

Appendix B-2

Correspondence Relevant To the SDEIS

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### Correspondence Relevant To The SDEIS

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EI-1361

*The Median County Environmental Action Association, Inc.*

202 CR 450, HONDO, TX 78861  
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Phone 830 741 5040  
Fax 830-426-2060

January 9, 2005

Ms. Victoria Rutson,  
Chief, SEA Section  
Surface Transportation Board  
1925 K Street NW  
Washington, D.C. 20423-0001

received  
1/11/05

Re: Subject Finance Docket 324 84 Southwest Gulf Railroad

Dear Ms. Rutson:

After reviewing the three volume DEIS and attending the public meeting held in Hondo, TX. on December 2, 2004, I am convinced the people in Medina County have not communicated with the STB. After submitting scoping comments, some of which the STB described as valid environmental concerns, we expected to have definitive answers to these comments and questions. What we obtained was disappointment and frustration. We hope the final EIS will be amended and address our concerns more definitively.

Our biggest disappointment concerns the STB's decision to not consider the quarry and railroad as connected action. STB need only ask Vulcan if the railroad would exist without the quarry. Vulcan knows, as does its board of directors and stockholders, Vulcan would not develop a quarry and haul aggregate ten miles to Union Pacific Railroad if it meant operating at a loss. It appears STB supports Vulcan's preposterous claim that it could operate an all-truck facility, which would take 90% of its output to a distant railroad. It does this without any supporting data or proof. No cost figures for the special loading and unloading facilities, special trucks required, no cost for fuel, insurance, driver's wages or road construction are given even though MCEAA has requested them. Yet, cost estimates are given for the railroad. Is this being fair? STB must see that the all-truck route is a ruse. SBC must consider our request to make the railroad and quarry connected actions.

On specific issues many of our questions are unanswered. Environmental issues concerning surface water and traffic issues as well as air pollution are unanswered and are dealt with phrases such as "will be managed by best management practices" or

“environmental impact is not significant.” Worse yet, STB appears to let Vulcan decide how these environmental impacts will be managed. We have received no data

concerning such important issues such as bridge designs, berm and culvert dimensions other than to say it would be adequate. We deserve and expect unbiased answers based on data that can be verified, not undocumented statements by SGR.

We have noted that Vulcan has voluntarily only submitted five paltry voluntary mitigation’s. While STB e submitted forty-seven valid mitigation proposals, there is no assurance Vulcan will accept these proposals. Worse yet, STB has qualified many of its’ mitigation statements with terms such as “reasonable” and “minimal”. We would like to note that STB has made a glaring omission . There is not one word in either of these sections concerning mitigation for the so-called no-build or all-truck route. Could the reason for this be that both STB and Vulcan know that this option is an absurd ruse? We have learned through bitter experience that Vulcan’s word cannot be trusted. It is a devious and powerful company that must be required to abide by a written agreement before a permit is given. If not required to do so, they will do anything possible to circumvent what is required all for the sake of gaining a larger profit. If STB doubts this, please review the previously submitted correspondence between TxDOT, Medina County Commisioners Court and SGR regarding grade separations over FM 2676 and CR 4516. STB must state firm mitigation requirements. MCEAA insists that STB require grade separation crossings for the above roads.

MCEAA requests further consideration is given to the alternate route of a variation to Medina Lake. We believe the Galveston-Houston-San Antonio route has not received proper consideration. SGR has done its best, for whatever reasons, to make this route appear unacceptable, thus misleading the STB. We would like to set the record straight. We believe the SGR statements concerning the cuts and fills required for this railroad are incorrect. We will submit data to support this argument. We also wish to point out that SGR has failed to provide data requested by the URS Corporation in regard to the cut and fills on this proposed or any alternative routes and the no build alternative. {See memorandum dated February 12, 2003—page G10, Vol 3 from the URS Corporation) Our accompanying maps and graphs show that this route would bypass the Cherry Creek and most of the Quihi Creek flood plains, which have to be traversed by the proposed and alternate #3. As previously noted, the G-H-SA route would have many advantages, which will be subsequently enumerated. These are as follows:

- #1. Removes flooding dangers in the Quihi and Cherry Creek Flood Plains,
- #2. Crosses fewer county roads—four instead of five to seven-
- #3 Crosses all roads at safer locations.
- #4. There would be less construction costs for bridges, culverts and berms
- #5. This alternative would bypass and thus sparing historic and archeological areas,.
- #6. It traverses property of five landowners known to favor the quarry.
- #7. Contrary to SGR’s claim, there would be less disruption of environmental features such as flood plains, wetlands and hydraulic features.
- #8. The upkeep costs, therefore, would be less on level plateau-type terrain than a railroad traversing flood plains.

The added length (estimated 2 ½ miles) of such an alternative should not disqualify it particularly if its advantages outweigh the other routes. Likewise, this route should not be disqualified because of any agreements between quarry owners, their heirs or employees' and Vulcan providing that their land should not be traversed by a railroad. And owners of the quarry site should not be permitted to make an agreement with Vulcan prohibiting a railroad being placed on their property, thus requiring Vulcan to route the railroad on other people's land who do not want such a nuisance. We believe it is STB's duty to ascertain if such an agreement exists and consider it before making a final decision to disqualify the variation of the G-H-SA railroad. MCEAA requests careful review of the maps, graphs and data of this alternative and compare them to the proposed and all alternate routes. We believe the advantages of this route will be recognized and will cause less adverse environmental impacts than the SGR routes.

Before concluding, there are other matters we wish to bring to STB's attention, which have only recently transpired. These include:

#1. SGR's statements concerning the management of its' proposed rail line by the Union Pacific and

#2. The impact of an additional 1000 railroad cars a week traversing San Antonio's congested rail traffic in route to Houston's congested rail traffic.

Both of these issues need careful consideration and evaluation by STB and bring up many additional questions. MCEAA believes that further explanation and information concerning SGR's decision should be made available to the public. Is SGR incapable of managing the railroad? Is it able to get personnel to manage the railroad? Why does it wish to turn it over to a railroad that is already admittedly understaffed, over-burdened and years behind in getting necessary construction of new track and up-grading of current lines? Is this what STB condones? Why would a newly created railroad which presents itself as a common carrier with eminent domain power to condemn land and thus build a railroad, then seek to have another railroad company, which had previously been unwilling to build the railroad, assume management of this railroad? The answer to MCEAA is obvious. This is the only way this railroad can be built. MCEAA repeats its belief that a private company should not be allowed to masquerade as a common carrier railroad, and be allowed to condemn property to build a railroad if it only transports its only product.

As STB should be aware rail traffic in the San Antonio area has been the site of six train accidents in the last half of 2004, with five deaths and untold property damage. Vulcan's desire to send an additional five million tons of aggregate per year through the San Antonio area will further tax this already over-burdened Union Pacific system. The details of this additional railroad traffic will be given separate discussion. I mention it here only to emphasize our concern about the environmental impact this project will have.

Simple questions on environmental impact:

#1. Transportation and Safety Section A, page ES10 (Section 1, Vol. 1) STB, without justification, comment, or consideration of all of the previously submitted testimony and reasons why grade separations are needed on county and state roads states that at grade road crossings for its' preferred and three alternate routes with their appropriate warning devices which gives the impression that this type of crossing is appropriate. What does it take to make the STB understand that county and state government officials want the safest road-railroad crossings? **This means grade separations.** Vulcan has agreed to install these crossings when told to do so. There must be a requirement in the mitigation section for grade separation crossings. If not done initially, it will not be accomplished and lives will be lost because of STB's failure to protect the human environment as has been repeatedly requested by the public and local government officials.

#2. Section P-Socio-Economics ES-17. We ask the STB, what is their basis for concluding that there would be no significant socioeconomic impacts as a result of the proposed action or no-action alternative? Doesn't STB realize that these actions will potentially change Medina County from an agricultural-residential to a commercial-industrial economy, with total disruption of people's property, vocation and livelihood? How will people accommodate this? What are the impacts? No answers have been provided.

#3. Section Q, Page ES 17—Cumulative Impacts. STB has gone to great lengths to deny the quarry as a connected action to the railroad designating it as a cumulative impact to the railroad, yet this section ignores the quarry all together. STB should either acknowledge the quarry is a connected action or else fully define the environmental impacts of this cumulative effect. STB has allowed SGR to hold itself out as a common carrier, while at the same time it allows SGR to say it is unlikely to have any other enterprises ship goods on this line. SGR has a duty and responsibility to either define the environmental impact or other businesses or else deny common carrier status to SGR. Which will they choose?

#4 Section A, Page ES11—Traffic Safety. In regards to local traffic impact, the two major arteries that would be crossed by a proposed railroad FM 2576 and CR 4516—General Woll's Road—the statement is made that proposed construction would take twelve months, but the traffic impact would not be significant, however, no alternative routes through these areas exist and none has been designated. How will traffic continue to flow during any construction period? No coordination with local officials has been done which is also a stated requirement. STB has already been advised that at grade crossings at these locations are unsafe even with warning devises, because of the type of traffic which include heavy gravel trucks, farm machinery, fertilizer and diesel trucks. The safest type of crossing, i.e. grade separation, should be required by STB in the mitigation section. Page 4-108 the southern half of the rail loop within the quarry exists in the flood plains of the Pole Cat and Elm Creeks with an elevation difference of thirty feet below the northern loop. The statement is made that there are potentially no

significant adverse cumulative effects to the surface water in this region caused by the southern rail loop. We believe this statement is untrue. Other questions and comments concerning railroad location, construction and operation follow. On page 2-6, vol 1 SGR anticipates entering into an agreement with the Union Pacific regarding the connection with the UP line, the details would be determined at a later date. This statement needs thorough investigation by STB. It opens the door to numerous questions, particularly in light of Union Pacific's present operating difficulties. Questions follow:

1. What is the current and future availability of shipping of Vulcan's products ?
2. How long will the loaded rail cars stand idle?
3. How many cars will accumulate before shipment? Maximum number?
4. Where will these unattended, loaded cars be parked?
5. How will air pollution from dust be controlled in this area?

These questions and their environmental impacts must be answered in the final EIS. To MCEAA's observation the absence of these questions and answers from the DEIS show Vulcan's lack of preparation.

SGR states its' trains would have the capacity of traveling 40 MPH presumably while unloaded) but will operate at 12 to 25 MPH for the foreseeable future. These statements raise the following questions:

Barring a runaway accident, why does SGR make statements that track design (curves) must be for speeds of 40 MPH? Is it so that it can use this argument to try and mislead STB concerning the design of the variation of the G-H-SA route? If the SGR can use speeds of 12 MPH going up one-degree grades shouldn't this same speed be used around curves? Please answer these questions in the final EIS.

On page 2-10, Vol 1, SGR attempts to mislead the STB by stating that the G-H-SA line is several miles east of the quarry site. However, a variation of the G-H-SA route could be designed so that it would only be 2.2 miles after crossing FM 2676 in a north-south orientation. SGR continues to attempt to mislead STB by stating that there is a steep fall at the northern end of the G-H-SA route which is true according to their designs, however, a variation of the G-H-SA route could be designed so that a steep decline would not be necessary.

SGR continues its tirade with weak suppositions and statements that it appears the Medina Dam route was intended to haul lighter trains and to be used for only a short time. These statements are easily challenged. One needs only to look at the massive loads of heavy construction material hauled over the upper two-thirds of this line, up much steeper grades with much less powerful steam engines as compared with the powerful diesel engines of today. Pictorial proof of this is available in a book entitled "Ripples from Medina Lake" written by Rev. Cyril Matthew Kuehne, S.M. Additionally, how does SGR know how long the SGR would have lasted? It can only guess. STB must not base its decisions on SGR's guesswork. SGR is left with one last point, a variation of the G-H-SA railroad would be longer., why will SGR not realize it is also

better and more environmentally sound? We have previously stated the reasons and hope to have dispelled and unproven SGR's untrue statements. Now STB must decide. MCEAA again urges the STB to make an on-sight evaluation of this alternative and compare it with all SGR's suggested routes. In this way, STB can see for them which is best. We are assured that SGR does not want this, but we believe one look is worth ten thousand words.

In conclusion, the STB has been given ample comments and information to correct errors and omission appearing in the Draft EIS. We hope that the information supplied will help to set the record straight. STB should not need to be reminded of its' responsibility to protect all phases of the environment which includes the people effected by the SGR. MCEAA and Medina County await your decision. Thank you for your time.

Sincerely,

Dr. Bob Fitzgerald, President

CC: U.S. Congressman Henry Bonilla  
Senator John Cornyn  
Senator Kay Bailey Hutchinson  
Texas Senator Frank Madla  
Texas Representative Tracy King

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

Oversized map too large to scan.  
Please contact the Section of Environmental Analysis to view a copy.

*The Medina County Environmental Action Association, Inc.*

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June 8, 2005

Ms. Rini Ghosh  
Section of Environmental Analysis  
Surface Transportation Board  
ATTN: Finance Docket No. 34284  
1925 K Street, NW  
Washington, DC 20423-0001

Re: Finance Docket 34284  
Proposed Vulcan Materials/Southwest Gulf Railroad Rail Line  
Medina County Texas

Dear Ms. Ghosh:

As per our conversation on June 1, 2005, MCEAA respectfully requests the STB to obtain more detailed information concerning the cut and fill data it had previously requested from Vulcan/SGR, on all 15 routes considered by the applicant.

This is the second time this data has been requested and to date Vulcan/SGR has not adequately submitted it. Vulcan/SGR's most recent reply to your agency's request (EI-1439, dated April 4, 2005) is lacking in many respects and cannot be verified without appropriate supporting data. Vulcan/SGR has ignored STB's response for data on all of the 15 routes and has given data on only 4 routes (the proposed and 3 alternates). In addition, the cut and fill data given by Vulcan/SGR on the Medina Dam alternative route ("MDR") is meaningless for reasons discussed below. For all of these reasons MCEAA doubts the validity of Vulcan/SGR's most recent data submission.

It is important to note that the public did not have this data available for evaluation during the comment period for the Draft Environmental Impact Statement ending January 10, 2005.

Cut and fill data submitted by the applicant to date is inadequate

We are critical of the manner utilized to determine the cut and fill data for many reasons.

First, in order to compute and then compare accurate volumes of the cut and fill needed between alternatives, the track base width, height and length of the cut or fill section must be determined for all routes. This would include the dimensions of any berms or earth massing

necessary to support the rail bed or track base. Also, the *location* of the cut and fill must be more clearly defined. None of this data is currently in the record, nor has it been provided by Vulcan/SGR.

The reason for requiring disclosure of this data is more than just a casual interest for information. The location of the cuts and fills directly affects the flooding patterns in the floodplain, thus affecting the lives and property of all within it. The agency controls this harm to the extent it controls the design and placement of the rail line, which it most certainly does in this construction licensing proceeding.

The process used by Vulcan/SGR to calculate the cut and fill data requested by STB, which it characterizes on page 6 of EI-1439 as “a rough approximation,” is poorly devised, inaccurate, and easily manipulated. It bears no relationship to the actual physical design characteristics of each alternative analyzed by the Draft EIS. It is an attempt to use the inertia of the agency’s licensing process to keep staff members from requesting the information necessary to complete their legally mandated task. This is not fair and cannot be tolerated, especially when important environmental impacts are at stake.

The agency has a duty to consider—and should, for very practical reasons consider—a properly designed Medina Dam alternative route

Turning to Vulcan/SGR’s criticism of the Medina Dam alternative route (“MDR”), MCEAA wishes to make it clear to the STB that Vulcan/SGR’s representation of this route is not the location suggested by MCEAA. Vulcan/SGR’s route variation is purposefully designed so it will be discarded by the STB. MCEAA’s variation of the MDR is a reasonable and feasible alternative for the agency to analyze. It is also a viable and defensible choice for the agency to select which would avoid many of the environmental impacts and public opposition brought on by Vulcan/SGR’s decision to co-locate two projects, a quarry and a rail line, so as to significantly alter the floodplain in area of the Quihi community.

MCEAA’s version of the MDR has been expressed verbally and in writing to the agency on many occasions, but was also presented graphically in the oversize set of maps submitted with MCEAA’s Draft EIS comments. This graphical presentation included detailed topographic maps comparing MCEAA’s version of the MDR with the one submitted to the agency by Vulcan/SGR. MCEAA’s version, which has to date not been analyzed by the agency, differs from the version analyzed and dismissed by Vulcan/SGR and the agency, in the following ways:

1. It is shorter and crosses fewer landowners’ properties.
2. It approaches the quarry site from the east rather than from the south, so that Vulcan/SGR’s purposely designed sharp turns at the quarry terminus are eliminated.

3. It requires less cut and fill. Vulcan/SGR's version has an eastward bulge going close to CR366 and goes close to the top of a hill that is 1057' high. Vulcan/SGR's version is also approximately

5000' longer. Whatever the accuracy of Vulcan/SGR's cut and fill data to date, MCEAA's version of the MDR will clearly require less cut and fill because it does not contain this mischaracterized routing.

4. It crosses FM 2676 at a safer location.

5. It crosses the Quihi Creek floodplain in its extreme northern portion in open farm country, thus avoiding significant floodplain impacts and eliminating much of the potential to exacerbate flood impacts.

6. It avoids the Elm Creek floodplain entirely, reducing cumulative downstream flood impacts on Quihi.

In short, MCEAA's version not only addresses all of the concerns Vulcan/SGR exhibited in its own self-evaluation of alternatives (and thus the agency's objections to Vulcan/SGR's version of the MDR that led to its dismissal from further consideration), but also addresses the primary environmental harms of concern to area residents.

MCEAA's variation of the Medina Dam alternative route, although approximately 2.5 miles longer than the applicant's preferred route through the Quihi area floodplains, offers the following advantages over the preferred and three proposed alternative routes previously suggested by Vulcan/SGR and compared in the Draft EIS:

1. The MDR is largely on a level plateau. According to USGS maps, it would enter the quarry at 930 feet and would terminate at Dunlay Acres Subdivision at an elevation of 965 feet. This avoids 90 to 95% of the Quihi Creek floodplain, and 100% of the Cherry Creek and Elm Creek floodplains. It also avoids significant amounts of the "necessary" cut and fill alleged by Vulcan/SGR.

2. It would avoid the Quihi valley basin which contains the entire historic Quihi area, thus preserving its visual aesthetic value, and thus eliminating the flooding potential, dust, noise, and vibration associated with the 400+ railroad cars per day that would traverse this area utilizing the proposed or any of the three alternative routes.

3. It crosses FM 2676 and CR 4516 at safer locations.

4. It crosses fewer county roads than any of the other proposed or alternative routes.

5. Because it is on a plateau, it would reduce the number of trestle bridges, culverts and berms required.

6. It would reduce the maintenance costs on the above structures, because they would be completely outside of or traverse much less of the floodplain.

7. It crosses land owned by quarry land lessors, their families, and Vulcan employees. These people support both the quarry and the rail project. The preferred route and 3 proposed alternatives do not cross land owned by any of the above individuals.

8. The southern rail terminus near Dunlay Acres Subdivision would be the same as Vulcan/SGR's proposed or alternative #3 route, and thus no new additional overpass over U.S. Highway 90 would be required.

Again, by any fair comparison with Vulcan/SGR's earlier submissions, MCEAA's version of the MDR addresses Vulcan/SGR's stated concerns. It therefore merits further analysis as a reasonable and feasible alternative route.

Further, as noted above, the applicant has prevented consideration of this version of the MDR by mischaracterizing it and by submitting vague, conclusory, and unsupported cut and fill data that bears no relationship to the physical design of any of the alternative routes. It then uses this mischaracterization and inadequate data to eliminate alternatives it dislikes by claiming "engineering difficulties." The agency cannot disclaim responsibility for the design and placement of the rail lines in a manner that allows the applicant to self-define the scope of alternatives in this manner.

This is particularly true here, where specific design parameters associated with the rail line and its support structures will control the environmental impact on the floodplain. The agency's clear duty to analyze the rail structure's impact on the floodplain necessarily guides its level of inquiry into what is a feasible alternative.

More to the point, this isn't about rejecting an alternative but considering one. There are no cost objections in this proceeding for a variety of reasons, not the least of which is the common financial control of SGR by Vulcan, and the fact that the quarry will serve as the rail line's sole customer. Financial feasibility is therefore limited only by the quarry (though attorney's for Vulcan/SGR have earlier stated on the record that even that may not be the limit; that the rail line may have a bottomless pocket to draw from). In addition Vulcan/SGR will depreciate the entire cost of the rail line in 8 years, deriving a substantial tax benefit, even though they anticipate the rail line will be in service for over 50 years. Cost is simply not an issue. What is left are the "engineering obstacles" which for the MDR are derived solely from Vulcan/SGR's mischaracterization of the route and the incomplete cut and fill data they have submitted.

The exclusion of fill volumes for rail line alternatives that traverse the floodplain biases the entire analysis

Perhaps the most seriously biased portion of Vulcan/SGR's cut and fill data submission concerns the placement of fill in the floodplain. In the cut and fill calculations completed by the applicant, the assumption was made that fill would not be placed in the floodplain. Because all of Vulcan/SGR's proposed routes traverse deep within the floodplain, this dramatically skews the comparison of cut and fill between the currently proposed alternatives and the MDR.

To suggest that the proposed alternatives will not use fill in the floodplain is to suggest that the rail lines will be built at ground level and will be unusable in any significant rainfall event of the type documented and submitted by MCEAA as evidence of regular flooding in the Quihi area. It would also suggest that the height of the bridges necessary at the rail line's stream crossings would be more on the order of a kitchen table than a major structure. Given the flood history of the area, that is absolutely ludicrous. "Waiting until the design stage" to obtain accurate design information, as suggested by the applicant, is merely a means of excluding this highly relevant design and placement information from the record and from required disclosure and analysis under NEPA.

The proposed Vulcan/SGR-preferred alternative crosses and encroaches on more mapped floodplain than any other proposed route (Draft EIS Fig. 3.3-7, page 3-25). Assuming for the moment that the mapped floodplain is accurate (an issue we have urged the agency to verify with modeling, given that the maps are over 25 years old), the preferred alternative will require more floodplain fill to keep it elevated and above the floodplain than any other route. This amount of fill, as with the other proposed alternatives, was specifically not considered and was specifically excluded by Vulcan/SGR when it provided cut and fill data to the agency. The applicant's purpose was clear: to create a disparity between cut and fill volumes for the floodplain-traversing routes near Quihi and more viable routes with fewer flood impacts to the east.

Therefore, "reasonable" cut and fill volumes for any alternative cannot be determined in reference to the incomplete and biased information the applicant has provided to date.

### Conclusion

In conclusion, we urge the agency not to be seduced by Vulcan/SGR's rhetoric. Thus far, Vulcan/SGR has failed to fully comply with the agency's request for information in many areas, information vital to its decision-making process, mitigation requirements and laws. STB must not waver in carrying out its NEPA duties given by Congress and the people to disclose impacts to the environment.

STB must not be influenced by Vulcan/SGR's cries that "it will cost too much to study these projects in a timely and proper manner." If Vulcan/SGR had done the necessary research in the beginning of this project it might have not undertaken the project at all, and instead would have developed a quarry further west where the UP rail line and limestone are available in a less environmentally sensitive area. Alternatively, it would have approached the Quihi community in a more forthright manner and discussed real options for design and mitigation based on the analysis of harms that it had undertaken. It chose not to. And as the agency knows, the applicant's failure to do so does not excuse the agency from doing its duty. Now, the agency finds itself in an untenable position. If it attempts to save these connected action projects, in the exact manner designed by Vulcan/SGR, the agency will be the one seen as responsible for unnecessary and dire environmental consequences. These consequences can only be avoided with proper study and analysis of the environmental impacts of the proposed rail line and quarry.

Thanking you in advance, we await the receipt of the complete data requested, which we urge STB to include in the form of a Supplementary DEIS (SDEIS) for appropriate public comment.

Respectfully,

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

CC:

U.S. Congressman Henry Bonilla

Senator John Cornyn

Senator Kay Bailey Hutchison

Texas Agriculture Commissioner Susan Combs

Texas Senator Frank Madla

Texas Representative Tracy King

County Judge James Barden

County Commissioner, Pct. 1, Chris Mitchell

Texas Historical Commission, Larry Oaks, Executive Director

Tom Ransdell, Vulcan Materials

Tom Hill, President, SW Division, Vulcan Materials

Donald James, CEO, Vulcan Materials

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

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October 5, 2005

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Washington, DC 20423-0001

**VIA EMAIL**  
**& Regular Mail**

**RE:** STB Finance Docket No. 34284 -- Adequate analysis under NEPA for:

- (1) Vulcan Materials Company's planned Medina County stone quarry; and
- (2) Vulcan Materials Company subsidiary Southwest Gulf Railroad Company's proposed rail line to serve Medina County stone quarry.

Dear Ms. Ghosh:

MCEAA has reviewed the recent submission, EI-1675, by the applicant, Vulcan/SGR ("Vulcan"), dated September 15, 2005. That letter transmits a report from one of Vulcan's consultants to the agency, concerning historic resources near one of Vulcan's eastern alternatives, the "SGR Eastern Route."

In the companion letter to this one, responding to EI-1664, the applicant's September 7, 2005 letter, we note that the creation of the "SGR Eastern Route," rather than a direct response to MCEAA's Medina Dam Alternative, resembles an analogize-instead-of-analyze strategy to eliminate alternatives disfavored by the applicant.

As we explain in our companion letter, it is possible that all alternatives in this proceeding will have impacts to historic sites; some more, some less. However, attempting to eliminate otherwise viable alternatives from consideration through the use of preliminary,

conclusory statements regarding environmental impacts that remain to be analyzed is impermissible. The applicant has it exactly wrong when it states that it “has previously identified . . . various *impacts* associated with the Eastern Route (unrelated to cultural resources) that it believes warrant rejection of that Route” (emphasis added).<sup>1</sup> For the reasons given in our companion letter, none of the *impacts* cited by the applicant in its conclusory statements, including cultural resource impacts, amount to any significant difference with any of the other proposed alternatives. What matters are the feasibility criteria which, as MCEAA has explained, are by and large physical parameters controlling whether or not a functional rail line between Dunlay and the quarry can be built. The applicant is in no position to draw conclusions about environmental impacts associated with any of the alternatives in this proceeding, because it continues to refuse to provide the agency with the information necessary to conduct the analysis.

In this proceeding, the Area of Proposed Effect for the National Historic Preservation Act (NHPA) process is a rather arbitrary 1000 feet on either side of the rail line. The NHPA permits such a preliminary delineation in order to identify listed historic sites and potentially listed historic sites early on in the process, so that design changes to avoid adverse effects can be incorporated into the project for their protection.<sup>2</sup>

Under NEPA, however, the NHPA Area of Proposed Effect is irrelevant. Historic sites may be impacted by any single one or combination of environmental impacts. That necessarily implies that the true extent of the impact is known only after the environmental impact analysis. Therefore, a conclusory statement regarding perceived impacts to historic sites cannot be used alone or used as part of a sandbagging strategy to eliminate an alternative.

That is particularly true in this proceeding, where many of the most relevant direct and cumulative impacts, including flooding and vibration impacts, have yet to be completely analyzed.

The preliminary conclusions of Vulcan’s consultant for the “SGR Eastern Route” appear to be as follows:

- The consultants state that no documented historic sites or properties exist within the 1000-foot Area of Proposed Effect.<sup>3</sup>
- Based on a survey of area human history, and followed up by a driving tour of the area to eliminate clearly disturbed areas, the consultants determined “High Probability Areas” for archeological resources.<sup>4</sup>
- After a paper and web survey and a driving tour of the area, the consultants identify nine “potentially eligible” historic sites for listing on the National Register.<sup>5</sup>
- The consultants conclude that these nine potentially eligible sites are not likely eligible for designation as a historic district.<sup>6</sup>

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<sup>1</sup> EI-1675.pdf at 1.

<sup>2</sup> See 36 C.F.R. § 800.4–800.6 (2004).

<sup>3</sup> EI-1675.pdf at 5.

<sup>4</sup> EI-1675.pdf at 5, 26–31.

<sup>5</sup> EI-1675.pdf at 5, 33 and 42–51.

<sup>6</sup> EI-1675.pdf at 51.

- The consultants arrive at a general conclusion that “intensive cultural resource investigations are warranted” in the area, but this phrase is not defined further.<sup>7</sup>

By comparison, the alternatives analyzed in the Draft Environmental Impact Statement have numerous eligible historic and archeological sites within the Area of Proposed Effect.<sup>8</sup> Most of the alternatives, including the Proposed Route, have as many or more eligible sites within their Area of Proposed Effect as the “SGR Eastern Route”.<sup>9</sup> Such sites also exist adjacent to the Area of Proposed Effect for these alternatives, though it is unclear whether they have all been identified. Because other impacts that may contribute to historic and archaeological site impacts remain unknown, it is premature to conclude that historic site impacts along the “SGR Eastern Route” are any more severe than any other alternative presently under consideration.

Finally, the Draft Environmental Impact Statement uses a different methodology to identify potential “probability areas” for archaeological resources than Vulcan’s consultant uses here.<sup>10</sup> However, both approaches appear to result in deferral of further archeological surveys until the Programmatic Agreement is implemented. As MCEAA has stated, it prefers that these surveys occur up front. One possible cooperative means of accomplishing that would be for MCEAA’s cultural resources expert, Dr. Tom Hester, to talk with the consultants at González, Tate, & Iruegas, and jointly establish a priority schedule for field studies. We do not know for certain if Dr. Hester is available for such a collaboration, but to our members it makes more sense than doing nothing and waiting to find archeological sites during construction.

Very truly yours,

**THE GARDNER LAW FIRM**  
A Professional Corporation

/s/

David F. Barton

cc:  
U.S. Congressman Henry Bonilla

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<sup>7</sup> EI-1675.pdf at 51.

<sup>8</sup> Draft Environmental Impact Statement at 3-67 to 3-68.

<sup>9</sup> See Draft Environmental Impact Statement at 3-52 (map).

<sup>10</sup> Compare EI-1675.pdf at 5, 26–31 with Draft Environmental Impact Statement at 3-62 and 3-63 and with Draft Programmatic Agreement, Technical Memorandum (I-4), Supplement to the Preliminary Cultural Resources Assessment at 28–30.

Senator John Cornyn  
Senator Kay Bailey Hutchison  
Texas Agriculture Commissioner Susan Combs  
Texas Senator Frank Madla  
Texas Representative Tracy King  
County Judge James Barden  
County Commissioner, Pct. 1, Chris Mitchell  
County Floodplain Administrator Pat Brawner  
Texas Historical Commission Executive Director Larry Oaks

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October 5, 2005

Ms. Rini Ghosh  
Section of Environmental Analysis  
Surface Transportation Board  
ATTN: STB Finance Docket No. 34284  
1925 K Street, NW  
Washington, DC 20423-0001

**VIA EMAIL**  
**& Regular Mail**

**RE:** STB Finance Docket No. 34284 -- Adequate analysis under NEPA for:

- (1) Vulcan Materials Company's planned Medina County stone quarry; and
- (2) Vulcan Materials Company subsidiary Southwest Gulf Railroad Company's proposed rail line to serve Medina County stone quarry.

Dear Ms. Ghosh:

MCEAA has reviewed the recent submission, EI-1664, by the applicant, Vulcan/SGR ("Vulcan"), dated September 7, 2005. That letter purports to respond to numerous information requests and questions posed by the agency to the applicant, which the applicant had not responded to, despite the issuance of a Draft Environmental Impact Statement in this proceeding some 10 months ago.

Unfortunately the applicant's September 7 letter continues to ignore and trivialize the cumulative impacts from its connected quarry and rail proposals. Rather than conduct the necessary quantitative studies, the applicant continues to rely on hand-waving, promises, and conclusory statements. In our view, the applicant continues to mislead the agency in order to avoid these studies and to avoid viable alternative routes suggested by MCEAA.

- I. THE AGENCY HAS YET TO IDENTIFY A CONSISTENT SET OF CRITERIA FOR ALTERNATIVES

Several potentially viable alternative routes have been presented to the agency throughout this proceeding. However, a major problem with the alternatives analysis to date has been a lack of consistent standards and comparisons as to what makes an alternative viable. MCEAA has attempted on several occasions to match the applicant's stated qualitative and quantitative criteria, only to have the applicant make up additional "modified" straw men alternatives, closely analogous to MCEAA's but containing serious deficiencies, hence the "modifications". The applicant then analogizes its "modified" alternatives to our proposals, in lieu of actual analysis.

The "analogize instead of analyze" strategy leads to the arbitrary selection of criteria for viable alternatives. Up until the agency's recent information requests, the agency appeared to be proceeding on the basis of an undefined totality of the circumstances approach. The facts and record, however, show that criteria the agency permits for some of the alternatives currently under consideration have been used to dismiss other alternatives. This indicates that some of the allegedly disqualifying factors are simply environmental impacts. These impacts are greater for some alternatives and less for others. But the fact that these impacts are common, at some level, to all alternatives, does not render a particular alternative infeasible unless a threshold of infeasibility is defined.

So far, the threshold of infeasibility has been defined as whatever the applicant wants it to be. This makes the alternatives analysis a sham, and shows all of the alternatives suggested by the applicant to be straw men, rather than any more or less viable than alternatives suggested by the public.

To remedy this, we clearly isolate the feasibility criteria from other criteria that simply represent impacts. We then catalog and state Vulcan's representation of those criteria to date. Finally, we show that both of the alternatives suggested by the public can meet the feasibility criteria.

## Feasibility Criteria

### 1. Grades

In North America, gradient is expressed in terms of the number of feet of rise per 100 feet of horizontal distance. Two examples: if a track rises 1 foot over a distance of 100 feet, the gradient is said to be "1 percent;" a rise of 2 and-a-half feet would be a grade of "2.5 percent."

According to Vulcan, grades must be limited to 1.0% for this project.<sup>1</sup> Therefore, any required cutting and filling to even out the grade should theoretically result in a 1.0% grade, and no less. No extra and cutting and filling should occur to decrease the grade below 1.0%, by that standard.

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<sup>1</sup> EI-28.pdf at 9. Page numbers cited are the page of the pdf file, and may not necessarily correspond to paper page numbers.

We disagree, however, that a 1.0% grade is the appropriate grade for this project, based on the applicant's own representations:

Earthwork costs can be reduced if [Union Pacific (UP)]-Vulcan agreements allow for run through power to be used on the rail line or that no interchange will occur at the UP main line connection. This will allow for increasing grades to match UP's ruling grade between Dunlay and the aggregate outlet *and eliminating the flat spot near the connection.*<sup>2</sup>

This [1.0%] grade is somewhat less than ruling grades on the UP between Dunlay and Houston (1.2-1.4%). Consequently, if run through power is used between the loading facility and destination points, tonnage ratings will be governed by the grades on the UP rather than those of the proposed rail line.<sup>3</sup>

Because "Southwest Gulf Railroad," a wholly owned and operated subsidiary of the Vulcan Materials aggregate corporation, is not a true railroad, and because neither it nor its parent owns and operates long-haul rail equipment of its own, nor plans to purchase or operate such equipment for this project, and because "Southwest Gulf Railroad's" assertions to the contrary consist solely of bare assertions, hypotheticals, and indeterminate possibilities of acquiring its own locomotive power, MCEAA believes that the agency must assume the use of run through power, absent a firm commitment by the applicant to provide its own. In Vulcan's own words, responding to the agency:

How would SGR connect to and move trains to and from the UP line? These details will be worked out with the Class I railroads in the future.<sup>4</sup>

MCEAA also notes that, as presently designed, there is no way to interchange locomotive power where the proposed line intersects the UP main line, without bringing the "5,200 to 5,800 foot"<sup>5</sup> "Southwest Gulf Railroad" train to a complete stop, blocking and conducting reverse movements over the UP main line. Realistically, a siding, which is not yet part of the proposal, would be required, either along the UP main line or along the line serving the quarry.

In terms of feasibility criteria, a 1.2 to 1.4% grade, with corresponding cuts and fills, is all that is required for feasible alternative alignments in this project.

Vulcan also raises the issue of slope in the area of the UP main line as a safety issue. However, as noted above, Vulcan's own consultants note that the flat spot in that area could be eliminated with run through power. Additionally, based on all deviations of alternatives proposed to date, and discussed later in this letter, at least 4,000-5,000 feet of flat track exist, along what is currently the start of Vulcan's Proposed Route, before any alternative would take off to the east and begin to ascend a marginal grade. This is more than enough track to allay any alleged safety concerns.

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<sup>2</sup> EI-28.pdf at 11 (emphasis added).

<sup>3</sup> EI-28.pdf at 10.

<sup>4</sup> EI-1664.pdf at 13.

<sup>5</sup> EI-28.pdf at 4.

Finally, and most fittingly, if Vulcan does not plan to use pass through power, all “Southwest Gulf Railroad” trains will be stopping on the line or at a siding before or after reaching the UP main line. No “safety issue” based on potential grades, the precise contours of which Vulcan has yet to define, will occur with trains moving so slowly or not at all. In any case, railroads across the nation likely deal with more serious safety issues with heavier trains on steeper grades and interchanges on a daily basis.

Furthermore, certainly any alleged “requirement” to place the siding before the UP main line can only exist if pass through power is not used. Yet as noted above, only the wildest, barest assertion of this paper railroad applicant supports an inference that pass through power will not be used. But regardless of whether pass through power is used, the location of any siding is irrelevant and may not be used as an albatross to dismiss viable alternatives. Both the set of alternatives within the Quihi floodplain and the set of alternatives to the east, as well as the UP main line itself, have ample flat ground within a reasonable distance of the quarry line interchange on which to construct a siding.

The future operational details of this line, which currently seem grounded only in the unsubstantiated assertions of the paper railroad applicant, are not sufficient to eliminate otherwise viable alternatives unless those details are more adequately supported, and made binding on the applicant as a condition of the license.

## 2. Cut and Fill

Having established a feasible grade of 1.2 to 1.4%, it is now necessary to determine the other factor involved in calculating cut and fill: the resulting slope of the area around the rail line that is cut into or built up. Feasibility of the cut and fill cost will be discussed later. First, we must determine how much cut and fill will occur, before dismissing any possibilities.

In its September 7 letter, Vulcan revised its cut and fill figures in a manner that should raise alarm at the agency. Vulcan stated that:

In its initial presentation of cut/fill data in that [June 6, 2005] letter, SGR had assumed that all excavation would be in rock or a consolidated material capable of supporting vertical benches 10 feet wide by 20 feet high, resulting in a slope calculation of 0.5:1 (the equivalent of a 63° slope). Upon further review of this assumption and discussion with qualified engineers who reviewed surface geological maps of the area, SGR has now concluded that somewhat more refined data on the cut volumes would be generated by assuming side slopes of 1.5:1 (the equivalent of a 33° slope).<sup>6</sup>

The effect of all of this was to dramatically increase the cut volumes for alternatives to the east of the Quihi floodplain, while barely affecting some of the cut volumes for alternatives through the floodplain. Essentially, the change in slope had an exaggerated effect in the

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<sup>6</sup> EI-1664.pdf at 2.

marginally steeper topography to the east, because more horizontal cutting would have to be done to achieve a 33 degree slope adjacent to the rail line there than in the marginally flatter floodplain.<sup>7</sup> Plainly, this was an attempt by the applicant to bias the feasibility analysis.

More seriously, however, Vulcan's own earlier submissions contradict both the necessity and basis for this change. The original slope was not 0.5:1 and 63 degrees after all, but 1:1, or a 45-degree angle. Because of that, there is no basis for requiring a 33-degree slope unless the surrounding material is *extremely* loose and unconsolidated and unable to support itself when balanced evenly at 45-degrees and a 1:1 ratio. Vulcan's own words, in the December 2002 TRAX Report:

Earthwork calculations and the cost estimate assume that all excavation will be in rippable material. This assumption is grounded in site visits, inspection of road cuts in the area and data from University of Texas-Austin maps, but is not backed by soils tests and drillings. Based on this information, road bed side slopes of 1:1 in cuts (with 10 ft. wide benches and 20 ft. height intervals) and 2:1 in fills were used. These side slope assumptions were used to determine of [*sic*] right of way width throughout the length of the line.<sup>8</sup>

In cuts, ditches 10 ft. wide and 2 ft. deep (below top of subgrade) have been assumed on both sides of the track. Assumed side slopes were as noted in the previous paragraph [1:1].<sup>9</sup>

Cuts are in material that can be excavated without blasting and will stand at a 1:1 slope.<sup>10</sup>

Vulcan first provided cut volumes based on 1:1 slopes to the agency in Exhibit 4 of EI-1439, on April 4, 2005. These volumes are repeated in Exhibit 1 of the September 7 letter. We know these volumes are based on 1:1 slopes, rather than 0.5:1 slopes, because Vulcan said:

The following process was used to calculate the cuts and fill volumes:

...

- (3) The criteria outlined in the December 2002 TRAX Report [EI-28.pdf] previously provided to SEA were taken into account for

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<sup>7</sup> "The differences between the previous and revised cut estimates are greater for the [eastern] alternatives due to the greater depth of the cuts required as one moves east, a reflection of the steeper escarpment that needs to be traversed by the more eastern alignments." EI-1664.pdf at 3.

<sup>8</sup> EI-28.pdf at 11.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

- Grade Limitations
- Curve Limitations
- Cut and Fill Profiles<sup>11</sup>

Further, Vulcan’s stated basis for the change to a 1.5:1 ratio was “discussion with qualified engineers who reviewed surface geological maps of the area.”<sup>12</sup> Yet according to Vulcan’s earlier submission, they had already reviewed “data from University of Texas-Austin maps” and the only basis for a change in slope ratio would be “soils tests and drillings.”<sup>13</sup> Vulcan has not conducted soils tests and drillings, nor submitted any evidence to the agency to support its changed slope ratio and cut volumes. No engineer has signed or certified the numbers Vulcan now urges upon the agency in Exhibit 1 of the September 7 letter.

Because there is only one purpose for the Vulcan’s unsupported change in the slope ratio—the inflation of cut volumes for alternatives east of the Quihi floodplain—it must be discarded in the absence of supporting data and professional opinion. A bare assertion that the lawyers talked to the engineers is not enough.

The original 1:1 slope cut volumes, which Vulcan (deliberately) misrepresents as 0.5:1 volumes in Exhibit 1 of the September 7 letter, may apply, to the extent they are relevant. However, as we discuss further below, numerous sections of viable alternatives have not been analyzed. Therefore, attempts to analogize the cut volumes of close-by routes traversing different topography, in lieu of analyzing the specific viable alternative presented, are irrelevant.

### 3. Operating Speed

Vulcan’s prior submission and its response to the agency in the September 7 letter confirm that operating speed is not a major factor in the design of feasible alternatives.

Track geometry will allow 40-mph maximum speed operations; however, 25-mph will meet the needs of the quarry for the foreseeable future and operating at this speed will lower track maintenance costs. Speeds while climbing the steepest grades will be as low as 12 mph.<sup>14</sup>

These speeds “obtained while climbing the 1 percent ruling grade near station 80+00 [of the applicant’s Proposed Route] could [be] [*sic*] as low as 12 mph with 9000 horsepower. This will not introduce delays since speeds will be reduced as the loaded train prepares to enter the [Union Pacific] main [line] causing no practical impact on running time.”<sup>15</sup>

The agency wisely asks Vulcan why, if 12 mph operating speeds are feasible for its Proposed Route, 25 mph speeds are assumed for curves. Vulcan’s answer, “[t]he track design is

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<sup>11</sup> EI-1439.pdf at 6.

<sup>12</sup> EI-1664.pdf at 2.

<sup>13</sup> EI-28.pdf at 11.

<sup>14</sup> EI-28.pdf at 4–5.

<sup>15</sup> EI-28.pdf at 8.

based on safety considerations. . . . The speed to be used on curves will vary based on the degree of curvature and grade considerations,”<sup>16</sup> is pathetic.

The fact is, speeds of below 25 mph will occur near the quarry,<sup>17</sup> on certain grades, and near the interchange with the UP main line at Dunlay. In fact, as noted above, depending on whether run through power is used or not, the trains may actually stop near the interchange. Therefore, operating speed is, at best, a negligible consideration in determining whether an alternative is feasible.

#### 4. Curves

Vulcan has stated that “[c]urves exceeding 4° 00’ have been limited to the ends of the line only, where speeds will be relatively low.”<sup>18</sup> All of the curves greater than 4° 00’ shown in the TRAX route description have maximum operating speeds of at least 25 mph.<sup>19</sup> It is unknown what maximum speeds would correspond to sharper curves.

In any case, no alternative or deviation described by MCEAA later in this letter will require more than a 4° 00’ curve, and it is believed that even that curve, near the origin, can be eliminated by selecting a different, less steep deviation just to the north.

Therefore, while a maximum curve sharpness remains undefined in this proceeding, MCEAA believes that whatever that value is, it will not interfere with the feasibility of the alternatives it offers. Still, the agency should align curve criteria with known conditions; for instance, expectations, rather than bare assertions, of what will occur near the interchange.

#### 5. Length

Length is relevant as a feasibility criteria due to its relationship to cost, which is discussed below. It should be considered independently and not lumped together in conjectural assumptions like “a longer line means more cut and fill.” The longest of the four alternatives drafted by Vulcan is Alternative 1, at 10.6 miles. Potentially viable alternatives submitted by the public are between approximately 10 and 12 miles long.

#### 6. Total Cost

The major factors in total cost, based on the TRAX report, are earthwork (cut and fill), track (length), and structures (bridges, berms, ditches, culverts, and flood mitigation).<sup>20</sup>

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<sup>16</sup> EI-1664.pdf at 12–13.

<sup>17</sup> Exiting the quarry, Vulcan “does not anticipate that the speed of the trains at this point [at CR 353] will exceed 10 mph.” EI-1664.pdf at 13.

<sup>18</sup> EI-28.pdf at 10.

<sup>19</sup> *Id.*

<sup>20</sup> EI-28.pdf at 14.

The latter factor, the level of structural engineering necessary to avoid cumulative flood impacts from the rail line and quarry, has been hotly contested in this proceeding. Vulcan's cost estimate states that "sizing of bridges and culverts is based on a flood frequency of 25 years."<sup>21</sup> For a number of reasons, including the reality of cumulative flood impacts in this proceeding, as well as a Medina County Floodplain Ordinance prohibiting the enlargement of the 100-year floodplain, a 25-year structural flood mitigation plan is irrelevant.

Further, Vulcan admits that it has still not even designed, much less analyzed, stream crossing and drainage structures and their impacts on the floodplain. Nor have the cumulative flood impacts, which may require additional mitigation by the rail line, been analyzed. Therefore, consideration of the cost of stream crossing and drainage structures when analyzing the feasibility of alternative alignments is highly premature and arbitrary, at least as the record stands in this proceeding.

This leaves cut and fill volume and length. It is true that some routes may have greater cut and fill requirements and travel marginally longer distances than others. This alone does not make them infeasible. Also, as we discuss further below, numerous sections of viable alternatives have not even been analyzed. It will not do to simply analogize their very different facts, particularly topography, to straw men alternatives created by the applicant.

Even though it is possible to extrapolate from the cost data that has been provided to date, it is not permissible for the applicant to set a secret cost threshold. If the applicant or agency wants to use total cost as a basis for deeming an alternative infeasible, it needs to state exactly what part of the total cost is excessive, and by how much. We are not convinced that a few million dollars really matters to Vulcan, given that it has been planning the quarry since 1999, and since it has waited more than ten months past the Draft Environmental Impact Statement to provide the most rudimentary evidence that would even begin to make a feasibility analysis of alternatives possible.<sup>22</sup>

### Impacts

The fact that an alternative has more or less of a certain environmental impact does not render it infeasible. This particularly true when that impact is shared by the other alternatives the agency has already accepted for further analysis.

In this section, we address the impacts cited by Vulcan as justification for why its own alternatives east of the Quihi floodplain are infeasible. The agency may wish to compare the public's alternatives and deviations outlined later in this letter, at some point, but it is extremely doubtful these impacts are significantly great to render them infeasible.

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<sup>21</sup> EI-28.pdf at 10.

<sup>22</sup> EI-1664.pdf and its exhibits are the first time that detailed topographic profiles, cross sections, and aerial photos of *all* of the applicant's alternatives have been provided to the public.

In most cases, while these impacts can be quantified, their enumeration really doesn't tell us much without further analysis. Does it really tell the agency anything if one alternative crosses 8 properties and another crosses 12? If one alternative has 5 stream crossings and another has 7? These are not criteria of feasibility for a rail line, particularly not if the applicant plans to condemn the necessary land and still hasn't engineered or analyzed a way to resolve flood impacts along the route. Rather, these numbers denote impacts of otherwise viable routes that require further analysis to determine which is most preferable.

### 1. Significant Stream Crossing and Drainage Features

According to Vulcan, the Proposed Route will require seven significant stream crossings and drainage features,<sup>23</sup> while Alternatives 1 and 2 will require eight, and Alternative 3 will require four.<sup>24</sup> Any route to the east would appear to require only 3 stream crossings.

### 2. Crossing Roads and Driveways

According to Vulcan, the Proposed Route will require six to seven road crossings, while Alternative 1 will require eight, Alternative 2 will require five and Alternative 3 will require six.<sup>25</sup> Any route to the east would appear to require a similar number of road crossings.

As the agency noted in its information request, the number of private driveways to be crossed, as well as access routes around working properties, are also important environmental impacts. In the past, the agency has denied a license, in part on the basis of impacts to private residential driveways. At the very least, this is an important safety concern to affected residents that merits full disclosure and mitigation.

### 3. Crossing Property

Given that Vulcan may attempt to use eminent domain to acquire any land that it cannot purchase, the number of properties crossed by the line is irrelevant without knowledge of which individuals, such as quarry supporters living east of the Quihi floodplain, would willingly sell. Vulcan appears to agree:

In addition, SGR's potential exercise of eminent domain rights, aside from being a highly speculative proposition at this time, is not in SGR's view an appropriate issue for consideration by SEA in its study of the environmental impacts of the SGR line.<sup>26</sup>

Therefore, Vulcan's attempt to use the number properties crossed as a feasibility criteria, rather than a land use impact, should be ignored.

### 4. Existing or Proposed Land Uses

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<sup>23</sup> EI-284.pdf at 12.

<sup>24</sup> EI-287.pdf at 2-4.

<sup>25</sup> EI-472.pdf at 1-2.

<sup>26</sup> EI-259.pdf at 4.

Along the applicant's proposed route and first three alternatives, most lands are used for ranching, farming, hunting, and residences. Similar land use exists to the east. Some speculative future land uses, such as subdivisions, also may exist. Each of these land uses bears the risk of being impacted by a rail line alternative and by potential condemnation attempts, however *ultra vires* they may be. It is not possible to elevate any one of these land uses to the level of a disqualifying feasibility criteria. Some land uses on some parcels will be more adversely impacted, and there will be significant debate and comment about that. Crossing more land may impact different land uses, but that is for the impact analysis to discuss. Existing or proposed land use is not a ground, independently or otherwise, for disqualifying an alternative route.

## 5. Proximity to Historic Sites

Vulcan has defined the "Area of Proposed Effect" on historic sites to extend 1000 feet on each side of the rail line, over its entire route.<sup>27</sup> This relation of this area to actual environmental impact is unclear and perhaps inaccurate because several environmental impacts, such as flooding, have yet to be fully analyzed in this proceeding. Nevertheless, because most of the historic sites lie near the Quihi floodplain, it is unlikely that the impact on historic sites of any route to the east would rise to a disqualifying level.

## II. APPLYING CONSISTENT FEASIBILITY CRITERIA TO THE MEDINA DAM ROUTE AND MEDINA DAM ALTERNATIVE

Two pairs of alternatives exist to the east of the Quihi floodplain where the Vulcan's Proposed and three Alternative Routes lie. In each of these pairs of alternatives, the public has offered a proposal. Then, Vulcan has offered a "modified" straw man variation of each proposal, in some ways similar, in some ways different, but always with major infirmities.

As MCEAA has commented and as the agency noted in the Draft Environmental Impact Statement, an eastern route has the potential to lessen environmental impacts, including avoiding the Quihi floodplain, avoiding impacts to historic sites, and impacting fewer working lands currently used for grazing, agriculture, and hunting.

However, the agency has not yet analyzed the public's proposals against a consistent set of feasibility criteria, though it has, perhaps prematurely, dismissed one of them in the Draft Environmental Impact Statement, based not on the actual route proposed by the public, but instead on a straw man route proposed and described by Vulcan.

The public has presented two viable alternative routes to the agency, and Vulcan has presented two "modifications" of those routes. In discussing each of these routes, we begin at

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<sup>27</sup> EI-751.pdf at 1-6.

the origin, the existing Union Pacific main line at Dunlay, and proceed towards the quarry, responding to Vulcan's "modifications" and stated objections as they arise along the route.

### The Medina Dam Route ("Original MDR")

The first alternative submitted by the public is a historic rail right of way. The original Medina Dam Route ("Original MDR")<sup>28</sup> dating from the early 1900s carried aggregate to construct the Medina Dam, northeast of the project area. This route was built before U.S. Highway 90, and, in its original configuration, would have required a grade separation over U.S. 90 to reach the existing Union Pacific main line at Dunlay. This factor, no doubt, contributed to its preliminary disqualification by the agency. However, MCEAA noted the grade separation problem before the agency disqualified the Original MDR, and pointed out how it could be avoided by connecting to the applicant's Proposed Route less than a mile north of its origin.

Vulcan's "modified" Original Medina Dam Route ("Modified MDR") contains such a connection to the Proposed Route. We will now refer to this segment as "Original MDR – Deviation A". With this deviation, the Modified MDR turns due east off the Proposed Route and ascends approximately 60 feet.

In a May 4, 2004 letter to the agency, Vulcan discusses and dismisses Deviation A on the basis of feasibility criteria discussed earlier in this letter. MCEAA believes that when the feasibility criteria are correctly applied, Deviation A passes.

For Deviation A, Vulcan primarily objects that the amount of cut and fill would be too large.<sup>29</sup> Topographic maps,<sup>30</sup> however, indicate that the grade traversed by Deviations A is not 6-7% as stated by the applicant, but more on the order of 3-5%.<sup>31</sup> At the crucial cross-section 50+00, we find, upon examining the applicant's cross sections for the Modified MDR contained in Exhibit 6 of the September 7 letter, a grade of between 3 and 4%. In fact, the applicant's Proposed Route traverses similar 3-5% grades between Cherry and Quihi Creek, as cross-section 160+00 for that route illustrates. Based on the profiles provided by the applicant, we find no more cut and fill with Deviation A than exists on other sections of the Proposed Route and Alternative 3.

If a grade of 6-7% does exist, it is a very short one, and could easily be addressed with cut and fill. In fact, Vulcan has analyzed a cut and fill scenario with a 1:1 slope ratio for

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<sup>28</sup> MCEAA notes that the Draft Environmental Impact Statement refers to this route as the "Medina Dam Alternative". Due to the number of alternatives and modified alternatives existing at this time, we suggest that the agency adopt the system of references contained in this letter.

<sup>29</sup> EI-793.pdf at 14. Vulcan also raises the downward slope towards the UP main line "safety issue" that we discussed earlier in this letter.

<sup>30</sup> EI-1664.pdf, Exhibit 4.

<sup>31</sup> As a general comment, MCEAA notes that throughout this proceeding, it has never seen an engineer or consultant certify or attest to many of the crucial measurements presented as fact in the letters from the applicant. Because TRAX, the rail consulting firm that produced some of the original feasibility criteria, is no longer in business, and because MCEAA has not noticed a replacement for them appearing in the submitted materials, it has raised questions, particularly when we discover inconsistencies like the slope ratio for the cut volumes mentioned earlier in this letter.

Deviation A. Therefore, Deviation A is only infeasible if its cut and fill volume, and associated cost, standing alone, would render an alternative infeasible.

By contrast, MCEAA has submitted a map showing how the Original MDR could easily be linked to the Proposed Route, and thus the origin, through a much more gradual turnoff and a far gentler ascent. We will now refer to this segment as “Original MDR – Deviation B1,” though it was not originally labeled as such. This deviation has not been analyzed to date.

MCEAA’s Deviation B1 is very different from the Deviation B proposed by Vulcan in its May 4, 2004 letter (“Deviation B2”).<sup>32</sup> Vulcan’s Deviation B2 takes too long to leave the Proposed Route and Alternative 3 (about 1.5 miles from the origin). This causes it to ascend a much steeper and longer hill than necessary, and to cross nearer to the intersection of CR 4516 and CR 2676 than the Deviation B1 MCEAA submitted.

MCEAA’s Deviation B1 ascends a much gentler grade than either of Vulcan’s Deviations. Therefore, the cut volumes necessary to achieve a 1.2 to 1.4% grade would be much lower. Vulcan also raises the safety issue of crossing CR 4516 “on a gradient,”<sup>33</sup> but any such gradient would be eliminated by the cut and fill. We do not see a 1.2 to 1.4% gradient as being an insurmountable obstacle to feasibility, particularly when Vulcan could take whatever additional grade crossing protections are necessary. Currently, Vulcan proposes only to place warning signals at CR 4516.<sup>34</sup> Crossing gates could easily be placed at CR 4516 if the safety issue was that pressing. Further, since crossing gates will likely be required at one other location common to every alternative, CR 2676, their requirement at one additional location would not render an alternative infeasible.

With Vulcan’s objections to the initial portion of the Original MDR answered, we turn east of CR 4516 to one of the Original MDR’s defining features—a level stretch of approximately 5 miles that lies well east of any streams in the Quihi floodplain, crosses only 1 road, certain lands owned by quarry supporters, and passes near very few houses.

Between CR 4516 and the top of this gradually sloping plateau, the Original MDR and Modified MDR are very similar. Any disqualifying infirmity in one could be corrected for by shifting to the other, and the flat topography is conducive to doing so. Major cut and fill need not occur along this stretch.

From the top of the plateau to the quarry, four deviations, C, D, E, and F, exist. Each of them crosses Quihi Creek at some point. Deviations C, D, and E have been proposed by Vulcan,<sup>35</sup> and, after crossing Quihi Creek, they generally return to the Proposed Route, join it, and enter the quarry from the south. Deviation F is the name we now give to MCEAA’s submitted route from Quihi Creek, which follows the historic Medina Dam Route to the north over flat land for about another 1 to 1.5 miles before turning and approaching the quarry from

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<sup>32</sup> EI-793.pdf at 23.

<sup>33</sup> EI-793.pdf at 14.

<sup>34</sup> EI-28.pdf at 4.

<sup>35</sup> EI-793.pdf at 23.

due east of the loading loop, north of Hill 1009'.<sup>36</sup> From Quihi Creek to the quarry, each of these deviations easily satisfies a fairly applied, consistent set of feasibility criteria. It is unlikely that any one of the segments analyzed alone, unconnected to the Original MDR or Modified MDR, is infeasible. However, only one, Deviation D, which Vulcan incorporated into its Modified MDR, has been completely analyzed.

The focus thus returns to the descent from the top of the plateau to Quihi Creek. Vulcan's consistent—and sole—feasibility objection to this segment is the amount of cut and fill required.<sup>37</sup>

Yet as MCEAA has shown above, the data necessary for a fair feasibility determination remains incomplete: both the grade and the slope ratio used by Vulcan are inaccurate. More realistic alignments are also possible. For its Modified MDR, Vulcan chose the shortest possible route, straight up the grade. The Original MDR takes a more gradual path, as yet unanalyzed, and it seems like an even more gradual grade could be found or created by tracking west of east of the crest of the plateau in this area. While the cost of the project would increase due to the amount of cut and fill necessary in a segment from the plateau to Quihi Creek, it has not been shown that this amount is infeasible to the applicant, a Fortune 500 company. It has merely been asserted in a conclusory statement.

After the grades are leveled, and because, when proper deviations and earthwork are applied, there are no problems with curves, Vulcan's ultimate objections<sup>38</sup> to the Original and its own Modified MDR center on length and cut and fill volume, which implicate total cost.

The agency, however, correctly does not cite total cost to the applicant as a justification for deeming the Modified MDR infeasible in the Draft EIS. Rather, it cites only potential environmental impacts to "floodplains, hydrology, soils, and wetlands,"<sup>39</sup> even though it is not clear that any of these would necessarily be impacted by the disposal or excavation here. This particular segment lies outside of the floodplain,<sup>40</sup> traverses non-farm grazing land, and does not include any wetlands. Further, any hydrologic impacts are unknown, because the applicant still refuses to disclose how it will handle both drainage along the rail line and the construction of structures (bridges) within the floodplain.<sup>41</sup> Without further analysis, described in the conclusion to this section, the agency's rejection of the Medina Dam Route is premature.

### The Medina Dam Alternative ("MDA")

MCEAA's Medina Dam Alternative ("MDA"), presented several times on detailed topographic maps to the agency, improves on a historic route originally constructed in the early

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<sup>36</sup> See EI-1664.pdf, Exhibit 4 (topographic map).

<sup>37</sup> Vulcan also insinuates, but has never shown, that a loaded train leaving the quarry would be unable to ascend this segment, despite more than two and a half miles of level acceleration.

<sup>38</sup> Draft Environmental Impact Statement at 2-11, 2-12.

<sup>39</sup> Draft Environmental Impact Statement at 2-12.

<sup>40</sup> Vulcan explicitly states that cut and fill will only occur outside of the floodplain, with trestle bridges used within the floodplain. EI-1439.pdf at 6.

<sup>41</sup> EI-1664.pdf at 7, 8, 15–16.

1900s to build the Medina Dam, to the northeast of the project area. The Medina Dam Alternative presented to the agency links the applicant's point of origin, at Dunlay, to the quarry, in a manner consistent with the applicant's stated rail geometry and other construction requirements. It has numerous advantages relative to the current proposed route, which have been discussed previously. It has not yet been evaluated by the agency alongside the other alternatives in this proceeding.

Vulcan's "SGR Eastern Route," was submitted by the applicant on June 6, 2005, five months after MCEAA submitted topographic maps and comments containing the MDA in response to the Draft Environmental Impact Statement.<sup>42</sup>

Clearly, it is the agency's responsibility, not the applicant's, to inquire further when the public presents it with a potentially viable alternative. Still, MCEAA was disappointed that, given the opportunity to take its best shot at the MDA, Vulcan chose not to conduct the same level of quantitative investigation as it had for all of the other alternatives. Instead, Vulcan chose only to passively analogize the MDA to the "SGR Eastern Route," without any further discussion of the MDA itself. On that basis alone, Vulcan argued that the MDA, like its own "SGR Eastern Route", should not be considered further.<sup>43</sup>

This strategy implies that the "SGR Eastern Route" was complete baloney from the beginning. If the "SGR Eastern Route" was so bad, why create it? Why not just analyze the MDA? Presumably, Vulcan's consultant had some reason to choose a more western orientation in the key area where the cut and fill volumes were highest. The problem is that the public is left to guess what that reason is, while Vulcan asks the public to accept a flawed analogy to the MDA, rather than an analysis of the MDA itself. The basis for deviating from the public's version of the MDA, if not disclosed and explained by the agency, is a ripe litigation target.

Departing from the Proposed Route, the MDA utilizes feasible Deviation B1, discussed with reference to the Original MDR above. One atop the plateau and east of CR 4516, it travels northeast in a corridor with the Modified and Original MDRs and the "SGR Eastern Route". This corridor, properly aligned, should require little to no cut or fill.

Turning north and then northwest, the MDA and "SGR Eastern Route" ultimately split south of a small pond. The MDA slopes down to the east of the outlet creek to this pond, while the "SGR Eastern Route" descends to the west. The MDA takes a more northerly course, meeting the Original MDR at Quihi Creek, and then joining Deviation F of that route, discussed above, traveling north and then turning to enter the quarry from due east. All portions of the MDA from the plateau onward remain unanalyzed.

#### Conclusion: Reevaluation

The agency needs to rerun the cut and fill calculations using the applicable grade (1.2–1.4%) and slope ratio (1:1) values, or else require the applicant to support the parameters it

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<sup>42</sup> EI-1545.pdf

<sup>43</sup> EI-1664.pdf at 1–2.

urges. The agency needs to run these calculations on the Original MDR and MDA as described above. Because the agency did not have much of the information that it has now in front of it when preparing the Draft Environmental Impact Statement, MCEAA requests that it conduct a reevaluation of the Original MDR and the MDA.

MCEAA feels strongly that the ultimate feasibility of the Original MDR and the MDA will come down to two issues that together implicate total cost: length and cut and fill volume. The environmental impact of handling the reduced amounts of cut and fill is likely not significant enough to merit the disqualification of the Original MDR and the MDA as infeasible; but in any case, it has yet to be fully analyzed. Likewise, it is impermissible to layer and sandbag preliminary conclusions from issues properly reserved to the environmental impact analysis in order to disqualify an otherwise viable alternative. Finally, if the applicant must rest on total cost as the ultimate justification for infeasibility, there will likely be two consequences. First, declaring the marginal cost increase infeasible, relative to the most expensive alternative, requires the agency to disclose a basis given the connected nature of the quarry and rail proposals. Second, and regardless of the first consequence, leaving money as the only obstacle to avoiding impacts certainly increases the importance of fully analyzing and mitigating the impacts that will occur along routes traversing the Quihi floodplain.

### III. CUMULATIVE FLOODING AND GROUNDWATER IMPACTS, AMONG OTHERS, REMAIN UNANALYZED

Much of the remainder of Vulcan's September 7 letter is devoted to more promises of resolving issues during "final engineering." For the reasons given in our previous letters and comments, incorporated here by reference,<sup>44</sup> these promises are not legally adequate.

In particular, Vulcan's response to Request #8 illustrates a failure to provide the agency with necessary information to analyze cumulative flood impacts. Request #8 concerns the location and height of earthen berms along the rail line that will manage runoff.<sup>45</sup> Vulcan again delayed providing this information and deferred it to "final engineering."<sup>46</sup>

To fully conceptualize what Vulcan proposes at the stream crossings, it is worth summarizing the structures that will exist. First, large barriers of fill supporting the rail line will exist up to the border of the mapped floodplain: 8 feet high near Cherry Creek, 13 feet high at a Cherry Creek tributary and approaching Quihi Creek, an easily overtopped 2 feet at Elm Creek, and remarkably, at grade approaching Polecat Creek.<sup>47</sup> Then, trestle bridges spanning the entire floodplain between these fill mounds and the fill mound or cut on the opposite bank.<sup>48</sup> Additional rip-rap material will be placed around the bridges in the floodplain. Berms of indeterminate height and width will be built inside and outside of the floodplain. Ditches and culverts draining alongside the line will feed into the floodplain on either side of the bridges.

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<sup>44</sup> See e.g., EI-1480, EI-1491.

<sup>45</sup> EI-1664.pdf at 7.

<sup>46</sup> *Id.*

<sup>47</sup> EI-1664.pdf, Exhibit 6 (cross sections).

<sup>48</sup> EI-1439.pdf at 6.

The bridges themselves will collect debris from upstream. The bridges and the other structures in the floodplain will affect the shape of the floodplain upstream and downstream. Appropriate design (trestle or freestanding), mitigation (upstream detention ponds), and sizing of these structures, and whether they are overtopped or susceptible to damage, depends on the contribution to cumulative floodplain impacts from the quarry.

Yet while Vulcan does provide fill profiles, flawed or otherwise, for individual cross sections along the route, it still has provided none of the information that would enable the agency to analyze the impact of either the rail line's structures or the quarry on the floodplain. In particular, Vulcan has declined to provide necessary information on:

- Berms for runoff management (Request #8)
- Location and design of stream crossings (including bridges) and culverts and 100-year floodplain water surface elevations<sup>49</sup> in the vicinity of the crossings (Request #9)
- Necessary consultation with the Medina County Floodplain Administrator (Request #26)
- Maps and drainage plan for the quarry with specific information about diversion structures (Request #27)

Without this information, the agency cannot analyze the cumulative flood impact of the quarry and rail line. It cannot analyze how the structures that Vulcan plans to place in the floodplain and the excavation it plans at the quarry will impact floodplains up and downstream. It cannot propose mitigation to eliminate or significantly lessen those impacts. It cannot even begin to design the analysis and thresholds necessary to trigger mitigation, because even the most basic information is lacking. Indeed, the only thing the agency can do on this record is trust the applicant to do whatever it wants. That is not an acceptable course of action.

One of Vulcan's promises should be discussed further, however, and that is its reliance on the state WPAP (stormwater) permit to allegedly zero-out flood impacts from the quarry. This should be a major concern to the agency, considering Vulcan only plans to share the WPAP application with the agency when filed, "if that happens during the course of this proceeding."<sup>50</sup>

Even if the agency gets to see the WPAP application, Vulcan cannot rely on it to eliminate flood impacts from the quarry for many reasons.

First, the presence of the state permit does not eliminate the federal agency's NEPA responsibility to investigate. Second and more importantly, the WPAP is a *water quality* permit. It has nothing to do with mitigating peak flows of runoff, particularly the cumulative effect on

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<sup>49</sup> As a universally utilized hydraulic analysis and floodplain mapping output, water surface elevations enable effects of design changes in floodplain structures to be analyzed ahead of time, to create an effective mitigation plan. The U.S. Army Corps of Engineers develops the leading software, freely available over the Internet, for these analyses. <http://www.hec.usace.army.mil/software/software.html>.

<sup>50</sup> EI-1664.pdf at 18.

peak flows downstream of the project site. Third, while the WPAP does address the quality of surface water infiltrating into groundwater, Vulcan misunderstands and misconstrues MCEAA's position that the surface-groundwater relationship needs to be analyzed. It is not simply one-way infiltration, and the quality of the water going in. It is also the volume going in at the quarry and the volume exiting, downgradient, during peak rainfall events, that must be analyzed. Finally, as should be obvious now to the agency, the whole problem in this proceeding is the *cumulative* impact that occurs when the floodwaters from the quarry are routed downstream and interact with the berms and trestle bridges, which the WPAP does not address.

The WPAP is not going to come up with a conclusion of "no net downstream impact" to eliminate downstream impacts on peak flow from the quarry. The disturbance associated with creating the largest quarry in the state is fundamentally too great to pass without impact, particularly considering the fact that the applicant plans no on-site retention/detention, and has not even begun "design" to consider how to manage runoff at either its quarry or around its rail line berms and bridges. There is going to be *some* flood impact from the quarry, notwithstanding the applicant's hand-waving, conclusory statements, and promises, and the question is "how does that impact interact with the berms and trestles that are known to be part of the rail line?" Because Vulcan/SGR refuses to provide adequate information on both impacts at the quarry site and the exact locations and amounts of its cut and fill, the agency is unable to complete its legal obligations on this issue.

The agency is similarly unable to analyze cumulative impacts to groundwater supplies and groundwater quality due to vibration from quarry blasting and the rail line. In the Draft Environmental Impact Statement, the agency hastily concluded, without more, that while sensitive structures such as wells could be impacted by either the rail line or the quarry, they would not be impacted by both.

In response to the agency's information request, Vulcan reveals, as MCEAA maintained, that it has never determined the location of wells around the quarry.<sup>51</sup> Vulcan also admits, in response to Request #14, that it has not even begun to design best management practices to minimize impacts to groundwater supplies.<sup>52</sup> It is likely difficult to do so without knowing the location of the supplies themselves. Vulcan's solution is to again promise resolution of the issue during "final engineering" after the license is issued and after the time has passed for the agency to determine what mitigation may be required and whether such mitigation would prove effective.

## MCEAA REITERATES ITS REQUEST FOR A SUPPLEMENTAL DEIS

We apologize for any delay in response due to our need to obtain the exhibits to Vulcan's September 7 letter, and thank the agency for providing them. It is unfortunate that Vulcan has not been a more cooperative, forthright applicant, towards the Quihi community and towards the agency. It was not necessary to create straw men alternatives when the alternatives that MCEAA

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<sup>51</sup> EI-1664.pdf at 17.

<sup>52</sup> EI-1664.pdf at 9.

submitted could have been analyzed. It was not necessary to select slope criteria that distorted the alternative feasibility analysis. And clearly, the necessary hydrologic and groundwater studies could have been completed by now.

The obligations of environmental disclosure under NEPA are, in the first instance, the agency's. As the record stands, it is the agency's obligation to require the production of this information in a Supplemental Draft Environmental Impact Statement. MCEAA hereby reiterates its request, made first in its DEIS comments, for an SDEIS document.

Very truly yours,

**THE GARDNER LAW FIRM**  
A Professional Corporation

/s/

David F. Barton

cc:

U.S. Congressman Henry Bonilla

Senator John Cornyn

Senator Kay Bailey Hutchison

Texas Agriculture Commissioner Susan Combs

Texas Senator Frank Madla

Texas Representative Tracy King

County Judge James Barden

County Commissioner, Pct. 1, Chris Mitchell

County Floodplain Administrator Pat Brawner

Texas Historical Commission Executive Director Larry Oaks

*The Medina County Environmental Action Association, Inc.*

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November 4, 2005

Ms. Rini Ghosh  
Section of Environmental Analysis  
Surface Transportation Board  
ATTN: Finance Docket No. 34284  
1925 K Street, NW  
Washington, DC 20423-0001

Re: Finance Docket 34284  
Proposed Vulcan Materials/Southwest Gulf Railroad Rail Line  
Medina County Texas

Dear Ms. Ghosh:

This letter will transmit an important presentation regarding flash flooding in the project area. It also provides additional publicly available data on physically feasible grades for the agency to take note of and consider when establishing feasibility criteria for alternatives in this proceeding. Finally, this letter concludes with thoughts on the present state of this proceeding, and encloses a letter published in this week's *Hondo Anvil-Herald*.

"Flash Flood Alley" and Medina County

We have been searching for a way to assist your agency in better understanding the flash flood risk in Medina County. As you know, flash flood risk is an important topic that needs to be addressed as part of the Environmental Impact Statement in this proceeding. We want to give you a better idea of how it works, why it happens in our area, and specifically what happens, and why the rapid, unpredictable rise and movement of waters in our nearby creeks is of such concern.

The project area—indeed, all of Medina County—is part of a region known as Flash Flood Alley. Recently, the federal government has partnered with state and local agencies to create a series of materials and data hosted on their website, [Floodsafety.com](http://Floodsafety.com). Specifically, they have produced a short DVD video, "Flash Flood Alley," that describes flash flooding in our area of central Texas, along with an accompanying DVD-ROM that contains the video, historic flood data up to the present day, and articles. "Flash Flood Alley" was sponsored and produced by the United States Geological Survey (which monitors and gauges many of the streams in the area), the State of Texas, the San Antonio River Authority (the basin just to the east of Medina County), the cities of

Austin and Dallas, and local flood control districts. Numerous representatives of these agencies appear in the video. We have enclosed copies of it for review by you and all appropriate SEA staff.

We strongly urge you to view the DVD video presentation, which runs just under 1 hour, with your staff in the near future.

As a guide, we will provide a short summary of each of the sections of the video, which we recommend viewing on the DVD, and then we will summarize the data on the DVD-ROM.

### Video Chapter 1

Texas leads nation in flood damage and deaths annually. The extensive damage history of flash flooding in Central Texas opens the video, which then describes why areas like Medina County are flood prone due to weather patterns. The video describes an example of severe river flooding to the east of our area. While we are obviously not claiming the 7-mile wide super-flood on the Guadalupe River will occur in the project area, the video makes clear that such massive scale downstream impacts are aggregations of many upstream floods in Hill Country canyons and washes.

In the interviews with flood victims, you will notice some similarities to Hurricane Katrina, and some important differences. These citizens received no warning. The control structures in their communities failed. They could not depend on the mapped floodplain. And they experienced a total loss of their biggest investment, their homes.

In Quihi, the proposed development is not homes – the homes in the project area are protected and were built up out of the floodplain. Vulcan’s quarry and rail line are the new developments that are failing to plan for flood impacts.

### Video Chapter 2

Documented catastrophic events dot the state, including Medina County, extending hundreds of miles in all directions around it. Medina County is in “Flash Flood Alley” - the most flash flood prone region in the United States according to the National Weather Service. Damaging storms in the Texas Hill Country result in canyon and wash flooding, and assumptions surrounding downstream flood prevention in the cities are based on that fact.

The nearby record US point rainfall that MCEAA first mentioned in its scoping comments is documented in this section of the video, along with other data.

This section of the video underscores that not all 100 year floodplains on FEMA floodplain maps are accurate, and that new development often tries to downplay the existence of a flood hazard rather than confront it and design for it.

Again, in our case, the proposed development is not homes – the homes in the project area are protected and were built up out of the floodplain. Vulcan’s quarry and rail line are the new developments that are failing to plan for flood impacts.

### Video Chapter 3

Catastrophic rainfall events can occur anywhere in Texas, particularly in Flash Flood Alley, which includes the Nueces Basin of which the project area is a part. “Even the most arid lands are

not immune,” the video states, using the extreme example of Sanderson, Texas, some 250 miles to the west of Medina County. This once again puts the lie to Vulcan’s constant self-serving assertions that Medina County does not experience severe floods.

Even unmarked streams and crossings are deadly in flash flood conditions. The story of Sharon Zambrzycki’s experience at such an unmarked crossing on Brushy Creek, west of Austin, is particularly applicable to the crossings along Quihi and Elm Creeks in Medina County. The video notes that “12 to 18 inches of water across a roadway can float a vehicle.” That situation routinely occurs along the creeks in the project area during even moderate rains.

A representative of the National Weather Service describes the Texas Hill Country as “the most flood prone area in the country.” The video painstakingly documents the naïve claims of skeptics and developers—claims that the locals and old timers “didn’t know what they were talking about,” only to have the skeptics face reality when the floods came.

Even a surge on a small tributary can overwhelm a town, as in the case of Peach Creek and Cuero. Peach Creek was a USGS gauged stream that became an ungauged stream when funding ran out, not unlike the streams in the project area. The lack of gauged data is not an excuse to avoid the necessary analysis, particularly in the face of the serious risk faced by Medina County.

When unanalyzed and unmitigated, poor development practices shift flood risk and cost onto landowners, as well as unquantifiable psychological trauma. That is what must be prevented in Medina County.

#### Video Chapter 4

Mentioned in the DVD-ROM data but not the video, is the near-failure of the Medina Dam, just to the north of the project area, in July 2002. This near-failure resulted when flash flooding filled Medina Lake to capacity in record time. The near-failure of the Medina Dam is analogous to the overtopping of Canyon Dam described in this segment of the video.

The events in the video are events you do not hear about because they don’t always make the national news. It may surprise you, after watching the graphic video, to learn that so many disasters of this magnitude occurred before Tropical Storm Allison in 2001, and before Hurricanes Katrina and Rita this year. Part of the reason for that is the collective denial, at all levels of government, that these events are happening and must be analyzed, planned for and resolved in the course of licensing new projects. This denial is fed and abetted by applicants who do not want to take responsibility for the impacts of their proposed developments.

The foundation failure of Linda Coble’s house is emblematic of an inadequate permitting process. It is a small leap from the faulty nails on her foundation to the absurd trestle bridges and floodplain berms proposed by Vulcan.

#### Additional notes on the video

Finally, the cruel financial ruin experienced by many in the video is emblematic of a temporary shift in our society that is rapidly undermining itself and coming to an end, and which, in any case, we will not allow to obstruct the law in this proceeding. That shift is a shift in risk and cost, in this case from government and proposed upstream development on to individuals with existing good faith investments.

You can see it in the story of the Lopez family. They lived over a mile from the river, were not in the floodplain, and had no flood insurance. Their house had never flooded, they received no warning, yet their property was a total loss. The husband later lost his job because of a health condition (Why couldn't his employer accommodate it? Was it even legal for them to fire him on that basis?), and now likely lacks health insurance to treat that condition. He's probably lucky if his company hasn't raided his pension yet, and his wages were probably flat long before he was fired. The Lopez family must now choose between rebuilding from the loss of their biggest investment, their home, and their other expenses like health care and college for their daughter. They will receive scant public financial support, because there is no safety net anymore.

We mention all of this because there is a waning element inside the Beltway that thinks it fashionable to blame the Lopez family for their recent troubles – for the flood loss, for the job loss, for the unforgivable financial choices they must now make to preserve their mere health and safety, much less their property, in the richest country on earth. Yet unlike some of the others in the video, the Lopez family did not come to the hazard. They did not build or move into in the mapped floodplain. They did everything a reasonable person would do. They thought they could rely on existing flood protection and planning mechanisms, as well as private property rights, to protect them. A waning element inside the Beltway denigrates this reliance and weakens its legal foundations. Then, they hold it up as proof that government can't plan ahead and protect private property from disasters, while absolving irresponsible developers under a doctrine of “common enemy” and preemption. This turns the lawless into the blameless.

This is part of why MCEAA finds Vulcan's lawless refusal to analyze flood impacts from the quarry and rail line so offensive, and why the agency should as well. Absent a federal forum, Vulcan would have to resolve these issues with the landowners and local government directly in order to obtain condemnation power. The federal forum, the STB licensing process, purports to remove that leverage and substitute it with the Environmental Impact Statement of the National Environmental Policy Act, to inform citizens and all levels of government. While Vulcan hails the leverage of a purported federal common carrier license, it refuses to provide adequate information to the agency to satisfy NEPA obligations. When the floods come, Vulcan will blame everyone but itself, and fight landowner inverse condemnation and trespass claims as long as its deep pockets will allow. Assuredly, Vulcan would hold up the currently inadequate EIS, which doesn't even analyze flood impacts, to claim absolution, while simultaneously claiming the events never could have been foreseen. In short, Vulcan would blame everyone, including the citizens of Quihi who built their homes out of the floodplain, and blame anyone, except, of course, itself. To anyone at the agency who watched coverage of Hurricane Katrina and its aftermath, we don't have to spell it out any further—you know exactly what we are talking about.

Many of the people of Quihi and rural Medina County have a lot of pride in their heritage and their community. But many of them have a lot in common with the Lopez family in the video, some more than maybe they would admit. The temporary shift in our society that made it okay to shift risk and cost onto working families, and wrapped together corporate fraud and government negligence under a banner of false individualism, is coming to an end. The floods of the last decade in Texas have had an economic cost. Don't doubt that they have also had a social cost. If Vulcan thinks that it can evade a comprehensive up-front analysis of flood risks, and instead force the Quihi

community to bear that unanalyzed, unmitigated risk, we have one message to send: Over our dead bodies.

Again, we hope you will view this presentation with your staff in the near future. We recommend the DVD for the best quality video viewing.

#### DVD-ROM Data

In addition to yet more documentation corroborating MCEAA's prior comments to the agency regarding flood risk, an extensive array of historical and current flood data appears on the DVD-ROM. You may also access this data, and the video segments, from the Floodsafety.com website.

Most of the data is on the Regional Programs – Texas page. You can browse through all of the sections on that page. The most useful is likely the USGS historic flood data page. This will give you a more robust picture of what is happening around the project area, which is in the Nueces River basin. Unfortunately, as you may know, the gauge data from within the project area is historic in nature and was only collected for a few years. We wish that it could be a better a resource. Overall, however, these pages, combined with knowledge of the Corps of Engineers' hydrologic modeling software (<http://www.hec.usace.army.mil>) and the availability of data (including radar rainfall data and design storms) from the National Weather Service and local agencies such as the Edwards Aquifer Authority, Nueces River Authority, and San Antonio River Authority, should drive home the point that this risk is something that is modeled all the time by our local governments. The situation with Vulcan's projects requires more than a simple eyeballing of the risk.

The "Texas Challenge" in the Interactive Segments of the Media and Map Gallery section provides more detail on why severe storms impact Flash Flood Alley, and gives another geographic distribution of historically severe storms (note that the "Medina" point rainfall record is misplaced on this presentation's map, however. It should be in Medina's neighboring county, Bandera, not in South Texas).

We have also learned from the Medina County floodplain administrator that FEMA plans to remap the floodplains in Medina County with up-to-date technology within 2 years. As you will recall, the existing FEMA floodplain maps for the project area were completed in 1980.

#### Alternatives: Feasible Grade Data From Other Ongoing Proceedings Must Be Considered

In our letter dated October 5, 2005, our attorney discussed the need for the agency to establish physical feasibility criteria for the proposed rail line. These criteria would allow the agency to complete an adequate alternatives analysis, rather than relying on unfounded conclusory statements about potential impacts and cost to eliminate otherwise viable alternative routes.

One of our consultants has recently alerted us to data already within the agency’s possession, and other data easily available to it, that further support the physical feasibility of the Medina Dam Route (“Original MDR”) and Medina Dam Alternative (“MDA”).

In each of those routes, there is a short (approximately 1 mile, a maximum of just under 100 feet in vertical gain) uphill portion south of Quihi Creek that requires grade adjustment, not unlike other sections of proposed alternatives in this proceeding.

Vulcan states that maximum permissible grade is 1.0%. Leaving aside the run-through power issue discussed in our October 5, 2005 letter, it is clear that a lower permissible grade increases the amount of cut and fill required. Vulcan also insinuates, but has never shown, that a loaded train leaving the quarry would be unable to ascend this segment, at whatever grade, despite more than two and a half miles of level acceleration.

Data from other rail lines around the country and from other proceedings currently before the agency disprove Vulcan’s baseless assertions. A further description follows the chart below.

**Chart 1: Feasible grades and cut and fill volumes on other rail lines**

	Maximum feasible grade after cut and fill	Feasible cut and fill volume
Tongue River Railroad III, Montana 17 mile segment Four Mile Creek Alternative Loaded coal trains	2.31%	10.3 million cu yds
Tongue River Railroad III, Montana 17 mile segment Western Alignment Loaded coal trains	0.95%	17.0 million cu yds
Department of Energy Yucca Mountain, Nevada Caliente Corridor Nuclear waste caskets	2.0% (some areas are as high as 3.2-4.4% pre-cut and fill)	Unknown, easily in the millions of cu yds
Vulcan Medina Quarry 11.24 mile segment Modified Medina Dam Route Loaded aggregate trains	1.0%, alleged	729,778 cu yds, allegedly infeasible
Vulcan Medina Quarry 9.01 mile segment “SGR Eastern Route” Loaded aggregate trains	1.0%, alleged	336,566 cu yds, allegedly infeasible

**Chart 2: Existing grades after cut and fill on major North American rail routes<sup>1</sup>**

<i>Route</i>	<i>Grade</i>
Canadian Pacific – Rogers Pass	2.2%
Union Pacific – Moffet Tunnel	2.1%
Cajon Pass, San Bernardino Mtns	2.2%
Donner Pass	2.2%
Proposed DOE Yucca Mtn Caliente Corridor	2.0%
Union Pacific – Hondo east to Houston	1.2 to 1.4%

The data for the Tongue River Railroad III STB construction proceeding (FD\_30186\_3) comes straight out of the Draft EIS dated December 6, 2004. The attorney for the Tongue River Railroad, making the grade feasibility arguments, is the same attorney that represents Vulcan<sup>1</sup> in this proceeding.

Ironically, in the Tongue River DEIS there are two preferred alternatives, one with a grade of 0.95% and the one with 2.31%. But not surprisingly, the cut and fill for the first, more gradual route, is much larger, 17 million cubic yards, than for the other, steeper route, 10.3 million yards. The steeper one requires more fuel cost, but the more gradual one requires more up front cost.

It seems clear to us that neither of those cost bases was a legitimate ground for eliminating these otherwise physically feasible alternatives, and the agency agreed. It did not seem to make any difference in that case which direction the trains were traveling loaded and unloaded with coal, because in the DEIS the agency examined the risks and costs in both directions. In short, there is no factual distinction between physically feasible grades in that case and physically feasible grades in this case; at least not one that passes the straight face test.

Additionally, the segment in this case requiring grade modification is so short, compared to the millions of cubic feet of earthwork required in Tongue River III, that the existence of a legitimate cost objection seems impossible. This is particularly true given that the applicant's revenue projections for the line are wholly dependent on a quarry whose output it will solely control.

The data in Chart 2 shows that steeper post-cut and fill grades exist on major rail lines throughout North America, and are currently being proposed for rail lines that will handle nuclear waste caskets of comparable weight and far greater risk than the aggregate to be handled here. Certainly one feature of the segments in Chart 2 is that they may require more operating power (engines) or other operational constraints. At the same time, because the segment requiring grade adjustment along the Original MDR and MDA routes is so short, and because two and a half miles of open track separate the loading loop from the grade, those concerns may well be overblown. In any case, as in Tongue River III, they may not necessarily make an otherwise viable alternative an infeasible one. That is your job, for you all to decide.

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<sup>1</sup> Source: U.S. Department of Energy, Office of National Transportation. <http://www.ntp.doe.gov/tec/TECAgenda-Apr4-2005.pdf> (Presentation of Gary Lanthrum, Director, slide 10)

The point is, however, that the agency has not yet made that decision, in large part because a consistent set of physical feasibility criteria to evaluate alternative routes against remains undisclosed. That the issue still exists, and the agency has not dealt with it, is because Vulcan has misrepresented the physically feasible post-cut and fill grade, which has the side effect of increasing the necessary cut and fill, and thus the overall cost.

The potential grade on the Original MDR and MDA routes remains unknown, but it is clear that there are post-cut and fill opportunities between 1.0 and 2.0% or higher, over a very short distance, that may well make the Original MDR and MDA feasible under a consistent set of physical feasibility criteria.

### General Observations

As noted above, one of our consultants has long been aware of both the Tongue River III proceeding currently before the STB, as well as the Department of Energy's Yucca Mountain Caliente Corridor rail construction project, which is not (yet). As you probably know, back in early 2004, there was a lot of discussion over whether the STB should take jurisdiction over the Caliente Corridor. The House Committee on Transportation and Infrastructure's Railroads Subcommittee held a hearing about it on March 5, 2004, at which now-outgoing STB Chairman Nober testified.

To call it what it was, at the hearing and behind the scenes, there was a delicate dance between STB and DOE and the rail community. We are well aware of the fact that the Yucca Mountain rail line potentially raises the jurisdictional "what is a true common carrier?" issue, federal preemption vs. local control issues, and significant environmental impact issues (including flooding<sup>2</sup>).

The result was DOE issuing a Record of Decision selecting the Caliente Corridor in April 2004, where DOE made the decision to not submit the project to STB licensing. Nevada eventually sued and the question of whether DOE's statutory authority permits it to avoid the STB process will soon be decided by the Court of Appeals for the D.C. Circuit.

Regardless of how that case turns out, we recognize that the ultimate fate of Yucca Mountain rail construction is connected in so many ways to the core, practical issues that this proceeding raises.

There is something fundamentally wrong with the rail licensing system in this country when a 400 mile rail line to serve the Yucca Mountain nuclear waste project, potentially the most dangerous national security and environmental impact situation in the country's history, does not come before (indeed, arguably deliberately avoids) the agency that issues rail licenses, the STB; Yet, at the same time, the STB is conferring licenses on non-rail entities for 7-10 mile spurs to give them condemnation power and to circumvent local political responsibility for land use planning and environmental impact mitigation.

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<sup>2</sup> Steve Curran, "Recent Floods Raise Questions About Yucca Rail," Las Vegas Sun, Feb. 11, 2005. <http://www.lasvegassun.com/sunbin/stories/special/2005/feb/11/518277272.html>

As we note above, absent a federal forum, Vulcan would have to resolve these issues with the landowners and local government directly in order to obtain easements through voluntary sale. The federal forum, the STB licensing process, purports to remove that leverage and substitute it with the Environmental Impact Statement of the National Environmental Policy Act, to inform citizens and all levels of government.

Yet Vulcan refuses to participate forthrightly in the existing NEPA process and complete the disclosures required by federal law. The leverage of local communities—control over their property, and impacts to that property—is eviscerated by the federal license, but then Vulcan refuses to comply with the disclosure process under NEPA that is supposed to replace that leverage and inform decisionmakers at all levels of government. The federal agency becomes the last line of defense. The result is the (arguably unnecessary) federalization of what are essentially local land use and drainage conflicts.

Because rail lines require land, the appropriate conceptual relationship is that of a triangle, between railroad-shipper-community, not a binary relationship between shipper and railroad where one is constantly trying to out leverage the other in a vacuum.

The most urgent issue for industrial shippers today is obtaining rail access and will only become more so as oil prices increase. Rail access at multiple facilities nationwide gives the shipper leverage over the railroad to control costs where competitive service is not available. We have a national rail backbone in place. The urgent national need is by and large not for surveying new routes through the Rockies. It is for spur lines between 2 and 15 miles in length that will likely benefit only the facilities they extend to, just like Vulcan's quarry.

Yet when the demand for rail construction increases in the coming years, is Vulcan's process seriously going to be the template for future licensing? Because if it is, there's no way the STB will be able to license a sufficient number of rail lines to meet the national need. This proceeding, for an 8 to 15 mile rail line, has been ongoing for over 3 years, and the applicant has been working on the overall proposal, including the connected quarry, for 6 years, since 1999.

It is a national embarrassment that it takes so long to license new rail lines. We do applaud the agency for requiring the necessary information from Vulcan, regardless of the delay, but that downplays the larger point, which is the applicant's refusal to address local concerns at the start. Let's be perfectly clear about why the licensing process takes so long: Recalcitrant applicants like Vulcan refuse to deal up front with local landowners and local representatives under state law. They then enter the federal process and drag their feet on disclosure to put pressure on the agency, creating a classically cynical "Problem-Reaction-Solution" situation. The alleged "problem" is that rail licensing under NEPA contains unwanted input from local communities; the "reaction" is to avoid disclosure of environmental impacts and thus avoid responsibility for mitigation, and the "solution" is to spawn more litigation and more delay, and to lobby for further exemptions (and arguably, unconstitutional preemption power) under federal law that weaken local community input and oversight even more.

Throughout the NEPA process, MCEAA has only raised the essentially same fundamental concerns as its County-level representatives, though in more detail. It has only raised the same

concerns that its members would have raised—and indeed, that any landowner would raise—when deciding whether to voluntarily sell easements across their land in the face of a combined quarry-rail project in their community and watershed. The federal licensing process has transferred these concerns to a federal forum, to be resolved, to the extent the “regulation” of railroads is concerned, under federal law.

Yet the only reason Vulcan and other paper-railroad applicants like it are in a federal forum is to obtain a federal common carrier license that purportedly gives them instant condemnation power under state law, removing local landowner leverage and local political accountability, and necessitating a replacement NEPA process.

Why?

Why do we need to keep pretending these private paper railroad lines are common carriers? Why do we need to keep pretending these private paper railroad lines are interstate commerce, when we build state and county roads of similar length every day? Why does the federal STB need to license these private paper railroad spur lines? Why do the shippers who want rail access stupidly think that they will get a better deal after 10 years of litigation than 10 months of negotiation? That approach might make sense in an extractive, neo-colonial economy, where wealth gets taken out and shipped elsewhere, regardless of what the locals want; perhaps it even made sense when we were first building the railroads and settling the West. We do not live in that world anymore, we live in a different world today.

There is no good reason why we shouldn't call private paper railroads like Vulcan's what they truly are. That is, but for the refusal of paper railroad applicants to get off their horse and deal with local landowners up front instead foolishly trying to out-leverage them by creating “problem-reaction-solution” situations in the NEPA process, then trying to preempt state condemnation law with their federal common carrier license.

As Chairman Nober laid out the STB's position in his March 5, 2004 testimony:

Construction and operation of private track — which is not covered by the Interstate Commerce Act and not subject to any aspect of the Board's jurisdiction — does not require any regulatory authorization by the Board at all. While the term “private track” is not defined in the statute, Congress described private track as follows in its Conference Report on the ICC Termination Act: “[N]on-railroad companies who construct rail lines to serve their own facilities [exclusively]. . . are not required to obtain agency approval to engage in such construction.”

The courts and the Board have long recognized that wholly private operations conducted over private track are not subject to the agency's jurisdiction. This is so even when such operations are conducted by an operator that conducts common carrier rail operations elsewhere, if it operates on the private track exclusively to serve the owner of the track pursuant to a contractual arrangement with that owner. And, of course, the private track can connect to a common carrier line and the

national rail network. However, state and local laws and regulations are not Federally preempted with respect to construction of private track.

Currently the railroads have a lot of leverage over the shippers. They can force the shippers who want rail access to front all the costs of constructing the new line and acquiring land, then buy the federal common carrier license off the shipper and its paper railroad for pennies on the dollar once operation begins. The shipper eats the rest of the cost as part of the capital cost for the overall connected proposal. However, that leverage is a pricing power issue, not an access issue. The access issue plays into it, but only to the extent that the cost of obtaining access matters. What we are arguing is that the notion that proceeding under federal law is more cost effective, rather than dealing straightaway with local landowners and local governments under state law, may be false. And Vulcan's actions in this proceeding prove it and serve as case study #1.

Unless it holds Vulcan's feet to the fire on NEPA, the STB process will not be an adequate replacement for the leverage that private property owners have over a private, non-common carrier under state law. Otherwise, the clear answer is to force private paper railroad projects like Vulcan's to remain subject to state law, and not to issue a federal common carrier license. Only then will the applicant be forced to do an adequate preliminary investigation ahead of time, and meet the community's concerns up front, to convince them to release easements at a fair price, without litigation. Only then will we have political responsibility at the local level for enforcing laws like the County Floodplain Ordinance and County land use plans, as well as State Historic Preservation and Agricultural Land Use laws. And guess what: when it happens, it will still be faster and cheaper than the federal process and all its litigation.

There are three ways to get there from here. First, the STB could clearly disclaim jurisdiction over private paper railroads where a true railroad or rail operator is not even involved in the consortium or partnership applying for the license, and where the line would solely serve a facility owned by the applicant. We are unsure how many previous STB construction cases to a solely-served facility lack a true rail partner in the application, as Vulcan's does, but the Yucca Mountain case certainly presents a unique opportunity, one we do not expect the state of Nevada to pass up if it arises.

Second, Congress could more clearly remove jurisdiction and/or alter the balance between shippers, carriers, and communities.

But the most likely scenario is the one that relies on common sense and the shippers getting wise to the practical concerns of the communities they seek rail access in. The best solution is most often the one that doesn't have to resort to creating winners and losers by testing the bounds of the law. The only answer to *Cui bono?* under the current system is attorneys, consultants, and engineers.

For what purpose can anyone in their right mind defend what Vulcan is doing, and the cost and time involved? If the choice is A) running a federal licensing process that takes 10 years to build a rail line because of the litigation, or B) forcing companies like Vulcan to do what they should have done six years ago (investigating ahead of time) by subjecting them to the power of private property owners who cannot lose their land to a private rail line under state law, it seems the

agency should push cases like Vulcan away, get out of the local land use business, get on to the big construction cases like Yucca Mountain that matter, and reap the national benefits of having more shippers obtaining rail access sooner rather than later.

\* \* \*

So that it is perfectly clear, our observations above should not be interpreted as wavering one inch from our previous statements. We fully support the agency in its attempts to obtain further information from the applicant. We are in no rush for Vulcan to realize what has been plain to us from day one. We will continue to participate fully and pass on information to the agency as we obtain it and respond to it. We are only as ready to negotiate and litigate with Vulcan as we have been from the beginning, as private landowners impacted by this project, before Vulcan ever entered a federal forum.

It is just that we find it embarrassing when corporations think that they can evade community and landowner leverage by creating paper railroads to invoke the jurisdiction of federal forums, and then, once in that forum, try to have it both ways and avoid the leverage of the federal environmental disclosure process under NEPA. Anyone can see that type of having-your-cake-and-eating-it-too is not sustainable, and is not going to last for long. Only the most binary railroad-shipper worldviews can project that illusion for long. It is clear to us that a resurgence of the railroad-shipper-community triangle, or the railroad-shipper-community-agency tetrahedron, if you must, is required if the NEPA process is to be taken seriously as a replacement for landowner leverage under state law.

\* \* \*

MCEAA and the Quihi community grow stronger each day that Vulcan continues to appeal to “facts” it has never shared with the agency, local government, or the public. The enclosed letter to the editor from landowners and MCEAA members Tom and Mary Walpole, in this week’s *Hondo Anvil-Herald*, sums up the unity of our community on these issues.

Thank you for your work to date on the NEPA process. Please place a copy of this letter and the DVDs in the administrative record for this proceeding.

Sincerely,

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

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

# Surface Transportation Board

## Incoming Correspondence Record



#EI-1752

### Correspondence Information

Docket #:	<b>FD 34284 0</b>	Date Received:	11/10/2005
Name of Sender:	Dr. Robert T. Fitzgerald	Date of Letter:	11/10/2005
Group:	MCEAA		

### Submitter's Comments

Dear Rini,

We wish to make something explicit about the Original Medina Dam Route ("Original MDR") and Medina Dam Alternative ("MDA") that may have been implicit in our previous letters and comments. That is, there is no need or requirement for these routes to pass through the Castroville West subdivision. If necessary, extremely minor deviations to the east of the subdivision, traveling in the general northward direction of the historic route on the level topography that characterizes that area, can easily be devised to avoid the subdivision boundary. We refer you to the topographic maps submitted by us earlier in the proceeding and by Vulcan in EI-1664.

We think that point should have been obvious from the start, if the agency, which studies rail design nationwide, is doing anything more than stenography with Vulcan's submissions. Nevertheless, we are stating it explicitly now. And indeed, this obvious point did not stop Vulcan from analogizing straw men routes to the Original MDR and MDA. It is no surprise that Vulcan would ignore the obvious need to detour around existing homes, because it does not desire a feasible eastern alternative.

It is true that the original MDR went through the eastern edge of the Castroville West Subdivision. However, the land east of the subdivision boundary is level. There should be no problem devising a feasible deviation that avoids the subdivision, is a suitable distance away from the homes to avoid safety impacts, and would not cross a dirt road (driveway) leading south from CR4516 approximately 1/4 to 1/2 mile away. As we have stated in the past, it would be best to design such a route once the agency has defined a consistent, uniformly applied set of physically feasible criteria for alternative routes. There is NO reason to dismiss the eastern alternatives such as the Medina Dam Alternative simply because Vulcan's straw men analogs to this route refuse to recognize a feasible route slightly eastward from the Castroville West Subdivision. It should be noted that the deviation required by the MDA would not come any closer to homes than any of the original routes proposed by SGR and would cross fewer county roads, and cross in safer locations on level ground.

Sincerely,

Dr. Robert T. Fitzgerald

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November 22, 2005

**VIA HAND DELIVERY**

Ms. Victoria Rutson  
Chief  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

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

Dear Ms. Rutson:

In an October 5, 2005 letter, the Medina County Environmental Action Association (“MCEAA”), through its attorneys, makes certain claims and arguments that require response in order to ensure an accurate record in this proceeding. Southwest Gulf Railroad (“SGR”) will hereby reply to these points. Further, should SEA desire a further response from SGR on any other points raised in the MCEAA letter (many of which have already been addressed in prior submissions), SGR will be pleased to provide such further response.<sup>1</sup>

First, we note that MCEAA criticizes SGR for not supplying data on various proposed alternatives. That charge is grossly unsupported; SGR has supplied volumes of data required by SEA and its contractors for environmental analysis. SEA is obviously the best judge of the sufficiency of data and clearly it determined that it had sufficient data when it issued its Draft EIS.

MCEAA interprets the fact that SEA has asked for more data as a sign that initial submissions by SGR were inadequate, but again this is wrong. It is not at all unusual for an agency to ask for

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<sup>1</sup> SGR will of course cooperate fully with SEA in connection with any further environmental analysis it may choose to undertake on any issue in this proceeding, just as SGR has fully cooperated with SEA to date.

supplemental data in response to comments the agency has received. This is the way the process is supposed to work. On the other hand, while critical of SGR's data on the eastern routes it has developed, MCEAA offers few details about its own alignment proposals and impacts that might flow from those alignments.

Second, on the fifth page of the MCEAA letter, MCEAA takes issue with SGR's statement that the original cut and fill data provided by SGR (which was subsequently amended by SGR in its September 7 letter) was based on a slope calculation of 0.5:1. MCEAA claims that the original slope assumption used by SGR was actually 1:1, citing the report of TRAX Consultants, a firm that Vulcan had retained to do initial feasibility studies on rail alignments.

However, MCEAA's assertion is factually incorrect. While the TRAX Report cited the 1:1 slope ratio, this was an obvious typographical error in the TRAX Report since that Report makes clear that it assumed 10 foot wide benches and 20 foot high intervals – which is a obviously ratio of 0.5:1. SGR's September 7 letter thus correctly noted that the original SGR cut/fill calculations were based on the TRAX Report's 0.5:1 ratio, and not a 1:1 ratio. In other words, the original cut/fill calculations performed by SGR were based on the "bench cut" template, with a 10 ft wide benches and a 20 ft height intervals, a 0.5:1 ratio.

As explained in its September 7 letter, SGR decided to reevaluate the slope assumptions made in the original TRAX report. Based on the assessments of knowledgeable engineers, site visits, inspection of road cuts in the area, and after reviewing the same data TRAX apparently relied on from the University of Texas-Austin maps, SGR determined that the TRAX slope ratio of 0.5:1 throughout the length of the line warranted further scrutiny and that it would be more appropriate to rely on a more conservative side slope assumption of 1.5:1 in calculating cut/fill data. The sole reason for these revised calculations was to offer SEA cut/fill data based on a more appropriate and conservative slope ratio than was used initially. In any event, the fact remains that the eastern alignments under review will (under any set of slope assumptions SEA may find appropriate) require relatively more cut and fill than the alignments previously considered.

Third, MCEAA takes issue with the SGR design criteria that the SGR line have a ruling grade not in excess of 1%. SGR believes that this grade criterion is a reasonable and attainable assumption to use for purposes of preliminary design engineering. This is the grade assumption that was used in the development of the alternatives previously considered by SEA, and for consistency SGR believes that the same grade criteria should be used in comparing those alternatives to any eastern alternatives.

Fourth, MCEAA claims that inadequate data has been presented on cumulative flooding and groundwater impacts. MCEAA overlooks the extensive mitigation that SGR has committed to provide on this point – see pages 5-2 though 5-3 of the Draft EIS. SGR will undertake extensive floodplain modeling prior to construction and will incorporate that modeling into the design of the rail line and bridges so as to mitigate impacts on ground water and address any threat of flooding. SGR will also be required by the proposed mitigation to coordinate as appropriate with the US. Army Corps of Engineers and the Medina County Flood Administrator. Since this modeling and consultation is alignment-

specific, this is work that can be undertaken only once a final alignment is chosen. MCEAA's suggestion that hydrological mitigation has been left entirely in SGR's hands "to do whatever it wants" is grossly wrong – SGR will be obligated to adhere to the numerous ground water and related mitigation measures proposed by SEA, which will presumably be adopted as binding conditions/obligations by the STB upon issuance of a final decision in this proceeding. Failure to adhere to these conditions would jeopardize SGR's right and operate to construct its line.

Moreover, SGR will require permits from the Corps of Engineers to the extent that its rail construction will impact waters of the United States. It will need a permit from the Medina County Flood Administrator for structures built in the 100 year floodplain. SGR is legally obligated to seek any required permits, and likely also will be required to do so by mitigation measures it expects will be adopted in this proceeding. The Corps and Flood Administrator thus will have an opportunity to apply their expertise to assess any potential flooding impacts from the line to be constructed and further ensure that the concerns raised by MCEAA are addressed. SGR would also be obligated by mitigation conditions proposed by SEA to consult with FEMA and adhere to its reasonable requirements regarding construction of the rail line in the 100 year floodplain.

Further, SGR remains subject to requirements that it prepare and file a Stormwater Pollution Prevention Plan and a Water Pollution Abatement Plan (WPAP), both of which are also required to be prepared by SGR under the mitigation proposed by SEA in its Draft EIS. The mitigation would also require SGR to use Best Engineering Practices in the design of rail stream crossings.

Contrary to MCEAA's contentions that the WPAP for the Vulcan quarry will not address the implications of any downstream runoff from the quarry on the areas traversed by the rail line, the fact is that Vulcan is in the process of preparing a WPAP based on its on-going study of drainage in the area of the quarry. Vulcan's consultants working on the WPAP for the quarry are in the process of determining water flows and developing best management practices (BMPs) based on 1 foot contours (as opposed to the 10 foot contours more frequently used.) Thus, the WPAP process will allow Vulcan to design BMPs to limit and control water flows outside the quarry area. In that regard, Vulcan does not intend to route flood waters from the quarry area into streams, as MCEAA wrongly assumes. Indeed, most streams in the quarry area will not be affected by the quarry and thus current flow patterns will not be disrupted. Moreover, as the quarry pit grows, rainwater that would otherwise find its way into these streams will instead end up in the pit, reducing flooding potential.

Also contrary to MCEAA's assumption, Vulcan also plans to have at least two detention/retention ponds in the quarry area to handle rainfall from the plant area. Vulcan is in the process of conducting studies to help determine the size and location of these ponds. Vulcan will also have settling ponds on the quarry site, which will be used to collect and recycle rain water. Stormwater will be directed to these settling ponds as part of Vulcan's BMPs.

Once Vulcan's WPAP application is submitted to TCEQ, that agency will evaluate the application and the underlying data/assumptions used to prepare it. TCEQ will only approve the

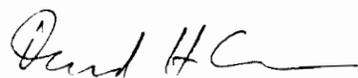
Ms. Victoria Rutson  
November 22, 2005  
Page 4

application if it satisfies regulatory requirements, including Edwards Aquifer rules for water quality protection.

In addition, as it has previously stated, Vulcan will consult with the Medina County Floodplain Administrator relative to the quarry in the event that its plans change and construction in the 100 year floodplain were to be undertaken. Vulcan also plans to consult with the Administrator once the WPAP for the quarry is completed.

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

Respectfully,



David H. Coburn  
Attorney for Southwest Gulf Railroad Company

cc: Ms. Rini Ghosh  
Ms. Jaya Zyman-Ponebshek

#E1-1803  
RJ

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Reviewed  
12/19/05

December 2, 2005

Ms. Rini Ghosh  
Section of Environmental Analysis  
Surface Transportation Board  
ATTN: STB Finance Docket No. 34284  
1925 K Street, NW  
Washington, DC 20423-0001

**VIA EMAIL**  
**& Regular Mail**

**RE:** STB Finance Docket No. 34284 -- Adequate analysis under NEPA for:

- (1) Vulcan Materials Company's planned Medina County stone quarry; and
- (2) Vulcan Materials Company subsidiary Southwest Gulf Railroad Company's proposed rail line to serve Medina County stone quarry.

Dear Ms. Ghosh:

MCEAA has reviewed the recent submission, EI-1769, by the applicant, Vulcan/SGR ("Vulcan"), dated November 22, 2005. That letter from Vulcan essentially purports to respond to a previous October 5, 2005 submission by MCEAA, EI-1698, and perhaps other recent submissions.

There are really only three points to be made in response to EI-1769, most of which we have already made in previous letters:

- 1. The semantics of whether the 1:1 cut ratio in the TRAX report should have been 0.5:1 ignores the fact that MCEAA is right about the bottom line of Vulcan's September 7, 2005 changes to the ratio: Wider benches result in higher cut and fill volume. There has been no basis shown for why the wider benches are suddenly required—only an allegation that they are

# THE GARDNER LAW FIRM

A PROFESSIONAL CORPORATION

Ms. Rini Ghosh  
December 2, 2005  
Page -2-

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more “conservative.” How can they be more “conservative” if narrower benches were feasible before?

2. In contrast to its haste to change the cut ratio used on its original alignments, Vulcan insists on preserving its original ruling grade of 1.0%. Unfortunately, this 1.0% limit presents the opposite situation from the cut ratio. Where the original cut ratio was a “floor” that was deemed sufficient, the ruling grade is an “upper limit” that has never been justified. Indeed, MCEAA has submitted evidence from past and present agency construction proceedings involving heavy haul freight, including loaded coal trains, to show that 1.0% is by no means an “upper limit.”

Vulcan is trying to whipsaw the agency and any reviewing body by trying to turn a “floor” (the cut ratio) into an “upper limit” while utilizing its alleged “upper limit” (the ruling grade) that is really a “floor.” The agency, with its expertise, should know the difference and make findings accordingly when it defines a common set of physical feasibility criteria for the alternative routes.

3. Finally, Vulcan again challenges the need to evaluate cumulative flood and groundwater impacts, among others, from the quarry and rail line in accordance with governing law. This is despite the fact that the agency has designated Vulcan's quarry, in the record, as a related action within the meaning of the cumulative impact regulation, 40 C.F.R. 1508.7. The agency has also recognized that quarry impacts will be at least cumulative with those of the rail line.

Vulcan's argument is simple and baseless: “Since this modeling and consultation is alignment-specific, this is work that can be undertaken only once a final alignment is chosen.” This has never been the law, and with good reason. Anyone can see that this irrational position renders the alternatives analysis under NEPA a sham. Indeed, it should be clear to the agency that since NEPA is a procedural, rather than substantive statute, that bare promises to mitigate significant impacts along one pre-chosen route are no replacement for their analysis and disclosure in the EIS.

Vulcan's reliance on future, post-licensing actions creates many serious legal and factual problems in the administrative record for the agency. In our mind, these problems are

**THE GARDNER LAW FIRM**

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Ms. Rini Ghosh  
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unnecessary and unjustifiable in light of governing law on cumulative impacts and the alternatives analysis, and the agency should abandon any support for Vulcan's meritless position—support for which has never been disclosed to date, probably because it does not exist—on these issues.

Very truly yours,

**THE GARDNER LAW FIRM**  
A Professional Corporation

  
David F. Barton

DFB:nCF

cc: U.S. Congressman Henry Bonilla  
Senator John Cornyn  
Senator Kay Bailey Hutchison  
Texas Agriculture Commissioner Susan Combs  
Texas Senator Frank Madla  
Texas Representative Tracy King  
County Judge James Barden  
County Commissioner, Pct. 1, Chris Mitchell  
County Floodplain Administrator Pat Brawner  
Texas Historical Commission Executive Director Larry Oaks

#E1-1959  
RJ

United States Department of Agriculture



Natural Resources Conservation Service  
101 South Main Street  
Temple, TX 76501-7602

March 28, 2006

Surface Transportation Board  
Section of Environmental Analysis  
1925K Street, N. W.  
Washington DC 20423-0001

*Received  
4/5/06*

**Attention: Rini Ghosh, SEA, Project Manager**

Subject: LNU-Farmland Protection-  
Supplemental Draft EIS  
Southwest Gulf Railroad Company  
STB Docket No. FD 34284  
Medina County, Texas

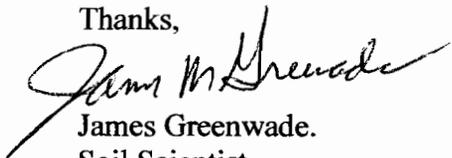
We have reviewed the information provided concerning the Supplemental Draft Environmental Impact Statement (FD 34284) for the proposed construction of the Southwest Gulf Rail line in Medina County, Texas. Our agency is primarily concerned with actions that may impact Important Farmland. We have reviewed this Draft EIS as required by the Farmland Protection Policy Act (FPPA).

We have previously responded to the four alternatives outlined in the Draft EIS dated Nov 5, 2004. We have evaluated the three additional proposed routes outlined in Figure 1-FD 34284 attached to your notice dated March 13, 2006. We have estimated the location of routes outlined in Figure 1 and drafted these routes on a soil map. Acreage for each route was estimated by measuring the map distance and estimated a 100 foot ROW. We developed a composite rating for each proposed route (Eastern Bypass Route, MCEAA Medina Dam Alternative, and SRG's Modified Medina Dam Route) and completed the AD-1006 Farmland Conversion Impact Rating for all three alternatives. The total points in Part VII of the AD-1006 are 130 for the Eastern Bypass Route, 125 for the MCEAA Medina Dam Route, and 134 for SRG's Modifier Dam Route. The FPPA law states in 7 CFR 658.4 c (2) that "Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated."

Alternative Route	Estimated Ac.	Prime Farmland Ac.	AD-1006 Score
Eastern Bypass	106	46	130
MCEAA Medina Dam	115	35	125
SGR Modified M. Dam	142	69	134

Thanks for the opportunity to reply to this supplemental Draft EIS and the resource materials you submitted to evaluate this project. We also thank you for recognizing the importance of soils in the planning process. If you have any questions please call James Greenwade in the Soils Section at (254)-742-9960, Fax (254)-742-9859.

Thanks,

A handwritten signature in black ink, appearing to read "James M. Greenwade". The signature is written in a cursive style with a large initial "J" and "M".

James Greenwade.  
Soil Scientist  
USDA-NRCS, Temple, Texas

## FARMLAND CONVERSION IMPACT RATING

<b>PART I</b> (To be completed by Federal Agency)		Date Of Land Evaluation Request		3-28-2006	
Name of Project		Southwest Gulf Railroad		Federal Agency Involved	
				Department of Energy	
Proposed Land Use		Railroad Transportation		County and State Medina County, Texas	
<b>PART II</b> (To be completed by NRCS)			Date Request Received By NRCS		Person Completing Form: James Greenwade
			3-28-2006		
Does the site contain Prime, Unique, Statewide or Local Important Farmland? (If no, the FPPA does not apply - do not complete additional parts of this form)			YES	NO	Acres Irrigated
			x <input type="checkbox"/>	<input type="checkbox"/>	44,330
					Average Farm Size
					477
Major Crop(s)		Farmable Land In Govt. Jurisdiction		Amount of Farmland As Defined in FPPA	
Grain Sorghum		Acres: 625,600 % 73		Acres: 574,330 % 67	
Name of Land Evaluation System Used		Name of State or Local Site Assessment System		Date Land Evaluation Returned by NRCS	
LESA		NONE		3-28-2006	
<b>PART III</b> (To be completed by Federal Agency)			Alternative Site Rating		
			Site A	Site B	Site C
			Site D		
A. Total Acres To Be Converted Directly			106	115	142
B. Total Acres To Be Converted Indirectly			0	0	0
C. Total Acres In Site			106	115	142
<b>PART IV</b> (To be completed by NRCS) Land Evaluation Information					
A. Total Acres Prime And Unique Farmland			48	35	69
B. Total Acres Statewide Important or Local Important Farmland			0	0	0
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted			0.0001	0.0001	0.0001
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value			34	40	32
<b>PART V</b> (To be completed by NRCS) Land Evaluation Criterion Relative Value of Farmland To Be Converted (Scale of 0 to 100 Points)			62	57	66
<b>PART VI</b> (To be completed by Federal Agency) Site Assessment Criteria (Criteria are explained in 7 CFR 658.5 b. For Corridor project use form NRCS-CPA-106)			<b>Maximum Points</b>	Site A	Site B
			Site C	Site D	
1. Area In Non-urban Use			(15)	14	14
2. Perimeter In Non-urban Use			(10)	9	9
3. Percent Of Site Being Farmed			(20)	10	10
4. Protection Provided By State and Local Government			(20)	0	0
5. Distance From Urban Built-up Area			(15)	0	0
6. Distance To Urban Support Services			(15)	0	0
7. Size Of Present Farm Unit Compared To Average			(10)	0	0
8. Creation Of Non-farmable Farmland			(10)	10	10
9. Availability Of Farm Support Services			(5)	5	5
10. On-Farm Investments			(20)	10	10
11. Effects Of Conversion On Farm Support Services			(10)	5	5
12. Compatibility With Existing Agricultural Use			(10)	5	5
TOTAL SITE ASSESSMENT POINTS			160	68	68
<b>PART VII</b> (To be completed by Federal Agency)					
Relative Value Of Farmland (From Part V)			100	62	57
Total Site Assessment (From Part VI above or local site assessment)			160	68	68
<b>TOTAL POINTS (Total of above 2 lines)</b>			260	130	125
				134	
Site Selected:		Date Of Selection		Was A Local Site Assessment Used?	
				YES <input type="checkbox"/> NO <input type="checkbox"/>	
Reason For Selection:					
A= Eastern Bypass Route					
B= MCEAA Medina Dam Route					
C= SGR Modified Medina Dam Route					

#EO-289  
RS

***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.**<sup>1</sup>

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).

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<sup>1</sup> 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 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> 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.<sup>2</sup> 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 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> 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

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<sup>2</sup> 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)<sup>3</sup> 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.<sup>4</sup> 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,

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<sup>3</sup> 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).

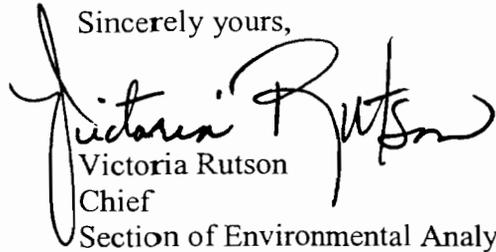
<sup>4</sup> These are the same conditions that SEA recommended for the rail alignments studied in the DEIS. SEA may propose additional mitigation measures in the SDEIS and/or Final EIS (which SEA will prepare in response to comments received on the DEIS and SDEIS).

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,



Victoria Rutson  
Chief  
Section of Environmental Analysis

Enclosures





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<sup>2</sup> 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.

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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.<sup>4</sup> 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,

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<sup>3</sup> 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).

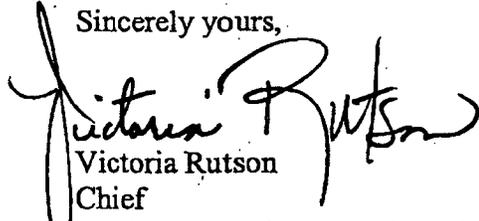
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we conclude that construction and operation of any of the Eastern Alternatives would not be likely to adversely affect a listed species or designated critical habitat. Moreover, our proposed mitigation measures for preventing groundwater contamination, 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

Jaya  
Zyman-Ponebshek/Austin/UR  
SCorp

05/12/2006 09:06 AM

To dbrowner\_mcad@sbcglobal.net

cc Rini.Ghosh@stb.dot.gov

bcc

Subject Request for Information on Number of Properties Crossed by  
SGR's Proposed Rail Line Alternatives

Dear Mr. Garcia,

Thank you so much for your assistance. As we discussed on the phone, I am working on an environmental review of Southwest Gulf Railroad Company's proposal to construct and operate a rail line in Medina County, Texas, as the Surface Transportation Board's third-party contractor.

In a Draft Environmental Impact Statement document that the Surface Transportation Board issued in November 2004, we studied four potential rail alignments, and included information from the railroad indicating approximately how many properties not owned by the railroad or its affiliates each of the four rail alignments would cross. We are currently studying three additional rail alignments and I would greatly appreciate receiving the following information from you, if available:

1. How many properties not owned by Vulcan or its affiliates would each of the seven rail alignments shown on the attached map cross? How many of these properties would be crossed along fence lines and how many of these properties would be severed? (We only need the number of properties. For example, in the Draft Environmental Impact Statement we included the information in the following format: "Alternative 1 would cross more than 20 properties not owned by Vulcan or its affiliates. About half of them would be severed to some extent by the route" etc. So, it is not necessary for you to send us any maps or tables.)

2. What is the location of irrigation systems in the area? It may be easiest for you to either mark the locations on the attached map and fax it back to me or e-mail me back the appropriate data layer.

We will include this e-mail and your response to us in an Appendix to the Supplemental Draft Environmental Impact Statement that we are currently preparing so that it can be made part of the public record for this proceeding.

If you have any problems with the attached files, please let me know. Thanks again for your assistance.

Sincerely,

Jaya

Jaya Zyman-Ponebshek  
Project Manager/Senior Engineer  
URS Corporation  
9400 Amberglen Blvd  
Austin, TX 78729  
(512) 419-5316 (office direct)  
(512) 632-1929 (mobile)  
(512) 454-8807 (Fax)



"Henry Hagemeyer"  
<jhmcad@hotmail.com>  
05/16/2006 11:42 AM

To Jaya\_Zyman-Ponebshek@URSCorp.com  
cc  
Subject Info Medina County Texas

Hi,

I took your shapefiles and put them in ArcMAP along with fences and aireals and have come up with approximate numbers of land owners the different rails cross. It is an approximate number because in that area of the county we do not have many parcels in our parcel layer so I had to make my best decision on areas of land in the aireals and the fence layer as to what was making up a single owner.

1. The proposed route had around 22 crossings with about 1/2 of those bisecting parcels
2. Alternate 1 had around 31 properties with about 3/4 bisecting parcels
3. Alternate 2 had around 24 properties crossed with most being bisected
4. Alternate 3 had around 24 properties crossed with most being bisected
- 5 Modified Medina Dam Route had about 26 properties crossed and almost all bisected.
6. MCEAA Medina Dam Alternative had about 22 properties almost all bisected
7. Eastern Bypass Route had 32 properties crossed with almost all bisected

I hope this will help you,  
Henry

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Express yourself instantly with MSN Messenger! Download today - it's FREE!  
<http://messenger.msn.click-url.com/go/onm00200471ave/direct/01/>

David H. Coburn  
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October 12, 2006

Ms. Victoria Rutson  
Chief  
Section of Environmental Analysis  
Surface Transportation Board  
Washington, DC 20590

**Re: STB Finance Docket 34284, Southwest Gulf Railroad Company Construction and Operation Exemption – Medina County, TX**

Dear Ms. Rutson:

This concerns your July 18, 2006 letter to Dawn Whitehead of the U.S. Fish and Wildlife Service (USFWS), which was posted on the STB's website several weeks ago. As relevant, we note that your letter advises USFWS that several mitigation measures will be recommended by SEA to address hydrological issues raised in this proceeding. While most of the described measures were set forth in the Draft EIS previously issued in this proceeding, one of them that was not addressed in the Draft EIS raises an issue that we wish to bring to your attention and that of USFWS, which we have copied on this letter. (We note that on July 24, 2006 USFWS indicated, by a notation placed on the copy of your letter which appears in the docket, that it would take no action in response to your letter.)

Specifically, your letter reports that SEA will recommend that SGR be required, in any STB decision allowing it to build its planned rail line along any alternative route, to "use Vulcan's existing water rights when using water from the Edwards Aquifer during construction, maintenance and operation of the rail line." The described purpose of this proposed mitigation measure is to ensure that the rail line does not adversely affect the total demand on the Edwards Aquifer, the quantity pumping limits of which are fixed by law.

SGR is not opposed to a mitigation measure that would address use of Edwards Aquifer water by its rail line, but notes that Vulcan may at some stage choose to buy water rights from entities or persons who hold such rights additional to its "existing" water rights. Such a transaction would not be unusual. Further, SGR may need at some stage to use the water obtained through such additional water rights purchased by Vulcan, e.g., in the event that Vulcan's existing water rights are required for other uses. Accordingly, SGR respectfully suggests that any mitigation measure imposed with respect to the use of

Edwards Aquifer water by SGR provide the flexibility that SGR may need to utilize Edwards Aquifer water obtained through water rights other than those currently held by Vulcan. Of course, the use of water rights acquired by Vulcan from some other entity would not result in any net increase in the draw on water from the Aquifer and thus would not in any way undermine the goal that SEA is apparently seeking to achieve.

We also note that SGR has previously advised SEA that it may seek to obtain water from sources other than the Edwards Aquifer. We trust that any mitigation measure that may be imposed will not impair SGR's flexibility to use water obtained from sources other than the Edwards Aquifer.

We appreciate your attention to this matter.

Sincerely,



David H. Coburn  
Attorney for Southwest Gulf Railroad

cc: Ms. Rini Ghosh, SEA  
Ms. Jaya Zyman Ponebshek, URS  
Ms. Dawn Whitehead, USFWS



Dawn\_Whitehead@fws.gov  
10/17/2006 10:25 AM

To Rini.Ghosh@stb.dot.gov  
cc  
bcc

Subject Re: Modification to recommended mitigation, FD 34284  
Consultation #2-15-03-I-0276

The response below adequately captures our phone conversation. Thanks for the coordination. If you need anything else, please give me a call at (512) 490-0057 x222.

Regards,  
Dawn Whitehead

Rini.Ghosh@stb.dot.gov

10/16/2006 09:23 AM

To: dawn\_whitehead@fws.gov  
cc:  
Subject: Modification to recommended mitigation, FD 34284 Consultation  
#2-15-03-I-0276

Dear Ms. Whitehead:

In our letter to you, dated July 18, 2006, to which your agency concurred, we indicated that we would recommend a condition requiring Southwest Gulf Railroad Company (SGR) to use Vulcan Materials Company's (Vulcan) existing Edwards Aquifer water rights when using water from the Edwards Aquifer during construction, maintenance, and operation of the rail line. We recently received a letter from SGR, dated October 12, 2006, requesting that this recommendation be modified because Vulcan may purchase additional water rights in the future from others who currently have existing Edwards Aquifer water rights.

In a phone conversation earlier today, you indicated that limiting SGR's use to Vulcan's existing Edwards Aquifer water rights and to any other existing Edwards Aquifer water rights Vulcan may purchase in the future would serve the same purpose as our original recommendation to mitigate potential impacts to the overall water quantity in the Edwards Aquifer. Thus, a modification to our recommendation would read something like the following: Southwest Gulf Railroad Company shall use Vulcan Materials Company's existing Edwards Aquifer water rights and any other existing Edwards Aquifer water rights that may be acquired when using water from the Edwards Aquifer during construction, maintenance, and operation of the rail line.

Please let me know if this is an appropriate summary of our phone conversation or if you would like to discuss this further.

Thanks,  
Rini Ghosh

(202) 565-1539