

SOUTH DAKOTA RAILROAD BOARD MEETING MINUTES

June 16, 2021 at 11:00 a.m. CDT

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

MEMBERS PRESENT: Jerry Cope, Chairman
Jeff Burket, Vice-chairman
Jack Nelson

MEMBERS PRESENT

VIA CONFERENCE CALL: Greg Carmon
Jon Kirby

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

DOT STAFF PRESENT

VIA CONFERENCE CALL: Karla Engle and Shane Pullman

OTHERS PRESENT: Mark Trottier – Dakota Missouri Valley & Western (DMVW) and Bruce Lindholm – Grant Solutions

VIA CONFERENCE CALL: Dick Huff; Alex Huff, Jerry Vest – Rapid City, Pierre & Easter Railroad (RCP&E); Scott Van Den Top – D&I Railroad Co. (D&I); Jeff Cooley – Civil Design, Inc; and Steve Hoff - HDR

Chairman Jerry Cope called the meeting of the South Dakota State Railroad Board (the “Board”) to order at 11:02 a.m. CST. A roll call was taken, and 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 February 17, 2021 Board meeting minutes.

A MOTION WAS MADE by Kirby and seconded by Burket to approve the February 17, 2021 Board meeting minutes. All present voted aye by roll call vote. The motion carried.

Karla Engle, Office of Legal Counsel, presented for Board consideration a proposed amendment to the Slover & Loftus legal services agreement. The amendment would increase the contract amount by \$75,000 and extend the term of the legal services contract through December 31, 2022.

A MOTION WAS MADE by Burket and seconded by Nelson to approve the proposed amendment to the Slover & Loftus legal services agreement to include an increase to the contract amount by \$75,000 and an extension of the legal services contract through December 31, 2022. All present voted aye by roll call vote. The motion carried.

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

- Organization within the Department of Transportation (the "Department"). The Office of Air, Rail, and Transit will now be supervised by Kellie Beck, Division of Finance and Management Director.
- Federal Reauthorization is still underway with Congress. Proposed is new grant funding for rail service that could increase funds through the Special Transportation Circumstances (STC) Grants or a new grant program.

Secretary Jundt presented for Board consideration a planned Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary grant application. Jundt explained the legislation passed by the 2021 State Legislature that would give funding to RCP&E to rehabilitate the railroad from Fort Pierre and west. RCP&E will develop a RAISE grant application for the Department to submit. If the US Department of Transportation (USDOT) approves the grant application, the Board would need to give authorization to the Department to execute agreements and other documents to administer the grant.

A MOTION WAS MADE by Carmon and seconded by Kirby to authorize the Secretary or his designee to execute all necessary agreements and related documents to expend any federal grant funds received and state funds of \$20 million received for the rehabilitation of the rail line from west of the city of Fort Pierre to the city of Rapid City in accordance with the terms and conditions in SB93 of the 2021 session of the South Dakota State Legislature. All present voted aye by roll call vote. The motion carried.

Jerry Vest of RCP&E, in a brief statement, shared his appreciation to the Board for authorizing the project. He discussed the significance of the project, its transformative nature and the additional commerce the project will bring to South Dakotans in the West River area.

Jack Dokken, Program Manager of the Office of Air, Rail, and Transit requested authorization for the Department to enter into a joint powers agreement with Pennington County for the

county to perform weed spraying on the Mitchell-Rapid City (MRC) rail line. The Department is responsible for controlling the weeds because the Department is the sponsor the of the rail banked segment of the line.

Board member Carmon left the meeting due to a lost phone signal.

A MOTION WAS MADE by Nelson and seconded by Burket to approve the department entering into a joint powers agreement with Pennington County for weed spraying. All present voted aye by roll call vote. The motion carried.

Carmon rejoined the meeting at 11:28 a.m.

Dokken presented for Board consideration a transfer of funds between the railroad administration fund and the railroad trust fund. Dokken explained that with current changes in the state railroad ownership, the railroad administration fund will have an estimated 95% decrease in annual income and the fund will need an income adjustment provided by the trust fund. An amount of \$540,000 would allow the State to cover administrative and maintenance expenditures in 2021, and projected expenses for 2022 and 2023. The Department requests the Board to authorize the transfer of \$540,000 from the railroad trust fund to the railroad administration fund.

A MOTION WAS MADE by Burket and seconded by Nelson to approve the transfer of \$540,000 from the railroad trust fund to the railroad administration fund. All present voted aye by roll call vote. The motion carried.

Dokken requested authorization for a State Rail Plan contract. Every five years the Federal Railroad Administration (FRA) requires states who receive federal funding to have a State Rail Plan. South Dakota's last State Rail Plan was completed in 2014. Dokken shared that in 2018 the Board approved the Department to issue an Request for Proposal (RFP) to create a State Rail Plan that included the federally required elements and to create a State Rail Investment Guide to help the Board and the Department manage the state-owned rail lines. Also in 2018, the Department found there was interest from private business to buy the state-owned rail lines so the Department stopped the RFP to re-evaluate the details to be contained in the plan. The Department has since issued a new RFP and recommends award of a contract to HDR, Inc.

A MOTION WAS MADE by Burket and seconded by Nelson to authorize the Department to enter into a contract with HDR, Inc. in the amount of \$548,569.67 to develop the South Dakota State Rail Plan, which will include an investment plan. All present voted aye by roll call vote. The motion carried.

Dokken requested Board approval to terminate a federal grant agreement for relocation of a portion of the Sioux Valley rail line. In 2013, the Department entered into an agreement with the Federal Railroad Administration within the U.S. Department of Transportation ("FRA") for this Sioux Valley line relocation project. The project had many cultural and environmental challenges that required re-evaluations and grant adjustments. Over the last several years, this project has accumulated \$526,574 in consulting fees and land easement acquisitions. To date, there have not been any federal funds dispersed for this project. The expenses incurred were paid for by a combination of a loan and a grant approved by the Board to the Sioux Valley Regional Railroad Authority as well as funds directly from D&I.. To date, there have been no acquisition of materials or construction done. D&I Railroad Co. requested the grant be terminated, because the railroad believes there are much more cost-effective solutions to address the slide issue rather than to continue with the grant.

Scott Van Den Top of D&I was available for questions.

A MOTION WAS MADE by Carmon and seconded by Kirby to authorize the Department to terminate the grant agreements for the project, return the project funds to the Department's STC account and keep the loan for the project active until the remaining loan balance has been repaid. All present voted aye by roll call vote. The motion carried.

Dokken requested Board approval to terminate STC grant agreements for improvements to the Britton Line. Since the grant was awarded, there have been changes to the track needs and the estimates of the original project. DMVW plans to reevaluate the costs of the total project and reapply in 2021. The awarded STC funds would be returned to South Dakota's account of STC funding and would be available for a future STC grant.

Dokken shared a shift in FRA managers changed the flexibility to which grants are processed. In the past, the grant could be adjusted to include consultant fees as needed. This is no longer allowed under the FRA. When DMVW applied for the grant, consultant fees were not included because there was an understanding that the adjustment could be made; however, it can no longer be made.

Mark Trottier of DMVW was available for questions.

A MOTION WAS MADE by Nelson and seconded by Burket to authorize the Department to terminate any grant agreements for the Britton Line project as recommended by the Department, with the funds no longer assigned to that project. All present voted aye by roll call vote. The motion carried.

Dokken presented information about the current status of FRA grants executed by the Department.

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.

Executive session began at 12:10 p.m. CDT.

Cope called the meeting back into session at 1:20 p.m. CDT. Cope, Burket, and Nelson were present.

With no other business to come before the Board and having no quorum present, Cope adjourned the meeting at 1:20 p.m.

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