



January 31, 2011

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

Dear Mr. Wallen,

We would like to take this opportunity to respond to the January 5, 2011 letter from Canadian National and to convey our appreciation to the Board for its actions in its December 2010 decisions – numbers 26 and 27. The Board’s extension of the oversight period of the CN acquisition of the EJ&E for an additional year, as well as reinforcing the need for CN to be forthcoming in its reporting by assessing a fine, underscore the Board’s willingness to assist our communities with the fallout from this transaction and to hold CN to the letter, as well as spirit, of the December 24, 2008 merger approval decision.

With regard to the January 5th letter – one issue CN addressed was an engineering report on the “sinkhole” issue near a residential subdivision in Will County. While TRAC is pleased with CN’s offer to undertake field research and prepare an engineering report, CN’s characterization that it developed this plan in “cooperation with Will County” missed the mark. TRAC’s Will County liaison has confirmed that while the County appreciates CN’s offer to assess the “sinkhole” situation, the County has no real degree of comfort that CN’s efforts would unearth any facts that could prove unfavorable to CN. Also, the residents of that subdivision have reiterated the need for an independent study on several occasions. We would suggest that the STB request that CN agree to pay Will County’s cost for the County’s engagement of an independent engineer to undertake the investigation and the report on this matter. Since the community has received conflicting messages on the seriousness of this issue from CN and others, this would put to rest any credibility question and achieve CN’s goal, as stated in its January 5th letter of “assuaging any lingering concern” on this issue.

As to the Voluntary Mitigation condition number 9 - signage, although it has taken two years to arrive at this point, we are pleased that CN has agreed to erect adequate VM 9 signage at EJ&E crossings consistent with the 30 x 30 mock up attached to the January 5, 2011 letter. As part of its ongoing oversight, we would ask the Board to make available a listing of the installations as they occur.

In pursuing the two issues mentioned above and in its ongoing oversight, TRAC has acted and will continue to act as a regional watchdog and voice on the CN/ EJ&E acquisition. Despite the fact that CN has entered into settlement agreements with many of the EJ&E communities, there remain implementation issues important to all communities along the EJ&E and beyond. Specifically, TRAC requests that the STB not lose sight of enforcement of mitigation conditions that have region-wide impact and benefit -- like safety signage, minimizing crossing blockages and the need to “cut” trains -- whether or not a nearby community has settled.

Finally, we would like to bring an additional issue to your attention to insure that the Board is focusing efforts on protecting the interests of all communities, including those that entered into VMAs with CN.

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In reviewing most of the settlement agreements between CN and communities, invariably we find the following language requiring that the community signing the agreement:

- *"Withdraw from membership in the TRAC coalition and publicly acknowledge that action" within so many days of entering into the settlement agreement with CN; and*
- *"Not make further submissions in the STB proceeding (or in related appellate proceedings) without GTC's prior review and approval except in support of the agreement and/or the STB's decision approving the Transaction." (Emphasis added)*

In addition to these provisions, a random check of seven negotiated agreements CN has entered into with affected third-parties shows that CN had included in all seven the following sentence under the section titled "Sole Remedy": *"It is the intent of the parties to this Memorandum that the STB require GTC's compliance with this agreement in lieu of any additional or inconsistent mitigation that the STB might otherwise impose regarding environmental impacts in (town.)"*

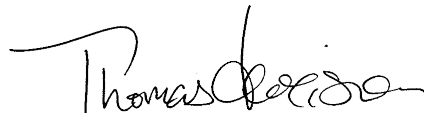
In light of the Catch-22 settled communities may find themselves in on follow up with the STB on implementation of the decision mitigation conditions, or performance by CN of the terms of the settlement agreements, TRAC would ask that the STB pay particular attention in monitoring CN's performance of all settlement agreements' provisions. This request echoes Senator Durbin's recent call for stepped up oversight of these agreements.

Thank you, as always, for your attention and consideration of these important issues.

Sincerely,



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