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July 9, 2008

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

VIA ELECTRONIC FILING

Re: Finance Docket 34284, Southwest Gulf Railroad—Construction and
Operation Exemption—Medina County, Texas

Dear Secretary Quinlan:

This letter will respond on behalf of the Medina County Environmental Action Association (MCEAA) only to the letter dated July 7, 2007 from counsel for Southwest Gulf Railroad (SGR).

MCEAA had not anticipated making any further submissions prior to the Board's decision, but once again, as has occurred without success in numerous prior occasions in this proceeding, SGR had to overreach.¹ The tone of the Board's decision, as it imposes *all* of the necessary mitigation outlined in the Final EIS, should reflect the need for consensus-building and community support in permitting these types of projects, and should send a message to future applicants that overreaching without community support

¹ Examples include SGR's unlawfully narrow formulation of alternative routes, which MCEAA was ultimately successful in supplementing (requiring preparation of a supplemental EIS) and having selected as environmentally preferable by the SEA; as well as the high level of historical and environmental analysis and mitigation across all impact areas arrived at after much resistance from Vulcan/SGR.

results only in delays of the type experienced in this nearly five year long proceeding. A lesson of this proceeding is that the environmental review process will produce a result more accommodative of community understanding, because the community understands the facts on the ground that the environmental review process documents. Applicants proceeding contrary to community understanding without proper environmental review merely delay the documentation of the facts the community already knows to be true. So it was here: it was clear from the start that the rail line should go to the east and avoid the floodplains and the Quihi Historic District.

The Section of Environmental Analysis and the Board are aware that Medina County is developing a memorandum of understanding (MOU) with SGR and its parent Vulcan Construction Materials, LP, to potentially be submitted and incorporated into the Board's final decision as part of the binding mitigation the Board will impose. This MOU states the county's "reasonable requirements" with respect to matters such as the upkeep and upgrading of crossings, the maintenance of roads and bridges, signage, etc. *See also* Final EIS p. ES-14, mitigation conditions F-4, F-5, F-8 (discussing adherence to County's "reasonable requirements" and plan that "specifies the responsibility of each party").

It is unfortunate that the County's adoption of the MOU has been delayed. The process began with a two-year old draft version substantially written by Vulcan that the Medina County Commission raised for discussion at its April 30, 2008 meeting. That draft was roundly opposed by the public as not sufficiently protective of the County's interests and was tabled by the Commissioners. This firm submitted a draft that is protective of the County's interests on May 12, 2008. Lawyers for Vulcan/SGR took about a month to review that document and propose their changes. Absences of various Commissioners and other factors have prevented the Commissioners from debating and adopting a Final MOU. The Commission only meets on the second and fourth Monday of each month.

The Board should allow the political process to play out and wait to make its decision based on a complete record of what will happen on the ground. This proceeding has been ongoing for nearly five years, since November 2003. During that entire time, Vulcan has had the right to permit and open a quarry without rail service. It has not done so, nor does it intend to, even though it has since acquired permits. This has raised significant questions as to whether the quarry and rail line should be viewed as connected actions, as discussed in the Final EIS. It would be ironic, for certain, (and largely vindicate MCEAA's position on the connected action issue) if there is sudden urgency to license a rail line for which there has been no urgency to open the facility it will solely serve.

SGR's "hurry up" approach at this time would prevent the MOU from being incorporated into the rail license as the statement of the county's "reasonable requirements" and prevent the Board from taking a look at what plans and responsibilities the County and SGR will be bound by. In other words, the "hurry up" approach prevents

the Board from making a full inquiry into whether the mitigation that will actually occur in this case is appropriate. While the Board cannot impose requirements on the County or alter the County's MOU, there is no reason the Board's license should preempt any part of it simply because it was not incorporated into the license. The MOU will also give the Board a more complete picture of what is actually going to happen in concert with the mitigation conditions in the Final EIS.

As to SGR's nitpicking of the mitigation, MCEAA notes that SGR has identified no basis for removing the requirement in condition F-31 to monitor for total suspended solids, which will be added to the creeks as a result of construction and operation of the rail loading loop. The design and location of the rail loading loop has changed since Vulcan received its Water Pollution Abatement Plan approval for the quarry site from the state. While SGR argues that the additional relocation of the fuel storage area alleviates the need to monitor for oil and grease and hydrocarbons, there is still a need to monitor for total suspended solids, and SGR should not be excused from doing so, including during operation.

Likewise in mitigation measure F-61, SGR proposes self-policing the moisture content of the limestone. Such delegation runs counter to the evidence here and the intent of the environmental review process. The concerns raised regarding the dispersion of dust by uncovered rail cars during operation are legitimate and the mitigation proposed is reasonable. If indeed the moisture content is sufficient, Vulcan and SGR have nothing to fear by verifying that fact. In addition, SGR is not telling the Board is that monitoring the moisture content of the limestone once it reaches the rail cars provides a means of verifying whether Vulcan's representations regarding its state air permit for the quarry's crushers are true. SGR's state air permit for the rock crushers is predicated on the moisture content of the limestone, prior to, during, and (to the extent fugitive dust is to be kept below levels triggering additional requirements) *after* the crushing process.

MCEAA requests that the Board await a completed MOU from the Medina County Commissioners Court and incorporate it into the final decision. MCEAA further requests that SGR's modifications to the mitigation be denied as set forth above.

Very truly yours,

/s/

David F. Barton
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