

May 3, 2022

Kathryn K. Floyd

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Danielle Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 36500, Applicants' Voluntary Mitigation Measures

Dear Ms. Gosselin:

I'm enclosing for your consideration a set of voluntary mitigation measures being proposed by the Applicants in this docket. The attached voluntary mitigation measures are intended to supersede our earlier transmittal on March 31, 2022.

Please don't hesitate to contact me if you have any questions.

Sincerely,



Kathryn K. Floyd

Enclosures

cc: Sean Cline
Glen Wilson

Danielle Gosselin

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Joe Van Humbeck

David Meyer

Jeffrey Songer

Kayden Howard

William Mullins

Erin Glavich

Joshua Wayland

Victoria Rutson

David Navecky

Alan Summerville

CP-KCS VOLUNTARY MITIGATION MEASURES

Introduction

Applicants (Canadian Pacific Railway et al. and Kansas City Southern et al.) submit these Voluntary Mitigation Measures (VMs) for the proposed merger of the two companies. Unless otherwise stated below, these VMs are specific to and limited to the potential impacts of the proposed merger (merger-related impacts). They were developed to mitigate certain of those merger-related impacts. The VMs are based on the Applicants' understanding of the environmental and built environmental conditions along those parts of their respective operating Rights-of-Way affected by the proposed merger. They are based in part on feedback received from the Applicants' ongoing discussions with potentially affected communities,¹ as well as feedback received during the environmental review process. The VMs may be carried out either by the Applicants or by their agents or construction contractor(s), as appropriate.

Voluntary Mitigation Measures

The following sections provide the Applicants' VMs. They are presented by resource category.

General Commitments

- VM 1. The Applicants will continue to engage in good faith with potentially affected communities along the combined network, listen to their input related to the proposed merger and strive to reach negotiated agreements to address merger-related impacts.
- VM 2. The Applicants will follow all applicable Federal Railroad Administration and Occupational Safety and Health Administration construction and operational safety regulations to minimize the potential for incidents during construction of the Capital Improvement Projects² and operation of the combined network.
- VM 3. The Applicants will use Canadian Pacific's experience building relationships with First Nations in Canada to engage with federally recognized Indian tribes in the United States.

Freight and Passenger Rail Capacity and Safety

- VM 4. The Applicants will comply with Federal Railroad Administration and Pipeline and Hazardous Materials Safety Administration regulations applicable to the safe and secure transportation of hazardous materials.

¹ "Potentially affected communities" means those jurisdictions through which the Applicants' right-of-way passes and traffic increases from the proposed merger exceed the Surface Transportation Board's environmental review thresholds.

² The Capital Improvement Projects are those projects identified in Applicants' Merger Application.

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- VM 5. The Applicants will comply with the Safety Integration Plan, prepared pursuant to 49 CFR Part 1106, which may be modified and/or updated as necessary to respond to evolving conditions and/or new information.
- VM 6. In the event of a reportable hazardous materials release, the Applicants will notify appropriate federal, state, and local agencies, as required under applicable law.
- VM 7. The Applicants will conduct Transportation Community Awareness and Emergency Response Program (TRANSCAER) workshops (training for communities through which dangerous goods are transported) in potentially affected communities that request this training. The Applicants will conduct the workshops in English and, upon request, Spanish. Training will include support for appropriate access to the AskRail app and its use to facilitate rapid, real time access for qualified responders to information about hazardous materials in rail transportation.
- VM 8. The Applicants will offer to fund the participation in railroad focused emergency response training at the Association of American Railroads' Security and Emergency Response Training Center in Pueblo, Colorado, of two qualified firefighters providing service within each of the potentially affected communities.
- VM 9. The Applicants will leverage CP's extensive emergency response equipment assets by reviewing coverage of those assets across the combined network and either redistribute existing assets or add new equipment assets to improve emergency response capability relating to the potentially affected communities on the combined network.
- VM 10. The Applicants will abide by their commitments to Amtrak in their agreement dated Dec. 17 2021. In general, the Applicants will support the efforts of Amtrak and the Southern Rail Commission to establish Amtrak service between New Orleans and Baton Rouge, and study the potential for Amtrak service between Meridian, Mississippi and Dallas, Texas. Additionally, Applicants will work with Amtrak to increase the frequency on the Hiawatha service between Chicago and Milwaukee; extend Hiawatha service from Milwaukee to Saint Paul and create a second round-trip on the Twin Cities-Milwaukee-Chicago corridor; and establish passenger service through the Detroit River Tunnel, connecting Detroit to Windsor, Ontario in order to facilitate passage service between Detroit and Windsor connecting to Via Rail.

Roadway/Rail At-Grade Crossing Safety and Delay

- VM 11. Although the Applicants have not identified any grade crossings that would require mitigation based on precedent established in other approved mergers, the Applicants will, upon request, work with potentially affected communities in support of securing funding, in conjunction with appropriate state agencies, for crossing mitigation projects where they

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may be appropriate under criteria established by relevant state transportation departments to increase the safety of existing at-grade crossings.

VM 12. The Applicants will operate under U.S. Operating Rule No. 526 (Public Crossings), which provided that public crossing must not be blocked longer than 10 minutes unless it cannot be avoided and that, if possible, rail cars, engines, and rail equipment may not stand closer than 200 feet from a highway/rail at-grade crossing when there is an adjacent track.

VM 13. The Applicants will consult with potentially affected communities to improve visibility at highway rail at-grade crossing by clearing vegetation where practicable.

VM 14. Where practicable, the Applicants will investigate the potential to create alternative access for properties whose sole access will be blocked more than once per week by a train stationary longer than ten minutes at a single location.

VM 15. For the construction of additional track through road crossings within the limits of the Capital Improvement Projects, where practicable, the Applicants will consult with local transportation officials regarding detours and associated signs, as appropriate, or attempt to maintain at least one open lane of traffic, as practicable, to allow the quick passage of emergency and other vehicles.

VM 16. The Applicants will notify Emergency Services Dispatching Centers for potentially affected communities of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time.

Noise

VM 17. The Applicants will fund the improvements necessary to allow any potentially affected community with an existing Quiet Zone to maintain that designation should the increase in merger related train traffic cause that community to fall out of compliance with Federal Railroad Administration regulations.

VM 18. While building the Capital Improvement Projects, the Applicants will work with their construction contractors to minimize, where practicable, construction-related noise disturbances between the hours of 2100 and 0700 local time.

VM 19. In the construction of the Capital Improvement Projects, the Applicants will, where practicable and consistent with safe and efficient operating practices, use continuously welded rail in order to reduce wheel/rail wayside noise.

Air Quality and Climate Change

VM 20. The Applicants commit to developing Green House Gas (GHG) reduction targets for the combined network and request verification as appropriate from the Science Based Targets

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- initiative (SBTi). As reference, Canadian Pacific's current SBTi approved target is a 38.3% reduction in well-to-wheels GHG emissions (on an intensity basis) from locomotive operations by 2030 compared to a 2019 base year. CP has also committed to committed to 27.5% GHG reduction (on an absolute basis) by 2030 compared to a 2019 base year for non-locomotive Scope 1 and Scope 2 emissions. KCS has a SBTi target to reduce scope 1 and 2 GHG emissions by 42% by 2034.
- VM 21. The Applicants commit to undertaking a combined network in-depth climate scenario analysis aligned to TCFD recommendations to understand how a changing climate may impact CPKC. The Applicants further commit to improving the resiliency of the combined network to the physical risks of climate change through its capital program.
- VM 22. As part of the ongoing reconfiguration of Bensenville Yard (a non-merger related project being undertaken as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project), the Applicants commit to undertake studies to identify ways to reduce the GHG emissions (and by extension, also reduce other air emissions) at Bensenville Yard.
- VM 23. The Applicants will comply with EPA emissions standards for diesel-electric railroad locomotives when purchasing and rebuilding locomotives.
- VM 24. The Applicants will develop an anti-idling policy for use in potentially affected communities on the combined network. The policy will capture both idling of construction equipment used on the Capital Improvement Projects as well as ongoing operations.
- VM 25. To minimize fugitive dust emissions created during the construction of the Capital Improvement Projects, the Applicants will implement appropriate fugitive dust suppression controls, such as spraying water or other approved measures.
- VM 26. The Applicants will work with the contractors selected to construct the Capital Improvement Projects to make sure that construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air emissions.
- VM 27. Where vegetation clearing has taken place during the construction of the Capital Improvement Projects, the Applicants will begin revegetation as soon as practicable to minimize impacts of wind erosion and fugitive dust. Where immediate revegetation is not practicable, the Applicants will implement alternative stabilization measures such as matting, mulching or hydroseeding.

Cultural Resources

- VM 28. The Applicants will abide by the terms of any agreement negotiated pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations that addresses the potential impact(s) of the Capital Improvement Projects on cultural resources.

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Hazardous Waste Sites

- VM 29. The Applicants will require its construction contractor(s) to implement measures to protect workers' health and safety and the environment in the event that undocumented hazardous material are encountered during construction of the Capital Improvement Projects. The Applicants will document all activities associated with the previously undocumented contamination and will notify the appropriate state agencies according to applicable regulations. The applicant will use disposal methods which comply with applicable solid and hazardous waste regulations.
- VM 30. Prior to the start of construction for each Capital Improvement Project, the Applicants will develop a site-specific spill prevention, control and response plan. This plan will specify measures to prevent the release of petroleum products or other hazardous materials during construction activities and contain such discharges if they occur.
- VM 31. In the event of a spill over the applicable reportable quantity during the construction of a Capital Improvement Project, the Applicants will comply with its site specific spill prevention, control and response plan and applicable federal and state regulations pertaining to spill containment, appropriate clean-up and notifications.
- VM 32. During the construction of the Capital Improvement Projects, the Applicants will ensure that gasoline, diesel fuel, oil, lubricants and other petroleum products are handled and stored to reduce the risk of spills contaminating soils or surface waters. If a petroleum spill occurs as a result of construction, and exceeds specific quantities or enters a waterbody, the Applicants (or its agents) will be responsible for promptly cleaning up the spill and notifying responsible agencies in accordance with federal and state regulations.
- VM 33. The Applicants will require contractors to dispose of waste generated on the Capital Improvement Projects in accordance with all applicable federal, state and local regulations.

Natural Resources

- VM 34. In alignment with Canadian Pacific's Environmental Policy, the Applicants commit to implementing methods to promote No Net Loss of sensitive habitats (e.g., aquatic areas, wetlands, riparian areas, native prairie, old growth forest) when constructing the Capital Improvement Projects.
- VM 35. Where practicable, the Applicants will clear vegetation in preparation for the Capital Improvement Projects before or after the breeding bird nesting season, specific to each project location, to avoid inadvertent removal of active nests (nesting adults, young, or eggs) and to ensure compliance with the Migratory Bird Treaty Act. If clearing is required during a respective location's nesting season, the Applicants will consult with the Office of

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Environmental Analysis and the local office of the US Fish and Wildlife Service on appropriate nest survey methods for that area.

- VM 36. The Applicants will not conduct construction related tree removal for the Capital Improvement Projects during the active season for the Indiana bat and the northern long-eared bat (April 1 to October 31).
- VM 37. During the construction of the Capital Improvement Projects, the Applicants will take steps to reduce the unnecessary removal of bat habitat outside of active bat season by limiting tree removal to only the areas necessary to safely construct and operate the new siding or second track, marking the limits of tree clearing through the use of flagging or fencing, and ensuring that construction contractors understand clearing limits and how they are marked in the field.
- VM 38. If construction of the Capital Improvement Projects would require removal or alteration of bridges, culverts, or other structures that provide suitable habitat for the northern long-eared bat or the Indiana bat during the active season for those species (April 1 to October 31), the Applicants will first conduct an inspection for the presence of, or evidence of use by, bats. The inspection will be completed by a qualified biologist. If the inspection finds bats or evidence of bats, then the Applicants will not commence work on the structure until coordinating with OEA and USFWS to determine appropriate follow-up or mitigative actions. The inspection must be completed during the same year that the work takes place.
- VM 39. Where practicable, the Applicants will conduct any culvert or bridge removal as part of the Capital Improvement Projects outside of the roosting period of bat species, specific to each project location. Where practicable, if bridge or culvert removal is required during the bat roosting period where the individual Capital Improvement Project is located, the Applicant will consult with the Office of Environmental Analysis and the local office of the US Fish and Wildlife on appropriate methods to determine if bats are using the bridge or culvert as a roost.
- VM 40. During construction of the Capital Improvement Projects, the Applicants will direct any temporary lighting away from suitable habitat for the northern long-eared bat or the Indiana bat during the active season for those species (April 1 to October 31). The Applicants will use downward-facing, full cut-off lens lights for any temporary lighting used during the construction of the Capital Improvement Projects.
- VM 41. If the Capital Improvement Projects would involve installing any new, or replacing any existing, permanent lights, the Applicants will use downward-facing, full cut-off lens lights (with the same intensity of less for replacement lighting).
- VM 42. During construction of the Capital Improvement Projects, temporary barricades, fencing, and/or flagging will be used in sensitive habitats to contain construction related impacts to

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the area within the construction Right-of-Way. To the extent possible, staging areas will be located in previously disturbed sites and not in sensitive habitat areas.

VM 43. The Applicants will limit ground disturbance to only the areas necessary for the construction of the Capital Improvement Projects.

VM 44. The Applicants will use construction methods and seed mixes that minimize introduction and spread of noxious weeds on the Capital Improvement Projects. Noxious weed control will include combinations of mechanical and herbicide spray methods.

VM 45. The Applicants will ensure that any herbicides used in Right-of-Way maintenance to control vegetation are approved by the US EPA and are applied by licensed individuals who will limit application to the extent necessary for safe rail operations. Herbicides will be applied so as to prevent or minimize drift off of the Right-of-Way onto adjacent areas.

Water Resources

VM 46. The Applicants commit to remaining compliant with CFR Title 33 Part 117 – Drawbridge Operation Regulations.

VM 47. As applicable for each of the Capital Improvement Projects, the Applicants will request Clean Water Act Water Quality Certification from the jurisdiction where the respective project is located.

VM 48. As applicable for each of the individual Capital Improvement Projects, The Applicants will obtain an authorization from the US Army Corps of Engineers under Section 404 of the Clean Water Act before initiating project-related construction activities in jurisdictional waters of the United States.

VM 49. As applicable to each of the individual Capital Improvement Projects, the Applicants will require its construction contractor(s) to follow all water quality control conditions identified in all permits including the Water Quality Certification from the respective jurisdiction and Section 404 Permits issued by the US Army Corps of Engineers.

VM 50. As applicable to each of the individual Capital Improvement Projects, the Applicants will protect bald and golden eagles by adhering to the Bald and Golden Eagle Protection Act. In addition, the Applicants will follow the USFWS National Bald Eagle Management Guidelines, as applicable.

VM 51. Prior to initiating construction at a Capital Improvement Project location, the Applicants will develop a site specific Stormwater Pollution Prevention Plan which will incorporate Best Management Practices as well as site specific measures to control erosion and reduce the amount of sediment and pollutants entering surface waters, ground waters and waters of the US.

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- VM 52. For Capital Improvement Project locations which will involve construction activities in proximity to surface water, prior to the start of construction the Applicants will develop a site specific water quality monitoring plan and implement this monitoring plan throughout construction.
- VM 53. The Applicants will minimize impacts to wetlands where practicable in the final design of the individual Capital Improvement Projects. Applicants agree to compensate for the loss of any wetlands through any one, or a combination of: purchasing credits from an authorized wetland mitigation bank, restoring a previously existing wetland or other aquatic site, enhancing an existing aquatic sites function, preserving an existing aquatic site and/or creating a new aquatic site.
- VM 54. The Applicants will design all Capital Improvement Project drainage crossing structures to pass a 100-year storm event.
- VM 55. The Applicants will consider the passage of aquatic organisms in the design of culverts and bridges required for the Capital Improvement Projects, where practicable.
- VM 56. As applicable to each of the individual Capital Improvement Projects, the Applicants will comply with applicable in-water work windows and timing restrictions for the protection of fish species.
- VM 57. During the construction of Capital Improvement Projects, the Applicants will require all contractors to conduct daily inspections of all equipment for any fuel, lube oil, hydraulic or antifreeze leaks. If leaks are found, the Applicants will require the contractor to immediately remove the equipment from service and repair or replace it.
- VM 58. During the construction of the Capital Improvement Projects, the Applicants will prohibit construction vehicles from driving in or crossing streams at other than established crossing points.
- VM 59. During the construction of the Capital Improvement Projects, the Applicants will take reasonable steps to ensure contractors use fill material appropriate for the project area.

Environmental Justice

- VM 60. The Applicants will make Operation Lifesaver programs available to potentially affected communities, including schools and other organizations (Operation Lifesaver is a non-profit education and awareness program that helps increase the public's awareness of the dangers around rail lines).

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VM 61. For the construction contracts for the Capital Improvement Projects, the Applicants commit to allocate a minimum of 15% of contractor bid evaluation weighting to the inclusion of minority and tribal owned businesses and employees on the proposed project team.