



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

+1 202 736 8531
PWHITFIELD@SIDLEY.COM

February 10, 2023

By Email

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

Re: **CN Adoption of Voluntary Mitigation Measures in**
Illinois Central Railroad Company – Responsive Application – Divestiture of KCS
Line Between Kansas City, Mo. and Springfield / East St. Louis, Ill., FD 36500
(Sub-No. 1)

Dear Director Gosselin,

I write on behalf of Illinois Central Railroad Company (CN) in FD 36500 (Sub-No. 1) regarding proposed mitigation measures to supplement the environmental information set forth in CN's responsive application. Pursuant to the request by the STB Office of Environmental Analysis in connection with the Responsive Application for the Springfield Line, CN agrees to voluntarily adopt the following measures that Canadian Pacific proposed to adopt as part of the proposed merger with Kansas City Southern:¹

Best Management Practices (BMPs) for Northern long eared bat and Indiana bat (herein after collectively referred to as “bats”)

- Where applicable, CN will restrict construction-related tree removal for projects to the inactive season, November 1 – March 31.
- Where applicable, CN will take steps to reduce unnecessary removal of bat habitat outside of active bat season by limiting tree removal to only the areas necessary to safely construct and operate any new, relocated or extended siding or new yard track,

¹ CN notes that its responsive application regarding divestiture of the Springfield Line is contingent upon STB finding the proposed merger in the public interest and approving the merger of CP and KCS.

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.

- Where applicable, for construction projects that 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), CN 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 CN 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.
- Where applicable, CN will conduct any culvert or bridge removal as part of the construction projects outside of the roosting period of bats, specific to each project location. Where practicable, if bridge or culvert removal is required during the bat roosting period where the project is located, CN will consult with OEA and the local USFWS office on appropriate methods to determine if bats are using the bridge or culvert as a roost.
- Where applicable during construction, CN 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). CN will use downward-facing, full cut-off lens lights for any temporary lighting used during the construction of applicable projects.
- Where applicable, CN will use downward-facing, full cut-off lens lights (with the same intensity or less for replacement lighting) if project construction would involve installing any new, or replacing any existing, permanent lights.

Waters/Wetlands

- Where applicable, CN commits to remaining compliant with 33 C.F.R. Part 117 Drawbridge Operation Regulations.
- Where applicable, CN will request Clean Water Act Section 401 Water Quality Certification from the jurisdiction where the respective project is located.
- Where applicable, CN will obtain an authorization from the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act before initiating project-related construction activities in jurisdictional waters of the U.S.

- Where applicable, CN 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 USACE.
- Where applicable, CN 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 U.S. prior to initiating construction at a project location.
- CN will minimize impacts to wetlands where practicable in the final design of the individual projects. CN agrees 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 site's function, preserving an existing aquatic site, and/or creating a new aquatic site.
- Where applicable, CN will design all new project drainage crossing structures to pass a 100-year storm event.
- CN will consider the passage of aquatic organisms in the design of culverts and bridges required for projects, where practicable.
- As applicable to each of the individual projects, CN will comply with applicable in-water work windows and timing restrictions for the protection of fish species.
- During the construction of projects, CN will require all contractors to conduct daily inspections of all equipment for any fuel, lube oil, hydraulic or antifreeze leaks. If leaks are found, CN will require the contractor to immediately remove the equipment from service and repair or replace it.
- During the construction of projects, CN will prohibit construction vehicles from driving in or crossing streams at other than permitted, established crossing points.
- During the construction of projects, CN will take reasonable steps to ensure contractors use fill material appropriate for the project area, and in compliance with applicable permits.

To the extent STB believes other mitigation measures are important, please let us know and we would be happy to discuss.

SIDLEY

Page 4

Best regards,

A handwritten signature in black ink, appearing to read "Peter Whitfield". The signature is fluid and cursive, with the first name "Peter" and last name "Whitfield" clearly distinguishable.

Peter Whitfield

Partner

PW: