

SOUTH DAKOTA STATE RAILROAD BOARD MEETING MINUTES

December 15, 2021 at 11:00a.m. CST

Becker-Hansen Building/ Commission Room – 700 E. Broadway Ave, Pierre SD

MEMBERS PRESENT: Jerry Cope, Chairman
Jeff Burket, Vice-chairman
Steve Scharnweber, Secretary
Greg Carmon
Gary Doering
Jack Nelson

DOT STAFF PRESENT: Joel Jundt, Karla Engle, Kellie Beck, Jack Dokken, Perry Griffith, and Kari Kroll

OTHERS PRESENT: Scott Van Den Top – D&I Railroad Co. (D&I); Ed Van Gerpen – Bon Homme County; Janet Wagner – Friends of Tabor to Platte Rail to Trail; Ron Wagner - Friends of Tabor to Platte Rail to Trail; Larry Lucas - Friends of Tabor to Platte Rail to Trail; Dean Krogman - Rapid City, Pierre & Easter Railroad (RCP&E); Dan Kippley – Ellis & Eastern; Tony Solie – Redneck & Western/ WATCO; Ralph Schmidt – Sisseton Millbank Railroad; and Bruce Lindholm – Grant Solutions

OTHERS PRESENT

VIA CONFERENCE CALL: Alex Huff, Jerry Vest – RCP&E; Ben Hayben - RCP&E; Hollie Stalder – Belle Fourche Economic Development Corporation; Dan Bilka; David Scott; Amy Allhisier; Jeff Cooley – Civil Design Inc; Kley Cameron – Redneck & Western/ WATCO; and Keith Fiala

Chairman Jerry Cope called the meeting of the South Dakota Railroad Board (the “Board”) to order at 11:00 a.m. CST. A roll call was taken. A quorum was determined.

Cope opened the floor to the Board members to disclose potential conflicts of interest and to present requests for waiver pursuant to the South Dakota Codified Law (SDCL) chapters 3 – 23.

No conflicts of interest were disclosed, and no waivers were requested.

Cope asked for a motion to approve the November 17, 2021 Board meeting minutes.

A MOTION WAS MADE by Carmon and seconded by Burket to approve the November 17, 2021 Board meeting minutes. All present voted aye by voice vote. The motion carried.

Copen opened the floor to public input. The following individuals addressed the Board:

- Ed Van Gerpen of Bon Homme County shared with the Board his opposition to the trail project proposed for the state-owned Napa to Platte rail line. He objects to traffic being routed to county roads with no shoulder and the additional risks that would bring.
- Hollie Stalder of the Belle Fourche Economic Development Corporation (BFEDC) shared with the Board that BFEDC would be rescinding its 2021 Special Transportation Circumstances (STC) grant application for funding. BFEDC intends to reapply in the future when/if the funding becomes available again.
- Amy Allhisser shared with the Board her opposition to the trail project proposed for the state-owned Napa to Platte rail line. She raised concerns about liability, changes in the proposals, and impacts on landowners near the trail.
- David Scott of Geddes shared with the Board his opposition to the trail project proposed for the state-owned Napa to Platte rail line. He cited livestock concerns and liability for accidents as reasons for his opposition.

Secretary Joel Jundt presented the following items in the Secretary's Report to the Board:

1. The United States Department of Transportation (USDOT) awarded RCP&E a Rebuilding America Infrastructure with Sustainability and Equality (RAISE) discretionary grant in the amount of \$22 million. With these federal funds, along with the \$20 million appropriated during the 2021 Legislature and RCP&E's own \$42 million match, RCP&E will be able to do the necessary upgrades to its rail line.
2. The Appropriations Bills has still not been passed by Congress in relation to the Bipartisan Infrastructure Law (BIL). A second continuing resolution was passed for funding of FY2021 appropriations through February 18, 2022.

Cope asked for a motion for the Board to enter into executive session.

A MOTION WAS MADE by Nelson and seconded by Doering to enter into executive session pursuant to SDCL 1-25-2(3) for the purpose of consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters. All present voted aye by voice vote. The motion carried.

Executive session began at 11:22 a.m. CST.

Cope called the meeting back into session at 11:56 a.m. CST. A quorum was determined, the same members were present (Cope, Burket, Carmon, Doering, Nelson, and Scharnweber.)

The Board addressed each of the following STC grant applications and took action.

1. **Presenter:** Dan Kippley – Ellis & Eastern

Project: Construct a 5,121 ft. siding along the Ellis & Eastern from MP 50.94 to 51.91, install 6 rail turnouts on the siding, and a 948-foot siding into a new rail service industrial park located on the west edge of Brandon, SD.

Updating Funding Request: \$3,113,700 estimated total project cost, consisting of \$2,490,960 (80%) in federal grant and \$622,740 (20%) Ellis & Eastern match.

A MOTION WAS MADE by Burket and seconded by Scharnweber to deny the STC grant application from Ellis & Eastern/Encore Park. All present voted aye by voice vote. The motion carried.

2. **Presenter:** Ralph Schmidt, Sisseton Millbank Railroad Company/Twin Cities & Western Railroad Company

Project: Replace 4 miles of 60 lb. rail with new jointed 115 lb. rail, add 2400 tons of ballast, and surface the track.

Funding Request: \$2,161,804.72 estimated total project cost, consisting of \$1,729,443.78 (80%) in federal grant and \$432,360.94 (20%) Sisseton Millbank Railroad match.

A MOTION WAS MADE by Nelson and seconded by Carmon to table the STC grant application from the Sisseton Millbank Railroad Company/Twin Cities & Western Railroad Company. All present voted aye by voice vote. The motion carried.

3. **Presenter:** Tony Solie – Ringneck & Western Railroad Inc./ WATCO

Project: Build-out of new railroad infrastructure in Plankinton located on wholly-owned railroad property at MP395 that includes a 558' locomotive shop track and two 1,500' transload tracks. Ancillary project work would include a loadout spur, access roadway for transloading, six turnouts, and a maintenance pit.

Funding Request: \$2,998,348.39 estimated total project cost, consisting of \$1,799,009.03 (60%) in federal grant and \$1,199,339.36 (40%) WATCO match.

A MOTION WAS MADE by Scharnweber and seconded by Nelson to authorize the Department's Secretary or his designee to execute all documents necessary to submit the STC application for federal funding in the amount of \$1,799,009.03 for the proposed Ringneck & Western Railroad/WATCO project, contingent upon Ringneck & Western Railroad Inc./WATCO contributing \$1,199,339.36 toward the project. All present voted aye by voice vote. The motion carried.

4. **Presenters:** Scott Van Den Top, D&I Railroad Company

NEW Project: Replace 5.8 miles of existing 100 lb./ yd jointed rail with 115 lb./ yd ribbon rail located in South Dakota and replace 1.7 miles of existing 100 lb./ yd jointed rail with 115 lb./ yd ribbon rail located in Iowa. DOT staff will work with D&I to separate the South Dakota project from the Iowa project.

Funding Request: \$3,997,520 estimated total project cost, consisting of \$3,198,016 (80%) in federal grant and \$799,504 (20%) D&I match.

A MOTION WAS MADE by Scharnweber and seconded by Burket to authorize the Department's Secretary or his designee to execute the STC grant application and related documents for federal funding in the amount of \$1,100,000 for the South Dakota portion of the proposed project, contingent upon D&I Railroad concurrence and agreement to pay the 20% match. In addition, it is understood that if D&I is in need of additional funding via state railroad loan, that request would need to be approved at a future Board meeting. All present voted aye by voice vote. The motion carried.

5. **Presenter:** Jerry Vest, RCP&E Railroad/Genesee & Wyoming Inc.
STC Project: Hydrology and hydraulic studies were completed in 2020 and early 2021 that identified seven culverts and one bridge structure to be high risk based on existing structure size vs. probability of storm frequencies. Addressing these eight locations and reducing the high risk for the railroad infrastructure is the basis for the project.
STC Funding Request: \$1 million estimated total project cost, consisting of \$800,000 (80%) in federal grant and \$200,000 (20%) in RCP&E funding match

A MOTION WAS MADE by Doering and seconded by Carmon to authorize the Department's Secretary or his designee to execute the STC grant application and related documents for federal funding in the amount of \$800,000 for the proposed RCP&E project, contingent upon RCP&E contributing \$200,000. All present voted aye by voice vote. The motion carried

Ron Wagner of Friends of Tabor to Platte Rail to Trail addressed the Board to inform the Board the trails group will not pursue a demonstration trail at this time. The group plans to seek a grant to help cover the expenses of a feasibility study of the proposed trail. The study will address the concerns of individuals who oppose the trail. Larry Lucas addressed the Board about some liability concerns and rules of the road. Wagner responded that the Friends of Tabor to Platte Rail to Trail group is willing to cooperate with the Board in the future and will address any questions and concerns of the Board.

Karla Engle, Office of Legal Counsel, presented for Board consideration the following requests regarding the pedestrian walkway located on state-owned railroad right of way in and around Lake Andes:

1. Ratify the original construction of the pedestrian walkway and the DOT's agreement providing for maintenance of the walkway by the City of Lake Andes and the Yankton Sioux Tribe;
2. Authorize the Secretary to execute an agreement between DOT and the South Dakota Railroad Authority that allows DOT to reconstruct and continue to maintain the walkway; and
3. Authorize the Secretary to execute new agreements delegating DOT's maintenance responsibilities for the walkway to one or more third parties whom DOT deems capable of meeting these responsibilities.

A MOTION WAS MADE by Burket and seconded by Carmon to:(1) ratify the original construction of the pedestrian walkway and the Department's agreement providing for maintenance of the walkway by the

City of Lake Andes and the Yankton Sioux Tribe; (2) authorize the Secretary to execute an agreement between the Department and the South Dakota Railroad Authority that allows the Department to reconstruct and continue to maintain the walkway; and (3) authorize the Secretary to execute new agreements delegating Department's maintenance responsibilities for the walkway to one or more third parties whom Department deems capable of meeting these responsibilities. All present voted by voice vote. The motion carried.

Engle then presented for Board consideration a proposed amendment to the Slover & Loftus legal services agreement. The amendment would increase the contract amount by \$100,000 and leave the term of the legal services contract through December 31, 2022.

A MOTION WAS MADE by Carmon and seconded by Doering to approve the proposed amendment to the Slover & Loftus legal services agreement to include an increase in the contract amount by \$100,000 and leave the term of the legal services contract through December 31, 2022. All present voted aye by voice vote. The motion carried.

With no other business to come before the Board, Cope adjourned the meeting at 1:55 p.m.