

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

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STB FINANCE DOCKET NO. 35087

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

**TRAC COMMENTS PURSUANT TO BOARD DECISION NO. 23**

These Comments regarding the audit of Canadian National Railroad's (CN) post-transaction blockage of grade crossings along the EJ&E rail line are submitted, pursuant to the STB's Decision No. 23, served April 20, 2010, on behalf of the local communities that make up the Regional Answer to Canadian National Coalition (TRAC). TRAC commends the Board for its diligence in undertaking this investigation at TRAC's request, as well as holding the April 28 hearing to examine the troubling discrepancies between the actual incidents of blocked crossings and CN's monthly reporting of blocked crossings as required by the Board in its legally binding conditional approval of CN's acquisition of the EJ&E. As TRAC has contended for the past year in its communications with the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), instances of blocked crossings have been grossly under-reported by CN. TRAC is pleased that the anecdotal evidence it supplied during this past year has been supported and confirmed by the remote monitoring device (RTU) technology that is in place at a significant number of crossings on the EJ&E rail line.

From TRAC's perspective, the current proceeding reflects a need to determine a number of key issues. First, the Board needs to determine whether CN's under-reporting was a "misunderstanding" as characterized by Mr. Gordon Trafton, CN's Special Advisor to the CN Leadership Team, or a willful

effort to mislead the Board and the region on this critical safety issue. Second, the Board must determine what this blocked crossing data means in terms of extrapolating its impact on the region when the CN is operating all the proposed traffic on the EJ&E, and not less than 15% of projected volume as is now the case. Finally, the Board must determine what it will do in response to this investigation. TRAC hopes the Board will take active steps to protect the communities that are located along the EJ&E by strictly interpreting and enforcing all of the conditions that it imposed on CN, and will not take the position that there is nothing that can be done to penalize CN for its brazen attempt to skirt the conditions imposed by the Board in its Decision. TRAC will address all three of these issues in our comments.

**KEY ISSUE 1: Was CN's Under-Reporting a Willful Effort to Mislead the Board and the Public?**

TRAC respectfully submits that the evidence compiled in this investigation can lead to no other conclusion than a finding that CN's under-reporting was a willful attempt to thwart the Board's known oversight interests on this transaction. The record plainly shows that after CN learned of the data and, as early as March of 2009, came to the realization that it had the ability to measure slow-moving trains, CN covered up that ability instead of disclosing it to the Board.

In his written statement prepared for the April 28 hearing, Mr. Trafton claimed, "*We believed we were meeting the Board's reporting requirements. With respect to blocked crossings, we had a good faith understanding that the Board's expectation was for reports on blockages caused by stopped trains and we diligently worked to meet that expectation.*" Given the explicit wording of Condition No. 2, in particular the requirement that CN "shall summarize the cause of *each type of blockage*," Mr. Trafton's comment lacks any credibility, and appears instead to be a carefully crafted statement intended to further CN's choreographed position that only stopped trains needed to be reported.

Simply put, there can be no honest misunderstanding about the Board's requirements vis-à-vis blocked grade crossings. To pretend that there was only "one type" of blockage that needed to be reported is, as Vice-Chairman Mulvey stated, "disingenuous" (Hearing transcript -- page 93.)

The bottom line is that the language of Condition No. 2, which HDR helped draft, is crystal clear, and needs no clarification. HDR's belated attempt to suggest otherwise is of no moment and is, itself, disingenuous. As will be set forth in detail, TRAC questions whether HDR is sufficiently independent that it can be relied upon to provide the STB and the general public with an unbiased opinion. Therefore, TRAC will recommend that any future audits of CN be performed by the General Accountability Office ("GAO") or an independent private auditor (with no prior involvement with the transaction) and not by HDR.

1. HDR's John Morton who serves as a transaction auditor (following the firm's role as consultant on the environmental review for the transaction) responded to Commissioner Nottingham's questions on the clarity of the Board's reporting requirements by stating "We, certainly, worked with your staff on the wording of many of those conditions, and we felt that as we were working with them, that they were clear, yes." (Hearing transcript – page 38.)
2. Mr. Ted Kalick (CN Senior U.S. Regulatory Counsel) and Ms. Karen Borlaug Phillips (CN Vice President, North American Government Affairs) testified about the railroad's understanding of the reporting requirements following a February 2009 "kick-off meeting" between the Board, Board staff, and CN representatives. Their explanations regarding CN's interpretation of the Board's intent regarding the Board's Final Mitigation Condition

No. 2 cannot withstand scrutiny. Given Ms. Phillips' position as a former Commissioner and Mr. Kalick's position as a former member of the Board's Office of General Counsel, it is inconceivable that they did not fully understand the plain meaning of the Board's requirement that Applicants shall report on "the frequency, cause, and duration of train blockages of crossings of 10 minutes in duration or greater, listing each delay ... [and] shall summarize the cause of *each type* of blockage ...". Based on their responses to Board members' questions, it appears that they simply felt the Board's expectations, as explicitly set forth in Final Mitigation Condition No. 2, didn't apply to CN:

- Mr. Kalick attempted to justify the reporting omissions by stating: "*... in the February '09 meeting with Board personnel, ... we raised the issue of what crossings the Board wanted us to report.*" (Hearing transcript – page 80.) That excuse is hollow. The same is true with his subsequent comments after admitting that there are legally recognized methods for seeking clarification on Board rulings that CN failed to undertake after learning of the available data. (Hearing transcript – page 82.) Instead of simply admitting that the language of Condition No. 2 is clear, he offered the meaningless comment that: "*As you know, the Board's approval decision directed CN to work with Board personnel, specifically as to the oversight and monitoring reporting. And we worked with not just SEA, but STB, your staffs, general counsel at that meeting, and for intents and purposes, from our perspective, that was, essentially, a proxy for the Board to really resolve how we were going to go forward on the particulars of reporting...the process here actually had another layer on it.*" (Hearing transcript – page 90.) What Kalick failed to state was that while CN may have worked with SEA, the STB, its staff and its general counsel, it

never disclosed the existence of the technology that easily captures the relevant data.

- When Ms. Phillips was asked directly by Commissioner Nottingham, “*Do you recall anybody from the STB voicing concern about limiting reporting to only stopped blockages, and how that would be likely viewed by the community?*” (Hearing transcript – page 91) Phillips acknowledged, “*There was definitely interest expressed by people at that meeting, including yourself, about the fact that the Board is interested in the impacts of the transaction overall on the communities. Having had that discussion, though, we proceeded to talk about what are the data that are available, what did we know at that time, **what made sense** from the standpoint of conventional railroad operating practices.*” (Emphasis added by TRAC; hearing transcript – pages 91 & 92.) Once again, it must be emphasized that CN’s representatives, with full knowledge of the voiced concerns, thereafter failed to disclose data that was then available to it in response to interests expressed by Board personnel at the meeting, including Commissioner Nottingham.

CN’s representatives were forced to change their story about the blockage undercount being a mere “misunderstanding” when Commissioner Nottingham made it clear to them that it seemed to him that “circumstances changed quite significantly in late March [2009] when the RTU data was discovered [and] ... all of a sudden what was proffered to be a very difficult and burdensome legal mandate by the Board ... appears to have become around that time frame pretty darned easy to comply with.” (Hearing transcript – pages 85 & 86.)

As the Transcript reflects, Mr. Kalick had just testified that certain of CN's voluntary mitigation conditions had caused CN to raise "*the issue of what crossings the Board wanted us to report. Notwithstanding the language that you read before, which we concede reads as it reads, but because of these other VMs, because of our knowledge of railroad operations, we, in fact, raised the issue with the Board at that [February 2009] meeting in trying to come to some sort of an agreement of what it was that we were to report.*" (Hearing transcript -- pages 80 & 81). In response to Commissioner Nottingham's question, Mr. Kalick quickly changed gears by claiming that CN "*didn't have the confidence in the data at that time.*" (Hearing transcript – page 86.) That response, however, does not excuse the uncontested fact that CN, at no time after discovering the existence of the data, ever bothered to disclose its existence to the Board.

Instead, as Ms. Philips confirmed, CN stuck to its previous decision to report what it considered to be "*feasible.*" (Hearing transcript – page 92). That, however, was not what was required by the clear language of Condition No. 2.

As Vice-Chairman Mulvey aptly described CN's contrived excuses, "*the testimony does sound a little disingenuous.*" (Hearing transcript -- page 93). More importantly, CN's testimony left open the question as to why, after CN management became aware of the RTU equipment on the EJ&E and the data relating to the time that crossings were blocked, CN made the decision not to notify the STB. Without question, at some point in time it had to have become clear that the technology could provide the type of blocked crossing data that the Board had required in its Decision approving the transaction.

The Board's attention is invited to HDR's April 14, 2010 Report entitled *Task 3 Train Volumes and Street Blockages*. As revealed at page 4, HDR learned, during discussions with CN personnel that "*they understood that a blockage would only be reported to the Board if a train was actually stopped (no movement) on a crossing for a duration lasting ten minutes or more.*" Simply stated, it is highly

doubtful that CN's dispatchers would have reached such a conclusion on their own. As part of its ongoing investigation, the Board should compel CN to produce all documents in its possession that reflect the instructions that were given to the dispatchers regarding actions to be taken with respect to the highly relevant data generated by the RTUs.

By way of summary:

1. At the April 28 hearing, it became clear that CN *never* voluntarily proffered any information to the Board as to the existence of the remote monitoring devices, even though Trafton stated in response to a direct question by Chairman Elliot that it "*was the latter part of March and into early April*" (2009) when CN management learned of their existence. (Hearing transcript – page 71;. see also, Kalick's testimony at hearing transcript – pages 89, 90 & 95.) Instead, CN only shared this information with HDR on February 5, 2010, when CN personnel met with HDR for purposes of conducting the audit on the blocked crossings issue. (Hearing transcript – page 28.)
2. Despite its failure to notify the Board about the RTU units that exist on the EJ&E, it appears that CN found the devices reliable enough to use some of the data provided by the technology in preparing its erroneous monthly blockage reports to the Board. In response to Commissioner Nottingham's questioning about whether CN "*filtered, extracted, manipulated or edited*" the raw RTU data to prepare those misleading reports, HDR's Morton testified: "*Well, I think they extracted from that data set those crossings where the train was stopped for 10 minutes, or more.*" (Hearing transcript – pages 45 & 46.)
3. In trying to rationalize why CN failed to inform the Board of the existence of this RTU technology and data, CN's witnesses lamely suggested that CN did not have confidence in the

RTU data. Trafton – who has spent his entire long career in the railroad industry – stated: “... to the extent that the RTU existed, and it was, obviously generating some data at the time on the EJ&E, none of us at that meeting at the time, nor actually for several weeks afterwards, was familiar with the information.” (Hearing transcript – page 89.) Later on, Trafton expanded his comments: “...at that point in time, the RTU data was still in its early stages from a reliability standpoint.” (Hearing transcript – page 95.) In further discussing why this “new technology” was deemed so unreliable, Trafton noted: “...one of the concerns we’ve had from the beginning with the RTU is the number of people that handle RTU data before it actually gets into what we call the spreadsheet. And in that process, faxes can be lost, transcripts or information being transcribed can be misstated...” (Hearing transcript – page 97.) Kalick echoed this same excuse. (Hearing Transcript – page 86.)

- In questioning HDR’s Morton, Vice-Chairman Mulvey asked: “You said there’s 4,500 of these nationwide, and I would assume that these are mostly on the large railroads. And wouldn’t the large – the large railroads, and the large railroad operators would be familiar with these devices. You’ve said they’ve been around now for about ten years.” (Hearing transcript – pages 29 & 30.) In what appeared to be an effort not to paint CN in too poor a light, Morton’s response was: “You know, I guess I really can’t speak to what the railroads might be familiar with, or not. But the technology has been around for 10 years, that’s correct.” (Hearing transcript – page 30.)
- TRAC wonders how Trafton can claim such tentative familiarity with the RTU technology when it has existed on at least 72 CN crossings within the EJ&E arc since 2003. For the record, TRAC is attaching a “Stipulated Agreement” dated June 26, 2000

between the Illinois Commerce Commission and Wisconsin Central, Ltd. that demonstrates that the ICC was funding the installation of 72 RTU devices on inner-arc lines that CN has been operating for years (Stipulated Agreement is Attachment A.) The ICC required confirmation when the entire project was completed, and on February 5, 2003, Mr. Jack Palach, a CN Signal and Communications Engineer, sent the ICC a letter stating that the installation project was “100% complete.” (Letter is Attachment B.) TRAC notes that the Board approved CN’s acquisition of the Wisconsin Central in September 2001.

- The April 28 hearing testimony and ICC-related documents beg a number of questions:
  - As part of its due diligence on the transaction, wouldn’t CN have known about the widely-used RTU technology in advance of taking over the rail line since the ICC funded installation of RTU’s in Illinois for the direct purpose of improving grade crossing safety, and the EJ&E runs through a highly populated area in which only 27.5% of its rail crossings are grade-separated?
  - Because CN has been using RTU technology on its inner arc lines for nearly a decade, what was so qualitatively different about the EJ&E RTU data and handling processes that caused CN to have so little confidence in its reliability?
  - What plausible reason could CN management have to fail to alert the Board to the existence of RTU units on the EJ&E, especially when it was undertaking a “stop watch” project to measure crossing delays in June 2009 at spots along the EJ&E that actually had, according to the HDR audit, RTU units in place? Or

perhaps, was the “stop watch” project merely a way to avoid disclosure of readily available RTU data?

- As a follow up measure, the Board should compel CN to provide information to the Board detailing what percentage of the crossings on all its lines across the country are equipped with RTU units to determine whether CN management’s discomfort with the technology’s reliability is even remotely plausible.
- The Board should also compel CN to provide any and all documentation of communications after March 2009 between CN and GE/Progress Rail (the Cincinnati vendor of the RTU monitoring services) pertaining to the accuracy and reliability of the RTU monitoring equipment and service along the EJ&E.

Despite CN’s carefully orchestrated efforts to claim that its under-reporting of blocked crossings was nothing more than an unfortunate misunderstanding, the record cannot support that claim. TRAC contends that CN knowingly and willfully violated both the letter and the spirit of the Board’s legally binding mandate to provide accurate information on this critical safety issue.

**KEY ISSUE 2: What Can the Region Expect in Terms of Blocked Crossing Incidents and Safety Once CN is Running Trains on the EJ&E at Full Capacity?**

In reviewing the blocked crossing data that has been provided by HDR and CN to the Board, TRAC is greatly concerned that the blockages are going to escalate as CN shifts more and longer trains to the EJ&E. Hence, TRAC requests the Board to consider the following, common sense questions

(from the general public's perspective.) TRAC urges the Board to seek answers to these questions in its ongoing investigation into this issue, and to report its findings to the public.

1. The train volume figures provided by HDR failed to indicate what percentage of increased train volumes are now running on the two segments of rail (segments 14 and 7) that the auditor reviewed. However, TRAC's analysis shows that 13% of total projected traffic was running on Segment 14 between Leithton (near Mundelein) and Spaulding (near Bartlett); and, that 9% of total projected traffic was running on Segment 7 between East Joliet and Frankfort of the EJ&E in November/December 2009. To clarify matters, the Board should:

- Require CN to provide the Board and region some idea as to what the expected blockage rates will be once the remaining 90% of trains are running on the EJ&E.
- Because CN apparently has dispatcher records relating to the reasons that crossing gates had been activated for a period of time in excess of ten minutes, require CN to provide crossing-specific details as to where on the EJ&E that the planned CN infrastructure upgrades will result in decreased blockages.
- Require CN to forecast specific locations where crossing blockages will likely increase exponentially once all infrastructure upgrades have been completed on the EJ&E.

2. The CN-produced chart introduced into the record on April 28 that provides 33 months of historic data detailing total monthly incidents of blocked crossings on the EJ&E reflects a significant, unexplained decrease in blockages after January 2008 that persists until the incidents again spike in March of this year. Because CN has claimed that its efforts have resulted in the apparent decrease, the Board should attempt to confirm the validity of those claims. In order to do so, the Board must explore several lines of inquiry, such as:

- What occurred that accounted for this marked decrease following consistently high levels of blockages between July 2007 and January 2008?
  - Were the RTU units reconfigured between January 2008 and February 2008?
  - Did HDR consider records of possible RTU unit reconfigurations, including settings and dates of any changes in configuration parameters?
  - Has the Board consulted with U.S. Steel to determine if some operational changes were made by the EJ&E that decreased blockages so significantly?
  - Will the Board mandate any such operational changes or cap train volumes to limit instances of crossing blockages moving forward?
  - HDR's John Morton stated at the April 28 hearing: "*...One of the conditions that the Board imposed was a voluntary mitigation condition that CN actually offered, that is, to comply with their U.S. Operating Rule that talks about the time frame that they block crossings, and what they would do.*" (Hearing transcript – page 31.) Given its failures to date, how does CN expect that its operational plans will limit crossing blockages when the EJ&E is running at full capacity?
3. In reviewing the initial data on blockages that CN supplied to the Board, there is a marked shift as to when the blockages are occurring. TRAC's analysis of the timing of blocked crossings shows that the pre-transaction data from 2008 demonstrates that crossings were blocked during weekday rush hours at a rate of 8.1%. (Rush hour is defined by TRAC as 6 to 8:30 am and 3:30 to 6 pm on weekdays). After CN took over the EJ&E, the figure for weekday rush hour blockages almost doubled -- increasing to 15.4%. Additionally, there was an overall day/night shift in blockage patterns. Prior to the transaction in 2008, 59% of blockages occurred at night and only 41% occurred during the day. Since CN began operations on the EJ&E, that pattern has reversed with 46% of blockages occurring at night and 54% occurring during daytime

hours.

- Because rush hour traffic flow is a crucial issue to residents of the region, the Board should compel CN to explain why there has been such a marked increase in rush hour crossing blockages.
  - The Board should compel CN to explain why its trains are running more frequently during the day and grid-locking vehicular traffic, as well as impacting pedestrian traffic at crossings, especially when such a small portion of the expected train volume is actually now running on the EJ&E.
4. The data provided by CN to the Board reviews the number of *incidents* of blocked crossings. The Board is urged to carefully compare the CN data with the information compiled by HDR. The Board should also note that the data focuses only on blockages that lasted more than 10 minutes and does not reflect a significant number of blockages that would not last that long, but would still be cumulatively disruptive of vehicular, commuter rail, and pedestrian traffic.
5. Vice Chairman Mulvey pursued a line of questioning with HDR's Morton to determine whether the data provided by CN pre and post transaction was a comparison of the same crossings: *"So, these data that I'm looking at here just reflect the 105 miles, not all of the EJ&E, or you're not sure about that?"* Morton replied, *"I'm sorry, I'm not – the data that we presented in our – ... You'd have to ask them."* (Hearing transcript -- pages 48 & 49.) The Board should ask CN to clarify this point. Indeed, it may well be that the significant decrease in delays can be attributed to a far smaller sampling of crossings.

6. Because one of the premises of the environmental analysis that preceded the Board's approval of the transaction was the promise to the region that there would be traffic improvements on CN's existing lines within the EJ&E arc, the Board should seek RTU data for these inner CN lines to determine if the rate of crossing blockages on those various rail lines has improved since the transaction was approved.
7. Because the EJ&E region can largely be characterized as a suburban commuter area and was assured by the Board that CN would work cooperatively with Metra to minimize interference with commuter trains, the Board should seek data from Metra to determine if commuter train blockages have increased, decreased, or remained at a consistent level post-transaction.
8. In the April 26 cover letter from CN's outside counsel that accompanied raw RTU data and dispatcher records submitted for the record per the Board's instructions, CN acknowledges that "*there are some minor errors or inconsistencies in the data*" for a number of reasons CN's counsel delineates. However, from a cursory review of the dispatcher log records addressing incidents of gates down in excess of 10 minutes, it appears that there are far fewer dispatch record instances noted than are found in RTU records during the post-transaction period (TRAC is submitting a one-page historical summary comparison to facilitate the Board's review as Attachment C.) CN should be compelled to explain and provide any documentation detailing all record-keeping instructions that were given to dispatchers post-transaction to cause such significant undercounts.
9. In his questioning of CN's Trafton, Vice-Chairman Mulvey was seeking data from other *urban* areas that could support CN's contention that the blockages on the EJ&E are "*not atypical for a railroad in a city, in an urban setting.*" Trafton maintained that other railroads are unwilling to

share that information. (Hearing transcript – pages 101 & 102.) Although TRAC disagrees with the Board’s characterization of the region surrounding the EJ&E as “urban” since it is predominantly suburban (and in some areas quite rural), it will accept the demographic mischaracterization for this exercise, and suggest that the Board should compel CN to provide blockage data as it relates to CN’s lines in Edmonton, Winnipeg, St. Louis, Memphis, New Orleans, Mobile, Toledo, Buffalo, Toronto, and/or Montreal to facilitate a comparison without involving other railroads.

10. Commissioner Nottingham noted during the hearing that the blocked crossing instances increased markedly during early 2010. (Hearing transcript – page 116.) This observation begs the question of why the environmental review process did not examine data on crossing blockages given the reality (1) that HDR and SEA determined in the EIS process that the EJ&E would be running at full capacity; and, (2) that 72.5% of crossings on the EJ&E are at grade level. Absent an analysis based on data modeling, how was it possible for HDR and SEA to determine whether this transaction had the potential to lead to vehicular gridlock of unprecedented proportions based on crossing blockages alone?
  
11. Given the fatal tragedy in University Park on April 16 at a CN grade crossing, can the RTU units be configured to indicate when gates are non-operational? TRAC notes that RTU units were funded by the Illinois Commerce Commission’s Grade Crossing Protection Fund for the purpose of reporting “*instances of extended commercial power failures, high/low standby battery voltage limits, suspect gate operations and excess warning operation.*” (ICC 6/26/00 Stipulated Agreement – page 1). If so, the Board should mandate that the RTU units on the EJ&E be configured to provide such an alert.

12. Because the safety of the region's residents has always been of paramount concern to the local elected leaders of TRAC, an issue was raised by CN's Trafton during the April 28 hearing that arouses our alarm given the tragic reality that in less than one year CN has been responsible for two deaths in Northern Illinois. In discussing the operational changes that can be made to curtail the incidents of blocked crossings, Trafton stated: *"I was talking to the former chief engineer who's with the CN still to this day just here about a week ago, and he was commenting that one of the big changes under CN is we don't have near the slow orders that the EJ&E used to have. Slow orders are typically put out for engineering purposes, because of track condition, weather, or some other circumstances. We have a very tight process within CN about slow orders, because we're looking at velocity and speed."* (Hearing transcript – page 103.) This quote raises a number of questions that TRAC would like the Board to address with CN and include in its report on this matter:

- The Board should order CN to provide historical data comparing the number of EJ&E slow orders pre-transaction with CN slow orders post-transaction along with information detailing why the slow orders were issued and what steps CN has taken to remove them. Optimally, the historical slow order data could track the same 33 months covered by the RTU data.
- The Board should also require CN to explain what actions have been taken in regards to improving track conditions on the EJ&E since March 2009 that make slow orders less necessary since CN operations have begun. Because CN has shown itself capable of deceiving the Board on matters that are legally binding on it, CN should be required to provide track maintenance records to support any claims that it has actually made such improvements in track conditions.

- On May 20, 2010, TRAC received an e-mail from a concerned resident of Elgin about an issue of erosion at the base of the EJ&E track at the back of her home. She initially reported this issue to Larry Herzig with the STB on May 4, 2009 and never heard a response or had anyone come out to investigate. (The resident's e-mail and photo evidence is Attachment D.) The Board should order CN to advise the Board and the public (1) whether such erosion at the base of the track is problematic, or when such erosion could become problematic in terms of track stability; and, (2) whether and when such erosion would be cause to issue a slow order for that part of the line.
- TRAC must question whether CN's tight processes that result in "velocity and speed" were in any way responsible for the fact that CN ignored a record rainfall and first responder calls notifying it of a washed out rail bed near Rockford on June 19, 2009 that led to the death of Zoila Tellez when a CN train derailed and exploded into flames because its personnel ignored those warnings. The Board should compel CN to provide all slow order records covering Northern Illinois for June 19, 2009.

### **KEY ISSUE 3: What are the Consequences for CN's Record of Disingenuousness?**

While the Board has currently chosen to focus on CN's veracity as it relates to the blocked crossings undercount in its oversight of this transaction, TRAC would respectfully remind the Board that this issue is just one area in which CN has shown itself to be less than truthful with the Board and the public. Other instances include:

- In its quarterly environmental report dated July 10, 2009, CN claimed to have met the legally binding mitigation mandate requiring CN to install signs at each grade crossing with

the information necessary to report to CN any problems or dangerous conditions at each separate grade crossing along the EJ&E. CN stated in that 2009 report: “*The signage is in place.*” This was NOT the case, and that reality was brought to the Board’s attention by TRAC in written communications throughout 2009 and in person to Chairman Elliott and Board staff when they visited the region in December 2009. In HDR’s March 15 audit report on this issue, HDR completely ignored CN’s lack of veracity in its July 2009 reporting and noted that CN would have the signage in place by the end of June, 2010. (TRAC’s March 25, 2010 letter to the Board discussing the failings of the HDR audit as it relates to this issue is Attachment E.)

- In regards to CN’s monthly operations reports, TRAC has notified the Board repeatedly when CN has failed to include clearly pertinent information to the Board. Examples include CN’s gross mischaracterization of the severity of an accident in its yard in Matteson on October 3, 2009 that was caused by an inebriated employee; as well as its failure to notify the Board of a sparking locomotive that resulted in a major brush fire that took three hours to control by fire personnel from Plainfield, Lockport Township, Channahon, Naperville, Oswego, Troy, Romeoville, and Bolingbrook on March 17, 2009.
- Despite the reality that its former CEO told a congressional committee on September 9, 2008 that the Board had the full right to condition approval of the EJ&E transaction with mitigation mandates that would relieve the burdens on the region, CN has now filed a legal appeal of two of the Board’s lawful mitigation requirements. Having achieved its business goal of consummating the EJ&E transaction, CN has done an “about face,” claiming that the Board had no right to mandate mitigation terms beyond what CN was willing to

negotiate with impacted communities. In order to justify its change of tune on this critical issue, CN attempted in its legal brief to paint the contradictory statements of its former CEO before the congressional committee as nothing more than the addled comments of a non-lawyer nearing his retirement.

The reason TRAC raises these issues is because -- as a whole -- they indicate that CN has been engaged in a pattern of deception throughout this transaction. It seems that CN feels it can pick and choose what it tells Congress and shares with the Board at any given stage of the game. Quite frankly, TRAC is left to wonder how many of the other conditions that CN proposed as "voluntary mitigation" were deliberately worded to allow CN -- if or when questioned -- to assert that "clarification" is required by the STB. With all due respect, we wonder if this crossing blockage issue would have been addressed at all, absent the continued and costly efforts by TRAC to force CN to live up to its obligations to the region.

The fundamental issue before the Board goes far beyond responding to CN's willful effort to mislead the Board on this one particular issue. The essential issue is whether the Board will allow such practices to be given free rein. Essentially, we are asking whether the Board is a regulator of the railroad industry or if it is merely a facilitator for the industry's interests. The Board's actions in response to the case at hand will be a defining statement to the public and the Congress as to how it characterizes itself. This issue is a turning point for the Board in how it deals with the railroad industry. The Board must bring real enforcement teeth to these transactions vis-à-vis enforcing community mitigation mandates, otherwise the Board will show itself to be a paper tiger providing only illusory protection to the general public impacted by the EJ&E transaction.

In 1954, Charlie Wilson, the former CEO of General Motors, told a congressional committee during his confirmation hearings for Secretary of Defense, *“For years I thought that what was good for our country was good for General Motors, and vice versa.”* Since then, we’ve seen many a company and/or industry argue from that very same perspective – Enron, AIG, WorldCom, Countrywide, Goldman Sachs, the banking and derivatives industries. The consequence of that “free-for-all” mentality has been economically devastating to this country. With the benefit of hindsight, we can see that a key component that has been missing in many of these cases was a willingness by regulators to disrupt what had evolved into a cozy relationship between the regulator and the regulated.

Right now, the Gulf of Mexico is engulfed in an oil slick -- compliments of BP. The public is left to wonder how this could happen. Thanks to a series of reports issued by the nonpartisan research arm of Congress – the Government Accountability Office (GAO) – one of the causal factors is found at the Minerals Management Service within the Department of Interior. The MMS is charged with regulating the offshore oil drilling industry. Instead, the GAO found that it has, *“fallen behind in several of its fundamental regulatory duties, including enforcing environmental and safety rules.”* Apparently, the MMS’s *“confidence in the industry appears entrenched, according to audit findings and interviews.”* (May 8, 2010 Los Angeles Times article, “Federal Regulators Haven’t Kept Up with Oil Drilling Expansion.”) TRAC believes there may be a similar dynamic at work in the regulation of the railroad industry.

TRAC is also concerned about the continuing use of HDR to audit this CN transaction. This is not to disparage HDR. However, it is evident that HDR, in its capacity as the “independent auditor,” was in a difficult position, which was made apparent by the equivocating language John Morton used in discussing CN’s actions as related to blocked crossing undercounts at the April 28 hearing. In

pressing this issue, TRAC requests the Board to carefully consider the implications of the following matters:

- Even though CN was charged with funding this third-party monitor, it does not seem rational to TRAC for the Board to have empowered the very entity that was to be monitored with choosing its own watchdog.
- There was a clear record in the proceedings of the environmental analysis surrounding the transaction that TRAC and impacted communities had significant disagreements with the assessment methodologies used by HDR in quantifying the transaction's environmental impacts. TRAC believes the recent HDR-prepared audit reports demonstrate a continuing lack of analytical rigor.
- HDR would clearly be in a conflicted position if its oversight would necessitate it to highlight its own flawed analysis from the environmental review process, as TRAC now believes to be the case when it comes to blocked crossings and other matters that were subject to auditing.
- Because of the "paying customer" relationship it would have inevitably developed with CN in spearheading the environmental review process on the transaction, HDR does not have the requisite level of arms-length financial impartiality to make it an acceptable third party monitor of CN's actions in the region.

For these reasons, TRAC respectfully urges that all future oversight be shifted to the GAO or an independent private auditor for the remainder of the oversight period.

### **TRAC's Recommendation:**

TRAC fully accepts that the Board wishes to “do right” by the communities impacted by this transaction by compelling actual compliance with the binding conditions that it imposed on CN. We believe, however, that there needs to be a firm break that demonstrates clearly to the public that the Board is willing to move beyond the normal operating procedures of the past. To that end, we recommend the following actions be taken by the Board in response to the crossing blockage undercount investigation:

1. Extend the oversight period on the transaction at least to the latter of January 23, 2015 or until one full year has passed following the completion of the transition of traffic to the EJ&E.
2. With official authorization from congressional authorities, shift audit powers for this transaction to the Government Accountability Office (GAO), or to an independent private auditor, as a means of assuring Congress and the public that the region's interests are being safeguarded by a truly independent entity.
3. Hold CN legally accountable for its failure to disclose the data that was available to it that would have permitted it to comply with Condition No. 2.
4. Impose a formal “litigation hold” on all records that relate to the subject matter of the Board's investigation consistent with Chairman Elliott's comment at the conclusion of the oral hearing and raised in the TRAC comments.

5. For the duration of the extended oversight period, require CN to underwrite the full costs of robust and aggressive oversight and audit activities, including the creation of a process for determining whether the assumptions about the environmental impacts of the transaction that preceded approval are actually proving accurate in practice.
6. Given the lengthy blockages that HDR uncovered when less than 15% of anticipated rail volumes have been realized, the Board should reserve the right to reopen the proceeding beyond the oversight period in order to impose whatever additional conditions are needed to address unanticipated adverse impacts on communities located along the EJ&E lines.
7. To insure that CN does not achieve improvement in incidents of crossing blockages by compromising safety, mandate that CN include in its monthly operating reports all information relating to the slow orders issued and/or removed on the EJ&E and the accompanying reasons that each of the slow orders were issued and/or removed.
8. The Board should also review HDR's conclusions stated in its April 14, 2010 report entitled "*Task 2 Investigate Noise and Vibration Complaints*" and live up to the monitoring commitment the Board made in an e-mail communication to TRAC on December 16, 2009 (STB email is Attachment F.) In the audit report, HDR brushes aside various complaints registered by community residents by agreeing with CN's assertion that complaints of excessive noise "*were based on an individual's subjective and undocumented claim that noise ...was excessive.*" (Task 2 Audit Report -- page 3.) TRAC acknowledges that anecdotal evidence was the best evidence available, and that is why TRAC was pleased when the Board agreed that the HDR audit on this issue would be based on the installation of field monitoring equipment at select spots along the EJ&E to measure vibration and

noise. As a result of the Board's proposed field monitoring plan, TRAC recruited over 60 residents from the full length of the EJ&E who were willing to have the monitoring equipment installed on their properties. (TRAC's 12/28/09 recruiting web-blast is Attachment G.) TRAC was later notified by the Board that winter weather conditions precluded a launch of the field monitoring effort, and it expected a launch of those efforts this spring. TRAC was therefore quite surprised when HDR drafted a report that purports to have "audited" the problems related to noise and vibration and concluded that everything was as it should be despite a complete lack of any actual proof to support that contention. TRAC believes HDR came to this conclusion solely because the field monitoring had the potential to undermine its analysis of these issues during the environmental review process. That motivation should not be allowed to prevail.

TRAC respectfully submits that its recommendations to the Board about the actions that should be taken as a consequence of this investigation are critical to the integrity of the oversight process. It is crucial that the Board make clear to CN that it has "skin in the game" when it comes to having an interest in limiting the incidents of blocked crossings. It is only by CN experiencing ongoing financial ramifications that it will change its operational behavior as it relates to blocking rail crossings and otherwise honoring both the spirit and letter of the Board's conditional approval of the transaction. The Board cannot allow CN to go unpunished. If CN is allowed only to weather some embarrassment due to being caught, it will send a telling message to every other railroad that is subject to the Board's jurisdiction.

The decisive actions outlined by TRAC would be the right thing to do given the reality that CN has lost a large measure of credibility on this transaction. As Chairman Elliott so eloquently said in his closing remarks at the April 28 hearing, "*Our regulatory process relies on honest and truthful*

*production of information by the carriers... When carriers believe they can decide what information to reveal, and what to conceal, it undermines the integrity of the entire process.*" (Hearing transcript – page 121.) As in all relationships in which the bond of integrity has been destroyed, it is the responsibility of the party at fault to re-establish that it can be trusted. In assigning future auditing oversight to other than HDR and instituting the other TRAC recommendations, the Board will assure Congress and the public that CN cannot rely upon past practices, but that it must meet the expectations stemming from a fresh and independent perspective on the regulatory oversight process.

**ITEMIZED LIST OF ATTACHMENTS:**

**Attachment A:** ICC Stipulated Agreement dated 6/26/00

**Attachment B:** CN Letter confirming installation of 72 RTU units dated 2/5/03

**Attachment C:** Summary of RTU Data and dispatch records on blocked crossings (prepared by TRAC)

**Attachment D:** Elgin resident's e-mail with photos on track erosion issue dated 5/20/10

**Attachment E:** TRAC comments on HDR audit of signage dated 3/25/10

**Attachment F:** STB e-mail to TRAC on noise and vibration field monitoring dated 12/16/09

**Attachment G:** TRAC web-blast recruiting field monitoring site participants dated 12/28/10

Respectfully Submitted,



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Karen Darch  
President, Village of Barrington  
& TRAC Co-Chair  
Village of Barrington  
200 South Hough Street  
Barrington, IL 60610  
847/304-3445



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Tom Weisner  
Mayor, City of Aurora  
& TRAC Co-Chair  
City of Aurora  
City Hall  
44 East Downer Place  
Aurora, IL 60507

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION  
STIPULATED AGREEMENT

ORIGINAL

T00-0072

This agreement made and entered into, by and between the State of Illinois acting by and through the Illinois Commerce Commission, hereinafter referred to as the "Commission", the Wisconsin Central Ltd., hereinafter referred to as the "Company" and the State of Illinois, Department of Transportation, hereinafter referred to as the "Department".

## WITNESSETH:

WHEREAS, it has come to the attention of the Commission that inquiry should be made into the matter of installing remote monitor units at all of the Company's grade crossings located in Illinois which are equipped with automatic warning devices;

WHEREAS, proper investigation has been made of the circumstances surrounding the proposed improvements by a member of the Commission's Transportation Division, Railroad Section staff; and

WHEREAS, the parties are mutually agreeable to accomplish the proposed improvements upon a determination of the Commission by Order.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements as hereinafter contained the parties pray that the Commission enter an Order according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law requiring that certain improvements as hereinafter stated be made and that the cost for the proposed improvements be divided among the parties according to law and that in the interest of the statewide traveling public the Grade Crossing Protection Fund of the Motor Fuel Tax Law be required to bear a substantial portion of the cost; To Wit the parties agree as follows:

Section 1 All improvements encompassed by this agreement shall be made in accordance with all applicable State laws, rules, standards, regulations and orders and procedures in general.

Section 2 The parties are of the opinion that the following improvements should be performed in the interest of public safety:

- (a) the installation of remote monitor units at each of the Company's signalized grade crossings listed on Exhibits A1 and A2 attached hereto; the devices are designed to continually monitor the warning system at each location and will electronically report instances of extended commercial power failures, high/low standby battery voltage limits, suspect gate operations and excess warning operation directly to the Company's 24-hour Call Center.

DOCKETED

Section 3 The Company has prepared a detailed estimate of cost to accomplish the proposed improvements; said estimate is attached as Exhibit B.

Section 4 Automatic remote monitor unit initiated system health check messages designed to confirm the integrity of the system will be transmitted daily. The Company will perform all user defined network and remote monitor unit administration functions including remote monitor commissioning/decommissioning, message routing definition, and alarm parameter adjustment. The Company's operating costs for the remote monitor units will be based on the number of alarm messages and requested status messages transmitted. The Company cannot guarantee service availability of local cellular telephone companies; however, agreements between the Company and private service companies will have provisions to encourage continued service availability. The Company will notify the Commission if there is a change in the initial 72 crossings listed in Exhibits A1 and A2. An adjustment will be made to the lump sum cost for labor if the change in the initial aforesaid crossings results in a reduction or increase in the number of crossings equipped with remote monitoring units. A final bill with a request for reimbursement for any additional installations, or refunds for fewer locations will be made by the Company depending on the final number of remote monitor units installed.

Section 5 The Company shall upon Order, according to the requirements contained therein, proceed toward the completion of the proposed improvements, accomplishing the work with their own forces or appropriate contracted services and agrees that an appropriate time for the submission of progress reports should be quarterly which shall include the status of expenditures of the total project and percentage of completion of the project; if the project is behind schedule the report must include a brief explanation of the reason(s) for the delay; the Company further agrees that the time for the completion of the proposed improvements should be twenty four (24) months from the date of Commission Order subsequent to this agreement.

Section 6 The parties hereto agree that an equitable division of cost for the proposed improvements should be:

- a) the total cost of the labor needed to install the remote monitor units at each of the Company's 49 signalized grade crossings located on the local highway system (listed on Exhibit A1 attached) is estimated at \$21,738; 90% of this cost, in an amount not to exceed \$19,564, should be funded on a lump sum basis by the Grade Crossing Protection Fund ("Fund") with the remaining 10% cost borne by the Company; and
- b) the total cost to establish a communication link which will provide for daily system health checks for a period of 10 years at each of the Company's 49 signalized grade crossings located on the local highway system (listed on Exhibit A1 attached) is estimated at \$24,248; 90% of this cost, in an amount not to exceed \$21,823, should be funded on a lump sum basis by the Grade Crossing Protection Fund ("Fund") with the remaining 10% cost

borne by the Company; and

- c) the total cost of the material needed to install remote monitor units at each of the Company's 49 signalized grade crossings located on the local highway system (listed on Exhibit A1 attached) is estimated at \$97,944 and should be funded 90% of the actual cost, in an amount not to exceed \$88,150, to the Grade Crossing Protection Fund ("Fund") and all remaining installation and operational costs and all costs of future maintenance should be borne by the Company; and
- d) the total cost of the labor needed to install the remote monitor units at each of the Company's 23 signalized grade crossings located on the state highway system (listed on Exhibit A2 attached) is estimated at \$10,203; 90% of this cost, in an amount not to exceed \$9,183, should be funded on a lump sum basis by the Department with the remaining 10% cost borne by the Company; and
- e) the total cost to establish a communication link which will provide for daily system health checks for a period of 10 years at each of the Company's 23 signalized grade crossings located on the state highway system (listed on Exhibit A2 attached) is estimated at \$11,382; 90% of this cost, in an amount not to exceed \$10,244, should be funded on a lump sum basis by the Department with the remaining 10% cost borne by the Company; and
- f) the total cost of the material needed to install remote monitor units at each of the Company's 23 signalized grade crossings located on the state highway system (listed on Exhibit A2 attached) is estimated at \$45,974 and should be funded 90% of the actual cost, in an amount not to exceed \$41,377, to the Department and all remaining installation and operational costs and all costs of future maintenance should be borne by the Company.

Section 7 Special Provisions. All bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund for crossings on the local highway system shown on Exhibit A1 attached shall be marked "local" and submitted to the Department as follows:

Illinois Department of Transportation  
Engineer of Local Roads and Streets  
Darrell McMurray, Bureau Chief, Attention: Hank Chronister, Sr.  
Room 205, 2300 South Dirksen Parkway  
Springfield, Illinois 62764

Said bills shall list separately the costs of labor, material and communication link. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than thirty - six (36) months from the date of Commission Order subsequent to this agreement. Authorization for reimbursement from the Grade Crossing

Protection Fund shall expire twelve (12) months after the completion date specified in the Order. The Department shall, at the end of the 36th month from the Commission's Order date, de-obligate all residual funds accountable for installation costs for this project.

All bills for expenditures for crossings on the state highway system shown on Exhibit A2 attached shall be marked "state" and submitted to the Department as follows:

Illinois Department of Transportation  
Engineer of Design and Environment  
Mike Hine, Bureau Chief, Attention: Cheryl Cathey  
Room 330, 2300 South Dirksen Parkway  
Springfield, Illinois 62764

Said bills shall list separately the costs of labor, material and communication link.

Progress billing will be based upon the work performed during the billing period. Progress payment for material will be based on the actual cost of material purchased and received by the Company during the billing period. Progress payment for labor and communication link lump sum costs will be based upon the proportionate amount of "state" and "local" crossings completed by the Company during the billing period.

The Company shall file its initial progress report within three (3) months from the date of Commission Order subsequent to this agreement with the Director of Processing and Information of the Commission's Transportation Division. The report shall include the name, title, mailing address, phone number and facsimile number of the employee responsible for management of this project.

Section 8 This agreement shall be binding upon the parties hereto, their successors or assigns. Upon execution of this agreement by all parties, the Commission shall enter an appropriate Order, within 60 days accepting or rejecting such stipulation according to the provisions contained herein.

In Witness Whereof, the parties have caused this agreement to be executed by their duly authorized officers, as of the dates indicated herein.

Executed by the Commission this 26th day of June, 2000.



\_\_\_\_\_  
Michael E. Stead  
Railroad Safety Program Administrator

Attest:

  
\_\_\_\_\_  
Daniel S. Drewes  
Railroad Section  
Transportation Division

Illinois Commerce Commission Stipulated Agreement No. 911 concerning installation of remote monitor units at each of the Wisconsin Central Ltd. signalized grade crossings located in Illinois.

Executed by the Department this 30<sup>TH</sup> day of JUNE, 2000.

STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION

By James C. Shifery  
Director of Highways

Illinois Commerce Commission Stipulated Agreement No. 911 concerning installation of remote monitor units at each of the Wisconsin Central Ltd. signalized grade crossings located in Illinois.

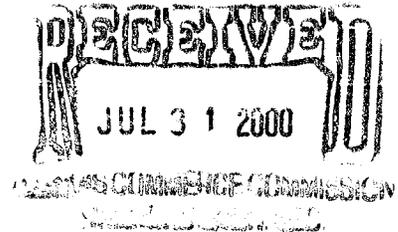
Executed by the Wisconsin Central Ltd. this 14<sup>th</sup> day of July, 2000.

Glenn J. Kerba

By V.P. - ENGINEERING  
(Title)

Attest:

Greg Z. Davis



3/22/2000

**WC PUBLIC AT GRADE CROSSINGS WITH AUTOMATIC WARNING DEVICES ON THE LOCAL ROAD SYSTEM**

	ICC Crossing	Main AAR	MilePost	Line	Branch	In/Near	City Name	County Name	Street Name	Highway	ICC Warning Device
1	689617L	WC	10.90	M	CM LINE	In	RIVER FOREST	COOK	MADISON AVE	CH154	AFLS-Gates-Cant-over
2	689624W	WC	12.10	M	CM LINE	In	RIVER FOREST	COOK	FOREST AVE	MS2003A	Gate (red & white)
3	689625D	WC	12.19	M	CM LINE	In	RIVER FOREST	COOK	AUGUSTA ST	MUN3004	Gate (red & white)
4	689626K	WC	12.24	M	CM LINE	In	RIVER FOREST	COOK	KEYSTONE AV	MS2004A	Gate (red & white)
5	689631G	WC	14.14	M	CM LINE	In	RIVER GROVE	COOK	GEORGE ST	MS2015A	Gate (red & white)
6	689632N	WC	14.58	M	CM LINE	In	FRANKLIN PARK	COOK	FULLERTON	CH146B	Gate (red & white)
7	689633V	WC	15.05	M	CM LINE	In	FRANKLIN PARK	COOK	GRAND AV	FAU1376	AFLS-Gates-Cant-over
8	689634C	WC	15.22	M	CM LINE	In	FRANKLIN PARK	COOK	CHESTNUT AVENUE	MUN4070	Gate (red & white)
9	689635J	WC	15.30	M	CM LINE	In	FRANKLIN PARK	COOK	PARKLANE AVENUE	MUN4060	Gate (red & white)
10	689636R	WC	15.40	M	CM LINE	In	FRANKLIN PARK	COOK	COMMERCE	MUN1190	Flash Lites (mast)
11	689637X	WC	15.40	M	CM LINE	In	FRANKLIN PARK	COOK	PARK AVENUE	MUN2030	Flash Lites (mast)
12	689649S	WC	20.28	M	CM LINE	In	DES PLAINES	COOK	PRATT AVE	MUN4740	Flash Lites (mast)
13	689652A	WC	21.22	M	CM LINE	In	DES PLAINES	COOK	BIRCHWOOD AVE		Gate (red & white)
14	689653G	WC	21.44	M	CM LINE	In	DES PLAINES	COOK	PROSPECT LN	MS4490B	Gate (red & white)
15	689655V	WC	22.33	M	CM LINE	In	DES PLAINES	COOK	ALGONQUIN RD	FAU3514	Gate (red & white)
16	689658R	WC	22.84	M	CM LINE	In	DES PLAINES	COOK	THACKER ST	FAU1323	AFLS-Gates-Cant-over
17	689659X	WC	22.98	M	CM LINE	In	DES PLAINES	COOK	PRAIRIE AV	MUN3030	Gate (red & white)
18	689660S	WC	23.17	M	CM LINE	In	DES PLAINES	COOK	WOODLAWN AVENUE	MUN3090	Gate (red & white)
19	689675G	WC	23.86	M	CM LINE	In	DES PLAINES	COOK	SEEGERS RD	MUN3275	Gate (red & white)
20	689681K	WC	26.32	M	CM LINE	In	MOUNT PROSPECT	COOK	EUCLID AV	FAU1292	Gate (red & white)
21	689683Y	WC	26.86	M	CM LINE	In	PROSPECT HTS	COOK	CAMP MCDONALD RD	FAU1290	Gate (red & white)
22	689688H	WC	28.96	M	CM LINE	In	PROSPECT HTS	COOK	HINTZ RD	FAU1277	Gate (red & white)
23	689692X	WC	33.21	M	CM LINE	Near	PRAIRIE VIEW	LAKE	LONG GROVE APTAKI	FAU1258	Gate (red & white)
24	689694L	WC	34.82	M	CM LINE	In	BUFFALO GROVE	LAKE	PORT CLINTON RD	FAU2657	Gate (red & white)
25	689698N	WC	37.37	M	CM LINE	In	VERNON HILLS	LAKE	BUTTERFIELD RD	FAU2647	Gate (red & white)
26	689701U	WC	38.65	M	CM LINE	In	MUNDELEIN	LAKE	ALLANSON RD	FAU1244	Gate (red & white)
27	689703H	WC	39.80	M	CM LINE	Near	MUNDELEIN	LAKE	OLD MCHENRY RD	FAU1249	AFLS-Gates-Cant-not
28	689704P	WC	39.94	M	CM LINE	In	MUNDELEIN	LAKE	PARK ST		AFLS-Gates-Cant-over
29	689707K	WC	40.85	M	CM LINE	In	MUNDELEIN	LAKE	DUNBAR ROAD		Gate (red & white)
30	689709Y	WC	41.78	M	CM LINE	In	MUNDELEIN	LAKE	WINCHESTER RD	FAU1233	AFLS-Gates-Cant-over
31	689710T	WC	42.38	M	CM LINE	Near	MUNDELEIN	LAKE	PETERSON RD	FAP371	Gate (red & white)
32	689712G	WC	43.01	M	CM LINE	Near	GRAYSLAKE	LAKE	HARRIS RD	TR84	Gate (red & white)
33	689720Y	WC	45.45	M	CM LINE	In	GRAYSLAKE	LAKE	CENTER ST	FAU189	Gate (red & white)
34	689725H	WC	45.99	M	CM LINE	In	GRAYSLAKE	LAKE	LAKE ST	FAU195	Gate (red & white)

3/22/2000

**WC PUBLIC AT GRADE CROSSINGS WITH AUTOMATIC WARNING DEVICES ON THE LOCAL ROAD SYSTEM**

	ICC Crossing	Main AAR	MilePost	Line	Branch	In/Near	City Name	County Name	Street Name	Highway	ICC Warning Device
35	689726P	WC	46.47	M	CM LINE	In	GRAYSLAKE	LAKE	WASHINGTON ST	FAU187	Gate (red & white)
36	689727W	WC	47.63	M	CM LINE	In	ROUND LAKE BEAC	LAKE	SHOREWOOD RD	FAU203	Gate (red & white)
37	689728D	WC	48.21	M	CM LINE	In	ROUND LAKE BEAC	LAKE	ROLLINS RD	FAU181	AFLS-Gates-Cant-over
38	689731L	WC	49.40	M	CM LINE	Near	LAKE VILLA	LAKE	MONAVILLE RD	FAU177	Gate (red & white)
39	689735N	WC	50.99	M	CM LINE	In	LAKE VILLA	LAKE	CEDAR AVE	CITY ST	Gate (red & white)
40	689738J	WC	52.50	M	CM LINE	Near	LAKE VILLA	LAKE	WALL ST		Gate (red & white)
41	689739R	WC	53.03	M	CM LINE	Near	ANTIOCH	LAKE	GRASS LK RD	FAU174	Gate (red & white)
42	689740K	WC	53.72	M	CM LINE	Near	ANTIOCH	LAKE	LAKESHORE DRIVE	TR663	Gate (red & white)
43	689742Y	WC	54.33	M	CM LINE	Near	ANTIOCH	LAKE	GRIMM RD	TR23	Gate (red & white)
44	689745U	WC	55.05	M	CM LINE	In	ANTIOCH	LAKE	IDA AVE	CITY ST	Gate (red & white)
45	689746B	WC	55.31	M	CM LINE	In	ANTIOCH	LAKE	DEPOT ST	CITY ST	Gate (red & white)
46	689750R	WC	55.92	M	CM LINE	In	ANTIOCH	LAKE	NORTH AVE	FAU172	Gate (red & white)
47	693744U	WC	48.45	M	CM LINE	Near	ROUND LAKE BEAC	LAKE	MALLARD CREEK RD.		Gate (red & white)
48	694865V	WC	32.37	M	CM LINE	In	BUFFALO GROVE	LAKE	DEERFIELD RD	MUN4795	AFLS-Gates-Cant-over
49	694918S	WC	27.37	M	CM LINE	In	WHEELING	COOK	WILLOW RD	MUN4060	AFLS-Gates-Cant-over

3/22/2000

**WC PUBLIC AT GRADE CROSSINGS WITH AUTOMATIC WARNING DEVICES ON THE STATE HIGHWAY SYSTEM**

	ICC Crossing	Main AAR	MilePost	Line	Branch	In/Near	City Name	County Name	Street Name	Highway	ICC Warning Device
1	689627S	WC	12.39	M	CM LINE	In	RIVER FOREST	COOK	THATCHER RD	FAU2753	AFLS-Gates-Cant-over
2	689628Y	WC	13.04	M	CM LINE	In	RIVER GROVE	COOK	1ST AV	ILL171	AFLS-Gates-Cant-over
3	689630A	WC	13.41	M	CM LINE	In	RIVER GROVE	COOK	5TH AV	FAU2742	Gate (red & white)
4	689638E	WC	12.63	M	CM LINE	In	FRANKLIN PARK	COOK	BELMONT AVE	FAU1374	AFLS-Gates-Cant-over
5	689651T	WC	20.80	M	CM LINE	In	DES PLAINES	COOK	TOUHY AV	FAP341	Gate (red & white)
6	689654N	WC	21.82	M	CM LINE	In	DES PLAINES	COOK	OAKTON ST	FAU1332	AFLS-Gates-Cant-over
7	689656C	WC	22.56	M	CM LINE	In	DES PLAINES	COOK	LEE ST NB	US12 A	AFLS-Gates-Cant-over
8	689657J	WC	22.67	M	CM LINE	In	DES PLAINES	COOK	GRACELAND AV	US12	AFLS-Gates-Cant-over
9	689676N	WC	23.94	M	CM LINE	In	DES PLAINES	COOK	GOLF RD	ILL58	Gate (red & white)
10	689677V	WC	24.05	M	CM LINE	In	DES PLAINES	COOK	RAND RD/US 12	US12	AFLS-Gates-Cant-over
11	689678C	WC	24.78	M	CM LINE	In	DES PLAINES	COOK	CENTRAL RD	FAU1300	Gate (red & white)
12	689680D	WC	25.80	M	CM LINE	Near	MOUNT PROSPECT	COOK	KENSINGTON RD	FAU1295	Gate (red & white)
13	689682S	WC	26.78	M	CM LINE	In	PROSPECT HTS	COOK	WOLF RD	FAU2692	Gate (red & white)
14	689689P	WC	30.06	M	CM LINE	In	WHEELING	COOK	DUNDEE RD	ILL68	AFLS-Gates-Cant-over
15	689693E	WC	34.18	M	CM LINE	Near	PRAIRIE VIEW	LAKE	IL 22	ILL22	Gate (red & white)
16	689697G	WC	36.05	M	CM LINE	Near	VERNON HILLS	LAKE	US 45	US45	AFLS-Gates-Cant-over
17	689699V	WC	37.50	M	CM LINE	In	MUNDELEIN	LAKE	ILL 60	ILL60	Gate (red & white)
18	689705W	WC	40.10	M	CM LINE	In	MUNDELEIN	LAKE	MAPLE ST	ILL176	Gate (red & white)
19	689718X	WC	44.51	M	CM LINE	Near	GRAYSLAKE	LAKE	IVANHOE RD	ILL83	Gate (red & white)
20	689719E	WC	44.80	M	CM LINE	In	GRAYSLAKE	LAKE	ILL 120	ILL120	AFLS-Gates-Cant-over
21	689733A	WC	50.80	M	CM LINE	In	LAKE VILLA	LAKE	GRAND AVE	ILL132	Gate (red & white)
22	689743F	WC	54.70	M	CM LINE	In	ANTIOCH	LAKE	ILL 173	ILL173	Gate (red & white)
23	689751X	WC	56.04	M	CM LINE	In	ANTIOCH	LAKE	MAIN ST	ILL83	AFLS-Gates-Cant-over

SUMMARY

Exhibit B

WISCONSIN CENTRAL LTD. C&S ESTIMATE						
INSTALL REMOTE MONITORING DEVICES AT GRADE CROSSINGS						
LOCATION:	ILLINOIS	MP	CM10-CM57	DOT/AAR #	VARIOUS	
<b>LABOR</b>						
		MANDAYS		RATE	TOTAL	
	SIGNAL INSTALLATION	MD	72	\$ 140.00	\$ 10,080.00	
	ACCOUNTING	LOT	1	\$ 207.00	\$ 207.00	
	ENGINEERING	LOT	1	\$ 200.00	\$ 200.00	
				TOTAL:	\$ 10,487.00	
<b>MATERIAL</b>						
		QUANTITY		PRICE	TOTAL	
	12" FLASHING LIGHT	EA.	0	FALSE	\$ -	
	CANTILEVERS	EA	0	FALSE	\$ -	
	RTU-10 UNIT	EA.	72	\$ 1,465.00	\$ 105,480.00	
	SIDE LIGHTS	EA	0	FALSE	\$ -	
	12V BELL	EA	0	FALSE	\$ -	
	WIRING MATERIAL	EA.	1	\$ 4,679.40	\$ 4,679.40	
	UNDERGROUND CABLE	FT	0	FALSE	\$ -	
	GRAVEL FILL	LOT	0	FALSE	\$ -	
	STATE SALES TAX		0.0775		\$ 8,537	
	COUNTY SALES TAX		0.055		\$ 6,059	
				TOTAL:	\$ 124,755.52	
<b>OTHER COSTS</b>						
		QUANTITY		COST	TOTAL	
	PERDIEM (MANDAYS)		72	\$ 41.20	\$ 2,966	
	HEALTH MONITORING 10 YR	72 LOT		\$ 450.00	\$ 32,400	
	COMPANY EQUIPMENT RENTAL		18	\$ 251.00	\$ 4,518	
				TOTAL:	\$ 39,884	
<b>SALVAGE</b>						
		QUANTITY		COST	TOTAL	
	NONE				0	
				TOTAL:	0	

SUMMARY

ADDITIVES		AMOUNT	RATE	TOTAL
ENGINEERING BENEFITS		\$ 10,487.00	72.05%	\$7,556
ENGINEERING SUPERVISION		\$ 10,487.00	27.05%	\$2,837
ACCOUNTING BENEFITS		\$ 207.00	59.62%	\$123
SMALL TOOLS		\$ 10,487.00	5.76%	\$604
MATERIAL HANDLING		\$ 124,755.52	5.00%	\$6,238
TRANSPORTATION TON MILES	1600		0.25%	\$4
			TOTAL:	\$17,362
<b>SUMMARY</b>				
		LABOR		\$10,487
		MATERIAL		\$124,756
		OTHER COSTS		\$39,884
		SALVAGE		\$0
		ADDITIVES		\$17,362
DATE	3/15/00		SUBTOTAL:	\$192,489
ESTIMATE PREPARED BY				
OFFICE OF CHIEF ENGINEER				
COMMUNICATIONS AND SIGNALS				
STEVENS POINT, WI. 54481				
		CONTINGENCY		\$19,000
			TOTAL:	\$211,489



**CANADIAN NATIONAL  
WISCONSIN CENTRAL DIVISION**

Engineering Department  
Signal and Communications  
3000 Minnesota Avenue  
Stevens Point, WI. 54481  
Ph: 715-345-2524  
Fax: 715-345-2534

**COPY**

RECEIVED  
FEB 10 2003

Illinois Commerce Commission  
RAIL SAFETY SECTION

Kevin Sharpe  
Director of Processing and Information  
Transportation Division  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, Il. 62701

2/5/03

Re:  
Docket T00-0072  
Installation of Remote Monitoring Devices  
72 Locations  
Lake & Cook Counties  
Canadian National / Wisconsin Central Division  
Grade crossing warning devices

*Completion*

Dear Mr. Sharpe,

This project is now 100% complete all of the (RTU's) remote monitoring devices have been installed.

Sincerely,

Jack E. Palach  
Engineer C&S

Cc: JAB  
DHS  
Susan Splansky

**DOCKETED**

**ATTACHMENT C -- CN BLOCKED CROSSING DATA DISCREPANCIES**

<b>MONTH</b>	<b>4/28/10 CN Produced Chart</b>	<b>CN Resubmitted Spreadsheets</b>	<b>Dispatcher Spreadsheets</b>
<b>02/09</b>	1046	1066	not available
<b>03/09</b>	1123	1150	not available
<b>04/09</b>	886	899	148
<b>05/09</b>	726	726	494
<b>06/09</b>	850	850	697
<b>07/09</b>	1002	1006	781
<b>08/09</b>	980	977	761
<b>09/09</b>	1038	1047	930
<b>10/09</b>	1000	998	807
<b>11/09</b>	787	786	644
<b>12/09</b>	871	873	665
<b>01/10</b>	1156	1151	826
<b>02/10</b>	1239	1244	1062
<b>03/10</b>	1804	1808	1488

**ATTACHMENT D – ELGIN RESIDENT E-MAIL ON RAILBED EROSION**

**From:** jandrew11@comcast.net [mailto:jandrew11@comcast.net]  
**Sent:** Thursday, May 20, 2010 3:18 PM  
**To:** info@fightrailcongestion.com  
**Subject:** CN railbed erosion

Dear TRAC,

I wanted to give you a status report on the CN railbed erosion at the base of my backyard. I have attached two pictures. The first one was taken about a year ago in April 2009, shortly after I first reported this problem through TRAC's website. I also reported the erosion problem on to Lawrence Herzig of the STB on May 4, 2009 and to Cook County Commissioner Tim Schneider on July 1, 2009. The second photo was taken last weekend, May 16, 2010.

As you can see from the photos, nothing has been done and the erosion is worse. The photos were taken from a similar vantage point - the exact same tree branch is shown in both images - and therefore I believe the photos represent an accurate comparison of the continued deterioration of the railbed over 12-months time. The length of the erosion along the tracks is actually much greater than what is shown within the frame of these two photos, but I selected these two as the best comparison of year-over-year change.

While I do not believe this erosion currently poses a serious safety hazard, I am by no means an expert in such matters and am unable to estimate how long this problem can go untreated. It seems clear that some kind of maintenance will need to be performed by CN at some point. Considering that 12 months after my initial report to the STB nothing has been done, I am becoming increasingly concerned. I know this is what we have come to expect from CN, but I hope that I don't find myself sending another email in 2011 with photos that show an even more serious situation.

I would welcome the opportunity to share these photos and remarks with the STB within any relevant context of TRAC's next communication with them on this topic.

Thank you, TRAC, for all the great work you do!

Janet Andrew  
Elgin, IL

PHOTO from April 30, 2009



PHOTO from May 16, 2010:





March 25, 2010

Mr. Matthew T. Wallen  
Director  
Office of Public Assistance, Government Affairs &  
Compliance  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

**VIA E-MAIL**

Dear Mr. Wallen,

On behalf of the local governments that comprise the TRAC Coalition, please find the attached document that enumerates deficiencies in the March 15, 2010 Technical Memorandum on Task 6 Public Grade Crossing Signs that was prepared by HDR. We believe the HDR memorandum demonstrates that it cannot serve as an impartial consultant in verifying the activities undertaken by Canadian National Railway (CN) to implement Board-mandated mitigation measures. We request, therefore, that the Board recognize the conflict of interest that makes HDR an unsuitable oversight consultant by replacing HDR with an impartial consultant that is truly able to verify CN's actions as regards the EJ&E transaction, or augment the monitoring with an additional consultant to assure a truly independent monitor is overseeing the transaction's implementation.

Sincerely,

Karen Darch  
TRAC Co-Chair  
President, Village of Barrington  
[kdarch@barrington-il.gov](mailto:kdarch@barrington-il.gov)

Tom Weisner  
TRAC Co-Chair  
Mayor, City of Aurora  
[tweisner@aurora-il.org](mailto:tweisner@aurora-il.org)

Copies to:

Transportation Secretary Ray LaHood  
House Transportation & Infrastructure Committee Chairman James Oberstar  
House Transportation & Infrastructure Committee Ranking Member John Mica  
Members of the Illinois Congressional Delegation  
STB Chairman Daniel Elliott III  
Ray Atkins, Chief of Staff, Office of the Chairman  
SEA Chief Victoria Rutson

# Deficiencies Identified in the March 15, 2010 HDR Technical Memorandum on Task 6 Grade Crossing Signs

March 22, 2010

## Section II. Background:

1. No one has ever questioned CN's compliance with VM 2 that required CN to install 6-month temporary warning signs notifying drivers there would be an increase in train traffic on the EJ&E. Inquiry into this matter was unnecessary.
2. HDR failed to state accurately and fully the Board's VM 9 mandate requiring CN to install signs at each grade crossing with the information necessary to report to CN any problems or dangerous conditions at the crossings. The Board required that these signs be "prominent" and absent that qualitative modifier, CN's signs could be construed to meet the VM9 guidelines despite failing to meet the "prominence" test.
3. HDR did not accurately state communities' concerns about the VM9 sign issue. HDR states: *"Complaints from the communities concerning compliance with these two conditions centered on whether the signs were truly visible and a concern that different signs had different telephone numbers for motorists to report problems."* In fact, communities' VM9 sign concerns were centered on:
  - A lack of visibility (or prominence);
  - the reality that some crossings had no signs whatsoever; and
  - that CN misled the Board into believing it had accomplished VM9 when it stated in its July 10, 2009 quarterly environmental report to the Board that "the signage is in place."
4. Communities are indifferent to CN's use of different telephone numbers on the signs along the EJ&E. What is important is that someone actually answers the phone line(s) when someone calls. TRAC had reported to the Board that there was documented evidence that there were instances when no one answered these telephone lines to respond to calls. Since there are 911 records in Rockford prior to that tragic June 19, 2009 CN derailment that demonstrates the necessity of having someone man these emergency contact numbers, it is vital that CN's compliance with this aspect of VM9 be taken seriously. HDR failed to look into this issue whatsoever.

## Section III. Method and Analysis:

5. HDR spot-checked signage on the EJ&E and claims:  
*"Typically the crossings had a decal visible to motorists that contained the toll free number to report problems with the crossing (see Attachment 2) and the DOT crossing identification number posted on a nearby railroad bungalow (see Attachment 3)."*  
In the photo attachments HDR supplied, it provides evidence that (1) the sign or "decal" in place fails the "prominence" test as it was impossible to even read the decal in the photo; and, (2) that the crossing ID number was not on the sign and therefore failed to meet the Board's VM9 mandate.
6. HDR's analysis centers mostly on a discussion of sign standards from the Manual on Uniform Traffic Control Devices (MUTCD) and how the federal government's late 2009 changes to that manual and State adoption of the revised standards justified CN's inaction on meeting VM9. This entire argument is specious as the new standards have sufficient leeway to enable CN to erect compliant signage.
7. HDR attached a CN memorandum dated February 15, 2010 to its report. In that, CN discusses *ad infinitum* the MUTCD standards issue and states that it is *"currently soliciting bids for this project, and anticipates completing installation of the new signs by the end of June, 2010."* Since visibility and prominence of the signs is a major issue for communities, it is inconceivable that HDR and CN failed to

actually share with the Board and interested public the bid specifications for this project. TRAC has attached to this document a photo of a sign from when the EJ&E was owned by USX. Our expectations are that signs similar to this in terms of prominence and visibility will be installed by CN as they meet the Board's "prominence" test as well as current MUTCD standards and guidelines.

**Section IV. Results:**

8. HDR claims: *"CN's approach to compliance with VM2 and VM9 appear reasonable."* This statement demonstrates that HDR's conflict of interest vis-a-vis CN makes it impossible for HDR to point out that CN's erroneous claim to have fulfilled VM 9 in July 2009, and its subsequent reliance on revised MUTCD sign standards is an excuse for inaction and nothing more than a stalling tactic to deny concerned residents of the region the information they need to register dangerous crossing concerns directly with CN.

**Section V. Conclusions and Recommendations:**

9. HDR claims: *"CN is complying with VM 9"* and *"If problems with visibility of emergency notification signs are identified in the future, these can be addressed on a case by case basis."* TRAC would like to stress to the Board and HDR that the record clearly demonstrates that CN is doing everything in its power to stall on complying with VM 9. Additionally, a dismissive comment that the visibility/prominence issue can be addressed on a case by case basis completely ignores the fact that "prominence" was required by the Board in VM9. The Board needs to take ownership of insuring that its mandates are fully met and not require that communities continue to raise this issue individually at some point in the future. Aggressive Board intervention directing CN to live up to the spirit and letter of the VM9 mandate is prudent and necessary.

## **ATTACHMENT F – STB E-MAIL ON NOISE & VIBRATION FIELD MONITORING**

**From:** Matthew.Wallen@stb.dot.gov [mailto:Matthew.Wallen@stb.dot.gov]  
**Sent:** Wednesday, December 16, 2009 2:47 PM  
**To:** Darch, Karen  
**Subject:** noise and vibration monitoring

Karen,

I apologize for not getting this to you sooner, it's been a work in progress. The document is still in draft form as I need to get Chairman Elliott's final approval to proceed. He's been involved in the process all along so I think he's comfortable with the concept, I just need to review the final draft with him. Will you please review and provide any comments you might have. I understand you want to share it with your noise consultants which is fine but please keep it confidential, as it's not prepared for a public audience and I'm still waiting for some final approvals.

We would very much welcome your feedback and thoughts and we very much want you to be involved and have input into the monitoring we are attempting to conduct.

I look forward to hearing from you and I'll see you next week.

Matt

DOCUMENT:

### **DRAFT**

#### **Monitor noise and vibration, and record audio and video**

##### **Task Objective:**

The purpose of this task is to respond to complaints that horns are sounded in quiet zones, and that noise and vibration associated with train pass-by events is disruptive in adjacent communities. HDR will focus on collecting noise information in established quiet zones and measure noise and vibration and record audio and video signals during train pass-by events at representative locations. HDR will download the information that it records at particular locations remotely, and relocate and continue data collection at other locations, as warranted. HDR proposes to implement the monitoring and recording system for a two-month period.

##### **Activities:**

- HDR will review comment letters and project information to identify those locations in existing quiet zones where concerns have been raised and to identify potential areas for noise monitoring and then work with the Board and the communities to finalize the location for noise monitoring.

- HDR proposes to identify, obtain, test, and install and commission an appropriate remote monitoring system capable of measuring air-borne noise, ground-borne vibration, and recording audio and video signals associated with train-pass by events. HDR proposes to configure the system to begin data collection when a specific noise or vibration threshold has been exceeded (a trigger). HDR also proposes to configure the system such that it can be remotely accessed by HDR acousticians, its operational status can be assessed, data can be downloaded, and the system can be reconfigured for continuous use at other locations throughout the two-month monitoring period.
- HDR proposes to remotely download and process the monitoring data each week for two months. The acquired data will be used to identify when train pass-by events occurred at a specific location; document maximum and average noise and vibration levels, create an audio and video record of the pass-by event, and determine if the rules associated with sounding the train horn are being observed. The acquired data will be used to address complaint-related issues. HDR proposes to coordinate with STB (and TRAC) to identify and coordinate appropriate monitoring locations. HDR also proposes to map the location of monitoring activities, noise and vibration complaints, the location of quiet zones, sidings where CN trains idle, etc. HDR will prepare periodic reports to the Board over the two-month period.

**Travel/Meetings Required:**

HDR proposes to send Acoustics Program staff from Minneapolis to Chicago to install and commission the monitoring system, and to train HDR staff in Chicago how to relocate the system and install fresh batteries, etc. On an as-needed basis, Acoustics Program staff may have to return to the project area for maintenance or trouble-shooting, but the remote data download capability is intended to minimize the need for additional trips. This scope assumes a total of three round-trips throughout the duration of the two-month data collection period (two are for system maintenance/trouble-shooting). HDR staff in Chicago will spend one day each week moving the system to another location and installing it there.

**Key Understandings:**

HDR assumes that the focus of the noise monitoring effort will be in existing quiet zones and that the communities will help in identifying and locating appropriate areas for noise monitoring. Potential monitoring locations for vibration related issues will be identified by the communities. HDR also assumes CN and the communities will promptly respond to any requests for information. The proposed monitoring system is not a common, off-the-shelf instrument; HDR intends to deploy it with extreme caution. Extreme cold weather conditions may interfere with the monitoring and recording system, and may force the suspension of the data collection activities. HDR reserves the right not to deploy the monitoring system if weather conditions could potentially interfere with its installation, functionality, or otherwise interfere with secure data collection practices.

HDR assumes TRAC will support these data collection activities, and provide a right-of-entry for data collection at residences in the project area. HDR assumes that gaining right-of-entry will not require very much effort. HDR also reserves the right to not deploy the monitoring system at a location where security is a concern. The budget for this task does not include a contingency fund for theft or damage to the monitoring equipment during the two-month monitoring period. Repair or replacement of the monitoring system will be at the expense of the Applicant.

HDR proposes to provide a simple memo to the Board containing a summary of the monitoring results. The summary will be limited to: date and time of the train pass-by event; duration of the pass-by event; average and maximum noise and vibration levels, and an electronic file containing audio and video of the pass-by events summarized in the weekly memo.

## **ATTACHMENT G – TRAC WEB BLAST SEEKING FIELD TESTING PARTICIPANTS**

**From:** administrator@fightrailcongestion.com [mailto:administrator@fightrailcongestion.com]  
**Sent:** Monday, December 28, 2009 8:14 AM  
**To:** wyngate150@sbcglobal.net  
**Subject:** At TRAC's Request, the STB is Going to Monitor Canadian National Railway Train Noise and Vibration Levels Along the EJ&E

Because the region has created a strong record of complaints against CN around excessive noise, vibration and quiet zone violations, the STB has agreed to institute a field monitoring process that will evaluate what is occurring along the EJ&E. TRAC is still in the initial stages of working with the STB to define this process and when the monitoring will begin, but we need your help to expedite this process once the details are ironed out!

While TRAC has an excellent record of complaints that has pinpointed some hot spots for noise, vibration and quiet zone violation problems, we want to insure that the list we provide to the STB is fully comprehensive. IF YOU HAVE EXPERIENCED RECURRING PROBLEMS THAT YOU WOULD LIKE TO HAVE FIELD-MONITORED FOR NOISE AND/OR VIBRATION LEVELS, PLEASE LET US KNOW. IN ADDITION, WE WILL NEED YOUR AGREEMENT TO ALLOW THE STB CONTRACTORS TO GAIN ACCESS TO YOUR PROPERTY FOR SETTING UP THE EQUIPMENT.

If you are interested in participating in the field monitoring process, please contact TRAC by e-mail at [info@fightrailcongestion.com](mailto:info@fightrailcongestion.com). We will need specific information from you:

- The nature of the problem (i.e. excessive noise, excessive vibration, quiet zone violation)
- Your name
- The exact street address of the problem location (and whether it is a business or residential location)
- Your contact information (both phone and e-mail)

Once we have the monitoring plan finalized with the STB, we will provide the Board the list that TRAC has created so that the field monitoring process can begin. The deadline for getting these requests into TRAC is Sunday, January 10. Please feel free to distribute this e-mail freely if you know of someone who has been troubled by CN's operations and might be interested in serving as a monitoring location.

To everyone in the region, thank you for your ongoing efforts to register complaints about CN operations as they occur!

**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2010, I caused the foregoing TRAC Comments Pursuant to Board Decision No. 23 to be served via first class mail, postage prepaid, or by a more expeditious method of delivery, on all parties of record:

A handwritten signature in black ink, appearing to read "R. H. Streeter", written over a horizontal line.

Richard H. Streeter