

E1-8047
Daw

**The
Gardner
Law
Firm**
A Professional Corporation

David F. Barton
Jay K. Farwell
Dawn B. Finlayson†††
Kelly E. Foster
Gregory M. Huber
R. Wes Johnson†
Mary Q. Kelly
Daniel P. McCarthy††
William W. Sommers
Marc A. Stroope
Craig Taliaferro
J.P. Vogel
Thomas J. Walthall, Jr.
†Board Certified-Consumer & Commercial Law
††Board Certified-Civil Trial Law
†††Board Certified-Labor & Employment Law
Texas Board of Legal Specialization

July 17, 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) to the letter dated July 16, 2008 from counsel for Southwest Gulf Railroad (SGR).

Once again we have heard the shameless hypocrisy of the Fortune 500 "victim" in this case. It is clear SGR's position is, "Heaven forbid," the citizens and MCEAA inject themselves into the MOU process with their own County. They only live there and pay taxes, after all. Indeed, how un-19th century of them it was to interrupt and advocate for their interests, instead of allowing a skewed, crooked MOU drafted by SGR which the County Commissioners were shamed into tabling and which will not now be approved.

SGR's misrepresentations continue in its July 16, 2008 letter. Counsel asserts that the community support lies with SGR, but names no particulars, because no Medina County elected official or state or federal elected official from Medina County has, to our knowledge, provided unequivocal support to this project. Delay to SGR's application for exemption is the necessary and proper consequence of the misrepresentations and

shortcuts SGR made in the early stages of the environmental review process—many of which the eastern alternatives reversed, and which SGR ultimately was forced to capitulate to. Had the licensing process moved forward as SGR originally instituted within its self-guided vacuum, all affected parties, other than SGR to include the STB, would have been significantly and adversely impacted with a result that failed to reflect fact gathering to facilitate a studied result. A studied result is and has been driven by input from those who live in the community and will have to live with this project. SGR clearly exhibits its attitude of how impertinent it is of those adversely impacted to demand proper environmental disclosure and decision-making from their government, and in a rail construction case before the STB, no less!

SGR also quotes out of context a newspaper article *published on May 29, 2008, and the quotations were given in the weeks before the release of the Final Environmental Impact Statement on May 30, 2008*. Of course, counsel for SGR does not give the exact date of the article or mention this context.

At the time Dr. Fitzgerald gave his quotes, the recommendations made by SEA in the Final EIS were not known. Indeed, it was not known when SEA would be issuing the Final EIS. Dr. Fitzgerald's comments were in the context of Medina County Judge James Barden's prior comments that the County would prefer to wait to finalize the MOU until it knew the route or route(s) that SEA would recommend to the Board. Nonetheless, the County Commissioners had put out for discussion on April 28, 2008 the MOU that SGR had proposed, and the Commissioners were promptly and properly shamed into tabling it by the citizens who had packed the Courthouse that day. Seen in the foregoing context—knowing that the County was going to further develop the MOU to meet community objections, and not knowing when the Final EIS would be published or what it would conclude—Dr. Fitzgerald's quotations properly advise the County, *at that time, in that context*, to take its time to develop a better MOU that meets the County's needs and ideally would be adaptable and flexible enough to apply to whatever decision was recommended in the Final EIS, including a 100% trucking alternative.

Given the foregoing context, the suggestion by SGR's counsel that MCEAA has now taken contradictory positions on whether the STB should wait for the County to approve an MOU is beyond cavil. The Board could be obligated to wait in this circumstance, for the reasons given in MCEAA's July 8 letter, but regardless of any legal obligation to wait, the Board certainly can and should, in its discretion, wait to obtain a full picture of the mitigation and to incorporate the MOU into the final licensing decision.

SGR's counsel is misrepresenting the content of the quotations in the newspaper article solely to further a weak argument. "The quarry is moving forward" counsel states. Yet, there has been no discernible activity at the site, aside from drilling a test well, in the year since SGR again (mis)represented to the public that quarry development was imminent. See attached article, "Quarry Site Development to Begin in Coming Months", *Hondo Anvil Herald*, July 5, 2007 (quoting Vulcan representative Eric Remmert stating

that “By early next year [2008] we hope development will actually begin”). Regardless of whether the SEA’s decision not to treat the quarry and rail line as connected actions is proper under NEPA, there is really no serious debate that SGR is not going to move forward with quarry site development unless it has a rail license, and that the final engineering and construction of the rail line will not occur until after quarry site development begins.

Mitigation requirement F-31, for monitoring of total suspended solids, was and continues to be supported by the environmental review record in this case and should be retained. SGR’s argument that other requirements will alleviate the need for monitoring is speculative. Moreover SGR seems to suggest that the same monitoring may be required under a “NPDES permit to be issued” that SGR may obtain in the future. If that is the case, there is no reason to delete the monitoring requirement in F-31, as it provides a guarantee in case such monitoring does not occur in association with the NPDES permit.

With respect to mitigation requirement F-61, the wetting of limestone prior to shipment, SGR attempts to shift the burden to MCEAA to rebut its self-serving, self-policing determinations. Obviously, that is a recipe for noncompliance by the license holder. However, the record supports the imposition of the condition, and therefore it should stand rather than be delegated away and left to the applicant’s discretion. SGR’s past actions dictate against allowing it to be the one to police itself to the expected detriment of the local inhabitants. Should it choose to ignore the historical and esthetically pleasing importance of the pristine spring fed waters of the watershed to be affected by its actions – the beauty of which your SEA staff has observed first-hand – the results will be devastating and irreversible.

The takeaway for the Board from this case is: Some applicants for STB licenses have gotten so arrogant and high handed over the years that they think they can take every advantage over the community, make any conceivable argument or misrepresentation in the environmental review process to lower their construction and mitigation costs, and not have it affect or delay the project.¹ To them, the general public is the enemy, a construct only reinforced by the insular world of multinational Beltway law firms. The Board has a statutory interest in permitting more rail projects. This project, though marked by much admirable, indeed yeoman-like work on the part of STB staff, will not be the template for future applicant conduct and applicant-community relations. Speedier approvals will result from a different approach by legitimate license applicants.

Keep in mind this is a dedicated rail line for a single project, with no legitimate expectation that the this rail line has anything to do with the purpose and intent that

¹ In this case, the applicant’s initial decision to avoid environmentally preferable eastern routes that would cross land owned by the lessors of its parent company’s quarry represented the pivotal attempt to have one’s cake and eat it too.

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

SGR shall use ~~CONVAULT-type~~ Above Ground Storage Tanks (ASTs) at its fueling and maintenance facility. These ASTs are above-ground ~~concrete~~ full-storage tanks that have dual wall construction to provide maximum protection in the event of a leak. [The remainder of F-32 would remain unchanged.]

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

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

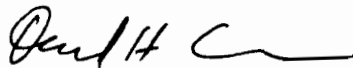
As agreed to by SGR, SGR shall conduct appropriate visual monitoring of the moisture content of the limestone prior to or during loading of the rail cars. If necessary to prevent the dispersion of limestone dust during rail transportation, SGR shall wet the surface of the limestone prior to transportation.

Honorable Anne Quinlan
July 7, 2008
Page 5

STEPTOE & JOHNSON LLP

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

Respectfully,

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

David H. Coburn
Attorney for Southwest Gulf Railroad

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

provides the driving force for rail development throughout the country. The controlling fact of SGR's need to seek common-carrier status with a rail license was that it was unable to obtain the property it needed for rail support following the land owners' formation of real property restrictions blocking the original private rail project. It, therefore, sought the only mechanism possible to subjugate the residents of this pristine area to its purposes by the use of the condemnation power of a common carrier. Once chosen, SGR completed its ill-gotten charge by seeking to deny local input into the process, which then led to unwarranted hardship on those who stood in its way.

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
COUNSEL FOR MEDINA
COUNTY ENVIRONMENTAL
ACTION ASSOCIATION, INC.

cc: All parties of Record (3)

Dr. Robert Fitzgerald
Medina County Environmental Action Association
202 Cr 450
Hondo, TX 78861

VIA REGULAR MAIL

David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Ave NW
Washington, DC 20036-1795

VIA CERTIFIED MAIL
RRR # 7006 0810 0002 1053 5417

Richard H Streeter
Barnes & Thornburg
750 17th Street NW Ste 900
Washington, DC 20006

VIA CERTIFIED MAIL
RRR # 7006 0810 0002 1053 5424

and

Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

*VIA REGULAR MAIL AND
ELECTRONIC FILING*

ATTN:
BRIAN

HONDO AVIATION

Meyer Tax Service 05/10
202 CR 450
Hondo, TX 78861

Thursday, July 5, 2007

Volume 121, Number 27

Website: HondoAviationHerald.com

Two Sections, 28 Pages

75 Cents

Medina County's Leading Newspaper

Our 121st Year

Published in Hondo, Texas



Aviation Herald weather info
recorded by Jeff Berger

Date	High	Low	Rain
Wed., June 27	86	73	.32
Thurs., June 28	78	69	2.42
Fri., June 29	87	69	.00
Sat., June 30	89	74	11
Sun., July 1	87	75	.09

Total rain for the past week: 2.83 in.
Total rain for June: 8.19 in.
Total rain for July: 0.09 in.
Total rain for 2007: 30.00 in.
Avg. high temp. for the week: 85.6°
Avg. low temp. for the week: 72°
High temp. for 2007:
91° on June 13, 14 & 15
Low temp. for 2007: 27° on Feb. 16

Edwards Aquifer level, July 2:
Bexar County: 17 well: 685.4 ft.
Medina Lake level, July 2: 1058.62 ft.

Quarry site development to begin in coming months

by William Hoover
and Harold Combs

In recent weeks, Vulcan Materials Company's new project manager for the 1,760-acre Medina Quarry, Eric Remmert, has spoken to the Londo Area Chamber of Commerce, the Lions Club and the Rotary Club regarding the company's plans and progress toward opening a new quarry north of Qulbi.

The Medina Quarry, as Vulcan calls it, is over the Londo Aquifer Recharge area. It is scheduled to be used for construction grade material for 50 years after it begins operation. If the quarry opens in 2010, as planned, it will continue to be used until 2060.

Remmert, who possesses a degree in Building Construction from Texas A&M University, has the formal title of manager of Engineering Projects at VMC. Below he explains his qualifications and what he told the members of the public attending the presentation he made in the Londo area.

"I will be managing the overall project," he said. "As soon as we have all our internal plans in place, we will be starting portable crushing operations out at the site. All the permits for the site are actually in place, with the exception of a temporary storm water permit (which) we apply for two to three days before we start construction operations. We have already gone through the paperwork, we just have to apply and receive it."

The portable rock crusher is not what Vulcan will use for its long-term crushing operations. Rather, the portable crusher will be used to create aggregate to build the quarry's plant site and roads.

"This crusher will be towed in on a flat bed and it runs on a generator," said Remmert of the temporary rock crusher. "What (the portable crusher) is going to be used for is to base out, or prepare, the preliminary site work where the actual quarry processing plant (will be located). So everything will be internal to the site. In other words, you won't see any trucks. This is a small

crusher just for internal use at our site and it will produce 150 tons (of aggregate) a day, according to our permit."

Site plans must still be drawn up by the company. Overly Desamps, now a part of Pope Dawson Engineers, which designed the Medina Quarry's Water Pollution and Abatement Plan (WPAP). "They will need to come up with a site bid package for the site work contractor who observes all the environmental regulations we have agreed to," Remmert said. "When we hire the person (or contractor) to do the job, I will coordinate (the hiring and environmental compliance) with our portable rock crushing crew and manager. At the same time they get the crusher to the site, we will have Medina Electric Coop power brought to the site. I have talked with (MECC's) Mark Howard and they will provide just temporary power for our construction trailer."

Pope Dawson is the company Vulcan worked with previously, along with TCEQ and the Medina County Environmental Action Association

(MCEAA), so Vulcan felt it best to continue with them. Pope Dawson will be assisting in developing the quarry's site work bid package.

"We have a six month portable crushing permit," said Remmert. "The first thing they do at any construction site is clear the land. In our case, we will clear the site in certain acre increments to comply with our WPAP. Then we will put down a white crushed gravel base."

Remmert said he expects to start preliminary quarry site development in 60 to 90 days, depending on how soon Vulcan obtains its bid package plans from Pope Dawson.

"Power is not a problem as far as the supply out there for single phase power," said Remmert. "We will be clearing sections of the site and stabilizing sections by putting base down and installing all our site fences. By early next year, we hope we will actually begin the real site work and the construction of the quarry plant."

Assuming everything goes as scheduled, the plant will start producing commercial grade

limestone aggregate by the end of 2009 or the beginning of 2010, according to the project manager. "We have an 18 to 24 month construction window," said Remmert. "It takes a while to construct a large quarry and do it right within all the environmental guidelines. That is what some people were confused about. In the meeting they were saying, 'Oh you are going to have trucks coming in and out within months.' But that is not right. We are looking at two years from January 2008 before we will have the plant fully operational."

Asked why Vulcan wanted to use its proposed route for its seven mile Southwest Gulf Railroad (SGR) when the Texas Historic Commission and the Surface Transportation Board's (STB) Section on Environmental Analysis (SEA) have identified the eastern route as the less disruptive route, Remmert said such was not necessarily the case.

"Technically, that is not accurate because the eastern route has not been approved," said the engineer. "The SEA is the entry going through the whole

Environmental Impact Study (EIS) process. However, in that final EIS there are still three routes. (Vulcan's) preferred route, the eastern route and a route even further to the east. None of those are approved routes. They are still working to get a determination. Sometime in October we think, the (SEA) will have reached conclusions and they will give their recommendation of a rail route. As far as why we are pursuing the preferred route versus the other, you will have to talk to somebody else."

Vulcan will begin building its rail route, if approved, sometime next year. Assuming we have a route recommended by the SEA by the end of December, and allowing another three months for the STB to approve that route, then we will have a route issued," said Remmert. "Say in January 2008, (if the STB designates a route for the SGR), we will know exactly where we have to go and then the rail construction process will start."

QUARRY

CONTINUED FROM PAGE 1A

If the STB permits a route Vulcan does not like, Remmert confirmed the quarry would operate with trucks only. However, he could not say how many trucks a day would be entering and exiting the quarry site.

However, it has been estimated 850 trucks a day will be used if truck transportation only is used and up to 10%, or 85 trucks a day, will be needed even with a railroad.

"That is an operation issue," Remmert said. "My job is to design and construct the (limestone mining) plant and the railroad. I do not have the answer on those operational issues. All I can tell you is that using trucks only is an option. If the STB recommends a 'no route' alternative, which they could do, we will construct an unloading spur on property we own in Dunlay adjacent to the Union Pacific rail lines. It will be a place where the trucks from the quarry can go and load the trains."

Truck traffic, however, would not be limited to shuttling aggregate between the quarry and the UP line. "If local builders or people need rock and they are coming in and out of the quarry, they would be going to different places," Remmert said. "We have no way to control that, nor do we know how much that volume would be because we don't know what the demand is."

Remmert said Vulcan would work with Medina County and the Texas Department of Transportation to maintain the roads, because they are concerned about safety. "We are aware there are roads that will need to be improved. What I told people at the meetings was we have to work with the county. It is not up to us. We will recommend and do stuff but these are county and state roads; therefore TxDOT and the (Medina) County Commissioners have to be involved in the process."

Regarding how much

groundwater they will use, Remmert said Vulcan recognizes water is a precious commodity. "We are looking at all sources available to obtain that water," he said. "You have the Edwards Aquifer, but you also have the Trinity Aquifer and the Cow Creek Aquifer, which is below the Trinity (Aquifer.) We are in the process of having hydrogeologists look at the site and recommend to us what they think is feasible."

Remmert said no test wells have yet been drilled but that will happen soon. "Depending on what the hydrologist tells us and what is found, Vulcan will then drill the appropriate wells with the appropriate permits," he noted.

The Medina Quarry will recycle 70% of the water it uses in the mining process, according to Remmert, as part of its WPAP through on site water recycling plants. "We will use somewhere in the neighborhood of 2,400 gallons of water per minute to operate the plant," he said.

Remmert said the survey work currently being performed at the Wurzbach property was just part of the site preparation project and did not indicate any land was being purchased. "We have long term lease with the Wurzbachs, the Schweers and the Boehme/Balzen tracts," he said. "All the construction in the next two years will take place on the Wurzbach tract, the southernmost tract. There will also be some activity on the Saathoff property, which is right across the road from the Wurzbach property on the southern side of CR 353. Everything is being done with long term leases."

Vulcan does not anticipate needing to pipe any water in from off the quarry site, according to Remmert. However, it is possible they might pipe water from one part of the site to another. "There are wells on the property already but we are not going to use those in an industrial capacity," he said. "In fact, those will be used in accordance with the WPAP as monitoring wells. So we, using another com-

pany, can monitor the level in the existing wells that are out there so we can gauge usage."

The project manager said the quarry operations will not affect the wells of area landowners or deplete the water table, regardless where the water is pumped from. "That will all be monitored," he said.

Regarding the provision of permanent electrical services, the Project Manager said he was still trying to broker a deal with a power company. "There are preliminary negotiations and discussions going on with MEC," he said. "They are providing the temporary single phase power with a temporary single-phase 200-amp transformer close to the site already. We can be hooked up to that connection in three to four weeks. But, that is just to power the office and construction trailers at the entry to the site. Plant power is a whole other issue. Preliminary discussions with MEC have begun on that. We need to provide them with more data. A lot depends on how they have to supply it to us and how their power grid is situated. We need to know our rail route first to determine how they will route (power lines) to us. There are various ways they could do that and it is up to them to decide. We have no control over that because, in the end, they (MEC) will actually route the power and deal with the issues of utility right-of-way."

The power lines could follow the rail easement, if a route is approved by the STB or they could go a different way, according to Remmert.

Asked if Vulcan or MEC would be responsible for obtaining permission from landowners to run above ground power lines across their property, Remmert was unsure. "That gets into the negotiations between Vulcan and the power company. Those negotiations will take place at the corporate level."

The Medina Quarry Project Manager said Vulcan would not use historic preservation donations as an incentive to try to persuade the STB or oth-

ers to support the rail route desired by Vulcan. The SEA alone will make the route decision, according to Remmert.

Asked about the power of taking private property against landowner wishes, via eminent domain which the aggregate company will receive if a rail route is approved by the STB, Vulcan officials said fair market value would be given to landowners for any land the SGR rail line might need. However, Vulcan officials are hoping landowners sell their land to SGR, if a route is approved, so the railroad does not have to invoke its power of eminent domain.

"We really don't know the final details of that yet," said Vulcan's Clay Upchurch. "We are hopeful that eminent domain won't even come into play in this whole thing. We want to successfully work with all the landowners and keep everybody happy through the process, regardless of the route that is approved."

Upchurch said Vulcan will negotiate to buy private land for the SGR rail line at fair market value, whether or not the company has to invoke its powers of eminent domain. "We may buy entire properties. We may buy pieces of properties. We may just buy the easement the rail has to go through," he said. "All of that will be subject to negotiation. We will have negotiations with each individual landowner."

If a landowner does not wish to sell land to Vulcan for the SGR line, the company could file with the local government which would send the landowner a letter telling them that they have to sell their property or else their land will be taken from them. Any landowner subject to eminent domain would still receive fair market value for their property, even if they have to unwillingly turn over their land to Vulcan and its railroad, according to Upchurch.

Upchurch and Remmert said Vulcan was due to issue a press release soon, in the next of couple days, to keep the public informed of the status of the proposed quarry.

830-
Mo