

# Chapter 1

## Purpose and Need

### 1.1 Introduction

On October 29, 2021, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company; Central Maine & Quebec Railway U.S., Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) filed an application with the Surface Transportation Board (Board) under 49 U.S.C. §§ 11323-25 seeking the Board’s approval of CP’s acquisition of KCS (Proposed Acquisition). If the Board authorizes the Proposed Acquisition, CP and KCS (collectively, Applicants) would combine to form an integrated system to be known as Canadian Pacific Kansas City (CPKC). **Figure 1.3-1**, provides a map of the proposed combined system showing current ownership. See *Chapter 2, Section 2.2, Proposed Acquisition*, for a detailed description of the combined system.

Because the Proposed Acquisition has the potential to result in significant environmental impacts, the Board’s Office of Environmental Analysis (OEA) has prepared this Draft Environmental Impact Statement (Draft EIS) pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370m-12) and related laws, including Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) (NHPA). This chapter describes the purpose and need for the Proposed Acquisition, the Board’s role in reviewing railroad acquisitions, and the Board’s environmental review process.

### 1.2 Purpose and Need

The proposed federal action in this proceeding involves an application for Board authority under 49 U.S.C. §§11323-25 for CP to acquire KCS. The Proposed Acquisition is not a federal government proposed or sponsored project. Thus, the project’s purpose and need should be informed by both the Applicants’ goals and the Board’s enabling statute, the Interstate Commerce Act, as amended by the Interstate Commerce Commission (ICC) Termination Act (ICCTA), Pub. L. No. 104-188, 109 Stat. 803 (1996). See *Alaska Survival v. STB*, 705 F.3d 1073, 1084-85 (9th Cir., 2013).

According to the Applicants, the purpose of the Proposed Acquisition is to combine America’s two smallest but fastest-growing Class I railroads to build a more efficient and

more competitive rail network.<sup>1</sup> The Applicants state that the Proposed Acquisition would address the need for expanded and more capable and efficient transportation infrastructure while simultaneously advancing the interests of current and future customers with more reliable and economical rail transportation options serving important north-south trade flows. The Applicants also state that the Proposed Acquisition would generate environmental benefits by reducing truck transportation on highways in North America by more than 64,000 trucks annually, resulting in less congestion, less maintenance, and improved safety on those roads. The Applicants further state that the Proposed Acquisition would result in less noise pollution in the places where those trucks would have driven and lowered air emissions, including greenhouse gas emissions.

Under the Interstate Commerce Act, as amended, the Board “shall approve and authorize a transaction” such as this when, after considering several factors, “it finds the transaction is consistent with the public interest.” (49 U.S.C. §§ 11324 (b) & (c)). When the Board determines that a transaction is consistent with the public interest, the Board is required by statute to approve the transaction. The Board’s intention in making a decision to approve a railroad merger or acquisition is to allow railroads to expand their systems by acquiring other railroad facilities and thereby operate more efficiently and compete more effectively with trucks and other railroads.

### 1.3 Role of the Board in Reviewing Railroad Acquisitions

The Board is a nonpartisan, independent federal regulatory agency, composed of five presidentially appointed members confirmed by the Senate. The Board has jurisdiction over certain rail transportation matters, including financial transactions such as railroad acquisitions, mergers, and consolidations; new rail line construction; rail line rates and service issues; and line sales and the abandonment of rail service, as authorized by the Interstate Commerce Act, as amended by ICCTA.

The Board is reviewing the Proposed Acquisition through two parallel but distinct processes: (1) the transportation-related process that examines the competitive, transportation, and economic implications of the Proposed Acquisition on the national rail system, and (2) the environmental review process that is being conducted by OEA. The statute setting forth the procedures for Board review of acquisitions at 49 U.S.C. § 11325 and the Board’s implementing regulations at 49 C.F.R. § 1180.4 require that the Board complete both processes within approximately 15 months after the primary application is accepted for a “major” transaction such as this. The Board accepted the Applicants’ application on November 23, 2021. On March 16, 2022, however, the Board issued a decision suspending the existing procedural schedule and directed the Applicants to explain an apparent inconsistency between data submitted in the application and information that the Applicants provided to OEA as part of the environmental review process. By decision issued on April 27, 2022, the Board directed the Applicants to amend their application and revise supporting workpapers to address the data inconsistency. The Applicants submitted

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<sup>1</sup> Class I railroads are the largest railroads and are defined as having annual revenue greater than \$250 million. There are seven Class I railroads in the U.S.

their amended application and revised workpapers on May 13, 2022, and on May 27, 2022, the Board issued a revised procedural schedule for the proceeding.

### 1.3.1 Review of Transportation Merits

In all its decisions, the Board is committed to advancing the national rail transportation policy goals established by Congress. In 1920, Congress established a national policy favoring railroad acquisitions, mergers, and consolidations in the interest of economy and efficiency. Congress reaffirmed its rail consolidation policy in subsequent amendments to the Interstate Commerce Act, including ICCTA, and it requires the Board, as it required its predecessor, the ICC, to approve railroad acquisitions that are consistent with the public interest (49 U.S.C. § 11324(c)).

When deciding whether to approve the merger of two or more Class I railroads or impose conditions on such a transaction, statutory provisions at 49 U.S.C. § 11324(b) require the Board to consider:

- The effect that the proposed transaction would have on providing adequate transportation to the public.
- The effect on the public interest of including, or failing to include, other rail carriers in the geographic area involved in the proposed transaction.
- The total fixed charges that would result from the proposed transaction.
- The interests of affected railroad employees.
- The possibility of an adverse impact on competition among railroads in the affected region or in the national rail system.

The Board licenses railroads as common carriers, requiring them to accept goods and materials for transport from all customers upon reasonable request (49 U.S.C. § 10101(a)). Railroads make decisions on an ongoing basis regarding which routes they will use to serve their customers in response to changes in multiple factors, including market conditions, the economy, and market demand. If a railroad simply wants to reroute its trains or update or otherwise improve a portion of its system in order to provide better service to shippers, it may do so without seeking the Board's permission; therefore, the Board does not regulate the number of trains operating over a specific section of rail line nor does it maintain control over general day-to-day railroad operations. In the case of railroad mergers or acquisitions, a Board decision approving a transaction would not require the railroads involved to run a specified number of trains or transport existing or new freight by any particular route. Rather, the Board's decision is intended to allow railroads to expand their rail line systems by acquiring the facilities of other railroads in order to operate more efficiently and compete more effectively with trucks and other railroads.

Figure 1.3-1. Proposed CPKC Rail System



### 1.3.2 Review of Environmental Impacts

NEPA requires federal agencies to assess the environmental effects of proposed actions prior to making decisions. OEA is the office within the Board tasked with carrying out the Board's responsibilities under NEPA and related environmental laws, including Section 106 of NHPA and Section 7 of the Endangered Species Act (16 U.S.C. § 1536) (ESA).

Environmental impacts from the Proposed Acquisition would include impacts related to increased rail traffic on certain rail lines. The Applicants expect that the Proposed Acquisition would create new efficiencies in the rail network that would result in rail traffic being diverted from other rail lines onto the combined CPKC network and the diversion of freight from trucks to rail transportation. Because of these expected diversions, the Applicants project that the Proposed Acquisition would result in increased rail traffic on portions of the combined CPKC network. The largest expected change would occur on the CP mainline between Sabula, Iowa, and Kansas City, Missouri, where the Applicants project that rail traffic would increase by approximately 14.4 trains per day, on average. Other rail lines would experience smaller increases in rail traffic, no change in rail traffic, or a decrease in rail traffic.

OEA applied the thresholds set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e) to identify rail lines where the projected increase in rail traffic warranted environmental review. The general thresholds in the Board's regulations for assessing environmental impacts from increased rail traffic on rail lines are an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains per day. For rail lines located in areas that are in nonattainment under the Clean Air Act (42 U.S.C. §§ 7401-7671q), the threshold for air quality analysis is an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains per day (49 C.F.R. § 1105.7(e)(5)(ii)). OEA identified rail lines in Illinois, Iowa, Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas that would experience increases in rail traffic that would exceed these analysis thresholds as a result of the Proposed Acquisition.

In addition to increased rail traffic on rail lines, the Proposed Acquisition would result in changes in operational activities at rail yards and intermodal facilities. The threshold for environmental review of rail yards and intermodal facilities is an increase in rail yard activity of at least 100 percent (measured by carload activity) or an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment (49 C.F.R. § 1105.7(e)(5)(i)). For rail yards and intermodal facilities in nonattainment areas, the threshold for air quality analysis is an increase in rail yard activity of at least 20 percent (measured by carload activity) or an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment (49 C.F.R. § 1105.7(e)(5)(ii)). This Draft EIS addresses environmental impacts that would be associated with increased operational activities at rail yards and intermodal facilities where the Board's thresholds related to rail yards and intermodal facilities would be reached or exceeded.

If the Board authorizes the Proposed Acquisition, the Applicants plan to make 25 capital improvements within the existing rail right-of-way (ROW) to support the projected increases in rail traffic, and this Draft EIS discusses environmental impacts that would be associated with them. The planned capital improvements would include extending 13 existing passing sidings, adding 10 new passing sidings, adding a section of double track in Blue Valley near Kansas City, Missouri, and adding a section of facility working track adjacent to the International Freight Gateway intermodal terminal near Kansas City. The Applicants have stated that they would add the capital improvements as needed based on increasing traffic and that design-level engineering for each capital improvement would occur only when each capital improvement is needed. The Applicants do not propose to construct any new rail lines subject to Board licensing or to abandon any rail lines as part of the Proposed Acquisition.

As part of the environmental review process, OEA makes recommendations to the Board regarding measures for mitigating potential adverse environmental impacts that could occur as a result of a Board decision. Environmental mitigation measures may include voluntary measures developed by railroad applicants and additional measures recommended by OEA. The Board encourages railroad applicants to propose voluntary mitigation. In some situations, voluntary mitigation can replace, supplement, or reach farther than mitigation measures the Board might otherwise impose. In making its final decision in a case, the Board considers OEA's conclusions regarding environmental impacts and OEA's final recommendations for mitigation. In railroad acquisition cases, the Board can authorize the transaction as proposed; authorize the transaction with conditions, including environmental conditions to avoid or reduce potential adverse environmental impacts; or deny the transaction. *Section 1.4, NEPA Process*, provides additional information regarding the NEPA process.

### 1.3.3 Review of Safety Integration Plan (SIP)

Pursuant to 49 C.F.R. Part 1106 and the Federal Railroad Administration (FRA) regulations at 49 C.F.R. Part 244, the Applicants prepared a proposed Safety Integration Plan (SIP). The proposed SIP describes the Applicants' proposed process and timeline for merging the operations of CP and KCS, as well as the safety implications of merging these operations. During the preparation of the SIP, the Applicants met with FRA to review drafts of the proposed SIP and related materials, respond to questions, and accept recommendations. Pursuant to 49 C.F.R. §§ 1106.4(b)(1) and 244.17, on December 28, 2021, the Applicants submitted their proposed SIP to the Board and, by letter dated February 28, 2022, FRA submitted comments to the Board stating that FRA is satisfied that the proposed SIP provides a reasonable assurance of safety for the proposed transaction, consistent with governing regulations. OEA also has reviewed the proposed SIP, which is appended to this Draft EIS as **Appendix G** to allow for public review and comment on it and on FRA's comments. In the Final EIS, OEA will address any written comments on the SIP submitted during the Draft EIS comment period. If the Board authorizes the Proposed Acquisition and adopts the SIP, the Board will require compliance with the SIP as a condition to its authorization. 49 C.F.R. § 1106.4(b)(4). The Applicants then would coordinate with FRA in implementing the approved SIP, including any amendments thereto. *Id.* FRA would

provide the Board with updates as appropriate during the acquisition implementation period and advise the Board when, in FRA's view, the integration of the Applicants' operations has been fully and safely completed. Id.

### 1.3.4 Review of Responsive Applications (RAs)

On February 28, 2022, Canadian National Railway and Illinois Central Railroad Company (collectively, CN) filed an RA for consideration by the Board. RAs are proposals that parties other than the Applicants may file with the Board to request modifications or conditions to the Applicants' primary application seeking Board authority. After the Board directed the Applicants to amend their application and revise supporting workpapers on April 27, 2022, the Board provided time for other parties to amend their filings, including any RAs, based on the Applicants' amended application and revised workpapers. On June 9, 2022, CN filed an amended RA based on the Applicants' amended application and revised workpapers. By decision served on July 1, 2022, the Board accepted CN's RA for consideration.

In its amended RA, CN requested that the Board require, as a condition of any decision granting authority for CP to acquire KCS, the Applicants to divest, or sell, a number of KCS rail lines to CN. Specifically, CN requested that the Board order the Applicants to divest the KCS rail lines that extend between Kansas City, Missouri, and Roodhouse, Illinois; between Roodhouse and Springfield, Illinois; and between Roodhouse and East St. Louis, Illinois. In total, CN is seeking to acquire ownership of approximately 355 miles of KCS rail lines in Missouri and Illinois through the proposed divestiture. CN's RA also seeks ownership interests in KCS's International Freight Gateway terminal south of Kansas City, as well as trackage rights over certain rail lines owned by KCS and Union Pacific Railroad Company.

According to CN, the proposed divestiture of the KCS rail lines to CN would increase rail traffic on those rail lines by preserving and enhancing competition in the regional rail transportation industry. For some of the rail lines proposed for divestiture, CN projects that the increase in rail traffic would reach or exceed the thresholds triggering an environmental review under the Board's environmental regulations at 49 C.F.R. §§ 1105.6(b)(4) and 49 C.F.R. 1105.7(e). Therefore, OEA will conduct an environmental and historic review of CN's RA that will be separate from, but conducted concurrently with, OEA's ongoing environmental and historic review of the Proposed Acquisition. More information regarding the environmental review for CN's RA can be found on the Board's website at [www.stb.gov](http://www.stb.gov) by conducting a search for Docket No. FD 36500 (Sub-No. 1).

Norfolk Southern Railway Company (NSR) submitted an RA on February 28, 2022 and an amended RA on June 9, 2022 seeking trackage rights (such as, the right to operate) over certain KCS rail lines in Texas and Louisiana. By decision served on July 1, 2022, the Board accepted NSR's RA for consideration. NSR's trackage rights proposal is categorically excluded from environmental and historic review under 49 C.F.R. §§ 1105.6(c)(3) and 1105.8(b)(3). More information regarding the environmental review for NSR's RA can be found on the Board's website at [www.stb.gov](http://www.stb.gov) by conducting a search for Docket No. FD 36500 (Sub-No. 5).

## 1.4 NEPA Process

The environmental review process under NEPA is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on that proposal is made. In conducting its environmental review, OEA considers the NEPA requirements and the Council on Environmental Quality (CEQ) implementing regulations; other related environmental laws and their implementing regulations; and the Board's environmental regulations at 49 C.F.R. Part 1105. Based on the information provided by the Applicants, OEA determined that the Proposed Acquisition has the potential to result in significant environmental impacts and that the preparation of an EIS is appropriate under NEPA.

### 1.4.1 Lead Agency

The Board, through OEA, is the lead agency responsible for preparing this Draft EIS to identify and evaluate the potential environmental impacts associated with the Proposed Acquisition. In performing its environmental analysis, OEA reviewed the Applicants' application and the Applicants' responses to OEA's information requests to identify projected changes in rail traffic on the rail line segments, and activity at rail yards and intermodal facilities that could cause potential environmental impacts.

Consultation with other government agencies and public involvement are central components of NEPA and the Board's environmental review process. OEA considered pertinent federal statutes, regulations, and executive orders, and as part of its role as the lead agency it coordinated and consulted with appropriate federal, state, and local agencies to ensure that they were notified of the Proposed Acquisition and knew about the time frame for agency review and comment on this Draft EIS. *Section 1.5, Agency Consultation; Section 1.6, Tribal Consultation; and Section 1.7, Public Involvement* provide additional detail regarding OEA's agency and tribal consultation and public involvement activities.

OEA has engaged an independent third-party contractor to assist with the environmental analysis and preparation of environmental documents for the Proposed Acquisition. The Board's environmental rules and those of CEQ specifically permit the use of agency-approved, independent third-party contractors (49 C.F.R. § 1105.10(d) and 40 C.F.R. § 1506.5, respectively). For this case, as in all Board proceedings where third-party contractors are retained, the independent third-party contractors' scope of work, approach, and activities are under OEA's sole supervision, direction, and control. The contractors work under OEA's direction to conduct independent environmental analysis; develop appropriate environmental approaches, documentation, and mitigation options; and verify the environmental information provided by the Applicants, consulting agencies, and all other interested parties.

OEA's environmental review of the Proposed Acquisition is a multi-step process. After OEA considers all public and agency comments received on this Draft EIS (including comments on the preliminary recommended mitigation and the proposed SIP); consults further with appropriate agencies, tribes, concerned parties, and communities; and conducts additional environmental analysis, where appropriate, OEA, with the assistance of its

independent third-party contractor, will prepare a Final EIS that responds to all comments received and contains OEA's final environmental analysis and final recommended environmental mitigation. The Board will consider the entire environmental record including the Draft EIS, Final EIS, the information concerning the proposed SIP and all public comments when making its final decision on whether to authorize the Proposed Acquisition and what mitigation, including environmental mitigation, to impose.

## 1.4.2 Other Agencies

This Draft EIS considers a potential major federal action by the Board. Although there are no Cooperating Agencies for this EIS, OEA has consulted with and will continue to consult with appropriate federal and state agencies regarding the Proposed Acquisition. These agencies and their responsibilities are briefly discussed below.

### 1.4.2.1 U.S. Environmental Protection Agency (EPA)

Under Section 309 of the Clean Air Act (42 U.S.C. § 7609), EPA reviews and comments on the environmental impacts of major federal actions for which an EIS is prepared under NEPA. EPA's Office of Federal Activities, which is responsible for reviewing EISs, evaluates and comments on the quality of analysis in the EIS and the extent of the proposal's impact on the environment. EPA announces the availability of any Draft EIS for public comment in the *Federal Register*. EPA also has broad oversight and implementing responsibility for federal environmental laws, including the Clean Air Act (42 U.S.C. §§ 7401-7671q), the Clean Water Act (33 U.S.C. §§ 1251-1387), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Chapter 103), the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629), and the Resource Conservation and Recovery Act (40 U.S.C. §§ 6901-6992k). OEA has consulted with EPA during preparation of this Draft EIS and will consider and respond to EPA's comments on this Draft EIS.

### 1.4.2.2 U.S. Army Corps of Engineers (the Corps)

The Corps is part of the U.S. Department of Defense, under the Secretary of the Army. The Corps, under Section 404 of the Clean Water Act (33 U.S.C. § 1344), has jurisdiction over activities that result in the discharge of dredge or fill material into any waters of the United States, including lakes, rivers, streams, oxbows, ponds, and wetlands. Activities within these systems could require Section 404 permits from the Corps. If the Board authorizes the Proposed Acquisition, the Applicants plan to undertake certain capital improvements within the rail ROW, including adding new passing sidings, extending existing sidings, adding double track, and adding a facility working track. Because some of the planned capital improvements could occur within waters of the United States, the Applicants may need to obtain Section 404 permits prior to beginning work on the planned capital improvements.

The Corps is also responsible for activities that may affect navigable waters of the United States, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). Section 10 requires that any entity proposing to perform work or place a structure in navigable waters obtain a Section 10 permit from the Corps prior to commencing the

activity. Because some of the planned capital improvement projects associated with the Proposed Acquisition would involve crossing navigable waters of the United States, the Applicants could need to obtain a Section 10 permit prior to beginning work on the planned capital improvements.

#### 1.4.2.3 U.S. Fish and Wildlife Service (USFWS)

USFWS is the federal agency with primary expertise in fish, wildlife, and natural resource issues. USFWS is responsible for implementing ESA and is also responsible for implementing the Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) and the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668d). Under Section 7 of ESA, USFWS is responsible for the review of federal agency actions and potential impacts on threatened and endangered species, and could issue a determination, in the form of a biological opinion, that details projected impacts on threatened and endangered species in the area of a proposed agency action. As the lead agency, the Board is responsible for initiating Section 7 consultation with USFWS. OEA is using the EIS process to concurrently complete and document compliance with Section 7. OEA has consulted with USFWS during the development of this Draft EIS and provided USFWS with this Draft EIS for review and comment. This Draft EIS reflects the status of Section 7 consultation, which will be fully completed and documented in the Final EIS.

#### 1.4.2.4 Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency created under the authority of NHPA. Among its roles, ACHP is responsible for advocating consideration of historic preservation in federal agency decision-making and promulgating regulations to implement Section 106 of NHPA. The Section 106 regulations at 36 C.F.R. Part 800 require federal agencies to consider the impact of their “undertakings” on “historic properties” listed or eligible for listing in the National Register of Historic Places (National Register) prior to licensing or providing funds for a project. In considering project impacts, federal agencies are required to consult with their applicants (CP and KCS, in this case), appropriate State Historic Preservation Officers (SHPOs), appropriate Tribal Historic Preservation Officers (THPOs), tribes, and other Section 106 Consulting Parties with a demonstrated interest in the undertaking. As part of its mission, ACHP encourages agencies to coordinate their Section 106 reviews with other federal laws, including NEPA, the Native American Graves Protection and Repatriation Act (25 U.S.C. §§ 3001-3013), the American Indian Religious Freedom Act (42 U.S.C. § 1996), the Archaeological Resources Protection Act (16 U.S.C. §§ 470aa-470mm), and other applicable laws.

#### 1.4.2.5 State Agencies

The Proposed Acquisition would affect 10 states, with eight states experiencing changes in rail operations that would exceed thresholds for environmental review detailed in *Chapter 2, Section 2.2.2, Impacts from Increased Rail Traffic*. OEA consulted with relevant state agencies including departments of transportation, environment, and conservation, as well as SHPOs. *Section 1.5, Agency Consultation*, describes the agency consultation process in more detail.

### 1.4.3 Scoping Process

The first stage of the environmental review process is scoping. Scoping is an open process for determining the range of issues that should be examined and assessed in the EIS. In addition to announcing that the Board would prepare an EIS for this proceeding, the Notice of Intent (NOI) that the Board issued on November 12, 2021 also requested comments on the scope of the EIS and presented the schedule of public scoping meetings. In the NOI, OEA solicited comments on the scope, alternatives, and issues to be analyzed in the EIS. OEA sent letters to local, state, federal, and tribal officials and agencies, as well as other potentially interested organizations. The letters announced OEA's intent to prepare an EIS, described the Proposed Acquisition, and set forth the dates, times, and log-in details for six online public scoping meetings. OEA also posted Google banner advertisements (banner ads) online focusing on areas with identified Environmental Justice (EJ) populations in the project area. The banner ads announced the project and encouraged viewers to click on the ad to visit the Board-sponsored project website for more information. The Board-sponsored project website provided information on the Proposed Acquisition including maps, the NOI, and dates and times for the public scoping meetings. In addition, OEA issued a press release to local media, including television stations, radio stations, and newspapers, along the proposed CPKC system. The press release announced OEA's intent to prepare an EIS and advertised the purpose, dates, and times for the public scoping meetings. After the close of the comment period on the scope of the EIS on January 3, 2022, OEA reviewed all comments received and issued a Final Scope of Study for the EIS on February 18, 2022, which responded to comments received during the scoping period and set forth the final issues to be examined in the EIS.

### 1.4.4 Draft EIS

Following the issuance of the Final Scope, OEA prepared this Draft EIS for the Proposed Acquisition. The Draft EIS identifies and analyzes alternatives—the Proposed Acquisition and the No-Action Alternative—and addresses potential impacts on the environment, including those identified during the scoping process. The Draft EIS focuses on:

1. Potential impacts from changes in rail operations along rail line segments, activity at rail yards, and activity at intermodal facilities where increases in rail traffic or activity as a result of the Proposed Acquisition would reach or exceed the thresholds for environmental review set forth in 49 C.F.R. § 1105.7(e), or thresholds developed by OEA in previous acquisition and merger cases;
2. Potential impacts related to changes in vehicular traffic that would reach or exceed the Board's thresholds for environmental analysis on roadways and at facilities as a result of the Proposed Acquisition; and
3. Potential impacts associated with making planned capital improvements within the rail ROW to accommodate the projected increase in rail traffic resulting from the Proposed Acquisition.

Based on the information provided by the Applicants and verified through the environmental review for this Draft EIS, rail lines in eight states—Illinois, Iowa, Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas—would experience increases in rail traffic that

reach or exceed the Board's environmental analysis thresholds as a result of the Proposed Acquisition. In addition to assessing the environmental impacts of the Proposed Acquisition, this Draft EIS sets forth OEA's preliminary recommendations for environmental mitigation measures.

### 1.4.5 Final EIS

Following issuance of this Draft EIS and a 45-day public and agency comment period, OEA will prepare and issue a Final EIS that will address the comments on the Draft EIS from the public; federal, state, and local agencies; and other interested parties, and will set forth OEA's final recommended environmental mitigation. Then, in reaching its decision on whether to authorize the Proposed Acquisition, the Board will consider the Draft EIS, the Final EIS, public comments, and any final environmental mitigation recommended by OEA.

### 1.4.6 Section 106 Process

The Section 106 regulations at 36 C.F.R. Part 800 require federal agencies to consider the impact of their undertakings on historic properties listed or eligible for listing in the National Register prior to licensing or providing funds for a project. In considering project impacts, federal agencies are required to consult with project applicants, SHPOs, THPOs, tribes, and other Section 106 Consulting Parties. Federal agencies must also make their findings available to the public and provide the ACHP an opportunity to comment on the undertaking. OEA has consulted and will continue to consult with appropriate SHPOs, THPOs, and other Section 106 Consulting Parties regarding the potential effect of the Proposed Acquisition on historic properties. Consistent with past practice in proceedings involving the acquisition of existing rail lines, the Section 106 review in this case is focused on the potential effect of the 25 planned capital improvements that the Applicants intend to add within the existing ROW because the planned capital improvements have the potential to affect historic properties. *Chapter 3, Section 3.9, Cultural Resources*, provides details on the status of Section 106 consultation, OEA's efforts to identify historic properties that could be affected by the Proposed Acquisition, and OEA's conclusions regarding potential effects on those properties. This Draft EIS reflects the status of the Section 106 consultation to date.

## 1.5 Agency Consultation

Following issuance of the NOI, OEA engaged with federal and state agencies through tailored meetings based on geography or resource topics. OEA sent letters to federal and state agencies providing background information on the Proposed Acquisition and how to participate in the process. The state agency letters extended invitations to relevant state agency staff for state-specific officials' briefings. Separately, OEA sent letters for individual agency meetings to the local regional offices, as applicable, of federal agencies with jurisdiction or interest in potentially affected resources. OEA held eight agency consultation meetings during the scoping period:

- Tuesday, November 30, 2021, Corps meeting

- Wednesday, December 1, 2021, Minnesota and Michigan state agencies meeting
- Wednesday, December 1, 2021, USFWS meeting
- Thursday, December 2, 2021, Illinois and Iowa state agencies meeting
- Monday, December 6, 2021, EPA meeting
- Tuesday, December 7, 2021, Kansas and Missouri state agencies meeting
- Wednesday, December 8, 2021, Louisiana and Arkansas state agencies meeting
- Thursday, December 9, 2021, Texas and Oklahoma state agencies meeting

OEA hosted meetings for relevant state and local agency staff (such as, transportation, environmental, and conservation departments). Agency comments addressed a range of issues, including:

- Potential impacts to nearby wildlife refuges;
- Potential impacts to tribal lands;
- Potential impacts to EJ communities;
- Railroad grade-crossing safety and delay; and
- Freight rail safety.

OEA also consulted with the SHPOs in a separate set of meetings to ensure that each state's individual cultural resource review processes were initiated and that the unique issues across the large project area were given appropriate attention. The letter OEA sent to SHPOs included a response form to identify points of contact and indicate their interest in participation based on whether known resources are present in the project area. OEA held nine SHPO meetings as follows:

- Wednesday, December 1, 2021, Texas SHPO
- Friday, December 3, 2021, Minnesota SHPO
- Friday, December 3, 2021, Illinois SHPO
- Monday, December 6, 2021, Iowa SHPO
- Tuesday, December 7, 2021, Oklahoma SHPO
- Tuesday, December 7, 2021, Missouri SHPO
- Thursday, December 9, 2021, Louisiana SHPO
- Monday, December 13, 2021, Arkansas SHPO
- Thursday, December 16, 2021, Kansas SHPO

At the end of the scoping period, OEA notified agencies of the availability of the Final Scope through email and OEA sent postcards to agencies for which email addresses were unavailable. Similarly, OEA notified the agencies of the availability of this Draft EIS through email with a link to the Draft EIS and by sending postcards to agencies for which email addresses were unavailable. Upon publication of the Notice of Availability of this Draft EIS in the *Federal Register*, a 45-day public and agency review and comment period will begin. After the comment period ends and OEA prepares the Final EIS addressing the timely comments received, EPA will publish a Notice of Availability of the Final EIS in the

*Federal Register*, and OEA will provide notification through emails and postcards to agencies.

## 1.6 Tribal Consultation

During scoping and the preparation of the Draft EIS, OEA consulted with federally recognized Indian tribes, consistent with NEPA, NHPA, and Executive Order (EO) 13175, “Consultation and Coordination with Indian Tribal Governments.” EO 13175 requires that federal agencies conduct government-to-government consultation with federally recognized Indian tribes in the development of federal policies (including regulations, legislative comments or proposed legislation, and other policy statements or actions) that have tribal implications. Through government-to-government consultation, tribes can voice potential concerns about significant resources that may not otherwise be raised during the Section 106 process.

OEA identified 67 federally recognized tribes that may have current or historic interest in areas where the Proposed Acquisition could result in increased rail traffic, increased activity at rail yards or intermodal facilities, or construction of the 25 planned capital improvements within the existing rail ROW. OEA invited those tribes to participate in the Section 106 process, government-to-government consultation, or both. OEA sent tailored letters to tribal leaders, THPOs, and cultural resource officials along with a response form to identify points of contact and indicate a preference for participation in the government-to-government consultation process and/or the Section 106 process. **Appendix B** includes an example of the letter and the list of tribal recipients. OEA called each tribe to ensure that the tribes received the letters and to answer any questions.

No tribes chose to participate in government-to-government consultation. Six tribes elected to participate in the Section 106 process. The tribes can also participate through the same opportunities afforded to agencies and the public if they did not elect government-to-government or Section 106 consultation.

OEA notified tribes of the availability of the Final Scope through email and sent postcards to tribes for which email addresses were unavailable. OEA has also notified tribes of the availability of the Draft EIS through emails or postcards and will use the same method to notify tribes of the availability of the Final EIS when it is issued.

## 1.7 Public Involvement

In accordance with the NEPA regulations, OEA made diligent efforts to notify and involve the public during each phase of the environmental review process to date, starting with the issuance of the NOI on November 12, 2021.

### 1.7.1 Public Notification Activities

OEA announced each formal public comment period, described in the following sections, through the *Federal Register*; on the Board’s website and the Board-sponsored project

website; through press releases; online banner ads, postcards, and letters and emails to local, state, and federal elected officials. Upon EPA's publication of the Notice of Availability for the Draft EIS in the *Federal Register*, the public will have 45 days to review the Draft EIS and provide comments. OEA is announcing this public comment period via the *Federal Register*; geotargeted online banner advertisements for EJ populations; the Board-sponsored project website; postcards; email notifications to local, state, and federal elected officials, as well as individuals who signed up to receive email notifications; and a press release. OEA is also sending email notices to community leaders in areas with EJ populations, or postcards for whom email addresses were unavailable. The Community Leaders Distribution List can be found in **Appendix A**.

When OEA issues the Final EIS, EPA will publish a Notice of Availability in the *Federal Register* and OEA will provide notification through geotargeted online banner advertisements for EJ populations in those population areas; the Board-sponsored project website; emails or postcards to local, state, and federal elected officials and to community leaders in EJ population areas, as well as to individuals who signed-up to receive notifications; and a press release. The Board-sponsored project website, project email inbox, and toll-free information phone line have been and will continue to be updated and monitored throughout the environmental review process.

## 1.7.2 Public Comment Periods

The EIS process for the Proposed Acquisition involves two formal public comment periods. The first comment period occurred during scoping and began with the issuance of the NOI on November 12, 2021. The scoping comment period was originally scheduled to end on December 17, 2021, but OEA extended the scoping comment period until January 3, 2022, in response to requests for an extension. During the scoping comment period, OEA hosted six online public scoping meetings at the following dates and times, listed in Central Standard Time (CST).

- Tuesday, November 30, 2021, 6 to 8 p.m.
- Wednesday, December 1, 2021, 2 to 4 p.m.
- Thursday, December 2, 2021, 6 to 8 p.m.
- Tuesday, December 7, 2021, 6 to 8 p.m.
- Wednesday, December 8, 2021, 2 to 4 p.m.
- Thursday, December 9, 2021, 6 to 8 p.m.

OEA also accepted written comments during the scoping comment period via the Board's website ([www.stb.gov](http://www.stb.gov)), the Board-sponsored project website, email, and regular mail. OEA received 443 written comments between November 12, 2021 and the end of the scoping comment period on January 3, 2022. The total number of comments received during the scoping period was 492, including both oral and written comments. All comments are available on the Board's website. OEA prepared the Final Scope of Study on February 18, 2022 for the EIS based on pertinent comments received during the scoping comment period.

OEA is providing a 45-day comment period on this Draft EIS where interested parties may review the Draft EIS and provide comments. OEA has sent a combination of emails, banner

ads, and post cards with a link to the Draft EIS to interested parties and media outlets. The entire Draft EIS is available on the Board’s website ([www.stb.gov](http://www.stb.gov)) by clicking on the “View all Decisions” button and searching by Service date (August 5, 2022) or Docket Number (FD 36500). The Draft EIS will be listed as an Environmental Document under the “Decision Type” category. The Draft EIS is also available on the project-specific website ([www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com)).

OEA is holding four in-person public meetings on the Draft EIS during which interested parties may review the Draft EIS, make oral comments in a formal setting, and/or submit written comments. OEA will begin each meeting with an open house followed by a brief overview of the Proposed Acquisition and environmental review process, followed by a public comment session. During the formal comment session, each interested individual will be given three minutes to present oral comments. A court reporter will be present to record these oral comments. If time permits, the court reporter will be available at the conclusion of the formal segment of the meeting to record oral comments from individuals not interested in addressing the meeting participants as a whole. Meeting transcripts will be available on the Board-sponsored project website. Meetings will be held at the following dates, times, and locations.

- September 12, 2022, 6 to 8 p.m. Central Daylight Time (CDT) in Itasca, Illinois
  - The Westin Chicago Northwest, 400 Park Boulevard, Itasca, Illinois 60143
- September 13, 2022, 6 to 8 p.m. (CDT) in Davenport, Iowa
  - River Center, 136 E. 3rd Street, Davenport, Iowa 52801
- September 14, 2022, 6 to 8 p.m. (CDT) in Excelsior Springs, Missouri
  - The Montgomery Event Venue, 425 S. Thompson Avenue, Excelsior Springs, Missouri 64024
- September 15, 2022, 6 to 8 p.m. (CDT) in Vidor, Texas
  - The Oaks Event Center, 2110 South Main Street, Vidor, Texas 77662

In addition, OEA will hold three online public meetings. Anyone interested in commenting is encouraged to pre-register on the Board-sponsored project website. OEA will begin the online public meeting with a brief overview of the Proposed Acquisition and environmental review process. Following the overview, OEA will receive oral comments in the order in which speakers have pre-registered. The online public meetings will be a facilitated formal comment session during which individuals who have pre-registered will be given three minutes to present their oral comments. If time permits, the facilitator will allow other interested individuals who did not pre-register to provide oral comments. Interested individuals can participate in the meeting by phone, computer, or both. A court reporter will participate to record oral comments. The meeting transcripts will be available on the project website after the meetings. To register for the online public meeting, visit [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com). The online public meetings will be held at the following date and times:

- September 7, 2022, 6 to 8 p.m. (CDT)
- September 8, 2022, 12 to 2 p.m. (CDT)
- September 19, 2022, 6 to 8 p.m. (CDT)

In addition to the public meetings, any interested parties are encouraged to submit written comments on all aspects of this Draft EIS. OEA will consider all timely comments in preparing the Final EIS, which will include responses to all substantive comments, OEA's final conclusions on potential environmental impacts, and OEA's final recommended environmental mitigation measures. The deadline for comments is September 26, 2022. When submitting comments on this Draft EIS, the Board encourages commenters to be as specific as possible and to substantiate concerns and recommendations.

Comment forms will be provided at the in-person public meetings. Completed forms will be accepted at the meetings or the forms can be submitted later by mail. Any interested party may submit written comments on this Draft EIS regardless of whether the commenter participated in any of the public meetings.

### 1.7.3 Environmental Justice Population Engagement

Throughout the NEPA process, OEA has made and will continue to make additional efforts to notify and consult with EJ populations, as required by EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. EO 12898 requires enhanced outreach efforts to environmental justice populations for public involvement opportunities. To identify potentially affected EJ populations, OEA applied a quarter-mile buffer along rail line segments where the projected increase in trains per day would reach or exceed the Board's analysis thresholds. Within those locations, OEA identified areas in the 80th percentile or higher of minority or low-income populations within each state as EJ population areas. OEA emailed letters to community leaders where email addresses were available and sent other community leaders letters by U.S. Mail. The letters sent to community leaders included flyers to post in their local communities.

In addition to contacting community leaders by letter, OEA issued geotargeted online banner advertisements to reach internet users on any platform (such as computers, tablets, and smart phones) through December 10, 2021. OEA determined that the online banner advertisements were appropriate means to reach environmental justice populations, as smart phone ownership rates among low-income and minority populations in the project area are estimated at 83% and 84%, respectively, indicating high rates of internet accessibility (Pew Research Center 2021).<sup>2</sup> The online banner advertisements were linked to the Board-sponsored project website and were posted from November 12, 2021 to December 10, 2021. During this time, banner ads made 236,000 impressions resulting in 986 clicks.

**Appendix A, Public Involvement**, contains the distribution list for community leaders and examples of the banner advertisement and letters sent to the community leaders.

### 1.7.4 How to Submit Comments on the Draft EIS

Interested agencies, tribes, individuals, and other stakeholders are encouraged to submit comments on this Draft EIS. OEA will accept oral comments during the public meetings, as

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<sup>2</sup> Minority population data was calculated from an average of smartphone ownership rates for Black and Hispanic populations (85 percent and 83 percent, respectively), the only non-white populations identified in the data. Low-income populations include the data from population categories under \$49,999 annual income.

discussed above. OEA will also accept written comments during the comment period, which ends on Monday, September 26, 2022. OEA will consider all timely comments equally no matter how the comments are received, and it is not necessary to attend a public meeting to provide comments on the Draft EIS.

Interested parties are encouraged to file their written comments electronically through the Board-sponsored project website at [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com). Written comments can also be submitted electronically on the Board's website, [www.stb.gov](http://www.stb.gov), by clicking on the "File an Environmental Comment" link. Please refer to Docket No. FD 36500 in all correspondence, including E-filings, addressed to the Board. Comments submitted by mail should be addressed to:

Joshua Wayland  
Surface Transportation Board  
Environmental Filing, Docket No. FD 36500  
c/o VHB  
940 Main Campus Drive Suite 500  
Raleigh, NC 27606

It is not necessary to mail written comments that have been filed electronically. Please refer to Docket No. FD 36500 in all correspondence addressed to the Board, including all comments submitted on the Draft EIS.

Written comments on this Draft EIS must be postmarked by September 26, 2022. Electronically filed comments must be received by September 26, 2022. All comments received—written, e-filed, or transcribed—will carry equal weight in helping to complete the EIS process and guide the Board in making a decision in this proceeding. Further information about the project can be obtained by calling OEA's toll-free number at 1-888-319-2337. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.

Following the close of the comment period on the Draft EIS on September 26, 2022, OEA will issue a Final EIS that will consider and respond to all substantive comments received on the Draft EIS and set forth OEA's final recommendations on environmental mitigation. The Board will then issue a final decision based on the Draft and Final EISs and all public and agency filings and comments in the public record for this proceeding. The final decision will address the transportation merits of the proposed project and the entire environmental record. If the Board decides to authorize the Proposed Acquisition, the Board may impose conditions on the Applicants as part of that decision, including environmental mitigation conditions.

This Draft EIS is available for viewing or download on the Board's website at [www.stb.gov](http://www.stb.gov) or on the Board-sponsored project website at [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com).