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June 15, 2016

Dave Navecky
Surface Transportation Board
Docket No. FD 35952
395 E Street SW
Washington, DC 20423-0001
Docket No. FD 35952

*Re: Scoping Process for Environmental Impact Statement on Great Lakes Basin
Transportation Rail Construction Proposal, Docket No. FD 35952*

Midwest Environmental Advocates submit these comments on the Surface Transportation Board (STB) Notice of Intent to Prepare an Environmental Impact Statement (EIS) and draft scope of study. Our central concern at this stage is that the public receives sufficient notice to participate fully in the EIS process. We are particularly concerned that those who may be most impacted—property owners in or adjacent to the path of the proposed rail—be made aware of the proposed project through individual notice.

Great Lakes Basin Transportation, Inc. (GLBT) plans to construct an approximately 278-mile rail line, running from La Porte, Indiana to near Milton, Wisconsin. GLBT must obtain a license or exemption from STB prior to constructing the line. Before STB can take action on this project, it must prepare an Environmental Impact Statement (EIS) to comply with the National Environmental Policy Act (NEPA). The EIS will disclose and evaluate the potential environmental impacts of the rail construction.

The principal purposes of NEPA are “informed decision-making and informed public participation.”ⁱ NEPA regulations require STB to give public notice of the scoping process for an EIS and to “[i]nvite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and *other interested persons*.”ⁱⁱ The regulations mandate minimum requirements, but leave some details to agency discretion, provided that discretion is exercised within the confines of the law. NEPA regulations envision that in some circumstances, it may be appropriate to mail notice directly “to owners and occupants of nearby or affected property.”ⁱⁱⁱ STB’s regulations only explicitly require notice of the EIS scoping process to be published in the Federal Register, but that does not mean more notice is not required in some circumstances.^{iv}

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For this project, STB published notice in the Federal Register and sent public notice directly to numerous entities, but did not notify the property owners whose land may be taken for this rail project. The scale of this project and the result of STB's proposed action—which will allow GLBR to take private property for the rail line—warrant more thorough notification of landowners along the proposed rail line. This should include all property owners within the proposed route whose property may be taken for the rail line and associated right-of-way.

We respectfully request that STB send individual notice to all property owners in the path of GLBT's rail construction proposal. While this may be more than STB typically provides for similar actions, individual notice in this case is consistent with the letter and spirit of NEPA, given the scale of this project. Additionally, direct notice to those most affected by this proposed action will reduce potential grievances and ill will down the road. We expect that GLBT has information about the property owners that it could share with STB to ease the administrative burden of sending direct notice to many landowners across several states.

Thank you for your consideration. Please contact me if you have any questions.

Sincerely,

/s/

Sarah Geers

ⁱ *Habitat Educ. Ctr., Inc. v. U.S. Forest Serv.*, 593 F. Supp. 2d 1019, 1025 (E.D. Wis. 2009) (quoting *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1071 (9th Cir. 2001)).

ⁱⁱ 40 C.F.R. § 1501.7(a)(1) (emphasis added).

iii 40 C.F.R. § 1506.6(b)(3)(viii).

iv 40 C.F.R. § 1105.10(2).