



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

June 13, 2022

Susan Minnick
USFWS Oklahoma Ecological Services Field Office
9014 East 21st Street
Tulsa, OK 74129
OKProjectReview@fws.gov
Susan_Minnick@fws.gov

Re: Docket No. FD 36500, Canadian Pacific Railway Limited, et al.—Control
of—Kansas City Southern Railway, et al.; **USFWS Informal Section 7
Consultation**

Dear Ms. Minnick:

As you may recall from my letter dated November 12, 2021, Canadian Pacific Railway Limited, et al. (CP) and Kansas City Southern Railway et al. (KCS) have filed an application with the Surface Transportation Board (Board) under 49 U.S.C. §§ 11323-25 seeking the Board's approval of the acquisition of control of KCS by CP (Proposed Acquisition). If the Board authorizes the Proposed Acquisition, CP and KCS (collectively, the Applicants) would combine to form an integrated system to be known as Canadian Pacific Kansas City (CPKC). The Board's Office of Environmental Analysis (OEA) is currently preparing a Draft Environmental Impact Statement (EIS) that assesses the potential environmental impacts of the Proposed Acquisition, pursuant to the National Environmental Policy Act (NEPA) and related environmental laws. The purpose of this letter is to request your written concurrence of OEA's determination of effects for the Proposed Acquisition on federally listed species, in accordance with Section 7(a)(2) of the Endangered Species Act (ESA) of 1973.

The Applicants expect that the Proposed Acquisition would cause average rail traffic to increase on certain rail lines within the combined CPKC network because freight would be diverted from rail lines owned by other railroad companies and from truck transportation to rail transportation. To accommodate the projected increase in rail traffic, the Applicants plan to make certain capital improvements within the existing rail right-of-way (ROW) if the Board authorizes the Proposed Acquisition. In Oklahoma, those planned capital improvements would include adding two new passing sidings and extending two existing sidings. Construction activities associated with those capital improvements have the potential to affect federally listed threatened or endangered species, if any are present within the existing rail ROW at the planned capital improvement locations. Maps of the planned capital improvement locations in Oklahoma are appended to this letter.

Although OEA is evaluating the potential environmental impacts of the planned capital improvements as effects of the Proposed Acquisition, the Applicants would only add the capital improvements as needed to support increased rail traffic. Therefore, the Applicants have not completed detailed design and engineering and would not do so until after the Board has issued its final decision on the Proposed Acquisition. Accordingly, OEA's analysis of the potential impacts from constructing the planned capital improvements is based on largely conceptual design information, as well as conservative assumptions about how construction would proceed. OEA expects that all construction activity associated with the planned capital improvements would take place within the existing rail ROW.

In Oklahoma, the planned capital improvements would include extending two existing sidings and adding two new sidings adjacent to the existing rail line, which would involve tree clearing, grading, and filling within the existing rail ROW. To be conservative, OEA assumed that each planned capital improvement could affect the entire area extending from the existing tracks to the edge of the rail ROW (study area), but the actual affected area would likely be smaller. The planned capital improvements could also involve replacing or extending existing railroad bridges and culverts to accommodate the new or extended siding.

OEA conducted field work in January 2022 to characterize the existing habitat at each planned capital improvement location. Prior to conducting field work, OEA used the USFWS Information for Planning and Consultation tool and correspondence from the Oklahoma Natural Heritage Inventory to determine the species of concern for each planned capital improvement location. Based on habitat-level field work, OEA identified suitable roosting and foraging habitat within the existing ROW for the northern long-eared bat (*Myotis septentrionalis*) and Indiana bat (*Myotis sodalis*) at all planned capital improvements in Oklahoma. The Applicants have proposed multiple measures to protect the northern long-eared and Indiana bat during the construction of the planned capital improvements, as detailed in Attachment A to this letter. These measures include commitments to conduct tree clearing and work on structures that provide suitable roosting habitat outside of the active season (April 1 to October 31), as well as measures related to installing lighting. Based on the Applicants' voluntary commitments, OEA has determined that the Proposed Acquisition **may affect, but is not likely to adversely affect** the northern long-eared bat and Indiana bat.

The following species do not have suitable habitat within the rail ROW at any of the planned capital improvement locations: American burying beetle (*Nicrophorus americanus*), gray bat (*Myotis grisescens*), monarch butterfly (*Danaus plexippus*), Neosho mucket (*Lampsilis rafinesqueana*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), piping plover (*Charadrius melodus*), rabbitsfoot (*Quadrula cylindrica cylindrica*), red knot (*Calidris canutus*), and scaleshell mussel (*Leptodea leptodon*). Therefore, OEA has determined that the Proposed Acquisition would have **no effect** on these species. There is no critical habitat within any of the planned capital improvement locations in Oklahoma. If you agree with these recommended determinations, please send your written concurrence.

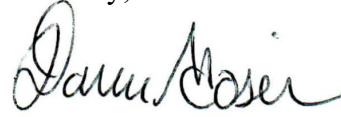
Please see **Table 1** below for a summary of ESA-listed species with suitable habitat and the attached maps showing suitable forested bat habitat and suitable bat roosting structures within the ROW of the planned capital improvement locations.

Table 1. ESA-listed species with suitable habitat at the planned capital improvement locations in Oklahoma

Common and Scientific Name	Capital Improvement Location	Federal Status	Suitable Habitat	Recommended Effects Determination
Northern long-eared bat (<i>Myotis septentrionalis</i>)	MP 247 (Adair County) Cave Springs (Adair County) Spiro (Le Flore County) Heavener (Le Flore County)	Threatened (Proposed Endangered)	Suitable roosting and foraging habitat for the northern long-eared bat was present throughout the study area. Roosting habitat was identified in the forested areas along edges of railroad ROW, under multiple bridges, and in multiple culverts throughout the study area. Foraging habitat was present in the canopy-enclosed flyways of forested edges of railroad ROW, adjacent roads, and throughout riparian corridors.	May affect, not likely to adversely affect
Indiana bat (<i>Myotis sodalis</i>)	MP 247 (Adair County) Cave Springs (Adair County) Spiro (Le Flore County) Heavener (Le Flore County)	Endangered	Suitable summer roosting and foraging habitat for the Indiana bat was present throughout the study area. Summer roosting habitat was identified in the forested areas along edges of railroad ROW, under multiple bridges, and in multiple culverts throughout the study area. Foraging habitat was present in the canopy-enclosed flyways of forested edges of railroad ROW, adjacent roads, and throughout riparian corridors.	May affect, not likely to adversely affect

We appreciate your review and assistance in the consultation process and look forward to hearing from you. For further information or questions, please contact Joshua Wayland at Joshua.Wayland@stb.gov or 202-245-0330. For further information about the Proposed Acquisition, you may also visit the Board-sponsored project website at www.CP-KCSMergerEIS.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Gosselin". The signature is fluid and cursive, with the first name "Danielle" written in a larger, more prominent script than the last name "Gosselin".

Danielle Gosselin
Director
Office of Environmental Analysis

ATTACHMENT A: NORTHERN LONG-EARED BAT AND INDIANA BAT VOLUNTARY MITIGATION MEASURES

Canadian Pacific Railway Limited, et al. (CP) and Kansas City Southern Railway et al. (KCS) (collectively, the Applicants) have voluntarily proposed the following measures to avoid impacts on northern long-eared bat and Indiana bat. If the Surface Transportation Board (Board) authorizes the Proposed Acquisition of KCS by CP, the Applicants, their employees, and their contractors would be required to strictly adhere to these measures during construction of planned capital improvements related to the Proposed Acquisition, as well as any additional mitigation measures recommended by the Board's Office of Environmental Analysis (OEA) and imposed by the Board in its final decision.

- The Applicants will not conduct construction-related tree removal for the planned capital improvements during the active season for the Indiana bat and the northern long-eared bat (April 1 to October 31).
- During the construction of the planned capital improvements, 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.
- Where practicable, the Applicants will conduct any culvert or bridge removal as part of the planned capital improvements outside of the roosting period of bat species, specific to each planned capital improvement location. Where practicable, if bridge or culvert removal is required during the bat roosting period where the individual planned capital improvement is located, the Applicants will consult with OEA and the local office of the U.S. Fish and Wildlife Service (USFWS) on appropriate methods to determine if bats are using the bridge or culvert as a roost.
- If construction of the planned capital improvements 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.
- During construction of the planned capital improvements, 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 planned capital improvements.

- If the planned capital improvements 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 or less for replacement lighting).