

**SOUTH DAKOTA STATE RAILROAD BOARD MEETING MINUTES
DECEMBER 18, 2019**

**BECKER-HANSEN BUILDING / DOT COMMISSION ROOM
700 EAST BROADWAY AVENUE, PIERRE, SOUTH DAKOTA**

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

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

DOT STAFF PRESENT: Joel Jundt, Karla Engle, Bonnie Olson, Jack Dokken, Misty Siedschlaw,
Perry Griffith, and Kari Kroll

OTHERS PRESENT: Alex Huff; Dick Huff; Bob Mercer – Keloland; Rick Vallery; Scott Van Den Top – D & I Railroad Co. (D&I); Heath Haden – Dakota Southern Railway Company (DSRC); Blake Jones – Genesee & Wyoming, Inc. (G&W); Rod Wiseman – Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E); Dean Krogman – RCP&E; Dan Kippley – Ellis & Eastern Company; Jeff Cooley – Civil Design, Inc (CDI); Dave Husby – Marquardt Companies; Ralph Marquardt – Marquardt Companies; Toby Morris; Bruce Lindholm; Michael Whalen – Charles Mix Electric Association, Inc.; Shane Peterson – Chamberlain Redimix; Wayne Blair – 4J Enterprises; Joe Bosworth; Becky Drury – City of Rapid City; Jeff Biegler – City of Rapid City; Frank Bloom – Ranchers Railway, LLC.; Elliot Bloom – Ranchers Railway, LLC.; Patsy Horton – City of Rapid City; Greg Powell – City of Chamberlain; Lynn Deinert – Farmers Elevator Co.; Debbra Houseman – City of Lake Andes; Chipp Gerlach – Mt. Vernon Farmers Elevator; Pete Christensen; Mike Perault; Terence Hickey; and Chet Edinger – Edinger Bros. Partnership

**OTHERS PRESENT
VIA CONFERENCE CALL:** Avory Beggs – Dakota Southern Railway Company; John LeSeur – Slover & Loftus; Jeff Wood – Dakota, Missouri Valley & Western Railroad, Inc. (DMVW); Scott O'Meara – OM Properties; Ken Cotton; and Matt Walsh

Chairman Cope called the meeting of the South Dakota State Railroad Board (the "Board") to order at 9:01 a.m.

Cope determined a quorum by those present.

Cope 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) chapters 3 – 23.

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

Cope asked for a motion to approve the December 4, 2019, Board meeting minutes.

A MOTION WAS MADE by Carmon and seconded by Burket to approve the December 4, 2019, Board meeting minutes. All present voted aye by roll call vote. The motion carried.

Cope opened the floor to the Board members for nominations for the election of Board officials.

Cope turned the gavel over to Vice-chairman Burket for the election of Chairman.

Scharnweber nominated Jerry Cope as Chairman of the Board. There were no further nominations. All present voted aye by roll call vote, with the exception of Cope who abstained. The motion carried.

Burket returned the gavel to newly re-elected Chairman Cope.

Carmon nominated Jeff Burket as Vice-chairman of the Board. There were no further nominations. All present voted aye by roll call vote, with the exception of Burket who abstained. The motion carried.

Nelson nominated Steve Scharnweber as Secretary/Treasurer of the Board. There were no further nominations. All present voted aye by roll call vote, with the exception of Scharnweber who abstained. The motion carried.

Cope opened the floor to public input.

Cope summarized an email received from Dan Bilka of the Rail Passengers Association to Board members and members of the public. Cope indicated a copy of the email would be posted on the Board and Commission's webpage after the Board meeting.

Shane Peterson from Chamberlain Redimix presented to the Board a request to purchase property located north of their current lease (lease #1278). Peterson had attempted to enter a bid for said property, but due to a naming format issue on the bidding site, the bid was not accepted. Chamberlain Redimix is desirous of acquiring the property because two of their existing buildings encroach on the property that is outside of the leased property.

Dick Huff addressed the Board regarding his claims that the Department of Transportation (the "Department") has been withholding information from the Board concerning a number of issues against Dakota Southern Railway Company. Huff provided examples of what he alleged were violations of a serious nature that he claimed the Department did not present to the Board. Huff recommended, on behalf of himself and Alex Huff, that the Board not sell the Napa to Platte line or the MRC line. Huff referred to a letter he had recently sent to Chairman Cope, which is attached to these minutes as **Attachment A**.

The Chair acknowledged the allegations in Huff's testimony and in his written letter he sent to the Board. Cope stated that before the Board would schedule any discussion on the issues addressed in the letter, Huff must provide supporting documentation and other factual information to the Board. The Board would then review the information and determine whether to schedule an agenda item for discussion and consideration of the allegations. Huff acknowledged the need to provide documentation and other factual information regarding the allegations.

Bruce Lindholm (former Program Manager of the Office of Air, Rail and Transit) disputed various allegations made by Huff and informed the Board he would be available and willing to respond to any allegations concerning the Department's actions while he was employed by the Department.

Jack Dokken, Program Manager for the Office of Air, Rail, and Transit asked the Board to consider a contract amendment to the Slover & Loftus contract. The amendment is to add an additional \$100,000.00 to the funding portion of the contract ending December 31, 2020.

A MOTION WAS MADE by Carmon and seconded by Scharnweber to allow the Department to enter into an amendment to the Slover & Loftus agreement to increase the total amount by adding an additional \$100,000.00 to the agreement. All present voted aye by roll call vote. The motion carried.

Dokken presented to the Board an update on the Federal Emergency Management Agency (FEMA) grants. There were 5 events with 4 of those events being declared as disasters by President Trump. Of the 4 events that were declared disasters and eligible for FEMA assistance, the South Dakota Office of Railroads has documentation of the damages that occurred to the State-owned railroads in 3 of those events.

Dokken presented to the Board an update on the Special Transportation Circumstances (STC) grants.

Cope asked for a motion for the Board to enter into Executive Session.

A MOTION WAS MADE by Burket and seconded by Nelson 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 roll call vote. The motion carried.

The Board entered into Executive Session at 9:42 a.m.

Cope called the meeting back to order at 10:39 a.m.

The Board listened to presentations on each of the proposals (except for City of Avon) relating to the sale of the state-owned rail lines for purposes other than continued railroad operations. The order of the presentations was as follows:

1. City of Avon – no one appeared to present
2. Ranchers Railway LLC – presented by Frank Bloom and Elliot Bloom
3. City of Lake Andes – presented by Debra Houseman
4. City of Rapid City – presented by Patsy Horton
5. 4J Enterprises – presented by Wayne Blair
6. Edinger Brothers Partnership – presented by Chet Edinger
7. Eric J. Bosworth – presented by Joe Bosworth
8. Pete Christensen – presented by Pete Christensen
9. City of Chamberlain – presented by Greg Powell
10. Charles Mix Electric Association, Inc. – Michael Whalen
11. Barnes Hay & Feed Co, Inc. – Dave Husby
12. Mike Perault – presented by Mike Perault
13. OM Properties – presented by Scott O'Meara
14. Farmer's Elevator Company of Mount Vernon – Lynn Deinert
15. Terence Hickey – presented by Terence Hickey

Karla Engle, Chief Legal Counsel, provided clarification to proposers on the procedure the Board needs to follow in accordance with SDCL 1-44-28 whenever the Board gets a request to purchase railroad property for non-railroad purposes.

John LeSeur, Slover & Loftus, provided additional information from a regulatory standpoint and discussed approvals that must be obtained from the United States Surface Transportation Board (STB).

Cope opened the floor to allow for public comment on the proposals.

Blake Jones of Genesee & Wyoming, Inc. expressed concerns with the proposal from OM Properties for 10 feet of the north edge of rail line and that being too close to their leased property. G&W would request at least 25 feet from edge of rail line.

Joe Bosworth, a proposer, asked for clarification regarding legal requirements that may apply to purchases of the actual railbed where service is currently being provided or may be provided in the future. LeSeur explained that common carrier obligations likely apply to the actual railbed where tracks are

located and a purchase is likely to require approval from any lessees, sublessees, and the STB. Jundt emphasized the distinction between proposed purchases of a rail service line from proposed purchases of properties that are excess to the needs of rail transportation.

Bruce Lindholm asked LeSeur about regulatory obligations relating to trail use of the railbanked portions of the MRC and Napa to Platte Lines. LeSeur explained a two-fold process.

Alex Huff asked about transfer from rails to trails to private ownership. LeSeur explained the process for private ownership purchase.

Chet Edinger asked the Board for a timeline of its intentions. Jundt stated that it will take some time to research how the State owns the properties as well as the need to still finalize any negotiations with operating proposers that the Board may decide to enter into negotiations with. He also stated that the Department will keep entities informed on the status as the process moves forward.

Cope asked for a motion for action on the proposal from L.G. Everist/ D&I Railroad Co. for purchase of the Sioux Valley rail line.

A MOTION WAS MADE by Burket and seconded by Scharnweber to enter into further negotiations with L.G. Everist based on the Board's assessment of the best interest of the state of South Dakota. All present voted aye by roll call vote. The motion carried.

Cope asked for a motion for action on the A&K Railroad proposal for the Napa to Platte rail line.

A MOTION WAS MADE by Burket and seconded by Nelson to reject the proposal from A&K Railroad on the Napa to Platte rail line. All present voted aye by roll call vote. The motion carried.

Cope asked for a motion for action on the WATCO proposal for the MRC rail line and the Napa to Platte rail line.

A MOTION WAS MADE by Burket and seconded by Carmon to reject the proposal from WATCO for the MRC rail line and the Napa to Platte rail line. All present voted aye by roll call vote. The motion carried.

Cope asked for a motion for action on the G&W proposal for the MRC rail line and Wolsey Junction.

A MOTION WAS MADE by Burket and seconded by Scharnweber to reject the proposal from G&W for the MRC rail line and the Wolsey Junction. All present voted aye by roll call vote. The motion carried.

Cope asked for a motion for action on the Blue Hen Holding Inc. proposal for the Napa to Platte rail line.

A MOTION WAS MADE by Burket and seconded by Nelson to reject the proposal from Blue Hen Holding Inc., for the Napa to Platte rail line. All present voted aye by roll call vote. The motion carried.

Cope asked for a motion for action on the DMVW proposal for the Britton rail line.

A MOTION WAS MADE by Burket and seconded by Scharnweber to reject the proposal from DMVW for the Britton rail line. All present voted aye by roll call vote. The motion carried.

Cope asked for a motion for action on the SDR Holding proposal for the Napa to Platte rail line.

A MOTION WAS MADE by Burket and seconded by Kirby to reject the proposal from SDR Holding for the Napa to Platte rail line. All present voted aye by roll call vote. The motion carried.

The Board elected to not enter into a second Executive Session.

The Board discussed the meeting dates for calendar year 2020. The Board decided to keep the January date as scheduled and cancel if needed.

With no other business before the Board, Cope adjourned the meeting at 1:06 p.m.

DRAFT

P. O. Box 2
Chamberlain, SD 57325-0002
December 9, 2019

Mr. Jerry Cope, Chairman
South Dakota State Railroad Board
5208 Ridgeview Road
Rapid City, SD 57701

Dear Jerry:

Over the last several years a number of observers, including myself, have speculated about why the State Railroad Board consistently fails to enforce its lease with Dakota Southern and its lease with the MRC Rail Authority. At the last regular meeting of the Board a primary reason for these failures came to light.

Simply put, it became clear that SD DOT has withheld information from the Board. Confirmation of this situation occurred when you and a couple of your fellow Board members stated that, although you knew Mike Williams had not been paying taxes, you were not told that leaseholder Dakota Southern had not been paying taxes. This failure to pay taxes is a criminal violation of law and thus is a violation of the lease and sublease. There are other lease violations as well, some of which are mentioned below.

This letter is a formal complaint that the administration, in failing to enforce the leases, has put the public at risk. As part of this complaint I am requesting that you include the following two items on the agenda for the December 18, 2019 Board meeting:

- Consider cancellation of Dakota Southern's Napa-Platte lease.
- Consider remedy for MRC Rail Authority's failure to enforce Dakota Southern's sublease.

When the Board considers these agenda items it should, at a minimum, obtain and review the evidence which will confirm the following violations by Dakota Southern:

1. Repeated failure to pay taxes, and the misdemeanors and felonies that resulted.
2. Destruction of, and possible theft of, public property (specifically track) on the Napa-Platte and MRC lines.
3. Serious FRA violations too numerous to list here, except to point out that several involve hazardous material.
4. Failure to maintain the MRC line as required by the sublease, as shown by Dakota Southern's own admission and by private, state and federal inspections.
5. Two blatant violations of the assignment clause of the MRC sublease. In reviewing these violations the Board should also investigate:

- If there was a time that hazmat cars were on the MRC line with no insurance.
- If money laundering occurred.

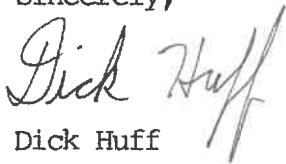
These violations are documented by SD Department of Revenue liens, relevant SD law, track inspection reports, FRA reports and by SD DOT observations. Field inspections of the destruction of public property can be made if necessary. MRC meeting minutes can demonstrate Dakota Southern's failure to make payment to that rail authority.

I ask that you direct SD DOT to provide the Board with all documents and other evidence it possesses regarding the above violations plus any other violations by Dakota Southern. At that point it is requested that all such submissions be made available and reviewed at a public meeting of the Board, and that members of the public be given opportunity to provide any evidence that SD DOT does not submit. So that interested parties are able to respond with submissions they may wish to provide, this step should be taken at the subsequent meeting of the Board.

Given the serious nature of the violations by Dakota Southern and the failures of the MRC Authority, there may be a brief delay in the possible sale of the MRC or Napa-Platte lines. Such delay, if any, is more than justified by the effort to protect the interests of the public and of the administration.

Thank you for your attention to this formal complaint. I look forward to assisting the Board as it moves toward resolution of this issue.

Sincerely,



Dick Huff

cc: Rail Board members
Kara Semmler
Government Operations and Audit Committee
Bob Mercer
Ellen Bardash