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RICHARD A. ALLEN

May 9, 2002

BY HAND

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington D.C. 20423

205356

**Re: Finance Docket No. 34002; Petition of Alamo North Texas Railroad
For An Exemption Under 49 U.S.C. § 10502 from the Requirements of
49 U.S.C. § 10901**

Dear Mr. Williams:

Enclosed for filing in this proceeding are an original and ten copies of Comments of
Petitioner Alamo North Texas Railroad on Environmental Assessment.

Sincerely,

A handwritten signature in cursive script that reads 'Richard A. Allen'.

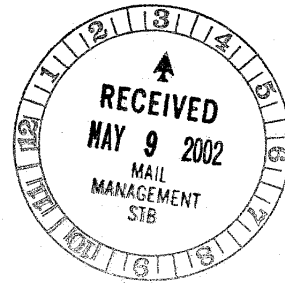
Richard A. Allen

Attorney for Alamo North Texas Railroad
Company

cc: (w/encl.) Rini Ghosh (by fax)
John Skogland, Esq.

ENTERED
Office of the Secretary
MAY - 9 2002
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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34002

ALAMO NORTH TEXAS RAILROAD, CONSTRUCTION
AND OPERATION EXEMPTION IN WISE COUNTY, TX

**COMMENTS OF PETITIONER ALAMO NORTH
TEXAS RAILROAD ON ENVIRONMENTAL ASSESSMENT**

Petitioner Alamo North Texas Railroad ("Alamo North") wishes to make only a few brief comments on the Environmental Assessment prepared by the Board's Section of Environmental Analysis and served April 12, 2002 on the rail construction and operation project involved in this proceeding. Subject to these comments, Alamo North commends the Board's staff on the very thorough analysis contained in the Environmental Assessment, and asks the Board promptly to issue a final decision making effective the exemption the Board conditionally granted in its decision served November 16, 2001, subject to appropriate environmental mitigation conditions, in order to permit Alamo North to begin construction on this much-needed project as soon as possible.

First, Alamo North fully concurs in the conclusion of the Environmental Assessment that the proposed project will "not significantly affect the quality of the human environment if the recommended mitigation measures set forth in Chapter 6 are implemented." ES-5.

Second, Alamo North requests the Board to make one change to the recommended mitigation measures, specifically to Item 8, which reads: "Alamo North shall consult with the owners of each of the pipelines along the right-of-way prior to construction to ensure appropriate construction plans for rail-pipeline crossings, and to determine what safety concerns need to be addressed." Normally, easements and other agreements pertaining to pipelines provide that the owner or lessor of the real property notify the pipeline company of any construction that might traverse the pipeline right-of-way and provide it with construction plans in advance so that the pipeline company can determine whatever effects there might be on its interests. Such agreements do not normally, and do not in this case, require the owner or lessor to "consult" with the pipeline companies or obtain their approval for constructions; nor does state or federal law. We believe that providing notification and construction plans in advance will serve the purposes of Item 8 as drafted, but we are concerned that a requirement to "consult" in order "to ensure appropriate construction plans" would establish ambiguous obligations that could lead to unnecessary disputes and provide an unwarranted basis for obstructing the project.¹ We therefore request that this item be revised to read:

Alamo North shall notify the owners of each of the pipelines along the right-of-way prior to construction and shall provide them with copies of the applicable construction plans.

Third, page 5-2 of the Environmental Assessment contains the statement: "The entire right-of-way for the proposed new rail construction would be within an existing railroad easement." This is not entirely correct. Almost the entire length of the proposed rail line will be

¹ We hasten to add that Alamo North is not aware of any opposition to this project and does not anticipate any efforts to obstruct it.

constructed on property leased to Alamo North's parent, MMM Southwest, and the lease and MMM Southwest permit the construction and operation of the proposed line. Another entity, which quarries the tract adjacent to and west of MMM Southwest's existing quarry, obtained a railroad easement some time ago, which runs adjacent to and north of Alamo North's proposed line, but has never constructed a rail line upon it. Alamo North's proposed right-of-way will not be within this other entity's right-of-way, but will be adjacent to it. Alamo North's proposed line will traverse a few hundred yards of land not owned or leased by MMM Southwest or the Union Pacific Railroad. As Alamo North advised in its petition for exemption, Alamo North intends to acquire an easement over these few hundred yards by purchase or by eminent domain, pursuant to authority granted to it by Texas law.

Respectfully submitted,



Richard A. Allen
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Attorney for
Alamo North Texas Railroad Corporation

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