

STEPTOE & JOHNSON^{LLP}
ATTORNEYS AT LAW

#E1-2907
vaw

David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

April 18, 2007

Ms. Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Mr. F. Lawrence Oaks
Executive Director
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711-2276

Ms. Charlene Dwin-Vaughn
Ms. Katry Harris
Advisory Council on Historic Preservation
1100 Pennsylvania Ave.
Washington, DC 20004

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

Dear Ms. Rutson, Mr. Oaks, Ms. Dwin-Vaughn and Ms. Harris:

This letter offers the views of the Southwest Gulf Railroad ("SGR") in response to an April 13, 2007 letter from Dr. Robert Fitzgerald on behalf of MCEAA and an April 17 letter from Raymond Hernandez on behalf of the Tap Pilam-Coahuiltecan Nation ("Tap Pilam"). At the outset, it is important to reiterate that SGR favors the Proposed Route because it is the best transportation option and because it is substantially less costly to build and maintain than the alternatives favored by these parties. It also merits note that landowners along each of the routes under consideration have expressed concern about the rail line – not just who live near the Proposed Route. SGR believes that these concerns can in all cases be addressed, but wishes to dispel the inaccurate notion that only the Proposed Route has drawn local opposition. Moreover, over 490 persons have signed petitions favoring the rail line and quarry projects proposed for Medina County.

Ms. Victoria Rutson
Mr. F. Lawrence Oaks
Ms. Charlene Dwin-Vaughn
April 18, 2007
Page 2

MCEAA's letter questions why SGR would want to traverse through the Quihi Rural Historic District "when a somewhat longer route, varying somewhat from the route used to build the Medina Dam, existed on a safer, level location, and could be utilized." MCEAA's characterization of the MCEAA Medina Dam Alternative is not accurate, except for the fact that it is longer – in fact it is over 30% longer or an extra 2.5 miles longer than the Proposed Route. MCEAA's favored route is not, as it claims, meaningfully "safer" than the Proposed Route – the Draft Supplemental EIS concludes that, "construction and operation of any of the rail line alternatives would not cause significant transportation and traffic safety impacts." DSEIS at 6-14. Second, the longer route MCEAA favors is not on a "level location" – the MCEAA Medina Dam route and any of the Eastern Alternatives would require not only that SGR build a longer rail line, but would require that the line traverse up and down an escarpment, resulting in greater cut and fill volumes than the Proposed Route, which would be located on flatter land. As MCEAA is also aware, the Eastern Routes will disrupt more landowners, crossing more than twice as many properties owned by landowners other than companies affiliated with SGR and many more private roads.

MCEAA is critical of the artist's rendering of the crossing of Quihi Creek by the Proposed Route, claiming that the sketch is somehow misleading and that SGR failed to present any data. As SGR has explained, hydrological studies have not yet been undertaken as these will need to await final engineering. The sketch was provided in response to Mr. Oaks' reasonable request at the March 26 meeting for "a sketch of the design of the bridge crossing Quihi Creek", a request reflected in the meeting minutes posted by SEA. The relocation of the road CR 365, as depicted in the sketch, does not contemplate the construction of any kind of berm, as MCEAA alleges. Nor does it contemplate the placement of fill in the floodplain, again contrary to MCEAA's unfounded allegation.

As to MCEAA's assertion about the cultural resources impacts of moving CR 365 for a short distance away from the creek, SGR submits that this relocation would only be done with the approval of the County, which has been preliminarily consulted and which has voiced no objection. To the extent that the Medina County Historical Commission or the THC have any issues with the proposed relocation, there will be ample opportunity to address these. Further, as SGR indicates in its letter, it could move the location of the stream crossing to a point where no road relocation would be required. The rendering of the bridge over Quihi Creek would look essentially the same as it does in the previously submitted sketch regardless of whether the crossing is moved or not.

Concerning the views expressed by Tap Pilam, SGR notes that the degree of difference between the various routes in terms of *potential* archeological site impacts is at best modest. On SEA's scale of 1 (highest potential) through 7, the Proposed Route was ranked as a 3 and the route favored by Tap Pilam as a 5. In other words, both rank in the middle. However, these rankings are hardly precise and not intended, according to the Draft Supplemental EIS "to depict the specific location of all archeological sensitive landforms." See Supplemental Draft EIS at 5-19. According to SEA, the more detailed geological studies needed to do that have not been done at this stage of the process. DSEIS at 5-19. Thus, SGR submits that no party should rely too heavily on archeological sensitivity as a basis for

Ms. Victoria Rutson
Mr. F. Lawrence Oaks
Ms. Charlene Dwin-Vaughn
April 18, 2007
Page 3

favoring one route or another. SEA, in fact, did not do so – it did not favor one route over another on the basis of potential archeological impacts.

It also bears note that, according to SEA's review, the route favored by Tap Pilam will in fact cross more miles of archeologically sensitive terrain than would the Proposed Route. The MCEAA Medina Dam Route that Tap Pilam favors will cross 5.8 miles of terrain classified as "archaeologically sensitive" versus only 3.15 miles of such terrain that would be crossed by the Proposed Route. See Draft SEIS at pp. 5-19 and Draft EIS, Vol. III, App. I-4 at 31. Further, the route Tap Pilam prefers would traverse near a known archeological site, the Proposed Route would not. See table on p. 6-39 of the Draft SEIS.

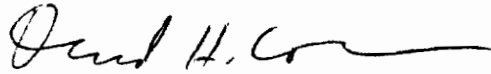
The cultural resources mitigation that SEA has recommended, regardless of which route is ultimately constructed, is the implementation of the Programmatic Agreement. That Agreement, according to SEA, includes, as appropriate, "avoidance, archaeological data recovery, monitoring, landscaping, documentation, salvage and relocation of historic properties that would suffer direct impacts." The PA also "includes provisions for consultation, tribal input, treatment of human remains, repatriation, curation of artifacts and records, dispute resolution, amendment and termination." See Draft EIS at 4-98 through 4-99. SGR stands ready to implement the provisions of the Agreement regardless of which route is ultimately chosen for construction and, of course, it also stands ready to implement the additional voluntary mitigation it has offered relative to the Proposed Route.

Finally, the fact that the Proposed Route is the shortest and the lowest in cost to build (by at least \$3 million) and to operate and maintain (by \$1.2 to \$1.7 million over a ten year period), should not be overlooked. A shorter route is almost always favored in rail line construction. It will not only offer the lowest cost and most efficient transportation option, but will have lesser land use impacts than will a longer one. It will also impact many fewer landowners. The mitigation that SGR has proposed offers a balance of these benefits of the Proposed Route against the legitimate interest expressed in protecting the Quihi Rural Historic District. Indeed, that District will have no protection absent the proposed mitigation and all of the talk about protecting its integrity will not serve to protect it from future development absent special efforts such as those SGR has proposed as part of its voluntary mitigation. Further, SGR has taken reasonable steps to prevent or dissuade businesses from locating on its line in the Quihi Rural Historic District, and with the assistance of local landowners will be able to prevent that from happening.

Ms. Victoria Rutson
Mr. F. Lawrence Oaks
Ms. Charlene Dwin-Vaughn
April 18, 2007
Page 4

We look forward to the forthcoming discussion on Friday, April 20 and to responding to any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "David H. Coburn", with a long horizontal flourish extending to the right.

David H. Coburn
Attorney for Southwest Gulf Railroad

cc: Ms. Diana Wood, SEA
Ms. Jaya Zyman Ponebshek, URS