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September 14, 2023

Danielle Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, D.C. 20423-0012

Re: Docket No. FD 36500, Canadian Pacific Railway Limited, et al. – Control –
Kansas City Southern, et al.: Supplement to Quarterly Environmental
Mitigation Measures Report

Dear Ms. Gosselin:

On August 14, 2023, you sent a letter asking our client, CPKC, to supplement the information it provided to OEA in its July 14, 2023 quarterly environmental mitigation measures report. That quarterly report, you noted, did not address some of the mitigation measures required by the Board's final decision. As your letter also suggested, CPKC did not discuss those measures because it judged that they did not require a full explanation or were not applicable.

With that said, CPKC appreciates that OEA would like information about every mitigation measure imposed by the Board's decision. Going forward, that is what CPKC will provide. In the meantime, and in response to your request, I am enclosing a chart that updates the information in the July 14 quarterly report. This supplemental chart covers the mitigation measures that were not discussed in the July 14 quarterly report.

As you know, CPKC had six capital improvement projects in construction at the end of the first quarterly reporting period: Bellevue, Deer Creek, Washington, Newtown, Laredo, and Mansfield. The information included in the supplemental mitigation measures compliance chart is specific to those project sites, up to June 14, 2023—the end of the quarterly reporting period.

We are always happy to discuss these issues with you, so please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay C. Johnson".

Jay C. Johnson

cc: Elizabeth Webster
Glen Wilson
Joe Van Humbeck
Alan Summerville

Enclosure

FD 36500 – Supplemental Mitigation Measures Compliance Chart

Mitigation Category	Voluntary/Mitigation Measure	Compliance Activity	Comments
Noise and Vibration	VM-Noise-02. 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.	All construction activities on the Capital Improvement Projects during the reporting quarter were completed between the hours of 0700 and 2100 local time.	
Air Quality and Climate Change	VM-Air-06. 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.	To prevent fugitive dust emissions, the construction contractors have monitored dusting conditions and applied dust control measures, such as site watering, as required.	
Air Quality and Climate Change	VM-Air-08. 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.	The Capital Improvement Projects were in initial construction phases during the reporting quarter. Therefore, this measure was not applicable during the reporting period.	

Mitigation Category	Voluntary/Mitigation Measure	Compliance Activity	Comments
Hazardous Material Release Sites	VM-Haz. Material Sites-03. 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.	As reported in CPKC's Quarterly Compliance Report dated July 14 th , 2023 under the update on the Washington Siding Construction, there was one reportable spill. This was reported to the State of Iowa (Spill #042423-JDF1737) which was subsequently cleaned up using response materials on site.	
Hazardous Material Release Sites	VM-Haz. Material Sites-04. 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.	All petroleum products on site are properly stored and this is inspected daily by each site's respective environmental monitor.	

Mitigation Category	Voluntary/Mitigation Measure	Compliance Activity	Comments
Hazardous Material Release Sites	VM-Haz. Material Sites-05. 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.	All waste generated on site at the Capital Improvement Projects under construction was disposed of in accordance with applicable laws and regulations.	
Hazardous Material Release Sites	MM-Haz Material Sites-04. The Applicants shall use established standards for recycling or reuse of construction materials, such as ballast and rail ties, during the construction of capital improvements related to the acquisition. When recycling construction materials is not a viable operation, the Applicants shall use disposal methods that comply with applicable solid and hazardous waste regulations.	No used ballast or rail ties were generated at the Capital Improvement Projects during the reporting quarter and thus none were reused.	
Biological Resources	VM-Biological-02. 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	No clearing of trees or brush occurred after March 31, 2023 at any of the Capital Improvement Project ensuring compliance with the Migratory Birds Treaty Act.	

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	nesting season, the Applicants will consult with OEA and the local office of the U.S. Fish and Wildlife Service (USFWS) on appropriate nest survey methods for that area.		
Biological Resources	VM-Biological-03. 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).	No clearing of trees or brush occurred after March 31, 2023 at any of the Capital Improvement Projects.	
Biological Resources	VM-Biological-05. 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	Prior to altering any bridge or culvert on the Capital Improvement Projects, a qualified biologist completed an inspection for bats. No signs of use by bats were observed.	

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	completed during the same year that the work takes place.		
Biological Resources	VM-Biological-06. 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 Applicants 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.	No bridges or culverts were removed at the Capital Improvement Projects during the reporting quarter.	
Biological Resources	VM-Biological-07. 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.	No temporary lighting was used during the reporting quarter.	

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Biological Resources	VM-Biological-09. 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 the area within the construction ROW. To the extent possible, staging areas will be located in previously disturbed sites and not in sensitive habitat areas.	Sensitive habitats, such as wetlands, were flagged on site. To ensure that staging areas are not in sensitive habitat areas, environmental monitors are used at each of the Capital Improvement Projects.	
Biological Resources	VM-Biological-10. The Applicants will limit ground disturbance to only the areas necessary for the construction of the Capital Improvement Projects.	The contractor limited ground disturbance to only the areas necessary for the construction of the Capital Improvement Projects.	
Biological Resources	VM-Biological-11. 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.	No seed was applied during the reporting quarter nor was weed control required.	
Biological Resources	MM-Biological-01. For capital improvements related to the acquisition, the Applicants shall not knowingly include any federally- or state-listed invasive weed	No seed was applied during the reporting quarter.	

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	species in seed mixes for revegetating disturbed areas within the rail ROW.		
Biological Resources	MM-Biological-03. The Applicants shall apply the mitigation measures identified in VM Biological-03, VM-Biological-04, VM-Biological-05, VM-Biological-06 and VM Biological-07 to any planned capital improvements potentially affecting the habitat of the Tricolored bat, which USFWS has proposed for listing as Endangered.	The listed mitigation measures were applied for the protection of Tricolored Bat in addition to the Indiana Bat and Northern Long-eared Bat.	
Water Resources	VM-Water-04. 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 USACE.	The environmental monitor onsite daily at the respective Capital Improvement Projects under construction is ensuring the contractors comply with all applicable permit conditions.	
Water Resources	VM-Water-10. 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.	In water work is being scheduled at the Capital Improvement Projects to protect fish species as applicable to each respective site.	
Water Resources	VM-Water-11. During the construction of Capital Improvement Projects, the Applicants will require all contractors to	The contractors are completing daily equipment inspections at each	

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	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.	of the Capital Improvement Projects under construction.	
Water Resources	VM-Water-12. 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.	The environmental monitors at each of the respective Capital Improvement Project construction sites are ensuring that the contractors are only crossing watercourses at established crossing points.	
Water Resources	VM-Water-13. 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.	The contractor is complying with the engineering design for each of the respective Capital Improvement Projects including the material specifications for each site (which have been designed by a Professional Engineer to ensure they are appropriate for that respective site).	