



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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September 28, 2010

Victoria Rutson, Chief
Surface Transportation Board
(ATTN: Danielle Gosselin
Section of Environmental Analysis
Environmental Filing FD 35116)

395 E Street, SW
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RE: Docket No. FD 35116

Dear Ms. Rutson:

The Fish and Wildlife Service has reviewed the *Draft Environmental Impact Statement, Construction and Operation Exemption, Clearfield and Centre Counties, Pennsylvania* (dEIS) dated July, 2010. The R.J. Corman/Pennsylvania Lines, Inc. (Corman), proposes to construct and operate a new rail line on an abandoned 10.8-mile rail right-of-way between Wallacetown and Winburne in Clearfield County, Pennsylvania, and to reactivate a rail-banked section on a connecting 9.3-mile line between Winburne and Gorton in Clearfield and Centre Counties, Pennsylvania (Proposed Action). Alternatively, Corman proposes to replace the western-most section from Wallacetown to Munson, in Clearfield County, in the Proposed Action, by constructing a 4,000-foot connection to tie into another 5.8-mile abandoned rail line located near Phillipsburg, in Morris Township, Clearfield County, Pennsylvania, running to Munson, and from that point continuing on the proposed route to Gorton (Modified Proposed Action). The purpose of the new rail line would be to service a proposed new landfill, a quarry, and an industrial park. Work would include activities such as 1) brush cutting and clearing; 2) roadbed grading; 3) culvert clearing; 4) bridge repairing or constructing; 5) updating road crossings; 6) utility relocating; and track installing. The Proposed Action would affect about 1.34 acres of wetlands and 1,570 feet of stream channel, while the Modified Proposed Action would affect about 3.36 acres of wetlands and 980 feet of stream channel.

The following comments are provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of federally listed endangered and threatened species, the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755, as amended) to ensure the protection of migratory bird species, and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) to ensure protection of other fish and wildlife resources.

Federally Listed and Proposed Species

The Resource Recovery Landfill project is located within the range of the federally listed, endangered Indiana bat (*Myotis sodalis*). We have previously commented on this and other related components of this project by letters dated February 14, 2007 (landfill, rail line, local road system upgrade project, highway interchange, and industrial park), May 8, 2008 (Beech Creek Line from Wallacetown to Gorton), June 9, 2009 (Beech Creek Line alternative route), October 26, 2009 (Beech Creek Branch Line or the local road system upgrade alternative), January 8, 2010 (Beech Creek Branch Line or the local road system upgrade alternative). The applicant has identified 30-40 acres of forest to be impacted for the Beech Creek Branch Line or the local road system upgrade alternative. Based on this information, we found that the rail line alone is not likely to adversely affect the Indiana bat.

However, if other developments/components are proposed in relation to this project (*i.e.*, landfill, industrial park, highway interchange, quarry, or local road upgrades), further consultation with the Service will be necessary to evaluate all direct, indirect, and cumulative impact areas within the overall area.

These determinations are valid for two years from the date of this letter. If the proposed project has not been fully implemented prior to this, an additional review by this office is recommended. Should project plans change, or if additional information on listed or proposed species becomes available, this determination may be reconsidered.

Assessment of Risks to Migratory Birds

The Fish and Wildlife Service is the principal Federal agency charged with protecting and enhancing populations and habitat of migratory bird species, *i.e.* bird species that spend all or part of their lives in the United States. The Migratory Bird Treaty Act prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the MBTA has no provision for authorizing incidental take, the Service recognizes that some birds may be killed even if all reasonable measures to avoid take are implemented. Unless the take is authorized, it is not possible to absolve individuals, companies or agencies from liability (even if they implement avian mortality avoidance or similar conservation measures). However, the Office of Law Enforcement focuses on those individuals, companies, or agencies that take migratory birds with disregard for their actions and the law, especially when conservation measures have been developed but are not properly implemented.

The potential exists for avian mortality from habitat destruction and alteration within the project boundaries. Site-specific factors that should be considered in project siting to avoid and minimize the risk to birds include avian abundance; the quality, quantity and type of habitat; geographic location; type and extent of bird use (*e.g.* breeding, foraging, migrating, etc.); and landscape features. We recommend minimization of land and vegetation disturbance during project design and construction. Keep new activities constrained to previously disturbed areas wherever possible (*e.g.*, road and utility line rights-of-way, agricultural fields, previously mined areas, etc.).

We offer the following general recommendations to avoid and minimize impacts to migratory birds within and around the project area:

1. Due to the difficulty in assessing the entire project site for all bird nests, we recommend that the clearing of natural or semi-natural habitats (*e.g.*, forests, woodlots, reverting fields, fencerows, shrubby areas) be carried between September 1 and March 31, which is outside the nesting season for most native bird species. Without undertaking specific analysis of breeding species and their respective nesting seasons on the project site, implementation of this seasonal restriction will avoid direct take of most breeding birds, their nests, and their young (*i.e.*, eggs, hatchlings).
2. Avoid permanent habitat alterations in areas where birds are highly concentrated. Examples of high concentration areas for birds are wetlands, State or Federal refuges, Audubon Important Bird Areas, private duck clubs, staging areas, rookeries, leks, roosts, and riparian areas. Avoid establishing sizable structures along known bird migration pathways or known daily movement flyways (*e.g.*, between roosting and feeding areas).
3. To conserve area-sensitive species, avoid fragmenting large, contiguous tracts of wildlife habitat, especially if habitat cannot be fully restored after construction. Maintain contiguous habitat corridors to facilitate dispersal. Where practical, concentrate construction activities, infrastructure, and man-made structures (*e.g.*, buildings, cell towers, roads, parking lots) on lands already altered or cultivated, and away from areas of intact and healthy native habitats. If not practical, select fragmented or degraded habitats over relatively intact areas.
4. To reduce habitat fragmentation, co-locate roads, fences, lay down areas, staging areas, and other infrastructure in or immediately adjacent to already-disturbed areas (*e.g.*, existing roads, pipelines, agricultural fields). Where this is not possible, minimize roads, fences, and other infrastructure. To minimize habitat loss and fragmentation, cluster development features (*e.g.*, houses, commercial buildings, roads) rather than distributing them throughout land parcels.
5. Develop a habitat restoration plan for the proposed site that avoids or minimizes negative impacts on vulnerable wildlife. Use only plant species that are native to the local area for revegetation of the project area.

Other Fish and Wildlife Resources

Based on our review of the dEIS, wetlands, streams and riparian communities occur within the boundaries of the proposed project. Regardless of the presence or absence of federally listed species, work in wetlands and streams requires permits from the Pennsylvania Department of Environmental Protection (State) and the Army Corps of Engineers (Corps). We recommend that the applicant contact the State and the Corps for information about permit requirements. Lists of the State and Corps offices, along with their areas of jurisdiction, are enclosed. We further recommend that the entire project, including all storage and stockpile areas, access roads,

laydown areas, staging areas, new trailhead facility, and utility line relocations be submitted to the State and the Corps for review, and that these areas be identified on project plans and in the dEIS. Siting of these areas should avoid all aquatic resources.

Riparian areas are a valuable natural resource and impacts to these areas should be avoided whenever possible. Riparian vegetation plays an important role in protecting streams, reducing erosion and sedimentation, protecting water quality, maintaining the water table, controlling flooding, and providing shade and cover. Any encroachment into these areas should be avoided and minimized. Impacts to streams should be assessed in terms of stream functions and values; linear feet of impact; vegetation type lost; and potential effects on wildlife, bank stability, and water quality. Measures to compensate for unavoidable losses of riparian areas should be developed and implemented as part of the project.

To reduce adverse effects that might be caused by project implementation, we recommend the use of best management practices when conducting work in or near streams, including working during periods of low flow, using sedimentation and erosion control devices, adequately and continually maintaining sediment and erosion control devices to insure effectiveness, expediting all revegetation efforts to reduce sedimentation and erosion run-off, stabilizing new construction as the project progresses, conducting stream work from the stream banks or bridges to minimize sedimentation and turbidity within the stream, and locating equipment staging areas outside of streams and riparian areas. All excavated materials from any earthmoving activities should be stored at a predetermined upland site and precluded from re-entry into any aquatic resource. Additionally, we recommend that the applicant maintain a vegetated riparian buffer with a minimum width of 50 feet directly adjacent to streams (*e.g.*, Black Moshannon Creek, Moshannon Creek, and Laurel Run). Any vegetation in impacted areas should be re-established by using only plant species that are native to the local area.

Wetlands perform significant ecological functions which include: (1) providing habitat for numerous aquatic and terrestrial wildlife species, (2) attenuating flood flows, (3) improving water quality through retention and assimilation of pollutants from storm water runoff, and (4) recharging the aquifer. Wetlands also possess aesthetic and recreational values. The Service recommends measures be taken to avoid and minimize wetland losses in accordance with Section 404 of the Clean Water Act, and Executive Order 11988 (floodplain management) as well as the goal of "no net loss of wetlands."

To reduce adverse effects on wetlands that may be caused by project implementation, we recommend that the applicant install a physical barrier (like snow fencing or other visible demarcation) to protect existing wetlands from unintentional excursions by heavy equipment. If temporary wetland crossings are necessary for access to the project, we recommend that any heavy equipment crossing wetlands be placed on corduroy, chunkwood, or rubber mats or other measures to minimize disturbances and improve the soil's ability to support traffic. We recommend that the applicant establish a vegetated buffer with a minimum width of 50 feet around existing wetlands. Any vegetation in impacted areas should be re-established by using only plant species that are native to the local area.

Alternatives Analysis. The dEIS identifies several Alternatives, including the Proposed Action and the Modified Proposed Action as two "Build Alternatives." Although the dEIS lists three

“No-Build Alternatives,” it is unclear why the I-80 Interchange was considered as a no-build alternative, as this proposal was eliminated from consideration years ago by FHWA as being contradictory to the regional land use and transportation plans. Similarly, it is unclear why the Black Bear Road was included since it is noted that the necessary subdivision plan was not approved by county officials. Thus, other than a No-Action alternative, only one legitimate alternative to the Proposed Action and Modified Proposed Action is offered (the Local Road System Upgrade). We recommend that additional options be considered for analysis as alternatives. Even within the “Build Alternatives” options, additional alternatives may include minimizing the right-of-way width (especially constricting it at stream crossings); minimizing lengths of stream enclosures; resetting perched culverts with a depressed subvert instead of merely cleaning them out (to allow for aquatic life movements); or replacing culverts with bridges (to allow for aquatic life movements and reestablish habitat connectivity).

Identification of Environmentally Preferable Alternative. The dEIS concludes that the Modified Proposed Action is the environmentally preferable alternative for this project, among the alternatives given meaningful consideration. It does not appear the information provided in the dEIS is sufficient to support this conclusion.

The explanation of impacts of the Modified Proposed Action in its selection as the environmentally preferable alternative focuses primarily on it having fewer public road and private driveway crossings, and fewer adjacent residential properties. While these may be relevant factors in determining the final action, we do not agree that these should be the driving factors for consideration of the environmental impacts of these alternatives. The dEIS notes that the Modified Proposed Action would have fewer watercourse impacts (980 feet versus 1,570), but greater wetland impacts (3.36 acres versus 1.34 acres), than the Proposed Action. The dEIS also explains that the Modified Proposed Action would result in less air quality and energy impacts because trains would be traveling one less mile than over the Proposed Action, describing an approximately 10% difference in fuel consumption for that portion of the rail line (the percentage would be smaller if the total project were included).

When identifying the Modified Proposed Action as the environmentally preferable alternative, construction of approximately 2,500 feet of new railroad corridor in habitat consisting of field and early successional forest is not addressed, especially the extent to which this contrasts with the Proposed Action occurring solely along previously-established railroad rights-of-way. In addition, while the Modified Proposed Action would affect fewer linear feet of watercourses, it does not address the quality of the impacted waterways. For example, it appears the Modified Proposed Action would cross at least three “cold water fisheries.” Also, in comparison to wetland impacts, which are greater in the Modified Proposed Action, stream crossings – which are more numerous in the Proposed Action – may provide efficient and effective opportunities for mitigation. For example, the existing and previous rail beds presumably already cross those same streams, and old railway construction frequently involved culverts that impair aquatic resources. Incorporating culvert replacement as part of the new construction has the potential to benefit aquatic resources at such sites. Given the greater negative impacts of the Modified Proposed Action concerning wetland impacts and new railroad construction corridors, and the comparatively small differences between that alternative and the Proposed Action concerning impacts to waterways and fuel consumption, we do not agree that the information provided in the

dEIS supports selection of the Modified Proposed Action as the environmentally preferable alternative. We recommend additional analysis and explanation concerning the comparison of these two alternatives.

While the No Action alternative is considered within the dEIS, no explanation is provided regarding why it is not identified as the environmentally preferable alternative.

Single and Complete Project/Cumulative Impacts. As described, and as acknowledged in the dEIS statement of purpose for the project, the proposed R. J. Corman Railroad Line is directly related to the Centre County, Resource Recovery landfill, the quarry, and the industrial park. We disagree with the dEIS's interpretation of available information and conclusion that the proposed railway and other proposed development (*e.g.*, the RRLC landfill, the Hawbaker quarry, the industrial park, and the local road improvement project, etc.), are not interdependent. Consequently, we recommend that these projects be considered concurrently, since there may be additional associated environmental impacts (including wetlands, streams, fish and wildlife). It is difficult for reviewers to assess the adverse effects of a project (direct, secondary, or cumulative impacts) without a complete disclosure of all interrelated projects proposed for the same area; consequently, a full evaluation of potential effects requires that all such projects be considered.

Herbicide Use. We note that the applicant's plan for track maintenance includes the use of herbicides as a vegetation control method (Page ES-22, VM 21), but the dEIS did not provide details on which chemicals might be used. It is important to consider the effects on the aquatic community when spraying herbicides in the vicinity of a water body, especially due to the toxic nature of carriers or surfactants usually used in conjunction with herbicides. Surfactants, or carriers, can often be more environmentally detrimental than the treatment, and more toxic and persistent in the environment than the herbicide itself. Certain commercial herbicides such as Roundup 7 (a form of glyphosate) and Garlon 7 (a form of triclopyr) can be successfully applied in upland areas, but may have limited use on or near aquatic resources, due to potential toxicity to fish. We recommend that the applicant use the aquatic formulation of any herbicide chosen when herbicide use is anticipated around streams or wetlands. The aquatic formulations of Rodeo 7 or Renovate 37 (alternative forms of glyphosate and triclopyr, respectively) are acceptable, less toxic alternatives, and recommended for use around aquatic resources.

To avoid incidental spray drift during application of herbicides, we recommend targeted application, including painting the cut surfaces of freshly cut stumps and stubs, injecting through the bark of woody plants, making cuts with a hatchet and treating, girdling and treating, or basal bark and stem treatment methods, wherever possible.

Compensatory Mitigation. A Clean Water Act section 404 permit from the U.S. Army Corps of Engineers may be needed prior to project construction. In reviewing the applications for such permits, unless the activities fall under general or nationwide permits, the Service may concur, with or without stipulations, or object to the proposed work, depending on project effects on fish and wildlife resources which may be identified at that time. The Service would likely recommend that the Corps require compensatory mitigation for permanent wetland or riparian habitat losses (including permanent alteration of vegetative cover), and impacts to streams. We

offer these comments on the conceptual mitigation plan:

1. In the listed Voluntary Mitigation Measures (VMs), Corman has committed to comply with wetland and watercourse mitigation in accordance with its authorization from the U.S. Army Corps of Engineers and the Pennsylvania Department of Environmental Protection. However, as this simply restates legal obligations, it does not indicate what means of mitigation will be pursued. Other VMs describe avoidance and minimization measures that appear appropriate, but again offer little in the way of specifics, and therefore cannot be endorsed without additional information. In one VM, Corman offers to “evaluate the potential to provide wetland and watercourse mitigation” through an in lieu fee agreement with local, State, or Federal organizations, which does not provide sufficient commitment to merit review and comment. We recommend that the applicant develop a mitigation plan that includes wetland creation, enhancement, or preservation; stream restoration; riparian enhancement or restoration; or other options. We would appreciate an opportunity to review the mitigation plan once it is finalized.
2. The applicant should develop a planting plan for the revegetation of all wetland and terrestrial areas, using plant species that are native to the local to the area. The applicant should develop a plant species list or planting plan along with the mitigation plan. We request an opportunity to review the planting plan once it is developed.
3. We recommend that the applicant coordinate with related projects, such as the landfill, the quarry, the industrial park and the local road improvement project, to develop a Master Mitigation Plan. We request that the resource agencies have an opportunity to review the mitigation plan once it is developed.

Summary

We recommend that the Surface Transportation Board require the applicant to address all of the abovementioned recommendations (which may entail conducting appropriate field studies to obtain site-specific information). We expect that the STB will coordinate with the Fish and Wildlife Service throughout the permitting process. We request the opportunity to participate in any subsequent discussions regarding this project to assist in resolving the above concerns.

Thank you for the opportunity to comment on this permit and draft Environmental Impact Statement. Please contact Jennifer Kagel of my staff at 814-234-4090 if you have any questions or require further assistance regarding this matter.

Sincerely,

Clinton Riley
Field Office Supervisor

cc:

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Project File – Kagel
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