

**SOUTH DAKOTA STATE RAILROAD BOARD MEETING MINUTES
AUGUST 16, 2017 – 11:00 A.M.
BECKER-HANSEN BUILDING – 700 EAST BROADWAY
PIERRE, SOUTH DAKOTA**

MEMBERS PRESENT: Todd Yeaton, Chair
Harlan Quenzer, Vice Chair
Jeff Burket, Member
Jerry Cope, Member
Sheldon Cotton, Member

**MEMBERS PRESENT
VIA CONFERENCE CALL:** Gary Doering, Member

DOT STAFF PRESENT: Darin Bergquist, Joel Jundt, Karla Engle, Bonnie Olson, Jack Dokken, Lynn Kennison, Misty Siedschlaw, and Tessa Wenner

**OTHERS PRESENT,
VIA CONFERENCE CALL:** Kim Halverson, Erin Heupel, Avory Beggs, Drew Fredricks, Kirk Jones

OTHERS PRESENT: Alex Huff, Jeff Cooley, Dick Huff, Mark Cutright, Heath Haden, Jack Parliament, Rob Everist, and Bob Mercer

Chair Yeaton called the meeting of the South Dakota State Railroad Board (the “Board”) to order at 11:05 a.m. Roll call was taken and a quorum was determined.

Karla Engle, Office of Legal Counsel, presented the new Conflict of Interest laws and Consideration of Conflicts of Interest through a PowerPoint presentation.

After Engle’s presentation relating to the updates to the conflict of interest laws, Chairman Yeaton opened the floor to the Board members to disclose potential conflicts of interest and to present requests for waivers pursuant to South Dakota Codified Law (SDCL) chapter 3-23.

Jeff Burket submitted a written disclosure and waiver request (attached to and incorporated into these minutes as **Exhibit A**) concerning a lease between Minerals Technologies, Inc. and the South Dakota Department of Transportation (the “Department”) that allows Mineral Technologies, Inc. to use a railroad yard in Rapid City, South Dakota for rail car storage. Burket is currently employed by Minerals Technologies, Inc.. Burket also provided a verbal

summary of the lease. Burket will abstain from any discussion and voting in regard to the lease of this rail yard to Minerals Technologies, Inc.

A MOTION WAS MADE by Cope and seconded by Quenzer to approve the waiver request submitted by Burket as the Board has determined the matter underlying the conflict is fair, reasonable, and not contrary to public interest. All present voted aye by roll call vote, except Burket, who abstained from the Board discussion and vote. The motion carried.

Jerry Cope submitted a written disclosure and waiver request (attached to and incorporated into these minutes as **Exhibit B**) regarding leases between his employer, Dakota Mill & Grain, Inc., ("DM&G") and the Department for state-owned rail property in Murdo, South Dakota, and Presho, South Dakota, as well as proposed and pending purchases of state-owned property by DM&G in Presho, South Dakota. Cope also provided a verbal summary of these transactions. Cope will abstain from any discussion and voting in regard to DM&G's leases in Murdo, South Dakota and Presho, South Dakota. Cope will also abstain from any discussion and voting in regard to the pending and proposed purchases of state-owned property in Presho, South Dakota by DM&G.

A MOTION WAS MADE by Quenzer and seconded by Cotton to approve the waiver request submitted by Cope as the Board has determined that the matter underlying the conflict is fair, reasonable, and not contrary to public interest. All present voted aye by roll call vote, except Cope, who abstained from the Board discussion and vote. The motion carried.

Yeaton turned the meeting over to Vice Chair Quenzer.

Todd Yeaton submitted a written disclosure and waiver request (attached to and incorporated into these minutes as **Exhibit C**) requesting a waiver from the Board for a potential conflict of interest. Yeaton explained to the Board plans that he and his business partner have for entering into a lease with the Department for use of railroad rights of way and possibly highway rights of way for haying purposes.

A MOTION WAS MADE by Burket and seconded by Cope to approve the waiver request submitted by Yeaton as the Board has determined that the matter underlying the conflict is fair, reasonable, and not contrary to public interest. All present voted aye by roll call vote, except Yeaton, who abstained from the Board discussion and vote. The motion carried.

Quenzer turned the meeting back over to Chair Yeaton.

Chair Yeaton asked for a motion to approve the minutes of July 5, 2017.

A MOTION WAS MADE by Burket and seconded by Cotton to approve the July 5, 2017, meeting minutes. All present voted aye by roll call vote. The motion carried.

Joel Jundt, Deputy Secretary of the Department, presented the Board with an update of the Railroad trust fund condition statement (3044-681).

Darin Bergquist, Secretary of the Department, informed the Board that he was requested to appear at the Government Operations and Audit Committee (“GOAC”) meeting of July 24, 2017. He provided GOAC with general information on how DOT monitors and manages state-owned railroad property. The Committee requested Bergquist return to provided more information regarding car storage in regard to hazardous materials.

Secretary Bergquist then presented the Board with Dakota Southern Railway Company (DSRC) car storage lease payment information for the state-owned Napa to Ravinia line. Bergquist explained there is an issue regarding how gross revenue should be calculated for purposes of determining the 50% car storage lease payment. The Board discussed authorizing the Department to enter into negotiations with DSRC on a proposed amendment to the current lease agreement.

A MOTION WAS MADE by Cotton and seconded by Burket to authorize the Department to negotiate with Dakota Southern Railway Company on a proposed amendment to the current Napa to Ravinia lease agreement concerning how gross revenue should be calculated for purposes of determining the 50% car storage lease payment. Any agreement negotiated between the Department and DSRC will be presented to the Board at a later date for final approval. All present voted aye by roll call vote. The motion carried.

The Board requested the Department inquire into why the Napa to Ravinia line has not been servicing rail cars to potential shippers.

Deputy Secretary Jundt presented the Board with an informational item. The Department will be requesting the following information from Regional Rail Authorities and operators:

- Federal Rail Authority (FRA) inspections;
- Weekly track inspection reports;
- Monthly maintenance plan progress reports;
- Quarterly bridge inspections reports;
- Annual new construction reports; and
- Rehabilitation reports.

The Department, operators, and Regional Railroad Authorities will work together to find an acceptable format to allow for the information to be shared with or accessed by the Department.

No action was taken.

Deputy Secretary Jundt updated the Board on the Richland-Sargent drainage project. The Board had previously approved obligating funds in an amount up to \$250,000.00 to replace a drainage structure located at the Richland-Sargent drainage crossing with the Britton line near Cayuga, North Dakota. The remaining decision to be finalized is the amount of funding the Board is agreeable to actually expend for the project. The Department is requesting the Board approve funding for this project up to \$250,000.00.

A MOTION WAS MADE by Quenzer and seconded by Doering to authorize the Department to enter into a loan agreement with Marshall County Regional Railroad Authority for an amount up to \$250,000.00 for replacement of the Richland-Sargent drainage project. Loan repayment would commence after Marshall County Regional Railroad Authority's satisfaction of prior loan payments based on current surcharge rates. All present voted aye by roll call vote. The motion carried.

Deputy Secretary Jundt presented the Board with a bid for an underwater bridge inspection of the Missouri River Bridge in Chamberlain, SD. The bridge is part of the state-owned Mitchell to Rapid City ("MRC") rail line and has not had an underwater bridge inspection since the 1980's. The Department is recommending the underwater bridge inspection be completed and raised the issue of who should be responsible for paying the cost of the underwater bridge inspection estimated at \$17,500.

A MOTION WAS MADE by Cope and seconded by Cotton to approve the State expending up to \$17,500.00 on a one-time basis to cover the cost of performing an underwater bridge inspection on the MRC bridge structure located over the Missouri River in Chamberlain, SD. All present voted by roll call vote, with 5 aye votes [Yeaton, Doering, Cope, Burket and Cotton], and 1 nay vote [Quenzer]. The motion carried.

Jack Parliament, President of D&I Railroad Co., presented the Board with the estimated project costs for rehabilitation of the T480 bridge provided by Koppers Railroad Structures Inc. Parliament suggested the Board apply for a federal grant to help fund rehabilitation of the T480 bridge.

A MOTION WAS MADE by Quenzer and seconded by Cope to authorize the Department to prepare and submit a federal grant application in cooperation with D&I Railroad Co. ("D&I") for the replacement of facilities on the state owned rail line subleased by D&I, with preference placed on bridge work. The Department is further authorized to commit the previously approved state funding share of \$1,950,888.50 as match for the grant. All present voted aye by roll call vote. The motion carried.

The Board requested D&I to obtain a third opinion for the cost to rehabilitate the T480 bridge.

Jack Dokken, Office of Air, Rail, and Transit Program Manager, introduced Board packet attachment 3, containing an observation report of the MRC line submitted by Quenzer.

No action was taken.

Dokken provided updates to the Board on the following projects:

- On August 14, 2017, a project kick off meeting was held between the Department and Federal Railroad Association (“FRA”) regarding the RCP&E TIGER project.
- Sioux Valley relocation: 4 tribal entities have raised interest in this project as a cultural site. FRA will be scheduling future meetings with the interested tribes to better understand any concerns the tribes may have.

A MOTION WAS MADE by Burket and seconded by Cope to adjourn.

With no other business to come before the Board, the meeting was adjourned at 2:05 p.m.

ANNUAL DISCLOSURE FOR AUTHORITY/BOARD/COMMISSION MEMBER
PURSUANT TO SDCL CHAPTER 3-23

THIS IS A PUBLIC DOCUMENT

Name of Member: Jeff Burket

Name of Board, Authority or Commission: state Railroad Board + Rail Authority

The Member shall disclose below any contract in which the Member has an interest or from which the Member derives a direct benefit if the contract is:

- 1) With the state agency to which the Member's board, authority or commission is attached for reporting or oversight purposes and which contract requires the expenditure of government funds;
- 2) With the state and which contract requires the approval of the Member's board, authority or commission and the expenditure of government funds; or
- 3) With a political subdivision of the state if the political subdivision approves the contract and:
 - a. Is under the regulatory oversight of the authority, board, or commission, or
 - b. Is under the regulatory oversight of the agency to which the Member's board, authority or commission is attached.

The Member shall disclose the contract even though no additional authorization is needed from the Member's board, authority or commission to have an interest or derive a benefit from the contract.

The Member shall also identify every entity in which the Member possesses an ownership interest of five percent or greater if:

- 1) The entity receives grant money from the State, either directly or by a pass-through grant or
- 2) The entity contracts with the State or any political subdivision for services.

1. Contracts in which you have an interest pursuant to SDCL Chapter 3-23 and which do not violate any other provision of law - Provide the following for each contract in which you have, or will have, an interest. For further information see SDCL 3-23-2.1 and 3-23-3.1.

Description of the contract	Parties	Description of your interest/role in the contract	Date contract was previously disclosed, if applicable
Lease of Milwaukee Yard in Rapid City	MTI American Colloid	Employee of MTI who leases the yard	

Attach additional pages, if necessary.

2. Contracts in which you have a direct benefit pursuant to SDCL Chapter 3-23 - Provide the following for each contract from which you derive, or will derive, a direct benefit. For more information see SDCL 3-23-2, 3-23-2.2 and 3-23-3.1.

Description of the contract	Parties	Description of the direct benefit	Date contract was authorized
Lease of Milwaukee Yard in Rapid City	MTI American Colloid	Employee of MTI who leases the yard	

Attach additional pages, if necessary.

3. Entities in which you possess an ownership interest of five percent or more that receive grant money from the State, either directly or by a pass-through grant, or that contract with the State or any political subdivision for services – Provide the following for each such entity. See SDCL 3-23-3.1.

Description of the contract or grant	Party in which you possess the interest	State agency or subdivision

Attach additional pages, if necessary.

The member shall complete a separate authorization request for any contract identified above that requires authorization from the Member's board, authority or commission in order for the Member to legally derive a direct benefit.

Signature of Member:  Date: 8/16/17

STATE OF SOUTH DAKOTA

(insert name of board/commission/authority) South Dakota State Railroad Board and South Dakota Railroad Authority
REQUEST FOR STATE BOARD WAIVER
PURSUANT TO SDCL CHAPTER 3-23

THIS IS A PUBLIC DOCUMENT

Date: 8/16/17

Name of Board Member or Former Board Member: Jeff Burkel

Name of Board, Authority or Commission: State Railroad Board + State Rail Authority

Brief explanation of contract for which a waiver is requested:

- a) Parties to the contract
Employee of MTI who is leasing the Milwaukee yard in Rapid City
- b) Board Member's role in the contract
manage the lease of the yard.
- c) Purpose and objective of the contract
Storage of railcars
- d) Consideration or benefit conferred or agreed to be conferred upon each party
Employee of MTI
- e) Duration of the contract
5 years

Signature of Requesting Party:  Date 8/16/17

ANNUAL DISCLOSURE FOR AUTHORITY/BOARD/COMMISSION MEMBER
PURSUANT TO SDCL CHAPTER 3-23

THIS IS A PUBLIC DOCUMENT

Name of Member: Jerry Cope
Name of Board, Authority or Commission: State Rail Board * State Rail Authority

The Member shall disclose below any contract in which the Member has an interest or from which the Member derives a direct benefit if the contract is:

- 1) With the state agency to which the Member's board, authority or commission is attached for reporting or oversight purposes and which contract requires the expenditure of government funds;
- 2) With the state and which contract requires the approval of the Member's board, authority or commission and the expenditure of government funds; or
- 3) With a political subdivision of the state if the political subdivision approves the contract and:
 - a. Is under the regulatory oversight of the authority, board, or commission; or
 - b. Is under the regulatory oversight of the agency to which the Member's board, authority or commission is attached.

The Member shall disclose the contract even though no additional authorization is needed from the Member's board, authority or commission to have an interest or derive a benefit from the contract.

The Member shall also identify every entity in which the Member possesses an ownership interest of five percent or greater if:

- 1) The entity receives grant money from the State, either directly or by a pass-through grant or
- 2) The entity contracts with the State or any political subdivision for services.

1. Contracts in which you have an interest pursuant to SDCL Chapter 3-23 and which do not violate any other provision of law - Provide the following for each contract in which you have, or will have, an interest. For further information see SDCL 3-23-2.1 and 3-23-3.1.

Description of the contract	Parties	Description of your interest/role in the contract	Date contract was previously disclosed, if applicable
Presho land purchase Mundo land lease Presho land lease in City of Presho	Dakota Mill & Grain, Inc.	Employed by Dakota Mill & Grain Inc.	Presho 7/5/17 Agreement Approved by Rail Board Mundo land lease - ongoing Presho land lease in City limits - ongoing

Attach additional pages, if necessary.

2. Contracts in which you have a direct benefit pursuant to SDCL Chapter 3-23 - Provide the following for each contract from which you derive, or will derive, a direct benefit. For more information see SDCL 3-23-2, 3-23-2.2 and 3-23-3.1.

Description of the contract	Parties	Description of the direct benefit	Date contract was authorized
Presho land purchase Mundo land lease Presho land lease in City of Presho	Dakota Mill & Grain, Inc.	Employed by Dakota Mill & Grain, Inc.	Presho 7/5/17 Agreement Approved by Rail Board Mundo land lease - ongoing Presho land lease in City limits - ongoing

Attach additional pages, if necessary.

3. Entities in which you possess an ownership interest of five percent or more that receive grant money from the State, either directly or by a pass-through grant, or that contract with the State or any political subdivision for services – Provide the following for each such entity. See SDCL 3-23-3.1.

Description of the contract or grant	Party in which you possess the interest	State agency or subdivision

Attach additional pages, if necessary.

The member shall complete a separate authorization request for any contract identified above that requires authorization from the Member's board, authority or commission in order for the Member to legally derive a direct benefit.



Signature of Member: _____ Date: 10/18/17 _____

STATE OF SOUTH DAKOTA

(insert name of board/commission/authority) South Dakota State Railroad Board and South Dakota Railroad Authority
REQUEST FOR STATE BOARD WAIVER
PURSUANT TO SDCL CHAPTER 3-23

THIS IS A PUBLIC DOCUMENT

Date: 8/16/17

Name of Board Member or Former Board Member: Jerry Cope

Name of Board, Authority or Commission: South Dakota Rail Board / South Dakota State Rail Authority

Brief explanation of contract for which a waiver is requested:

a) Parties to the contract

Dakota Mill & Grain, Inc.

b) Board Member's role in the contract

Employed by Dakota Mill & Grain Inc.

c) Purpose and objective of the contract

Purchase of land east of Presho for construction of Rail Siding

d) Consideration or benefit conferred or agreed to be conferred upon each party

Employed by Dakota Mill & Grain Inc.

e) Duration of the contract

~~2016~~ Fiscal Year 2017

Signature of Requesting Party: Jerry D Cope

Date 8/16/17

ANNUAL DISCLOSURE FOR AUTHORITY/BOARD/COMMISSION MEMBER
PURSUANT TO SDCL CHAPTER 3-23

THIS IS A PUBLIC DOCUMENT

Name of Member: Todd Yeaton

Name of Board, Authority or Commission: Railroad Board - Railroad Authority

The Member shall disclose below any contract in which the Member has an interest or from which the Member derives a direct benefit if the contract is:

- 1) With the state agency to which the Member's board, authority or commission is attached for reporting or oversight purposes and which contract requires the expenditure of government funds;
- 2) With the state and which contract requires the approval of the Member's board, authority or commission and the expenditure of government funds; or
- 3) With a political subdivision of the state if the political subdivision approves the contract and:
 - a. Is under the regulatory oversight of the authority, board, or commission, or
 - b. Is under the regulatory oversight of the agency to which the Member's board, authority or commission is attached.

The Member shall disclose the contract even though no additional authorization is needed from the Member's board, authority or commission to have an interest or derive a benefit from the contract.

The Member shall also identify every entity in which the Member possesses an ownership interest of five percent or greater if:

- 1) The entity receives grant money from the State, either directly or by a pass-through grant or
- 2) The entity contracts with the State or any political subdivision for services.

- Contracts in which you have an interest pursuant to SDCL Chapter 3-23 and which do not violate any other provision of law - Provide the following for each contract in which you have, or will have, an interest. For further information see SDCL 3-23-2.1 and 3-23-3.1.

Description of the contract	Parties	Description of your interest/role in the contract	Date contract was previously disclosed, if applicable

Attach additional pages, if necessary.

- Contracts in which you have a direct benefit pursuant to SDCL Chapter 3-23 - Provide the following for each contract from which you derive, or will derive, a direct benefit. For more information see SDCL 3-23-2, 3-23-2.2 and 3-23-3.1.

Description of the contract	Parties	Description of the direct benefit	Date contract was authorized
Haying Railroad + Highway Right of way	Todd Yeaton Kevin Heath	Income from Hay Sales and usage.	

Attach additional pages, if necessary.

3. Entities in which you possess an ownership interest of five percent or more that receive grant money from the State, either directly or by a pass-through grant, or that contract with the State or any political subdivision for services – Provide the following for each such entity. See SDCL 3-23-3.1.

Description of the contract or grant	Party in which you possess the interest	State agency or subdivision
<p>Haying Railroad + Highway Right of way.</p>		<p>DOT</p>

Attach additional pages, if necessary.

The member shall complete a separate authorization request for any contract identified above that requires authorization from the Member's board, authority or commission in order for the Member to legally derive a direct benefit.



Signature of Member: _____

Date: _____

8-16-17

STATE OF SOUTH DAKOTA

(insert name of board/commission/authority) South Dakota State Railroad Board and South Dakota Railroad Authority
REQUEST FOR STATE BOARD WAIVER
PURSUANT TO SDCL CHAPTER 3-23

THIS IS A PUBLIC DOCUMENT

Date: 8-16-17

Name of Board Member or Former Board Member: Todd Yeaton

Name of Board, Authority or Commission: Railroad Board - Railroad Authority

Brief explanation of contract for which a waiver is requested:

a) Parties to the contract

Todd Yeaton + DOT

b) Board Member's role in the contract

Putting up hay on DOT leased land.

c) Purpose and objective of the contract

Hay lease from DOT - Railroad ROW
Hay sales and useage
Highway ROW

d) Consideration or benefit conferred or agreed to be conferred upon each party

Hay - Sales and own use

e) Duration of the contract

Annual

Signature of Requesting Party:  Date 8-16-17