

EI # 16241

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**United States Department of the Interior**

FISH AND WILDLIFE SERVICE
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IN REPLY REFER TO:
FWS/AES-CIFO/

December 16, 2008

Ms. Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20423

Dear Ms. Rutson:

This responds to your request for our comments on the biological report for the proposed sale of the Elgin, Joliet and Eastern Railway Company (EJ&E) to the Canadian National Railway Company (CN). You have also requested concurrence with your conclusion that federally listed species would not be adversely affected by this proposed acquisition. At issue are the effects that the proposed action may have upon the Hine's emerald dragonfly (*Somatochlora hineana*), Karner blue butterfly (*Lycaides melissa samuelis*) and eastern prairie fringed orchid (*Platanthera leucophaea*).

With respect to the dragonfly, two possible sources of adverse effects were identified. Midwest Generation (MWG), one of the shippers, contended that CN's acquisition and construction activities may remove currently available staging area, and they would be forced to construct additional staging area in habitat supporting the Hine's emerald dragonfly. CN has voluntarily agreed that if the current staging area becomes unavailable, CN would construct, at MWG's expense, staging area in a suitable place that does not support the dragonfly.

The other adverse effect noted was the potential for dragonfly mortality from collisions with trains. CN funded a brief study that noted no mortality from trains hitting dragonflies along the Joliet Subdivision line. Because that study was too brief, and the methods were limited to searching near the tracks, it does not support a conclusion that no dragonflies are harmed by trains. The Service remains willing to work with CN to design a more robust study evaluating the potential for Hine's emerald dragonfly mortality from collisions with trains. The STB has indicated that they only have authority over operations that would change as a result of the CN acquisition of the EJ&E. Therefore, the STB has no authority to modify existing operations, regardless of any adverse effects that may be occurring. The STB and CN have determined that there would be no increase in train traffic along the line. Because there would be no change in operations, the STB has no authority over any associated impacts. Because the STB has no

Ms. Victoria Rutson

2

discretion or authority over the impacts, it has no obligation under section 7 of the Act on this issue.

However, we believe that the potential for take of Hine's emerald dragonfly as a result of collisions with trains exists. Section 9 of the Act prohibits the take of federally listed animals. Several partners have been working on a habitat conservation plan for the Hine's emerald dragonfly in the lower DesPlaines River Valley. If successful, that HCP would provide for the conservation of the Hine's emerald dragonfly, and would enable the Service to issue a permit to take the dragonfly. The Service has invited CN to participate in this HCP effort, and CN has agreed to a voluntary mitigation measure requiring them to participate in this effort.

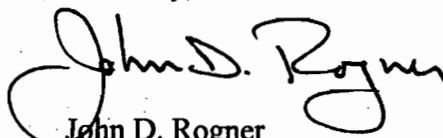
Because of the voluntary measures described above and because the STB lacks authority to make modifications that would affect existing mortality, the Service concurs with STB's determination that the CN acquisition of the EJ&E is not likely to adversely affect the Hine's emerald dragonfly or its designated critical habitat.

With respect to the Karner blue butterfly, the STB concluded that there would be no direct effect on the butterfly because there is no suitable habitat in the immediate vicinity of the proposed connections. Therefore we concur with your determination that the proposed acquisition would not adversely affect the Karner blue butterfly.

With respect to the eastern prairie fringed orchid, CN's acquisition of the EJ&E would not affect any known locations of the plant. However, suitable habitat is present in areas where construction activities would occur. CN has agreed to a voluntary measure to conduct searches for the orchid and has agreed to compensate for any impacts. The STB has acknowledged the need to reinitiate consultation with the Service if any orchids are found, and CN has agreed to certain types of compensation measures that would offset impacts. Because consultation would be reinitiated if any orchids are found, the Service concurs with STB's conclusion that the proposed action is not likely to adversely affect the eastern prairie fringed orchid.

Thank you for your interest in endangered species, and efforts to reduce and avoid impacts to federally listed species, should the acquisition be approved. If you have any questions, please call Karla Kramer at (847) 381-2253 ext. 12.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Rogner". The signature is fluid and cursive, with a large initial "J" and "R".

John D. Rogner
Field Supervisor