



EI - 20709

July 16, 2014

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Mr. Josh Wayland  
Office of Environmental Assessment  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20324

**RE: FD 35802, Northwest Tennessee Regional Port Authority-Construction and Operation of a Line of Railroad**

Dear Mr. Wayland:

I am writing on behalf of the Northwest Tennessee Regional Port Authority ("NWTRPA"), Petitioner in the above-captioned proceeding, for a waiver of the requirements of 49 CFR §1105.6(a) pertaining to the preparation of an Environmental Impact Statement for railroad construction transactions. For the reasons stated below, NWTRPA believes that an Environmental Assessment (EA) should be adequate to address the impacts of the proposed construction.

As you will recall, NWTRPA is a political subdivision and noncarrier that is seeking Board authority to construct and operate an approximately 5.5 mile-long rail line extending from the NWTRPA's newly constructed port facility on the Mississippi River at the Port of Cates Landing to the connection with the national rail system at Tiptonville, TN.

In support of its request, NWTRPA or its representatives have met with members of the Office of Environmental Assessment ("OEA") staff including you in late 2013 or early 2014 to discuss the proposed construction. Subsequently, NWTRPA sought and obtained a waiver of the six months' advance notice requirement under 49 CFR §1105.10(a)(1) and OEA approval to engage EnSafe,

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Inc., as a third party independent environmental consulting firm. Thereafter, you and EnSafe's Paul Stoddard conducted a site visit in May 2014.

On June 2, 2014, NWTRPA, EnSafe, and the OEA executed a Memorandum of Understanding for handling the environmental and historic issues presented by this construction case. EnSafe under the OEA's supervision will coordinate the National Historic Preservation Act Section 106 consultation with the Tennessee State Historic Preservation Office (SHPO) and the Endangered Species Act Section 7 consultation with the US Fish and Wildlife Service. EnSafe under the OEA's supervision will conduct a field survey of the region that would be affected by the proposed rail project, including in particular the routing that is preferred by NWTRPA and will most likely be presented as the proposed route for the new line.

Subsequently, on June 27, 2014, NWTRPA filed its Petition for Exemption under 49 U.S.C. §10901 for construction and operation authority. To the best of my knowledge, no consultation letters have been sent out or other actions taken by EnSafe or the OEA.

The Board's regulations provide that an EIS normally is prepared in connection with a rail construction project. *See*, 49 CFR §1105.6(a). However, 49 CFR §1105.6(d) provides for flexible exceptions to the general rule:

The Board may reclassify or modify these requirements for individual proceedings...[I]n a rail construction case, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of 49 CFR §1105.7(e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact.

NWTRPA respectfully submits that an EA is sufficient in this case under the standards of 49 CFR §1105.6(d), because the subject construction project is not likely to have a significant environmental impact. Moreover, the port facility was the subject of a previous environmental review and a Finding of No Environmental Significance by the US Army Corps of Engineers ("the Corps") back in 2004.

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generate. Because the Port of Cates Landing and the Lake County Industrial Park both represent new sources of traffic, there will be no diversion of existing freight or passenger traffic either to or from other transportation systems or modes as all traffic would be new.

**(3) Land Use**

Much of the land adjacent to the proposed right-of-way is undeveloped agricultural land and woodland. The major uses of the developed adjacent lands are for agricultural purposes and for a state prison. The proposed action is not expected to adversely affect or conflict with existing land use plans.

Between 60 and 80 acres of land would be required for the right-of-way. The right-of-way width is anticipated to be at least 150 feet.

**(4) Energy**

The proposed action will result in new rail traffic and, thus, a modest net increase in energy use for train operations. Based upon an average one roundtrip per day, seven days per week, it is estimated that 350 trains would operate over the proposed line each year. The proposed action will have no adverse effect on recyclable commodities, and may have a positive impact if recycled rail or crossties are used in the construction process. No diversions of existing traffic from rail to motor carriage are expected to occur.

**(5) Air**

No significant impact to local or regional air quality is expected. According to 40 CFR §81.344 and the Tennessee Department of Environment and Conservation, Lake County and the region encompassing the proposed line currently are in attainment under the Clean air Act.

**(6) Noise**

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Anticipated traffic volume can be expected to lead to a corresponding increase in noise levels. However, there do not appear to be any sensitive noise receptors located in areas immediately adjacent to the proposed rail line.

(7) Safety

As noted above, the proposed right-of-way will cross only two lightly travelled roads and the area it traverses is very sparsely settled. Consequently, safety impacts are not a major consideration.

(8) Biological resources

The majority of the land affected by the proposed action is either undeveloped agricultural land or woodlands. A review of National Wetland Inventory (NWI) maps identified only minimal mapped wetlands that could be affected by NWTRPA's proposed alignment. Although the proposed right-of-way does not cross any navigable waters, OEA will coordinate with the Corps to address any Clean Water Act permitting issues and NWTRPA will pursue and secure any permit(s) that may be needed (see water resources below).

There are no wildlife sanctuaries or refuges, national or state parks or forests that would be affected by the proposed action. While the EA prepared by the Corps back in 2004 identified certain endangered species in Lake County, the associated Biological Assessment did not identify any such species within the proposed harbor areas or along the rail corridor. The area is not a designated critical habitat for any wildlife species. If and to the extent any sensitive species are found along the rail alignment and would be adversely affected by the proposed action, mitigation measures will be developed in coordination with the US Fish and Wildlife Service and the Tennessee Department of Environment and Conservation.

No rare or sensitive native habitats were shown by preliminary review to be significantly affected by the proposed action.

(9) Water resources

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The proposed line crosses no traditional navigational waters or relatively permanent waters and the only potential impact to Waters of the U.S. could be minimal wetlands affected by the proposed project.

(10) Cultural resources

The lands adjacent to the right-of-way do not contain any known Native American cultural artifacts or other resources. Additionally, there are no historic structures or other potential historic or archeological resources on or along the proposed right-of-way. OEA will consult with the Tennessee SHPO to seek concurrence on appropriate measures to avoid or minimize potential project impacts to any cultural resources that may be discovered during project construction.

(11) Geology and Soils

In preliminary geotechnical evaluations undertaken by the Corps, the Project area was found not to include potential geologic hazards, such as areas of subsidence, giant desiccation cracks, landslides, or surface faults. The Project will incorporate features and measures to mitigate for potential seismic activity that is possible in the region.

We believe that the foregoing information should be sufficient under 49 CFR §1105.6(d) to justify reclassification of the NWTRPA rail project as one requiring only an EA. However, if your office believes that any additional information is needed in order to make that determination, please contact the undersigned.

Respectfully submitted,

John D. Heffner

cc: Paul Stoddard  
John Lannom, Esq.