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FD 34284

January 15, 2004

Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
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& REGULAR U.S. MAIL

Re: Finance Docket No. 34284-Southwest Gulf Railroad Company
Petition for Exemption from U.S.C. 10901 to Construct and
Operate a Rail Line in Medina County, Texas

Dear Ms. Rutson:

I represent Medina County Environmental Action Association, Inc. (MCEAA). This letter responds to issues in the September 23, 2003, November 10, 2003 and January 5, 2004 letters from David Coburn, as counsel for Vulcan Materials and Southwest Gulf Railway (SGR) to STB/SEA. This letter incorporates herein by reference Dr. Kitchen's letters to STB/SEA. It is stressed that that MCEAA represents over 300 landowners and residents of Medina County, Texas who are concerned about their quality of living and property values.

This letter will respond to numerous issues addressed in the referenced letters which incorrectly state facts and consequences associated with the proposed rail project and, consequently, the quarry project. If correctly portrayed, the facts surrounding those issues would require the Surface Transportation Board to direct an Environmental Impact Statement (EIS) for SGR's proposed rail project. After thorough study, the proposed rail line plan will be shown to have such severe adverse environmental impact, especially on historical and archeological features in the area, that it should be abandoned.

Before going into the points of concern, I want to address the tenor of the latest letter from the Vulcan/SGR counsel. Counsel intimates that MCEAA and anyone else that is "opposed" to the proposed rail and quarry operation somehow are not entitled to the same consideration as Vulcan/SGR in this process. I find that a troubling position for someone who is

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representing a company that has entered a quiet rural community of long time ranchers and city dwellers seeking refuge in quiet surroundings with the stated purpose, depending of course upon the time and audience, of foisting a heavy industrial complex and rail line upon that community. At any given time Vulcan/SGR, as you are well aware, has stated the rail is necessary for the quarry operation and also to provide rail service for what it expects to become, as a result of its quarry operations and rail line, a complex of businesses that will come to the area due to the existence of rail service and in need of the rail. At other times, such as in Mr. Coburn's November 10, 2003 and January 5, 2003 letters, there is an over-arching tenor which indicates the quarry will be the only rail user and that it will pose no nuisance or adversity to the community. This is all in the context of the attempt by Vulcan/SGR to get this project pushed through the STB oversight process by getting a waiver of the six month pre-filing notice by erroneously asserting that its rail project was of limited scope and in environmental impact. It is obvious an EIS which addresses both the quarry and rail operations is necessary to properly evaluate the intent of Vulcan/SGR.

At any given time, Vulcan/SGR has informed MCEAA that the quarry will eventually be a 1,700 acre, 80 year project that will quarry in excess of 200 million tons of crushed stone. At the same time Mr. Coburn hedges his commitment to rail use in terms of "four trains per day . . . for the reasonably foreseeable future." Coburn Jan. 5, 2004 letter, page 3. These assertions are at the root of the "opposition" to the proposed project. The local community cannot respond appropriately, because it is unable to determine what the project truly encompasses. MCEAA is convinced the only way to determine what "the reasonably foreseeable future" may be is to prepare an EIS to evaluate the full environmental impact of the rail line.

By further example, Vulcan/SGR continues to be elusive as to the actual proposed rail route and the alternatives. As is made clear by all agency input on the subject, no determination can be made as to impacts of the rail line until accurate routes are made public. It is rather surprising that Vulcan/SGR is this far along in the process without specifically identifying its proposed and alternate routes. It is not difficult in this day of GPS and other mapping technology to identify within inches where any particular landmark is or will be. Mr. Coburn intimates in his January 5, 2004, letter, in reference to the comments of Dr. Thomas Hester, that Dr. Hester made his comments "without benefit of detailed maps." Dr. Hester made his comments on the best available evidence, which, as far as MCEAA knows, does not include any detailed maps. This must be the case for Vulcan/SGR also, based on Mr. Coburn's January 5,

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2004 letter in which he refers to their maps of “the approximate location of the preferred alignment.”

Contrary to Mr. Coburn’s assertion, the intent of the Preliminary Assessment is understood by MCEAA. MCEAA is only exercising its right to address issues raised by the Preliminary Assessment, which indicate it was more preliminary than it should have been and appears purposefully misleading. Its “starting point” fails to show an adequate investigation of even the most preliminary matters. This is an opinion shared by other professionals who have weighed in to date. It is obvious Vulcan/SGR is not “prepared to assist SEA” in moving forward in an open forum. It had its opportunity and failed. Even though their first effort was “preliminary” it was not as enlightening as it should have been, as is obvious by the comments.

The following are the points of concern:

1. Various aspects of Mr. Coburn’s assertions relating to the alleged endangered species studies are either incorrect or misleading. We are unaware of and do not believe there has been an endangered species habitat study of the areas associated with the proposed and any of the alternatives for the 7.3 mile rail line from the proposed quarry to the Union Pacific connection at Dunlay, TX. The only study of which we are aware was for a limited area of the quarry site potentially impacted by the railroad for 2001, 2002 and 2003. Additionally, Mr. Coburn incorrectly states that the rail line maintenance facility, which will store diesel fuel and nitrates, will not be located over the Edwards Aquifer. Based upon all available information that facility will be over or immediately adjacent to the Edwards Aquifer Recharge Zone in an area in which the aquifer is extremely close to the surface. This is an extremely dangerous position for the sole source drinking supply for San Antonio and the surrounding area. Considering the possible adverse environmental impacts relating to either of the foregoing, the STB must exercise its responsibility to direct implementation of an Environment Impact Study (EIS) for this project.
2. The final biological assessment report prepared by Vulcan for U.S.F.&W. dated September 23, 2003, incorrectly stated that the proposed rail line is “not expected to traverse jurisdictional wetlands” and “steps would be taken to avoid any wetlands that may have to be crossed.” The proposed and alternate routes 1 and 2

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rail lines cross wetlands near the Quihi Creek and its flood plain. It will be interesting to learn what “steps would be taken to avoid any wetlands that may **have** to be crossed,” when they allege no wetlands exist. The language they use, although it is misleading, provides them a cover for explaining the inadequacy of their current investigation when it is shown they are wrong. All of the foregoing is in the context that Vulcan/SGR informed the Corps of Engineers they did not need to be involved with the project following the Corp’s inquiry of the project to Vulcan/SGR. (This fact is contradicted by Mr. Coburn in his January 5, 2004, in which he states Vulcan/SGR has consulted and will be consulting “further” with the Corps. Which is it? Does the Corps not need to be involved or will it be consulted “further?” Vulcan/SGR credibility suffers under this factual scenario.) The Corps does need to be involved in the project, considering the jurisdictional wetland issues.

3. Mr. Coburn states that MCEAA concerns about traffic and flooding problems are without merit, but offers no proof of this. Significant evidence has been presented to you and others in the form of letters from County Commissioners Court, Texas Department of Transportation, U. S. Representative Henry Bonilla, State Senator Frank Madla and private citizens stating that grade separation crossings of county and state roads are required to avoid traffic and flooding problems. The grade level crossings planned on FM 2676 and CR 4516 will result in traffic congestion and tragic, preventable, deaths. An EIS would bear out the facts presented in these letters. It is obvious to the MCEAA that SGR realizes this fact and is trying to avoid an EIS by its misleading allegations.
4. Mr. Coburn states Vulcan/SGR does not possess any information that would suggest that the rail line would have any adverse impact on archeological or historical resources. This statement is not true. See the enclosed letter of November 9, 2003, by Dr. Tom Hester and make reference to the opposition that has been brought to the attention of the STB. Dr. Hester states that a more extensive study of the entire rail area, and the alternate routes, is necessary. It is clear from this expert, who is a known expert on this area’s history, that the “Cultural Assessment” is not an excellent starting point for the Section 106 process, as Mr. Coburn claims. It is apparent an EIS will be the best course of action to address the vast and detailed issues addressed by Dr. Hester and others.

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Mr. Coburn's statement that the Schweers Historical Foundation, Inc. supports the project rings hollow and raises yet another question of his credibility. The primary benefactors and supporters of the Schweers Historical Foundation, Inc. are the owners and/or former owners of property who stand to benefit and have benefited from the Vulcan/SGR quarry and rail project and Vulcan/SGR who, based upon knowledge and belief, either owns or has an interest in a significant amount of, if not all, the property of the Schweers Historical Foundation, Inc. Vulcan/SGR's purchase of some of this property will possibly alleviate its need to exercise eminent domain, should it be granted common carrier status.

5. MCEAA is unable to understand how vibration impact is an indirect effect on the historic and cultural artifacts and structures. The vibration studies state that pile driving would have adverse effects, but that *no* pile driving will be done. It is our understanding that trestle-type bridges are being planned for crossing the Quihi Creek and its flood plain where it joins with County Road (CR) 365. A vibration study should be done to determine the effect of pile driving required during construction of the proposed trestle bridges. There are four historic structures in close proximity to this crossing which could be adversely affected by pile driving. An EIS should include a study of this.
6. Mr. Coburn states that SGR is moving forward with an understanding with TxDOT with respect to its rail line crossing at FM 2676. In February, 2003, Vulcan/SGR was told by TxDOT officials that a grade separation of the rail line at the T intersection of FM 2676 and CR 353 was needed. Again on April 30, 2003, this requirement for grade separation was made clear by James Randell, Director, Transportation Planning and Programming of Tex DOT in his letter to STB/SEA.

SGR tried unsuccessfully on December 18, 2003 to get TxDot to okay a grade level crossing at this critical intersection. A decision was postponed by TxDot after letters from Medina County Judge Jim Barden and MCEAA, Inc. requested grade separation at this intersection. This is an example of Vulcan/SGR reluctance to do the construction necessary for a safe crossing. This is disturbing to MCEAA acting on behalf of its members, after Vulcan/SGR had stated years

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earlier to the Medina County Government that it would place grade separations on CR 4516 and FM 2676, according to Precinct 1 County Commissioner Royce Hartman. Ironically, Vulcan has stated repeatedly in public meetings that it wanted this project to be environmentally and community friendly and to be a model project which would not endanger people, property, or historic structures. Also, at various organization and public meetings in Castroville and Hondo, they have stated that the public would not be inconvenienced by delays at rail line crossings. Now they are trying to back away from their promises to do the right thing of building grade separation crossings on state and county roads.

7. SGR's November 10th letter failed to note that the Coahuiltecos Tribe that inhabited this region and is mentioned in the preliminary report, has not been contacted for their input. There are known Indian Burial Grounds in the path of rail line alternate #1. As noted by Dr. Hester, the possibility of other Indian cultural and/or burial sites exists on the proposed quarry site and in the vicinity of the railroad loop and straight line loading track. These have been reported to the STB and must be reviewed.
8. Contrary to SGR statements, sinkholes exist on the quarry site which have not been reported or investigated for or by USF&W or other agencies. These sinkholes may contain Indian tribal burial remains or other artifacts. A thorough EIS would address these issues.
9. SGR states that the proposed rail line is the best route of all those submitted. They also state routes other than the proposed and three alternate routes were considered and rejected. No reasons were given for these other routes being rejected. As an example, it is a fact that a previously constructed railroad route existed from the Dunlay area to Medina Dam (constructed in 1911). This abandoned rail route was in close proximity to the proposed quarry. This route did not disturb the historic area of Quihi/New Fountain. It would cross only three county roads and one state road.

The proposed route crosses county roads six times and FM 2676 once. The Quihi/New Fountain area contains at least 61 historic residences, schools, churches and cemeteries that are registered in State or National Registries, or are

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eligible for registry. Mr. Coburn states that there are only 16 such properties. The abandoned rail line route would provide the advantage that it would cross the Quihi Creek floodplain much farther to the north, thereby reducing the flood problems posed by the proposed and alternate routes. History verifies that this route is feasible, practical and more suited to the needs of the community. Considering the current reluctance of Vulcan/SGR to fully study this issue, an EIS appears necessary.

10. There are possible routes other than those currently under consideration. Vulcan has stated there were a total of eight routes originally considered, but no reason was given for the four that were rejected. It is my understanding that, according to STB regulations, all routes considered require reasons for being rejected. Routes that would not endanger people, historic or archeological areas, and other property, should not be rejected just because they are longer, or more expensive.
11. MCEAA strongly disagrees with the statement in the cultural assessment that the railroad would not have any direct effect on the cultural resources in any of the routes proposed. Flooding problems created by the railroad with the types of crossings proposed for the Quihi flood plain will destroy or severely damage many historic structures and artifacts and wreak havoc with current residents. It is also obvious that noise, dust, vibration and aesthetic degradation will occur with 400 gondola railroad cars and 12 diesel engines encroaching on the area for the next 50 years. All of this will be for the purpose of providing natural resources from this area to benefit those in distant places.

Mr. Coburn states that there will be four trains for the foreseeable future. It is obvious that when a company as large as Vulcan proposes to establish a 1,700 acre quarry operation which will be maintained for a planned 50 years that they are in possession of a detailed business plan for this operation. That plan should be a part of this process to enable all affected to know what will happen after the "foreseeable" future.

Mr. Coburn states that it is not anticipated that dust - from 400 uncovered railroad cars each day - would cause problems. MCEAA finds that to be a foolhardy position. Air and aesthetic issues related to the railroad must be studied for their

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impact. No air quality studies have been done to support the assertion that air quality as well as aesthetic value would be adversely affected. An EIS would evaluate this problem. Medina County is part of a San Antonio metropolitan area that is facing close scrutiny relating to federal air non-attainment designation. The air issues associated with this project are critical and could become more-so in the near future. The air issues associated with particulate matter and train exhaust need to be evaluated for the Medina County area and all areas to which the quarry products will be delivered; especially the Houston, Texas area which is already designated as a federal air non-attainment area.

Considering the actions of Vulcan/SGR thus far, MCEAA is not willing to accept their "goal" that cultural and historical sites of concern be "avoided if possible." Preservation is an absolute. That they will "avoid those resources to the extent practicable" and that "the line is unlikely to adversely impact historical or archeological sites" cannot be left to Vulcan/SGR's determination. It is clear it must be addressed through the EIS process. MCEAA is not enamored of the Vulcan/SGR attitude that archeological excavations should be classified as "extraordinary and unnecessary" in order to not block their corporate purposes. That attitude pretty well sums up the lack of concern Vulcan/SGR has for the good people of Medina, County.

12. Mr. Coburn states that the rail line will not detract from the aesthetic value of the historic buildings because it will not be significantly elevated and the railroad would be concealed by grasses, trees and scrub brush growing along the rail line. However, considering all the businesses Vulcan postulates will move into the area as a result of the draw of the railroad would compound this problem. All of these factors would greatly increase the flooding damage potential, considering all the debris and dead vegetation that regularly comes down from the hills during the frequent floods. These points would be shown by a more thorough study accomplished with an EIS.
13. Noise factors have not been adequately evaluated by SGR. Word mincing by Vulcan/SGR is again employed when it refers to noise issues "with respect to cultural resources impacts." County Road 365 runs through the Quihi Creek flood plain. Crossing this road with a grade level crossing would mandate

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blowing the diesel whistle at least four times a day. Again, because of their proximity, the aesthetic value of the historic homes in the area would be adversely affected. No mention of this is made in the Vulcan/SGR letters to STB.

Noise factors will also adversely affect the serene surroundings that are the draw of this area to those who live here. It must be remembered that Vulcan/SGR seeks to impose its noise and other adverse impacts on the people, the people did not move to surround a pre-existing nuisance. There is no mention that there currently is no noise, no dust, no rail line, etc. These adverse impacts are being forced on those who did not settle here to endure such adversity and do not want or appreciate their proposed existence.

MCEAA agrees with SGR that there is local opposition to this project, especially as it is currently being approached. MCEAA, Inc. has presented to the STB the concerns of its members, which make up a large percentage of area inhabitants, and other citizens supportive of the concerns of MCEAA. MCEAA is troubled that its concerns, as well as those of the Texas Historical Commission, TxDOT, Quihi/New Fountain Historical Society, and the Medina County Commissioners Court, have apparently not been fully understood and appraised by the STB. The MCEAA was formed, in part, to provide a unified voice which could be recognized by the STB as a tool for communication that would enhance the STB's evaluation of the Vulcan/SGR proposal.

MCEAA perceives, much to its dismay, that STB has not been responsive to the MCEAA and its intended mission to ensure that if the Vulcan/SGR project is allowed to move forward it will be after a full understanding of the project impacts on the Medina County community that will be most adversely affected. The current facts indicate the only way that can be accomplished is for an EIS to be conducted. It is clear there are too many unknowns for which anyone is showing an adequate interest to address outside the EIS process. MCEAA will continue to pursue its chartered purpose until STB steps up to render a full review of the project or an EIS is conducted. MCEAA is of the firm belief that a decision of the STB to forego an EIS will be a violation of its regulatory guidelines.

It is difficult to imagine any objective evaluation of the current situation could lead to a conclusion that Vulcan/SGR is prepared to fully disclose its plans, unless forced to do so, or to make an honest evaluation of the adverse impacts of its proposal. The only way to get a full

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investigation of the impacts of this project is to require an EIS. MCEAA is convinced an EIS will show the project, as currently proposed, must be rejected.

Very truly yours,

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