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March 5, 2012

Dave Navecky
Surface Transportation Board, Office of Environmental Analysis
395 E. Street, SW
Washington, DC 20423-0001
Attn: Docket No. FD 35554

**RE: STB Docket No. FD
35554, Eagle Pass Railroad,
LLC -- Proposed Rail Line
Construction and Operation
-- Maverick County, Texas.**

Dear Mr. Navecky,

I represent the Maverick County Water Control & Improvement District No. 1 ("District" or "Water District"), and I am writing in response to your letter dated February 3, 2012, directed to the District regarding the Eagle Pass Railroad.

The District was organized pursuant to the provisions of Article 16, § 59, of the Texas Constitution in 1929, and the purposes of the Water District are set forth in the Texas Constitution and in the enabling legislation, now found under Chapter 51, Texas Water Code.¹ The District exists and functions as a governmental agency, a body politic and corporate, and stands upon the same footing as counties and other political subdivisions of the state. *Lewis Cox & Son v. High Plains Underground Water*, 538 S.W.2d 659, 662 (Tex.Civ.App.-Amarillo 1976, writ ref'd n.r.e.), overruled on other grounds by *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937 (Tex.1993). All of the affairs of the District are managed by the board of directors except to the extent specifically delegated to the General Manager. see §49.057(a) Texas Water Code. The District's policies are formulated by the Board of Directors and that the general manager only has authority to grant temporary exceptions to the Operating Rules in a state of emergency. See Operating rules Preface and Operating Rules Statement of Exclusion. In light of these matters, none of the issues raised in your letter are within the control of the General Manager, and all matters related to the same must be approved by the Board of Directors in order to be binding upon the District.

The District controls, improves, and maintains over two-hundred miles of canals and laterals. Most of them are earthen. Through these waterways, the District delivers water to those who use the water, including water for livestock and farming, domestic and municipal uses, and commercial

¹ A history of the Water District's formation is found in *Moore v. Maverick County Water C. and Imp. Dist. No. 1*, 162 S.W.2d 1009, 1012-13 (Tex.Civ.App.-San Antonio 1942, writ ref'd), cert. denied, 318 U.S. 790, 63 S.Ct. 993, 87 L.Ed. 1156 (1943).

uses. At some points, the water must pass through private laterals and ditches before reaching its ultimate destination, and overflow water, water that was delivered to a user but which was not used, follows laterals and channels which, ultimately, flow back into the Rio Grande. In sum, although the District's waterways are close to two-hundred miles in length, the network of irrigation channels through which water must flow is significantly more expansive than two hundred miles. A cursory review of the proposed locations (excluding any crossing of the main canal) reveals that approximately ninety-seven accounts and over 2,900 acres of irrigable land will be affected by the proposed railroad. The District could provide you with these details with proper request. It is not known how many private parties could be affected. It is known, however, that there are some users in the vicinity of Corridor 4 who are receiving water for domestic purposes, and the water from the canal is their only source of water except for water that they might bring in by the bottle.

The proposed railroad will cross District property as well as non-District waterways, thereby affecting not only private parties, but also the District. Although the District does provide water to certain other governmental entities, I do not believe that any of those entities are in the vicinity of the proposed corridors. At a minimum, a railroad will generally interfere with providing water to its users and preventing or hindering the District's ability to repair and maintain District facilities.

Presently, the District's facilities are accessed by driving along the canal/lateral. At some points, entry is made by crossing private land. The District operates all types of vehicles on its property, including tracked and wheeled vehicles, trucks, bulldozers, power shovels, eighteen-wheelers, backhoes, dump trucks, graders, and long reach excavators, to name a few. With these vehicles, the District inspects the waterways, identifying areas where maintenance is needed, and then performs the maintenance. The District, through a series of gates and valves along the waterways, controls the flow of the water and directs it, and in the appropriate quantities, to the places where the water is needed.

As previously stated, most of the District's waterways are earthen. As such, they are subject to the effects of flora and fauna. Weed growth in the waterway is dealt with by using two bulldozers, one on each side of the canal, to pull an extremely heavy anchor chain. The chain is exceptionally heavy--thousands of pounds, and if I were to guess is roughly 150 to 200 feet long. Vegetation on the banks is often dealt with manually, or by using the excavator. If this is not done, not only does the vegetation generally hold back the water, but sediment can build up and cover gates or turn-outs (valves that permit water to exit the canal and flow into a smaller lateral). If a railroad is to come in, provision must be made to permit the passage of heavy, tracked vehicles to enable the District to drag the canal.

Additionally, in some places the channel is elevated--the water is held between earthen banks and the water, although lower than the banks of the channel, is actually higher than the general elevation of the surrounding land. Trees present a problem because the roots penetrate the banks. Water inside the canal weeps out along the roots, saturating the bank. When an earthen bank is saturated, its strength is greatly reduced and a break can occur. Breaks can also occur from beavers burrowing into the bank, from livestock walking down the bank and into the waterway, or even from ants building their nests. Water has broken out of the canal and it will continue to do so. Whenever a weak spot is identified or a break occurs, the District must stop putting water into it and allow what

is there to drain out. Then the weak space is dug out, whether it is thirty feet or two hundred feet, and then fill material must be brought in, dumped, and tamped into place until the breach is filled and the bank reformed. If a railroad is to come in, provision must be made to permit the District to not only repair and maintain the place where the tracks cross but also any portions beyond the tracks.

Another problem that will arise with a railroad is that there will be a new, clear, unregulated path of entry to District property. Anything short of a guardhouse which is manned at all times will prove inadequate at preventing trespassers and livestock from entering the property.

Motorcycles, horses, hikers, fisherman, all types of person and machine will enter onto the District property for all types of purposes and activities, from recreation to criminal activity. None of these activities are authorized by the District, and the District does not have the infrastructure to monitor additional points of illegal entry. The problems that are caused by these illegal entries are common as well as varied. Not only is damage to property caused, through vandalism, illegal dumping, or theft, but damage to person is, as well, through drowned swimmers or vehicle occupants or injury from accidents with vehicle or animals. Where the canal or affected fence lines provided a barrier to the passage of animals in the past, the railroad will result in providing a bridge to permit those animals to enter places from which they were previously excluded.

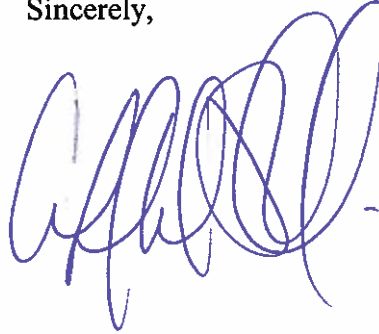
Questions in my mind arise from the possibility of pollution and contamination. While at the present time it appears that only coal trains will operate, I anticipate that the District will far outlive any coal mine and, when the coal is depleted, the railroad will remain. If not the railroad, at least the tracks. In either event, I sense no limitation on the type of cargo that can be transported on the tracks. About a year and a half ago a train derailed while it was crossing over a trestle. Fortunately, no one was hurt, to my knowledge, but it destroyed a significant amount of fence line and dumped many tons of cargo onto the adjacent land. Fortunately the cargo was soybeans. Had it been a toxic chemical that was released, the damage could have been significantly worse. If such an occurrence were to happen on District property, the effects could be much worse. Not only are people relying on water to care for their crops and animals, but they need it for their businesses and residential uses, as well. Not only does the District transport water to water treatment plants, the District transports water for the County lake, where families and fishermen alike recreate. If a contaminant were to escape the railroad, the District's waterways become an efficient method of transmission that could have the effect of spreading the contamination to points well-removed from the tracks.

Because the District will exist indefinitely into the future, and will be required to carry out its operations and deal with any possible contingencies that might arise, it is not possible to articulate each circumstance where the presence of a railroad could affect the District's operations. Managing the waterways and the water that flows through them is not a simple matter nor is it instantaneous. Activity must take place many miles away and many hours before the result is seen in the anticipated location within the District's waterways. What happens on one part of the canal affects what occurs on another part of the canal. It matters not whether it is upstream or downstream. People rely on the District and the water it provides and/or transports, and unanticipated problems are frequent occurrences, sometimes with very harmful results. If the railroad is going to interfere in any way

with the Districts ability to efficiently, effectively, and safely perform the purposes for which it was formed, then a railroad is inadvisable.

Please contact me should you have any additional questions.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and flourishes, positioned to the right of the word "Sincerely,".