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VIA HAND DELIVERY

Surface Transportation Board
Case Control Unit
Washington, DC 20423
Attn: Rini Ghosh

**Re: Finance Docket No. 34284 -- Southwest Gulf Railroad Company -- Petition for
Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line In Medina
County, Texas**

**Southwest Gulf Railroad, Inc./Vulcan Construction Material LP's Comments on
Supplemental Draft EIS**

Dear Ms. Ghosh:

Petitioner Southwest Gulf Railroad, Inc. and Vulcan Construction Materials LP ("SGR", unless otherwise noted) hereby offer their comments on the Supplemental Draft Environmental Impact Statement ("SDEIS") issued by the Board's Section of Environmental Analysis ("SEA") on December 8, 2006. SGR continues to support the alignment that it initially proposed as its favored alignment in this proceeding (the "Proposed Route") and believes that with appropriate mitigation to address cultural resources issues that that alignment should be found in the Final EIS to be among those deemed environmentally preferable. In these comments, SGR will explain why it believes that SEA should find acceptable the additional voluntary mitigation measures that SGR is prepared to implement to address cultural resources impacts of the Proposed Route. SGR will also comment on SEA's findings with respect to the Eastern Routes and the No-Action (truck) alternative, as well as on the mitigation measures proposed by SEA.¹

¹ As SGR has previously advised SEA, MCEAA has reached a settlement with Vulcan over MCEAA's now-withdrawn challenge to Vulcan's air quality permit application for the quarry. Vulcan

(Continued...)

While SGR favors its Proposed Route for the reasons stated previously and in these Comments, SGR is pleased that SEA has determined that with respect to six of the seven alignments studied (with the exception of Alignment 1) "the majority of potential environmental impacts from the construction and operation of the proposed rail line under any of the alternatives would either be minimal or could be substantially reduced through SEA's recommended mitigation." SGR agrees with the assessment that none of the routes under consideration in the DEIS or the SDEIS are environmentally untenable, perhaps with the exception of Alternative 1. The differences in the alignments are instead less differences of environmental impact than they are differences of economic impact.

SGR is also very well aware, and respectful, of the cultural resources data and studies set forth in the SDEIS. Those studies were undertaken with SGR's full support. SGR understands the cultural and historical sensitivity of the area in question. It also believes that with appropriate voluntary mitigation of the type it is prepared to implement, the SGR rail line and the very low level of rail traffic projected for that line (two trains/day in each direction) can co-exist with the historic districts that have been identified, just as the existing roads, pipelines, electric wires and other modern visual elements already exist in these areas. Indeed, SGR believes that its proposed mitigation measures described below offer the best opportunity for preserving and maintaining the area's historic properties, while allowing SGR to achieve its goals in the most economically viable way.

SGR is advocating for the Proposed Route in part because it has environmental advantages (and the cultural resources impacts can be mitigated), but also in part because it is the most economically preferable route, both from the perspective of construction and operational/maintenance costs. Indeed, that route would be millions of dollars less expensive to build than either of the Eastern Routes, and also less expensive to operate and maintain year in and year out. SGR recognizes that SEA's primary goal in preparing the DEIS and SDEIS has been to assess environmental, rather than cost, benefits of one alignment or another. However, cost is not an irrelevant factor in assessing alternatives, and is certainly not an irrelevant factor in the real world of business decisions. SGR will further discuss below the cost benefit of the Proposed Route over the Eastern Routes, as well as the advantages of the Proposed Route from the perspective of environmental impacts.

understands that the TCEQ is close to taking final action on the air quality permit. Preparations for quarry operations are thus moving forward.

I. The Proposed Route, with Mitigation, Should be Included Among the Environmentally Preferable Routes

In the November 2004 DEIS issued in this proceeding, SEA assessed the Proposed Route and three other alternatives based on a variety of different impacts, including transportation and traffic safety, water and biological resources, land use, noise, vibration, cultural resources and air quality. SEA concluded at the time that three of the alternative routes (including the Proposed Route) were superior environmentally to Alternative 1, but that none of the three was environmentally preferable to the others. SEA proceeded to recommend a series of proposed mitigation measures. These included measures which SGR volunteered in order to address concerns that had been raised about potential flooding and other potential hydrological impacts to the area. With respect to cultural resources, SEA recognized the historic values of the Quihi area and the potential for its listing on the National Register. In response, SEA recommended that SGR enter into a Programmatic Agreement ("PA") that SGR had negotiated with the Texas Historical Commission ("THC"), concluding that "the extensive proposed mitigation measures in the Programmatic Agreement would appropriately address adverse effects to cultural resources." DEIS at ES-17. The referenced PA spelled out in detail procedures for SGR to follow in the addressing historic resources in the area through avoidance and other mitigation measures. A description of the PA appears in the DEIS at pages 4-98 through 4-99.

Following comments received on the DEIS about the impact of the Proposed Route and nearby alternatives on historic resources in the Quihi area, SEA determined that further study of that area was warranted, together with an analysis of three alternative routes east of the Quihi area. While SGR designed two of these routes, as it has made clear to SEA it did so in order to facilitate comparative analysis to be undertaken by SEA and not because it favors either of these routes over its Proposed Route. Specifically, SGR designed the Modified Medina Dam Route in response to comments submitted by the Medina County Environmental Action Association ("MCEAA") suggesting that SGR use as much as possible of the right-of-way that had been used by an early 20th century railroad that had existed for a period of years for the purpose of transporting construction materials needed to construct the dam at Medina Lake. That railroad no longer exists and its right-of-way exists today only on an old map. There is in fact little evidence remaining of the old railroad on the ground. Further, SGR has demonstrated that the Medina Dam railroad was too far east to offer a useful route to serve the Vulcan quarry.

SGR designed the Eastern Bypass route at the request of SEA to develop an eastern route that would avoid the Quihi area while providing a means of connection between the UP line and the Vulcan quarry. As noted above, Vulcan did not design this Eastern Bypass route because it favors it over the Proposed Route. Rather, SGR has consistently made clear that it believes that with appropriate mitigation the Proposed Route is the best alternative.

SGR is not unmindful of the fact that SEA has now concluded that two of the Eastern Routes (the Eastern Bypass route and MCEAA's Medina Dam Alternative, hereafter referred to as the "Medina Alternative") are environmentally preferable relative to the Proposed Route and any of the alternative routes considered in the DEIS. According to the SDEIS, that determination is based entirely on SEA's

assessment of cultural resources impacts. SEA has in fact made clear in the SDEIS that if cultural resource impacts are removed from the equation, three of the routes studied in the DEIS (including the Proposed Route) are not significantly different in terms of environmental impacts from the longer Eastern Routes. See SDEIS at 6-42. Indeed, SEA has stated that it “does not believe that the increased impacts from the longer lengths of the Eastern Alternatives would be significantly different from the impacts that would be caused by construction and operation of the Proposed Route, Alternative 2 or Alternative 3 . . .” and further found that the environmental impacts of any of these routes “would either be minimal or could be substantially reduced through SEA’s recommended mitigation.” Id.

SGR submits that in finding that the Proposed Route is not environmentally advantageous in comparison to the Eastern Routes (exclusively because of cultural resources impacts), SEA has understated key comparative advantages of the Proposed Route that cause it to remain SGR’s preferred route -- particularly its shorter length. Further, SGR has now proposed additional measures that will address the cultural resources issues to further mitigate the disadvantages of the Proposed Route relative to the Eastern Routes. In short, SGR submits that SEA should reconsider its conclusions concerning the Proposed Route for the reasons described in the following sections of these Comments.

A. The Proposed Route Offers Distinct Advantages

A critical advantage of the Proposed Route is this: relative to any of the Eastern Routes in contention, the Proposed Route is meaningfully shorter – about 7.5 miles versus 9.2 miles for the Eastern Bypass; 9.9 miles for the MCEAA Alternative and 10.9 miles for the Medina Dam Route. The Proposed Route is shorter because it is essentially a straight line between the point of logical connection to the UP line at the southern terminus of the proposed rail line and the Vulcan quarry site that the SGR line will serve at its northern terminus point.

In a June 6, 2005 letter to SEA, SGR estimated that the construction cost of the Proposed Route would result in savings of at least \$1.6 to \$2 million dollars relative to the Eastern Bypass route. SGR has now undertaken a new analysis of the difference in construction costs between the Proposed Route and both the Eastern Bypass and MCEAA Alternative routes based on 2007 cost factors. The new analysis uses updated construction cost figures based on another rail construction project in which Vulcan is currently engaged in Texas and the earthwork cost figures that take into account the fact that (as SEA’s cut/fill calculations at page C-2-12 of the SDEIS show) almost 70,000 cubic yards of fill will need to be imported into the area for the MCEAA Alternative. Based on this analysis, SGR has determined that each of the Eastern Routes will cost at least approximately \$3 million more than the Proposed Route.² In reference to the estimated cost of the Proposed Route, this is a very substantial cost increase.

² SGR would be pleased to supply its workpapers underlying these calculations to SEA.

The Proposed Route also has the benefit of operational and maintenance savings in comparison to the Eastern Routes. For each year of operation, the operational and maintenance advantage of the Proposed Route (measured with respect to fuel consumption and track maintenance) will be approximately \$120,000 in comparison to the Eastern Bypass and about \$170,000 in comparison to the MCEAA Alternative. While these differences are relatively modest in any one year, over a period of ten years, the differences amount to an additional \$1.2 million and \$1.7 million.

The shorter distance traversed by the Proposed Route results in other advantages too. Compared to the Eastern Routes, it will disturb many fewer properties owned by persons other than SGR or affiliated entities – 10 for the Proposed Route versus 32 and 22 for the Eastern Bypass and MCEAA Alternative, respectively. See SDEIS at 6-35. Just as importantly, the Proposed Route was carefully designed to traverse along the generally north-south oriented property boundaries and thereby minimize impacts to landowners. By contrast, due to their more semi-circular design, the Eastern Routes necessarily will cross many properties at a diagonal and thereby increase the likelihood of disruption to agricultural activities. Even though SGR would work with landowners to minimize these impacts (as per proposed Mitigation Measure 5A), it is unclear that it will be able to do so in all cases to the full satisfaction of the landowner.

While the Proposed Route would traverse modestly more prime farmland than the Eastern Routes, it will do so in a non-disruptive way by clinging to property lines so that agricultural activities on that farmland will be relatively unaffected. Most of the farmland through which the Proposed Route will traverse is rangeland and relatively little of it is irrigated farmland – only about 1,000 feet and the line would traverse along the edge of this irrigated property. The Eastern Routes, on the other hand, would traverse more farmland in which landowners have made substantial investments in irrigation systems. Based on an assessment of just the Weiblen property, both the Eastern Bypass and the MCEAA Alternative would traverse several thousand feet of that irrigated farmland.

In addition, due to its shorter length, the Proposed Route will result in fewer air quality impacts – compare Table 4.7-1 at page 4-50 of the DEIS with the Table 3.7.5-1 at page 3-40 of the SDEIS. These tables show that the Proposed Route result in lower emissions, e.g., 50 tons/year of NO_x for the Proposed Route versus 62.2 and 66.1 tons/year for the Eastern Bypass and MCEAA Alternative, respectively. The emissions of NO_x, as well as CO, PM and HC, are about 25% higher for the Eastern Routes as compared to the Proposed Route.

SGR offers this information *not* because it is of the view that either of the Eastern Routes could not be constructed within the mitigation framework set forth in the SDEIS or that doing so would have so substantial and adverse an environmental impact as to make the Eastern Routes non-viable. The SDEIS demonstrates to SGR's satisfaction that the Eastern Routes are not environmentally infeasible, although Vulcan may determine that they are not feasible from a cost perspective as discussed further below.

Further, SGR does not believe that the Eastern Routes are preferable to the Proposed Route, particularly once the cultural resources mitigation described below is taken into account. Thus, it is

SGR's view that the Proposed Route retains distinct environmental and significant cost advantages over the Eastern Routes due largely to its shorter length. When these distinct advantages of the Proposed Route are balanced against the cultural resources disadvantages identified in the SDEIS, and after the mitigation that SGR has now proposed to address those cultural resources impacts are taken into account, SGR submits that the Proposed Route should be among those deemed to be environmentally preferable in the Final EIS. SGR will now turn to those proposed mitigation measures.

B. SGR's Proposed Mitigation Addresses the Cultural Resources Impacts

SGR realizes that cultural resources are a critical issue in the assessment of the alternative routes, and it respects the history and resources of the area. At an early stage in this proceeding, SGR thus entered into consultations with the SHPO and developed, through a negotiation process, a Programmatic Agreement designed to address these issues. SEA found that PA satisfactory in its DEIS and concluded that it would adequately address the cultural resources impacts to the Quihi area, which was recognized in the DEIS as an area that may constitute a rural historic landscape. DEIS at 4-90. As the DEIS acknowledges, with appropriate mitigation a rail route may be approved for construction through a culturally sensitive area, even one eligible for listing on the National Register.

SEA's currently proposed mitigation to cultural resources remains the PA (see proposed measure 45 at page 6-10 of the SDEIS). However, SEA now further recommends avoidance (through the more circuitous Eastern Routes) of the Quihi Rural Historic District ("Quihi District"), the boundaries of which were defined in the Rural Historic Landscape Study found at Appendix F-2 of the SDEIS. While SGR recognizes that avoidance is one means of addressing the concerns about traversing the Quihi District, the regulations governing the Section 106 process make clear that impacts to historic resources can also be addressed through mitigation and minimization of those impacts, i.e., through "alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties." See Regulations Implementing the National Historic Preservation Act, 36 CFR section 800.6(a).

Accordingly, consistent with the Section 106 process, SGR has focused its efforts since issuance of the SDEIS on developing voluntary mitigation measures relative to the Proposed Route to address the concerns that have been raised about the fact that the Proposed Route runs through the Quihi District and to minimize the effects of its proposed action on the resources in that District. In that regard, it merits note that the Proposed Route does not traverse the portion of that District which contains the highest concentration of contributing elements,, which lies to the west of the Route.

The series of measures that SGR now offers as additional voluntary mitigation (over and above the mitigation provided by the PA) are set forth in the attached January 16, 2006 letter addressed to Mr. Larry Oaks, the Executive Director of the Texas State Historical Commission. SGR has initiated consultation on these matters with the THC, and has advised the Section 106 consulting parties of its proposed mitigation measures.

The proposed measures consist of:

- Establishment of a conservation easement on land owned by SGR or affiliated companies along the portion of the Proposed Route that traverses the Quihi Rural Historic District and the use of SGR's best efforts to encourage other landowners of properties through which the line would run in the District to establish similar easements. This would result in an easement no less than 1.3 miles long in the Quihi District. By this means, the risk of commercial development along the line in the Quihi District would be significantly reduced. In SGR's view, this offers the best chance of preserving the area's character from encroachment from the inevitable growth of the San Antonio area toward Medina County. The identification of the Quihi District as eligible for listing, in and of itself, does nothing to preserve the area, as businesses could still move into the area or residential subdivisions be developed in it. By contrast, the easement that SGR proposes would offer a substantial measure of protection against any railroad-induced development. Further, the easement that SGR proposes would vest in THC control over the ability of any entities to hook into the railroad. SGR also notes that it believes that the area in which other businesses might locate on its line is the area close to the point where the line intersects with the UP and where US 90 is located, which is outside the Quihi District.
- Adjustment of the Proposed Route to avoid any direct impacts to any historic or other cultural structures (e.g., the stone wall identified in the Landscape Study). SGR would work with a cultural resources consultant to avoid and/or minimize impacts to any property within the APE of its line and consult with the THC. SGR is prepared in this regard to move a portion of the Proposed Route in the District further to the east to traverse along a portion of Alternative 3 and also traverse parallel to a portion of a pipeline right of way already located in the District so as to ensure no direct impacts to any cultural structures.
- SGR is prepared, given the construction cost savings of not building along one of the Eastern Routes, to make a substantial donation (\$500,000) to the Texas Preservation Trust Fund, with the funds to be used for preservation, rehabilitation, restoration and like purposes within the Quihi historic area. SGR is also prepared to structure this contribution so that it could be used to leverage federal grant money or otherwise to maximize the financial benefit to the THC. Like Vulcan's support for the Schweers Historical Foundation, SGR's proposal underscores its commitment to preservation of the area and underscores too its preparedness to advance measures that will have a real and immediate benefit to historic preservation and the future maintenance of historic resources in the area.

- SGR would support any additional reasonable measures that might be proposed to help retain and preserve the historic character of the District, and would also support the listing of the Quihi District on the National Register. SGR would also take steps to reduce the already modest visual impact that its single track rail line would have as it traverses the relatively flat land in the area traversed by the Proposed Route. For example, local vegetation would be used to reduce that visual impact.

Further, none of these measures is designed to supplant the Programmatic Agreement that SGR remains prepared to execute. That Agreement contains extensive procedures for the identification of cultural resources and the development of means to minimize or otherwise avoid or mitigate impacts.

At this stage, SGR's proposed mitigation measures remain under consideration by the THC and consulting parties in the Section 106 process, each of whom has been sent a copy of SGR's written proposal. SGR looks forward to continuation of that process and to working toward an agreed resolution of this matter.³

II. The Eastern Routes

As stated above, SGR is pleased that SEA has determined that none of the alignments under consideration, except one, would result in substantial adverse environmental impacts or impacts that cannot be mitigated. With respect to the two Eastern Routes that SEA has deemed to be environmentally preferable in the SDEIS, SGR favors the Eastern Bypass due to its shorter length relative to the MCEAA Alternative. Based on available information, SGR sees no operational or cost advantages to the MCEAA Alternative over the Eastern Bypass given its longer length and a more circuitous routing. SGR's view in this regard is consistent with its view on the Proposed Route: shorter is better from both an environmental perspective and an economic perspective. Nonetheless, SGR does not take issue with SEA's determination that both the Eastern Bypass and MCEAA Alternative are environmentally acceptable (even though it does not believe for the reasons stated above that they should be deemed the only environmentally preferable routes).

³ As these Comments were being finalized, SGR received a copy of the January 19, 2006 letter from the Executive Director of the THC to SEA commenting on the SDEIS. SGR appreciates THC's position in favor of the two Eastern Routes as a means of avoiding or minimizing impacts to the Quihi District. SGR intends to continue to work with the THC and other Section 106 consulting parties to explore the cultural resources mitigation measures described here. We further note THC's interest that SEA choose a route that will result in the "least division of current agricultural lands." The Proposed Route best meets that criterion. Further, SGR is prepared to work with landowners on any alignment on which it ultimately chooses to build its line to minimize disruption to agricultural operations.

To the extent that one of SEA's two "preferable" Eastern Routes has lower environmental impacts than the other in some areas of comparison, these differences appear to be generally marginal. For example, in terms of potential impacts to hydrological resources (an issue on which line opponents have previously focused), the Eastern Bypass crosses fewer streams (8 versus 13) and has fewer floodplain crossing points (2 versus 4) and fewer aquatic features crossed (2 versus 4), while the total length of floodplain crossing is somewhat lower for the MCEAA Alternative (3996 feet versus 4557 feet). Although the Proposed Route would have marginally greater impacts to surface water and impacts to groundwater resources comparable to the Eastern Routes, SGR agrees with the broad conclusion of the SDEIS that none of the impacts of any of the alignments under consideration are dramatic or disqualifying. SGR also submits that the proposed mitigation addressed to these and other impacts, including its voluntary mitigation of hydrological impacts, is adequate to address any legitimate concerns.

SGR notes that the two Eastern Routes deemed environmentally preferable (like each of the other alternative routes) will traverse, and have some impact to, the Upper Quihi Rural Historic District ("Upper District"), as well as to certain individually eligible historic structures in that Upper District. See pages 5-13 through 5-16 and 5-35 through 5-38 of the SDEIS. In addition, both of these alignments could also have some impact to historic and pre-historic archeological resources. See 5-16 through 5-21 of the SDEIS. Thus, while SEA has found that the cultural resource impacts of the Eastern Routes are generally less than those of the Proposed Route (before the additional mitigation described above), each of the alternative routes could have some impacts. SGR concurs with SEA that the Programmatic Agreement provides appropriate mitigation for whichever of the alternative routes is ultimately constructed, including the Eastern Routes.

SGR also notes that the authors of the Landscape Study offered views on each of the alignments under consideration from a cultural resources perspective and concluded that the MCEAA Alternative would be preferable from that perspective. Unfortunately, although the authors of that Study consulted with numerous of the commenters in this proceeding, including MCEAA, they never consulted with SGR. Had they done so, SGR would have advised them, and hereby advises SEA, of its willingness to work with its own consultant and to consult with THC to avoid, minimize or mitigate to the extent reasonably possible, impacts to the historic resources within the APE. Of course, the PA, which is not mentioned or otherwise accounted for in the Landscape Study, is likewise designed to accomplish this result.

It also bears reiterating that whether a particular alignment will be built is not a decision that will be driven exclusively by the EIS or STB process, but rather a decision that necessarily will also be informed by economic considerations. In that regard, Vulcan has not at this time made a final determination with respect to the economic feasibility of either of the Eastern Routes. In the event that the two Eastern Routes identified in the SDEIS as environmentally preferable are identified in the Final EIS as the only environmentally preferable routes, Vulcan would be obligated by the higher construction and operation costs of those Routes to undertake a

Careful evaluation of whether to fund SGR's construction of a rail line on one or the other of these routes or, at least for some period of time during the initial years of quarry operation, pursue a no-build alternative, which may prove to be significantly less costly relative to the Eastern Routes. In other words, if forced to choose only among the Eastern Routes, Vulcan might decide based on a reasoned cost/benefit analysis to undertake a trucking operation of the type that has been described in detail to SEA.

Were Vulcan to decide that it would prefer a trucking alternative to the cost of the Eastern Routes as at least a short-term alternative to construction of one of those Routes, it of course would endeavor to mitigate the impacts of its trucking program to the extent reasonable. In that regard, Vulcan will continue to consult with Medina County officials over routings and road improvements that might be required. At the same time, Vulcan is hopeful that it can achieve a resolution that would allow SGR to pursue its Proposed Route with appropriate mitigation as it believes that this alignment offers a distinctly advantageous solution to the transportation needs of the quarry.

III. Mitigation

A. The Proposed New Mitigation Measures

SGR has reviewed the new mitigation measures proposed at pages 6-11 through 6-14 of the SDEIS. SGR is prepared to implement each of these proposed measures with respect to any finally approved alignment on which its rail line would be built, but offers the following comments on two of these newly proposed measures:

Mitigation Measure 5A. This mitigation measure has been offered in response to the concerns expressed by the Weiblen family, whose farm would be bisected by the Eastern Bypass. SGR is prepared to negotiate a modification of the rail line to minimize impacts to their property to the extent feasible should SGR decide to build its line along the Eastern Bypass alignment. SGR has so advised the Weiblens.

While the goal of negotiations designed to avoid or minimize impacts on homes, irrigation systems or other structures is obviously a sound one, such avoidance or minimization may not always be achievable due to geographic, cost or other constraints. Thus, to clarify that this measure is not intended to prohibit SGR from proceeding with construction even where certain impacts cannot be avoided, SGR suggests that SEA add the words ", to the extent feasible," after the word "ensure" in this measure.

Mitigation Measure 15A. This measure contemplates that SGR will use a track lubrication system for the loop track to mitigate wheel squeal as necessary. However, the use of lubricants in the vicinity of the Edwards Aquifer recharge zone may raise its own set of potential adverse impacts of such lubricants on the recharge zone. Accordingly, SGR requests that this measure be modified to provide that SGR would use such a system (if necessary) only if the Edwards Aquifer Authority is first consulted with respect to the use of such a system and does not object.

B. The Mitigation Measures Proposed in the DEIS

In its January 10, 2005 comments on the DEIS, SGR commented on several of the mitigation measures proposed there. SEA did not address any of those comments in the SDEIS, but SGR assumes that it will do so in the Final EIS. To ensure that these comments are appropriately considered by SEA, SGR hereby reiterates its prior comments, while also updating those comments in certain respects. As noted in its prior comments, SGR's points are designed, in some cases, to clarify the terms of those measures and, in others, to propose modifications that SGR believes will improve the mitigation measures in a manner consistent with SGR's understanding of SEA's intentions and the public interest. SGR stands prepared to respond to any questions or concerns raised by these comments.

Voluntary Mitigation Measure No. 3 -- SGR has voluntarily agreed to use continuously welded rail for the line of rail that it proposes to construct between the quarry and the UP line. This will reduce noise levels from train operations between the quarry plant and the southern terminus of the SGR line. However, for sake of clarification, SGR notes that it may not use continuously welded rail for the loading loop or the straight track alternative at the plant site, and did not intend that its offer of using such rail for the line extend to the loading loop or alternate straight track. Based on its consultations with HDR Engineering, a rail engineering firm with which it has consulted on these matters, SGR understands that it likely will not be practical or economical to use welded rail for this track given the tight confines of any loading loop track and the number of switches that would be located on the loop or the straight track at the plant site. Further, to the extent that such rail is designed as a noise mitigation measure, its use on the grounds of the plant facility will not serve that purpose, particularly given that trains will be moving at a very slow speed (about 5 mph) at the plant site and that SEA has now proposed additional noise mitigation measures with respect to the loop track.

Mitigation Measure No. 6 -- SGR suggests that this measure be modified to add the following language before the period: "consistent with recognized highway safety standards taking into account the level of highway traffic at the crossing." SGR recommends that this language be adopted in order to better define the term "appropriate" as used in the draft mitigation measure. In this regard, SGR recognizes that the nature of crossing protections deemed warranted will vary based on the level of highway traffic at issue. SGR will consult with responsible highway safety officials on these matters.

Mitigation Measure No. 18 -- SGR recommends that the last clause of this measure be modified as follows: "and shall remediate any soils contaminated by any diesel or gasoline release for which Southwest Gulf Railroad Company is responsible as soon as practicable." This revised language will clarify, we believe consistent with SEA's intent, that SGR is not responsible for remediating soils that are contaminated as a result of conduct unrelated to SGR's activities.

Mitigation Measure No. 24 -- This mitigation measure requires that SGR conduct a floodplain study and obtain a Medina County Floodplain permit for each floodplain crossing prior to initiating rail construction. The condition is apparently based on a conversation during the pre-DEIS consultation period between SEA's third party consultant and the Medina County Floodplain Administrator, which is described in a message set forth in Appendix C to the DEIS (at page C-39) and discussed at page 4-35 of

the DEIS. SGR proposes that the condition be revised to require that SGR: (a) conduct a floodplain study for submission to the Medina County Floodplain Administrator and (b) consult with the Medina County Floodplain Administrator to ensure that SGR's construction plans will not cause more than a 12 inch rise in the current 100-year floodplain elevation, consistent with the Floodplain Administrator's permitting standards as set forth during the pre-DEIS consultation process. SGR intends to adhere to the standards for floodplain crossing described in the communications with the Floodplain Administrator. While SGR has every confidence that it will qualify for a permit, SGR also notes that it would have a right to seek relief from the STB on preemption grounds if necessary.

Mitigation Measure No. 26 -- This measure would require that SGR minimize ground contact by "oil cleaning materials." SGR is not certain what is meant by the quoted term and thus requests that this measure be clarified, or eliminated, in the final EIS.

Mitigation Measure No. 30 -- SGR is concerned about the portion of this proposed measure that would require SGR to avoid placing fill material or structures in the ordinary high water mark of any creek channel that will be crossed. This absolute restriction could have an adverse impact on the final design of bridges, with no offsetting benefit. To the extent that a Corps permit may be needed to cross any creek channel, SGR would need to comply with the terms of any such permit prior to initiating construction, as the DEIS recognizes at pages 4-38 and 4-39. Also see proposed mitigation measure no. 25. Consistent with the terms of the DEIS, which recognize that Corps approval would be required with respect to any crossing subject to Corps jurisdiction under Section 404 of the Clean Water Act, SGR requests that this proposed measure be revised to require that SGR comply with any applicable Corps requirements in connection with the placement of fill material or structures in creeks during construction. Further, SGR intends to use best management practices in connection with the construction of the stream crossings and expects to minimize any placement of fill material and structures in the ordinary high water mark of any creek channel, consistent with its obligation to minimize impacts to wetlands as per the opening provisions of mitigation measure no. 30.

Mitigation Measure No. 32 -- Based on a May 28, 2003 letter from the Texas Parks and Wildlife Department which suggested a 4:1 slope for graded embankments without offering any explanation, SEA has proposed that graded embankments not exceed a 4:1 slope. SGR respects the views of TPW, but believes that a properly constructed road bed, with sufficient compaction of the construction material, can be built with a 2:1 slope for graded embankments without any significant danger of enhancing erosion. While SGR initially proposed a 3:1 standard in its comments on the DEIS, further review of the issue by SGR led it to determine that a 2:1 slope ratio for graded embankments would in fact be most appropriate and is in common use in the railroad industry. SGR thus used this criterion as the basis for its engineering analysis, as it relates to the earthwork and the resulting cut/fill volumes, for the Proposed Route and the other alternatives. SEA did not question this slope assumption in its verification of SGR's cut/fill analysis and in fact SEA used the same assumption in its analysis of the MCEAA Alternative. See SDEIS at C-2-3.

The proposed 4:1 embankment slope would significantly and unnecessarily increase the width of the road bed, and, ultimately, the required right-of-way. The footprint of the railroad would thus be

much greater than might otherwise be the case. In addition, SGR notes that SEA has not imposed any slope standard requirement in the mitigation measures that it adopted or recommended in two recent rail construction cases involving considerably more cut and fill work: the DM&E project and the Tongue River Railroad project. Nor did SEA impose any slope standard on another rail project it approved in the same general area of Texas: the Alamo North rail construction approved in F.D. 34002.

In view of the above, SGR recommends that this mitigation measure be revised to eliminate any prescribed slope standard and to require that SGR take reasonable measures to ensure erosion control in connection with embankments.

Mitigation Measure No. 33 -- This proposed mitigation measure is very broadly written to require SGR to avoid disturbing any natural buffers contiguous to floodplains in order to prevent soil erosion and preserve wildlife cover, food sources and travel corridors. SGR will of course endeavor to avoid any such disturbance of natural buffers, but complete avoidance may not be feasible. Thus, SGR recommends that this measure be revised to require that SGR use best practices during construction to avoid or minimize disturbance to the relevant natural buffers.

Mitigation Measure No. 41 -- SGR notes that SEA has proposed to replace this measure with Mitigation Measure 17A. SGR thus offers this comment in the event that Mitigation Measure 41 is retained. SGR notes that this mitigation measure could be read to require that SGR reroute or redesign its line following consultation to ensure well structure and pipeline integrity. SGR believes that the goals of this measure will generally be achievable with only minimal engineering changes. Thus, SGR requests that the condition be revised to eliminate the words "to the design of the rail line." Further, the comma between "well" and "structure" also should be eliminated.

Mitigation Measure No. 45 -- SGR notes that much of the work contemplated by the PA in terms of further studies of the area's cultural resources has already been done in connection with the preparation of the SDEIS. Thus, SGR believes that some modifications to the PA are appropriate at this stage, and will offer specific comments during the forthcoming consultation process contemplated by SEA. The PA would apply to any final alignment over which SGR would build its line and would not need to be adjusted if that final alignment proves to be one of the Eastern Routes.

SGR appreciates the opportunity to offer these comments and looks forward to the issuance of the Final EIS for its rail project.

Respectfully,



David H. Coburn
Attorney for Southwest Gulf Railroad

STEPTOE & JOHNSON^{LLP}

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January 16, 2007

F. Lawrence Oaks
State Historic Preservation Officer
Texas Historical Commission
1511 Colorado
Austin, TX 78711

**Re: Southwest Gulf Railroad Company, Medina County, TX
Project Review Under Section 106 of the National Historic Preservation Act of 1966**

Dear Mr. Oaks:

Thank you for meeting with me, Tom Ransdell and Clay Upchurch on January 11 to discuss the Southwest Gulf Railroad ("SGR") matter. I thought that it would be useful to reiterate in writing the terms of the proposed agreement that SGR raised for your consideration, and appropriate to copy on this letter the STB's Section of Environmental Analysis ("SEA"), Advisory Council on Historic Preservation and each of the Section 106 consulting parties for their information. SGR fully appreciates the THC's interest in supporting alignments for the SGR rail route that avoid, minimize or mitigate impacts to cultural resources, and particularly to the Quihi Rural Historic District ("District"), as it has been defined by the Rural Historic Landscape Study submitted with the Supplemental Draft EIS. In that regard, SGR understands the THC's support for the Eastern routes that are addressed in the Supplemental Draft EIS. SGR also understands that the THC will timely offer its views on those routes to the SEA.

SGR hopes, however, that the THC also will give consideration to the proposal that SGR has made for additional mitigation with respect to the Proposed Route. That proposal is designed to build on the natural advantages of the Proposed Route by mitigating its impact on cultural resources. The benefits of the Proposed Route include (1) a shorter length (essentially a straight line) and, related to that, a smaller footprint in the area than any of the Eastern routes under consideration; (2) likely fewer impacts to irrigated farmland than the Eastern alternative routes; (3) less cut and fill than any of the Eastern routes and therefore less disturbance to the area in general; (4) an alignment that traverses as much as possible along property boundaries and thus that is generally less intrusive than the Eastern alternatives to agricultural and other land uses for the property being traversed; (5) many fewer affected

properties not owned by SGR or affiliates; (6) fewer impacts to biological habitats than any of the Eastern routes and (7) lower construction costs and operating costs, as well as lower air emissions.

SGR notes that the no-action proposal -- which would contemplate a substantial volume of truck transport between the quarry site and a rail loading area that would be constructed near U.S. 90 -- also remains an option for Vulcan. In SGR's view, the economics favoring rail transportation along the Proposed Route over truck transportation are significant, but diminish meaningfully to the extent that a longer rail route such as any of the Eastern routes would be the only permitted options available. Thus, Vulcan could decide that it would have no choice but to consider truck transportation, at least for some period of time in that circumstance. In that event, routing of dozens of trucks through the District unfortunately would be unavoidable, and in SGR's view the impacts of such trucks would be much greater than the impact of two trains/day running through the area in each direction.

Of course, SGR recognizes that the Proposed Route also traverses the District. Even though it avoids the area of highest concentration of historic structures in that District (which is located in the southwest portion of the District), the Route would unavoidably have some impacts to the area. To specifically address the issues raised by that situation, and mitigate the impacts to the greatest degree possible, SGR has developed the following proposal for your consideration and the consideration of the Board's Section of Environmental Analysis:

1. SGR would offer a conservation easement on the property that it or its affiliates own in the Historic District proximate to the rail line. The easement would be designed so that THC would be in a position to control development on the property subject to the easement. The easement would be in place for a distance of at least about 1.3 miles, constituting almost half of the length of the portion of the Proposed Route traversing the District. Further, SGR would not oppose (and in fact would encourage) other landowners in the boundaries of the District from which it would need to acquire its right of way to establish similar conservation easements under which THC could exercise authority to control development within the District.

2. During the final engineering phase, SGR would adjust the alignment of the Proposed Route pursuant to a process that would be spelled out in a Programmatic Agreement to entirely avoid any direct impacts to specific contributing elements in the District, including the stone wall and any other structures identified in the Landscape Study. SGR would work closely with its own cultural resources consultant and consult with THC in doing so. In this regard, SGR is prepared to adjust the alignment of the Proposed Route so that it would follow a portion of Alternative 3 to avoid the stone wall and also traverse along a portion of a pipeline right of way already in the District.

3. By virtue of the construction cost savings that it would achieve were it able to construct the Proposed Route as opposed to any one of the Eastern alternatives, SGR would be in a position to provide a substantial contribution to the Texas Preservation Trust Fund for THC's discretionary use in supporting grants and loans designed to encourage preservation, rehabilitation, restoration or similar goals within the District. I have further discussed this contribution with my client and have been advised that the contribution would be in an amount of \$500,000. Further, SGR is prepared to work

Mr. F. Lawrence Oaks

January 16, 2007

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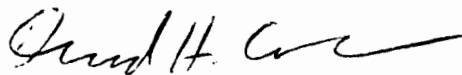
with you and your staff to structure this contribution in a manner such that the amount of the contribution might be eligible, to the extent possible, for possible matching by government funds, or otherwise might prove as beneficial as possible to the advancement of the THC's goals in the area.

4. Vulcan and SGR would support the adoption of any local historic preservation ordinance that might be designed to preserve the historic integrity of the District and the listing of the District on the National Register. SGR would also be prepared to maintain natural vegetation in the area of the Proposed Route to mask the rail line to the greatest degree possible.

In regard to this last element of the proposal and the project generally, it bears note that SGR proposes only to construct a single track line that will not be visible unless one is very close to the line. In addition, as we discussed, the proposed line will be a very light density line, with only a very small number of trains (projected at two in each direction) operating over it daily. It also bears note that SGR believes that the portion of the line that would be most attractive to other shippers and thus the portion of the line potentially most likely to see additional traffic would be at the far south end of the line, in the area proximate to U.S. 90 and the proposed connection with the Del Rio subdivision of the Union Pacific. This area is almost two miles south of the southern boundary of the District. In this area, all of the alternatives under review, including the Eastern route alternatives, follow essentially the same routing.

SGR hopes that you will give further due consideration to these proposals and trust that you will agree that if this mitigation were provided, the benefits of building the line along the proposed route could be achieved. SGR looks forward to your views and to working with you and other interested parties to achieve a mutually satisfactory result in this matter.

Respectfully,



David H. Coburn

Attorney for Southwest Gulf Railroad

cc: Ms. Victoria Rutson, SEA
Ms. Rini Ghosh, SEA
Donald Klima, ACHP
Honorable Ciro Rodriguez
Mr. Robert Hancock, Medina County Historical Commission
Mr. Jim Arterberry, Comanche Nation
Mr. Archie Gerdes
Dorla Goomby, Kiowa Tribe of Oklahoma
Robert Fitzgerald, MD, MCEAA
Holly Houghton, Mescalero Apache Tribe

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Mrs. Cynthia Lindsey, Quihi & New Fountain Historical Society
Carol Carpenter, Schweers Historical Foundation
Raymond Hernandez, Tap Pilam Tribal Council
Troy Johanntoberns, Wichita and Affiliated Tribes of Oklahoma