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United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Custom House, Room 244
200 Chestnut Street
Philadelphia, Pennsylvania 19106-2904



September 29, 2008

ER 08/833

Ms. Phillis Johnson-Ball
Surface Transportation Board
395 E Street, SW
Washington, DC 20423
Ref: STB Finance Docket No. 35087

Dear Ms. Johnson-Ball:

The Department of the Interior (Department) has reviewed the July 2008 Draft Environmental Impact Statement (DEIS) for the proposed Canadian National Railway Company and Grand Trunk Corporation (Applicants) acquisition of the Elgin, Joliet, and Eastern Railway Company (EJ&E). Coordination between the Surface Transportation Board's (STB) Section of Environmental Analysis (SEA) and the U.S. Fish and Wildlife Service (Service) began during the scoping process. With respect to resources or issues for which the Department or its bureaus have jurisdiction or special expertise, we offer the following comments and recommendations for your consideration.

GENERAL COMMENTS

The DEIS provides a considerable amount of general information on issues of concern to the Department, but detailed analysis is often lacking. The proposed action and alternatives, which include the construction of six new connections and the installation of 19 miles of double track, would result in environmental impacts of varying severity depending on the particular location within the project area. All alternatives would result in greater environmental impacts than the no action alternative. The DEIS does not adequately identify adverse impacts to the Service's trust resources (federally listed species and migratory birds) and does not fully disclose impacts to other wildlife. As a result, the DEIS fails to consider and describe appropriate mitigation for these environmental impacts.

There is confusion about which agencies own or manage conservation lands in the two affected States, where conservation lands are located in relation to either the EJ&E or CN tracks, and about lands that have utilized Land and Water Conservation Fund monies, among other issues. A major problem in sections of the DEIS dealing with the Indiana portion of the project is a failure to provide adequate maps and descriptions of the main line and other tracks in the

Gary/Hammond/East Chicago/Whiting area (Lake Front Line, City Track, etc.) so that specific locations of important natural resources areas can be ascertained in relation to the tracks (Figures 2.1-1, 3.1-1, and 3.11-1 are not of sufficient detail to be adequate; Figure E-1, Sheets 29 through 32, provide better detail but do not name the tracks or provide the Segment numbers that are used throughout the text). The text does not clearly distinguish between the EJ&E main line and other EJ&E tracks in the discussion of project impacts. In particular, the proximity of any EJ&E tracks to the Indiana Dunes National Lakeshore is not clearly apparent, other than the Gaylord Tract in Griffith.

The specific comments below address these concerns in more detail and provide recommendations to correct these deficiencies in the final EIS. We also recommend that SEA coordinate further with the Service to resolve differences of opinion concerning project impacts to Service trust resources. If differences remain, SEA should ensure that the opposing views are disclosed and adequately discussed in the final EIS.

SPECIFIC COMMENTS

Proposed Action and Alternatives (Chapter 2)

Section 2.2.1.4, Planned Phased Integration of Applicants' Operating Plan: This section discusses the proposed phased implementation of the CN take-over of the EJ&E system. The Lake Front Line and Whiting Branch are mentioned several times, but no mention is made about the Hammond Branch, City Track, or the other tracks listed on Table 3.3-2 of Appendix E. It is indicated that service would not change on the Whiting Branch, but in Phase 3 there would be longer trains on the Lake Front Line, which essentially borders Lake Michigan through northwestern Gary and northern East Chicago, Whiting, and Hammond, Indiana to South Chicago, Illinois. These longer trains on the Lake Front Line are not discussed in Chapter 4, Environmental Consequences, section of the DEIS, despite the fact that these longer trains could adversely impact other existing and proposed uses of the Lake Michigan shoreline (e.g., the Marquette Plan, including a trail).

It is also not clear which track borders the north side of Clarke and Pine and Pine Station State Nature Preserves, west and east, respectively, of Clark Road in Gary. (Table 3.3-2 in Appendix E lists 2 at-grade crossings of Clark Road using names not found anywhere in the text.) Because these habitats are unique, this track and any changes or lack of changes in operation need to be mentioned here and discussed in Chapter 4, Environmental Consequences.

Section 2.4.1, Rail Connection Alternatives-Munger, Illinois: This section describes all of the alternatives considered for the six proposed rail connections, including the proposed and no-build alternatives. The Service supports the No-build at Munger alternative to avoid direct or indirect impacts (noise) to Service trust resources (migratory birds) that would result from the Munger build alternatives in Pratt's Wayne Woods Forest Preserve (PWWFP). As the DEIS notes in Section 3.11.6.3, PWWFP provides important habitat for state listed, wetland, and grassland birds. If a build alternative is chosen, the Service supports the Applicant's Proposed Munger Connection (Section 2.4.1.2) because changes were made to the Original Munger alternative to avoid PWWFP land (wetlands in particular). The Munger Alternative-UP Connection would also avoid wetland impacts at PWWFP; however, other offsite environmental

impacts (impacts to the southern end of Pratt's Wayne Woods and Brewster Creek Fen Nature Preserve) would result from this alternative.

Section 2.4.2, Rail Connection Alternatives-Joliet, Illinois: The Service supports the No-build at Joliet alternative to avoid direct impacts with the Hine's emerald dragonfly which occupies habitat in the vicinity of this alternative. This issue will be addressed in Section 4.11, Biological Resources and should be addressed in the final EIS.

Table 2-9: This table presents a summary of potential environmental impacts due to changes in rail operations. We disagree with several of the conclusions made by SEA in regard to impacts on biological resources. The conclusions are located in the proposed action column. Specifically, we disagree with SEA's conclusions that the proposed action would not have an adverse effect on plant communities, wildlife, conservation and natural areas, wetlands, federally listed species (including the Hine's emerald dragonfly), state listed species, and water resources. Since land not currently used for railroad purposes will be taken for the proposed rail connections, plant communities and wildlife habitat will be affected and, in some cases, wetlands will be filled. Stating that wetlands would not be affected "as no changes in drainage patterns would occur" is incorrect. The filling of wetlands will adversely affect the wetlands whether or not drainage patterns are modified by the filling. Some conservation lands will be adversely affected by increases in numbers of trains passing them, with resultant noise and air pollution impacts. We disagree with the conclusion that the noise level increase of 65 dBA or greater would not result in adverse effects. These statements in Table 2-9 do not agree with the discussion of project impacts in Chapter 4, Environmental Consequences. These discrepancies should be addressed in the final EIS.

Table 2-10: This table presents a summary of potential environmental impacts for the Munger Connection. We agree with SEA's conclusion that the Proposed Munger Connection would result in "increased noise and indirect loss of habitat, potentially decreasing the breeding activity of marsh birds." However, this conclusion should be made for the Munger-Original Proposal and Munger-Northwest Quadrant alternatives.

We disagree with SEA's conclusion that there would be no effects to federally listed species. This determination cannot be made for the eastern prairie fringed orchid without conducting a habitat assessment or surveys in suitable wetland habitat. The conclusion in the table should be revised in the final EIS. This issue is addressed in greater detail in our comments regarding Section 4.11, Biological Resources.

Table 2-11: This table presents a summary of potential environmental impacts for the Joliet Connection. We disagree with SEA's conclusion that there would be no effects to federally listed species. As noted above, the proposed construction could result in take of the Hine's emerald dragonfly. The conclusion in the table should be revised in the final EIS. This issue is addressed in greater detail in our comments regarding Section 4.11, Biological Resources.

Tables 2-12 and 2-16: These tables present summaries of potential environmental impacts for the Matteson Connection and for proposed double tracking. We disagree with SEA's conclusion that there would be no effects to federally listed species since this determination cannot be made for the eastern prairie fringed orchid without conducting a habitat assessment or surveys in

suitable wetland habitat. The conclusions in the tables should be revised in the final EIS. This issue is addressed in greater detail in our comments on Section 4.11, Biological Resources.

Table 2-13, Summary of Potential Environmental Impacts – Griffith Connection: This table indicates that there would not be an effect on local parks, but in Chapter 4, Environmental Consequences, it is acknowledged that the Griffith Historical Park and Depot Museum may be affected to some extent because it is immediately adjacent to the proposed connection. This table also states that there would be no effect on wildlife, despite the fact that several acres of prairie, woodland, and wetland habitat would be converted to railroad embankments and tracks. Chapter 4, Environmental Consequences, acknowledges that wildlife will be impacted by this connector. These discrepancies should be addressed in the final EIS.

Table 2-14, Summary of Potential Environmental Impacts – Ivanhoe Connection: This table also states that there will be no effect on wildlife. However, birds and small mammals that utilize the existing remnant prairie along the south side of the CSXT tracks will lose habitat. Under Biological Resources, it is indicated that there will be “potential effect on wetlands and dry woodlands species” of State-listed threatened and endangered species, but under Water Resources, it is stated that the project “would not affect wetlands.” This inconsistency needs to be addressed.

Table 2-15, Summary of Potential Environmental Impact – Kirk Yard Connection: This table makes similar statements about potentially affecting wetland and prairie species of threatened wildlife, while not affecting wildlife or wetlands. These inconsistencies need to be corrected.

Affected Environment (Chapter 3)

Section 3.1.2.2, Yard Operations: This section states that the Whiting Yard in Indiana is located “just southeast of Kirk Yard,” although it is actually about 6 miles northwest of Kirk Yard.

Section 3.3.1, Regional and Local Highway Systems: The discussion in this section, as well as in section 4.3.1, of existing conditions and with-the-project conditions of highway/rail at-grade crossings in Gary, Indiana, does not adequately describe the crossing situation in that community. At this time, the only grade-separated crossing of the EJ&E tracks with a roadway in Gary is Industrial Highway (former US 12) near Gary-Chicago International Airport. Industrial Highway has an at-grade crossing of the CSXT Railroad double main line track a short distance northwest of the EJ&E grade separation. However, Chicago Avenue intersects Industrial Highway in the same general area, parallel to the CSXT tracks, and has an interchange with Cline Avenue/SR912. This configuration will change, however, when the EJ&E tracks are moved around Gary-Chicago International Airport, at which time the grade-separation will be removed and at-grade crossings will be provided at Industrial Highway and Chicago Avenue. At some unknown date, a grade separation will again be provided over Industrial Highway and Chicago Avenue will be closed. However, the airport’s ultimate plans, not covered under the 2005 FAA Record of Decision, are to close Industrial Highway entirely in order to lengthen the north-south runway.

Fifth Avenue (US 12-20) is a 4-lane highway that is the main entrance to the west side of Gary and includes an interchange with Cline Avenue about 0.5 mile west of the EJ&E at-grade crossing; it is a Department of Transportation designated heavy truck route that traverses the city

west to east. This highway is not even mentioned on page 3.3-37. Ninth Avenue is a 2-lane city street that crosses the EJ&E at-grade. It does not intersect with Cline Avenue and currently does not proceed into Hammond but connects with a service road parallel to Cline Avenue that connects with 15th Avenue. Therefore, it is not an alternative to either 5th or 15th Avenues. Fifteenth Avenue is a 2-lane city street serving commercial and industrial properties near the EJ&E at-grade crossing and mostly residential properties to the east; 15th Avenue intersects with Cline Avenue. Twenty-fifth Avenue is a 2-lane city street primarily serving residential areas; it does not intersect with Cline Avenue, but does proceed into Hammond. The seven unnamed roadways that have grade separated crossings of some part of the EJ&E tracks in Gary need to be named, and it should be acknowledged that they are not main entrances to the city from the west over the EJ&E double track main line.

Therefore, at this time, only Industrial Highway and Chicago Avenue are available to provide unobstructed access to the west side of Gary from Cline Avenue, which is the main north-south highway connection to Interstate Highways 80-94 and 90, area steel mills, and adjacent communities west of Gary. This unobstructed entrance will be lost during the unknown time period after the initial relocation of the EJ&E tracks around Gary-Chicago International Airport and before the construction of the Industrial Highway grade separation over the EJ&E (even though Industrial Highway may eventually be closed). With increased numbers of trains and longer trains on the EJ&E tracks with the project, access to and from the west side of Gary to Cline Avenue and adjacent communities could be significantly compromised unless another grade separation is provided.

This possible traffic impairment into and out of Gary is of concern to this Department because of the proximity of Ivanhoe Dune and Swale Nature Preserve and Ivanhoe South Dune and Swale to both the EJ&E tracks and 5th Avenue. Since 5th Avenue/US 12-20 is the major highway access for western Gary, it would appear that a grade separation will be needed at this location, regardless of the current and estimate traffic volumes (Level of Service) discussed in the DEIS. Either a grade separation of the EJ&E over 5th Avenue or 5th Avenue over the EJ&E would likely adversely impact the Ivanhoe Dune and Swale natural area complex. These preserves support the federally endangered Karner blue butterfly (*Lycaeides melissa samuelis*) and numerous Indiana-listed species of plants and animals. These dune and swale habitats are recognized as a Globally Imperiled Ecosystem.

Therefore, we request that the Surface Transportation Board provide a detailed discussion of the possible need for a grade separation at 5th Avenue/US 12-20 and the EJ&E Railroad, as well as the environmental consequences of such a separation, in the final EIS. Either grade separation structure would require retaining walls rather than side slopes in order to reduce the footprint of the structure and the impact on the Ivanhoe preserves. We believe that it is necessary for STB to address this issue because a grade separation would not be needed at this location “but for” the proposed project.

The discussions about Hammond, East Chicago, and Whiting need to make clear that the EJ&E lines being addressed are not the main line extending south and west from Kirk Yard into Illinois, which is the line that will experience the increases in numbers and sizes of trains. These cities are instead along lightly used spur lines that apparently would not have increased traffic as a consequence of the project.

Section 3.3.4, Airports: This section, as well as section 4.3.4, needs to discuss the ultimate plans of Gary-Chicago International Airport to close Industrial Highway at some unknown time in the future if the north-south runway is to be extended.

Section 3.5, Land Use: This section describes the land at the proposed Griffith connection between the CN and EJ&E Railroads as “vacant land.” This land is apparently not zoned but is just there, unoccupied by a specific use. Based upon the Service’s review of the area, it would more naturally be called “open space” since it consists of dry sand prairie, wetland, and savanna/woodland. Several abandoned rail rights-of-way cross the site, but native habitats dominate. Zoned “land use” does not necessarily describe the current land use, as is the case at this site. This same type of distinction can be made at the proposed Ivanhoe connector site, which is apparently zoned “open space” but is primarily industrial land, except for remnant prairie along the south side of the CXST track. “Open space” is the correct designation for the Ivanhoe dune and swale complex north of the proposed Ivanhoe connector.

Section 3.5.5, Public Lands: This section discusses various types of public lands in the project area but leaves the reader very confused about the subject. Both Indiana and Illinois have Nature Preserve systems; Indiana has County Park systems and no Forest Preserve systems; Illinois has Forest Preserve systems and no County Park systems within the counties affected by the proposed project. These distinctions are not made clear in this Public Lands discussion. This section needs to clearly explain the similarities and differences in the public land systems between Indiana and Illinois. For example, Table 3.5-2, Forest Preserves Adjacent to the EJ&E Rail Line, does not make clear that this system exists only in Illinois; all it states is that there are no forest preserves located near the EJ&E rail line in Lake County, Indiana. A reviewer unfamiliar with the distinctions between the two State systems would therefore believe that there are no designated, significant natural habitats along the EJ&E line in Indiana, which is not the case.

Section 3.5.5.6, Nature Preserves, and Table 3.5-3: The information provided in this section is also confusing. Listed lands are described as “south of” or “west of” the EJ&E line, but there is no indication if they are immediately adjacent to the main rail line or one of the spur lines, which is the important issue. Hoosier Prairie in Griffith is, in fact, along both the CN line and the EJ&E line. When the entire site is considered, it is about 600 acres in size, not the 430 acres listed in the table. Ivanhoe Dune and Swale is east, not west, of the EJ&E main line. Clarke and Pine and Pine Station Nature Preserves are along the south side of one of the spur lines of the EJ&E; this line should be named in the table.

Table 3.5-4, Resource-Rich and Protected Areas Adjacent to the EJ&E Rail Line: This table is also very confusing. Apparently, this terminology is used only in Illinois for specific resources; however, this is not made clear either in the discussion or in this Table. The last line of the table states that “No protected areas are located near the EJ&E rail line in Lake County, Indiana.” This would lead the reviewer to conclude that there is nothing of importance along the EJ&E Railroad in Indiana, which is clearly not the case. Therefore, it must be made clear that this Resource-Rich and Protected Areas designation refers only to Illinois; any references to Indiana need to be removed.

Table 3.5-9, Trails and Greenways in Lake County, Indiana: This table is incorrect about most of the trails. The Northwest Indiana Regional Planning Commission (NIRPC) does not manage

the trails, although they published the regional trail map and are involved in trail planning. The Little Calumet River Trail is a component of the Little Calumet River Flood Protection and Recreation Project being constructed by the Chicago District, U.S. Army Corps of Engineers, with the Little Calumet River Basin Development Commission (LCRBDC) being the local sponsor and the trail manager, in conjunction with the cities and towns the trail passes through. The trail is located, or will be located, along levees either north or south of the river and crosses the EJ&E min line tracks in Griffith. The Grand Calumet River and Marquette Corridor Trails do not exist, although there is a Marquette Trail on a portion of an abandoned Indiana Harbor Belt (IHB) rail corridor within the Indiana Dunes National Lakeshore (INDU) in Gary. The Marquette Trail is administered by INDU. The plan is for a trail near the Lake Michigan shoreline of Indiana between Illinois and Michigan, not Ohio. The only part presently existing is in the vicinity of Whihala Beach County Park in Whiting, which may mean it is near the EJ&E Lake Front Line. Portions of the Grand Calumet River trail are in the planning stage; it will be constructed on city streets and the river shoreline both north and south of I-90/Indiana Toll Road. The Oak Savanna Trail is along an abandoned railroad grade and is administered by the Lake County Parks and Recreation Department. The Prairie Duneland Trail is also along an abandoned railroad grade and is administered by Portage, Chesterton, and Porter County.

Table 3.5-11, Land and Water Conservation Fund Properties: This table omits Hoosier Prairie and Clarke and Pine Nature Preserves, although both have received funding from the Land and Water Conservation Fund. We acknowledge that the National Park Service Website references (<http://waso-lwcf.ncrc.nps.gov/public/index.cfm>) do not list these two properties, but information about the funding is available from the Indiana Department of Natural Resources, Divisions of Outdoor Recreation and Nature Preserves.

Section 3.10.2, Existing Conditions: This section describes the existing conditions with respect to noise and vibration. It describes the Kirk Yard as being “between the shore of Lake Michigan to the north, the US Steel Gary Works to the east, an interstate highway to the south, and rail lines to the west.” However, Kirk Yard is not along the shoreline of Lake Michigan; it is inland about a mile and the US Steel Gary Works is between it and the Lake.

Section 3.11, Biological Resources: This section describes the biological resources of the Study Area, which is a 1-mile-wide corridor centered on the EJ&E and CN rail lines.

Section 3.11.1, Background, and 3.11.6, Conservation and Natural Areas within the Illinois Study Area: Figure 3.11-1 in section 3.11.1 displays natural areas that would be affected by the proposed action and section 3.11.6 describes the natural areas. We note that the northern portions of MacArthur Woods and Middle Fork Savanna were not highlighted on the figure and were not described in these sections. These forest preserves are located along the EJ&E arch and provide habitat for Service trust resources. Therefore, the final EIS should highlight and describe these natural areas.

Figure 3.11-1 should be revised to designate the rail lines by segment number, since segment numbers are used in the text.

Table 3.11-1, Invasive and Nonnative Plant Species: Spotted knapweed (*Centaurea maculosa*) is another significant nonnative, invasive plant species that should be added to the list in this table and discussed in section 3.11.3.2, particularly since it is prevalent along railroad rights-of-way.

Table 3.11-2, Common Wildlife Species in the Study Area, and Table 3.11-3, Common Migratory Birds in the Study Area: These tables actually list many species that are very uncommon in the area, including those that are Indiana and/or Illinois listed rare species, as shown in Table 3.11-7, State-listed Threatened & Endangered Species Potentially within Illinois and Indiana Study Area. Common species would instead include American robin, blue jay, gray squirrel, white-tailed deer, and similar species that have adapted to living in human-dominated habitats. The rarer species are most often found within the Nature Preserves, Forest Preserves, and other significant habitats. Osprey, black-crowned night heron, and common loon are not “common” migratory birds within the study area (Table 3.11-3). Some of the birds listed migrate through the area but are not known to nest, while others on the list are known nesters.

There is also a large heron rookery in Lake County, Indiana, west of Cline Avenue and south of the Little Calumet River, which is about a mile west of the EJ&E main line. Although the rookery itself is outside of the mile-wide Study Area, the birds feed along the river in the vicinity of the railroad river bridge and numerous other locations along the river and area wetlands. Great blue heron, great egret, green heron, and black-crowned night heron have been known to nest at this rookery.

Section 3.11.7, Conservation and Natural Areas within the Indiana Study Area: This section mentions “county forest preserves,” but Indiana does not have a County Forest Preserve system, instead having a County Park system. This section continues the confusing conservation land discussions mentioned previously in our comments and needs clarification. Table 3.11-5 and the discussion in this section need to indicate what community the various lands are located in, particularly since some of them are not shown on Figure 3.11-1. We have no idea if any of the unnamed high quality natural communities discussed include the EJ&E prairie, which is located east of Clark Road at the west end of the Kirk Yard. This sand prairie and wetland complex is a remnant dune and swale habitat not far from Clarke and Pine and Pine Station Nature Preserves and is an area the Indiana natural resources agencies are interested in preserving and enhancing, possibly as mitigation for the impacts of this STB project. This area is discussed further in our comments on Chapter 6, Mitigation.

Except for the Gaylord Butterfly Tract, the Hoosier Prairie State Nature Preserve is owned and managed by the Indiana Division of Nature Preserves, even though it is a component of the Indiana Dunes National Lakeshore and a National Natural Landmark. The Gaylord parcel is south of the main section of Hoosier Prairie and is adjacent to the south side of the EJ&E right-of-way in Segment 5B. Hoosier Prairie also includes an 18-acre parcel adjacent to the south side of the EJ&E main line immediately west of Kennedy Avenue.

The discussion of Clarke and Pine and Pine Station Nature Preserves should identify which EJ&E track is adjacent to the properties. Pine Station is both north and south of the Grand Calumet River and it is both owned and managed by the Indiana Division of Nature Preserves.

It is not clear why the Indiana Dunes National Lakeshore is mentioned, because other than owning the Gaylord Butterfly Tract in Griffith, it appears that INDU is not located along any of the EJ&E tracks. Therefore, the proximity of INDU to any of the EJ&E tracks needs to be clarified.

Section 3.11.8, Threatened, Endangered, and Sensitive Species: This section describes the federally listed species that have the potential to occur in the study area. In reference to the Hine's emerald dragonfly, it is noted that the Service has an agreement with EJ&E rail line for train operations on the Paul Ales Branch and that trains operate between 4 to 6 miles per hour to reduce adult mortality from direct train collisions. Furthermore, the DEIS notes that the reduced speeds minimize impacts to larval Hine's emerald dragonflies from "squishing" ground water from beneath the railbed, releasing sediments into larval habitat next to the railroad embankment. The final EIS should clarify that the speed limits were imposed by the special conditions of the 1996 U.S. Army Corps of Engineers (COE) permit (Permit # 199600211). Additionally, it should be clarified that there is not an agreement in place between EJ&E and the Service; Commonwealth Edison was the applicant for the 1996 permit. It is our understanding that EJ&E operates trains on the line, the Metropolitan Water Reclamation District owns the land within the right-of-way, and Midwest Generation owns the rail line.

In reference to habitat for the eastern prairie fringed orchid, the EIS should also list wet to mesic prairie and marsh edges as suitable habitats. The DEIS notes two locations where the orchid was last recorded in the vicinity of the EJ&E. However, the orchid could be found in suitable wetland habitat throughout the study area and, as noted above, habitat assessments need to be conducted to determine whether suitable habitat is present.

Concerning the Karner blue butterfly, no critical habitat has been designated for the species anywhere throughout its range, so the Study Area is not the only area with no designated critical habitat. All of the Karner blue's larval stages utilize wild lupine (*Lupinus perennis*) as their sole food source, not just "several" of them.

In its February 12, 2008, letter to STB concerning the Draft Scope of Study for Finance Docket No. 35087, the Service's Bloomington, Indiana, Ecological Services Field Office stated that the proposed project area is within the range of the federally endangered Indiana bat (*Myotis sodalis*). The Service indicated that this species may be found along the floodplain of the Little Calumet River, which is crossed by the EJ&E main line tracks. However, this species is not listed on table 3.11-6 and is not discussed in this section of the DEIS. Based upon knowledge of the species, it is the position of the Service that the Indiana bat is considered to be present in suitable habitat unless proven otherwise. The Little Calumet River floodplain is considered suitable habitat although no studies have been undertaken along the river corridor in Lake County to prove or disprove the presence of the Indiana bat. The species is known along the East Branch of the river in adjacent Porter County. We therefore request that the Indiana bat be addressed in this section of the final EIS, as well as in section 4.11.

Section 3.12, Water Resources: This section discusses the various permits that may be needed by the Applicants because of project impacts to wetlands and/or Waters of the United States or Waters of the States. However, it confuses the Indiana Department of Environmental Management's (IDEM) Section 401 authority with the Federal Consistency Review requirements of the Indiana Department of Natural Resources. These are two separate and distinct reviews done by different agencies. Also, the discussion only addresses use of Nationwide Permits or the Indiana Regional General Permit No. 1, not the procedure if an individual permit is required under Section 404 of the Clean Water Act or Section 10 of the 1899 Rivers and Harbors Act. Both types of permits need to be discussed.

Section 3.12.5, Wetlands: This section notes that the Applicants would be required to conduct wetland delineations as part of Section 404 of the Clean Water Act. The Service recommends that the delineations and habitat assessments (e.g., Floristic Quality Assessments) be conducted during the growing season for greatest accuracy and reliability.

This section also needs to acknowledge publicly owned wetlands along the Little Calumet River in Lake County, Indiana. These wetlands are owned by the LCRBDC as part of the flood control project lands.

Environmental Consequences (Chapter 4)

As stated previously, we believe that a grade separation will likely be needed at 5th Avenue in Gary, Indiana, because it is the main west-side access into and out of the city. Therefore, the consequences of such a structure need to be addressed in this section.

Section 4.2.5, Hazardous Material Transportation Safety: This section needs to indicate whether or not herbicides and pesticides that could impact wildlife will be carried by the trains and may be released in an accident. If such materials spilled near a site containing endangered wildlife, such as the Karner blue butterfly, the population could be decimated before containment and clean-up is achieved. Temporarily restricting use of a water body that has received a spill may help keep humans away, but it will not help the wildlife that utilize the water body and cannot escape it.

Section 4.5, Land Use: This section states that the proposed action would not affect public lands in Indiana (page 4.5-3). We disagree. The Gaylord Butterfly Tract and the Hoosier Prairie 18-acre Kennedy Avenue tract would be affected by proximity effects, such as increased noise, because they are immediately adjacent to the EJ&E main line. The 18-acre Kennedy Avenue tract could also be impacted by any changes to the at-grade crossing at location. As previously noted, both Clarke and Pine and Hoosier Prairie Nature Preserves are Section 6(f) Land and Water Conservation Fund properties.

Construction of the Griffith connector (page 4.5-11) may not impact land use patterns, but it would certainly impact current use at the site, which is undeveloped open space. This is described as 3.25 acres of vacant land, which is actually sand prairie, wetland, and savanna/woodland. Section 4.11, Biological Resources, states that although there are natural habitats in the proposed connection areas, “the affected wildlife habitat is general minor [sic] and wildlife is mobile” so the proposed construction would not affect wildlife. This no-effect is not accurate. Wildlife forced to move from their habitat or die are “affected”; any eggs or immobile individuals will be killed. Wildlife do not necessarily have other habitats to move into because those habitats are already occupied. Wildlife have specific home ranges of certain sizes, and wildlife cannot be “stacked” into remaining habitats. Therefore, all of the wildlife species utilizing the 3.25 acres of natural habitat at the Griffith connector will be adversely affected through loss of habitat. These wildlife include insects, amphibians, reptiles, birds, and mammals. More detailed descriptions of the habitats at the Griffith connector site are necessary (page 4.11-16). The wetland at the Griffith connector site is not just a palustrine emergent seasonal type; it also includes scrub-shrub and forested components (Table 4.12-7, Wetland Effects from Proposed Connections). We agree that a botanical survey is necessary at the Griffith connector site prior to construction. Such a survey is also needed at the Ivanhoe connector site because of the remnant prairie along the south side of the CSXT tracks.

Section 4.10, Noise and Vibration: This section discusses noise impacts from the proposed action and estimates the number of noise-sensitive receptors that would be affected by increased average noise levels (in dBA). However, SEA's analyses only considered noise impacts on humans and did not consider the effects of noise on wildlife (specifically migratory birds), although the effects on wildlife are mentioned in Section 4.11. In this section, SEA determined that noise levels less than 65 dBA are generally not considered adverse to human health and welfare. SEA also determined that the majority of the EJ&E segments would experience noise levels of 65 dBA or greater and that seven of the segments would experience noise levels of 70 dBA or greater. The noise levels for some of these segments could approach 100 dBA since the existing noise levels at some of the monitoring stations in Table 3.10-2 show dBAs currently above 80 dBA and up to 92 dBA. In addition, average sound exposure levels (SEL) for locomotives horns, locomotives, and rail cars along the EJ&E are 104.1 dBA, 93.9 dBA, and 91.7 dBA, respectively.

Section 4.10.1.1 of the DEIS notes that the Board requires an evaluation of potential noise effects as part of an environmental analysis. However, SEA did not evaluate the potential noise effects on a major component of the environment, wildlife. Research exists that indicates thresholds for which adverse effects would be seen in wildlife, particularly in migratory birds. The issue of noise impacts to migratory birds is discussed in more detail in our comments on Section 4.11. Because of the numerous natural areas located adjacent to the EJ&E arch and the potential for adverse effects from the increased noise levels, noise impacts and their effects on wildlife should be considered and discussed in this section of the final EIS.

Sections 4.11.1 and 4.11.3, Biological Resources: These sections present the methodology SEA used to determine potential effects from the proposed action on biological resources and details the potential effects by category. In the summary of findings, we agree with the statement that wildlife and natural areas would experience a higher probability of exposure to hazardous material spills and that bird populations may experience behavioral or physiological effects and masking of communication signals because of increased noise. We also agree that several forest preserves, nature preserves, and state parks would be affected by the increased train traffic. However, we do not agree with the determination that only bird populations within 500 feet of the rail line could be affected. This issue is discussed in greater detail in our comments below on Section 4.11.3.1, Proposed Changes in Rail Line Operations-Wildlife.

We disagree with the finding that only the Hine's emerald dragonfly and Karner blue butterfly could be affected by the proposed action. As noted above, determinations about the eastern prairie fringed orchid cannot be made without surveys or habitat assessments such as a Floristic Quality Assessment. We also disagree with the finding that changes in rail operations would not affect the Hine's emerald dragonfly and that the orchid only has the potential to occur at the Proposed Griffith Connection.

We disagree with several of the conclusions at the end of section 4.11.3, which are:

- (1) the risk of hazardous materials spills would increase but the probability is still remote,
- (2) the probability of train/animal collisions would increase but would remain low,
- (3) the noise effects to wildlife, particularly migratory birds, would increase but effects are expected to remain slight, and
- (4) impacts to the Hine's emerald dragonfly from ground vibration are not expected to change.

The final EIS should discuss the benefits of the proposed actions on wildlife, as a result of reduced train activity inside of the EJ&E arch. For example, based on maps provided, existing adverse impacts (e.g., noise, collisions) to wildlife would be reduced on the Freeport Subdivision (south of Schiller Woods Forest Preserve), the Joliet Subdivision (along the Palos Preserves), and the South Bend Subdivision (north of Wampum Lake Woods and Thornton Lansing Road Nature Preserve).

Section 4.11.3.1, Proposed Changes in Rail Line Operations -Wildlife: This section acknowledges that rail line operations would lead to increased noise (see above). Numerous studies investigating the effect of noise on wildlife have been conducted. In this regard, birds have been studied the most (with most of those studies involving the effects of traffic on birds). Very little research has been completed showing the affect of railroad noise on birds. However, a recent study by Waterman et al. (2004) on meadow birds in the Netherlands showed that wetland birds were adversely affected by railroad noise levels ranging from 42 to 49 dBA.

The DEIS notes that several of the highway studies documented lower species diversity and lower breeding densities near roads and highway traffic. However, most of these studies do not conclusively show that noise is the main cause of these effects and that other variables associated with noise (e.g., visual disturbance) are not factors. In a series of studies in the Netherlands, Reijnen et al. (1987, 1995, 1996, 1997), Reijnen and Foppen (1994, 1995), and Foppen and Reijnen (1994) have shown that the number of breeding woodland and grassland birds have declined significantly near roads as a result of noise. The farthest distance for which reductions in the numbers of breeding birds were still observed from the roads was 1500 meters (4,921 feet). These studies also showed that noise levels as low as 50 dBA resulted in an adverse effect on breeding birds (with several studies showing an effect below 60 dBA). In these studies, 33 of 45 investigated woodland bird species were adversely affected by noise and 7 of 12 grassland species were adversely affected. Forman et al. (2002) also showed that several species of grassland birds (especially bobolink and eastern meadowlark) decreased in numbers and breeding densities near roads. Waterman et al. (2004) found adverse effects of railway noise in meadow/wetland bird species within 15 areas along existing railroads. These birds consisted mostly of shorebirds and ducks. The threshold noise level at which bird densities were adversely affected varied little among the species studied and, as noted above, ranged from 42 to 49 dBA.

Although it can be argued that the studies indicating an adverse effect on birds do not clearly isolate noise as an exclusive source of disturbance, it is widely agreed that noise has a negative effect on birds. The reference to the 500-foot distance as a threshold for reduction of adverse effects to birds can be disputed based on other studies showing an effect at longer distances (up to 1500 meters).

The DEIS identifies the numerous natural areas along the EJ&E arch and describes the vast numbers of migratory birds (including state listed species) that frequent these natural areas. Thus, the DEIS highlights the importance of these natural areas as bird concentration areas.

The final EIS should compare the predicted noises levels from the proposed action (including the increased number and frequency of trains) to noise levels and distances that have shown an adverse effect on migratory birds. Based on the studies reviewed by the Service showing adverse effects at greater distances than noted in the DEIS and adverse effects on breeding bird

densities at lower noise levels than noted in the DEIS, the proposed action would adversely affect migratory birds.

This section also notes that wildlife and natural areas would experience a higher probability of exposure to hazardous material spills and train collisions. SEA acknowledges the potential increase in the possibility of hazardous materials releases; however, due to regulatory and other safeguards in place, SEA believes the possibility of hazardous materials releases are remote. We disagree with this conclusion because, as SEA highlights, the increase in hazardous materials releases would increase with the increased amount of train activity. This increased probability would occur regardless of the regulatory safeguards currently in place. SEA evaluated the frequency of release (before and after the proposed action) of hazardous materials based on statistics provided by the Applicants. The results are shown in Table 4.2-23. However, these results and other results fail to support SEA's determination that hazardous releases are remote. The final EIS should provide data that shows the potential frequency of spills with the proposed number of carloads transporting hazardous materials per day (anticipated at up to 500 carloads per day). Table 4.2-23 shows potential intervals between anticipated hazardous material releases in years. The final EIS should also provide data that compares the frequency of spills (with the proposed number of carloads) with other rail lines transporting comparable numbers of cars per day over similar distances. This comparison of data could show whether the possibility of hazardous materials releases is remote.

Section 4.11.3.1, Proposed Changes in Rail Line Operations - Natural Areas: This section identifies four categories of risk to natural areas. Again, the 500-foot distance is provided; however, it is noted that animals in the area already live with daily noise from trains and therefore, noise could only have minor effects on wildlife and natural areas adjacent to the EJ&E arch. These statements do not take into account the increased number of trains proposed to operate on the EJ&E arch and the subsequent increased frequency of disturbance. Although it is acknowledged that some bird species habituate to increased noise levels, this ability to avoid the impacts of noise may be due to the fact that species able to habituate are native generalists or non-native colonizers (Kasloo and Tyson 2004, Slabbekoorn and Ripmeester 2008). Slabbekoorn and Ripmeester (2008) note that several of the native generalists or non-native colonizers are able to adapt to urban noise conditions. Rare and declining bird species along the EJ&E arch that would be subject to the increased number of trains may not be able to habituate to the increased disturbance levels because they are not native generalists, non-native colonizers, or urban species. Several of these species are on the Service's Region 3 Fish and Wildlife Resource Conservation Priorities (RCP) list and have also been identified as focal species by the Service's "Focal Species Strategy for Migratory Birds." In addition, several of these bird species are listed as endangered or threatened species by the state of Illinois.

The DEIS also notes that animals living in and passing along the EJ&E arch may be at higher risk of being struck by trains due to increased traffic. However, the DEIS goes on to state that these animals have adapted to the existing train traffic, and there would not be an effect on animal populations. For both conclusions, the final EIS should use analyses to support these claims, factoring in the increased number of trains and increased frequency of the trains traveling along the EJ&E arch. Lower densities and diversity of wildlife near roadways may be due in part to increased mortality from collisions with vehicles. We would expect to see increased mortality from collisions with trains if there is an increase in the number of trains.

Section 4.11.3.1, Proposed Changes in Rail Line Operations - Federally Listed Species: This section notes that vibration of the tracks causes sediments to be pushed from the rail bed into larval Hine's emerald dragonfly habitat, resulting in adverse impacts to Hine's emerald dragonfly larvae. It is also noted that the proposed action would not change operations on the Paul Ales Branch; therefore, the DEIS concludes that Hine's emerald dragonfly larvae would not be affected beyond current operations.

The DEIS notes the dispersal ability of adults, indicates (in Figure 2.2-1) that 42.3 trains would pass through the area per day, and that the risk of collisions for adults could increase in EJ&E Segment 9B (at the southern most end of designated Critical Habitat). A study in Door County Wisconsin demonstrated Hine's emerald dragonfly mortality that resulted from collisions with vehicles (Soluk and Moss 2003). We believe that Hine's emerald dragonflies would also be vulnerable to passing trains and that more trains would increase this risk. However, SEA concludes that increases in traffic on this segment are not likely to adversely affect the Hine's emerald dragonfly. The Service disagrees with this conclusion and questions how SEA made this determination given the information provided to them. As noted in Section 3.11.8.1, adult Hine's emerald dragonflies were observed in 2004 in the area of Segment 9B. More recent surveys in 2007 also identified adults in this area, which is less than 0.12 miles north of Segment 9B, well within the flight distance of an adult dragonfly.

We do not concur with SEA's conclusion that the proposed action would not adversely affect the Hine's emerald dragonfly. For this reason, we recommend that SEA consider requesting formal consultation as described in section 7 of the Endangered Species Act of 1973, as amended. We recommend that SEA inform the Applicants to consider carrying out actions that would enhance the habitat for Hine's emerald dragonflies, but that would not create an attractive nuisance near railroad tracks. SEA should request formal consultation if its actions would result in adverse effects to the listed species. For example, if SEA's actions would modify train speeds or modify numbers of trains on specific lines, then SEA's actions would directly or indirectly lead to adverse effects on the Hine's emerald dragonfly. SEA and the Applicants should also seriously consider joining in the effort to develop a Habitat Conservation Plan (HCP) in the lower Des Plaines River Valley. At present, the Applicants do not have the permission to take the federally listed species. The Endangered Species Act provides two possible approaches to an applicant to gain permission from the Service to take listed species. That permission may be granted after conducting a review necessary as part of a formal consultation. Permission to take may also be granted following review and approval of an HCP and accompanying section 10(a)(1)(b) permit application.

Table 4.11-2, Potential Effects on Federally Listed Species Along the EJ&E Rail Line Due to Operational Changes: Contrary to the information provided in this table, the Karner blue butterfly is not present in EJ&E Segment 5B.

Section 4.11.3.1, Proposed Changes in Rail Line Operations - State Listed Species: This section discusses the state listed species that occur in the study area. Although this section discusses state listed species, we provide comment because all the grassland, marsh, and rookery bird species listed in Table 4.11-3 are Service trust resources and most of them are listed as rare and declining bird species by the Service. Of the species listed in Table 4.11-3, Henslow's sparrow, short-eared owl, upland sandpiper, and king rail are on the Service's RCP and Focal Species lists. Black tern, common moorhen, least bittern, black-crowned night heron, and American

bittern are on the RCP list. Sandhill crane is on the Focal Species list. All of the birds on the RCP list are listed due to their rare or declining status and, therefore, have a need for special conservation attention. Focal species are those the Service is targeting for a return to healthy and sustainable levels.

Table 4.11-3 needs to include black-crowned night heron and Franklin's ground squirrel in the segment along Clarke and Pine and Pine Station Nature Preserves, since both species are found at these preserves. Henslow's sparrow is listed in the table as likely being present in Segment 4, which is the developed town of Griffith. We strongly doubt that this grassland species is present in the developed community, although it may be present along the CN Segment 33 at Oak Ridge County Park or CN Segment 23A at Hoosier Prairie.

This section also discusses increased Blanding's and spotted turtle mortality due to increased rail traffic. Although we agree with this assessment, we do not agree with SEA's conclusion that only minor effects are expected because habitat structure would not change and both species currently occur in the rail environment. The final EIS should address turtles being trapped between railroad rails and how increased train activity would result in longer periods of being trapped. Research has shown that prolonged periods of being trapped between railroad rails can result in mortality and physiological stress (overheating) on turtles (Kornilev et al. 2006).

Rookery species of birds could be adversely impacted by any activity that adversely impacts the Grand Calumet River and Little Calumet River, because herons and egrets regularly feed along these rivers, including near the EJ&E bridges.

Concerning Dune Invertebrate Species (page 4.11-13), the Gaylord Butterfly Tract and Hoosier Prairie Kennedy Avenue tract are directly adjacent to the EJ&E main line tracks and are not buffered from them by petroleum storage facilities.

Section 4.11.3.2, Proposed New Constructions/Connections - Wildlife: As noted above and in the DEIS, PWWFP is an important bird area and noise would adversely affect birds in the area. In addition to the increased numbers of trains, noise from construction could adversely affect breeding birds during the breeding season. This could be minimized by restricting construction during the breeding season (April – August). This recommendation holds true for all Munger alternatives except for the Munger-UP Connection alternative.

The section also states that “because the affected wildlife habitat is generally minor and wildlife is mobile, SEA determined the construction of the connections would not affect wildlife.” We disagree with the determination and again note that the DEIS emphasizes the habitat value and diversity of state listed bird species at the Munger location. The presence of the high number of state listed species does not support the conclusion that the affected habitat is generally minor. Furthermore, no wildlife survey data have been provided for the Matteson alternatives, although the DEIS indicates that wetlands and wetland birds are likely present in the area of this connection. Therefore, based on the lack of supporting information, we cannot concur with SEA's determination. The final EIS should address these issues.

Section 4.11.3.2, Proposed New Constructions/Connections - Natural Areas: Refer to the comments above.

Section 4.11.3.2, Proposed New Constructions/Connections - Federally Listed Species:

Figure 2.2-1 indicates that train activity would increase to two trains per day along the Joliet Subdivision, in the area of the Proposed Joliet Connection. Take of adult Hine's emerald dragonflies may be currently occurring on the Joliet Subdivision. An increase in train activity would result in further take. Adult Hine's emerald dragonflies were observed approximately 0.17 miles west of the Joliet Subdivision and approximately 1.10 miles northwest of the Proposed Joliet Connection in 2004. The Service has tried unsuccessfully to address the issue of take with Canadian National in the past (see enclosed letter). Due to the proposed increased train activity within the flight distance of an adult dragonfly, the Service concludes that the proposed action would likely adversely affect the Hine's emerald dragonfly and take could occur.

The DEIS notes that the eastern prairie fringed orchid could occur at the proposed Griffith Connection or wetland margins. As stated above, the orchid could be found in suitable wetland habitat throughout the study area, and surveys or habitat assessments need to be conducted in areas of new construction or double tracking to determine whether suitable habitat is present. Therefore, there is insufficient information to conclude that the orchid is not likely to be adversely affected.

Section 4.11.3.2, Proposed New Constructions/Connections - State Listed Species: Refer to the comments above.

Section 4.11.3.2, Proposed New Constructions/Double Track - Federally Listed Species: The Service agrees with SEA's determination that the orchid, mead's milkweed, and prairie bush clover could be affected by double track construction if suitable habitat is present. In addition to the proposed surveys, wetland delineations and habitat assessments should be conducted in wetland areas.

Section 4.12 and 4.12.3.2, Water Resources: The Service agrees with SEA's findings in this section that increases in rail traffic would result in a corresponding increase in the risk of hazardous spills, which could affect water resources. The DEIS notes that wetlands would be directly impacted during construction of connections and double tracking and that wetland delineations would be conducted as part of the permitting process. The final EIS should also indicate that habitat assessments should be conducted as well to determine if suitable habitat is present for the orchid and to help determine mitigation ratios for proposed wetland impacts.

Table 4.12-1, Potentially Affected Lakes and Preserves: This table lists conservation lands that contain water but fails to include Ivanhoe Dune and Swale and Ivanhoe South. These areas contain water/wetlands in the form of interdunal swales and should be listed on this table and discussed in the text.

Indirect and Cumulative Effects (Chapter 5)

Section 5.3, Potential Indirect Effects of the Proposed Action: In Section 5.3, SEA concludes that the proposed action could result in indirect effects from increased rail activity in the East Joliet and Kirk Yards and general indirect effects throughout the region. Section 5.3.1 discusses the general indirect effects of the project, **but does not** address any potential indirect effects on biological resources. This section does not disclose indirect impacts from the proposed action

and does not address indirect impacts to biological resources in the study area. The final EIS should address indirect effects to all biological resources listed in Chapter 4, or provide substantial documentation if the conclusion is that the proposed action would not result in indirect effects on biological resources.

Section 5.4, Related Projects, and Section 5.5, Site-Specific Cumulative Effects Analysis of Related Projects: These sections discuss past, present, and foreseeable cumulative effects on natural resources from the proposed action and at other areas outside the EJ&E right-of-way which should be considered in the cumulative impacts analysis as described in the National Environmental Policy Act (NEPA). In section 5.5.1, SEA concludes that the interaction between the proposed action impacts and the proposed Metra Star Line could result in minor cumulative impacts. Table 5.5-1 indicates that PWWFP would be affected and effects to biological resources would be minor. We believe that the impacts will be far more substantial than indicated in the DEIS. Departmental comments regarding Chapter 4 describe our concerns with respect to impacts of the proposed project to biological resources, particularly migratory birds. The impacts from the proposed action and the proposed Metra Star Line would occur along the same areas of the EJ&E arch and would adversely impact (specifically via noise) migratory birds in the same natural areas along the EJ&E arch. Furthermore, it is noted that the proposed Metra Star Line could result in a new dedicated track within the EJ&E right-of-way. A new track could have far greater direct construction impacts than the Applicants' proposal. The final EIS should more fully disclose the cumulative effects of the proposed Metra Star Line and the proposed project. The final EIS should address increased noise impacts and the increased probability of collisions with wildlife. Additionally, in the final EIS, Section 5.5.2 should provide figures depicting the locations of the proposed Star Line commuter stations so that determinations could be made about potential adverse impacts to natural areas and wildlife.

Mitigation (Chapter 6)

Section 6.2, Applicants' Voluntary Mitigation Measures: Chapter 6 discusses mitigation, including proposed voluntary mitigation measures offered by the Applicants as described in this section. We believe that a significant number of the Applicants' proposed mitigation measures are, in fact, best management practices that should be automatically required as part of the proposed action. Others, such as VM 64 concerning wetland fills and VM 65 concerning NPDES permits, are actions that are required by law and are not voluntary. Air quality VM 43, concerning switching to locomotives that emit fewer air pollutants, is commendable, but a time table needs to be established and adhered to. As stated, the proposal is open-ended on when it will occur, which could be many years away. The Applicants did not propose any mitigation measures to compensate for unavoidable impacts to biological resources.

Section 6.3, SEA's Preliminary Environmental Mitigation Measures: This section discusses the preliminary recommended environmental mitigation measures that are based on SEA's environmental analysis of the proposed action. SEA proposes mitigation measures to address effects not addressed by the Applicants' voluntary mitigation. We do not understand why adherence to required safety plans, including Occupational Safety and Health Administration (OSHA) requirements, is considered mitigation.

Several of the SEA proposed mitigation measures use terms such as "regularly inspect" or "communicate regularly" with other entities concerning noise and vibration (Nos. 24 and 26),

without defining “regularly”. Noise and possibly vibration also affect wildlife, so a clearly defined inspection schedule should be required.

The Department’s Recommendations for Additional Mitigation

As noted in our above comments, we believe that the DEIS does not fully disclose all potential project impacts to natural resources. To address these potential impacts, as well as to augment some of SEA’s proposed mitigation measures, we offer the recommendations below. These recommendations should be added to the indicated subsections in Chapter 6 in the final EIS.

Section 6.3.10.1, Noise:

- The Applicants should construct noise barriers in all locations where the EJ&E arch crosses through or is adjacent to a natural area that has been identified in the DEIS as an area where birds are concentrated. These areas have been discussed previously and are identified in various places in the DEIS. The noise barriers should be constructed on the outside of the existing or proposed tracks (both sides) and the Applicants should review existing research that discusses the heights, shapes, and materials used to construct the barriers (e.g., use of absorbent material) in order to mitigate noise impacts to birds and wildlife. These should be designed in association with designated wildlife crossings to permit the safe crossing by wildlife. The Service can provide technical assistance in the noise barrier review. The Applicants should construct these barriers to keep the noise levels below 50 dBA in these areas. Noise barriers should also be discussed as a potential mitigation measure in section 6.3.11.2.

Section 6.3.11.3, Federally-Listed and State-Listed Threatened and Endangered Species:

- The Applicants should continue to abide by the special conditions of the 1996 COE Permit # 199600211 for train operations on the Paul Ales Branch in order to minimize further impacts to larval Hine’s emerald dragonflies.
- The Applicants should conduct wetland delineations and habitat assessments in all construction areas to determine if suitable habitat is present for the eastern prairie fringed orchid. If suitable habitat is present, the Applicants should conduct orchid searches during the bloom date: June 28 through July 11, with searches conducted a minimum of three non-consecutive days within this time period.
- The Applicants should construct turtle ramps, drop boxes, or other structures that reduce the possibility of turtles becoming trapped within railroad rails, in all locations where the EJ&E arch crosses through or is adjacent to wetland areas. These structures should be placed at regular intervals in identified wetland areas. The Applicants should also construct turtle crossings in areas where turtles are concentrated (e.g., PWWFP). The Service can provide technical assistance in the selection and placement of these structures.

Section 6.3.14.6, Biological Resources:

- We agree with proposed Mitigation 30 concerning the Karner blue butterfly in the West Gary Recovery Unit. However, we do not agree with proposed Mitigation 57 concerning development and implementation of a plan for the restoration of dune and swale in the Ivanhoe connector area.

Based upon experience with attempts to recreate dune and swale habitat, we know that it has not been successful, even in areas not as heavily disturbed as the industrial property that would be affected by most of the connector. Therefore, we request that this proposed mitigation be deleted and replaced with mitigation to require the preservation and enhancement of the EJ&E prairie at the northwest end of the Kirk Yard. As previously mentioned, this area retains many natural qualities and is considered significant habitat for native plants and animals. It also supports wetlands, which likely need enhancement due to the encroachment of invasive species of plants and possibly animals. Therefore, it may be suitable to serve as required mitigation for the loss of wetlands at the Griffith connector, subject to approval by the regulatory agencies. Preservation of this prairie/wetland complex could be through a deed restriction and management agreement with the Indiana Division of Nature Preserves or through gift or sale to that agency.

- As discussed in our comments regarding section 3.3.1, we believe that a grade separation of the EJ&E over 5th Avenue or 5th Avenue over the EJ&E in Gary will likely be needed, resulting in impacts to the Ivanhoe dune and swale preserves. Mitigation measures to avoid, minimize, and offset any impacts need to be developed and included in the final EIS.
- The Applicants should avoid construction at PWWFP during the bird breeding season (April – August) to avoid disturbance of breeding birds in the vicinity.
- The Applicants should construct a hazardous materials containment system at PWWFP to capture hazardous materials in the event an accidental spill in this important wetland and bird habitat.
- We agree that Mitigation 62, concerning clearing of all equipment to reduce or prevent spread of invasive plant species, is necessary and desirable. However, the equipment would also need to be cleaned to remove invasive animal species, many of which are microscopic, such as veligers of invasive mussels that could spread into natural lakes and streams.

Section 6.3.14.7, Water Resources:

- The Applicants should conduct wetland delineations and associated habitat assessments to determine the floristic quality of wetlands that would be impacted by construction activities. The habitat assessments would be useful in determining the wetland mitigation replacement ratios, which could be higher than the 3:1 ratio noted in section 6.3.14.7.
- The Service believes that areas adjacent to the existing rail lines that currently support breeding grassland and wetland birds would become less suitable due to the increased number of trains and associated noise. We recommend that the Applicants consider conducting wetland and habitat restoration at one or more sites more remote from the rail lines to offset any reduced breeding bird productivity. There are a number of publically owned sites near the EJ&E arch that are currently undergoing habitat restoration or may be suitable candidates for restoration where impacts could be adequately offset. If this option is pursued, the Service could provide technical assistance in identifying potential sites.

Short-Term Use versus Long-Term Productivity of the Environment (Chapter 7)

In this chapter, SEA concludes that there would be some short-term construction disturbance which could have some impacts on resources. However, these would be eliminated upon completion of the construction activities. SEA also concludes that there would be no long-term impacts to resources. We disagree with SEA's conclusion that there would be no long-term impacts to resources and that short-term or long-term impacts would only result from disturbance associated with construction.

We believe that noise impacts to birds would be a long-term impact on birds. In addition, mortality of wildlife from train collisions and wildlife being trapped for longer periods between rails would also be long-term impacts. The final EIS should address these impacts on resources.

Section 7.2, Potential Hazardous Material Release: We disagree with SEA's conclusion that there would be no short or long-term impacts resulting from hazardous materials releases in the proposed construction areas. Due to the increased number of trains, the proposed action would create long-term impacts on resources (e.g., at PWWFP). The final EIS should address this issue more thoroughly.

Section 7.3.1, Wetlands: We agree with SEA's statement in section 7.3 that wetland productivity could be affected through permanent losses and adverse impacts to wetland function. However, section 7.3.1 states that long-term productivity would not be affected because the wetlands and wetland functions would be restored or replaced via mitigation. In addition, SEA states that wetlands and wetland functions would be protected by best management practices. We disagree with both conclusions.

Typically, wetland mitigation through section 404 of the Clean Water Act has focused on mitigating direct loss of habitat. However, we have suggested that increased noise would have a long-term impact on breeding bird productivity, which would not likely be considered during permit review, nor is it adequately considered in the DEIS. Offsite bird habitat restoration, as suggested previously in our comments, should be considered as a means of maintaining wetland bird productivity. Similarly, best management practices would offset some water quality and quantity impacts at the area of impact but would not address the impacts to wetland wildlife associated with increased rail noise. The final EIS should address these issues.

Irreversible and Irretrievable Commitments of Resources (Chapter 8)

Section 8.1.3, Protected Species: We disagree with SEA's conclusion that the proposed action would not irreversibly or irretrievably affect any particular animal populations. We believe that there would be ongoing impacts to wildlife that would not be fully mitigated with the mitigation measures presently proposed in the EIS. Our comments include recommendations that could improve the mitigation and lend support to SEA's conclusions.

Appendix M – Biological Resources Analysis

Section M.3.1, Natural Areas with Potential for Impacts: As noted previously, Middlefork Savanna Forest Preserve and MacArthur Woods Forest Preserve should be added to this section

and other applicable sections in the final EIS. Descriptions of these areas and the resources that could be affected should also be included in the final EIS.

For most of the natural areas listed in the section, SEA makes the same determinations that increased noise could only affect animal behavior within 500 feet of the rail line (and these animals already live with daily noise) and that the increased potential for animal/train collisions is not likely to adversely affect any particular animal populations. Again, we disagree with these conclusions. The language in the final EIS should be changed in this section to reflect our other requested changes listed throughout our comment letter.

Section M.3.1.1.9, Lake Renwick Forest Preserve: This section discusses the significance of the Lake Renwick Heron Rookery Nature Preserve. This section also acknowledges that flushing events from trains or train noise have been documented at the rookery. We do not agree with SEA's conclusion that there would not be a measurable impact on birds in the rookery from increased train noise. We also do not agree that SEA's determination that the increased potential for animal/train collisions would not likely adversely affect the rookery. The final EIS should address these issues.

Section M.3.1.1.14, Sauk Trail Woods and Indian Woods Forest Preserve: We disagree with SEA's determination that minimal impacts from increased noise and collisions on wildlife or habitat because this area is not being managed for wildlife or habitat. Just because a natural area is not being managed for wildlife or habitat does not mean wildlife is not present (and could be adversely affected). This language should be changed in the final EIS for this section and any other section for which this determination was made.

Table M.3.2-1, Natural Areas with No Impacts from the Proposed Action: We do not agree with SEA's inclusion in this section of natural areas that provide habitat for migratory birds and which are in close proximity to the EJ&E arch. The final EIS should address these issues.

SUMMARY COMMENTS

The DEIS provides general information on natural resources of concern to the Department, but detailed information and associated analysis is often lacking. Confusing information is presented about which agencies own or manage conservation lands in the two affected States and where conservation lands are located in relation to either the EJ&E or CN tracks. The DEIS inadequately identifies adverse impacts to the Service's trust resources (federally listed species and migratory birds) and does not fully disclose impacts to other wildlife. As a result, the DEIS inadequately identifies appropriate mitigation for these environmental impacts.

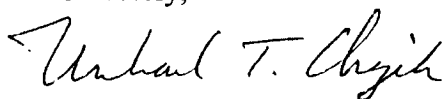
We offered numerous recommendations in these comments to address the aforementioned inadequacies of the environmental impact statement and thereby assist the SEA in fully disclosing and appropriately mitigating anticipated adverse environmental impacts.

The Department recommends that SEA coordinate with the appropriate Service field office(s) to discuss the concerns expressed and attempt to resolve the opposing views of the two agencies about anticipated project impacts to Service trust resources and mitigation needed to address the impacts. The results of the coordination, particularly any remaining differences of opinion, should be disclosed and adequately discussed in the final EIS.

The Department looks forward to continued coordination with SEA and the Applicants to ensure that project impacts to resources of concern to the Department are adequately addressed. For matters related to fish and wildlife resources and federally listed threatened and endangered species in the Illinois portion of the study area, please continue to coordinate with Mr. Shawn Cirton, U.S. Fish and Wildlife Service, 1250 South Grove Ave., Suite 103, Barrington, Illinois 60010, phone (847) 381-2253, extension 19, fax (847) 381-2285. For the Indiana portion of the study area, please continue to coordinate with Ms. Elizabeth McCloskey, P.O. Box 2616, Chesterton, Indiana 46304, phone (219) 983-9753, fax: 219-983-9816.

We appreciate the opportunity to review the document and provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Chezik". The signature is fluid and cursive, with the first name "Michael" being more prominent and the last name "Chezik" following in a similar style.

Michael T. Chezik
Regional Environmental Officer

Enclosure

Literature Cited

- Foppen, R. and R. Reijnen. 1994. The effects of car traffic on breeding bird populations in woodland. II. Breeding dispersal of male willow warblers (*Phylloscopus trochilus*) in relation to the proximity of a highway. *Journal of Applied Ecology* 31:95-101.
- Forman, R.T.T., B. Reineking and A.M. Hersperger. 2002. Road traffic and nearby grassland bird patterns in a suburbanizing landscape. *Environmental Management* 29:782-800.
- Kaseloo, P. and K. Tyson. 2004. Synthesis of Noise Effects on Wildlife Populations. U.S. Department of Transportation FHWA-HEP-06-016.
- Kornilev, Y., S. J. Price and M.E. Dorcas. 2006. Between a rock and a hard place: responses of eastern box turtles (*Terrapene carolina*) when trapped between railroad tracks. *Herpetological Review* 37(2) 145–148.
- Reijnen, R. and R. Foppen. 1994. The effects of car traffic on breeding bird populations in woodland I. Evidence of reduced habitat quality for willow warblers (*Phylloscopus trochilus*) breeding close to a highway. *Journal of Applied Ecology* 31:85-94.
- Reijnen, R. and R. Foppen. 1995. The effects of car traffic on breeding bird populations in woodland. IV. Influence of population size on the reduction of density close to the highway. *Journal of Applied Ecology* 32:481-491.
- Reijnen, M.J.S.M., J.B.M. Thissen and G.J. Bekker. 1987. Effects of road traffic on woodland breeding bird populations. *Acta Ecologia/Ecologia Generalis* 8:312-313.
- Reijnen, R., R. Foppen, C. Ter Braak and J. Thissen. 1995. The effects of car traffic on breeding bird populations in woodland. III. Reduction in the density in relation to the proximity of main roads. *Journal of Applied Ecology* 32:187-202.
- Reijnen, R., R. Foppen and H. Meeuwsen. 1996. The effects of car traffic on the density of breeding birds in Dutch Agricultural Grasslands. *Biological Conservation* 75:255-260.
- Reijnen, R., R. Foppen and G. Veenbaas. 1997. Disturbance by traffic of breeding birds: evaluation of the effect and considerations in planning and managing road corridors. *Biodiversity and Conservation* 6:567-581.
- Slabbekoorn, H and E. Ripmeester. 2008. Birdsong and anthropogenic noise: implications and applications for conservation. *Molecular ecology* 17:72-83.
- Soluk, D.A. and K. Moss. 2003. Roadway and exuvial surveys of the Hine's emerald dragonfly (*Somatochlora hineana*) in Door County, Wisconsin: Part II: Roadway fatalities. Final Report (June 2002-August 2002). Illinois Natural History Survey, Center for Aquatic Ecology, Technical Report 03/09, Champaign, IL. 10p.

Waterman, E., I. Tulp, R. Reijnen, K. Krijgsveld, and C. ter Braak. 2004. Noise disturbance of meadow birds by railway noise. Paper presented at the 33rd International Congress and Exposition on Noise Control Engineering.

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