

to become effective worldwide in 2009. To assure opportunity for public involvement in the international regulatory development process, the DOT and the NRC are soliciting proposals for changes to the IAEA Regulations at this time. This information will assist the DOT and the NRC in having a full range of views as the agencies develop the proposed changes the U.S. will submit to the IAEA.

## II. Public Participation

Proposed changes should identify the docket number (RSPA-04-16964 (Notice No. 04-3)) and if by mail proposed changes are to be submitted in two copies. Persons wishing to receive confirmation of receipt of their proposals should include a self-addressed stamped postcard. Internet users may access all proposals received by the U.S. Department of Transportation at <http://dms.dot.gov>.

Proposed changes must be submitted in writing (electronic file on disk in Microsoft Word format preferred) and are to include:

- Name;
- Address;
- Telephone no.;
- E-mail address;
- Objective of change/regulatory problem (*e.g.*, a description of the problem being addressed and its consequences);

Justification for change (*e.g.*, the proposed change maintains safety in transport, is risk-informed, and is effective and efficient (*e.g.*, does not impose an undue burden on shippers or carriers));

Paragraphs of the current regulations (TS-R-1) affected (existing text, and proposed new text); and

Modification of or additional guidance material (existing text, and proposed new text); and reference(s) and/or reference material as needed.

The DOT and the NRC will review the proposed changes and rationales. Based in part on the information received, the U.S. will propose changes to be submitted to the IAEA by July 15, 2004.

Proposals for changes from all Member States and International Organizations will be considered at an IAEA Review Panel Meeting to be convened by IAEA on September 27–October 1, 2004, in Vienna, Austria. Prior to that meeting, the DOT and the NRC anticipate holding a public meeting to solicit comment on all (including U.S.) proposed changes submitted to the IAEA.

## III. Privacy Act

Anyone is able to search the electronic form of all proposed changes

received into any of our dockets by the name of the individual submitting the proposed change (or signing the proposed change, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or may visit <http://dms.dot.gov>.

Issued in Washington, DC on May 4, 2004.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 04-10473 Filed 5-6-04; 8:45 am]

BILLING CODE 4910-60-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34499]

#### Union Pacific Railroad Company-Temporary Trackage Rights Exemption-The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail lines between BNSF milepost 6.1 near Fort Worth, TX, and BNSF milepost 218.1 near Temple, TX, a distance of approximately 129.2 miles.<sup>1</sup>

The transaction was scheduled to be consummated on April 27, 2004,<sup>2</sup> and the temporary trackage rights are intended to expire on or about May 8, 2004. The purpose of the temporary rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and, in accordance with the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Transportation Union—General Committee of Adjustment (GO-386) v. Surface Transportation Board*, No. 03-1212, 2004 U.S. App. LEXIS 6496 (D.C. Cir. Apr. 6, 2004), any employee affected by the

<sup>1</sup> The trackage rights involve BNSF track segments with non-contiguous mileposts. Therefore, total mileage does not correspond to the milepost designations of the endpoints.

<sup>2</sup> While UP indicated a proposed consummation date of April 26, 2004, consummation could not take place prior to April 27, 2004, 7 days after the filing of the notice. See 49 CFR 1180.4(g).

discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34499, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge St., Room 830, Omaha NE 68179.

Board decisions and notices are available on our Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: May 3, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 04-10440 Filed 5-6-04; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34284]

#### Southwest Gulf Railroad Company—Construction and Operation Exemption—Medina County, TX

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of availability of the final scope of study for the Environmental Impact Statement.

**SUMMARY:** On February 27, 2003, Southwest Gulf Railroad Company (SGR) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority to construct and operate a new rail line in Medina County, Texas. The proposed project would involve the construction and operation of approximately seven miles of new rail line. Because the effects of the proposed project on the quality of the human environment are likely to be highly controversial, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA issued a Notice of Intent to Prepare an EIS; Notice of Initiation of the Scoping

Process; Notice of Availability of Draft Scope of Study for the Environmental Impact Statement and Request for Comments on January 28, 2004. Comments were requested by February 26, 2004. However, comments that were received after February 26, 2004 have been accepted and considered in the Final Scope of study (Final Scope) of the EIS. Changes made to the Draft Scope of study (Draft Scope) are detailed in the Response to Comments section of this notice. The Final Scope, which is included at the end of this notice, adopts the Draft Scope and reflects any changes to the Draft Scope as a result of the comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rini Ghosh, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001, or 512-419-5941 (the project information line). Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. The Web site for the Surface Transportation Board is [www.stb.dot.gov](http://www.stb.dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background:** By petition filed on February 27, 2003, SGR sought an exemption from the Board under 49 U.S.C. 10502 from the formal application procedures of 49 U.S.C. 10901 for authority to construct and operate an approximately seven mile line of railroad in Medina County, TX. The proposed rail line would connect a proposed Vulcan Construction Materials, LP (VCM) quarry and the Del Rio subdivision of the Union Pacific Railroad Company (UP) at milepost 250, near Dunlay, Texas.<sup>1</sup> SGR would use the new rail line to transport limestone from the proposed quarry to the UP rail line, for shipment to markets in the Houston area, as well as other markets in the Southeast, Gulf Coast, and Rio Grande Valley regions of Texas. Although the primary purpose of the proposed construction is to provide rail service to the quarry site, SGR would hold itself out as a common carrier and provide service to other industries that might locate in the area in the future. In a decision served on May 19, 2003, the Board issued a decision finding that, from a transportation perspective, the proposed construction met the standards of 49 U.S.C. 10502. The Board will issue a final decision as to whether the exemption authority should be allowed to go into effect after

completion of the environmental review process.

**Environmental Review Process:** The National Environmental Policy Act (NEPA) is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. SEA is the office within the Board responsible for carrying out the Board's responsibilities under NEPA and related environmental laws, such as the National Historic Preservation Act (NHPA).

SEA has begun the environmental review of SGR's proposal by consulting with appropriate Federal, state, and local agencies, as well as SGR, and conducting technical surveys and analyses. SEA issued a Preliminary Cultural Resources Assessment report on October 10, 2003 to the then-identified consulting parties, pursuant to Section 106 of NHPA, for review and comment. The Texas Historical Commission, the consulting parties, and other individuals submitted comment letters in response to the report; many of the comments addressed environmental concerns not related to cultural resources. SEA also solicited written comments from the public during an informational Open House held in Hondo, Texas on June 12, 2003. Approximately 200 people attended the Open House and over 100 comment letters were received in response to the Open House. Based on the nature and content of the numerous public and agency comments received, SEA determined that the effects of the proposed project on the quality of the human environment are likely to be highly controversial, and that, thus, preparation of an EIS is appropriate.

The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS. SEA developed the Draft Scope, incorporating the issues and concerns raised in the comment letters SEA had then received, and issued the Draft Scope for public review and comment. SEA received approximately 100 comment letters in response to the Draft Scope. Although some of the comment letters expressed support for the proposed project, the majority of the comment letters expressed strong opposition to the proposed project and identified numerous concerns and questions. SEA has taken these comment letters into consideration in preparing the Final Scope.

SEA is currently preparing a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and

concerns identified during the scoping process. It will also contain SEA's preliminary recommendations for environmental mitigation measures. Upon its completion, the DEIS will be made available for public and agency review and comment for at least 45 days. A public meeting will also be held during the comment period for the DEIS. The details of the public meeting, including the specific format, location, and date, will be available in the DEIS. SEA will then prepare a Final EIS (FEIS) that addresses the comments on the DEIS from the public and agencies. Then, in reaching its final decision in this case, the Board will take into account the DEIS, the FEIS, and all environmental comments that are received.

**Response to Comments**

The discussion below summarizes and addresses the principal environmental concerns raised by the comments, and presents additional discussion to further clarify the Final Scope, which is included at the end of this notice.

Many of the comment letters were written on behalf of an organization or a family and many of the comment letters raised the same or similar issues. Thus, SEA has used the plural term "commenters" to refer to all persons submitting comments, including individuals.

**A. Proposed Action and Alternatives**

In the Draft Scope, SEA described the proposed action as the construction and operation of a single-track rail line to connect VCM's proposed quarry and UP's Del Rio subdivision line. SGR would use the rail line to transport limestone from the proposed quarry to the UP rail line, for shipment to markets in the Houston area, as well as other markets in the Southeast, Gulf Coast, and Rio Grande Valley regions of Texas. Although the primary purpose of the proposed rail line construction would be to provide rail service to the quarry site, SGR would hold itself out as a common carrier and provide service to other industries that might locate in the area in the future. SEA stated in the Draft Scope that the reasonable and feasible alternatives that would be evaluated in the EIS were (1) construction and operation of the proposed project along SGR's proposed alignment (including a rail loading facility, consisting of a loading loop or a series of parallel tracks, that would be constructed and operated on the quarry property and is not subject to the Board's jurisdiction), (2) three alternative routes that have been

<sup>1</sup> VCM is a subsidiary of Vulcan Materials Company (Vulcan), which is affiliated through common ownership with SGR.

developed to date, as well as other alternatives that might be identified during the scoping process, and (3) the no-action or no-build alternative (which would involve transportation of the limestone by truck from the proposed quarry to the UP rail line, instead of by rail). SEA received numerous comments requesting that the environmental review be expanded to include other actions and other alternatives, which have been summarized below.

#### Comments Regarding VCM's Proposed Quarry

- Commenters stated that VCM's proposed quarry and SGR's proposed rail line are connected actions that should be examined together in the EIS.

- Commenters requested that the EIS examine alternatives to the quarry, as well as conduct an analysis of all potential direct impacts from quarry development and operations.

- Commenters requested that the EIS include analysis of the following different phases of the quarry: Phase 1 (which is pre-rail, though it will ultimately use the rail and deliver rock to the rail from the crushing unit); Phase 2 (rail connection and first expansion of the quarry); and full build-out (quarry operations at maximum production capacity).

- Commenters stated that because development and operation of the proposed quarry would take place regardless of whether the proposed rail line were constructed and operated, the quarry and the rail line were not connected actions, and the EIS should only consider the quarry as part of the cumulative impacts analysis.

- Commenters requested that the EIS include detailed information on how the quarry will be designed, including the exact equipment to be used and all operations that will be conducted.

*Response:* SEA is continuing to gather information to determine the proper level of analysis for VCM's proposed quarry, based on established Board precedent, NEPA regulations, and court decisions, and appreciates the information that has been provided in the comment letters. Other agencies also will play a role in how the quarry is developed. The quarry would not require any Federal permits that would necessitate NEPA review; however, the quarry would require an air emissions permit from the Texas Commission on Environmental Quality (TCEQ) for stack and fugitive air pollution emissions, a water discharge permit from TCEQ for stormwater and process wastewater discharges, and be required to comply with the provisions of the Edwards Aquifer Rule at Title 30 Texas

Administrative Code Chapter 213. Operations at the quarry would also be required to comply with appropriate Federal, state, and local regulations. The DEIS will include an appropriate discussion and analysis of VCM's proposed quarry, which will be made available for public review and comment.

#### Range of Alternatives

- Commenters requested that the EIS study the rail line route that was used to facilitate the construction of the Medina Dam in the early 1900s as a possible alternative rail route.

Commenters stated that this rail line began at Dunlay, Texas, near the origin of the proposed route and Alternative 3. According to commenters, the route traversed north over level terrain and avoided the major part of Quihi Creek and its floodplain, passing near the proposed quarry site. Commenters suggested that this route could be advantageous because it would avoid the main portion of the Quihi Creek floodplain and its artesian creek beds, the floodplains of Cherry and Elm Creek, the historic areas of Quihi, the Texas Heritage Lands, and the major areas of buried artifacts. Commenters stated that the route would cross fewer roads and the crossings of FM 2676 and County Road 4516 could be located at safer points. Although the route would be longer and would involve more property owners, according to commenters, some of the property owners along the route are known to favor the quarry and would be expected to support this route. Commenters requested that the route be evaluated assuming that a grade-separated crossing would be constructed across U.S. Highway 90, and that the cost of constructing this route should be compared to the costs of constructing the proposed route.

- Commenters suggested that moving the rail line a little further in either direction or to a completely different location could cause much less damage and destruction.

- Commenters stated that the EIS should consider an alternative route that would bypass Cherry Creek, Elm Creek and the lower portion of Quihi Creek and accompanying floodplains.

- Commenters requested that the EIS include at a minimum an analysis of the following: Proposed route; Alternative 1; Alternative 2; Alternative 3; a trucking-only alternative; and a no-action alternative of no quarry, no rail line and no trucks.

- Commenters suggested that the EIS include the alternative of using trucks to transport 15 percent of the limestone

and rail to transport 85 percent of the limestone.

- Commenters expressed opposition to the trucking-only alternative, noting the possible adverse environmental effects of this alternative.

- Commenters stated that alternatives should not be excluded from further consideration because a grade-separated crossing or other mitigation could be required.

- Commenters stated that perhaps a quarry site could be found that would not impact the major regional water supply and would have a shorter distance to a rail line.

- Commenters requested that all alternatives be equally addressed and compared in the EIS and that reasonable and viable alternatives be analyzed in the same manner as the proposed action.

- Commenters questioned the financial relationship between the quarry and the mitigation or exclusion of certain alternatives.

*Response:* The Council on Environmental Quality's (CEQ) guidance and regulations for implementing NEPA set forth an agency's responsibilities for analyzing alternatives to the proposed action in the environmental review process. An agency must evaluate all reasonable alternatives and the no-action alternative, and briefly discuss reasons for eliminating any unreasonable alternatives from further consideration. 42 U.S.C. 4332(2)(C)(iii). The reasonable alternatives considered in detail, including the proposed action, should be analyzed in enough depth for reviewers to evaluate their comparative merits.<sup>2</sup> The goals of an action delimit the universe of the action's reasonable alternatives.<sup>3</sup> The objectives must not be defined so narrowly that all alternatives are effectively foreclosed, nor should they be defined so broadly that an "infinite number" of alternatives might further the goals and the project would "collapse under the weight" of the resulting EIS analysis.<sup>4</sup> An alternative that does not effectuate the project's purposes is, by definition, unreasonable, and the agency need not evaluate it in detail.<sup>5</sup>

SEA appreciates the comments received regarding possible additional alternatives to the proposed project. As required by NEPA, the DEIS will

<sup>2</sup> See 40 CFR 1502.14.

<sup>3</sup> *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1990).

<sup>4</sup> *Id.* at 196. See also *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026 (1981), Question 1.

<sup>5</sup> *Ringsred v. Dole*, 828 F.2d 1300, 1304 (8th Cir. 1987).

include appropriate analysis of all reasonable alternatives, and the no-action alternative, and discuss reasons for eliminating any unreasonable alternatives from detailed study. SEA is currently gathering information regarding the old rail route that led to the Medina Dam and will include an appropriate discussion of this alternative in the DEIS. SEA has also requested more information from SGR regarding the feasibility of the trucking-only alternative, as discussed below. SEA will assess the potential environmental impacts of this alternative, as appropriate, in the DEIS.

#### Feasibility of Truck Transportation

- Commenters questioned the feasibility of using truck transportation as an alternative to rail transportation.

*Response:* SGR has submitted information stating that if the rail line were not built, VCM would use trucks to transport the limestone from the quarry to the UP rail line. SEA has requested additional information from SGR regarding the feasibility of using trucks as an alternative to rail. SEA will discuss this issue in the DEIS.

#### B. Purpose and Need

- Commenters questioned the purpose and need for SGR's proposed rail line.
- Commenters requested that SEA obtain information regarding the financial dependence of the rail line on the quarry and the profitability of rail versus truck transport, as well as information on when the quarry may need rail transport to be profitable.
- Commenters questioned the economic feasibility of developing and operating the quarry without the rail line.

*Response:* SGR has stated that the primary purpose of rail line construction and operation would be to transport limestone from VCM's quarry to the UP rail line, for shipment to markets in the Houston area, as well as other markets in the Southeast, Gulf Coast, and Rio Grande Valley regions of Texas. SGR would also hold itself out as a common carrier and provide service to other industries that might locate in the area in the future. According to SGR, if the proposed rail line were not built, VCM would use trucks to transport the limestone to the UP rail line, which would require the construction of a remote truck-to-rail loading facility near the UP rail line, and the number of truck trips that would be required to transport the limestone would far exceed the number of train trips. As stated above, SEA has requested additional information from SGR regarding the

feasibility of using truck transportation as an alternative to rail transportation. SEA will discuss this issue in the DEIS. SEA does not believe that a detailed cost-benefit analysis of rail versus truck transport (if feasible) would be appropriate. CEQ regulations state that in an EIS "the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations."<sup>6</sup>

#### C. Transportation and Traffic Safety

##### Grade Crossings

- Commenters expressed concern about at-grade rail crossings of roadways and requested that a grade-separated crossing be built for the crossings of FM 2676 and County Road 4516, suggesting that the EIS include a study by the Texas Department of Transportation (TxDOT) regarding a grade-separated crossing of FM 2676. Commenters stated that FM 2676 and County Road 4516 are heavily traveled and County Road 4516 has been studied for state highway status; FM 2676 is the only road Quihi, Texas residents can use to reach Hondo, and FM 2676 and County Road 4516 are the only roads these residents can use to reach San Antonio. Commenters stated that County Road 4516 has curves and hills and an at-grade rail line crossing of this road would be dangerous, because of the low visibility, proximity to Cherry Creek, and the unstable condition of the roadbed.

- Commenters stated that alternative routes for the roads that would be crossed are miles out of the way.

- Commenters requested that the effects of rail operations on transportation and traffic safety be studied with projections made for the next 50 years, taking into consideration population growth patterns and the additional traffic generated by the quarry and resulting industrialization.

- Commenters expressed concern about traffic delays for emergency vehicles, school buses, and regular traffic, and requested that the EIS include a study of traffic delays and stopping distance times for trains.

- Commenters requested that the EIS study the risks of rail-related accidents both with and without grade separations.

- Commenters stated that since no accident data exists for the new crossings, the EIS cannot use the familiar Federal Railroad Administration model that it has used in the past and will need to find some

other way of conducting an analysis of risk of accidents.

- Commenters requested that the EIS use the most recent road traffic data available from TxDOT to analyze road traffic and grade crossing impacts and field verify the data to make sure that it is up to date and accurate.

- Commenters stated that SGR should have to pay for the costs of the crossings, not local taxpayers.

- Commenters requested that the EIS consider the costs of replacing grade-level crossings with grade-separated crossings, if the crossings are initially constructed at-grade and then later changed.

- Commenters stated that at-grade rail crossings would not cause traffic hazards, due to the low level of traffic on the roadways, and accidents from derailment would be unlikely.

*Response:* As stated in the Draft Scope, the DEIS will assess the potential impacts of the proposed new rail line construction and operation on the existing transportation network in the project area, including vehicular delays at grade crossings; describe the potential for train derailments or accidents from proposed rail operations; and propose mitigative measures to minimize or eliminate potential project impacts to transportation and traffic safety, as appropriate. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of transportation and traffic safety issues in the EIS. Although SEA has been in consultation with TxDOT and will provide TxDOT a copy of the DEIS for review and comment, SEA cannot require TxDOT to undertake a study of a grade-separated crossing of FM 2676.

##### Analysis of Truck Traffic

Commenters requested that the EIS examine air, noise, and traffic congestion from the trucking-only alternative, as well as traffic safety concerns and roadway maintenance.

- Commenters suggested that a divided highway be built along the rail line going directly to U.S. Highway 90, and that VCM should be required to absorb the costs of any roadway upgrades, instead of local taxpayers.

- Commenters stated that the EIS assess the impacts from the increased traffic on area roadways that would occur regardless of whether the rail line were built (truck traffic from the quarry to local markets and traffic from quarry employee cars.)

*Response:* As stated above, SEA is continuing to gather information

<sup>6</sup> 40 CFR 1502.23.

regarding the feasibility of the trucking-only alternative and the appropriate level of analysis of the quarry. SEA will assess potential impacts from the trucking-only alternative and other quarry-generated traffic, as appropriate, in the EIS.

#### Pipeline Crossings

- Commenters requested that the EIS examine impacts of the proposed rail line crossing gas and oil pipelines.

*Response:* As stated in the Draft Scope, the DEIS will describe potential pipeline safety issues at rail/pipeline crossings as appropriate, and propose mitigative measures to minimize or eliminate potential project impacts to such crossings, as appropriate.

#### Other Issues

- Commenters requested that the EIS include information on whether rail cars would be parked or pre-positioned along the rail line and whether hazardous materials would be stored along the line.

- Commenters stated that fire routes would be needed.

- Commenters requested information on whether and where rail traffic would be switched when it reaches the UP rail line.

- Commenters stated that the analysis of rail traffic must include the level of traffic that would occur at full build-out (maximum production capacity) of the quarry.

*Response:* SEA appreciates these comments and will take these requests into consideration, as appropriate, in the environmental review of transportation and traffic safety issues.

#### D. Public Health and Worker Health and Safety

- Commenters requested that the dust-related impacts of the rail line construction and operation and quarry development and operation be examined to understand how people with lung diseases would be affected.

- Commenters stated that sources of food would be contaminated by dust from trains and trucks.

- Commenters stated that workers should be careful, since hunting activities are prevalent in the area.

- Commenters stated that cement could be manufactured at the quarry in the future, which could lead to health hazards, since there is a possible link between cement factories and Creutzfeldt-Jakob disease.

- Commenters stated that appropriate safety measures would include posting warning signs for construction hazards, fencing the right-of-way of the rail line, maintaining flashing lights and barrier-

arms at grade crossings, and proper maintenance of the tracks and trains.

- Commenters requested information about possible spills of chemicals, diesel fuels, or any other hazardous materials being transported.

*Response:* As stated in the Draft Scope, the EIS will describe potential public health impacts from the proposed new rail line construction and operation, describe potential impacts to worker health and safety from the proposed new rail line construction and operation, and propose mitigative measures to minimize or eliminate potential project impacts to public health and worker health and safety, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of public health and worker health and safety impacts.

#### E. Water Resources

##### Impacts to Groundwater

- The Edwards Aquifer Authority (EAA) submitted comments requesting that Impact Category 3.a. in the Draft Scope be changed to read as follows: "Describe the existing groundwater resources within the project area, such as aquifers and springs, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line. Locate all water wells in the project area and identify the aquifer in which they are completed."

- Commenters stated that rail operations could contaminate the Edwards Aquifer and disturb natural water runoff. Commenters requested that the EIS examine the effect of the rail line on underground water supplies, including wells, the Leona Gravel aquifer and the Edwards Aquifer.

- Commenters stated that the EIS should study potential impacts from quarry development and operation to the Edwards Aquifer and compliance with the Edwards Aquifer Protection Plan.

- Commenters requested that the EIS study the present condition of the wells that are within two miles of the proposed quarry for documentation should the wells be damaged, as well as consider having an independent third party monitor wells for nitrate contamination and study VCM's policies regarding removing pollutants from wells.

- Commenters requested that the EIS include monitoring the quality and flow of all existing water wells within two miles of the quarry perimeter and that VCM install permanent water monitoring stations around the quarry for periodic testing by unbiased certified water quality testing laboratories, which would be paid for by VCM.

- Commenters questioned whether test wells should be required to detect any contamination or damage to the Edwards Aquifer or the Leona Gravel Aquifer and suggested that seismographs be installed in the area for several miles.

- Commenters requested that the EIS examine impacts to springs in the area, including the main spring that supplies water to Quihi Creek from County Road 4512.

- Commenters said that impacts to agricultural water pipelines should be examined, as well as impacts to water tanks.

- Commenters stated that dust from rail operations would pollute waterways and shallow water wells.

- Commenters requested that the EIS study impacts to water quality from quarry blasting and mining activities and impacts to water quality from chemicals used at the quarry.

- Commenters stated that the EIS should study the lowering of the water table due to quarry excavation.

- Commenters requested information regarding the exact location of the fuel storage area to determine whether it is on the Edwards Aquifer recharge zone.

*Response:* As stated in the Draft Scope, the EIS will describe the existing groundwater resources within the project area, such as aquifers and springs, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line. As indicated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of groundwater resources. SEA will also provide the EAA with a copy of the DEIS for review and comment.

#### Creek Crossings and Flooding Concerns

- Commenters stated that the area is prone to flash flooding events and residents are greatly concerned about impacts from the rail line on flooding.

- Commenters expressed concern about the type of rail crossings at creeks. Commenters indicated that crossings would be likely to create flooding

hazards and could lead to the destruction of homes, historic resources, and other facilities and establishments.

- Commenters requested that a full flood analysis be performed for all rail routes.

- Commenters stated that analysis of potential flood impacts should be an integral part of the elimination of alternatives from consideration, and such analysis should include detailed modeling. Such modeling should include a basin model (defining the watershed with all of its parameters), a design rainfall (the statistical level of rainfall over a given time span), a runoff output, a water surface elevation, and floodplain analysis. The most up-to-date methodology should be used and commenters recommended employing certain specific methodology that is currently being used throughout Texas. Reliance on Federal Emergency Management Agency (FEMA) floodplain maps would not be sufficient, since these maps have not been updated since 1980 and modeling technology would likely lead to different results.

- Commenters requested that the crossing of Quihi Creek be elevated to prevent water from being impounded, and to prevent flooding impacts to County Road 365, nearby homes and historic structures. Commenters stated that residents are trapped in their homes two or three times per year due to the flooding of Quihi Creek, and the rail crossing of the creek would increase these flooding problems.

- Commenters requested that the EIS compare the use of trestles to the use of wide span bridges with respect to flooding and other surface water issues.

- Commenters questioned how many trestle bridges SGR could afford to build.

- Commenters expressed concern that the wooden trestles, pilings, cross ties and piers to be used in the rail line construction would be treated with creosote or pressure-treated arsenic based chemicals, which would introduce toxic chemicals into the soil and water.

- Commenters expressed concern that railroad berms would cause flooding hazards.

- Commenters stated that the EIS should include all relevant flood data, including data collected by the EAA, the U.S. Army Corps of Engineers (Corps), and FEMA.

- Commenters stated that the rail line would cause increased water flow, which would lead to erosion problems.

- Commenters requested information on the conditions of roadways after flooding, and the amount of time and

money needed to restore roadways to pre-flood conditions.

- Commenters requested that the EIS conduct detailed analysis of flooding impacts from quarry development and operations and disclose where there would be alterations of and additions to runoff flows. Commenters questioned what the buffer plan would be for the streams in each quarry development phase, whether any streams would be filled at the quarry, and how drainage would be handled from the excavated areas of the quarry. Commenters requested that detailed flood modeling be done to determine the flooding impact of increased runoff entering the streams from the quarry and whether the construction of a detention pond at the quarry site to decrease peak flood flows would be a necessary or appropriate mitigation tool.

- Commenters stated that the area is generally dry and flooding in the area is rare.

*Response:* As stated in the Draft Scope, the EIS will describe the existing surface water resources within the project area, including watersheds, streams, rivers, and creeks, and the potential impacts on these resources resulting from construction and operation of the proposed rail line; describe the existing regulatory requirements that exist to protect stream and river crossings (including floodplains) in the event the proposed line is constructed and operated, water quality, and erosion control; and propose mitigative measures to minimize or eliminate potential project impacts to water resources, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of surface water resources (including creek crossings and flooding concerns). SEA has consulted with EAA, the Corps, and FEMA and will provide these agencies a copy of the DEIS for review and comment.

Wetlands and U.S. Army Corps of Engineers' Permits

- The Corps stated that a Corps permit pursuant to Section 404 of the Clean Water Act could be required for the proposed rail line construction. The Corps provided specific information regarding permitting requirements and procedures, and requested that impacts to streams, wetlands, and other waters of the United States be minimized.

- Commenters stated that the EIS should include a map of both jurisdictional and nonjurisdictional wetlands in the area of each alternative and indicate the volume and area of and map the stream fills necessary for bridge construction. Commenters suggested that the entire wetlands delineation be included as an appendix to the EIS.

*Response:* The location and nature of the creek crossings will determine whether a Section 404 Corps permit would be required. Thus, a determination by the Corps regarding permitting requirements would likely be made after completion of the environmental review process and only if the Board's final decision approves SGR's proposal to construct and operate the rail line along a route where the Section 404 permitting requirements would be triggered. However, SEA will provide the Corps a copy of the DEIS for review and comment.

As stated in the Draft Scope, the EIS will describe existing wetlands in the project area and potential impacts on these resources resulting from construction and operation of the proposed new rail line; describe the permitting requirements that are appropriate for the proposed new rail line construction and operation regarding wetlands, stream and river crossings (including floodplains), water quality, and erosion control; and propose mitigative measures to minimize or eliminate potential project impacts to water resources, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the comments received and will take them into consideration, as appropriate, in the environmental review of wetlands and other water resources.

#### F. Biological Resources

- The U.S. Fish and Wildlife Service (FWS) submitted comments stating that the proposed rail line may impact two endangered species, the golden-cheeked warbler (*Dendroica chrysoparia*) and the black-capped vireo (*Vireo atricapillus*). FWS requested information including habitat assessment and survey results to determine the presence of these species in the rail loading area on the proposed quarry site.

- Commenters expressed concern about impacts to cattle and wildlife. Commenters expressed concern about impacts to songbirds that nest in the area. Commenters stated the rail line would destroy blue bonnets, wine cups, agaritas, and cactus, and affect rabbits, racoons, squirrels, quail, doves, deer, bass, floridas, shad, and catfish.

- Commenters requested that the EIS include a detailed assessment of the actual types of plants and animals that are present in the project area, based on field surveys that focus on streambeds, riparian areas, and bridge construction areas.

- Commenters stated that the EIS should study how the rail line would change water flow patterns and impact fish, birds, bobcats, deer, crayfish, and other animals that depend on streams in the area.

- Commenters stated that SEA should undertake a Biological Assessment (BA) of both the quarry and the rail line, pursuant to the requirements of Section 7 of the Endangered Species Act (ESA), and that the phased approach that Vulcan has developed to conduct field surveys of the quarry area violates the ESA.

- Commenters stated that SEA does not need to undertake a BA of the quarry.

- Commenters stated that three years of focused counting of endangered species along the rail line alternatives be conducted to prepare a sufficient BA. The BA should be included in the EIS for public review and comment.

- Commenters requested that the EIS study the migration of birds to and from Mexico and how the quarry and the rail line would comply with the Migratory Bird Treaty Act.

- Commenters requested that the EIS study impacts to nocturnal animals from the quarry operations.

- Commenters requested that the EIS study impacts from the quarry to bats, wild turkeys, and sources of food.

*Response:* SEA has consulted with FWS regarding its recommendations and the provisions of the ESA, and FWS has indicated that if the EIS includes the information specified at 50 CFR 402.12(f), a separate BA need not be prepared. SEA will ensure that the appropriate information is included in the DEIS for FWS' review and comment and review and comment by the public. As stated in the Draft Scope, the EIS will describe existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and the Federal and state threatened or endangered species, and the potential impacts to these resources resulting from the proposed new rail line construction and operation, and propose mitigative measures to minimize or eliminate potential project impacts to biological resources, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions

and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of biological resources.

#### G. Air Quality Impacts

- Commenters expressed concern about air pollution from rail operations.

- Commenters stated that transporting the limestone by rail would affect air quality less than transporting the limestone by trucks.

- Commenters suggested that the EIS assess air quality impacts from the quarry development and operation and the rail line construction and operation by modeling Particulate Matter 10 and Particulate Matter 2.5 and determining how far from the quarry site and rail line any impacts would occur. The EIS should also include calculations of the atmospheric particle formation that may occur from reactions with volatile organic compounds from the quarry development and operation and the rail line construction and operation. The information should be presented graphically and all assumptions used in the model should be disclosed. The EIS should also include an analysis of particulate emissions from uncovered rail cars.

- Commenters requested that VCM be required to provide dust abatement equipment at each dust emitting location and a minimum of eight air quality monitoring stations be installed around the proposed quarry perimeter for continuous air monitoring for a three year period prior to operating the quarry.

- Commenters requested that one air quality monitoring station be installed for each mile of rail line for continuous air monitoring for a three year period prior to operating the quarry.

- Commenters requested that the EIS study impacts on machinery from quarry-generated dust.

*Response:* As stated in the draft scope, the EIS will describe potential air quality impacts resulting from the proposed new rail line construction and operation and propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of air quality impacts.

#### H. Geology and Soils

- Commenters requested that the EIS conduct a survey of geologic and soil features in the area and consult with agencies with jurisdiction over the Edwards Aquifer to obtain an inventory of these features; the inventory should be presented in map form in the EIS.

- Commenters requested that the EIS include an evaluation of karst topography in the area as well as an analysis of construction and operation impacts to geology and soils. The EIS should be provided to agencies with jurisdiction over the Edwards Aquifer for review and concurrence.

- Commenters requested that the geologic impacts of water withdrawal from the quarry be examined.

- Commenters requested information on the depth of mining activities at the quarry in relation to the depth of the Edwards Aquifer.

- Commenters said the EIS should study the loss of top soil due to the rail line crossing creeks and flood zones.

- Commenters stated that soil erosion could be prevented by planting native grasses and shrubs.

*Response:* As stated in the Draft Scope, the EIS will describe the native soils and geology of the proposed project area; describe the existing karst features of the project area, if any, and the potential impacts to karst features from the proposed new rail line construction and operation; and propose mitigative measures to minimize or eliminate potential project impacts on soils and geology and to karst features, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of geology and soils. SEA has consulted with and received comments from the EAA and will provide the EAA with a copy of the DEIS for review and comment.

#### I. Land Use

- Commenters expressed concern that the rail line would divide private property and ranches, including ranches that have been recognized as Texas Family Land Heritage properties, and adversely affect the operation of these ranches.

- Commenters stated that the rail line would divide farmland and destroy established soil erosion control systems, as well as divide hay fields and cattle pastures.

- Commenters suggested that SEA contact all of the landowners along each

rail route to determine where ranching, agriculture and hunting activities currently occur, where residences are located, and the distance of the residences from the rail line alternatives and quarry site. Each category of land use should be analyzed separately.

- Commenters questioned the use of condemnation authority or eminent domain to acquire land for the rail line and asked why Medina County should be required to support a project that is designed to meet the needs of distant places.

- Commenters requested information regarding impacts to vegetable farms.

- Commenters requested that the EIS study how weeds and vegetation would be controlled along railroad tracks and assess the use of pesticides.

- Commenters requested that the EIS consider how to prevent and control flash fires along the rail line during times of dry vegetation.

- Commenters requested that the EIS include a study of what will happen to the land on the quarry site after it has been mined.

- Commenters requested that the EIS study the destruction of homesteads from the quarry.

*Response:* As stated in the Draft Scope, the EIS will describe existing land use patterns within the project area and identify those land uses that would be potentially impacted by the proposed new rail line construction and operation; describe the potential impacts associated with the proposed new rail line construction and operation to land uses identified within the project area; and propose mitigative measures to minimize or eliminate potential project impacts to land use, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of land use impacts.

#### J. Environmental Justice

- Commenters questioned the need for an environmental justice study and requested that the EIS consider the concerns of the majority of residents in the area.

- Commenters requested that a detailed environmental justice analysis be conducted for each alternative. According to commenters, Census 2000 data indicates that Medina County is 45.5 percent Hispanic.

*Response:* Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations," sets forth

recommendations to Federal agencies for conducting environmental justice analyses. As stated in the Draft Scope, the EIS will describe the demographics of the communities potentially impacted by the construction and operation of the proposed new rail line; evaluate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income group; and propose mitigative measures to minimize or eliminate potential project impacts on environmental justice communities of concern, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the comments and will take these comments into consideration, as appropriate, in the environmental review of environmental justice issues.

#### K. Noise

- Commenters expressed concern about noise pollution from rail operations, particularly train whistles at crossings.

- Commenters requested that the EIS study the noise impacts of the rail interchange of the SGR rail line and the UP rail line at Dunlay, Texas.

- Commenters expressed concern about noise impacts to wildlife and cattle, as well as noise impacts to local churches.

- Commenters suggested that the following methodology be used for noise analysis: apply the nighttime weighting penalty if operations will occur at night; take background measurements on land crossed by rail alternatives and outside of the "buffer area" properties; locate all noise receptors; do computer modeling of noise from both the quarry and the rail line, accounting for all sources of rail construction, all sources of quarry construction and excavation, and all sources of noise at the quarry; disclose the results of the modeling as the cumulative noise impact, presenting all results graphically in the EIS and disclosing all modeling assumptions in the EIS; and discuss the rationale behind all mitigation measures or lack of mitigation measures.

- Commenters recommended that SGR be required to use the newly developed "Quiet Tracks" to reduce noise from train operations.

- Commenters requested that noise monitoring stations be installed around the proposed quarry perimeter for continuous monitoring for a three year

period prior to operating the quarry or rail line.

- Commenters suggested that trucks should use noiseless "solar like" technology for signaling when they are moving and loading materials.

- Commenters stated that train operations would not affect schools, churches, parks or hospitals.

*Response:* As stated in the Draft Scope, the EIS will describe the existing noise environment of the project area and potential noise impacts from the proposed new rail line construction and operation, and propose mitigative measures to minimize or eliminate potential project impacts to noise receptors, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of noise impacts.

#### L. Vibration

- Commenters requested that the EIS assess vibration impacts from train operations to wells, pipelines, water lines, springs, and old homes, as well as vibration impacts to sleep patterns and the gates at Medina Lake. Commenters requested that vibration impacts to the Medina Lake canals be studied.

- Commenters requested information about whether full trains or empty trains cause more vibrations, how far out vibration impacts would travel and whether vibrations would increase with added rail cars.

- Commenters expressed concern about vibration impacts to wildlife.

- Commenters requested that the EIS study vibration impacts from quarry blasting activities to nearby wells, septic tanks, open tanks of water for livestock, the Medina Dam (fault lines run from the quarry site to the dam), and historic structures.

*Response:* As stated in the Draft Scope, the EIS will describe the potential vibration impacts from the proposed new rail line construction and operation and propose mitigative measures to minimize or eliminate potential project impacts from vibration, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of vibration impacts.

### M. Recreation and Visual Resources

- Commenters requested that the EIS study impacts to the aesthetics of cultural resources.

- Commenters requested that the EIS study impacts to aesthetics from additional industry that may locate along the rail line and impacts to aesthetics from the quarry development and operation.

- Commenters stated that visitors desiring a nice drive in the county would be adversely impacted.

- Commenters stated that County Road 365 was originally the Upper Quihi Road and connected the homes of early Quihi settlers. A train crossing over County Road 365 would divide this historic district and would adversely affect the aesthetics of the area.

- Commenters stated that the quarry and the proposed rail line would affect stargazing activities. In particular, train operations over Alternative 1 would impact the activities of Trinity University Astronomy and Physics students.

- Commenters stated that quarry activities would cause light pollution.

- Commenters stated that the Quihi dance hall would be adversely affected, as well as fishing, swimming, family gatherings and hunting activities.

*Response:* As stated in the Draft Scope, the EIS will describe existing recreation and visual resources in the proposed project area and potential impacts to recreation and visual resources from construction and operation of the proposed new rail line, and propose mitigative measures to minimize or eliminate potential project impacts to recreation and visual resources, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of recreation and visual resources.

### N. Cultural Resources

- Commenters expressed interest in preserving cultural resources in the area and stated that numerous historic homes would be near the proposed rail line.

- Commenters requested that the areas of potential effect be defined for both rail construction and rail operation and impacts to cultural resources be thoroughly assessed, including flooding hazards, vibration from bridge construction, noise impacts, and aesthetic impacts.

- Commenters suggested that the option of creating buffer zones by the purchase of additional lands be explored.

- Commenters stated that County Road 4516 is a historic road and impacts to this road from a rail line crossing must be studied.

- Commenters requested that the EIS identify and document all the cultural, historic, and prehistoric sites in the area, as well as make recommendations to protect and preserve any sites that may be impacted by the rail line or the quarry.

- Commenters stated that approximately 60 historic homes and sites are in the area, and expressed concern about flooding impacts to these homes as well as impacts from blasting at the quarry.

- Commenters said the area may be eligible to become a Federal Historic District and stressed the importance of the preservation of the cultural resources of the area, including archeological sites.

- Commenters stated that two prehistoric tribal sites are in the area and more such sites could exist in the area as well.

- Commenters stated that the Schuele-Saathoff home that is listed on the National Register of Historic Places and is also a Texas State Historical Landmark would be impacted by train vibrations.

- Commenters stated that the proposed route would destroy portions of an old rock wall and the remaining wall would then be damaged by train vibrations.

- Commenters expressed concern that historic structures and homes would be adversely impacted by long term, low frequency ground vibration from rail operations.

- Commenters stated that First Lady Laura Bush recently recognized the Castroville, Texas area as a rich historical area.

- Commenters stated that cultural resources must be studied in detail by archeologists and historians who should conduct surface surveys, examine test excavations, and work with a geomorphologist, due to the unusual drainage of Quihi Creek.

- Commenters stated that two state archeological sites have the potential to be impacted by Alternative 3.

*Response:* As stated in the Draft Scope, the EIS will describe the cultural resources environment in the area of the proposed project and potential impacts to cultural resources from the proposed new rail line construction and operation; describe the ongoing NHPA Section 106 process for the proposed

project; and propose mitigative measures to minimize or eliminate potential project impacts to cultural resources, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA is also developing a Draft Programmatic Agreement (PA), pursuant to 36 CFR 800.14(b), to govern part of the Section 106 process. Moreover, SEA has identified several tribes that may have interests in the project area and is formally inviting them to participate in the environmental review process and become official Section 106 consulting parties. The Draft PA will be made available for Section 106 consulting party and public review and comment in draft form as part of the DEIS. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of cultural resources.

### O. Socioeconomics

- Commenters expressed concern about impacts from the quarry and the rail line to property values, impacts to hunting activities, and impacts to planned subdivisions.

- Commenters stated that there would be impacts to businesses that need quiet, rural settings to operate, such as sheep and goat embryo transplants.

- Commenters stated that the EIS should provide specific information regarding tax revenues, jobs and economics. This information should include whether any equipment would be owned or leased, whether any equipment would be subcontracted, and how the quarry and the rail would be taxed.

- Commenters requested that the EIS examine long term development impacts. According to commenters, the proposed rail line would physically divide Medina County and would directly influence the long-term growth of the county.

- Commenters requested that the EIS examine how residents would be protected or compensated for loss of health, quality of life, and livelihood from proposed quarry operations, and suggested that the EIS assess the costs from quarry operations to residents.

- Commenters requested that impacts to the Medina Oaks subdivision and Rocky Creek subdivision be studied.

- Commenters suggested that a fund be created to settle claims of loss due to quarry operations and a procedure be devised to adjudicate claims of loss due to quarry operations.

- Commenters expressed support for the economic development that would result from the quarry and the rail line, and stated that schools would benefit from the tax revenue generated by the quarry.

- Commenters stated that the quarry would bring more jobs to the county.

- Commenters stated that the rail line would increase property values because the availability of commercial transportation would make agricultural land more marketable.

*Response:* As stated in the Draft Scope, the EIS will describe the demographic characteristics of the project area and the current sources of income; describe the potential environmental impacts to employment and the local economy as a result of the proposed new rail line construction and operation; and propose mitigative measures to minimize or eliminate potential project adverse impacts to socioeconomic resources, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of socioeconomic impacts.

#### *P. Cumulative and Indirect Impacts*

- Commenters requested that the EIS include a study of the cumulative effects of new industries that could be brought into the area by the quarry and the rail line, with a full cost/benefit study.

- Commenters requested that SEA's analysis of cumulative effects be conducted in the following manner: first identify the types of resources that could experience cumulative environmental impacts; then, for each resource, conduct an analysis of the additive effects of past, present, and reasonably foreseeable future actions to the no-action alternative (no quarry and no rail line) and to all possible combinations of action alternatives for the rail line and the quarry by adding their direct effects (using full build-out levels (maximum production capacity) of quarry and rail line operations).

- Commenters stated that presenting the cumulative impacts analysis in a matrix or table format would not be sufficient.

- Commenters stated that cumulative flood impacts may be significant and should be evaluated in as detailed a manner as direct flood impacts.

- Commenters stated that the cumulative vibration impacts from blasting at the quarry and train operations should be assessed.

- Commenters suggested that the EIS include a study of cumulative noise impacts from the following sources: rail shipments from expanded quarrying; added common carrier customers; and population expansion. The study should take into consideration winter north winds, prevailing southeast winds and temperature changes. Specific sources of noise include explosions from quarry operations, whistles, bells, warning signals, quarry loaders, trucks, conveyors, and crushers.

- Commenters requested that the cumulative impacts of industrialization along the rail line be studied and assessed for all categories of land use, including residential, hunting, ranching, and agriculture, as well as the combined impacts from the quarry and rail line on all land use categories. Commenters requested that the EIS make a determination of whether there would be a cumulatively negative effect to land values, and indicate precisely where any negative impacts would occur.

- Commenters requested that downstream air quality impacts of transporting limestone to distant cities be taken into consideration, particularly impacts to the Houston area, which has a nonattainment plan provision for railroads.

- Commenters requested that the EIS include a study of the capacity of UP rail lines to transport limestone into the already crowded rail traffic in the Houston/Galveston area.

- Commenters requested information on the final destination of the trains carrying the aggregate (rail yard or transloading facility or other). Commenters also requested that the EIS assess the road traffic impacts of the increased rail traffic in Houston, when combined with other reasonably foreseeable future actions.

- Commenters expressed concern over possible future uses of the rail line by other types of industries, such as chemical plants.

- Commenters stated that SEA should not undertake an analysis of the impacts on the national rail system resulting from traffic originating on SGR's rail line, since such analysis would be speculative and require guesswork.

*Response:* Cumulative impacts are the impacts on the environment which result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions. 40 CFR 1508.7. In the Draft Scope, SEA stated that the EIS will address any identified potential cumulative impacts of the proposed new rail line construction and

operation, as appropriate. As stated above, SEA is continuing to gather information to determine the appropriate level of analysis of the quarry, which, at a minimum, will be addressed as a cumulative impact. SEA appreciates the suggestions and concerns raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of cumulative impacts.

Indirect impacts are impacts that are caused by the proposed action and are later in time or farther removed in distance, but are still reasonably foreseeable. 40 CFR 1508.8(b). In the Draft Scope, SEA stated that the EIS will address any identified potential indirect impacts of the proposed new rail line construction and operation, as appropriate. SEA appreciates the suggestions and concerns regarding potential indirect effects raised in the comment letters and will take these comments into consideration, as appropriate, in the environmental review of indirect impacts.

#### *Q. Other Issues*

##### Public Involvement

- Commenters stated that a meeting or a canvas of the area should be held to better accumulate public concerns.

- Commenters requested that the public be allowed to review and comment on the DEIS for a period of 60 days.

- Commenters requested that a public hearing with oral testimony be held no sooner than 45 days after the issuance of the DEIS. Commenters stated that the public hearing not be held between Thanksgiving and Christmas or on the Our Lady of Guadalupe feast day. Commenters suggested holding the hearing on a Monday or Tuesday with an afternoon and evening session so that there would be no need for pre-registration. Commenters suggested holding the public hearing at the Bethany Lutheran Church Hall in Quihi, Texas or in a location in Hondo, Texas.

- Commenters stated that written communication is not adequate.

*Response:* SEA believes that the public has been provided with adequate opportunity to participate in the scoping process. SEA conducted an Open House in Hondo, Texas on June 12, 2003, and received over 100 comment letters in response to the Open House. SEA also received additional comment letters from the public regarding specific areas of concern. Based on the nature and extent of the numerous comment letters received, SEA determined that the effects of the proposed project on the

quality of the human environment are likely to be highly controversial, and that, thus, preparation of an EIS is appropriate. SEA then issued a Notice of Intent to Prepare an EIS (NOI) and Draft Scope for public review and comment.

SEA mailed the NOI and Draft Scope to over 200 parties, including Federal, state, and local agencies, tribes, elected officials, local organizations, and interested members of the public. The NOI described the EIS process and opportunities for public involvement. The Draft Scope incorporated the issues and concerns raised in the comment letters SEA had received thus far. SEA has received approximately 100 comment letters in response to the Draft Scope, which raise specific issues and concerns, as discussed in this notice.

SEA is currently preparing a DEIS for the project. The DEIS will address those environmental issues and concerns identified during the scoping process. It will also contain SEA's preliminary recommendations for environmental mitigation measures. Upon its completion, the DEIS will be made available for public and agency review and comment for at least 45 days. A public meeting will also be held during the comment period for the DEIS. The details of the public meeting, including the specific format, location, and date, will be available in the DEIS. SEA will then prepare a Final EIS (FEIS) that addresses the comments on the DEIS from the public and agencies. Then, in reaching its final decision in this case deciding whether to allow the exemption to become effective, the Board will take into account the DEIS, the FEIS, and all environmental comments that are received. In short, throughout the Board's process, there has and will continue to be ample opportunity for public participation and public comment.

#### Maps

- Commenters stated that detailed maps are needed for all potential rail routes.
- Commenters requested that the exact location of the proposed rail route and alternatives be released to the public at this time in Geographic Information System format.
- Commenters requested that the potential rail routes be staked and flagged in the field to assist public review of the routes.

*Response:* SEA appreciates the suggestions of the commenters and will take these comments into consideration, as appropriate, when preparing maps of the proposed project area. Appropriate maps will be included in the DEIS for public review and comment. SEA

believes that requesting private landowners to maintain stakes and flags of the various rail routes on their properties would be unduly burdensome for these landowners and is not necessary for the environmental review process.

#### Other

- Commenters requested that the DEIS clearly present all methodology used to reach conclusions.
- Commenters stated that information should not be hidden from the administrative record and decisions regarding matters of agency discretion should be referenced and documented in the DEIS.
- Commenters stated that no analysis or information should appear in the FEIS that the public has not had a chance to comment on in a DEIS or a Supplemental EIS.

*Response:* SEA will ensure that all appropriate information for this proceeding is made available to the public, either as part of the EIS or separately as part of the administrative record. Environmental correspondence and other documents regarding this proceeding are already (and will continue to be) publicly available on the Board's Web site at [www.stb.dot.gov](http://www.stb.dot.gov). The EIS also will be available on the Board's Web site.

#### Final Scope of Study for the EIS: Proposed Action and Alternatives

The proposed project would involve the construction and operation of a single-track rail line to connect VCM's proposed quarry and UP's Del Rio subdivision line. The proposed rail line would extend about seven miles from the quarry site to approximately milepost 250 of the UP line, at a point near Dunlay, Texas. SGR would use the new rail line to transport limestone from the proposed quarry to the UP rail line, for shipment to markets in the Houston area, as well as other markets in the Southeast, Gulf Coast, and Rio Grande Valley regions of Texas. Although the primary purpose of the proposed construction is to provide rail service to the quarry site, SGR would hold itself out as a common carrier and provide service to other industries that might locate in the area in the future. SEA is continuing to gather information to determine the appropriate level of analysis of the quarry.

The alternatives that will be evaluated in detail in the EIS are (1) construction and operation of the proposed project along SGR's proposed alignment (including a rail loading facility, consisting of a loading loop or a series of parallel tracks, that would be

constructed and operated on the quarry property and is not subject to the Board's jurisdiction), (2) three alternative rail routes, and (3) the no-action alternative. Other alternatives that may be evaluated in detail in the EIS, if SEA determines that they are reasonable and feasible, are (1) the old rail route leading to the Medina Dam, (2) the trucking-only alternative, and (3) any other alternatives SEA may identify in its appropriate analysis of the quarry. Depending on the appropriate level of analysis of the quarry, the no-action alternative may include the analysis of transportation of the limestone by truck from the proposed quarry to the UP rail line (if feasible).

#### Environmental Impact Analysis

##### *Proposed New Construction*

Analysis in the EIS will address the proposed activities associated with the construction and operation of the proposed new rail line and their potential environmental impacts, as appropriate. Because SEA has not yet determined the appropriate level of analysis of the quarry, SEA will not discuss the specifics of the environmental review of the quarry development and operation in this document. However, the EIS will include an appropriate discussion of the quarry.

##### *Impact Categories*

The EIS will address potential impacts from the proposed construction and operation of the new rail line on the human and natural environment. Impact areas addressed will include the effects of the proposal on transportation and traffic safety, public health and worker health and safety, water resources, biological resources, air quality, geology and soils (including any karst features), land use, environmental justice, noise, vibration, recreation and visual resources, cultural resources and socioeconomics. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts from the proposed project on each category, as described below:

##### 1. Transportation and Traffic Safety

The EIS will:

- Describe the potential impacts of the proposed new rail line construction and operation on the existing transportation network in the project area, including vehicular delays at grade crossings.

- Describe the potential for train derailments or accidents from proposed rail operations.

c. Describe potential pipeline safety issues at rail/pipeline crossings, as appropriate.

d. Propose mitigative measures to minimize or eliminate potential project impacts to transportation and traffic safety, as appropriate.

## 2. Public Health and Worker Health and Safety

The EIS will:

a. Describe potential public health impacts from the proposed new rail line construction and operation.

b. Describe potential impacts to worker health and safety from the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project impacts to public health and worker health and safety, as appropriate.

## 3. Water Resources

The EIS will:

a. Describe the existing groundwater resources within the project area, such as aquifers and springs, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

b. Describe the existing surface water resources within the project area, including watersheds, streams, rivers, and creeks, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

c. Describe existing wetlands in the project area and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

d. Describe the permitting requirements that are appropriate for the proposed new rail line construction and operation regarding wetlands, stream and river crossings (including floodplains), water quality, and erosion control.

e. Propose mitigative measures to minimize or eliminate potential project impacts to water resources, as appropriate.

## 4. Biological Resources

The EIS will:

a. Describe the existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and Federal and state threatened or endangered species and the potential impacts to these resources resulting from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to biological resources, as appropriate.

## 5. Air Quality Impacts

The EIS will:

a. Describe the potential air quality impacts resulting from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate.

## 6. Geology and Soils

The EIS will:

a. Describe the native soils and geology of the proposed project area.

b. Describe the existing karst features of the project area, if any, and the potential impacts to karst features from the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project impacts on soils and geology and to karst features, as appropriate.

## 7. Land Use

The EIS will:

a. Describe existing land use patterns within the project area and identify those land uses that would be potentially impacted by the proposed new rail line construction and operation.

b. Describe the potential impacts associated with the proposed new rail line construction and operation to land uses identified within the project area.

c. Propose mitigative measures to minimize or eliminate potential project impacts to land use, as appropriate.

## 8. Environmental Justice

The EIS will:

a. Describe the demographics of the communities potentially impacted by the construction and operation of the proposed new rail line.

b. Evaluate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income group.

c. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice communities of concern, as appropriate.

## 9. Noise

The EIS will:

a. Describe the existing noise environment of the project area and potential noise impacts from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to noise receptors, as appropriate.

## 10. Vibration

The EIS will:

a. Describe the potential vibration impacts from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts from vibration, as appropriate.

## 11. Recreation and Visual Resources

The EIS will:

a. Describe existing recreation and visual resources in the proposed project area and potential impacts to recreation and visual resources from construction and operation of the proposed new rail line.

b. Propose mitigative measures to minimize or eliminate potential project impacts to recreation and visual resources, as appropriate.

## 12. Cultural Resources

The EIS will:

a. Describe the cultural resources environment in the area of the proposed project and potential impacts to cultural resources from the proposed new rail line construction and operation.

b. Describe the ongoing NHPA section 106 process for the proposed project, and propose mitigative measures to minimize or eliminate potential project impacts to cultural resources, as appropriate.

## 13. Socioeconomics

The EIS will:

a. Describe the demographic characteristics of the project area and the current sources of income.

b. Describe the potential environmental impacts to employment and the local economy as a result of the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project adverse impacts to socioeconomic resources, as appropriate.

## 14. Cumulative and Indirect Impacts

The EIS will:

a. Address any identified potential cumulative impacts of the proposed new rail line construction and operation, as appropriate. Cumulative impacts are the impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions.

b. Address any identified potential indirect impacts of the proposed new rail line construction and operation, as appropriate. Indirect impacts are impacts that are caused by the action and are later in time or farther removed

in distance, but are still reasonably foreseeable.

Decided: April 30, 2004.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 04-10441 Filed 5-6-04; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 28, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 7, 2004 to be assured of consideration.

#### Internal Revenue Service (IRS)

*OMB Number:* 1545-0042.

*Form Number:* IRS Form 970.

*Type of Review:* Extension.

*Title:* Application to Use LIFO Inventory Method.

*Description:* Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the LIFO inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

*Respondents:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 3,000.

*Estimated Burden Hours Respondent/Recordkeeper:*

Recordkeeping—7 hr., 53 min.

Learning about the law or the form—2 hr., 52 min.

Preparing and sending the form to the IRS—3 hr., 8 min.

*Frequency of response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 41,730 hours.

*OMB Number:* 1545-1070.

*Regulation Project Numbers:* TD 8223 Temporary, TD 8432 Final and Temporary, and TD 8657 Final and Temporary.

*Type of Review:* Extension.

*Title:*

TD 8223: Branch Tax;

TD 8432: Branch Profits Tax; and

TD 8657: Regulations on Effectively Connected Income and the Branch Profits Tax.

*Description:* The regulations explain how to comply with section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch, and which subject's interest paid by the branch, and certain interest deducted by the foreign corporation to tax.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 28,500.

*Estimated Burden Hours Respondent/Recordkeeper:* 27 minutes.

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 12,694 hours.

*OMB Number:* 1545-1212.

*Form Number:* IRS Form 706-QDT.

*Type of Review:* Extension.

*Title:* U.S. Estate Tax Return for Qualified Domestic Trusts.

*Description:* Form 706-QDT is used by the trustee or the designated filer to compute and report the Federal estate tax imposed on qualified domestic trusts by Internal Revenue Code (IRC) section 2056A. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

*Respondents:* Individuals or households, business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 80.

*Estimated Burden Hours Respondent/Recordkeeper:*

Recordkeeping—1 hr., 12 min.

Learning about the law or the form—42 min.

Preparing the form—1 hr., 30 min.

Copying, assembling, and sending the form to the IRS—1 hr., 3 min.

*Frequency of response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 357 hours.

*Clearance Officer:* Glenn P. Kirkland (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

Treasury PRA Clearance Officer.

[FR Doc. 04-10412 Filed 5-6-04; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 27, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 7, 2004 to be assured of consideration.

#### Internal Revenue Service (IRS)

*OMB Number:* 1545-0170.

*Form Number:* IRS Form 4466.

*Type of Review:* Extension.

*Title:* Corporation application for Quick Refund of Overpayment of Estimated Tax.

*Description:* Form 4466 is used by a corporation to file for an adjustment (quick refund) of overpayment of estimated income tax return for the tax year. This information is used to process the claim, so the refund can be issued.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 16,125.

*Estimated Burden Hours Respondent/Recordkeeper:*

Recordkeeping—4 hr., 4 min.

Learning about the law or the form—18 min.

Preparing, copying, and sending the form to the IRS—22 min.

*Frequency of response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 76,433 hours.

*OMB Number:* 1545-0213.

*Form Number:* IRS Form 5578.

*Type of Review:* Extension.

*Title:* Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

*Description:* Form 5578 is used by private schools that do not file Schedule A (Form 990) to certify that they have a racially nondiscriminatory policy toward students as outlined in Revenue Procedure 75-50. The Internal Revenue Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy in keeping with its exempt status.