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# Company to condemn land to build rail spur

Owners irate over federal 'common carrier' label

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DUNLAY — A **Vulcan Materials subsidiary** has moved to condemn the few remaining parcels of land needed for a railroad spur to carry rock from a company quarry north of town to existing tracks beside U.S. 90 here. Three of the 20 owners of land along the **Southwest Gulf Railroad Co.’s** proposed 9-mile route have not voluntarily provided the necessary easements, said company officials last week, noting that no buildings are in the path of the spur they hope to put into service next year. The holdouts now targeted by condemnation suits decry the anticipated loss of their land and peace of mind, blaming a federal designation of the SGRR spur as “a common carrier” — meaning other shippers can use it — which came with a grant of eminent domain authority.

“I’m really upset because this is a private company that’s trying to take private land through eminent domain,” said Richard Fournier, one of the holdouts. “It would ruin my hunting and my grazing, probably my water, and there will be noise.” Loss of property value is also a major concern among locals anywhere close to the rail spur planned through ranch land and scrub brush to **the 1,760-acre Vulcan site outside Quihi**. Fournier, 58, is a member of the **Medina County Environmental Action Association**, a grass-roots group that opposed the quarry and rail plan in court. “We’re fighting for every Texan who owns land. Nobody is going to be safe if this goes through,” he said recently.

The group that formed in 2000 fears the limestone quarry and related activities will foul the air and groundwater, and endanger motorists at grade-level rail crossings on local roads. It dropped its fight against the quarry receiving a state permit after Vulcan agreed in 2006 to leave a vegetative buffer around the eventual 600-acre dig site, among other concessions.

It fought on against the spur, but the U.S. Surface Transportation Board (STB) in 2008 granted SGRR permission to build and operate it as a “common carrier” rail line.

In 2010, the U.S. 5th Circuit Court of Appeals upheld that decision and rejected the group's call for additional environmental studies, but the recession stalled the project.

The use of eminent domain is necessary to overcome restrictive covenants jointly entered by 43 property owners along potential spur routes, which barred rail construction on their collective 9,622 acres.

Aylene Fitzgerald, the leader of the environmental action association, doubts that any other companies will use the spur. She called decisions in the forthcoming condemnation cases "potentially precedent-setting." "The right to private property ownership is the cherished heritage passed down to us by the early settlers of the Republic of Texas," she said in a media statement. "No one's land is safe from confiscation if Vulcan and its paper railroad prevail."

Scott Burnham, a spokesman for the railroad company that has no other operations, said it's actively marketing the planned spur, but noted, "For a railroad, it's hard to have customers without a track." He said the STB conducted a lengthy and rigorous review before determining the rail project was in the public interest and granted common carrier status.

"We are committed to Medina County and are dedicated to creating jobs, economic development and tax revenue," Burnham said last week.

Even though SGRR only wants to condemn three parcels, he said all of the covenant-signers were named as necessary parties in the condemnation suits.

**Medina County Judge Chris Schuchart**, who was Vulcan's local attorney before taking office 14 months ago, sees county commissioners' primary role as ensuring public safety around rail crossings. "I'm staying out of the fight because I'm conflicted across the board," he said.

Condemnation target Jerry Johnston said the rail line would ruin

plans to open an events venue on his 426-acre ranch, which includes a spring and an archaeological dig site where artifacts dating to 10,500 years ago were found.

“They haven’t convinced me they’re a common carrier,” he said.

Another defendant, Judy Dittmar, said her family’s 81-acre farm on CR 353 would be bisected by the rail line easement. “We feel totally let down by the STB for granting them a common carrier status, which allowed them to come in here and take what we’ve worked for and protected,” said Dittmar, 76. Kenneth Persyn lucked out, sort of, when SGRR passed on a potential spur route across his 90-acre ranch. However, he predicted his property value will plummet because of a rail depot planned just across CR 4643 from his home.

“I started out real mad. Ten years have gone by. I’m still sick about it,” said Persyn, 65, who noted history is repeating itself — sort of. A rail spur was built here in 1911 to carry construction supplies needed to build the dam on the Medina River that created Medina Lake, he said, adding, “After they were through, they picked up the rail line and left.” [zeke@express-news.net](mailto:zeke@express-news.net)

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