



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

December 1, 2022

Matt Fullerton
USFWS Oklahoma Ecological Services Field Office
9014 East 21st Street
Tulsa, OK 74129
OKProjectReview@fws.gov
matthew_fullerton@fws.gov

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

Dear Mr. Fullerton:

As you may recall from my letter dated August 1, 2022, Canadian Pacific Railway Limited, et al. (CP) and Kansas City Southern, et al. (KCS) (collectively, Applicants) are seeking authorization from the Surface Transportation Board (Board) for CP to acquire KCS. The Board's Office of Environmental Analysis (OEA) determined that the proposed acquisition of KCS by CP, including capital improvements that the Applicants plan to make within the existing rail right-of-way, may affect, but is not likely to adversely affect the northern long-eared bat (*Myotis septentrionalis*) and Indiana bat (*Myotis sodalis*). Since that time, the U.S. Fish and Wildlife Service (USFWS) proposed to list the tricolored bat (*Perimyotis subflavus*) as endangered under the Endangered Species Act (ESA), and the USFWS' Information for Planning and Consultation (IPaC) species lists for the planned capital improvements at MP 247, Cave Springs, Spiro, and Heavener now include the tricolored bat. No other changes have been made to the IPaC species lists. The purpose of this letter is to request your written concurrence of OEA's determination of effects for the proposed acquisition on the tricolored bat, in accordance with Section 7(a)(2) of ESA.

Based on habitat-level field work, OEA identified suitable roosting and foraging habitat within the existing ROW for the northern long-eared bat and Indiana bat at all planned capital improvements in Oklahoma. The same habitat would be suitable for the tricolored bat. 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. OEA believes that these measures would also protect the tricolored bat. Therefore, OEA has determined that the Proposed Acquisition **may affect, but is not likely to adversely affect** the tricolored bat.

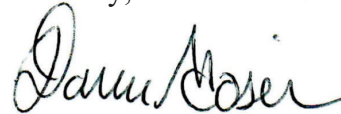
Table 1. Updated ESA-listed species with suitable habitat at the planned capital improvement locations in Oklahoma

Common and Scientific Name	Capital Improvement Location	Federal Status	Suitable Habitat	Recommended Effects Determination
Tricolored bat (<i>Perimyotis subflavus</i>)	MP 247 (Adair County) Cave Springs (Adair County) Spiro (Le Flore County) Heavener (Le Flore County)	Proposed Endangered	Suitable summer 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
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 summer 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

Common and Scientific Name	Capital Improvement Location	Federal Status	Suitable Habitat	Recommended Effects Determination
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,



Danielle Gosselin
Director
Office of Environmental Analysis

ATTACHMENT A: PROTECTED BAT VOLUNTARY MITIGATION MEASURES

Should the Surface Transportation Board (Board) authorize the proposed acquisition of Kansas City Southern et al. (KCS) by Canadian Pacific Railway et al. (CP), the Board's Office of Environmental Analysis (OEA) recommends that CP and KCS (collectively, Applicants) be required to implement the following measures to avoid impacts on northern long-eared bat, Indiana bat, and tricolored bat.

- The Applicants will not conduct construction-related tree removal for the planned capital improvements during the active season for the Indiana bat, the northern long-eared bat, and tricolored 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, the Indiana bat, or the tricolored 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, the Indiana bat, or the tricolored 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).