

SOUTH DAKOTA STATE RAILROAD BOARD MEETING MINUTES

Wednesday, May 24, 2023 at 11:00 a.m. CDT

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

MEMBERS PRESENT

VIA CONFERENCE CALL: Jeff Burket, Chair
Jerry Cope, Vice Chair
Steve Scharnweber, Secretary-Treasurer
Jack Nelson

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

OTHERS PRESENT: Dan Kippley – Ellis & Eastern Company and Jerry Vest – Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E)

OTHERS PRESENT

VIA CONFERENCE CALL: Mark Wagner – Sisseton Milbank Railroad Company (SMRR); Deb Cooney – Lake Andes Farmers Cooperative Company; Ryan Yanez – Ringneck & Western Railroad, L.L.C. (RWRR); Matt Hoobler – RWRR; Jeff Cooley – Civil Design, Inc.; Holly Stauber – Belle Fourche Economic Development Corporation; Dan Bilka – All Aboard Northwest; Dick Huff; and Alex Huff

Chair Jeff Burket called the meeting of the South Dakota State Railroad Board (the “Board”) to order at 11:02 a.m. CDT. A roll call was taken, and a quorum was determined.

Burket 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) chapter 3 – 23.

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

Burket asked for a motion to approve the March 15, 2023 Board meeting minutes.

A MOTION WAS MADE by Nelson and seconded by Cope to approve the March 15, 2023 meeting minutes. All present voted aye by roll call vote. The motion carried.

Burket opened the floor to public input.

Mark Wagner of Sisseton Milbank Railroad Company (SMRR) gave an update to the Board regarding flood damage to the SMRR line and SMRR's efforts to meet shipping needs while the line is out of service. At a future meeting, SMRR may request a loan from the railroad trust fund to repair the rail line and bring it back into service.

Dick Huff addressed the Board regarding concerns relating to Dakota Southern Railroad Company (DSRC) and its principal Mike Williams. Huff reported that DSRC failed to make a filing required by DSRC's lease with the South Dakota Department of Transportation (the "Department") and so the Department made the filing at the State's expense. Huff requested that the Board: (1) refrain from any closed session discussions relating to DSRC; (2) require the Department's legal counsel to refrain from participating in any matters relating to DSRC; and (3) instruct the Department to put together a list of filing and legal costs relating to DSRC and invoice Mike Williams for all those costs while also introducing those costs at a public meeting.

Secretary Joel Jundt presented the Secretary's Report. He shared that the Special Transportation Circumstance (STC) grant Notice of Funding Opportunity (NOFO) had still not been announced. Jundt reported that the Federal Railroad Administration (FRA) plans to announce the NOFO by the end of May or early June. Jundt also shared that the anticipated total available STC funds will be approximately \$58.9 million. Of this amount, \$4.4 million is carry-over, \$27.1 million is for Federal Fiscal Year (FFY) 2022, and \$27.4 million is for FFY 2023. Although the Board heard proposed projects last fall around the time of the CRISI grant application deadline, the Department recommends the Board reject all projects and invite applicants to re-apply, using the new application format developed by the Department.

Jack Dokken, Office of Air, Rail, and Transit, reminded the Board that in November 2022, the Board approved the Rail Investment Guide that included a mechanism for streamlining STC applications. He also shared that the Department held a workshop on May 23, 2023 to familiarize the railroad industry with the new application format.

A MOTION WAS MADE by Cope and seconded by Scharnweber to reject all applications and instruct the Department to invite applicants to re-submit applications upon issuance of the NOFO, with all applications to be submitted on a form approved by the Department. All present voted aye by roll call vote. The motion carried.

Dokken presented for Board consideration an adjustment to the 2020 STC grant awarded to Ringneck & Western Railroad (RWRR). He shared that the Board approved an STC grant application on May 20, 2020 for a 10,000-foot meet and pass siding on the Mitchell to Rapid City (MRC) rail line. The application was submitted and approved by the Federal Railroad Administration (FRA) before the MRC rail line was sold to WATCO. The purchase agreement for the MRC rail line sale includes a clause that

requires WATCO to pay the Department \$500,000 upon completion of this project, as well as two additional annual payments of \$500,000 on the annual anniversary of the completion of the project.

During the project's environmental review, seven wetlands were determined to be in the project area resulting in approximately \$186,400 in wetland banking expenses. In an effort to reduce the wetland disturbances, a proposal to reduce the length of the siding to 7900 feet was approved by the FRA. Reducing the length of the siding reduced the wetland disturbance from 7 wetlands to 3 and required the federal portion of the grant funding to be reduced by 21%.

	Federal 62.4%	State	WATCO	Total Project
Original Funding	\$1,560,000.00	\$640,000.00	\$300,000.00	\$2,500,000.00
Reduced Funding	\$1,232,400.00	\$640,000.00	\$102,600.00	\$1,975,000.00

Due to inflation, costs have increased making the current project estimate higher than the original estimate. Preliminary engineering and the environmental review requirements are not included in this grant budget; WATCO is funding those requirements independently.

Dokken noted that action is required by the Board to amend the original project as approved. The Department recommends the Board approve the reduced length of the siding to 7900 feet, that the state portion of the funding remain at \$640,000, and that a statement be added to the motion to give the Department authority to amend the necessary documents.

A MOTION WAS MADE by Scharnweber and seconded by Nelson to authorize changes in the project scope and federal funding contributions as approved by the FRA, maintain state funding for the project at \$640,000, and authorize the Department Secretary to execute all necessary agreements concerning these items. Nelson and Scharnweber voted aye and Cope and Burket voted nay by roll call vote. The motion did not pass.

After further discussion, Cope and Burket both shared their concern that the reduced siding length of 7900 feet will not accommodate shipping needs, particularly for unit trains.

Secretary Jundt recommended that WATCO come back to the June Board meeting with a different proposal for the Board to consider.

Dokken presented for Board consideration a modification to a track removal permit previously approved for the Lake Andes Farmers Cooperative Company (Lake Andes Coop) in Lake Andes. The Department recommended re-approving the 500 feet of track removal permit to include the corrected 260 feet of grade lowering. The permit would also include the requirement that in the event the rail line becomes reactivated, Lake Andes Coop would pay for the restoration of the grade, steel, and other components necessary to the design requirements of the railroad restoration project.

A MOTION WAS MADE by Cope and seconded by Scharnweber to re-approve the permit to remove 500 feet of track and approve lowering of the grade 260 feet as recommended by the Department. All present voted aye by roll call vote. The motion carried.

With no other business to come before the Board, Burket adjourned the meeting at 12:01 p.m. CT.

DRAFT