

STEPTOE & JOHNSON <sup>LLP</sup>  
ATTORNEYS AT LAW

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FD 34284

David H. Coburn  
202.429.8063  
dcoburn@steptoe.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
Tel 202.429.3000  
Fax 202.429.3902  
steptoe.com

December 4, 2007

Ms. Diana Wood  
Section of Environmental Analysis  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

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

Dear Ms. Wood:

We have reviewed the November 19, 2007 letter submitted to your office by MCEAA's attorneys concerning the Draft Programmatic Agreement (Draft PA) circulated for comment by SEA in this proceeding. In that letter, it is argued that Part II.A of the Draft PA should be revised because, MCEAA asserts, it provides SGR or its consultants with too much discretion to decide what surveys, in addition to those already undertaken as part of the NEPA and NHPA processes in this proceeding, should be conducted along the right-of-way on which the rail line is to be constructed. MCEAA is apparently concerned that SGR will choose, without any oversight, not to conduct additional cultural resources surveys for archeological sites or do so too selectively. It therefore proposes that the PA be modified to require two pedestrian reconnaissance surveys of the route to be constructed, one before vegetation is cleared and one afterward. It further proposes that representatives of the THC and ACHP participate in these surveys.

MCEAA's proposal to so modify the PA should be rejected. SGR is obligated by Part II. A. of the PA to conduct those surveys that are "necessary" to identify any archeological resources within the APE and will adhere to its commitments under the PA. It will, as required by the PA, also retain professional experts to conduct these surveys who meet the Secretary of Interior's Professional Qualification Standards. What SGR is not required to do by the PA is to repeat work that has already been done by SEA and its contractors during the NEPA/NHPA processes.

Further, MCEAA's concern that SGR will be operating without regulatory oversight is plainly incorrect. Part II.A. of the PA expressly provides the STB with such oversight of SGR's plans, including a requirement that the STB review and approve a proposed scope of work before any field work is undertaken. A requirement for consultation with the THC on a scope of work for such surveys is also specifically set forth in Part II.A. of the Draft PA. The notion that SGR would act on its own to simply ignore the requirement for archeological surveys is thus unsupported by the terms of the Draft PA. Moreover, it bears note that the THC and ACHP have seen the terms of the PA, and in fact the PA reflects significant input from the THC. Neither of these agencies has expressed the view that the PA is deficient in any respect, including on the points made by MCEAA.

None of the other comments submitted on the Draft PA require any extended response. Several commenters make note of specific historic and archeological resources in the area, and some continue to argue that no rail line should be built in the area. SGR is mindful of the resources in the area, including the archeological site that has been noted by one commenter. The issue before SEA here is not whether there are such resources in the area. Rather, the only question for which comment has been sought by SEA at this time is whether the terms of the Draft PA are sufficient to allow SGR to identify and appropriately avoid or otherwise mitigate in relation to whatever cultural resources may be found in the Area of Potential Effect on the right-of-way chosen for rail construction. None of these commenters has demonstrated that the Draft PA is deficient in this regard.

Further, the notion proposed by some commenters that further special studies must be undertaken should be soundly rejected. SEA's contractors have already undertaken extensive studies of the area, and the eastern rail routings now under review were designed to avoid the area that has been identified as the most sensitive from an historic resources impact. Other groups claiming an interest in the area's history are obviously free to undertake any studies and preservation efforts that they wish. However, through the extensive studies that have already been completed, SEA has more than met its responsibilities under NEPA and NHPA to examine the impact of the proposed rail line on the area's cultural resources. Further, implementation of the PA as a form of mitigation will ensure that the proposed rail line's impact on the specific cultural resources that may be located in the vicinity of the line to be constructed will be minimized. In short, none of the comments suggests that the Draft PA, in its current form, is inadequate in any respect.

Ms. Diana Wood  
December 4, 2007  
Page 3

STEPTOE & JOHNSON <sup>LLP</sup>

We would be pleased to respond to any questions that you might have concerning the above.

Respectfully,

A handwritten signature in black ink, appearing to read "David H. Coburn", with a long horizontal flourish extending to the right.

David H. Coburn  
Attorney for Southwest Gulf Railroad Company

cc: Ms. Jaya Zyman-Ponebshek  
Mr. Lawrence Oaks  
Ms. Charlene Dwin-Vaughn