would be located, as well as indication that VCM would continue to consult with FWS regarding impacts to Federally listed species, we conclude that SGR's proposed rail line construction and operation is not likely to adversely affect a listed species or designated critical habitat. Moreover, our proposed mitigation measures for identifying and inventorying karst features and caves during grading and construction of the rail line, as set forth in the Draft EIS, would further protect against potential impacts to threatened and endangered species.

We request your agency's concurrence with our determination that the proposed rail line construction and operation is not likely to adversely affect in order to conclude the informal consultation process of Section 7 of the Endangered Species Act.

If you have any questions or we require additional information, please do not hesitate to contact me or Rini Ghosh of my staff at (202) 565-1539.

Sincerely yours,



Victoria Rutson
Chief

Section of Environmental Analysis

Enclosures

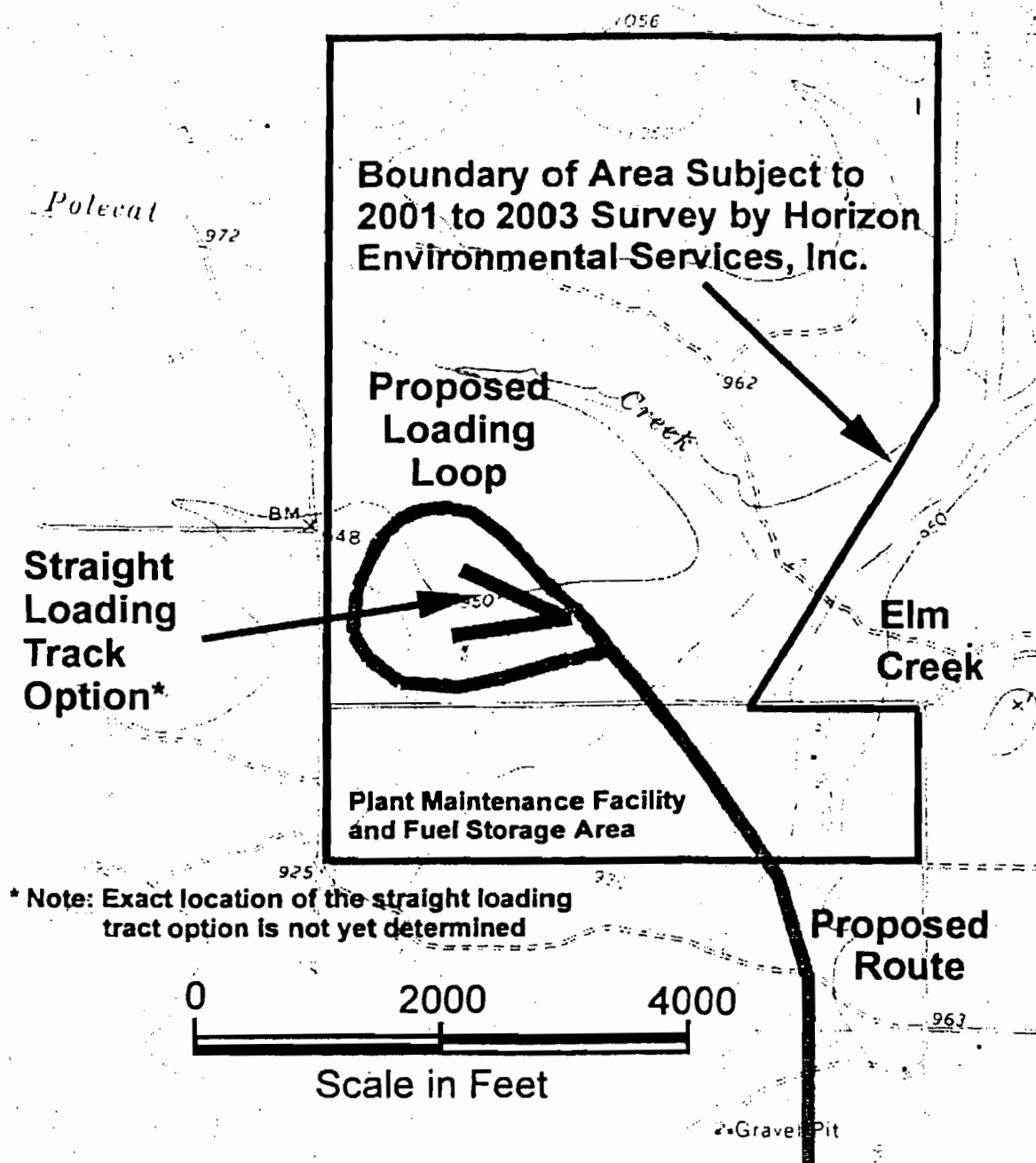


Figure 4.17-1. Survey Area of Vulcan Material Company's Biological Assessments



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#E1-1479
R2

MAY 19 2005

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
Washington, DC 20423

Consultation # 2-15-03-I-0276

Dear Ms. Rutson:

This responds to your May 12, 2005, concurrence request for the construction of Southwest Gulf Railroad Company's (SGR) proposed rail line (Surface Transportation Board (STB) Finance Docket No. 34284) near the town of Quihi, Medina County, Texas. We understand STB has determined that the proposed construction is not likely to adversely affect the endangered golden-cheeked warbler (*Dendroica chrysoparia*), pursuant to section 7 of the Endangered Species Act of 1973, as amended (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Effects to the environment from the construction of the 7-mile (11-kilometer) proposed rail line were analyzed in STB's November 5, 2004, draft Environmental Impact Statement (EIS). The EIS summarizes field surveys initiated by STB that indicate that no habitat for the golden-cheeked warbler or the endangered black-capped vireo (*Vireo atricapilla*) exist along the rail line route. However, a proposed loading track that connects with the rail line on the adjacent proposed Vulcan quarry property may contain habitat for the golden-cheeked warbler. Vulcan performed three years of presence/absence surveys for the warbler in this area, and found no individuals of this species. Therefore, we agree the project as proposed is not likely to adversely affect the golden-cheeked warbler.

Projects in Medina County also have the potential to affect species associated with the Edwards Aquifer, particularly in the recharge zone. It appears that most of the rail line occurs downgradient of the recharge zone. The loading track is within, or in close proximity to, the aquifer recharge zone, but all fueling of rail cars and other activities that can result in release of hazardous materials will occur outside of the recharge zone.

No karst invertebrate species are listed in Medina County. However, they do occur in adjacent Bexar County. We appreciate the willingness of STB to use caution during work around karst features, as they may contain connections to karst features in Bexar County that can support the endangered species.

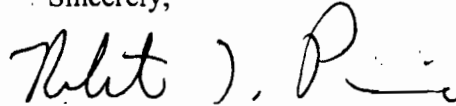
TAKE PRIDE
IN AMERICA

Ms. Rutson

2

We thank you for your concern for endangered and threatened species and other natural resources, and we appreciate the opportunity to comment on the proposed project. If we can be of further assistance or if you have any questions about these comments, please contact Jana Milliken at 512-490-0057, extension 243.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert T. Pine".

Robert T. Pine
Supervisor



United States Department of the Interior



FISH AND WILDLIFE SERVICE

10711 Burnet Road, Suite 200

Austin, Texas 78758

(512) 490-0057

October 17, 2003

Dr. William J. Rogers
Department of Life, Earth, and Environmental Sciences
West Texas A&M University
Box 60808
Canyon, Texas 79016-0001

Consultation Number 2-15-00-I-0658

Dear Dr. Rogers:

This letter responds to your August 2003 submittal to the U.S. Fish and Wildlife Service (Service) of the "Vulcan Materials Company's Biological Assessment Report for its Medina Project in Medina County, Texas." Vulcan proposes construction of a limestone quarry on an approximately 712 hectares (1760 acres) tract approximately 8 kilometers (5 miles) north of the community of Quihi, Texas. This biological assessment (BA) assesses Phase I, the southernmost approximately 243 hectares (600 acres) of the site, and is an updated version of the Vulcan Materials Company (Vulcan) BA submitted to our office in December 2001. Four additional phases will be assessed and submitted to the Service in the future.

On October 15, 2003, Jana Milliken of our staff toured portions of the future quarry site with you and project geologist Dr. Darrell Brownlow to discuss the project's potential impacts to the endangered golden-cheeked warbler (GCW) (*Dendroica chrysoparia*). It was determined in the previous BA that potential habitat for the GCW did exist within and adjacent to the quarry site. However, those areas with the highest potential to support GCW habitat (approximately 81 hectares (200 acres) of the total Phase I area) are to be set aside as buffer zones and undisturbed wildlife "preserve" areas surrounding quarry operations. It is not clear exactly how much of the total 712 hectares (1760 acres) property will remain undisturbed over the life of the project, but estimates given during our tour suggest as much as half of the tract may be set aside.

Presence/absence surveys for the GCW were initiated in the Spring of 2001. Horizon Environmental Services, Inc. was contracted to do the surveys for 2001, 2002, and 2003 field seasons. From these surveys, we understand that you have determined that "take" of GCWs is

TAKE PRIDE
IN AMERICA

G-113

Dr. Rogers

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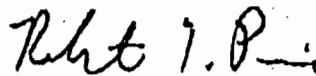
not likely to occur on the quarry site because of lack of suitable habitat. Section 9 of the Endangered Species Act of 1973, as amended (Act) defines take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Take is further defined to include "significant habitat modification where it actually kills or injures wildlife by significantly interfering with essential behavioral patterns such as breeding, feeding and sheltering" (50 Code of Federal Regulations 17.3).

We appreciate the cooperation of Vulcan with the Service over the years to design an environmentally-sound quarry project. As we discussed during our October 15, 2003, visit, we recommend Vulcan consider limiting clearing of vegetation on the quarry site to outside of the breeding season for the GCW, March 1 - August 15. This would further reduce the chance of take occurring incidental to quarry operations. In addition, we determined that if it is necessary to clear inside the breeding season, the Service would be contacted for further guidance. We appreciate the opportunity to work with Vulcan on a clearing schedule that would avoid impacting the local wildlife community to the greatest extent possible.

In a March 20, 2002, letter, we expressed concern about the phased approach that Vulcan is taking to assess potential habitat for the GCW. Generally, the Service requests that projects be assessed for habitat in their entirety prior to initiation of project activities. However, given the fact that operations will not begin in areas outside of Phase I for several years, surveys in those areas would likely need to be reinitiated to show absence. Therefore, we look forward to working with Vulcan in the future to avoid impacts to the GCW on future phases prior to quarrying activities.

Thank you for your concern for endangered and threatened species and other natural resources. We appreciate the opportunity to comment on the proposed project. If we can be of further assistance or if you have any questions about these comments, please contact Jana Milliken at 512-490-0057, extension 243.

Sincerely,



Robert T. Pine
Supervisor

cc: Dr. Darrell Brownlow, Floresville, Texas
Mr. Tom Ransdell, Vulcan Materials Company, San Antonio, Texas

#EO-289
RL

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

July 18, 2006

Dawn Whitehead
U.S. Fish and Wildlife Service
10711 Burnet Road, Suite 200
Austin, TX 78758

Re: STB Finance Docket No. 34284, Southwest Gulf Railroad Company –
Construction and Operation Exemption – Medina County, TX;
Consultation # 2-15-03-I-0276

Dear Ms. Whitehead:

The Surface Transportation Board's Section of Environmental Analysis (SEA) issued a Draft Environmental Impact Statement (DEIS) on November 5, 2004, which assessed the potential environmental impacts of Southwest Gulf Railroad Company's (SGR) proposed rail line construction and operation in Medina County, Texas. The DEIS assessed four potential rail alignments (Proposed Route, Alternative 1, Alternative 2, and Alternative 3). In response to comments received on the DEIS, SEA is currently preparing a Supplemental DEIS (SDEIS) to study three additional alternative rail alignments: the Eastern Bypass Route; the MCEAA Medina Dam Alternative; and SGR's Modified Medina Dam Route (collectively, the Eastern Alternatives). **Pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. 1536, we are writing to request the U.S. Fish and Wildlife Service's (USFWS) concurrence with our determination that construction and operation of any of the Eastern Alternatives is not likely to adversely affect Federally listed species or designated critical habitat.¹**

The proposed rail line would connect a proposed Vulcan Construction Materials, LP (VCM) limestone quarry and the Del Rio subdivision of the Union Pacific Railroad Company, near Dunlay, Texas. By letter dated May 12, 2005, SEA determined that construction and operation of the proposed rail line under any of the alternatives studied in the DEIS is not likely to adversely affect Federally listed species or designated critical habitat (copy enclosed for reference). SEA received concurrence with this determination from your office by letter dated May 19, 2005 (copy enclosed for reference).

¹ We note that this determination is based on our analysis of the Eastern Alternatives to date.

SEA received a letter from your office, dated April 12, 2006, indicating that the Eastern Alternatives may provide suitable habitat for the following Federally listed species: Golden-cheeked Warbler (*Dendroica chrysoparia*); Black-capped Vireo (*Vireo atricapilla*); Comal Springs Dryopid Beetle (*Stygoparnus comalensis*); Comal Springs Riffle Beetle (*Heterelmis comalensis*); Fountain Darter (*Etheostoma fonticola*); Peck's Cave Amphipod (*Stygobromus pecki*); San Marcos Gambusia (*Gambusia georgei*); San Marcos Salamander (*Eurycea nana*); Texas Blind Salamander (*Typhlomolge rathbuni*); and Texas Wild-rice (*Zizania texana*).

On April 11th, 12th and 20th 2006, SEA conducted pedestrian field surveys of the areas that would be crossed by the three Eastern Alternatives to assess potential impacts to the above-listed species. Findings indicate that habitat to support the Black-capped Vireo is not present within the areas traversed by the Eastern Alternatives, and that marginal habitat for the Golden-cheeked Warbler exists at the terminus of the MCEAA Medina Dam Alternative route, the Eastern Bypass Route and SGR's Modified Medina Dam Route, near the loading track area on the quarry site.

The area identified as marginal habitat for the Golden-cheeked Warbler occurs within VCM's proposed Plant Maintenance Facility and Fuel Storage Area for the quarry.² VCM intensely surveyed this area in 2000, 2001, 2002 and 2003, to determine the presence or absence of threatened and endangered species in the proposed quarry area. These detailed surveys included presence/absence surveys for the Golden-cheeked Warbler by endangered species specialists, and concluded that it is unlikely that activities in the surveyed area would adversely affect Golden-cheeked Warblers or their habitat. These surveys included the proposed rail loading track area in the southern portion of the proposed quarry area as well. The results were submitted to your office. (Enclosed figure shows the area in which detailed surveys were conducted. See also Draft EIS, Volume II, Appendix F.) USFWS informed VCM, by letter dated October 17, 2003 (copy enclosed), that VCM and USFWS would be working together throughout the quarry project to avoid impacts to the Golden-cheeked Warbler.

The remaining Federally listed species (Comal Springs Dryopid Beetle, Comal Springs Riffle Beetle, Fountain Darter, Peck's Cave Amphipod, San Marcos Gambusia, San Marcos Salamander, Texas Blind Salamander, and Texas Wild-rice) identified in the April 12, 2006, letter from your office, depend on surficial karst features, and the Edwards Aquifer and its associated springs (specifically the San Marcos River). SEA's April 11th, 12th and 20th 2006, pedestrian field surveys did not disclose observable karst features within the areas that would be crossed by any of the three Eastern Alternatives. Nevertheless, SEA would recommend that a condition be imposed upon any decision granting SGR authority to construct any of the Eastern Alternatives that would require SGR to inventory any caves for endangered species, if SGR identifies a significant karst feature during the grading and construction of the rail line in the area

² Licensing of the quarry is not part of the Surface Transportation Board's mandate, which primarily is the economic regulation of freight railroads. SEA has studied the proposed quarry as part of its cumulative effects analysis for the rail line construction and operation Environmental Impact Statement.

susceptible to karst feature formation (this is the same condition that SEA recommended for the four rail alignments studied in the DEIS). However, in your letter and in a phone conversation with Ms. Rini Ghosh of my staff and Ms. Jill Seed of URS Corporation (URS)³ on June 15, 2006, you indicated concern that the proposed rail line construction and operation could impact karst species by affecting the water quality and water quantity of the Edwards Aquifer.

To address your concern regarding potential impacts to the water quality of the Edwards Aquifer, SEA would recommend mitigation measures requiring SGR to do the following: (1) develop and follow a Stormwater Pollution Prevention Plan; (2) use Best Management Practices during construction and maintenance activities; (3) develop a Spill Prevention, Containment, and Countermeasures Plan specifically for portions of the rail line that would be constructed over the Edwards Aquifer Recharge Zone; (4) develop a Water Pollution Abatement Plan; and (5) monitor the stream beds, land, and water quality in the vicinity of the rail line for indications of diesel or gasoline releases, take appropriate action to prevent diesel or gasoline releases, and remediate any contaminated soils as soon as practicable.⁴ These measures would be applicable to any of the Eastern Alternatives for which the Board may grant a license. Moreover, SEA would also recommend that a condition be imposed that would require SGR to consult with your agency and the Edwards Aquifer Authority during final engineering of the rail line and prior to beginning construction to ensure that the material used for the track, ties, and ballast would not pose hazards to the water quality of the Edwards Aquifer or species dependent upon the aquifer (e.g., use of ties not preserved with creosote).

SGR has indicated that its affiliate, Vulcan Materials Company (Vulcan), owns Edwards Aquifer water rights that could be transferred from existing Vulcan operations in Bexar County and Medina County to supply the needs for the construction, maintenance and operation of the proposed rail line. To ensure that construction and operation of the rail line would not affect water quantity in the Edwards Aquifer, SEA would recommend that a condition be imposed upon any decision granting SGR authority to construct the rail line (under any alternative route) that would require SGR to use Vulcan's existing Edwards Aquifer water rights when using water from the Edwards Aquifer during construction, maintenance and operation of the rail line. Thus, SEA believes that construction and operation of any of the Eastern Alternatives would not cause significant impacts to the above-listed species, or to the Edwards Aquifer and its associated springs.

Based on SEA's field surveys of the Eastern Alternatives, and VCM's detailed surveys of the Plant Maintenance Facility and Fuel Storage Area, as well as indication that VCM would continue to consult with USFWS regarding impacts to Federally listed species on the quarry site,

³ URS Corporation (URS) is SEA's independent third-party contractor in this case. See 49 CFR 1105.4(j); Policy Statement on Use of Third-Party Contracting in Preparation of Environmental Documentation, 66 Fed. Reg. 16,975 (2001); and 40 CFR 1506.5(c).

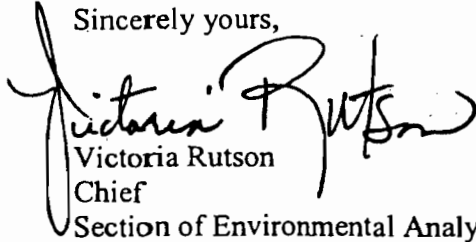
⁴ These are the same conditions that SEA recommended for the rail alignments studied in the DEIS. SEA may propose additional mitigation measures in the SDEIS and/or Final EIS (which SEA will prepare in response to comments received on the DEIS and SDEIS).

we conclude that construction and operation of any of the Eastern Alternatives would not be likely to adversely affect a listed species or designated critical habitat. Moreover, our proposed mitigation measures for preventing groundwater contamination, and identifying and inventorying karst features and caves during grading and construction of the rail line, as described in this letter, would further protect against potential impacts to Federally listed threatened and endangered species.

We request your agency's concurrence with our determination that the construction and operation of any of the Eastern Alternatives are not likely to adversely affect in order to conclude the informal consultation process of Section 7 of the Endangered Species Act. We also welcome USFWS to provide any suggestions or comments on our proposed mitigation measures and to propose additional recommendations for mitigation.

If you have any questions or require additional information, please do not hesitate to contact me or Rini Ghosh of my staff at (202) 565-1539.

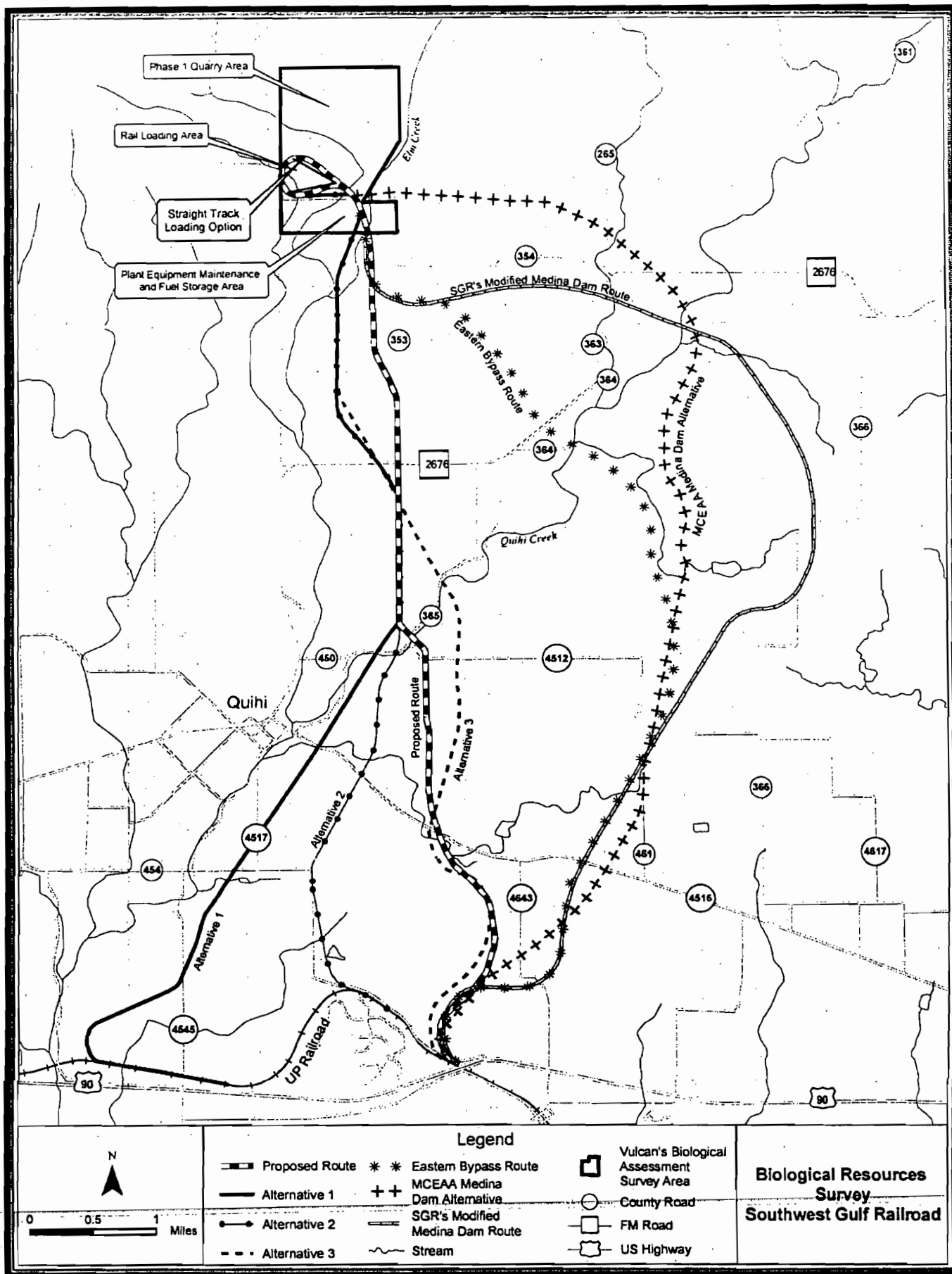
Sincerely yours,

A handwritten signature in black ink, appearing to read "Victoria Rutson", is written over the typed name and title.

Victoria Rutson
Chief

Section of Environmental Analysis

Enclosures



Biological Resources Survey **Southwest Gulf Railroad**

Darm

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RECEIVED

Washington, DC 20423

July 18, 2006

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Re: STB Finance Docket No. 34284, Southern
Construction and Operation Exemption
Consultation # 2-15-03-I-0276

West San Antonio County, TX
- Medina County, TX
Date: 24 July 86
Consultation #: 2-15-03-E-0276
Approved by: E. Dawn Whitehead
for Robert T. Pine, Field Supervisor
U.S. FISH & WILDLIFE SERVICE, AUSTIN, TEXAS

The Surface Transportation Board's Section of Environmental Analysis (SEA) issued a Draft Environmental Impact Statement (DEIS) on November 5, 2004, which assessed the potential environmental impacts of Southwest Gulf Railroad Company's (SGR) proposed rail line construction and operation in Medina County, Texas. The DEIS assessed four potential rail alignments (Proposed Route, Alternative 1, Alternative 2, and Alternative 3). In response to comments received on the DEIS, SEA is currently preparing a Supplemental DEIS (SDEIS) to study three additional alternative rail alignments: the Eastern Bypass Route; the MCEAA Medina Dam Alternative; and SGR's Modified Medina Dam Route (collectively, the Eastern Alternatives). Pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. 1536, we are writing to request the U.S. Fish and Wildlife Service's (USFWS) concurrence with our determination that construction and operation of any of the Eastern Alternatives is not likely to adversely affect Federally listed species or designated critical habitat.¹

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Based on SEA's field surveys of the Eastern Alternatives, and VCM's detailed surveys of the Plant Maintenance Facility and Fuel Storage Area, as well as indication that VCM would continue to consult with USFWS regarding impacts to Federally listed species on the quarry site,

³ URS Corporation (URS) is SEA's independent third-party contractor in this case. See 49 CFR 1105.4(j); Policy Statement on Use of Third-Party Contracting in Preparation of Environmental Documentation, 66 Fed. Reg. 16,975 (2001); and 40 CFR 1506.5(c).

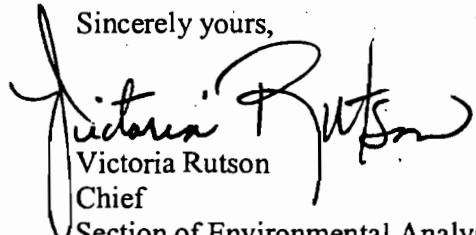
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we conclude that construction and operation of any of the Eastern Alternatives would not be likely to adversely affect a listed species or designated critical habitat. Moreover, our proposed mitigation measures for preventing groundwater contamination, and identifying and inventorying karst features and caves during grading and construction of the rail line, as described in this letter, would further protect against potential impacts to Federally listed threatened and endangered species.

We request your agency's concurrence with our determination that the construction and operation of any of the Eastern Alternatives are not likely to adversely affect in order to conclude the informal consultation process of Section 7 of the Endangered Species Act. We also welcome USFWS to provide any suggestions or comments on our proposed mitigation measures and to propose additional recommendations for mitigation.

If you have any questions or require additional information, please do not hesitate to contact me or Rini Ghosh of my staff at (202) 565-1539.

Sincerely yours,


Victoria Rutson
Chief
Section of Environmental Analysis

Enclosures

6 May 2002

Mr. Tom Ransdell
Vulcan Materials
PO Box 79155
San Antonio, Texas 78279-1550

**Re: Results of the federally listed endangered Golden-cheeked Warbler survey on the Hugo Wurzbach tract along County Road 353, Quihi, Medina County, Texas.
HJN 020076 TE**

Dear Mr. Ransdell:

Horizon Environmental Services, Inc. (Horizon) has completed the survey for the golden-cheeked warbler (GCW) on the above-referenced property according to the US Fish and Wildlife Service (FWS) survey guidelines. Surveys were conducted on 4, 9, 15, 24, and 30 April 2001. Horizon spent a total of 40 hours surveying the tract. The entire 200 acres planned for initial development were surveyed. However, drainages and areas more closely exhibiting preferred GCW habitat were surveyed more intensely than areas lacking the preferred vegetational characteristics.

The southern half of the subject site generally exhibits typical South Texas rangeland vegetation. Dominant canopy species include mesquite (*Prosopis glandulosa*), live oak (*Quercus fusiformis*), huisache (*Acacia farnesiana*), and coma (*Bumelia lanuginosa*). Ground species include prickly pear (*Opuntia lindheimeri*), plantain (*Plantago* ssp.), bluebonnet (*Lupinus texensis*), and various other wildflower species.

The remainder of the subject site encompassing the northern portion and creekside areas exhibit a denser woodland component composed of Ashe juniper (*Juniperus ashei*), hackberry (*Celtis laevigata*), and live oak. Ground species include agarita (*Berberis trifoliolata*), greenbrier (*Smilax bona-nox*), devil's shoestring (*Nolina texana*), twisted-leaf yucca (*Yucca rupicola*), and various wildflowers and forbs.

Horizon concentrated the survey effort in portions of the subject site exhibiting vegetation described by the FWS as being potential habitat for the GCW. GCW habitat in central Texas typically consists of mature Ashe juniper and broad-leaved oak woodlands, with a high percentage of canopy coverage within and adjacent to incised canyons of central Texas (Figure 1).

Figure1

Results of this survey did not indicate use of the subject site by GCWs. No birds were observed while on the site. In addition, a literature review at the Texas Biological Conservation Data System revealed no reported GCW sightings on the subject site. Please call if you have any questions or comments.

Sincerely,

Clay V. Fischer
Environmental Specialist

Cc: Dr. William Rogers

28 May 2003

Mr. Tom Ransdell
Vulcan Materials
P.O. Box 79155
San Antonio, Texas 78279-1550

RE: Results of the federally listed endangered golden-cheeked warbler survey on the Hugo Wurzbach Property, located along County Road (CR) 353 in Quihi, Medina County, Texas
HJN 030061 TE

Dear Mr. Ransdell:

Horizon Environmental Services, Inc. (Horizon) has completed the survey for the golden-cheeked warbler (GCW) (*Dendroica chrysoparia*) on the above-referenced property, conducted according to the US Fish and Wildlife Service (USFWS) survey guidelines. Surveys were conducted on 16 and 24 March and 1, 16, and 29 April 2003. Horizon spent a total of 40 hours surveying the site. Only the southern half of the 630-acre site is planned for initial development. The majority of this area does not exhibit preferred GCW habitat. However, Horizon surveyed all drainages and small mottes on the site more closely exhibiting preferred GCW habitat.

Generally, on-site vegetation outside of the drainages is typical of South Texas rangeland, with a significant grassland component and little developed canopy. Tree species include mesquite (*Prosopis glandulosa*), live oak (*Quercus fusiformis*), huisache (*Acacia farnesiana*), and coma (*Bumelia lanuginosa*). Understory species include immature Ashe juniper (*Juniperus ashei*), prickly pear (*Opuntia lindheimeri*), plantain (*Plantago* sp.), bluebonnet (*Lupinus texensis*), and various other wildflower species. Conversely, vegetation in drainages and a few small mottes exhibit a more dense woodland component with a developed canopy, and are composed of Ashe juniper, hackberry (*Celtis laevigata*), and live oak. Understory species include agarita (*Berberis trifoliolata*), greenbrier (*Smilax bona-nox*), devil's shoestring (*Nolina texana*), twisted-leaf yucca (*Yucca rupicola*), and various wildflowers and forbs.

GCW habitat in central Texas typically consists of mature Ashe juniper and broad-leaved oak woodlands, with a high percentage of canopy coverage within and adjacent to incised canyons (Figure 1). Therefore, Horizon concentrated the survey effort in drainages exhibiting vegetation described by the USFWS as potential habitat for the GCW. However, mottes and small drainages adjacent to potential habitat were also surveyed. Horizon believes that this, along with previous survey efforts, is satisfactory to determine if GCWs are present on the site.

Figure1

Results of this survey did not indicate use of the subject site by GCWs. No birds were observed or heard on the site. In addition, a literature review at the Texas Biological Conservation Data System revealed no reported GCW sightings on the subject site. However, a single GCW was heard calling while surveyors were in the northeastern corner of the site on 16 April 2003. This bird was calling from off the site and was never located on the site. A subsequent survey event on 29 April, as well as an on-site meeting with Dr. Jim Rogers and Mr. Darrel Brownlow on 7 May 2003, failed to locate a GCW in the area. Previous survey efforts in 2001 and 2002 also indicated no GCW utilization of the site.

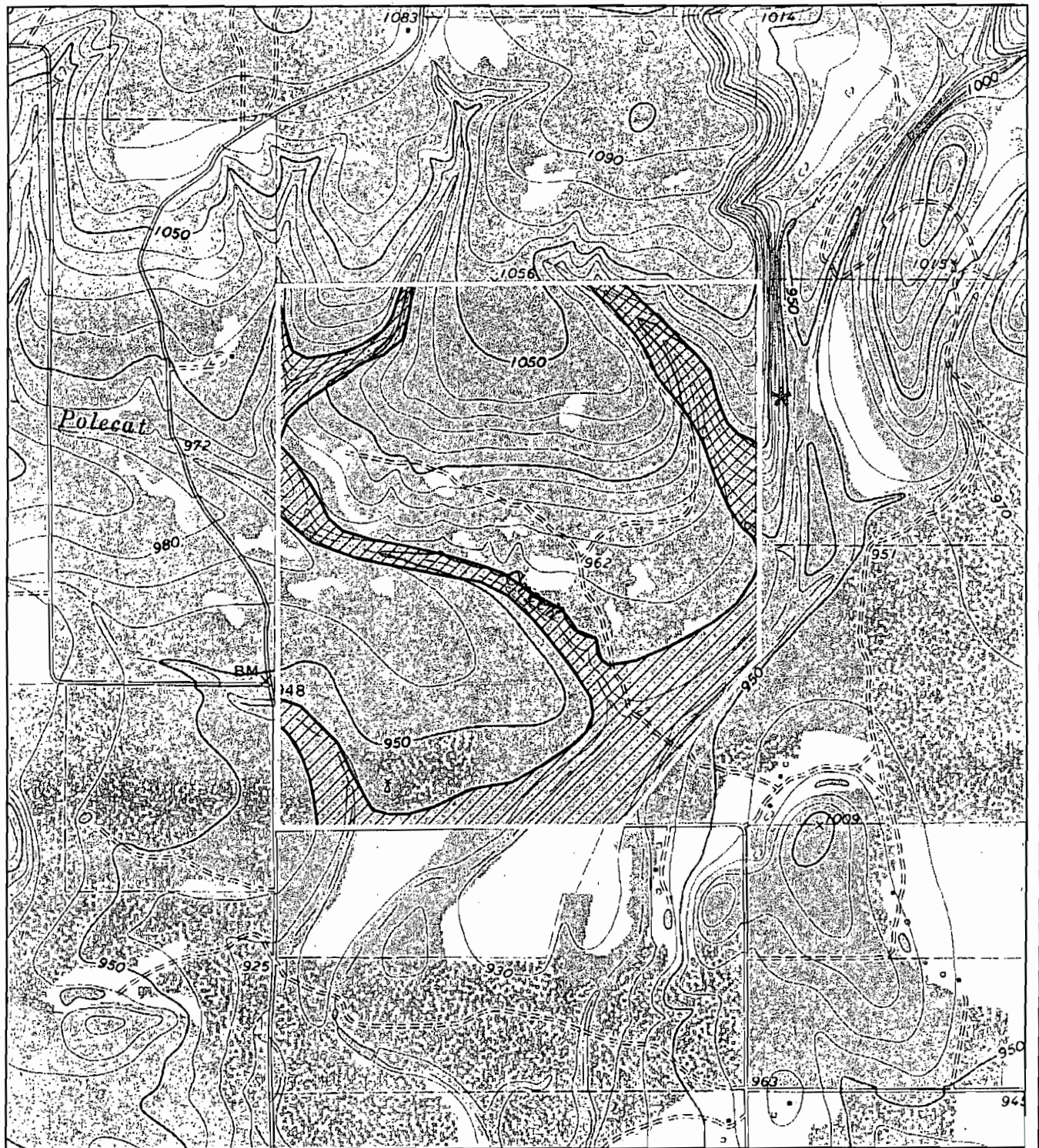
Due to low vegetational diversity, on-site habitat would generally be described as poor to marginal, with the majority of the site exhibiting no habitat. In Horizon's opinion, the low-quality habitat, coupled with negative survey results, indicates only a potential transient utilization of the site by GCWs. Horizon does not believe that development of the site will adversely affect the GCW.

Please call (512) 328-2430 if you have any questions or comments.

Sincerely,
For Horizon Environmental Services, Inc.

Clay V. Fischer
Environmental Specialist

CC: Dr. William Rogers



BASE MAP SOURCE: USGS 7.5' SERIES QUIHI TEXAS QUAD

LEGEND

- TRACT BOUNDARY
- MATURE ASH & JUNIPER/OAK WOODLAND
- * GOLDEN-CHEEKED WARBLER LOCATION

Horizon
Environmental Services, Inc.

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SCALE IN FEET

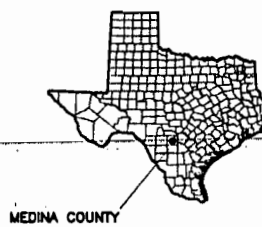
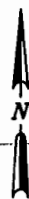


FIGURE 1
GOLDEN-CHEEKED WARBLER
SURVEY AREA
VULCAN MATERIALS
COUNTY ROAD 354
QUIHI, MEDINA COUNTY, TEXAS