

SOUTH DAKOTA STATE RAILROAD BOARD MEETING
Becker-Hansen Building - Commission Room
July 20, 2016 @ 11:00 AM
Pierre, South Dakota

MEMBERS: Todd Yeaton, Chair
Carl Anderson –via phone
Jeff Burket
Jerry Cope
Sheldon Cotton
Gary Doering
Harlan Quenzer

OTHERS: Lester Thompson, Jack Parliament, Alex Huff, Dick Huff, Mike Williams, Jeff Cooley, John Groez, Blake Jones, Kim Halverson, Lucy Halverson, Mike Windsand, Toby Morris, and Brian Hammerback

STAFF: Darin Bergquist, Bruce Lindholm, Karla Engle, Lynn Kennison, Misty Siedschlaw, Bonnie Olson, Dave Voeltz, and Tessa Wenner

PHONE: John LeSeur and James Nord

Agenda Items:

Call to order

- 1) Discussion & Consideration of Conflicts of Interest
- 2) Approve the minutes of meeting on June 15, 2016
- 3) Discussion of laws relating to boards, authorities and commissions
- 4) Secretary's report
- 5) Update on MRC TIGER project
- 6) Update on Britton line project
- 7) Update on RCP&E Tiger project
- 8) Update on Sioux Valley Slide project
- 9) Update on Dakota Southern's MRC maintenance plan
- 10) Request for meeting date to adopt changes to Property Management Guideline #3
- 11) Consideration of Sale of Presho Property
- 12) Consideration of surveying railroad right of way in Kennebec
- 13) Consideration of sale of property at Napa Junction
- 14) Consideration of amendment to Slover & Loftus law firm agreement
- 15) Consideration of bid award for surplus of railroad bridge timber

Chair Yeaton called the regular meeting of the South Dakota State Railroad Board (the "Board") to order at 11:05 AM with a quorum present.

1) Discussion & Consideration of Conflicts of Interest

Chair Yeaton opened the floor to Board members to disclose potential conflicts of interest and to present requests for waivers pursuant to South Dakota Codified Law (SDCL) chapter 3-23.

A) Jeff Burket, current member of the South Dakota State Railroad Board, submitted two separate letters disclosing potential conflicts of interest pursuant to SDCL chapter 3-23 as follows:

- 1) Burket submitted a letter of disclosure requesting a waiver from the Board relating to his employment with Minerals Technologies, Inc. (MTI). Burket is an Operations Manager for MTI's U.S. mining plants. MTI sells and markets limestone and bentonite products in many markets and to multiple customers. To the best of Burket's knowledge, there are no contracts or other matters involving railroad-related activities. If Burket becomes aware of a specific contract or other matter that creates a conflict of interest, Burket will submit a letter of disclosure to the Board and request a waiver.

Motion was made by Anderson, second by Doering, to approve the waiver request submitted by Burket as the Board has determined that the matter underlying the conflict is fair, reasonable, and not contrary to the public interest. Motion carried by roll call vote. (6 aye, 1 abstain [Burket]).

- 2) Burket submitted a letter of disclosure requesting a waiver from the Board for a ten-year lease MTI currently has with the State of South Dakota Department of Transportation (DOT) to use the Maple Street rail yard in Rapid City, South Dakota, for rail car storage. Burket is currently employed by MTI. Burket will abstain from any discussion and voting in regard to the lease of the rail yard in Rapid City, South Dakota with MTI.

Motion was made by Quenzer, second by Cotton, to approve the waiver request submitted by Burket as the Board has determined that the matter underlying the conflict is fair, reasonable, and not contrary to the public interest. Motion carried by roll call vote. (6 aye, 1 abstain [Burket]).

B) Harlan Quenzer, current member of the South Dakota State Railroad Board, submitted a letter of disclosure of potential conflicts of interest and requested a waiver from the Board. Quenzer is currently employed by Schmucker, Paul, Nohr and Associates. Quenzer will be retiring from Schmucker, Paul, Nohr and Associates on July 31, 2016. Schmucker, Paul, Nohr and Associates enters into contracts with the State of South Dakota for civil engineering and

surveying services. In addition, Quenzer's spouse serves as a member of the Mitchell Area LifeQuest Foundation Board. Mitchell Area LifeQuest Foundation solicits donations from a multitude of individuals and businesses to provide supplemental long-term financial support. To the best of Quenzer's knowledge there are no contracts or other matters involving railroad-related activities. If Quenzer becomes aware of a specific contract or other matter that creates a conflict of interest, Quenzer will submit a letter of disclosure to the Board and request a waiver.

Motion was made by Cope, second by Cotton, to approve the waiver request submitted by Quenzer as the Board has determined that the matter underlying the conflict is fair, reasonable, and not contrary to the public interest. Motion carried by roll call vote. (6 aye, 1 abstain [Quenzer]).

C) Jerry Cope, current member of the South Dakota State Railroad Board, submitted a letter of disclosure of potential conflicts of interest and requested a waiver from the Board as follows:

- 1) Cope is currently employed by Dakota Mill & Grain ("DMG") as a grain merchandiser. Cope works on projects such as operations, upgrades, rail development and transportation related issues that may be impacted by decisions of the Board. This includes, but is not limited to, negotiations with the State of South Dakota over land leases, track leases, track crossings, land acquisition, and loans.
- 2) Cope serves as a Board member of South Dakota Grain and Feed Association ("SDGFA"). SDGFA obtains donations and sponsorships from contractors, related companies, and railroads serving the State of South Dakota for the general purpose of funding SDGFA's annual Ag Expo.
- 3) Cope is also a Board Director and member of the Rail Shipper/Receiver Committee for the National Grain & Feed Association.
- 4) Cope's spouse serves as the Executive Director of South Dakota Ag and Rural Leadership ("SDARL"), a non-profit Ag-based leadership program that relies entirely on donations. Donors include railroads operating in South Dakota, other agricultural companies doing business in South Dakota, and individuals.

Cope will abstain from any discussion and voting in regards to activities involving Dakota Mill & Grain, including an item on the current agenda.

Motion was made by Cotton, second by Burket, to approve the waiver submitted by Cope as the Board has determined that the matters underlying the conflict are fair, reasonable, and not contrary to the public interest. Motion carried by roll call vote. (6 aye, 1 abstain [Cope])

5) Approve the minutes of meeting on June 15, 2016

Motion by Burket, second by Quenzer, to approve the June 15, 2016, Railroad Board meeting minutes. Motion carried by roll call vote (all aye).

6) Discussion of laws relating to boards, authorities and commissions

Karla Engle discussed a new law authorizing the public to record meetings of boards, authorities and commissions. Engle will provide additional information on other laws affecting boards, authorities, and commissions at a later meeting.

4) Secretary's report

Secretary Bergquist requested himself, the Board, and select Department of Transportation ("Department") staff (including John LeSeur with Slover & Loftus) to enter into an executive session to discuss pending legal matters.

Motion by Cope, second by Burket, to enter into executive session at 11:20 AM pursuant to SDCL 1-25-2(3) to consult with legal counsel or review communications from legal counsel about proposed or pending litigation or contractual matters. Motion carried by roll call vote (all aye).

The Board reconvened at 11:52 AM.

Chair Yeaton recognized Bruce Lindholm, Program Manager Air, Rail, and Transit on his upcoming retirement.

Motion by Cotton, second Quenzer, to pass Resolution 2016-B recognizing Lindholm for his accomplishments with the South Dakota Department of Transportation railroad program. Motion carried by roll call vote (all aye).

Resolution 2016-B was adopted.

5) Update on MRC TIGER project

Jeff Cooley, a representative of Civil Design, Inc., updated the Board on the status of the MRC TIGER project as follows:

- 50,000 ties have been installed.
- 2/10th of mile of rail left to install.
- Ballast is being delivered.
- Ballast and surfacing will be the focus in August.

6) Update on Britton line project

Lindholm updated the Board on the status of the Britton line as follows:

- Work on the line should be completed by mid-September.
- Materials are still being delivered.
- South leg of wye is completed.
- Workers are installing 1,500 ties from Jarrett Junction to Britton.

7) Update on RCP&E Tiger project

Lindholm updated the Board on the status of the RCP&E line as follows:

- Federal Railroad Administration has given approval to purchase rail using non-federal funds while waiting on the issuance of the grant.
- RCP&E will decide whether to make this advance rail purchase.
- Grading for the siding is still waiting for environmental approval.

8) Update on Sioux Valley Slide project

Lindholm updated the Board on the status of the Sioux Valley Slide project. The Department is still waiting on completion of the environmental study and final environmental approvals regarding the endangered long-eared bat that may have been detected in the area of this project.

9) Update on Dakota Southern's MRC maintenance plan

Lindholm recommended that the Board determine the condition of the rehabilitated segments of the Mitchell to Rapid City line (the "MRC") by obtaining a geometry car assessment and an expert inspection at a total estimated cost of \$60,000.00.

Motion by Quenzer, second by Doering to authorize the Department to obtain a geometry car assessment and an expert inspection of the rehabilitated segments of the MRC line stretching from Mitchell, South Dakota, to Chamberlain, South Dakota, and from Chamberlain, South Dakota, to Presho, South Dakota. Motion carried by roll call vote (all aye).

Lester Thompson, a representative of the Dakota Southern Railway Company ("DSRC"), provided an update to the Board on Dakota Southern's maintenance activities on the MRC line.

- All bridge stringers have been installed.
- 10 out of 20 bridge caps are completed.
- Workers have marked additional bridge caps to be replaced.
- DSRC's contractor is respraying for weeds. Horse tail is one weed remaining that is only killed in early April.
- All ties have been replaced.
- All removed ties are in the process of being picked up.
- Ballast of 10,000 tons has been delivered and distributed.

- Tamping is being done.
- DSRC is looking for a disposal facilities for tie disposal.

A committee of the Board, consisting of Doering and Quenzer, along with Department staff, completed a written report of their observations of the maintenance activities on the MRC line from Mitchell to Chamberlain; this report was included in the Board's meeting packet. They also provided the Board with a verbal summary of their observations concerning the progress being made by DSRC.

10) Request for meeting date to adopt changes to Property Management Guideline

Lindholm requested the Board set a meeting date to consider updating the method of determining the annual rental rate under Guideline #3 under the Property Management Guidelines to a more market based process. Lindholm requests the meeting be held at next month's Board meeting.

Motion by Anderson, second by Burket, to hold a meeting to consider updates to Guideline #3 under the Property Management Guidelines at next month's Board meeting. Motion carried by roll call vote (all aye).

11) Consideration of Sale of Presho Property

Cope recused himself from the discussion and took a seat in the audience.

Brian Hammerback, a representative of Dakota Mill & Grain, Inc. informed the Board that Dakota Mill & Grain, Inc., would still like to complete the purchase of the Presho property. Dakota Mill & Grain, Inc. is working on changes to its original purchase proposal and hopes to present his proposal at the next meeting of the Board.

No action taken.

Cope returned to his seat at the Board table.

12) Consideration of surveying railroad right of way in Kennebec

Lindholm informed the Board that during the rehabilitation of the MRC project the current leaseholder, Eugene Martin, allowed the Department and the Department's contractors to stockpile material on the leased property. The use of heavy machinery on the leased property caused large ruts in the ground. The current leaseholder wishes to continue to lease the property from the Department and pay for his lease and is willing to restore the property. In exchange for the repairs being made by the current leaseholder to restore the property, the current leaseholder has requested the Department conduct a survey to identify the location of the legal property line to minimize questions about the property boundaries.

Motion by Cotton, second by Cope, to approve entering into an agreement with the leaseholder to have the leaseholder restore the leased property in exchange for the Department providing a survey to identify the property corners and establish the boundary of the leased property. Motion carried by roll call vote (all aye).

Resolution 2016-B23 was adopted.

13) Consideration of sale of property at Napa Junction

Toby Morris, a representative of Dakota Plains Ag Center, LLC ("Dakota Plains") addressed the Board as follows:

During the design and construction of the loop track at Napa Junction, an assumption was made by the engineer for Dakota Plains that Dakota Plains had access and use of State-owned right of way along the Napa Platte mainline. The grading for the loop track extends into the State-owned right of way 20'.

Dakota Plains has proposed a solution where Dakota Plains would acquire the 20' wide strip of State-owned railroad right of way to allow for construction of the loop track, and also would grade the remaining State-owned railroad right of way to allow for the construction of a siding track.

Carl Anderson left the discussion by disconnecting his phone connection.

After discussion of the proposal, the Board decided to take no action on this item. The Board requested Department staff to work with Dakota Plains in order to present some additional options at the next meeting.

14) Consideration of amendment to Slover & Loftus law firm agreement

Lindholm requested Board approval to amend the Slover and Loftus agreement to allow for an additional \$100,000 to be added to the agreement for continued legal services. Slover and Loftus has been working on various rail related issues for the Department and the Board.

Motion by Cope, second by Cotton, to approve an amendment to the current agreement with Slover & Loftus to add an additional \$100,000 to the agreement for continued legal services. Motion carried by roll call vote (6 aye, Anderson absent).

Resolution 2016-B24 was adopted.

15) Consideration of bid award for surplus of railroad bridge timber

Lindholm presented to the Board the results of the July 18, 2016, bid opening for the Bridge Timber bid.

There was one bid submitted by Royal Peterson in the amount of \$10,000.00.

Motion by Burket, second by Doering, to approve the bid award to Royal Peterson for the bridge timber. Motion carried by roll call vote (6 aye, Anderson absent).

Resolution 2016-B25 was adopted.

Adjourn

Motion to adjourn by Doering, second by Quenzer.

The next railroad Board Meeting is scheduled for August 17, 2016.