

TEXAS HOUSE OF REPRESENTATIVES
Land and Resource Management Committee
Interim Study – Charge 1
May 3, 2006

TESTIMONY OF MCEAA, INC.—SUMMARY

The Speaker has charged the Committee with the following interim study responsibility:

- (1) Determine the appropriateness of non-elected governmental bodies exercising the power of eminent domain to condemn property

In the interest of legislating on the narrowest possible grounds, the Medina County Environmental Action Association, Inc. (MCEAA, Inc.), an organization of over 200 ranching, agricultural, retired military, and landowning households in Medina County currently facing the threat of eminent domain abuse by the Vulcan Materials Corporation of Alabama, directs the Committee's attention to the following principles:

1. The state limits its delegation of eminent domain to "common carrier" railroads.
2. The federal government has exclusive jurisdiction over rail construction by common carriers.
3. The federal government concedes it has no power to force a state to grant eminent domain power.
4. Under state law, private spur lines are not common carriers and therefore do not have eminent domain power.
5. A loophole in state law potentially permits private, non-rail entities constructing private spur lines to claim common carrier status at the federal level and then return to a state forum to take land, frustrating the intent of state eminent domain law.
6. The existing loophole in state law should be closed with a narrow control test that will still allow legitimate uses of eminent domain by true rail common carriers.

For the reasons stated above, MCEAA, Inc. urges amendment of TEX. GOVT. CODE § 2206.001(c) (passed as Senate Bill 7 of the Second Called Session, 2005) as follows:

(c) This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for:

(1) transportation projects, including, but not limited to, railroads, airports, or public roads or highways; provided, notwithstanding any other provision, that any private railroad corporation seeking to use eminent domain:

(A) is also a common carrier; and
(B) is not controlled by the same entity as the facility it seeks to serve.