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SURFACE TRANSPORTATION BOARD

CORRECTED DECISION

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
CONTROL – EJ&E WEST COMPANY

Decided: April 23, 2008

Agency: Surface Transportation Board.

Action: Notice of Availability of the Final Scope of Study for the Environmental Impact Statement (EIS).

Summary: On October 30, 2007, the Canadian National Railway Company (CN) and Grand Trunk Corporation (collectively CN or the Applicants) filed an application with the Surface Transportation Board (Board or STB) seeking the Board's approval to acquire control of EJ&E West (EJ&EW) Company, a wholly owned noncarrier subsidiary of the Elgin, Joliet and Eastern Railway Company¹ (EJ&E). In their application, Applicants state that they plan to construct six new rail connections and approximately 19 miles of siding extensions and second mainline track (double track). EJ&E is a Class II railroad that currently operates approximately 200 miles of track in northeastern Illinois and northwestern Indiana.

On November 26, 2007, the Board issued Decision No. 2 announcing that its Section of Environmental Analysis (SEA) will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts that may result from the proposed acquisition. On December 21, 2007, SEA published a Notice of Intent (NOI) in the Federal Register announcing the start of the scoping process and the dates and times of public scoping meetings. This

¹ Applicants state in their application that EJ&E plans to transfer all of its land, rail, and related assets located west of the centerline of Buchanan Street in Gary (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street) to EJ&EW, which at that time would become a rail common carrier. EJ&E would retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). It is expected that, if the proposed transaction is approved and Applicants acquire control of EJ&EW, EJ&E would change its name to Gary Railway Company, and EJ&EW would assume the Elgin, Joliet & Eastern Railway Company name. To eliminate confusion, and because EJ&EW would be a temporary entity, the remainder of this document will refer only to "EJ&E."

document, as well as a Draft Scope of Study, was served and distributed to approximately 350 stakeholders and 41 federal, state, and local agencies on an environmental distribution list. A press release was issued to 21 Chicago-area newspapers to announce the NOI to the public.

Information about the STB's environmental review of the proposed acquisition was also made available through the Board's website, www.stb.dot.gov. The Board's website provides an overview of the proposed acquisition; public comment guidance; links to documents (including the NOI and Draft Scope of Study); links to CN's, and EJ&E's websites; and SEA contact information. Additionally, SEA established a toll-free information line (1-800-347-0689) for public comments with a Spanish-language option available. An electronic filing system is also available on the Board's website, www.stb.dot.gov, to receive comments.

To promote participation in a series of 14 public scoping meetings scheduled for January 2008, SEA placed quarter-page advertisements and published public notices in 21 Chicago-area newspapers announcing the meetings. SEA issued a follow-up press release to the same newspapers. Announcement posters were placed in 42 public libraries in communities along the EJ&E rail line, and SEA emailed notices to 285 local elected officials.

Approximately 2,600 individuals participated in the open-house scoping meetings held at seven locations throughout the Chicago region. Two meetings per location were held: one from 1 p.m. to 4 p.m. and one from 6 p.m. to 8 p.m. The dates and locations of the 14 open house meetings were:

- January 8, 2008: Mundelein, Illinois
- January 9, 2008: Barrington, Illinois
- January 10, 2008: Joliet, Illinois
- January 15, 2008: Matteson, Illinois
- January 16, 2008: Gary, Indiana
- January 17, 2008: West Chicago, Illinois
- January 22, 2008: Chicago, Illinois

On January 30, 2008, SEA extended the deadline for Draft Scope of Study comments from February 1, 2008 to February 15, 2008. To publicize the extension, postcards were mailed to 3,038 persons on an updated environmental distribution list, and 43 letters were sent to agencies during the week of January 28, 2008. SEA issued a press release to the 21 Chicago-area newspapers and emailed 310 elected officials to alert them to the comment period extension.

In total, SEA received:

- 1,347 comments from individuals attending the open house meetings;
- 1,268 comment letters;
- 219 oral comments on SEA's information line; and
- 858 individual comments filed electronically on the Board's website.

At the conclusion of the comment period, SEA mailed follow-up postcards acknowledging the receipt of comments and participation in the scoping process. SEA placed

the names of all commenters on the environmental distribution list, thereby ensuring that they will receive notice of availability of the Draft and Final EIS, as well as the Final Scope of Study.

Based on the comments received and further analysis, SEA has prepared the Final Scope of Study for the EIS, which is included in this Notice of Availability as Appendix A.

Addresses for Further Information: Written requests for further information on the proposed acquisition should be directed to:

Phillis Johnson-Ball
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Telephone requests may be made by calling 1-800-347-0689 (SEA's information line), and emails may be sent via the Board's website at www.stb.dot.gov by clicking on the "E_FILING" link.

Supplementary Information: On October 30, 2007, Canadian National Railway Company (CN) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CN controls its U.S. rail subsidiaries, filed an application with the Board under 49 USC 11323-25. The application seeks the Board's authorization for CN to acquire control of the EJ&E rail line, land, and related assets west of Buchanan Street in Gary, Indiana, along with the hump and Dixie lead tracks located east of Buchanan Street leading into Kirk Yard. Trackage east of Buchanan Street would be handled by the Gary Railway Company.

Acquisition of the EJ&E rail line would provide CN with a continuous route around Chicago. The Applicants intend to connect the existing five CN rail lines that run into central Chicago and re-route CN trains now going through Chicago on their way to other destinations, to the EJ&E rail line. The proposed acquisition includes changes in rail line operations and changes in yard operations.

The Applicants plan to make approximately \$100 million in capital improvements, including constructing six new connections at Munger, Joliet, and Matteson (all in Illinois) and Griffith, Ivanhoe, and Kirk Yard located in Gary (all in Indiana). In addition, the proposed acquisition includes plans to install double track and extend sidings within the existing EJ&E railroad right-of-way (ROW) along 19 miles of the EJ&E arc at several locations:

- Leighton and Mundelein, Illinois
- East Siding to 95th Street (between Eola and Naperville, Illinois)
- Normantown to Walker, Illinois
- East Joliet to Frankfort, Illinois.

CN has stated that it intends to shift its trains to the EJ&E rail line from the existing CN routes as the proposed new rail line connections are completed and mainline capacity is added to the EJ&E rail line.

The Applicants propose to upgrade and expand Kirk Yard, and to assess the capabilities of the East Joliet Yard and upgrade it to accommodate increased yard activity. The Applicants propose to relocate rail car sorting and train development activities to both Kirk Yard and East Joliet Yard to allow CN to reduce switching activity that now occurs at CN's Glenn, Hawthorne, Schiller Park, and Markham yards, and at the BRC Clearing Yard. The rail cars of local shippers would continue to be handled at all of those locations and intermodal rail cars would still be served at Markham Yard.

Although the Applicants intend eventually to re-route all their trains currently operating over the St. Charles Air Line, a rail line in downtown Chicago owned jointly by CN, Union Pacific Railroad Company (UP), and BNSF Railway Company (BNSF), no abandonments are anticipated as a direct result of the proposed acquisition. Any abandonment of the St. Charles Air Line would require a separate request for authority to the Board under 49 USC 10903 or 10502, as well as coordination with BNSF and UP, and with other existing users such as Amtrak.

Environmental Review Process: In reviewing the proposed acquisition, the Board will consider both the transportation merits of the proposed acquisition, and the potential environmental impacts. Based on the information provided in the application, concerns raised regarding possible impacts of the proposed acquisition on communities, and consultations with SEA (the office within the Board responsible for preparing the Board's environmental documentation under the National Environmental Policy Act (NEPA), 42 USC 4321-4335, and related environmental statutes) the Board decided in its decision accepting the application to prepare a full EIS. The EIS will include all of the environmental information necessary for the Board to take the hard look at environmental consequences required by NEPA.

The NEPA environmental review process is intended to assist the Board and the public to identify and assess potential environmental consequences of the proposed acquisition before a decision is made whether to approve the proposed transaction, deny it, or approve it with mitigating conditions, including environmental conditions. On December 21, 2007, SEA issued a Notice of Intent (NOI) to individuals and agencies potentially interested in or affected by the proposed acquisition informing them of the Board's decision to prepare an EIS and to initiate the formal scoping process.

SEA also developed and made available a Draft Scope of Study and requested comments. Public meetings were held and comments were received between December 21, 2007 and February 15, 2008. After carefully reviewing the public comments, SEA is issuing this Final Scope of Study for the Draft EIS.

SEA is currently preparing a Draft EIS for the proposed acquisition. The Draft EIS will address those environmental issues and concerns identified during the scoping process and detailed in this Final Scope of Study. It will also include an appropriate discussion of alternatives and potential environmental mitigation.

Upon its completion, the Draft EIS will be made available for public and agency review and comment. A Final EIS will then be issued reflecting the SEA's further analysis, the comments on the Draft EIS, and SEA's recommendations (if any) for environmental mitigation. In reaching its decision on this case, the Board will take into account the full environmental record, including the Draft and Final EIS, and all public and agency comments received.

Discussion: Many issues that emerged through the scoping process are linked to concerns about potential impacts from increased freight rail traffic as a result of this proposed transaction. The issues raised by commenters are briefly outlined below, followed by a discussion of how the issue will be addressed in the Draft EIS. This preamble to the actual Final Scope of Study, included in Appendix A, provides SEA's rationale.

Proposed Acquisition and Definition of Alternatives: Reasonable and feasible alternatives for the proposed acquisition that will be evaluated in the EIS include approval of the transaction as proposed, disapproval of the proposed transaction in whole (No-Action alternative), or approval of the proposed transaction with conditions, including environmental mitigation conditions.²

Many commenters recommended that the EIS include consideration of the Chicago Region Environmental and Transportation Efficiency Program (CREATE Program) as an alternative to the proposed acquisition, or that it at least consider the effects on CREATE, and the use of non-EJ&E rail corridors and connections for CN to move its trains through the Chicago area.

Create and Other Non-EJ&E Rail Corridors as Alternatives: NEPA and the Board's environmental rules require the EIS to include reasonable and feasible alternatives to the proposed acquisition (49 CFR 1105.7(e) (1)). The EIS will evaluate proposed alternatives to determine which would meet "the purpose and need" of the proposed transaction, and warrant actual study or analysis, for the reasons that will be explained in the EIS. The purposes of the proposed transaction are described in a section of the CN application entitled "Purpose of the Transaction" (p. 22). These purposes are 1) connecting the five CN rail lines in the Chicago area to create operational improvements throughout the CN system, 2) obtaining access to the East Joliet and Kirk Yards, and 3) facilitating expanded business opportunities with EJ&E's shippers. Any reasonable and feasible alternative must meet the stated purpose and need for the proposed acquisition.

Neither CREATE nor any other non-EJ&E rail corridors will be treated as alternatives for the proposed action because they plainly would not meet the three-fold purpose and need

² The Board has broad authority to impose conditions in railroad control transactions under 49 USC 11324(c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, mitigation is not imposed to correct pre-existing conditions, and the condition imposed must be reasonable. *See United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

articulated in the application. Nevertheless, the transportation systems section of the EIS will address these issues as appropriate.

Alternative Connections: Commenters also suggested that the EIS should examine alternative locations or configurations for the proposed new connections to reduce potential impacts related to this proposed transaction because there may be a variety of reasonable ways in which Applicants could accomplish construction of the proposed connections. The EIS will contain an appropriate examination of alternative configurations for the proposed connections to determine whether there is a way to meet the purpose and need of the proposed acquisition with less potential environmental impact.

Environmental Impact Categories

Safety

Commenters raised concerns about rail safety and security, the Applicants' emergency management capability and planning, and the proximity of sensitive populations and land uses to the EJ&E rail line. The largest number of commenters on safety issues expressed concern about the potential impacts to local communities from accidents. As indicated in the Draft Scope of Study, the EIS will evaluate the effects of the proposed acquisition on the safety of the public at large (including such issues as increased probability of train accidents and derailments due to increased proposed acquisition-related train traffic on a system-wide basis), potential effects at grade crossings, and potential effects of increased proposed transaction-related freight traffic on commuter and intercity passenger service operations. The EIS also will include an appropriate discussion of Applicants' Safety Integration Plan.

Hazardous Materials Transportation

A number of commenters requested that the EIS address potential environmental impacts of the proposed acquisition on public health and safety with respect to the transportation of hazardous materials, including a discussion of possible accidental release, spill management capability, and the presence of contaminated sites. Many commenters suggested that this analysis should include CN's safety record in Canada, as well as the United States. Other commenters suggested that the EIS should assess accidents involving hazardous materials and alternative routes for hazardous material shipments.

The EIS will assess CN's safety record in the United States. The rail safety statistics in Canada are collected and analyzed in a different manner than that used in the United States. The EIS will provide information on CN's U.S. safety record and that of the other U.S. Class I railroads, as compiled by the Association of American Railroads (AAR), to provide a valid basis for comparison. The EIS will use Federal Railroad Administration (FRA) standards as the basis for compliance for all hazardous material accidents and spills. The EIS also will address quantities and types of hazardous materials transported, response plans for potential spills or accidents, and locations of contaminated sites in the vicinity of planned construction activities.

Transportation Systems

There are approximately 140 highway/rail at-grade crossings on the EJ&E line that may experience longer traffic delays due to increased freight rail traffic resulting from the proposed acquisition. Although existing CN crossings on lines into downtown Chicago would experience less train traffic and fewer delays as a result of the proposed acquisition, a number of commenters expressed concern about the potential impact of increased freight rail traffic on local transportation systems, including congestion and delays at highway/rail at-grade crossings, and potential impacts to community emergency response capability.

Consistent with the Draft Scope of Study, the EIS will evaluate the impact of the proposed transaction on local transportation systems and intercity Amtrak services, vehicular delays due to increases in rail-related operation, and increased train traffic on movable railroad bridges as result of the proposed transaction. Since no changes in intermodal activity or truck traffic have been identified, analysis of truck traffic as identified in the Draft Scope of Study does not appear warranted. Other issues of concern to be included in the transportation systems impact evaluation are described below.

Planning Horizon: CN has used 2012, three years from the date of the Board's anticipated issuance of a final decision, as the year it expects to achieve the rail traffic projected in the application. Many commenters objected that this three-year forecasting period is too short. Commenters are concerned that using 2012 as the planning horizon would underestimate the potential effects of the proposed acquisition, and could result in less mitigation than the mitigation the Board would impose if the planning horizon were lengthened.

Planning horizon threshold suggestions for both freight rail and highway traffic ranged from 2020 to as long as 2030 or 2035. The commenters believe that potential increases in freight rail traffic can be projected that far into the future, even though the forecasts are not as reliable as shorter projections. The commenters also allege that CN would not have decided to proceed with this proposed acquisition transaction based only on a short range forecast of potential freight rail traffic. On the other hand, CN contends that forecasts longer than three to five years are necessarily speculative due to uncertainties in the global economy and the effects of competition. CN also states that the proposed transaction would not lead to additional freight rail traffic beyond the projections in the application.

After carefully considering the comments, SEA has determined that the time horizons suggested by the commenters are too long to produce reliable information. Those time horizons also exceed by far the time horizons that have been used in prior Board proceedings. At the same time, the three-year time horizon proposed in the Draft Scope of Study is too short for the proposed transaction. Thus, the EIS will use a year 2015 threshold for analysis of effects of increased rail traffic, such as vehicle delay. This year was selected because it would provide at least five years of data to be considered in order to produce reasonable and reliable freight rail forecasts. SEA has requested the necessary information from CN to permit the use of a five-year forecast in the EIS.

Highway traffic will also be forecasted to 2020 for vehicle delay analysis. The year 2020 is reasonable based on available highway traffic data and will provide useful information for

community planning purposes. Any year further in the future would diverge too much from the five-year freight rail forecast timeframe that will be used.

ADT Threshold: The Draft Scope of Study stated that the EIS would assess impacts to safety and vehicle delays at highway/rail at-grade crossings where the average daily highway traffic (ADT) exceeds 2,500 vehicles per day, but did not state which year should be used to measure the ADT. Some commenters suggested that the threshold for analysis should be lowered to 2000 vehicles per day, to better help interested persons obtain information on all of the possible locations where drivers could be delayed or safety could be affected as a result of this proposed transaction.

In the EIS, vehicle delay will be estimated for all public highway/rail at-grade crossings and more detailed analysis will be done for crossings with an ADT of 2,500 vehicles per day. To clarify, SEA will apply the 2,500 vehicle per day threshold to traffic levels for the years 2015 and 2020. SEA also will conduct a more detailed analysis where the ADT at the crossing is less than 2,500 vehicles per day where appropriate as a result of specific circumstances. The ADT threshold of 2,500 vehicles per day will provide a sufficient level of analysis to determine the location of significant effects of the proposed acquisition on safety or vehicle traffic delays.

Gary Chicago International Airport (GCIA): Many commenters took the position that the EIS should analyze the effects of the proposed transaction on the Gary Chicago International Airport (GCIA). The GCIA has been engaged in an improvement program to increase the capacity of its existing principal east/west runway and to remedy a safety deficiency associated with this runway. Supporters of the airport expansion expect it to provide economic stimulus to the economy of Northwest Indiana. The Federal Aviation Administration (FAA) signed a Record of Decision (ROD) approving the extension in 2005.

According to the comments, GCIA plans to extend the primary runway (designated as Runway 12/30) 1,900 feet to the northwest to solve capacity and safety problems. Based on the available information, GCIA evidently has obtained commitments for funding to carry out airport improvements. Currently the northwest end of the runway is only 270 feet from the EJ&E tracks, which are on top of an embankment that places the tracks 22 feet above the end of the runway. Safety concerns have been raised because of the proximity of the EJ&E roadbed to the end of the runway, and the roadbed's elevation above the runway.

To extend the runway and reduce the potential safety issues, GCIA has proposed to relocate and lower to ground level the EJ&E tracks. According to the FAA ROD, the proposed relocation of the EJ&E would increase the rail route by 5,263 feet and add two highway/rail at-grade crossings at Chicago Avenue and Industrial Drive. These two crossings would be eliminated at a later date by closing Chicago Avenue and raising the grade of Industrial Highway over the EJ&E tracks.

Negotiations have been ongoing for many years between GCIA and EJ&E. CN has been sitting in on negotiations since the proposed acquisition was announced. To date, the parties have not reached an agreement on whether to relocate the EJ&E line or how the rail line relocation should be designed. During the parties' negotiations, concerns have been raised about

increased fuel consumption and interference of the highway/rail at-grade crossings with train operations if the rail line is relocated. GCIA has contended that projected additional trains associated with the proposed transaction could make it more difficult to negotiate a solution to the runway problem. In response, CN asserts that the proposed transaction would have no effect on the relocation negotiations or GCIA because CN believes that the number of trains using the EJ&E rail line does not affect the issues that need to be addressed related to the relocation. CN has labeled the potential impacts of the proposed line relocation “a pre-existing condition,” rather than one that would be a direct result of the proposed acquisition transaction.

The Draft Scope of Study did not mention any analysis of potential effects on existing or proposed airports. Based on the comments, SEA will include in the EIS an appropriate analysis of the impacts of increased train traffic on the existing line near GCIA, as well as the proposed runway expansion and rail line relocation at GCIA.

The Commuter Rail Division of the Regional Transportation Authority (Metra) and the Suburban Transit Access Route (STAR Line): Many individuals and government agencies commented that the EIS should address the effects of the proposed transaction on future commuter rail service planned for a portion of the EJ&E ROW in Illinois. The Commuter Rail Division of the Regional Transportation Authority (a/k/a Metra) proposes to institute passenger service on certain segments of the EJ&E ROW and tracks. The service, to be known as the Suburban Transit Access Route, or the STAR Line, is part of the 2030 Regional Transportation Plan for Northeastern Illinois. The STAR Line plan calls for service over approximately 35 miles of EJ&E ROW from a point east of Interstate 55 in Joliet, to Interstate 90 in Hoffman Estates, from which the service would then travel eastward on new track within the I-90 ROW corridor to O’Hare Airport. Metra’s STAR Line would include seven new passenger rail stations along the existing EJ&E rail line in Cook, DuPage, and Will counties.

Congress authorized funding for preliminary engineering of the STAR Line in Section 3043(c)(120) of SAFETEA-LU. Many of the municipalities along the STAR Line route have already obligated or spent funds to provide new passenger rail stations and are incorporating the STAR Line into their land use planning. Metra is also studying potential extensions to the STAR Line east of Joliet and north of Hoffman Estates on the EJ&E ROW, but that planning is preliminary and is not expected to be completed in the foreseeable future.

The Draft Scope of Study states that the transportation systems analysis in the EIS will address the potential effects on reasonably foreseeable future commuter rail operations. SEA now clarifies that the EIS will encompass an appropriate discussion of the STAR Line from Joliet to Hoffman Estates, as part of the analysis.

Metra and the EJ&E Interlockings: Many commenters urged that the EIS should include an analysis of the effects of the proposed acquisition on commuter rail operations where the Metra trains intersect with the EJ&E. Metra currently operates approximately 700 trains each day throughout the Chicago region. The Metra trains pass over “interlockings” (rail to rail at-grade crossings) where freight traffic on the EJ&E corridor is projected to increase as a result of the proposed transaction. The interlockings are controlled by EJ&E. Metra and many other commenters are concerned that the projected freight increases resulting from this proposed

transaction could impair Metra's on-time performance by causing commuter trains to wait for passing or stopped freight trains. Metra further states that it is planning to extend its service on the UP West Line that passes over the EJ&E interlocking at West Chicago, and on the UP Northwest Line that passes over the EJ&E interlocking at Barrington. Metra is also planning to institute new Southeast Service over the UP ROW, which would pass over the EJ&E interlocking at Chicago Heights. The success of these projects allegedly would be adversely affected due to the projected freight rail increases described in the application.

The Metra extensions described above are part of the 2030 Regional Transportation Plan for Northeastern Illinois. Section 3043(a)(13) of SAFETEA-LU authorized over \$26 million for final design and construction of Metra's UP West Extension. Section 3043(c)(119) of SAFETEA-LU authorized funding of preliminary engineering for Metra's Southeast Service.

As the Draft Scope of Study stated, the EIS will evaluate the effects of the proposed transaction on existing and reasonably foreseeable commuter rail operations. As part of that analysis, the EIS will contain an appropriate examination of the transportation system impacts of the proposed acquisition on existing Metra service, Metra's UP West Extension, the UP Northwest Extension, and the Southeast Service.

The National Railroad Passenger Corporation (AMTRAK): Many commenters noted that the EIS should consider the effects of the proposed transaction on AMTRAK service between downstate Illinois and Chicago. AMTRAK explained that it operates six trains each day over the CN Chicago Subdivision Line south from a point near 23rd Street on Chicago's Lakefront Line. These six trains connect from the Lakefront Line to Chicago's Union Station over the St. Charles Air Line, a rail line owned jointly by CN, UP, and BNSF. Under the proposed transaction, CN would no longer operate any freight trains over the St. Charles Air Line or along the Lakefront Line. AMTRAK is concerned that it could remain the only user of the St. Charles Air Line and CN's Lakefront Line and, as such, could be required to pay all maintenance expenses for the St. Charles Air Line. The Illinois Department of Transportation (IDOT) shares AMTRAK's concern, noting that it helps to finance AMTRAK's six daily trains. AMTRAK and IDOT say they would not be able to pay all of the maintenance expenses alone, which could jeopardize AMTRAK's current service. AMTRAK further indicates that, at present, it does not have an acceptable alternative access route into Chicago's Union Station.

The commenters also asked that the EIS assess the impacts that could occur from loss of AMTRAK service to Illinois communities that rely on AMTRAK service to and from Chicago and the effects on the highway system and related energy consumption that would result from loss of this service.

CN minimizes the potential impacts of this proposed transaction on AMTRAK, noting that AMTRAK has an existing agreement to use the St. Charles Air Line and the Lakefront Line tracks through 2010 and that AMTRAK can continue to use these lines indefinitely on the same terms with the same adjustments for inflation, as stated in the existing agreement. CN adds that there is no proposal pending before the Board to abandon the St. Charles Air Line or any of CN's tracks along the Chicago Lakefront Line.

The Draft Scope of Study stated that the EIS would describe the effects of the proposed acquisition on existing AMTRAK service. SEA now clarifies that the EIS will examine the transportation system impacts on existing AMTRAK service on the St. Charles Air Line and the other CN lines used by AMTRAK in the Chicago area. Because there is no proposal in front of the Board for authority to abandon the St. Charles Air Line, the possible future discontinuance of AMTRAK service over the St. Charles Air Line will not be analyzed in detail in the EIS. Any attempt to do so at this point would be speculative.

Northern Indiana Commuter Transportation District (NICTD): Many commenters urged that the EIS consider the effects of the proposed transaction on existing and proposed commuter rail service for Northwestern Indiana. The commenters explain that NICTD operates the South Shore commuter rail service between South Bend, Indiana and Chicago. The South Shore connects with the CN Illinois Central (Chicago Subdivision) tracks at 115th and Kensington in Chicago. Freight service on this CN line is expected to decrease as a result of the proposed transaction. NICTD is presently completing a switching improvement project where its tracks connect with CN at 115th and Kensington. NICTD evidently is considering two new West Lake Corridor commuter rail services between Chicago and communities in northwest Indiana. Both proposed services apparently would use existing Metra and NICTD trackage to Hammond, where the services would then use ROW controlled by NICTD south to Maynard, near Munster. Service between Chicago and Valparaiso, Indiana would use the CN South Bend Subdivision between Munster and Valparaiso, Indiana; this service would cross the EJ&E at Griffith. Service between Chicago and Lowell, Indiana would use CSXT trackage between Munster and Lowell, Indiana. This service would cross the CN South Bend Subdivision at Maynard and the EJ&E at Dyer.

The available information indicates that NICTD has prepared two planning documents related to these proposed services, which identify the purpose and need for the proposed services and describe rail and bus alternatives. However, a Locally Preferred Alternative (LPA) has not been determined for these services. No funding sources have been secured to date for continued planning and implementation for the proposed services. NICTD also does not have an agreement with CN to use its South Bend Subdivision ROW for the proposed passenger service. NICTD and others have commented that the outstanding issues related to use of the CN South Bend Subdivision ROW should be resolved in the instant acquisition proceeding and that the EIS should assess the impacts related to loss of the opportunity to institute new commuter service on the CN South Bend Subdivision ROW.

An appropriate discussion of the NICTD operations will be included in the EIS.

Land Use

Some commenters expressed concerns regarding potential impacts to parks and other community facilities and amenities, as well as impacts to neighborhoods including visual impacts. Consistent with the Draft Scope of Study, the EIS will evaluate consistency of the proposed transaction with existing land use plans and zoning requirements, and potential impacts to prime farmland. Because trains already operate on the EJ&E rail line, and additional trains resulting from the proposed transaction are not expected to change the physical character of the line or adjoining lands, SEA does not believe that a detailed visual impact analysis is warranted.

Socioeconomics

A number of commenters expressed concern over the potential impacts that the proposed acquisition would have on community quality of life, on local property values and the local economy, and how the proposed transaction would affect community growth and social cohesion. Consistent with the Draft Scope of Study, the EIS will evaluate socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.

Energy

Some commenters expressed concern about fuel consumption related to congestion and potential effects of the proposed transaction on climate change. As indicated in the Draft Scope of Study, the EIS will evaluate the potential environmental impact of the proposed transaction on the transportation of energy resources and recyclable commodities to the extent that such information is available, and evaluate potential changes in fuel use arising from the proposed transaction. The EIS will also include an appropriate discussion of fuel use changes related to this proposed transaction and climate change.

Air Quality

Commenters expressed concern regarding the potential impacts of the proposed transaction to public health and regional air quality resulting from proposed transaction-related changes in train emissions. The commenters noted that longer and more frequent trains and additional rail activity in the rail yards are expected to increase air emissions in the EJ&E corridor. In addition, commenters were concerned about an increase of emissions at highway/rail at-grade crossings from vehicles subject to delays as a result of the proposed acquisition. The Chicago Metropolitan Area has been designated as a nonattainment area under the Clean Air Act. Accordingly, the EIS will evaluate air emissions increases where the post-proposed acquisition activity would exceed the Board's thresholds for environmental review in nonattainment areas in 49 CFR 1105.7(e)(5)(i) (generally, an increase of three trains per day on any segment of rail line affected by the proposal).

The EIS will also evaluate the net increase in emissions from increased railroad operations, as well as potential air emissions increases from vehicle delays at rail crossings associated with the proposed transaction. Emissions changes arising from the proposed transaction will be estimated, including expected increases or decreases in diesel particulate emissions and related air toxics.

Noise and Vibration

Many commenters expressed concern about potential increases in horn and other noise, as well as train-induced vibration throughout the EJ&E corridor as a result of the proposed acquisition. As the commenters note, the proposed transaction would place more and longer trains on EJ&E tracks and increase activity at key points such as Kirk Yard in Gary, Indiana. Accordingly, consistent with the Draft Scope of Study, the EIS will evaluate potential proposed transaction-related increases in noise and associated impacts and will assess potential vibration

effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or adjacent to the EJ&E rail line ROW.

Biological Resources

Commenters expressed concern regarding potential impacts of the proposed transaction on wildlife, as well as nature preserves and designated natural areas. The Draft Scope of Study stated that the EIS would assess the effects of acquisition-related construction (double tracking, proposed new connections) on threatened and endangered species, wildlife sanctuaries or refuges, and national or state parks or forests. Many commenters suggested that the EIS should also assess the effects of increased rail operations, maintenance (herbicide spraying), and the risk of accidents on wildlife areas along the EJ&E ROW.

Based on the comments, the EIS will assess the operational impacts of additional freight rail traffic on areas where federal or state threatened or endangered species or designated critical habitats are located. The EIS will examine the effects of the proposed acquisition in areas along the EJ&E rail line ROW that have been designated as natural areas by federal, state, and local natural resource agencies. The EIS will also assess the potential effects on designated natural areas from construction of the alternative configurations for the proposed new connections and double tracking.

Water Resources

Some commenters expressed concern about the potential effects of the proposed transaction on surface and groundwater quality, as well as flood plains and local drainage systems. As indicated in the Draft Scope of Study, the EIS will evaluate consistency with applicable federal or state water quality standards; determine if permits may be required under Sections 404 or 402 of the Clean Water Act (33 USC 1344) for any proposed construction; and assess whether any planned construction has the potential to encroach upon any designated wetlands or 100-year floodplains.

Environmental Justice

Some commenters expressed concern about potential disproportionate adverse effects of the proposed acquisition on minority or low income populations. Consistent with the Draft Scope of Study, the localized adverse impacts of the proposed transaction (for example, noise, air quality, residential or business relocations, and community impacts) will be analyzed in relation to the presence of minority and low income populations. The EIS will assess demographics in the immediate vicinity of areas where major planned activities (such as construction of improved rail connections, siding extensions, and installation of double track) would take place, and where increases in train traffic would be above the Board's threshold for environmental review. The EIS will evaluate whether such activities potentially could have a disproportionately high and adverse effect on minority or low-income groups.

Cultural and Historic Resources

The Draft Scope of Study stated that the EIS would address potential effects from construction of the proposed connections and double tracking on cultural and historic resources that are in or immediately adjacent to the railroad ROW. Commenters suggested that the EIS should assess impacts on cultural resources that are near but not necessarily adjacent to the EJ&E ROW or near the area where new connections are proposed. These cultural resources range from historic and prehistoric sites to historic districts.

The Final Scope of Study clarifies that the EIS will establish an area of potential effect (APE) in coordination with the State Historic Preservation offices (SHPO) in Illinois and Indiana. SEA will assess potential effects within the APE. The APE will most likely be inside the EJ&E ROW and the immediate area where construction activities (double tracking, new connections) may cause ground disturbance. In addition, the EIS will evaluate Native American sites to the extent they are suggested for evaluation by a SHPO or a Native American tribe.

Indirect and Cumulative Effects

Commenters expressed concern about the potential indirect and cumulative effects that could be caused by the proposed acquisition, including effects of other reasonably foreseeable activities on communities and natural resources. Consistent with the Draft Scope of Study, the EIS will address indirect and cumulative effects that may occur later in time, or at other locations, or which, in combination with other actions, could affect the same resources. This analysis will be done for reasonably foreseeable related actions that warrant such analysis, given the context and scope of the proposed acquisition.

In addition, some commenters suggested that the EIS should examine the effects of increased freight rail traffic on CN lines in Wisconsin. They suggested that the proposed acquisition of the EJ&E by CN would result in increased traffic on the CN lines in Wisconsin going to and from the Chicago area. This, the commenters state, would result in increased impacts to safety and air quality in Wisconsin.

In preparing the EIS, SEA will determine the geographic boundaries for the analysis of indirect and cumulative effects by examining an area within reasonable proximity to the area or areas where direct effects to environmental resources are observed. SEA will also take into account the nature of each affected resource that is analyzed. The Applicants have not identified proposed transaction-related train traffic changes on any of the CN rail line segments outside of the EJ&E's arc. Although SEA's own review analysis has not been completed yet, the available information does not suggest that an analysis of indirect and cumulative effects outside of the Chicago metropolitan area will be warranted.

As indicated in the Draft Scope of Study, the EIS will evaluate indirect and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction where SEA determines that there is the likelihood of significant environmental impacts and where information is provided to the Board that describes 1) those other projects or activities, 2) their interrelationship with the proposed acquisition, and 3) the type and severity of the

potential environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis in the EIS.

Some commenters suggested that the EIS should examine the effects of the proposed acquisition of the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and the Iowa, Chicago & Eastern Railroad Corporation (IC&E) by Canadian Pacific Railway Corporation (CP).³ Prior to CP's application to acquire DM&E and IC&E, the Board approved an extension of the DM&E into the Powder River Basin in Northeastern Wyoming to permit rail access to coal resources.⁴ The commenters believe that the likely route for any new coal shipments that could result from the CP's proposed acquisition of the DM&E would be over the CN rail lines in Wisconsin, including the EJ&E rail lines, if CN's proposed acquisition of EJ&E is authorized and implemented. They contend that this would result in more and longer freight trains than the numbers projected in the application, which, the commenters claim, would result in more severe impacts on their communities than would otherwise be the case.

As previously noted, the EIS will include an appropriate evaluation of indirect and cumulative effects of reasonably foreseeable projects that relate to the proposed acquisition. The commenters' suggestion that the impacts of the proposed acquisition of the DM&E and IC&E by CP need to be considered as part of the cumulative impact analyses, however, is premature. In a decision in Finance Docket No. 35081, issued on April 4, 2008, the Board determined that it would be appropriate to defer preparation of an EIS addressing the possible future movement of DM&E PRB coal traffic over the IC&E and/or CP lines because sufficient information is not available to conduct a meaningful review now. In that decision, the Board made clear that should it ultimately authorize the transaction proposed in Finance Docket No. 35081, it would impose conditions on the authorization precluding such movements pending completion of an EIS and the issuance of a final Board decision addressing the impact of such coal operations and allowing such operations to begin, if appropriate. In short, no movements of the sort commenters are concerned about are reasonably foreseeable at this time.

Mitigation

Many commenters suggested that the Board should require CN to install highway/rail grade separations or change rail operations wherever vehicle delays or safety risk would exceed the existing conditions. Other commenters stated that the Board should base its mitigation conditions on the accomplishment of regional goals and not on local problem sites. Some commenters believed that the Board should retain jurisdiction over the proposed transaction for an extensive period after the proposed transaction is implemented (assuming the Board

³ This acquisition is pending before the Board in STB Finance Docket No. 35081, *CP Railway Company et. al. – Control – Dakota Minnesota & Eastern Railroad Corp., et. al.*

⁴ See *Dakota, Minnesota & Eastern Railroad Corp., Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Feb. 15, 2006), affirmed *Mayo Foundation v. STB*, 472 F.3d 545 (8th Cir. 2006).

authorizes it), to review additional increases in freight rail and vehicle traffic to determine appropriate mitigation. Other commenters suggested that the Board should not approve the proposed transaction unless CN agrees to make accommodations for improvements, such as the runway extension at GCIA and the NICTD West Lake Corridor service on the South Bend Subdivision ROW.

It would be inappropriate to present any specific mitigation in the Final Scope of Study for the Draft EIS. Mitigation depends on the results of the environmental analysis, and the environmental analysis related to the proposed transaction is not yet completed. The Draft EIS will contain recommendations for environmental mitigation based on the results of the analysis of potential effects. After the Draft EIS is issued, commenters will have the opportunity to comment on the mitigation recommendations in the Draft EIS. The comments will be reflected in the Final EIS. The Board then will consider SEA's final recommended mitigation in deciding whether to grant or deny the proposed acquisition or grant it with environmental conditions. Finally, it is worth noting here that the Board only has authority to require mitigation for effects arising from the proposed acquisition, not pre-existing conditions. At the same time, however, voluntary mitigation (i.e., mitigation proposed by the railroad often after consultations with potentially affected communities and others) can sometimes achieve more far reaching results than the Board could unilaterally impose. Voluntary mitigation and mutually acceptable negotiated agreements can result in cost sharing to allow completion of very costly measures, such as grade-separated crossings, which primarily benefit the community rather than the railroad, and thus are typically funded primarily by entities other than the railroad.

The Final Scope of Study for the Draft EIS of the proposed transaction is attached as Appendix A.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan
Acting Secretary

APPENDIX A: Final Scope of Study for the EIS

Proposed Action and Definition of Alternatives:

Applicants' proposed acquisition of the EJ&E railroad would result in shifting of rail traffic from rail lines in Chicago to rail lines on the EJ&E line, which forms an arc around Chicago. Rail traffic on CN lines inside the EJ&E arc would generally decrease. These decreases in rail traffic would be offset by substantial increases in the number of trains operated on the EJ&E line outside Chicago. The increase in train traffic on the EJ&E line would vary from approximately 15 to 24 additional trains per day. Applicants state that the proposed transaction would not impair CN's ability to handle commuter trains, passenger trains, or trackage/haulage trains currently operating on the EJ&E line. Finally, on the integrated CN/EJ&E system, four train pairs would be added to EJ&E terminals: three inbound and three outbound switch trains at Kirk Yard, and one inbound and one outbound switch train at East Joliet Yard. Applicants' projections for the changes in rail operations as a result of the proposed acquisition are set forth in the application, available on the Board's website. The proposed transaction also includes construction of six rail connections, siding extensions, and installation of double track. The EIS will discuss the purpose and need for the proposed transaction.

Reasonable and feasible alternatives /9630 for the proposed acquisition that will be evaluated in the EIS are 1) approval of the proposed transaction, 2) disapproval of the proposed transaction in whole (No-Action alternative), or 3) approval of the proposed transaction with conditions, including environmental mitigation conditions.¹

In addition, the EIS will consider as appropriate, reasonable and feasible alignment alternatives for the six proposed connections.

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. Existing rail operations are the baseline from which the potential environmental impacts of the proposed transaction will be evaluated. SEA will evaluate only the potential environmental impacts of operational and physical changes that are directly related to the proposed transaction. SEA will not consider

¹ The Board has broad authority to impose conditions in railroad acquisition transactions under 49 USC 11324 (c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, mitigation is not imposed to remedy pre-existing conditions, and the condition imposed must be reasonable. *See United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

environmental impacts solely arising from existing rail operations and existing railroad facilities.²

The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (for instance, an increase in average length of trains, or a proposed change in average train speed) for those rail line segments that meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7.
2. Proposed changes in activity at rail yards to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7
3. Proposed physical construction of improved rail connections, siding extensions, and installation of double track.

Environmental Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, rail operations, transportation systems, hazardous waste sites, hazardous materials transportation, land use, energy, air quality, noise, natural resources, water resources, socioeconomic effects related to physical changes in the environment, environmental justice, cultural or historic resources, and indirect and cumulative effects, as described below.

1. Safety

The EIS will:

- A. Consider at-grade rail crossing accident probability and safety factors related to increased freight traffic as a result of the proposed transaction. This will generally include all public highway/rail at-grade crossings. Accident probability analysis will address the potential for rail and vehicle accidents.

² In proceedings similar to this proposed acquisition, the Board's practice consistently has been to mitigate only those environmental impacts that result directly from the proposed transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy pre-existing conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the proposed acquisition (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

- B. Consider increased probability of train accidents and derailments due to increased proposed transaction-related traffic on a system-wide basis.
- C. Address potential effects of proposed transaction-related increased freight traffic on commuter and intercity passenger service operations.
- D. Discuss CN's emergency management or emergency response plans.
- E. Address safety issues associated with the integration of differing rail operating systems and procedures, including an appropriate discussion of Applicants' Safety Integration Plan.

2. Hazardous Materials Transportation

The EIS will discuss the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:

- A. Changes in the types of hazardous materials and quantities transported or re-routed.
- B. Nature of the hazardous materials that are currently being transported or are proposed to be transported.
- C. Applicants' safety practices and protocols.
- D. Applicants' U.S. safety data on derailments, accidents and hazardous materials spills.
- E. Contingency plans to address accidental spills.
- F. Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements.

3. Transportation Systems

The EIS will:

- A. Describe system-wide and localized effects of the proposed transaction-related operational changes, construction of proposed connections, siding extensions, and installation of double track.
- B. Evaluate those commuter rail line segments or crossings that would experience increased freight traffic as a result of the proposed transaction.

- C. Discuss proposed transaction-related effects on existing or proposed commuter or passenger rail service (Metra, NICTD, AMTRAK) as appropriate (i.e., where capital improvements have been approved). Evaluate the capability of the EJ&E rail line segments or crossings to accommodate the reasonably foreseeable addition of commuter trains.
- D. Discuss proposed transaction-related potential diversions of freight traffic from trucks to rail and from rail to trucks, as appropriate.
- E. Address vehicular delays at rail crossings and intermodal facilities due to increases in rail traffic operations as a result of the proposed transaction. Estimates of typical delays will be made for highway/rail at-grade crossings, more detailed analysis will be done at highway/rail at-grade crossings that have an ADT of 2,500 vehicles per day or are within 800 feet of another crossing. Vehicle delay analysis will be done for traffic levels in years 2015 and 2020. Detailed analysis also will be conducted at highway/rail at-grade crossings that have an ADT of less than 2,500 vehicles per day, but have unique circumstances that make such evaluations appropriate.
- F. Evaluate potential effects of proposed transaction-related highway/rail at-grade crossing blockage due to stopped trains.
- G. Discuss potential effects of proposed transaction-related increased train traffic on emergency response facilities in proximity to the EJ&E rail line.
- H. Discuss potential effects of proposed transaction-related increased train traffic on railroad bridges that cross navigation channels to the extent that such bridges allow only one mode of transportation to pass at a time (movable-span railroad bridges).
- I. Discuss potential effects of proposed transaction-related increased train traffic on the Gary Chicago International Airport and its planned expansion.

4. Land Use

The EIS will:

- A. Describe whether the construction of the proposed rail connections, siding extensions, and installation of double track are consistent with existing land use plans.
- B. Describe environmental impacts associated with the construction of the proposed rail connections, siding extensions, and installation of double track on existing land use plans and potential effects on prime farmland.
- C. Discuss potential effects of proposed transaction-related changes in rail operations on parks, forest preserves, and schools in the vicinity of the EJ&E rail line.

D. Discuss consistency of the construction of the proposed rail connections, siding extensions, and installation of double track with applicable zoning requirements.

5. Socioeconomics

The EIS will:

A. Address socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.

B. Describe demographic characteristics of the transaction area and potential effects of the proposed transaction.

C. Evaluate economic effects of proposed acquisition-related construction and improvements to the EJ&E.

D. Discuss potential effects of proposed transaction-related increased train traffic on the potentially affected communities.

6. Hazardous Materials – Contaminated Sites

The EIS will:

A. Describe any recorded sites of contamination within or adjacent to areas potentially disturbed by proposed transaction-related construction activities.

B. Discuss known areas where spills of hazardous materials have occurred in the past and which may be affected by proposed transaction-related activities.

C. Discuss emergency response and clean up plans.

7. Energy

The EIS will:

A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities.

B. Evaluate potential changes in fuel use arising from the proposed transaction.

8. Air Quality

The EIS will:

A. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), for air quality nonattainment areas as designated under the Clean Air Act. The applicable thresholds are as follows for the Chicago Metropolitan area, which is a nonattainment area:³

1. A 50 percent increase in rail traffic (measured in gross-ton miles annually) or an increase of three trains a day on any segment of rail line affected by the proposal; or
2. An increase in rail yard activity of at least 20 percent or more in carload activity (rail car switching and block swapping).
3. Increase in truck traffic greater than 10 percent of average daily traffic (ADT) or 50 trucks per day.

B. Discuss the net change in emissions from changes in railroad operations associated with the proposed transaction. Net emissions changes will be calculated for counties with projected proposed transaction-related changes in train traffic.

C. Discuss the following information regarding the anticipated transportation of ozone depleting materials (such as nitrogen oxide and Freon):

1. Materials and quantity;
2. Applicants' safety practices;
3. Applicants' safety record (within the United States) on derailments, accidents, and spills;
4. Contingency plans to address accidental spills; and

³ Nonattainment areas are areas that do not comply with one or more ambient air quality standards. Ozone non-attainment areas are further classified as Marginal, Moderate, Serious, Severe, or Extreme Areas. These classifications are based on the level, in parts per million (ppm), of ozone measured for each area. Moderate areas are defined as .092 to .107 ppm, Serious Areas are defined as containing 0.107 ppm to 0.120 ppm, and Severe Areas are defined as containing 0.120 to 0.187 ppm. The Chicago area is currently classified as moderate non-attainment for ozone and non-attainment for PM 2.5.

5. Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

D. Discuss potential air emissions increases from vehicle delays at highway/rail at-grade crossings where the crossing is projected to experience a change in rail traffic arising from the proposed transaction over the thresholds described above. Such increases will be factored into the net emissions estimates for the affected area.

E. Estimate potential increases or decreases in diesel particulate emissions arising from the proposed transaction.

F. Discuss potential for changes in greenhouse gas emissions arising from the proposed transaction and how such changes may relate to climate change.

9. Noise and Vibration

The EIS will:

A. Describe potential noise and vibration impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in the Air Quality section.

B. Identify whether the proposed transaction-related increases in rail traffic will cause an increase to a noise level of 65 dBA L_{dn} and 3 dBA L_{dn} or greater. If so, an estimate of the number of sensitive receptors (e.g., schools and residences) within such areas will be made.

C. Assess potential proposed transaction-related vibration effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or immediately adjacent to the railroad right of way.

D. Discuss existing or planned Quiet Zones.

10. Biological Resources

The EIS will:

A. Discuss the potential environmental impacts of construction of proposed connections, siding extensions, and installation of double track on federal or state endangered or threatened species or designated critical habitats.

B. Discuss the effects of construction of proposed rail connections, siding extensions, and installation of double track on wildlife sanctuaries or refuges, and national or state parks or forests.

C. Discuss potential effects of proposed transaction-related increased train traffic on federal or state designated protected species or areas of special biological significance.

11. Water Resources

The EIS will:

A. Describe existing surface and groundwater resources in the vicinity of the EJ& E, particularly in areas of planned construction activity.

B. Discuss whether potential impacts from the construction of proposed rail connections, siding extensions, and installation of double track may be inconsistent with applicable federal or state water quality standards.

C. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 USC 1344) for any construction of proposed rail connections, siding extensions, and installation of double track, and whether any such projects have the potential to encroach upon any designated wetlands or 100-year floodplains.

D. Discuss hydrogeology in the study area and presence of any designated sensitive groundwater areas.

12. Environmental Justice

The EIS will:

A. Report on the demographics in the immediate vicinity of any area where major activity such as construction of rail connections, siding extensions, and/or installation double track is proposed.

B. Report on the demographics in the vicinity of rail lines with projected proposed transaction-related rail traffic increases above the Board's thresholds for environmental review.

C. Evaluate whether such activities potentially have a disproportionately high and adverse effect on any minority or low-income group.

13. Cultural and Historic Resources

The EIS will address potential impacts from the proposed construction of rail connections, siding extensions, and installation of double track on cultural and historic resources that are within areas potentially disturbed by construction activities.

14. Indirect and Cumulative Effects

The EIS will:

A. Address indirect and cumulative effects of environmental impacts that have regional or system-wide ramifications. This analysis will be done for environmental impacts that warrant such analysis given the context and scope of the proposed transaction.

B. Discuss as part of the indirect and cumulative impact analysis the potential environmental impacts of yard modification activities on railroad-owned property that would potentially be affected by the proposed transaction.

C. Evaluate indirect and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction where SEA determines that there is the likelihood of significant environmental impacts and where information is provided to the Board that describes 1) those other projects or activities, 2) their interrelationship with the proposed acquisition, and 3) the type and severity of the potential environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis in the EIS.

15. Mitigation

Where SEA determines there is potential for significant adverse impacts arising from the proposed transaction, SEA will consider reasonable mitigation measures that could reduce or eliminate such adverse impacts. SEA may consider a range of mitigation measures based on the nature and severity of the potential impact and consistent with the Board's jurisdiction and authority.