



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

EO-3599

Office of Environmental Analysis

USFWS Arkansas Field Office Letter

November 12, 2021

Melvin Tobin
Field Supervisor
USFWS
Arkansas Ecological Services Field Office
110 S. Amity Road
Suite 300
Conway, AR, 72032

By email, if available, at michael.sullivan@ar.usda.gov

Re: Docket No. FD 36500, Canadian Pacific Railway Limited, et al.—Control of—
Kansas City Southern, et al.; **Notice of Intent to Prepare an Environmental
Impact Statement**

Dear Melvin Tobin:

On October 29, 2021, Canadian Pacific Railway Limited, et al. (CP) and Kansas City Southern, et al. (KCS) (collectively, Applicants) filed an application with the Surface Transportation Board (Board) seeking authorization for CP to acquire KCS. This acquisition would create the first railroad to connect Canada, the United States, and Mexico. CP's system runs east to west across Canada, connecting the east and west coast ports. It runs south into the U.S. Midwest and connects with KCS in Kansas City. KCS runs from Kansas City to the Gulf Coast and into Mexico. The combination of these two railroads would be an 'end-to-end' merger because the CP and KCS railroad networks do not overlap (see the interactive map on the Board-sponsored project website here: <https://cp-kcsmergereis.com/maps.htm>).

As part of the approval process, the Board must evaluate the potential impacts of the proposed acquisition on the environment, in accordance with the National Environmental Policy Act (NEPA) and the Board's environmental regulations (49 C.F.R Part 1105). To comply with NEPA, the Board's Office of Environmental Analysis (OEA) has initiated preparation of an Environmental Impact Statement (EIS) by issuing a Notice of Intent to Prepare an EIS (NOI) in the *Federal Register* on November 12, 2021. A copy of the NOI can be found here <https://cp-kcsmergereis.com/docs/cp-kcs-noi.pdf>.

The EIS will describe the potential environmental impacts of the proposed acquisition and assist the Board with making its decision about whether to approve, approve with conditions, or deny the application. The statute setting forth the procedures for Board review of acquisitions at 49 U.S.C. § 11325 and the Board's implementing regulations at 49 C.F.R. § 1180.4 (2000)

require that the Board complete its review within approximately 15 months after the application is accepted for a “major” transaction such as this, and OEA must complete the environmental process before the Board issues a final decision.

Description of the Proposed Action

According to the Applicants, the purpose of the proposed acquisition is to combine America’s two smallest but fastest-growing Class I railroads to build a more efficient and more competitive rail network. The Applicants state that the proposed acquisition would further the need for expanded and more capable and efficient transportation infrastructure while simultaneously advancing the interests of current and future customers in more reliable and economical rail transportation options serving important North-South trade flows. The Applicants also state that the proposed acquisition would generate environmental benefits by reducing truck transportation on highways in North America by more than 60,000 trucks annually, resulting in less congestion, less maintenance, and improved safety on those roads, as well as less noise pollution in the places where those trucks would have driven, and lowered air emissions, including greenhouse gas emissions.

The proposed acquisition would involve (1) changes in level of operations (e.g., an increase in average trains per day) on certain segments of the combined rail network that would exceed the Board’s thresholds for environmental review at 49 C.F.R. § 1105.7(e); (2) changes in activity at some rail yards and intermodal facilities that would exceed the Board’s thresholds for environmental analysis; and (3) capital improvements within the existing rail right-of-way. The thresholds for assessing environmental impacts from increased rail traffic on rail lines in railroad acquisition proceedings are an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase in rail traffic of at least eight trains per day. For air quality impacts, rail lines located in areas classified as being in nonattainment under the Clean Air Act are also assessed if they would experience an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains per day. OEA has preliminarily identified rail lines in Illinois, Iowa, Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas that would experience increases in rail traffic that could exceed the analysis thresholds as a result of the proposed acquisition. The EIS will analyze the potential environmental impacts of increased rail traffic along those rail lines, as appropriate.

To support increased rail traffic on the combined network, the Applicants propose to add new passing sidings or extend existing passing sidings at 24 locations within the rail right-of-way as part of the proposed acquisition. Sidings would be added or extended at locations in Louisiana, Oklahoma, Arkansas, Kansas, Minnesota, Illinois, Iowa, and Missouri. The Applicants also propose to add approximately four miles of double track within the right-of-way along the KCS Pittsburg Subdivision in Missouri and to add approximately five miles of facility working track within the right-of-way adjacent to the International Freight Gateway intermodal terminal in Missouri. The EIS will analyze potential environmental impacts, as appropriate, from these capital improvement projects, including impacts on threatened and endangered species.

The interactive map on the Board-sponsored project website here: <https://cp-kcsmergereis.com/maps.htm> shows the locations of the rail lines, rail yards, and intermodal facilities that would experience operational changes that would exceed the Board's environmental analysis threshold, as well as the locations of proposed capital improvements within the rail right-of-way.

Description of Project Sites

Capital improvements associated with the proposed acquisition would affect two sites in Arkansas, identified as Dorsey located near Decatur with an approximate midpoint of 36.3575404, -94.45119569 and identified as MP 377 located near Mena with an approximate midpoint of 34.60417934, -94.22355056, as shown on the interactive map on the Board-sponsored project website here: <https://cp-kcsmergereis.com/maps.htm>. OEA reviewed these sites for potential or suitable habitat for federally listed candidate, threatened, and endangered species using the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) database. This desktop search identified thirteen listed species. **Table 1** provides a list of these thirteen species, along with their status and preferred habitats.

Table 1. Summary of Status and Habitat for Thirteen Federally Listed Species

Common Name	Scientific Name	Status	Habitat Description
Arkansas Fatmucket	<i>Lampsilis powellii</i>	Threatened	Deep pools with sand, sand-gravel, sand-cobble, or sand-rock, with sufficient flow to move debris and detritus; often found adjacent to islands of water willow.
Eastern Black Rail	<i>Laterallus jamaicensis</i>	Threatened	Tidal or non-tidal salt, brackish, or freshwater marshes with dense cover; also uses high elevation, shrubby wetlands and wet sedge meadows with dense cover.
Gray Bat	<i>Myotis grisescens</i>	Endangered	Year-round cave dweller; hibernates in deep vertical caves during winter and roosts in caves along rivers during the summer.
Indiana Bat	<i>Myotis sodalist</i>	Endangered	Hibernates in caves or mines; spends summer in the forest, often along lakes or streams, roosting under the loose bark of dead trees.
Missouri Bladderpod	<i>Physaria filiformis</i>	Threatened	Open limestone glades that are naturally dry and treeless with shallow, loose soil and exposed rock; sometimes found on highway rights-of-way and open pastures.
Monarch Butterfly	<i>Danaus plexippus</i>	Candidate	Fields containing milkweed and nectar-bearing plants.
Northern Long-eared Bat	<i>Myotis septentrionalis</i>	Threatened	Hibernates in caves or mines; in summer, found under tree bark, in tree cavities, in caves/mines, or sometimes in manmade structures.
Ozark Big-eared Bat	<i>Corynorhinus townsendii ingens</i>	Endangered	Year-round cave dweller, often using the same cave or mine in winter and summer; occurs in oak-hickory hardwood forests.
Ozark Cavefish	<i>Amblyopsis rosae</i>	Threatened	Cave streams and springs, particularly those in the Boone and Burlington limestone formations of the Ozark Mountains.
Piping Plover	<i>Charadrius melodus</i>	Threatened	Wide, flat open sandy beaches with very little vegetation; often nests in areas with small creeks or wetlands.
Rabbitsfoot	<i>Quadrula cylindrica</i>	Threatened	Small to medium freshwater streams and some large rivers; often found in shallow, slower water along banks or shoals with gravel substrate.

Common Name	Scientific Name	Status	Habitat Description
Red Knot	<i>Calidrus canutus</i>	Threatened	Breeds in tundra; winters in coastal marine and estuarine habitats with large, exposed intertidal areas; migration and wintering habitat consists of bay/ocean front, sheltered bays/lagoons, or muddy/sandy coastal areas.
Red-cockaded Woodpecker	<i>Picoides borealis</i>	Endangered	Open longleaf pine forests with mature trees; often uses pines over 80 years old suffering from red heart disease for cavity excavation.

OEA reviewed aerial imagery at each site to characterize the nearby habitat. Each site consists of the area in the immediate vicinity of an existing rail line and within an existing rail right-of-way. The Dorsey proposed siding extension near Decatur would be approximately 0.30 miles long. The MP 377 new proposed siding near Mena would be approximately 2.0 miles long. Site composition was characterized based on analysis of images from Google Earth. One site runs parallel to a creek. This site is also adjacent to patches of fragmented forest, and fields. The other site in Arkansas crosses a creek and is also adjacent to forested areas, fields, commercial areas, and suburban neighborhoods.

Request for Comments and Consultation

OEA requests your comments on the potential impacts of the proposed acquisition. **We propose a conference call for all USFWS officials on Wednesday, December 1 at 10:30 a.m. CST.** OEA has sent letters to the Midwest, Southeast, Southwest, and Mountain Prairie USFWS regional offices, in addition to all relevant field offices.

How to Comment

We encourage you to file your written comments electronically through the Board-sponsored project website at www.CP-KCSMergerEIS.com. Written comments can also be submitted electronically on the Board's website, www.stb.gov, by clicking on the "E-FILING" link, then clicking on "Environmental Comments." Alternatively, your written comments may be sent by mail to:

Joshua Wayland, Surface Transportation Board, c/o VHB
Attention: Environmental Filing, Docket No. FD 36500
940 Main Campus Dr., Suite 500
Raleigh, NC 27606

Please make sure to refer to Docket No. FD 36500 in all correspondence, including e-filings, addressed to the Board. **All scoping comments must be sent no later than December 17, 2021.**

Public Scoping Meetings

Additionally, to provide an opportunity for the public to provide oral comments, OEA will hold six online public scoping meetings. We invite you to attend those meetings if you are interested. You can attend the online public scoping meetings in one of two ways:

- Join online at: <https://bit.ly/cp-kcs> .
 - Project information will be available for review at this link prior to the public meeting dates.
- Join by phone by calling (888) 788-0099 (Toll Free) and using the call-in information below:

Public Meeting Dates and Times

Date	Time	Meeting ID	Passcode
Tuesday, November 30, 2021	6-8 PM	899 9411 9431	336859
Wednesday, December 1, 2021	2-4 PM	834 1445 3134	140066
Thursday, December 2, 2021	6-8 PM	860 6003 9544	510488
Tuesday, December 7, 2021	6-8 PM	891 6903 1796	598592
Wednesday, December 8, 2021	2-4 PM	884 5338 0280	470936
Thursday, December 9, 2021	6-8 PM	899 8627 2409	227867

Next Steps

Following the end of the scoping period on December 17, 2021, OEA will review the comments and then issue a Final Scope of Study for the EIS. OEA will then proceed with the preparation of the Draft EIS. You will be notified of the publication of the Draft EIS and will have the opportunity to review and comment on the document. At this time, OEA anticipates issuing the Draft EIS in the spring of 2022. In the meantime, OEA may contact you with questions or queries pertaining to the resources under your jurisdiction or purview.

For further information or questions pertaining to the scoping process, please contact Joshua Wayland at the address provided above, or call the toll-free project line at 1-888-319-2337. For further information about the Board's environmental review process and the EIS, you may also visit the Board-sponsored project website at www.CP-KCSMergerEIS.com. We look forward to receiving your comments.

Sincerely,



Danielle Gosselin
Acting Director
Office of Environmental Analysis