

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STATE OF SOUTH DAKOTA ACTING BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION – ADVERSE
DISCONTINUANCE OF OPERATING
AUTHORITY – NAPA-PLATTE
REGIONAL RAILROAD AUTHORITY

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Docket No. AB 1253

**APPLICATION FOR ADVERSE DISCONTINUANCE OF
OPERATING AUTHORITY**

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APPLICATION FOR ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY

The State of South Dakota acting by and through its Department of Transportation (“State”) requests that the Surface Transportation Board (“STB” or “Board”) exercise its authority under 49 U.S.C. § 10903 to terminate Napa-Platte Regional Railroad Authority’s (“NPRRA”) operating authority on a State-owned rail line extending from Milepost (“MP”) 0.0, referred to as Napa Junction, in South Dakota to MP 13.4+/- near Tabor, SD (“Napa-Tabor Line” or “Line”).¹

PREFACE AND SUMMARY

The State’s Application for Adverse Discontinuance of Operating Authority (“Application”) is divided into three parts: Part I sets forth the pertinent background facts; Part II provides the supporting information required under the Board’s discontinuance of service rules; and Part III contains the State’s supporting legal argument.

The State’s last lease of the Napa-Tabor Line to NPRRA expired in September 2015. The State now leases the Napa-Tabor Line to Dakota Southern Railway Company

¹ The case caption is changed to correct a typographical error – “Nappa-Platte” should be “Napa-Platte.”

(“DSRC”). DSRC has obtained a modified certificate of public convenience and necessity to provide common carrier service over the Napa-Tabor Line.

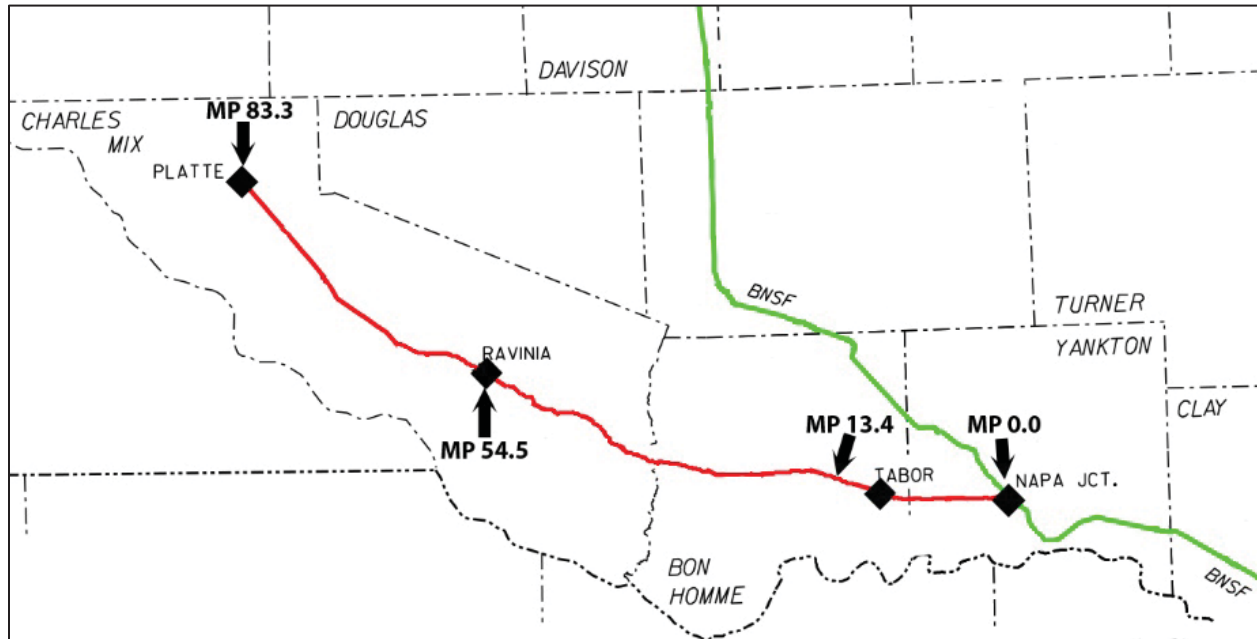
While NPRRA’s lease of the Napa-Tabor Line has expired, its STB-authorized class exemption rights to provide service over the line remain in effect. The State is filing this Application to obtain a Board order terminating these rights. NPRRA has recently informed the State it will not be opposing this Application.

The Board should grant the State’s Application under the governing public convenience and necessity (“PC&N”) standard set forth in 49 U.S.C. § 10903 because: (i) NPRRA’s lease rights to use the Napa-Tabor Line have expired; (ii) the State has secured another carrier – DSRC – to provide common carrier service over the Napa-Tabor Line; and (iii) the public interest will be advanced by allowing the State, as owner of the Napa-Tabor Line, to control operations over this line.

The Board has consistently granted similar requests for adverse discontinuance of operating authority in 49 U.S.C. § 10903 application proceedings where a carrier’s lease of the involved line has expired. Granting the State’s application is also supported by the Board’s decision last year granting the State’s petition for a declaratory order to adversely terminate NPRRA’s modified certificate operating rights over a State-owned line that connects to the Napa-Tabor Line.

I. BACKGROUND

1. The Napa-Tabor Line is part of a longer line that runs from MP 0.0 (Napa Junction, SD) to MP 83.3 near Platte, SD (“Napa-Platte Line”):



2. The Napa-Platte Line was authorized for abandonment in 1980 but, prior to being abandoned, was acquired by the State.²

3. In 2007, the State rail banked the segment of the Napa-Tabor Line between Ravinia (MP 54.5) and Platte (MP 83.3) (“Ravinia-Platte Line”).³

² See *Ogilvie – Aban. – in S.D., Iowa, & Neb.*, AB 7 (Sub-No. 88) (ICC served May 14, 1980); see also *Napa-Platte Reg’l R.R. Auth. – Modified Rail Certificate*, FD 35026, slip op. at 1-2 (STB served June 14, 2007) (“2007 Modified Certificate Decision”).

³ See *S.D. Ry. – Notice of Interim Trail Use & Termination of Modified Rail Certificate*, FD 31874, slip op. at 2 (STB served July 17, 2007) (“2007 Trail Use Decision”) (accepting the State’s request for notice of interim trail use for the Ravinia-Platte Line); Letter from State counsel to Acting STB Secretary, FD 31874 (Jan. 11, 2008) (advising the Board that an

4. For many years, the State leased the portion of the Napa-Platte Line between Napa Junction, SD and Ravinia, SD to NPRRA. This lease encompassed Napa-Tabor Line and the line segment between Tabor (MP 13.4) and Ravinia (MP 54.5) (“Tabor-Ravinia Line”). NPRRA’s last lease of these two lines expired on September 20, 2015.⁴

5. NPRRA is a political subdivision of the State of South Dakota and is a non-operating common carrier railroad.⁵ In 2007, NPRRA obtained: (i) a modified certificate of public convenience and necessity to operate over the Tabor-Ravinia Line;⁶ and (ii) class exemption rights to operate over the Napa-Tabor Line.⁷ For several years, NPRRA, with the State’s consent, subleased the Napa-Tabor Line, and the Tabor-Ravinia Line, to DSRC, an operating Class III carrier. DSRC’s last sublease with NPRRA also expired on September 20, 2015.⁸

6. Between 2007 and September 20, 2015, neither NPRRA, DSRC, nor any other railroad, provided any common carrier service over the Napa-Tabor Line or the Tabor-Ravinia Line. DSRC used these lines for rail car storage, but it did not have any STB-authorized

agreement for interim trail use for the Ravinia-Platte Line became effective as of December 27, 2007).

⁴ See Agreement between the State of South Dakota and NPRRA, No. 910940, Amendment No. 1 at § 1 (copy in Attachment 1).

⁵ See *2007 Modified Certificate Decision*, slip op. at 2.

⁶ *Id.*

⁷ See *Napa-Platte Reg’l R.R. Auth. – Lease & Oper. Exempt. – Dakota Short Line Corp.*, FD 35025 (STB served May 31, 2007) (“*2007 Class Exemption Notice*”).

⁸ See Agreement between NPRRA and DSRC, No. 910936, Amendment No. 1 at § 1 (copy in Attachment 2).

operating authority of its own during this time period to provide common carrier service over these lines.

7. Commencing on September 21, 2015, the State has leased the Napa-Tabor Line, and the Tabor-Ravinia Line, to DSRC.⁹ The currently effective lease has a term that runs through November 30, 2026, unless extended or terminated earlier pursuant to its terms.¹⁰

8. At the State's request, DSRC filed a notice with the Board on December 29, 2016 for a modified certificate of public convenience and necessity to provide common carrier service over the Napa-Tabor Line and the Tabor-Ravinia Line.¹¹ On January 25, 2017, the Board issued the requested modified certificate authority to DSRC.¹²

9. Following the termination of NPRRA's lease of the Napa-Tabor Line and the Tabor-Ravinia Line, the State requested that NPRRA voluntarily terminate its modified certificate operating rights over the Tabor-Ravinia Line and its class exemption operating rights over the Napa-Tabor Line. NPRRA did not undertake these actions.

10. On February 8, 2017, the State filed a petition asking the Board to issue a declaratory order terminating NPRRA's modified certificate rights over the Tabor-Ravinia

⁹ See Agreements between the State of South Dakota and DSRC, Nos. 910992 (§ 19), 911004, 911022 and State of South Dakota Department of Transportation Lease Agreement, No. 911065 (copies in Attachment 3).

¹⁰ State of South Dakota Department of Transportation Lease Agreement, No. 911065, §§ 3, 22.

¹¹ See *Dakota S. Ry. – Notice of Modified Certificate of Pub. Convenience & Necessity*, FD 36086 (filed Dec. 29, 2016).

¹² See *Dakota S. Ry. – Modified Certificate of Pub. Convenience & Necessity – Yankton, Bon Homme, & Charles Mix Crys., S.D.*, FD 36086 (STB served Jan. 25, 2017).

Line.¹³ In its Declaratory Order Petition, the State argued that termination of NPRRA’s modified certificate rights would “both protect the State’s right to control operations over a line that it owns and have no adverse effects on rail shippers.”¹⁴

11. In its decision served on June 14, 2017, the Board granted the State’s petition and issued a declaratory order terminating NPRRA’s modified certificate operating rights over the Tabor-Ravinia Line. The Board granted this relief, *inter alia*, because: (i) “NPRRA’s lease with the State has expired”;¹⁵ and (ii) “granting the proposed termination should not result in any adverse impact on shippers and the community, because a replacement carrier [DSRC] has already been granted the right to operate.”¹⁶

12. On February 8, 2017, the State filed a petition in the instant docket (AB 1253) asking the Board to waive or exempt, in whole or in part, the application of specified statutes and Board regulations that would otherwise apply in this proceeding (“Waiver/Exemption Petition”). The State’s Waiver/Exemption Petition was unopposed.

13. In its decision served on May 31, 2017, the Board granted the State’s Waiver/Exemption Petition (“*Waiver/Exemption Decision*”). Specifically, the Board waived or exempted, either in whole or in part, the following statutes and Board regulations:

- **System Diagram Map.** 49 U.S.C. § 10903(c)(2); 49 C.F.R. §§ 1152.10-14 and 1152.22(a)(5);
- **Line Attributes.** 49 C.F.R. § 1152.22(b)-(e);

¹³ See *State of S.D. Acting by & Through its Dep’t of Transp. – Pet. for Declaratory Order*, FD 36096 (filed Feb. 8, 2017) (“Declaratory Order Petition”).

¹⁴ *State of S.D. Acting by & Through its Dep’t of Transp. – Pet. for Declaratory Order*, FD 36096, slip op. at 2 (STB served June 14, 2017) (“*SD Declaratory Order Decision*”).

¹⁵ *Id.*, slip op. at 3.

¹⁶ *Id.*

- **Environmental and Historic Impacts.** 49 C.F.R. §§ 1152.20(c), 1105.7 and 1105.8;
- **Notice of Intent.** 49 C.F.R. §§ 1152.20(a)(1), 1152.20(a)(2) and 1152.20(b)(1);
- **Service of the Application.** 49 C.F.R. § 1152.24(c);
- **Posting at Agency Stations and Terminals.** 49 U.S.C. § 10903(a)(3)(B); 49 C.F.R. § 1152.20(a)(3);
- **Newspaper Publication.** 49 C.F.R. §§ 1152.20(a)(4) and 1152.21;
- **Federal Register Notice.** 49 C.F.R. § 1152.22(i); and
- **Offers of Financial Assistance.** 49 U.S.C. § 10904; 49 C.F.R. § 1152.27.¹⁷

14. The State requested in its Waiver/Exemption Petition that the Board confirm the Board's public use regulations (49 C.F.R. § 1152.28), trail use regulations (49 C.F.R. § 1152.29), and mandatory imposition of labor protective conditions did not apply in this proceeding. The Board granted these requests and confirmed in its *Waiver/Exemption Decision* that these regulations and conditions were not applicable in this proceeding.¹⁸

15. Following the service of the Board's *Waiver/Exemption Decision*, the State engaged in discussions with NPRRA concerning the discontinuance of its operating rights over the Napa-Tabor Line. NPRRA recently informed the State that it does not oppose this Application.

¹⁷ *Waiver/Exemption Decision*, slip op. at 2-7.

¹⁸ *Id.*, slip op. at 6.

II. SUPPORTING INFORMATION

The State submits information supporting its Application in accordance with the format set forth in the Board's rules, as modified by the Board's *Waiver/Exemption Decision*.

A. System Diagram Map

The Board has exempted the State's Application from the system diagram map requirements set forth at 49 U.S.C. § 10903(c)(2) and waived its system diagram map rules set forth at 49 C.F.R. §§ 1152.10-14 and 1152.22(a)(5).

B. Notice of Intent

The Board ruled in its *Waiver/Exemption Decision* that the Board's regulations requiring the filing of a pre-Application notice of intent (49 C.F.R. §§ 1152.20(a)(1), 1152.20(a)(2), and 1152.20(b)(1)) would be satisfied if the State served its Waiver/Exemption Petition on the following entities: NPRRA, BNSF Railway Company ("BNSF"), DSRC and Mr. Ralph Marquardt ("Marquardt"). The State complied with this ruling by serving its Waiver/Exemption Petition on NPRRA, BNSF, DSRC and Marquardt.¹⁹

C. Newspaper Publication

The Board ruled in its *Waiver/Exemption Decision* that the Board's form-of-newspaper publication requirements (49 C.F.R. §§ 1152.20(a)(4) and 1152.21) would be satisfied if the State used the newspaper notice format appended to the State's Waiver/Exemption Petition.

¹⁹ See Waiver/Exemption Petition, Certificate of Service.

The State used the approved format and, as called for under the Board's regulations, this notice has been published "at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located." 49 C.F.R. § 1152.20(a)(4). Proof of publication is set forth in Attachment 4.

D. 49 C.F.R. § 1152.22(a) Information

(1) Exact name of applicant. The applicant is the State of South Dakota acting by and through its Department of Transportation.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105. The applicant is not a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Relief sought (abandonment of line or discontinuance of service). The relief sought here is discontinuance of NPRRA's common carrier service authority over the Napa-Tabor Line.

(4) Detailed map of the subject line on a sheet not larger than 8 x 10 ½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line . . . over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers. The detailed map is set forth in Attachment 5.

(5) System diagram map related information. The Board ruled in its *Waiver/Exemption Decision* that the State did not have to submit any information responsive to this regulation.

(6) Detailed statement of reasons for filing application. The State is the owner of the Napa-Tabor Line. The State is filing this Application because NPRRA's lease of the Napa-Tabor Line with the State has expired, but NPRRA's class exemption operating rights over the Napa-Tabor Line remain in effect. The State seeks an order to adversely terminate NPRRA's STB-authorized class exemption rights to provide service over the Napa-Tabor Line. NPRRA's operating authority is no longer wanted or needed because the State now leases the Napa-Tabor Line to DSRC, and DSRC has obtained STB-authorized rights to provide common carrier service over the Napa-Tabor Line.

(7) Name, title, and address of representative of applicant to whom correspondence should be sent. Correspondence should be sent to counsel for the State in this proceeding:

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(8) List of all United States Postal Service ZIP Codes that the line proposed for [discontinuance] traverses. The Napa-Tabor Line traverses the following zip codes: 57058, 57078, and 57063.

E. 49 C.F.R. §§ 1152.22(b)-(h) Information

In its *Waiver/Exemption Decision*, the Board ruled the State did not need to provide any information responsive to 49 C.F.R. § 1152.22(b) (condition of properties); 49 C.F.R. § 1152.22(c) (service provided); 49 C.F.R. § 1152.22(d) (revenue and cost data); 49

C.F.R. § 1152.22(e) (rural and community impact); and 49 C.F.R. § 1152.22(f) (environmental impact).

49 C.F.R. § 1152.22(g) provides that “[i]f passenger service is provided on the line, the applicant shall state whether appropriate steps have been taken for discontinuance [of passenger service].” *Id.* This regulation is inapplicable because passenger service is not provided over the Napa-Tabor Line.

49 C.F.R. § 1152.22(h) provides that “[t]he applicant shall submit such additional information to support its application as the Board may require.” *Id.* The Board has not asked the State to submit any additional information in support of its Application. The State does include in Part III legal argument in support of its request that the Board issue an order discontinuing NPRRA’s operating rights over the Napa-Tabor Line.

F. 49 C.F.R. § 1152.22(i) – Draft Federal Register Notice

In its *Waiver/Exemption Decision*, the Board approved the State’s proposed Federal Register Notice form. The State appends in Attachment 6 the approved Federal Register Notice form, revised to reflect events that have occurred since the State filed its initial draft with the Board. The State also includes in Attachment 6 a track-change copy showing the proposed revisions.

G. 49 C.F.R. § 1152.22(j) – Verification

The State’s Application includes a verification from the Honorable Darin Bergquist, Secretary, State of South Dakota Department of Transportation. This verification adheres to the format prescribed in 49 C.F.R. § 1152.22(j).

III. SUPPORTING ARGUMENT

The Board should grant the State's application, and issue an order discontinuing NPRRA's operating rights over the Napa-Tabor Line, because the State has standing to pursue its application and the discontinuance it seeks clearly meets the governing statutory PC&N standard.

A. The State Has Standing as the Owner of the Napa-Tabor Line to File This Adverse Discontinuance Application

The State is pursuing this Adverse Discontinuance Application because, while NPRRA's lease of Napa-Tabor Line has expired, NPRRA's STB-authorized operating rights over the Napa-Tabor Line remain in effect. Any member of the public with "a proper interest in the proceeding" has standing to request that the Board issue an order discontinuing the operating rights of a common carrier railroad.²⁰ The State, as the owner of the Napa-Tabor Line, clearly has a "proper interest" in this proceeding.²¹

²⁰ *Bos. & Me. Corp. – Adverse Discontinuance – New Eng. S. R.R.*, AB 32 (Sub-No. 100), slip op. at 2 (STB served Apr. 30, 2010) ("*Bos. & Me. Corp.*") (footnote omitted); *Jacksonville Port Auth. – Adverse Discontinuance – in Duval Cty., FL*, AB 469, 1996 WL 396950, at *4 (STB served July 17, 1996) ("*Jacksonville Port Auth.*").

²¹ See, e.g., *Jacksonville Port Auth.*, 1996 WL 396950, at *1 (line owner files adverse discontinuance application); *Lake Cty., Or. – Adverse Discontinuance of Rail Serv. – Modoc Ry. & Land Co., LLC & Modoc N. R.R. Co.*, AB 1035 (STB served Nov. 17, 2009) ("*Lake Cty.*") (same); *City of Rochelle, Ill. – Adverse Discontinuance – Rochelle R.R. Co.*, AB 549, slip op. at 1 (STB served May 27, 1999) (same) ("*City of Rochelle*"); *Tacoma E. Ry. Co. – Adverse Discontinuance of Operations Appl. – A Line of City of Tacoma, in Pierce, Thurston & Lewis Cts., WA*, AB 548, slip op. at 1 (STB served Oct. 16, 1998) (same) ("*Tacoma I*"), stay denied (STB served Nov. 13, 1998) ("*Tacoma II*"); *Cheatham Cty. Rail Auth. "Appl. & Pet." for Adverse Discontinuance*, AB 379X, 1992 WL 322925, at *1-2 (ICC served Nov. 4, 1992) ("*Cheatham Cty.*") (same).

B. Discontinuing NPRRA's Operating Authority over the Napa-Tabor Line is Required Under the Public Convenience and Necessity Standard Set Forth in 49 U.S.C. § 10903

The Board has the statutory authority to issue an order discontinuing a common carrier's class exemption operating rights "if the Board finds that the present or future public convenience and necessity require or permit the . . . discontinuance." 49 U.S.C. § 10903(d). "In making the finding, the Board shall consider whether the . . . discontinuance will have a serious, adverse impact on rural and community development." *Id.*

The Board also stated, "[i]n implementing this statutory standard [49 U.S.C. § 10903(d)] in an adverse proceeding, we consider the relative burdens that continuation of service on the one hand, and cessation of service on the other hand, would have on the involved carrier, the owner . . . of the line, and the public."²² Consideration of the relevant interests here clearly dictates that the Board grant the State's Application.

- **State Interests.** NPRRA's lease of the State-owned Napa-Tabor Line expired in September 2015. The Board has consistently held that a rail line owner should be able to control operations over its line, and should not be forced to permit its property to be used by a carrier whose lease of the line has expired, unless "overriding Federal interest[s]" compel a different result.²³ No such "overriding Federal interest[s]" exist in this case. Indeed, "overriding Federal interest[s]" strongly support granting the State's Application.

²² *Bos. & Me. Corp.*, slip op. at 3.

²³ *Tacoma II*, slip op. at 3; *Fore River R.R. Corp. – Discontinuance of Service Exemption – Norfolk Cty., MA*, 8 I.C.C.2d 307, 310 (1992) ("*Fore River*"); accord *Tacoma I*, slip op. at 7 ("We see no need to perpetuate [the carrier's] unwanted, unneeded operations"); *Jacksonville Port Auth.*, 1996 WL 396950, at *5 ("denial of the adverse discontinuance request would amount

The State saved the Napa-Tabor Line from abandonment in 1980 by purchasing the line pursuant to a federal program that encourages “State-arranged continuance of service over lines that otherwise would have been abandoned.”²⁴ This federal policy is thwarted if the states do not have the corresponding power to control operations over their purchased lines.²⁵

- **Shipper Interests.** There are no shippers currently using the Napa-Tabor Line, nor have any shipments moved over the Napa-Tabor Line since 2007. Nevertheless, DSRC, at the State’s direction, has obtained operating authority from the Board to provide common carrier service over the Napa-Tabor Line, and the adjoining Tabor-Ravinia Line.

The State’s actions have produced a net benefit for any rail shippers that may decide to obtain service over the Napa-Tabor Line. NPRRA is not an operating common carrier and has no ability to provide service itself. DSCR, on the other hand, is an operating common carrier which can provide rail service to shippers, and now has the STB authority needed to provide that service upon reasonable request.²⁶

- **Carrier Interests.** NPRRA will not be harmed by discontinuance of its

to a finding that the railroad should be permitted to continue to operate over the objections of the owner of the line despite the railroad’s contract default”); *Cheatham Cty.*, 1992 WL 322925, at *5 (same).

²⁴ *Cheatham Cty.*, 1992 WL 322925, at *5. This program is currently codified at 49 C.F.R. Part 1150, Subpart C.

²⁵ *Id.*

²⁶ *Cf. Bos. & Me. Corp.*, slip op at 4 (finding no harm to shippers because the applicant in the adverse discontinuance case had secured reasonable replacement carrier service); *Lake Cty.*, slip op. at 2 (same); *City of Rochelle*, slip op. at 2 (same); *Tacoma I*, slip op. at 7 (same); *Jacksonville Port Auth.*, 1996 WL 396950, at *4 (same); *Cheatham Cty.*, 1992 WL 322925, at *4 (same); *Fore River*, 8 I.C.C.2d at 311 (same).

operating authority because NPRRA is a non-operating common carrier that is not capable of providing common carrier rail service itself. In addition, NPRRA has informed the State that it will not oppose this Application.

- **Community Interests.** NPRRA has never exercised its operating rights. Discontinuance of NPRRA's un-exercised rights will not have any adverse impacts on rural or community development. In addition, rural and community interests are protected because, at the State's direction, DSRC has obtained authority from the Board to provide common carrier service over the Napa-Tabor Line.²⁷

- **Board Precedent.** In a series of decisions, the Board has granted adverse discontinuance applications where the applicant has shown: (i) a carrier's lease of the rail line at issue has expired or has been terminated and (ii) the applicant has made arrangements with another carrier to provide reasonable replacement common carrier service over the line.²⁸ The Board should take the same action here because NPRRA's lease of the Napa-Tabor line has expired, and the State has made arrangements with DSRC to provide superior replacement common carrier service over the line.

²⁷ Cf. *Bos. & Me. Corp.*, slip op. at 4 (finding no harm to rural or community development because the applicant in an adverse discontinuance case had secured adequate replacement carrier service); *Lake Cty.*, slip op. at 2 (same).

²⁸ See *id.*, slip op. at 3-4; *Lake Cty.*, slip op. at 2-3; *City of Rochelle*, slip op. at 2-3; *Tacoma I*, slip op. at 7-8; *Jacksonville Port Auth.*, 1996 WL 396950, at *4-6; *Cheatham Cty.*, 1992 WL 322925, at *4-6; *Fore River*, 8 I.C.C.2d at 310-11.

C. The Board’s Decision Granting the State’s Request to Terminate NPRRA’s Operating Authority over the Tabor-Ravinia Line Provides Additional Support for Granting the State’s Adverse Discontinuance Application

Last year, the State filed its Declaratory Order Petition asking the Board to terminate NPRRA’s modified certificate operating rights over the Tabor-Ravinia Line.²⁹ The State requested the Board to take this action because NPRRA’s lease of the Tabor-Ravinia Line had expired; the State subsequently leased the Tabor-Ravinia Line to DSRC; at the State’s request, DSRC obtained STB authorization to provide common carrier service over the Tabor-Ravinia Line; and NPRRA refused to voluntarily terminate its modified certificate.³⁰

In *SD Declaratory Order Decision*, the Board granted the State’s request and issued an order terminating NPRRA’s modified certificate.³¹ The Board found that termination of this certificate was in the public interest for the reasons set forth in the State’s Declaratory Order Petition. While the instant case arises in a slightly different legal context because NPRRA holds class exemption rights, not modified certificate rights, over the Napa-Tabor Line, the facts and public interest issues in both proceedings are identical in all material respects.³²

The Board’s decision in *SD Declaratory Order Decision* to terminate NPRRA’s modified certificate rights over the Tabor-Ravinia Line provides additional support for granting the State’s Application to terminate NPRRA’s operating rights over the Napa-Tabor Line.

²⁹ Declaratory Order Petition at 1.

³⁰ *Id.* at 9-12.

³¹ *SD Declaratory Order Decision*, slip op. at 3-4.

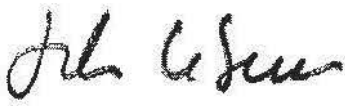
³² See *Waiver/Exemption Decision*, slip op. at 6 (noting “the nearly identical facts in the two proceedings”).

CONCLUSION

For the reasons set forth above, the State requests that the Board grant its Application and issue an order finding the present and future public convenience and necessity require discontinuance of NPRRA's operating rights over the Napa-Tabor Line.

Respectfully submitted,

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Acting by and Through Its Department
of Transportation

Dated: March 29, 2018

VERIFICATION

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

I, Darin Bergquist, makes oath and says that I am the Secretary, State of South Dakota Department of Transportation; that I am authorized by the State of South Dakota acting by and through its Department of Transportation to verify and file with the Surface Transportation Board the foregoing application in AB 1253; that I have carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that I have knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of my knowledge, information and belief.



Darin Bergquist

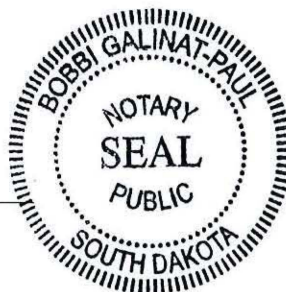
Sworn to and subscribed
before me this 28 day
of March, 2018.

Witness my hand and official seal.



Notary Public in and for
the State of South Dakota

My commission expires _____
Bobbi Galinat - Paul
My Commission Expires
October 5, 2022



CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March 2018, I served copies of the foregoing Application For Adverse Discontinuance Authority by United States First Class Mail, postage prepaid on:

Kenneth W. Cotton
Wipf & Cotton, L.L.C.
P.O. Box 370
Wagner, SD 57380-0370

Roger Berndt
30125 406th Ave.
Avon, SD 57315

John Hauck
41172 Haucks Ln.
Tyndall, SD 57066

Gary Beeson
69846 299th St.
Wagner, SD 57380

Dick Rysavy
421 Wilson Ave.
Dante, SD 57329

Jason Kokes
42628 307th St.
Tabor, SD 57063

Garry Moore
635 Augusta Cir.
Yankton, SD 57078

Allen Sinclair
1200 W. 21st St.
Yankton, SD 57078

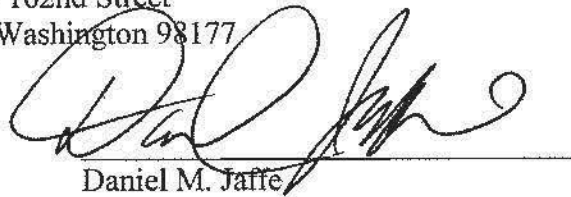
Gerald Harrington
29641 393rd Ave.
Wagner, SD 57380

John Harper
4307 E. Hwy. 50
Yankton, SD 57078

Ralph Marquardt
P.O. Box 1040
Yankton, SD 57078

Roger Nober
Executive Vice President, Law and Corporate Affairs
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131-2830

Charles H. Montange
426 NW 162nd Street
Seattle, Washington 98177



Daniel M. Jaffe

ATTACHMENT 1

LEASE
910940 1

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
NAPA-PLATTE REGIONAL RAILROAD AUTHORITY

THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and the Napa-Platte Regional Railroad Authority, referred to in this Lease Agreement as "Authority." This Lease Agreement is effective on June 21, 2014.

BACKGROUND:

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Authority wants to lease from the State the Rail Facilities.

AUTHORITY AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. The State will permit Authority to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Authority accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Authority acknowledges that Authority or Authority's Operator(s) has inspected the Rail Facilities, including all improvements and structures thereon. Authority further acknowledges that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. The State permits Authority to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. The rights granted Authority in this Lease Agreement relate solely to the provision of rail freight service on the Rail Facilities and Authority may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
4. Provision of Operations. If the Authority, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Authority and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.
5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
6. Common Carrier Obligations. Authority or Authority's Operator(s) will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.
7. Liability of Authority. The Authority will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of the Authority, its representatives, officers, employees or agents, including Authority's operator.

8. Laws to be Observed. The Authority and its operator will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. The Authority and its operator will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree, whether by the Authority or its operator.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Office of Air, Rail, and Transit, the Authority, and the Authority's operator, or any other railroad conducting operations on the facilities pursuant to a sublease agreement with the Authority. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Authority or Authority's Operator will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law, which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence, and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Authority or Authority's Operator will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Authority or Authority's Operator of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Authority or Authority's Operator will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Authority or Authority's Operator operates along the Rail Facilities and Authority or Authority's Operator will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Authority or Authority's Operator's failure to provide such evidence, within 7 days of any request therefore, will entitle State, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. Authority or Authority's Operator acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Authority or Authority's Operator or any lessee or other operator to the State as set forth herein.

11. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to the Authority by or within the scope of this Lease Agreement, there will be no liability upon any member of the Authority, or its authorized representatives, either

personally or as officials of the Authority, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.

12. Assignment. Authority will not assign its rights or delegate its duties under this Lease Agreement or any part thereof, without prior written consent of the State. An approved assignment, including assignments occurring by operator contracts, will not relieve the Authority of the Authority's primary responsibility to the State.
13. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
14. State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Authority, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State, or its duly authorized representatives, and the Authority, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of the Authority or its Operator(s) and Authority agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Authority agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.
15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
16. Additions to Rail Facilities. The State hereby grants to the Authority the right to make such Additions to the Rail Facilities as Authority may require to permit rail freight service, at Authority's sole expense. The term "Addition(s)" as used herein will mean capital improvements which are in addition to the Rail Facilities. Authority will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
17. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. The Authority will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
18. Payment. Authority will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows:

Thirty-two and a half percent (32.5%) of any car storage fees billed. The Authority's operator may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.

19. Term. This Lease Agreement will continue in full force and effect beginning June 21, 2014, and ending June 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days written notice of termination by certified mail to the Authority.
21. Termination by the Authority For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days, the Authority will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by the Authority giving notice of any prior breach thereof, to terminate this Lease Agreement.
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For the Authority:

Chairperson
Napa-Platte Regional Railroad Authority
29541 393rd Ave.
Wagner, SD 57380

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortious acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed and attested to by their duly authorized officers on the date and year first above written.

Napa-Platte Regional Railroad Authority

By: *Harold DeHart*

Its: *Chairman*

Date: *8-19-2014*

State of South Dakota
Department of Transportation

By: *[Signature]*

Its: Secretary

Date: *8/27/14*

(Corporate Seal)

ACKNOWLEDGMENTS FOLLOW



CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA }
COUNTY OF CHARLES MIX } SS

On this the 19 day of August, 2014, before me, Kenneth W. Cotton, a Notary Public within and for said County and State, personally appeared Gerald D. Harrington, who acknowledged himself/herself to be the Chairman, of Napa-Platte Regional Railroad Authority, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
NOTARY PUBLIC

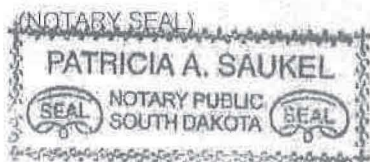
My Commission Expires: 8/1/2015

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA }
COUNTY OF HUGHES } SS

On this the 15th day of September, 2014, before me, PATRICIA A. SAUKEL, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Patricia A. Saukel
NOTARY PUBLIC

My Commission Expires: 10-19-17

APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2.0, and additionally known as Railroad Engineer's Survey Station Number 26+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

~~DO NOT~~ LEASE

Amendment Number 1 to Agreement Number 910940

BACKGROUND:

1. On June 21, 2014, the State of South Dakota, acting by and through its Department of Transportation, referred to in this Amendment as the "State," and Napa-Platte Regional Railroad Authority, referred to in this Amendment as the "Authority," entered into a lease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party and assigned agreement number 910940 by the STATE.
2. The State and the Authority wish to amend the AGREEMENT to extend the term of the AGREEMENT.

THE STATE AND THE AUTHORITY MUTUALLY AGREE AS FOLLOWS:

1. Effective June 17, 2015, paragraph 19 of the AGREEMENT, entitled "Term," is revised to read as follows:
 19. Term. This Lease Agreement will continue in full force and effect beginning June 21, 2014, and ending September 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
2. Except as modified by this Amendment, all other terms and conditions of the original AGREEMENT will remain in full force and effect.

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

Napa-Platte Regional Railroad Authority

By: Gerald HamptonName: GERALD HAMPTON

Its: Chairperson

Date: Effective Date 6/17/15
Signed 4/23/15

(CORPORATE SEAL)

State of South Dakota
Department of TransportationBy: Darin P. Bergquist

Name: Darin P. Bergquist

Its: Secretary

Date: 6/17/15

Approved as to Form:

Karla A. Smith
Special Assistant Attorney General

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA }
COUNTY OF CHARLES MIX } SS

On this the 23rd day of JUNE, 2015, before me, KENNETH W. COTTON, a Notary Public within and for said County and State, personally appeared SECRETARY HODGKINSON, Chairperson of the Napa-Platte Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
NOTARY PUBLIC

My Commission Expires: 8-1-2015

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA }
COUNTY OF HUGHES } SS

On this the 17th day of JUNE, 2015, before me, Bonnie R. Olson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

Bonnie R. Olson

NOTARY PUBLIC

My Commission Expires: JUNE 17, 2015

ATTACHMENT 2

SUBLEASE

910936

AGREEMENT BETWEEN
NAPA-PLATTE REGIONAL RAILROAD AUTHORITY
AND
DAKOTA SOUTHERN RAILWAY COMPANY

THIS SUBLEASE AGREEMENT (Agreement) is made and entered into by and between the Napa to Platte Regional Railroad Authority, referred to in this Agreement as "Authority," and the Dakota Southern Railway Company, referred to in this Agreement as "Operator." This Agreement is effective on June 21, 2014.

BACKGROUND:

1. The South Dakota Department of Transportation is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Agreement.
2. Operator wants to sublease from the Authority the Rail Facilities.

AUTHORITY AND OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. Authority will permit Operator to use the Rail Facilities described in Appendix 1 attached to this Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Agreement.

2. Representations and Warranties. Authority or Authority's Operator(s) accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, Authority or Authority's Operator(s) acknowledges that Authority or Authority's Operator(s) has inspected the Rail Facilities, including all improvements and structures thereon. Authority or Authority's Operator(s) further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. Authority permits Operator to use any and all of Authority's rights and licenses in and to the Rail Facilities as may be necessary for the purpose of providing rail freight service. The rights granted to Operator herein relate solely to the provision of rail service on the Rail Facilities and Operator may not use the Rail Facilities for any other purpose without the prior written authorization of the Authority and State of South Dakota.

This Agreement is subject to the prior consent of the South Dakota State Railroad Board, or its designee. This Agreement is expressly made subject to all of the terms, conditions, and limitations contained in the Agreement, which became effective June 21, 2014, between Authority and the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation (the "State").

Authority will have no obligation to perform any maintenance on the Rail Facilities other than as provided in paragraph 16 of this Agreement. Operator will be responsible for the normal and regular work required to keep the Rail Facilities in a condition necessary to enable safe operations as further provided by paragraph 6 of this Agreement.

4. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, or the agreement between the State of South Dakota and Authority, Authority will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight and/or passenger service.
5. Common Carrier Obligations. Operator will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Agreement upon the effective date of this Agreement.
6. Liability of Operator. Operator will indemnify, hold harmless, and protect Authority, its individual members, their representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage or deaths received or sustained by any person, persons, or property, including State or Authority owned property, on account of any negligent

act, omission, neglect or misconduct of the Operator, its representatives, officers, employees or agents. Operator will maintain liability insurance in the amount set forth in paragraph 9 of this Agreement.

7. Laws to be Observed. Operator will keep fully informed of all federal and state laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. Operator will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State, Authority and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
8. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described herein, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the Program Manager of the South Dakota Office of Air, Rail, and Transit, Authority, and Operator, or any other railroad conducting operations on the facilities pursuant to this Agreement with the Authority. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
9. Insurance. Operator will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State and Authority will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State and Authority as an additional insured, will apply as primary insurance of State and Authority, and will not be deemed to be excess to any insurance issued in the name of State and Authority. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Authority or Authority(s) Operator will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Authority or Authority(s) Operator of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating the State will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company; its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Agreement.

Authority or Authority(s) Operator will provide the State with evidence of the liability insurance coverage required by this Agreement before Operator operates along the Rail Facilities and Operator(s) will supply the State with copies of its insurance policies and any amendments, as soon as they are available and with evidence of continued insurance coverage on January 1 of each year. Authority or Authority(s) Operator's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Agreement without notice and without opportunity to cure such default. Authority or Authority(s) Operator acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Authority or Authority(s) Operator or any lessee or other operator to the State as set forth herein.

10. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to Operator by or within the scope of this Agreement, there will be no liability upon any member of Authority, or its authorized representatives, either personally or as officials of Authority, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
11. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought; provided however, that when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
12. State and Napa to Platte Inspection. The State or its duly authorized representatives, and Authority, and upon reasonable notice to Authority or its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Agreement and the Agreement executed previously between Authority and the State.

Further, it is agreed by the State, or its duly authorized representatives, and Authority, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Authority or its Operator(s) and Authority agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Authority agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.
13. Responsibility for Rehabilitation. The State and Authority will have no responsibility for rehabilitating the Rail Facilities.
14. Additions to Rail Facilities. Authority hereby grants to the operator the right to make such Additions to the Rail Facilities as Operator may require to permit rail freight and/or passenger service, at Operator's sole expense. The term "Addition(s)" as used herein will mean capital improvements which are in addition to the Rail Facilities. Operator will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
15. Maintenance. The State and Authority will have no obligation to perform any maintenance of the Rail Facilities. Operator will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control and other necessary repairs and work.
16. Payment. Operator will make payments based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Agreement, as follows:

Sixty-five percent (65%) of any car storage fees billed. Operator may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.
17. Term. This Agreement will continue in full force and effect beginning June 21, 2014, and ending June 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Agreement. Upon termination of

this Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement.

18. Termination by the State at the State's Sole Discretion. The State may terminate this Agreement at any time and for any reason or no reason by giving thirty (30) days written notice of termination by certified mail to Authority and Operator.
19. Termination by Authority or Operator for Fault. If either Authority or Operator substantially fail to perform its obligations under this Agreement, and continue in such default for a period of ten (10) days, the party not in default will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the party in default and to the State, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement. Activities to be considered fault include, but are not limited to: fraud, theft of state property, non-payment of lease, misappropriation of funds, and lapse of insurance. Substandard performance means failure to cause movement of loaded railcars within 30 days of loading by industry. Termination of this Agreement by Authority or Operator may be appealed to the South Dakota State Railroad Board, but only if the State elects not to exercise its independent right to terminate this Agreement pursuant to Paragraph 18, above. If either party is not satisfied with the Board's decision on the appeal, an appeal to Circuit Court can be made, but there is no right to appeal the State's decision to terminate this Agreement pursuant to Paragraph 18, above.
20. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the Authority:

Chairperson

Napa-Platte Regional Railroad Authority
29641 393rd Ave.
Wagner, SD 57380

For the Operator:

President:

Dakota Southern Railway Company
P.O. Box 612
Richmond, MO 64085

21. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses or phrases of this Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
22. Entire Agreement. This Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
23. Force Majeure. This Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this agreement or operability of the Rail Facilities is prevented by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this agreement or any subsequent sublease agreement. If restoration is not made, then this agreement will be void without penalty to either party.

SIGNATURES FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested to by their duly authorized officers.

Dakota Southern Railway Company

By: Avery Beegs

Its: CEO

Date: July 24 2014

(Corporate Seal)

Napa-Platte Regional Railroad Authority

By: Robert J. Hays

Its: Chairman

Date: July 15, 2014

(Corporate Seal)

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF CHARLES MIX)

On this the 15 day of July, 20 14, before me, Kenneth W. Cotton, a Notary Public within and for said County and State, personally appeared Gerald D. Harrington, who acknowledged himself/herself to be the Chairman, of Napa-Platte Regional Railroad Authority, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
 NOTARY PUBLIC

My Commission Expires: 8/1/2015

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF Rau)

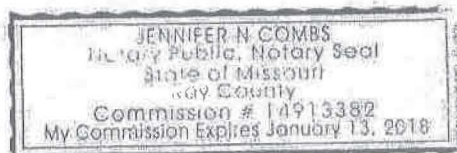
On this the 24th day of July, 20 14, before me, Jennifer N. Combs, a Notary Public within and for said County and State, personally appeared Avery Beggs, who acknowledged himself/herself to be the CFO, of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

Jennifer N. Combs
 NOTARY PUBLIC

My Commission Expires: 1-13-2018

(NOTARY SEAL)



APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2.0, and additionally known as Railroad Engineer's Survey Station Number 26+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

Amendment Number 1 to Sublease Agreement between
Napa-Platte Regional Railroad Authority
and Dakota Southern Railway Company

BACKGROUND:

1. On June 21, 2014, Napa-Platte Regional Railroad Authority, referred to in this Amendment as the "Authority," and Dakota Southern Railway Company, referred to in this Amendment as the "Operator," entered into a sublease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party.
2. The Authority and the Operator wish to amend the AGREEMENT to extend the term of the AGREEMENT.

THE AUTHORITY AND THE OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Effective June 17, 2015, paragraph 17 of the AGREEMENT, entitled "Term," is revised to read as follows:
 17. Term. This Agreement will continue in full force and effect beginning June 21, 2014, and ending September 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Agreement. Upon termination, of this Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement.
2. Except as modified by this Amendment, all other terms and conditions of the original AGREEMENT will remain in full force and effect.

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the Authority and the Operator to enter into the same.

Napa-Platte Regional Railroad Authority

By: [Signature]

Name: Charles Harrington

Its: Chairperson

Date: EFFECTIVE DATE 6/17/15
SIGNED 6/23/15

(CORPORATE SEAL)

Dakota Southern Railway Company

By: [Signature]

Name: Lester Thompson Jr

Its: General Manager Dakota Southern

Date: June 17, 2015

(CORPORATE SEAL)

Consent to enter into this Sublease Agreement given this 17th day of June, 2015.

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Approved as to Form

[Signature]
Special Assistant Attorney General

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF CHARLES MIX) : SS

On this the 23RD day of JUNE, 2015, before me, KENNETH W. COTTON, a Notary Public within and for said County and State, personally appeared GERRIE HARRINGTON, Chairperson of the Napa-Platte Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
NOTARY PUBLIC

My Commission Expires: 8-1-2015

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) : SS

On this the 17th day of June, 2015, before me, Bonnie R Olson, a Notary Public within and for said County and State, personally appeared Walter Thompson Jr General Manager (Title), of Dakota Southern Railway Company, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

Bonnie R Olson
NOTARY PUBLIC

My Commission Expires: June 17, 2015

ATTACHMENT 3

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
DAKOTA SOUTHERN RAILWAY COMPANY

910992

THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and Dakota Southern Railway Company, referred to in this Lease Agreement as "Dakota Southern." This Lease Agreement is effective on September 21, 2015.

BACKGROUND:

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Dakota Southern wants to lease from the State the Rail Facilities.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures thereon. Dakota Southern further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Lease Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insured, prior to any motorcar event; and, further, the Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification and hold harmless agreement to be executed by the person or entity in charge of the motorcar event, with copies of said indemnification and hold harmless agreement to be provided to the State of South Dakota prior to any motorcar travel on the trackage leased herein. The rights granted Dakota Southern in this Lease Agreement relate solely to the provision of rail service on the Rail Facilities and Dakota Southern may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
4. Provision of Operations. If Dakota Southern, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Dakota Southern and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.
5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
6. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.

7. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
8. Laws to be Observed. Dakota Southern will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified in this Lease Agreement. Dakota Southern will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. Dakota Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way

limit the liability of Dakota Southern or any lessee or other operator to the State as set forth in this Lease Agreement.

11. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Lease Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
12. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Lease Agreement or any part of this Lease Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
13. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
14. State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State, or its duly authorized representatives, and Dakota Southern, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Dakota Southern and Dakota Southern agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Dakota Southern agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.

15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
16. Additions to Rail Facilities. The State grants to Dakota Southern the right to make such Additions to the Rail Facilities as Dakota Southern may require to permit rail freight service, at Dakota Southern's sole expense. The term "Addition(s)" as used in this Lease Agreement will mean capital improvements which are in addition to the Rail Facilities. Dakota Southern will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
17. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
18. Payment. Dakota Southern will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows:

Fifty percent (50%) of any car storage fees billed

Dakota Southern may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.

19. Term. This Lease Agreement will continue in full force and effect beginning September 21, 2015, and ending November 19, 2015, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days' written notice of termination by certified mail to Dakota Southern.
21. Termination by the Dakota Southern For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days. Dakota Southern will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by Dakota Southern giving notice of any prior breach thereof, to terminate this Lease Agreement.
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern:

President
Dakota Southern Railway Company
PO Box 612
Richmond, Missouri 64085

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed and attested to by their duly authorized officers on the date and year first above written.

Dakota Southern Railway Company

By: 

Its: CFO

Date: 9-21-15

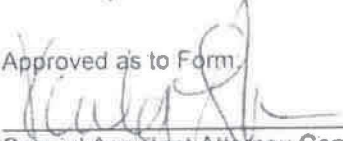
(Corporate Seal)

State of South Dakota
Department of Transportation

By: 

Its: Secretary

Date: 10/15/15

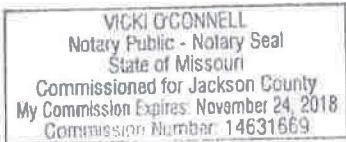
Approved as to Form:

Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENTSTATE OF Missouri SOUTH DAKOTACOUNTY OF Platte) SS

On this the 21st day of September, 2015, before me, Vicki O'Connell, a Notary Public within and for said County and State, personally appeared Arvy Beggs, who acknowledged himself/herself to be the _____, of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



(NOTARY SEAL)

Vicki O'Connell

NOTARY PUBLIC

My Commission Expires: November 24, 2018STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

On this the 14th day of October, 2015, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Wanda Amundson

NOTARY PUBLIC

My Commission Expires: Wanda Amundson
~~My Commission Expires~~
June 7, 2016

APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2.0, and additionally known as Railroad Engineer's Survey Station Number 26+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
DAKOTA SOUTHERN RAILWAY COMPANY

911004

THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and Dakota Southern Railway Company, referred to in this Lease Agreement as "Dakota Southern." This Lease Agreement is effective on November 20, 2015.

BACKGROUND:

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Dakota Southern wants to lease from the State the Rail Facilities.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures thereon. Dakota Southern further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Lease Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insured, prior to any motorcar event, and, further, the Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification and hold harmless agreement to be executed by the person or entity in charge of the motorcar event, with copies of said indemnification and hold harmless agreement to be provided to the State of South Dakota prior to any motorcar travel on the trackage leased herein. The rights granted Dakota Southern in this Lease Agreement relate solely to the provision of rail service on the Rail Facilities and Dakota Southern may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
4. Provision of Operations. If Dakota Southern, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Dakota Southern and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.
5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
6. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.

7. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
8. Laws to be Observed. Dakota Southern will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees identified in this Lease Agreement. Dakota Southern will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law, which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence, and \$10 million in the aggregate, and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. Dakota

Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Dakota Southern or any lessee or other operator to the State as set forth in this Lease Agreement.

11. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Lease Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
12. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Lease Agreement or any part of this Lease Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
13. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought, provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
14. State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State or its duly authorized representatives, and Dakota Southern, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Dakota Southern and Dakota Southern agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Dakota Southern agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.
15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
16. Additions to Rail Facilities. The State grants to Dakota Southern the right to make such Additions to the Rail Facilities as Dakota Southern may require to permit rail freight service, at Dakota Southern's sole expense. The term "Addition(s)" as used in this Lease Agreement will mean capital improvements which are in addition to the Rail Facilities. Dakota Southern will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
17. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
18. Payment. Dakota Southern will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows:

Fifty percent (50%) of any car storage fees billed.

Dakota Southern may collect and keep all switching fees charged for the Rail Facilities

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates

19. Term. This Lease Agreement will continue in full force and effect beginning November 20, 2015, and ending January 18, 2016, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days' written notice of termination by certified mail to Dakota Southern,
21. Termination by the Dakota Southern For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days, Dakota Southern will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by Dakota Southern giving notice of any prior breach thereof, to terminate this Lease Agreement.
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern

President
Dakota Southern Railway Company
PO Box 612
Richmond, Missouri 64085

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of

performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed and attested to by their duly authorized officers on the date and year first above written

Dakota Southern Railway Company

By: Michael J. Johnson

Its: President

Date: Jan 7, 2016

(Corporate Seal)

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Date: 1/20/16

Approved as to Form

William J. Nevin
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA

COUNTY OF PLATTE

} SS

On this the 8th day of January, 2016, before me, Robin D Wright, a Notary Public within and for said County and State, personally appeared Michael D Williams who acknowledged himself/herself to be the President of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



(NOTARY SEAL)

Robin D Wright
 NOTARY PUBLIC
 My Commission Expires 4/8/2017

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA

COUNTY OF HUGHES

} SS

On this the 21st day of January, 2016, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Darin P Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal



Wanda Amundson

NOTARY PUBLIC

My Commission Expires Wanda Amundson
My Commission Expires
June 7, 2016

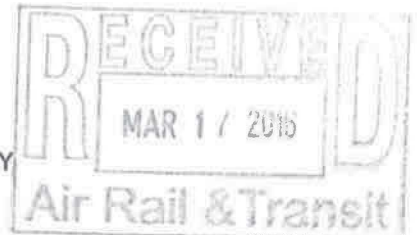
APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2.0, and additionally known as Railroad Engineer's Survey Station Number 26+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17 Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

011082

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
DAKOTA SOUTHERN RAILWAY COMPANY



THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and Dakota Southern Railway Company, referred to in this Lease Agreement as "Dakota Southern." This Lease Agreement is effective on January 19, 2016.

BACKGROUND:

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Dakota Southern wants to lease from the State the Rail Facilities.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures thereon. Dakota Southern further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Lease Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insured, prior to any motorcar event; and, further, the Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification and hold harmless agreement to be executed by the person or entity in charge of the motorcar event, with copies of said indemnification and hold harmless agreement to be provided to the State of South Dakota prior to any motorcar travel on the trackage leased herein. The rights granted Dakota Southern in this Lease Agreement relate solely to the provision of rail service on the Rail Facilities and Dakota Southern may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
4. Provision of Operations. If Dakota Southern, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Dakota Southern and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.
5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
6. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.

7. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
8. Laws to be Observed. Dakota Southern will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified in this Lease Agreement. Dakota Southern will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. Dakota

Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Dakota Southern or any lessee or other operator to the State as set forth in this Lease Agreement.

11. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Lease Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
12. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Lease Agreement or any part of this Lease Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
13. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
14. State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State, or its duly authorized representatives, and Dakota Southern, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Dakota Southern and Dakota Southern agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Dakota Southern agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.

15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
16. Additions to Rail Facilities. The State grants to Dakota Southern the right to make such Additions to the Rail Facilities as Dakota Southern may require to permit rail freight service, at Dakota Southern's sole expense. The term "Addition(s)" as used in this Lease Agreement will mean capital improvements which are in addition to the Rail Facilities. Dakota Southern will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
17. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
18. Payment. Dakota Southern will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows:

Fifty percent (50%) of any car storage fees billed.

Dakota Southern may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.

19. Term. This Lease Agreement will continue in full force and effect beginning January 19, 2016, and ending July 18, 2016, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days' written notice of termination by certified mail to Dakota Southern,
21. Termination by the Dakota Southern For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days, Dakota Southern will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by Dakota Southern giving notice of any prior breach thereof, to terminate this Lease Agreement.
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern:

President
Dakota Southern Railway Company
PO Box 612
Richmond, Missouri 64085

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of

performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed and attested to by their duly authorized officers on the date and year first above written.

Dakota Southern Railway Company

By: Michael Williams

Its: President

Date: Feb 25, 2016

(Corporate Seal)

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Date: 3/24/16

Approved as to Form:

William J. Nevin
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF ^{KANSAS} ~~SOUTH DAKOTA~~)
) : SS
 COUNTY OF JOHNSON)

On this the 25th day of February, 2016, before me, ~~Michael Williams~~ Erica Carper a Notary Public within and for said County and State, personally appeared Michael Williams, who acknowledged himself/herself to be the President of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)



ERICA CARPER
 NOTARY PUBLIC
 STATE OF KANSAS
 E.P. 5/11/19

Erica Carper

NOTARY PUBLIC

My Commission Expires: 5/11/19

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) : SS
 COUNTY OF HUGHES)

On this the 25th day of March, 2016, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Wanda Amundson

NOTARY PUBLIC

My Commission Expires: June 7, 2016

Wanda Amundson

My Commission Expires

APPENDIX 1

Napa Junction to Ravinia

Commencing at the intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 0.0, and additionally known as Railroad Engineer's Survey Station Number 00+00, and extending in a westerly direction a distance of approximately 54.5 miles in and through the counties of Yankton, Bon Homme, and Charles Mix and terminating at the, westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

911065

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT

This Lease Agreement ("Agreement") is made and entered into by and between the South Dakota Department of Transportation, referred to in this Agreement as the "State," and Dakota Southern Railway Company, referred to in this Agreement as "Dakota Southern."

BACKGROUND:

- A. The State is owner of railroad property, including mainline tracks, sidings, and extra-width property and facilities commencing at the intersection of the North Sioux City to Mitchell line located in the West Half of the Southwest Quarter (W½ SW¼) of Section Twenty-two (22), Township Ninety-four North (94N), Range Fifty-six West (56W) of the 5th P.M., also known as Milepost 0.0, and additionally known as Railroad Engineer's Survey Station Number 00+00, and extending in a westerly direction a distance of approximately 54.5 miles in and through the counties of Yankton, Bon Homme, and Charles Mix and terminating at the, westerly line of the Northwest Quarter of the Northeast Quarter (NW¼ NE¼) of Section Seventeen (17), Township Ninety-six North (96N), Range Sixty-four West (64W) of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17, referred to in this Agreement as the "Rail Facilities."
- B. Dakota Southern wants to lease the Rail Facilities from the State.
- C. The parties now wish to enter into this Agreement for the lease of the Rail Facilities by Dakota Southern from the State on the terms and conditions as stated in this Agreement.
- D. The State has received the approval of the South Dakota State Railroad Board (the "Railroad Board") and the written consent of the Governor to enter into this Agreement for railroad purposes, as evidenced by the resolution attached to this Agreement as **Exhibit A**.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

- 1. Purpose. The State leases the Rail Facilities to Dakota Southern, subject to the terms and conditions set forth in this Agreement. All property leased to third parties is identified in records on file at the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. In addition, the State may exclude additional property at any time during the term of this Agreement with Dakota Southern's consent. The parties recognize and agree that this Agreement is for railroad purposes. Consequently, Dakota Southern will not unreasonable withhold its consent to exclude property not necessary for railroad purposes.
- 2. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Background paragraph A above.
- 3. Effective Date. This Agreement is effective December 1, 2016. This Agreement supersedes Agreement Number 911022 that was executed by Dakota Southern on February 25, 2016, and by the State on March 24, 2016, and subsequently amended by the parties by an agreement executed by Dakota Southern on July 13, 2016, and by the State on July 15, 2016.
- 4. Condition of the Rail Facilities. Dakota Southern understands and agrees the Rail Facilities are leased in "AS IS" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Agreement.
- 5. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures. Dakota Southern further acknowledges that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements to the Rail Facilities.

6. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in and to the Rail Facilities to the extent necessary for the purpose of providing rail freight service and, if it can be accommodated without adversely affecting freight service, rail car storage. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insureds, prior to any motorcar event; and, further, Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification agreement to be executed by the person or entity in charge of the motorcar event, indemnifying the State and Dakota Southern from any claim or liability arising out of the event, and will provide copies of said indemnification agreements to the State prior to any motorcar travel on the Rail Facilities. The rights granted Dakota Southern under this Agreement relate solely to the provision of rail service on the Rail Facilities. Dakota Southern will not use the Rail Facilities for any other purpose without the State's prior written authorization.
7. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service. The State may grant leases, easements, licenses and all other similar property rights on the Rail Facilities for non-rail purposes, including but not limited to, placement on the Rail Facilities of utilities, fiber optic cables, pipeline, at-grade crossings and grade separations, and other non-rail related facilities and businesses, provided that such leases and easements, and licenses do not unreasonably interfere with Dakota Southern's rail operations. The State will be entitled to all revenues derived from such grants of property rights.
8. Government Approval. Upon execution of this Agreement, Dakota Southern will immediately prepare, file and obtain a modified certificate of public convenience and necessity from the Surface Transportation Board ("STB") to provide common carrier service on the Rail Facilities. The modified certificate will not contain any reservations on the provision of service. Dakota Southern will permit the State to review any proposed STB filings. Dakota Southern will be solely responsible for any costs incurred in obtaining the modified certificate.
9. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities upon the effective date of this Agreement. No later than December 31, 2016, Dakota Southern will provide service to shippers requesting service on the Rail Facilities. Dakota Southern will, at Dakota Southern's sole expense, be responsible for making any repairs or improvements necessary to provide such service.
10. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
11. Laws to be Observed. Dakota Southern will keep fully informed of all federal, state, and local laws, ordinances, regulations, injunctions, and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, rules, ordinances, regulations, orders, or decrees identified in this Agreement. Dakota Southern will at all times observe and comply with all such laws, rules, ordinances, regulations, and all final orders and decrees. Dakota Southern will protect, hold harmless, and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, rule, ordinance, regulation, injunction, or final order or decree.
12. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board

will issue a written decision, which will be binding on all parties to this Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.

13. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, and to immediately terminate this Agreement without notice and without opportunity to cure such default. Dakota Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit Dakota Southern's liability to the State as set forth in this Agreement.

14. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
15. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Agreement or any part of this Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
16. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by written memorandum.
17. State Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserves the right at all times to perform any and all necessary inspections over and across the Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Agreement. Dakota Southern will promptly address any deficiencies identified by the State as a result of these inspections.
18. Responsibility for Rehabilitation. The State will have no obligation to rehabilitate the Rail Facilities.

19. Additions to Rail Facilities. As partial consideration for this Agreement, Dakota Southern will at a minimum make the following improvements to the Rail Facilities during each year of this Agreement:

- a. Installation of 3,000 crossties;
- b. Rehabilitation of three railroad crossings with heavy rail (115# or greater) and new ties; and
- c. Improvement of two miles of ditch drainage.

The State grants to Dakota Southern the right to make such further improvements and additions to the Rail Facilities as Dakota Southern may require to permit rail freight service. All improvements and additions to the Rail Facilities will be at Dakota Southern's sole expense, unless agreed to in writing by the State.

20. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in an excepted track condition sufficient to provide service to shippers on the Rail Facilities. Such maintenance will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs, and work. If the Rail Facilities are rehabilitated, then Dakota Southern will maintain the rail Facilities to their rehabilitated condition.
21. Rent Payments. As partial rent for the Rail Facilities, Dakota Southern will pay the State fifty percent (50%) of any fees billed for car storage originating or terminating at any point along the Rail Facilities (excluding switching fees). Dakota Southern will establish storage fees according to market conditions to ensure the rates are reasonable. The State's share of car storage fees will be calculated as of November 30 of each year and Dakota Southern will remit payment to the State by May 1 of the following year. Dakota Southern will not be required to remit any portion of the switching fees charged or collected for the Rail Facilities.

As additional rent for the use of the Rail Facilities, Dakota Southern will make an annual payment to the State equal to one and one-half percent (1.5%) of the gross revenues for any rail freight originating, terminating, or carried along any point on the Rail Facilities. Gross revenues will be calculated as of November 30 of each year and Dakota Southern will remit payment to the State by May 1 of the following year.

22. Term. This Agreement will continue in full force and effect for a period of ten (10) years from and after the effective date of this Agreement, unless terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear that cannot be obviated by routine maintenance, as existed on the effective date of this Agreement, except that all improvements and additions to the Rail Facilities will become the sole property of the State.
23. Termination by the State For Fault. If Dakota Southern fails to perform its obligations under this Agreement, and continues in such default for a period of sixty (60) days after written notice of such default from the State, then State may terminate this Agreement. Default includes, but is not limited to, nonpayment of rent, lapse of insurance, inadequate maintenance or repair of the Rail Facilities, and failure to provide safe and efficient common carrier rail service. Fraud, theft of State property, or any other criminal act, other than Class 2 Misdemeanors, would be a material breach of the Agreement, and is grounds for immediate termination of the Agreement by State. No advanced notice is required and there is no opportunity to cure the breach.
24. Termination of Modified Certificate. Upon termination or expiration of this Agreement, Dakota Southern agrees to promptly terminate its modified certificate before the STB and relinquish any other rights it may have to provide common carrier service over the Rail Facilities, subject to the requirements set out in 49 CFR 1150.24. If Dakota Southern fails to promptly terminate these rights, then the State is authorized and empowered to submit the requisite filings to the STB and take all other necessary steps to terminate any rights Dakota Southern may have to provide common carrier service over the Rail Facilities. Dakota Southern will reimburse the State for all expenses incurred to effectuate the termination of these rights.

25. Audit. Dakota Southern will keep detailed records, accounts, invoices, and supporting documentation pertaining to all costs paid for under this Agreement. Upon reasonable notice, Dakota Southern will allow the State, through any authorized representative, to examine and copy all records, accounts, invoices, and supporting documents.
26. The terms of this Agreement alone will control the relationship between the State and Dakota Southern.
27. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:
 Program Manager
 Office of Air, Rail, and Transit
 SD Department of Transportation
 700 Broadway Avenue East
 Pierre, SD 57501-2586

For Dakota Southern:
 President
 Dakota Southern Railway Company
 10100 N. Ambassador Drive, Suite 105
 Kansas City, Missouri 64153

28. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
29. Entire Agreement. This Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
30. Force Majeure. This Agreement and any sublease is subject to force majeure, and is contingent on acts of God, weather conditions, tortious acts of third parties, restrictions imposed by any government or governmental agency, and other events beyond the control of parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any of these causes, neither Dakota Southern nor the State is under any obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Agreement. If restoration is not made, then this Agreement will be void without penalty to either party.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested to by their duly authorized officers on the date and year first above written.

Dakota Southern Railway Company

By: 

Its: President

Date: Nov 30, 2016

(Corporate Seal)

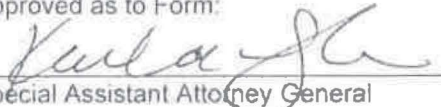
State of South Dakota
Department of Transportation

By: 

Its: Secretary

Date: 11/30/16

Approved as to Form:


Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF Hughes)

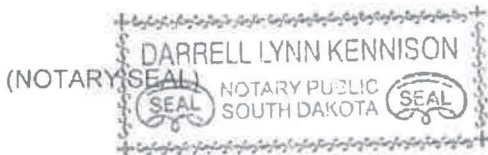
On this the 30th day of November, 2016, before me, Darrell Lynn Kennison, a Notary Public within and for said County and State, personally appeared Mike Williams, who acknowledged himself/herself to be the President, of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

Darrell Lynn Kennison

NOTARY PUBLIC

My Commission Expires: 01/24/2020

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF HUGHES)

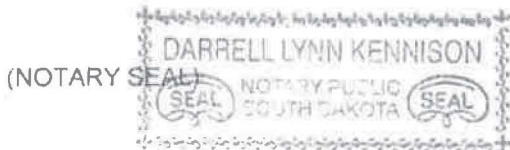
On this the 30th day of November, 2016, before me, Darrell Lynn Kennison, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Darrell Lynn Kennison

NOTARY PUBLIC

My Commission Expires: 01/24/2020



ATTACHMENT 4

Affidavit of Publication

State of South Dakota }
County of Bon Homme } SS

Rebecca Uz Being first duly sworn says that the **Tyndall Tribune & Register** is a legal weekly newspaper for publication of legal and other official notices as required by Chapter 298 of the Session Laws of South Dakota, 1939; that it has bona fide paid circulation of more than two hundred copies weekly; that it is published in English language in the City of Tyndall, Bon Homme County, South Dakota, and has been admitted to the United States mail under second class mailing privilege for more than one year prior to the first publication of the notice herein mentioned, and that it is printed in an office maintained at the place of publication at Tyndall, South Dakota, and that deponent is the publisher in charge of the advertising department of said newspaper; that the advertisement headed

SDPA

2x16 Napa-Platte RR

a printed copy of which is hereto attached, was printed and published in said newspaper for *three* successive weeks, upon the following dates:

<i>March 7</i> 20 <i>18</i>	20
<i>March 14</i> 20 <i>18</i>	20
<i>March 21</i> 20 <i>18</i>	20
20	20

That the full amount of the fee charged for the publication of said notice, \$ *462.72*, inures to the benefit of the publisher of said newspaper, that no agreement or understanding for the division thereof has been made with any other person, and that no part has been agreed to be paid to any person whomsoever.

Rebecca Uz publisher

Subscribed and sworn to before me this

21 day of *March* 20*18*

Peggy Schelske

Notary Public, South Dakota

My Commission Expires Oct. 24, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-1253

STATE OF SOUTH DAKOTA ACTING BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION - ADVERSE
DISCONTINUANCE OF OPERATING AUTHORITY - NAPA-PLATTE
REGIONAL RAILROAD AUTHORITY

NOTICE OF INTENT TO FILE APPLICATION FOR ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY

The State of South Dakota, acting by and through its Department of Transportation Board ("Board"), Washington, D.C. 20423, an application for the adverse discontinuance of the rail service operating authority of the Napa-Platte Regional Railroad Authority ("NPRRA") over an approximately 13.4 mile line extending between Milepost 0.0 near Napa Jct., SD and Milepost 13.4 SD ("Napa-Tabor Line"). The Napa-Tabor Line is situated in Yankton and Bon Homme Counties, South Dakota and traverses U.S. Postal Zip Codes 57508, 57001, 57002, 57003, 57004, 57005, 57006, 57007, 57008, 57009, 57010, 57011, 57012, 57013, 57014, 57015, 57016, 57017, 57018, 57019, 57020, 57021, 57022, 57023, 57024, 57025, 57026, 57027, 57028, 57029, 57030, 57031, 57032, 57033, 57034, 57035, 57036, 57037, 57038, 57039, 57040, 57041, 57042, 57043, 57044, 57045, 57046, 57047, 57048, 57049, 57050, 57051, 57052, 57053, 57054, 57055, 57056, 57057, 57058, 57059, 57060, 57061, 57062, 57063, 57064, 57065, 57066, 57067, 57068, 57069, 57070, 57071, 57072, 57073, 57074, 57075, 57076, 57077, 57078, 57079, 57080, 57081, 57082, 57083, 57084, 57085, 57086, 57087, 57088, 57089, 57090, 57091, 57092, 57093, 57094, 57095, 57096, 57097, 57098, 57099, 57100, 57101, 57102, 57103, 57104, 57105, 57106, 57107, 57108, 57109, 57110, 57111, 57112, 57113, 57114, 57115, 57116, 57117, 57118, 57119, 57120, 57121, 57122, 57123, 57124, 57125, 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Tyndall students celebrate Dr. Seuss' birthday with activities



Taycee Ranek and Aspen Schonebaum carefully cut out the pieces of their Dr. Seuss masks.



Grace Sanders and Adley Scheuerman draw pictures from the cover of a Dr. Seuss book to be displayed as a door cover.

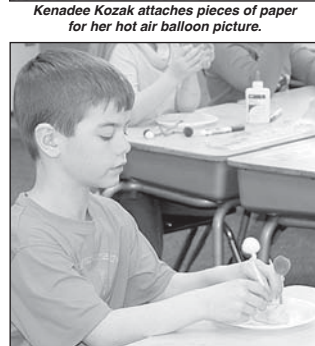


Kalem Hudson squirts some frosting onto his cookie for his cat in the hat cookie.



photos
by
Becky
Tycz

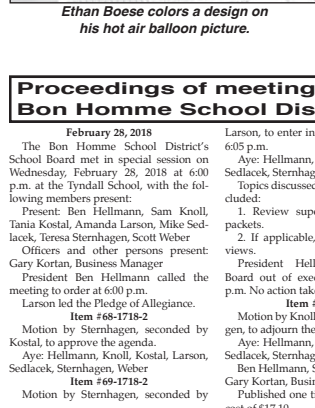
Nikkata Wilson attaches the pieces to her Dr. Seuss mask.



Kenadee Kozak attaches pieces of paper for her hot air balloon picture.



Major Aarstad places his truffle trees into the base.



Ethan Boese colors a design on his hot air balloon picture.



Jersie Schonebaum attaches the last piece to off her cat in the hat cookie.



March 1 activities centered around books written by Dr. Seuss



Maggie Sedlacek arranges her truffle trees.

Weed and pest meeting March 23

The annual meeting of the Bon Homme County Weed and Pest Board will be held Friday, March 23 at 1 p.m. at the Courthouse Annex, Tyndall. Board members and any area residents are encouraged to attend. Spray policies and guidelines for 2018 will be set.

Landowners and producers informal workshop rescheduled for Friday

Agricultural producers in eastern South Dakota are eligible to receive financial assistance for a variety of conservation practices focusing on improving soil health. Ducks Unlimited, the U.S. Natural Resources Conservation Service (NRCS) and several partners have developed the project under the Regional Conservation Partnership Program (RCPP) aimed at improving soil health, wildlife habitat, and landscape productivity. RCPP provides landowners with financial assistance for incorporating regenerative farming practices, improving wildlife habitat, diversifying crop rotations and landscape use.

Find out how this program fits with your operation at a public informational seminar Friday, March 9 from 1 to 4 p.m. at Boog's Bar, 109 E. Main Street, Parkston. Come meet field staff, ask questions and start your applications.

For more information contact Austin Peterson 507-829-5405 or Mark Rohlfing, district conservationist, 605-589-3232 ext. 3.

Blood drive March 22

Every two seconds, someone in the United States needs a blood transfusion to survive. To get blood to those patients in South Dakota, Iowa and Nebraska, LifeServe Blood Center needs 200,000 generous folks to take their turn in the blood donor chair every year!

Only 38% of the American population is eligible to donate blood, and only a tenth of those people actually do make time to save lives. Blood donors need to be at least 16, weigh 120 pounds or more and be in general good health.

If you meet these criteria, please give blood at the Bon Homme High School blood drive Thursday, March 22 from 10 a.m. to 3:30 p.m. at Bon Homme High School, Tyndall.

Sign up to save a life today by going online at lifeserveblood-center.org or calling Bon Homme High School at 605-589-3387.



Dodge Van Duysen and Sam Brandsgaard select the pieces for their cat in the hat cookie.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-1253

STATE OF SOUTH DAKOTA ACTING BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION - ADVERSE
DISCONTINUANCE OF OPERATING AUTHORITY - NAPA-PLATTE
REGIONAL RAILROAD AUTHORITY

NOTICE OF INTENT TO FILE APPLICATION FOR ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY

The State of South Dakota, acting by and through its Department of Transportation ("State") gives notice that on or about March 26, 2018, it intends to file with the Surface Transportation Board ("Board"), Washington, D.C. 20423, an application seeking permission for the adverse discontinuance of the rail service operating authority held by the Napa-Platte Regional Railroad Authority ("NPRRA") over an approximately 13.4 mile rail line extending between Milepost 0.0 near Napa Jct., SD and Milepost 13.4 +/- near Tabor, SD ("Napa-Tabor Line"). The Napa-Tabor Line is situated in Yankton and Bon Homme Counties, South Dakota and traverses U.S. Postal Zip Codes 57508, 57078, and 57063. The Line does not have stations. The reason for the proposed discontinuance is that the State's lease of the Napa-Tabor Line to NPRRA has expired and NPRRA has not sought permission to discontinue its operating rights. The State now leases the Napa-Tabor Line to Dakota Southern Railway Company ("DSRC"). DSRC has obtained a modified certificate of public convenience and necessity to provide common carrier service over the Napa-Tabor Line.

There are no documents in the State's possession that indicate that the Napa-Tabor Line contains federally granted rights-of-way. Any such documentation that might come into the State's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's website, www.stb.gov, or a copy can be secured from the State's representatives, whose names and addresses appear below. The application will include the State's entire case for discontinuance. Based on rulings made by the Board in its decision served in this proceeding on May 31, 2017 this proposed discontinuance will not be subject to: offers of financial assistance under 49 U.S.C. § 10904 (49 C.F.R. § 1152.27 of the Board's rules); requests for public use conditions under 49 U.S.C. § 10905 (49 C.F.R. § 1152.28 of the Board's rules); requests for trail use conditions under 16 U.S.C. § 1247(d) (49 C.F.R. § 1152.29 of the Board's rules); or imposition of labor protective conditions under 49 U.S.C. § 10903(b)(2).

Any interested person, after the application is filed, may file with the Board written comments concerning the proposed adverse discontinuance or protests to it. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings, or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including a description of the protestant's use of the line or, if protestant does not use the line, information concerning the group or public interest it represents; (3) the protestant's specific reasons why it opposes the application including information regarding its reliance on the involved service; and (4) the protestant's rebuttal of material submitted in the application.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in the oral hearing or through submission of their entire case in the form of verified statements and arguments at the time they file a protest.

Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Written comments and protests should indicate the proceeding designation, STB Docket No. AB-1253 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E. Street, SW, Washington DC 20423-0001 no later than 45 days after the application is filed. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served on the following representatives of the State: John H. LeSeur, Slover & Loftus LLP, 1224 17th Street, NW, Washington, DC 20036, (202) 347-7170 and Karla L. Engle, Special Assistant Attorney General, South Dakota Department of Transportation, 700 E. Broadway Ave., Pierre, SD 57501-2586, (605) 773-3262.

Written comments and protests may be sent to the Board either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's www.stb.gov website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR Part 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding in accordance with 49 C.F.R. § 1104.12(a).

The Board's May 31, 2017 decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Board decisions and notices are available on the Board's website at www.stb.gov.

Published three times at the approximate cost of \$462.72.

Proceedings of meetings of the Bon Homme School District 4-2

February 28, 2018

The Bon Homme School District's School Board met in special session on Wednesday, February 28, 2018 at 6:00 p.m. at the Tyndall School, with the following members present:

Present: Ben Hellmann, Sam Knoll, Tania Kostal, Amanda Larson, Mike Sedlacek, Teresa Sternhagen, Scott Weber

Officers and other persons present: Gary Kortan, Business Manager

President Ben Hellmann called the meeting to order at 6:00 p.m.

Larson led the Pledge of Allegiance.

Item #68-1718-2

Motion by Sternhagen, seconded by Kostal, to approve the agenda.

Aye: Hellmann, Knoll, Kostal, Larson, Sedlacek, Sternhagen, Weber

Item #69-1718-2

Motion by Sternhagen, seconded by

Larson, to enter into executive session at 6:05 p.m.

Aye: Hellmann, Knoll, Kostal, Larson, Sedlacek, Sternhagen, Weber

Topics discussed during the Retreat included:

1. Review superintendent candidate packets.

2. If applicable, select date for interviews.

President Hellmann declared the Board out of executive session at 8:00 p.m. No action taken.

Item #70-1718-2

Motion by Knoll, seconded by Sternhagen, to adjourn the meeting at 8:01 p.m.

Aye: Hellmann, Knoll, Kostal, Larson, Sedlacek, Sternhagen, Weber

Ben Hellmann, School Board President

Gary Kortan, Business Manager

Published one time at an approximate cost of \$17.10

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get groceries at
either Avon or
Springfield
grocery store



If you wish to have a ride,
call Joe at Country Ford 589-3362
Let Country Ford do the driving for you.

County - from page 1

and questioned if commissioners knew the language was going to be taken out. Commissioner Jelsma confirmed that it was known that the conditional use permit was going to be dropped. Commissioners were unsure how to go about getting the language put back in Article 17 since it has already been approved. Van Gerpen will check with Brian McGinnis at District III to see what the proper procedure is.

Ronnie Hornstra spoke on behalf of Prevailing Winds. James Damon and Bridget Canty (sPower) who were removed from the agenda would like to reschedule for the March 20 meeting. Hornstra requested and received contact information from Dennis Hovorka to send him the haul route agreements from sPower.

Highway superintendent Dennis Hovorka presented fuel quotes which were reviewed and approved.

Commissioners approved Brosz Engineering to complete the 2018 bridge inspections. Hovorka has five bridges that require yearly inspections.

Hovorka received approval to surplus a 1996 red Dodge with utility box, 1990 blue tonner with flat bed and a 1975 Ford F100.

Braven Boska has passed his CDL exam and has been moved from low-base starting to high-base starting \$15.52 effective February 26.

The John Deere Gator commissioners recently approved to purchase has been picked up and brought back to the shop. The gator has been serviced and equipped with a new battery and is currently being used.

The updated Snow Procedure Handbook was passed out for commissioners to keep; extra copies will be available at the courthouse for anyone that would like to have a copy.

Commissioners approved the publishing of the Right of Way policy in the newspaper for two weeks.

Sheehan Mack had to reschedule once again due to the weather. They will give their Mack Truck presentation at the March 20 meeting.

Discussion on the highway department taking over the installation of the 911 signs was brought up. Twenty plus 911 signs need to be installed around the county. Hovorka has an employee that is willing to take on the job but would like to keep his current wage while doing the sign installation. Commissioners approved the request and informed Hovorka where the signs and installation tools were located.

The highway crew is busy plowing and sanding the roads this week. Hovorka has one employee who slipped on ice and damaged his shoulder. An incident report has been filed, and the employee has been given the ok to see a chiropractor.

Teresa Meredith informed commissioners that courthouse employees would like to have hot water installed in the upstairs bathrooms. Meredith looked into having a two-gallon water heater installed for \$600. A 110 outlet would also be needed for the water heater. Meredith suggested while having the 110 outlets installed she would also like the electrician to fix the light fixture out back and install an outlet by the back door to plug in a snow mat that she would like to purchase for \$270. Commissioners approved all three requests.

During Meredith's time, Commissioner Bachmann questioned turning the EM-911 office into a bathroom, as there is no bathroom on the second floor of the courthouse. Meredith was in favor of that idea but reminded commissioners the register of deeds needs more space and

there is not sufficient storage in the courthouse. Jelsma added that you couldn't add on to the courthouse due to it being a historic building. Bachmann suggested splitting the space between a bathroom and storage space. After much discussion, no decisions were made.

Sherriff Lenny Gramkow gave his update on the new police vehicle, saying it should be here any day. Gramkow questioned what he should do with the old vehicle. He did not want to surplus the vehicle, it has low miles and there is nothing mechanically wrong with it. Gramkow suggested keeping the vehicle in the county and giving it to the emergency management department, as they do not need a pickup truck. Commissioners agreed with the idea. Bachmann suggested giving the EM pickup to highway superintendent Hovorka.

Discussion was held on giving the 911 coordinator duties to an employee in dispatch. Gramkow will place a sign up sheet in dispatch for employees who would like to take on the additional duties; the selected employee will receive an additional \$1 per hour. The deadline to sign up will be March 16. Gramkow will make a selection at the March 20 commissioner meeting. In the meantime, Gramkow will be speaking with interested candidates.

Eric Elsberry entered the meeting to discuss the emergency management position with commissioners. Earlier that morning Chairman Soukup spoke with Elsberry about taking over EM duties. Elsberry agreed to take on the additional duties and has been looking into getting certified. Ten out of the 16 training courses he is required to take are online and Elsberry already has some of the required courses completed due to them being a requirement for his current veterans service office position. Commissioners questioned additional compensation for Elsberry for taking on the additional duties. Auditor Brunken suggested waiting and talking it over more or trying Elsberry on a trail basis before anything is set in stone. Commissioners agreed and approved a motion to hire Elsberry for 90 days at an additional \$500 per month. Elsberry will give an update at the June 5 meeting.

Auditor Brunken informed commissioners that Governor Daugaard declared Easter Monday a holiday this year, and the courthouse will be closed Monday, April 2.

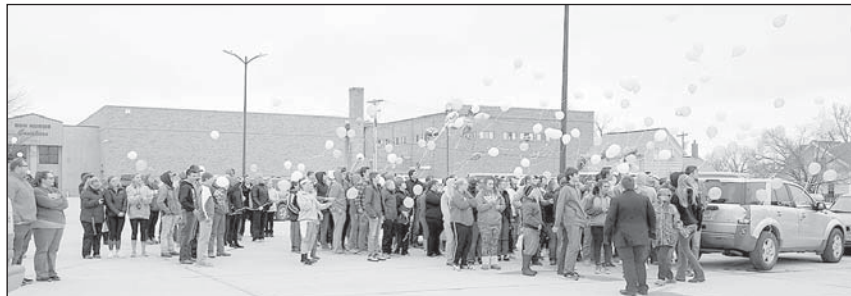
Chairman Soukup read a thank you card from Katie Hauck.

Commissioners reviewed and approved the minutes of the February 20 meeting and the annual report for 2017, reviewed and approved claims totaling \$72,918.02; general fund - \$23,443.87; road and bridge - \$42,289.65; 911 - \$4,205.72; emergency and disaster management - \$2,973.78; and reviewed and approved February timecards.

With all matters handled, the meeting adjourned at 11:33 a.m.



Simek-Ptak VFW
Tyndall Teener
BASEBALL BENEFIT
Saturday, March 24
Starting at 7:30 p.m. 4-H Center, Tyndall
Tickets available at the Bottle Shop
in Tyndall or any VFW member



CELEBRATION OF LIFE: Past and present students and staff of Bon Homme School along with friends and family gather in the school parking lot the afternoon of March 11 to release balloons in celebration of the lives of Dan, Tina and Zach Johnson of Tyndall. Zach was a freshman at Bon Homme High School. (photo by Becky Tycz)

Obituaries

Zach Johnson

Zachary Johnson, 16, of Tyndall died March 10, 2018 from injuries sustained in an automobile accident. Funeral services will be 10 a.m. Saturday, March 17 at the Bon Homme High School gym with Rev. Dean Schroeder officiating. Burial will be in the Tyndall Cemetery, Tyndall. Visitation will be 5 to 7 p.m. Friday, March 16 at the Bon Homme High School gym and then one hour prior to the service. The Opsahl-Kostel Memorial Chapel, Tyndall is assisting the family with the service details. On-line condolences may be sent at: www.opsahl-kostelfuneralhome.com.

Tina Johnson

Tina Johnson, 48, of Tyndall died March 10, 2018 from injuries sustained in an automobile accident. Funeral services will be 10 a.m. Saturday, March 17 at the Bon Homme High School gym with Rev. Dean Schroeder officiating. Burial will be in the Tyndall Cemetery, Tyndall. Visitation will be 5 to 7 p.m. Friday, March 16 at the Bon Homme High School gym and then one hour prior to the service. The Opsahl-Kostel Memorial Chapel, Tyndall is assisting the family with the service details. On-line condolences may be sent at: www.opsahl-kostelfuneralhome.com.

Daniel Johnson

Daniel 'Dan' Johnson, 49, of Tyndall died March 10, 2018 from injuries sustained in an automobile accident. Funeral services will be 10 a.m. Saturday, March 17 at the Bon Homme High School gym with Rev. Dean Schroeder officiating. Burial will be in the Tyndall Cemetery with military graveside rites by the Pike-Wagner American Legion Post 2 Honor Guard and the South Dakota Army National Guard Honor Guard. Visitation will be 5 to 7 p.m. Friday, March 16 at the Bon Homme High School gym and then one hour prior to the service. The Opsahl-Kostel Memorial Chapel, Tyndall is assisting the family with the service details. On-line condolences may be sent at: www.opsahl-kostelfuneralhome.com.



Marjorie J. DeGroot

Funeral services for Marjorie J. DeGroot, 88, of Tyndall will be held at 2:30 p.m. Wednesday, March 14 at the Springfield Community Bible Church in Springfield with burial in the Springfield Cemetery. Visitation will be the hour before the service. Crosby-Jaeger Funeral Home of Springfield is in charge of the arrangements.



Marjorie Jean DeGroot, daughter of Thomas and Cornelia (DeRoos) DeGroot, was born November 11, 1929 near Springfield. Marjorie attended elementary school at Quinn Country School through the eighth grade. She was a member of the Kingsburg Church, where she was the custodian for many years. She lived with her parents until their passing and then, shortly after, moved to the Good Samaritan Center in Tyndall. She died peacefully March 10, 2018 at the Good Samaritan Center in Tyndall.

Survivors are her sisters and brother, Donna (Marlow) Pedersen of Central City, Nebr., Thomas (Pat) DeGroot of Renton, Wash., Doris (Roger) Tucker of Wausa, Nebr. and Judy (Larry) Seger of Wallace, Nebr. and many nieces, nephews and friends.

Marjorie was preceded in death by her parents; sisters, Leona Ruppelt, Betty DeFries, Thelma Kent and Clarice Shutt.

sPower signs 30-year PPA for South Dakota wind farm

sPower, a renewable energy Independent Power Producer (IPP), announced that it has executed a 30-year Power Purchase Agreement (PPA) for its Prevailing Wind Park Project in South Dakota. The electricity generated by the project will be sold to a utility under a 30-year PPA.

The project is a 220-MW wind farm located in Charles Mix, Hutchinson and Bon Homme Counties. It was first developed by South Dakota local development group Prevailing Winds, which sold the project to sPower in October of 2017.

"We are excited to be involved in this great project that will provide so many benefits to the state of South Dakota," said Ryan Creamer, sPower's CEO. "The

Prevailing Winds Project was a local idea that has blossomed into a great Project that we are privileged to be a part of."

The expected electricity generated at full capacity is enough to meet the consumption of up to 90,000 average South Dakota homes. This is equal to avoiding more than 486,000 metric tons of CO2 emissions annually, representing the equivalent of the greenhouse gas emissions from 103,000 passenger vehicles driven over the course of one year.

The project is expected to generate over \$56,000,000 in tax revenue over the life of the project, which will be shared among the three local school districts, counties, townships and the state.

BEFORE THE
 SURFACE TRANSPORTATION BOARD
 WASHINGTON, DC 20423

STB Docket No. AB-1253

STATE OF SOUTH DAKOTA ACTING BY AND
 THROUGH ITS DEPARTMENT OF
 TRANSPORTATION - ADVERSE
 DISCONTINUANCE OF OPERATING AUTHORITY - NAPA-PLATTE
 REGIONAL RAILROAD AUTHORITY

NOTICE OF INTENT TO FILE APPLICATION FOR ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY

The State of South Dakota, acting by and through its Department of Transportation ("State") gives notice that on or about March 26, 2018, it intends to file with the Surface Transportation Board ("Board"), Washington, D.C. 20423, an application seeking permission for the adverse discontinuance of the rail service operating authority held by the Napa-Platte Regional Railroad Authority ("NPRRA") over an approximately 13.4 mile rail line extending between Milepost 0.0 near Napa Jct., SD and Milepost 13.4 +/- near Tabor, SD ("Napa-Tabor Line"). The Napa-Tabor Line is situated in Yankton and Bon Homme Counties, South Dakota and traverses U.S. Postal Zip Codes 57508, 57078, and 57063. The Line does not have stations. The reason for the proposed discontinuance is that the State's lease of the Napa-Tabor Line to NPRRA has expired and NPRRA has not sought permission to discontinue its operating rights. The State now leases the Napa-Tabor Line to Dakota Southern Railway Company ("DSRC"). DSRC has obtained a modified certificate of public convenience and necessity to provide common carrier service over the Napa-Tabor Line.

There are no documents in the State's possession that indicate that the Napa-Tabor Line contains federally granted rights-of-way. Any such documentation that might come into the State's possession will be made available promptly to those requesting it. The application, when filed, can be viewed following its filing on the Board's website, www.stb.gov, or a copy can be secured from the State's representatives, whose names and addresses appear below. The application will include the State's entire case for discontinuance. Based on rulings made by the Board in its decision served in this proceeding on May 31, 2017 this proposed discontinuance will not be subject to: offers of financial assistance under 49 U.S.C. § 10904 (49 C.F.R. § 1152.27 of the Board's rules); requests for public use conditions under 49 U.S.C. § 10905 (49 C.F.R. § 1152.28 of the Board's rules); requests for trail use conditions under 18 U.S.C. § 1247(d) (49 C.F.R. § 1152.29 of the Board's rules); or imposition of labor protective conditions under 49 U.S.C. § 10903(b)(2).

Any interested person, after the application is filed, may file with the Board written comments concerning the proposed adverse discontinuance or protests to it. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings, or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including a description of the protestant's use of the line or, if protestant does not use the line, information concerning the group or public interest it represents; (3) the protestant's specific reasons why it opposes the application including information regarding its reliance on the involved service; and (4) the protestant's rebuttal of material submitted in the application.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in the oral hearing or through submission of their entire case in the form of verified statements and arguments at the time they file a protest.

Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Written comments and protests should indicate the proceeding designation, STB Docket No. AB-1253 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E. Street, SW, Washington DC 20423-0001 no later than 45 days after the application is filed. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served on the following representatives of the State: John H. LeSeuer, Slover & Loftus LLP, 1224 17th Street, NW, Washington, DC 20036, (202) 347-7170 and Karla L. Engle, Special Assistant Attorney General, South Dakota Department of Transportation, 700 E. Broadway Ave., Pierre, SD 57501-2586, (605) 773-3262.

Written comments and protests may be sent to the Board either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's www.stb.gov website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR Part 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding in accordance with 49 C.F.R. § 1104.12(a).

The Board's May 31, 2017 decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Board decisions and notices are available on the Board's website at www.stb.gov.

Published three times at the approximate cost of \$462.72.



Obituaries

Bernhard Winkler

Funeral services for Bernhard (Ben) Winkler, 93, of Tyndall will be held at 10:30 a.m. Saturday, March 24 at the United Methodist Church in Tyndall with burial following in the Tyndall Cemetery. Visitation will be held from 5:30 p.m. until 6:30 p.m. prayer service Friday, March 23 at the Goglin Funeral Home, Tyndall. Funeral arrangements have been entrusted into the care of the Goglin Funeral Home of Tyndall. Online condolences may be sent at www.goglinfh.com

Ben died March 19, 2018 at the Good Samaritan Society of Tyndall.

Dan Johnson

Funeral services for Daniel James Johnson, 49, of Tyndall were held March 17 at the Bon Homme High School Gym with Rev. Dean Schroeder officiating. Burial was in the Tyndall Cemetery with military graveside rites by the Pike-Wagner American Legion Post 2 Honor Guard and the South Dakota Army National Guard Honor Guard. The Opsahl-Kostel Memorial Chapel, Tyndall, SD assisted the family with the service details. Online condolences may be sent at www.opsahl-kostelfuneralhome.com.



Dan was born in Wagner, SD to Nilus and JoAnne (Homomich) Johnson June 6, 1968. He went to high school at Wagner Community School where he competed in football and wrestling. He enlisted with the South Dakota Army National Guard out of Wagner, SD October 6, 1986. He later graduated from high school in 1987. Dan went on to earn an Associate's Degree in welding from Lake Area Technical Institute, where he met his wife, Tina Gienger. They were married at St. John's Lutheran Church in Jamestown, ND July 21, 1990 and to this union were born three sons, Derrick (1991), Jason (1994) and Zach (2002). Dan worked as a welder for Manitou in Yankton, SD for 13 years. He was a youth group supervisor and trustee at St. John's Lutheran Church in Tyndall and a part of the Bon Homme Athletic Booster Club. Daniel died March 10, 2018 in rural Hutchinson County driving with his wife, Tina, and son, Zach, to an AAU wrestling tournament in Mitchell.

Dan is survived by his sons, Derrick (Brooke) Johnson of Brandon and Jason (Breanna Johanne) Johnson of Tyndall; parents, Nilus and JoAnne Johnson of Mitchell; brothers, Matt Johnson of Mitchell, Curt (Elaine) Johnson of Beresford and Jeremie (Melissa) Johnson of Glenwood, Okla.; brothers-in-law, Keith Gienger of Robinson, ND and Kevin Gienger of Kensal, ND; sisters-in-law, Pauline (Darwin) Roeske of Jamestown, ND and Lori (Bill) Rath of Cleveland, ND and several nephews and nieces.

Dan was preceded in death by his grandson, Johnathan Johnson; parents-in-law, Arthur and Lois Gienger and nephew, Wally Dieder.



Do your work with your whole heart, and you will succeed - there's so little competition.

—Elbert Hubbard

Tina Johnson

Funeral services for Tina Marie (Gienger) Johnson, 48, of Tyndall were held March 17 at the Bon Homme High School Gym with Rev. Dean Schroeder officiating. Burial was in the Tyndall Cemetery, Tyndall. The Opsahl-Kostel Memorial Chapel, Tyndall, SD assisted the family with the service details. Online condolences may be sent at www.opsahl-kostelfuneralhome.com.



Tina was born in Oakes, ND to Arthur and Lois (Widmer) Gienger August 8, 1969. She went to high school at Jamestown High School and graduated in 1988. She went on to earn an Associate's Degree in computer science from Lake Area Technical Institute, where she met her husband, Daniel Johnson. They were married at St. John's Lutheran Church in Jamestown, ND July 21, 1990 and to this union were born three sons, Derrick (1991), Jason (1994) and Zach (2002). Tina worked as a quality control technician for Applied Engineering in Yankton for 15 years. She was a youth group supervisor and Sunday school superintendent for 20+ years at St. John's Lutheran Church in Tyndall. Tina died March 10, 2018 in rural Hutchinson County driving with her husband, Dan, and son, Zach, to an AAU wrestling tournament in Mitchell.

Tina is survived by her sons, Derrick (Brooke) Johnson of Brandon and Jason (Breanna Johanne) Johnson of Tyndall; brothers, Keith Gienger of Robinson, ND and Kevin (Dawn) Gienger of Kensal, ND; sister, Pauline (Darwin) Roeske of Jamestown, ND and Lori (Bill) Rath of Cleveland, ND; parents-in-law, Nilus and JoAnne Johnson of Mitchell; brothers-in-law, Matt Johnson of Mitchell, Curt (Elaine) Johnson of Beresford and Jeremie (Melissa) Johnson of Glenwood, Okla. and several nephews and nieces.

Tina was preceded in death by her grandson, Johnathan Johnson; parents, Arthur and Lois Gienger and nephew, Wally Dieder.



The most-used letter in the English alphabet is "E," and "Q" is the least used.

Zach Johnson

Funeral services were held for Zachary Arthur Johnson, 16, of Tyndall March 17 at the Bon Homme High School Gym with Rev. Dean Schroeder officiating. Burial was in the Tyndall Cemetery, Tyndall. The Opsahl-Kostel Memorial Chapel, Tyndall, SD assisted the family with the service details. Online condolences may be sent at www.opsahl-kostelfuneralhome.com.



Zach was born February 2, 2002 in Yankton, South Dakota to Dan and Tina (Gienger) Johnson and brothers, Derrick and Jason Johnson to make their family complete. Zach grew up in Tyndall and was in his freshman year at Bon Homme High School. Zach was well known and liked through his many activities including football, wrestling, baseball and his academic achievements. He was also very involved in St. John's Lutheran Church through Sunday school, vacation Bible school, youth group and church camp in the summers. Zach died March 10, 2018 in rural Hutchinson County driving with his parents, Dan and Tina Johnson, on their way to an AAU wrestling tournament in Mitchell.

Zach is survived by his brothers, Derrick (Brooke) Johnson of Brandon and Jason (Breanna Johanne) Johnson of Tyndall; grandparents, Nilus and JoAnne Johnson of Mitchell; uncles, Matt Johnson of Mitchell, Curt (Elaine) Johnson of Beresford, Jeremie (Melissa) Johnson of Glenwood, Okla., Keith Gienger of Robinson, ND and Kevin (Dawn) Gienger of Kensal, ND; aunts, Pauline (Darwin) Roeske of Jamestown, ND and Lori (Bill) Rath of Cleveland, ND and several cousins.

Zach was preceded in death by his nephew, Johnathan Johnson; grandparents, Arthur and Lois Gienger and cousin, Wally Dieder.



If you are snacking on an apple, be sure to eat the skin. It contains an antioxidant chemical called quercetin, which is thought to boost the immune system and help fight off illness.

Julius Schmidt

Funeral services for Julius Schmidt, 93, of Tyndall will be held at 10:30 a.m. Friday, March 23 at the St. John Lutheran Church, Tyndall with burial following in the Tyndall Cemetery with military graveside rites. Visitation will be held from 6 p.m. until 7 p.m. prayer service Thursday, March 22 at the church. Funeral arrangements have been entrusted into the care of the Goglin Funeral Home of Tyndall. Online condolences may be sent at www.goglinfh.com



Julius Schmidt was born September 24, 1924 to Andrew and Anna (Bajer) Schmidt in Tyndall, SD. He attended Tyndall school and graduated in 1943. During the Korean Conflict, Julius served in the U.S. Army and was awarded the South Korea Veterans Ambassador for Peace Medal. June 5, 1950, Julius married Linda Finck at Immanuel Reformed Church in rural Tripp, SD. Together they owned and operated Schmidt's Service and Consumer Supply in Tyndall, SD until retiring in 1986. Following retirement, Julius and Linda moved to Mesa, Ariz. during the warm winter months. During the summers, they always returned home to Tyndall. He was also an active member of the community; he regularly attended St. John Lutheran Church, was a retired volunteer fireman and EMT for the Tyndall Fire Department, a lifetime member of Pike-Wagner American Legion Post 2 and Simek-Plak VFW Post 6895 and served as the VFW Commander for a time and was also a retired Tyndall City Council member. Julius was also instrumental in the building of the grandstands at the Tyndall school football field and with the Apple Tree Basin in rural Springfield, SD. Julius died March 15, 2018 at the Good Samaritan Society of Tyndall.

He is survived by his children, Sandra (John) Stahl of Kosciusko, Miss., Robert (Karen) Schmidt of Tyndall, Patricia (Rob) Foudray of Rapid City and Michael (Christi) Schmidt of Tyndall; grandchildren, Juanita Parkinson, Alyson Land, Phyllis Odum, Lyndsay Lunders, Steven Doyle, Megan Schmidt, Jennifer Schmidt, Joshua Schmidt and Landon Schmidt; great-grandchildren, Ashleigh Parkinson, Collin Parkinson, Joshilyn Land, Mary Tyndall Odum, Connor Lunders, Carson Lunders, John William Odum and Trae Land.

He was welcomed to his eternal home by his parents, Andrew and Anna; his bride, Linda; son, Richard; brothers, Jake and Elmer Schmidt and sisters, Dorothy Burnett, Pauline Sternhagen, Deloris Isaak, Hattie Sandau and Ruby Sandau.



Tyndall • Scotland • Tripp • Yankton

Marilyn McNeely

Memorial services for Marilyn McNeely, 86, of Springfield were held March 15 at the United Church of Christ in Springfield, with inurnment at the Trinity Presbyterian Cemetery, rural Avon. Crosby-Jaeger Funeral Home of Springfield is in charge of the arrangements.



Marilyn Jean McNeely was born March 20, 1931 on a farm near Calvin, ND, the daughter of Alexander "Mac" and Ruth (Heller) McKechnie. Marilyn was one of eight children. She was a caregiver for several of her siblings and supported them throughout her life, especially her youngest brother, David. Marilyn's family moved from the farm to Sioux Falls during WWII. She graduated from Washington High School in Sioux Falls in 1949. She graduated from Southern State Teacher's College in Springfield and later obtained

her MA from the University of South Dakota-Vermilion. Marilyn was united in marriage to Arlon "Bud" McNeely October 18, 1952 in Sioux Falls. They frequently moved as Bud served over 30 years in military service and was an educator and school administrator for many years in numerous communities, mostly along the Missouri River. She was a former president of the South Dakota China Painters Association. Marilyn was a talented musician in her younger years. She travelled throughout the country with the Washington High School Band. Marilyn was a member of the UCC Church and the American Legion Auxiliary. She also was very active in the Springfield Museum. Marilyn died March 11, 2018 at the Good Samaritan Center in Scotland.

Survivors are her two sons, Guy (Carleen) of Yankton and Jay of Springfield; four grandkids, Alex, Kathryn, Jesse McNeely and Misty Lindgren; three great grandkids, Ethan, Jacob and Lucas McNeely; two brothers, Alan John McKechnie of Seattle, Wash. and David McKechnie of Sioux Falls; two sisters, Carol (Ed) Preissendorfer of Grants Pass, Ore. and Judith Fingar of Seattle, Wash. and many nieces and nephews.

Marilyn was preceded in death by her husband, Bud, April 15, 2016; parents and three brothers, Don, James and John, who died in infancy.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-1253

STATE OF SOUTH DAKOTA ACTING BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION - ADVERSE
DISCONTINUANCE OF OPERATING AUTHORITY - NAPA-PLATTE
REGIONAL RAILROAD AUTHORITY

NOTICE OF INTENT TO FILE APPLICATION FOR ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY

The State of South Dakota, acting by and through its Department of Transportation ("State") gives notice that on or about March 26, 2018, it intends to file with the Surface Transportation Board ("STB"), Washington, D.C. 20423, an application seeking permission for the adverse discontinuance of the rail service operating authority held by the Napa-Platte Regional Railroad Authority ("NPRRA") over an approximately 13.4 mile rail line extending between Milepost 0.0 near Napa, SD and Milepost 13.4 +/- near Napa, SD ("Napa-Tabor Line"). The Napa-Tabor Line is situated in Yankton and Bon Homme Counties, South Dakota and traverses U.S. Postal Zip Codes 57508, 57078, and 57063. The Line does not have stations. The reason for the proposed discontinuance is that the State's lease of the Napa-Tabor Line to NPRRA has expired and NPRRA has not sought permission to discontinue its operating rights. The State now leases the Napa-Tabor Line to Dakota Southern Railway Company ("DSRC"). DSRC has obtained a modified certificate of public convenience and necessity to provide common carrier service over the Napa-Tabor Line.

There are no documents in the State's possession that indicate that the Napa-Tabor Line contains federally granted rights-of-way. Any such documentation that might come into the State's possession will be made available promptly to those requesting it. The application, when filed, can be viewed following its filing on the Board's website, www.stb.gov, or a copy can be secured from the State's representatives, whose names and addresses appear below. The application will include the State's entire case for discontinuance. Based on rulings made by the Board in its decision served in this proceeding on May 31, 2017 this proposed discontinuance will not be subject to: offers of financial assistance under 49 U.S.C. § 10904 (49 C.F.R. § 1152.27 of the Board's rules); requests for public use conditions under 49 U.S.C. § 10905 (49 C.F.R. § 1152.28 of the Board's rules); requests for trail use conditions under 49 U.S.C. § 1247(d) (49 C.F.R. § 1152.29 of the Board's rules); or imposition of labor protective conditions under 49 U.S.C. § 10903(b)(2).

Any interested person, after the application is filed, may file with the Board written comments concerning the proposed adverse discontinuance or protests to it. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearing, or by submitting verified statements of reasons containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including a description of the protestant's use of the line or, if protestant does not use the line, information concerning the group or public interest it represents; (3) the protestant's specific reasons why it opposes the application including information regarding its reliance on the involved service; and (4) the protestant's rebuttal of material submitted in the application.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in the oral hearing or through submission of their entire case in the form of verified statements and arguments at the time they file a protest.

Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Written comments and protests should indicate the proceeding designation, STB Docket No. AB 1253 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E. Street, SW, Washington DC 20423-0001 no later than 45 days after the application is filed. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served on the following representatives of the State: John H. LeSeur, Slover & Loftus LLP, 1224 17th Street, NW, Washington, DC 20036, (202) 347-7170 and Karla L. Engle, Special Assistant Attorney General, South Dakota Department of Transportation, 700 E. Broadway Ave., Pierre, SD 57501-2586, (605) 773-3262.

Written comments and protests may be sent to the Board either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's www.stb.gov website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR Part 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding in accordance with 49 C.F.R. § 1104.12(a).

The Board's May 31, 2017 decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Board decisions and notices are available on the Board's website at www.stb.gov.

Published three times at the approximate cost of \$462.72.

NOTICE TO TYNDALL RESIDENTS
Tyndall City Ordinance prohibits
the dumping of sump pumps
into the sanitary sewer
City of Tyndall Utilities Department

Bon Homme County, SD Farm

For Sale

Description:
NE Quarter of Section 12
Springfield Township

Approximately 3 miles north,
1 mile east of
Springfield, SD

156
acres

good farmground
with
Ranchstyle home
and some
small outbuildings

Interested Parties call: 605-369-5491 (home)
605-661-5446 (mobile)

AFFIDAVIT OF PUBLICATION

YANKTON DAILY PRESS & DAKOTAN

SD NEWSPAPER ASSOCIATION
1125 32ND AVE
BROOKINGS SD 57006

STATE OF SOUTH DAKOTA
COUNTY OF YANKTON

KELLY HERTZ, BEING FIRST DULY SWORN ON OATH DEPOSES
AND SAYS THAT (S)HE IS THE MANAGING EDITOR OF YANKTON
MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE
YANKTON DAILY PRESS AND DAKOTAN, A LEGAL DAILY NEWSPAPER
PUBLISHED AND CIRCULATED IN THE CITY OF YANKTON, SAID COUNTY
AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID
COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED
NAPA-PLATTE REGIONAL RR

TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE
NEWSPAPER ON THE 22nd DAY OF MARCH, 2018,
THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION
OF SAID NOTICE TO WIT \$1,179.20 ENSURES TO THE
BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO
AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS
BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF
HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 03/09/2018 03/14/2018 03/22/2018

FILED ON: 03/22/2018



SUBSCRIBED AND SWORN TO BEFORE ME THIS 22nd DAY OF MARCH, 2018



NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 8/19/2021

2010 Legal and Public Notices

not be unlawfully imposed, and it is in the public interest. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://www.southdakota.gov/public>, or contact the Chief Engineer for information, or other documents at the Water Rights Program address provided below.

Any person interested in opposing or supporting this application is recommended to file a written petition with H0311 the applicant and Chief Engineer. The applicant may file a petition of objection to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, First Building, 325 E. Capitol, Pierre, SD 57501 (605 773-3352) and the applicant's mailing address is given above. A petition filed by either party must be filed by March 16, 2018.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the petitioner's mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

2010 Legal and Public Notices

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Steven M. Pomer, Secretary Department of Government and Natural Resources, Published once as the total approximate cost of \$26.34.

NOTICE OF DEADLINE FOR FILING NOMINATING PETITIONS FOR THE PRIMARY ELECTION AND FOR FILING INDEPENDENT CANDIDATE PETITIONS

The deadline for filing nominating petitions for the primary election is March 27, 2018, at 5:00 p.m. central time. If a petition is received by registered mail by March 27, 2018, at 5:00 p.m. central time, it shall be considered.

2010 Legal and Public Notices

The deadline for filing nominating petitions to run as an independent candidate for the office of the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Nominating petitions for the office of County Commissioner, County Auditor/Finance Officer, County Sheriff, Register of Deeds, in the general election in April 24, 2018, at 5:00 p.m. central time. If a petition is received by registered mail by April 24, 2018, at 5:00 p.m. central time, it shall be considered.

Perry Thomas, County Auditor, Published once as the total approximate cost of \$33.75.

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Roads

From Page 1A

ing to do improvements on this stretch of roadway for a long time.

"This one's been in the works for quite a few years," he said. "This year, we're hoping to get that taken care of."

In the Meridian District, crews will also be working on the reconstruction of Walnut Street.

"It will be a complete street reconstruction project with a water main replacement," Hagerman said in February. "There's going to be some sewer adjustments inside, new street pavement, all new sidewalks, as well as quite a bit of landscape amenities and features."

Additionally, work will be done on city-owned parking

lots. "The parking lots on Second Street on the north side between Walnut and Capitol, the landscaped islands will be removed and reconstructed with this project," he said. "They'll have similarly landscaped amenities that are on Walnut Street."

Plans call for the addition of planters, customized light fixtures, a few features that include a rock bed with fountains, flower beds, trees and gathering spaces along the sidewalks.

West City Limits Road is also scheduled to be reconstructed in 2018.

The road, which weaves in and out of city and county jurisdiction, had long been a point of contention, according to Yankton County Commissioner Todd Woods at last week's State of the Community address.

"This has been a topic for over 10 years with multiple city and county commis-

sions," Woods said. "In 2017, after numerous meetings — lengthy meetings and a lot of discussion — we came to a joint agreement that Yankton County would contribute \$1 million to the City of Yankton for the replacement of the City Limits Road."

Following completion, the city will annex the road in its entirety.

Hagerman said few years compare to this one, infrastructure-wise, for the city.

"It's one of our bigger construction years," he said. "We added that it was critical to get all three road projects and the Pine Street bridge under way."

"They're just all in dire need of reconstruction," he said. "West City Limits Road and Eighth Street, especially, were in very poor shape and in need of reconstruction."

Follow @RobbVierlind on Twitter

Limits

From Page 1A

being an unannounced discussion item.

Yankton County Commissioner Todd Woods said commissioners will continue the discussion. "This is something that we've tried to find a compromise on," he said. "We're going to continue to look at that. We've found that most of the contractors here would like to see it go to maybe a 4,000-45,000 gross vehicle weight permitting process. We've just got to keep looking."

"We've got to find a balance to keep our roads prolonged as long as we possibly can and balance for time to individuals to keep in business," he said. "They're here to do holes and put up houses and

add property tax base."

Woods said that the issue will be discussed again at the commission's next meeting.

"The most favorable option is finding a permit process on the non-divisible road to go above that 40,000 gross vehicle weight and have a fee for that," he said. "I don't know what the answer is. That's a legal question we'll talk with the state's attorney on and maybe the DOT, as well."

He added that Thursday's discussion is more evidence of the current state of the county's roads and the need to find funding solutions.

The elephant in the room is our roads are in the condition they are and we don't have the money to take care of all that we have," he said. "I would love to find that solution where we can find more money to take care of them. A levy is probably going to have to be continued to be discussed. It's something no-

body wants to talk about and nobody wants to pay another tax, but our roads are very, very vital."

Commissioner Gary Swanson was absent during Thursday's meeting. The county met Thursday after inclement weather had postponed the meeting originally scheduled Tuesday. As a result of moving the meeting to a different date, according to state law, five conditional-use permits that had originally been on the agenda for that meeting must be rescheduled and will be addressed at a later board meeting.

In other business Thursday, the commission:

- Approved a claim for the Turkey Valley ditch.
- Approved updated job descriptions for the Yankton County Office of Emergency Management.

Follow @RobbVierlind on Twitter

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-1253

STATE OF SOUTH DAKOTA ACTING BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION - ADVERSE
DISCONTINUANCE OF OPERATIONS AUTHORITY - MAPA-PLATTE
REGIONAL RAILROAD AUTHORITY

NOTICE OF INTENT TO FILE APPLICATION FOR ADVERSE
DISCONTINUANCE OF OPERATIONS AUTHORITY

The State of South Dakota, acting by and through its Department of Transportation ("SDOT"), gives notice that on or about March 28, 2018, it intends to file with the Surface Transportation Board ("STB") in Washington, D.C. 20423, an application seeking permission for the adverse discontinuance of the rail service operating authority held by the Mapa-Platte Regional Railroad Authority ("MPRRA") over an approximately 13.4 mile rail line extending between Milepost 10.0 near Map, SD, and Milepost 13.4 near Tabor, SD ("Mapa-Tabor Line"). The Mapa-Tabor Line is situated in Yankton and Bon Homme Counties, South Dakota and traverses U.S. Postal Zip Codes 57054, 57076, and 57083. The Line does not have stations. The reason for the proposed discontinuance is that the State's lease of the Mapa-Tabor Line to MPRRA has expired and MPRRA has not sought permission to discontinue its operating rights. The State now leases the Mapa-Tabor Line to Dakota Southern Railway Company ("DSRC"). DSRC has obtained a modified certificate of public convenience and necessity to provide common carrier service over the Mapa-Tabor Line.

There are no documents in the State's possession that indicate that the Mapa-Tabor Line contains federally granted rights-of-way. Any such documentation that might come into the State's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's website, www.stb.gov, or a copy can be secured from the State's representative, whose names and addresses appear below. The application will include the State's entire case for discontinuance. Based on rulings made by the Board in its decision served in this proceeding on May 31, 2017, the proposed discontinuance will not be subject to offers of financial assistance under 49 U.S.C. § 10504 (49 CFR § 1152.27 of the Board's rules) requests for public use funds under 49 U.S.C. § 10505 (49 CFR § 1152.28 of the Board's rules) requests for trial use conditions under 49 U.S.C. § 1247(f) (49 CFR § 1152.29 of the Board's rules) or imposition of labor protective conditions under 49 U.S.C. § 1180302(a).

Any interested person, after the application is filed, may file with the Board written comments concerning the proposed adverse discontinuance or protests to it. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings, or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance, who do wish to participate actively in the process should file a protest. Protests must contain: (1) the protester's name, address and business; (2) the protester's interest in the proceeding, including a description of the protester's use of the line; or (3) a statement of the protester's interest in the proceeding, including a description of the protester's use of the line; or (4) a statement of the protester's interest in the proceeding, including a description of the protester's use of the line; or (5) a statement of the protester's interest in the proceeding, including a description of the protester's use of the line.

Written comments and protests will be considered by the Board in determining what action to take of the application. The commenting party or protester may participate in the proceeding as its interests may appear.

If oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in the oral hearing or through submission of their entire case in the form of verified statements and arguments at the time they file a protest.

Parties seeking information concerning the filing of protests should refer to 49 CFR § 1152.25.

Written comments and protests should include the proceeding designation, STB Docket No. AB-1253 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E. Street, SW, Washington DC 20423-0001 no later than 45 days after the application is filed. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest must be served on the following representatives of the State: John A. LaSear, Sherrill A. Loftis, LLP, 1224 77th Street, NW, Washington, DC 20036, (202) 347-7170 and Karla L. Engle, Special Assistant/Attorney General, South Dakota Department of Transportation, 100 E. Broadway Ave., Pierre, SD 57501-2546, (605) 773-3261.

Written comments and protests may be sent to the Board either via the Board's e-filing system or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's www.stb.gov website, at the E-FILING link. Any person submitting a filing in the traditional paper format should send the original and 25 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR Part 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding in accordance with 49 CFR § 1154.10(a).

The Board's May 31, 2017 Decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or savings. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Persons seeking further information concerning discontinuance proceedings may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 345-0228 or refer to the Board's discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Board decisions and notices are available on the Board's website at www.stb.gov.

Published Three Times, at the approximate cost of \$1,179.20

White House Aide Launches First Wave In Final Pa. Push

BY STEVE PEOPLES

Associated Press

PITTSBURGH — In the first wave of the White House's new western Pennsylvania offensive, one of President Donald Trump's chief aides on Thursday attacked Democratic congressional candidate Conor Lamb on abortion while casting Republican Rick Saccone as "a reliable vote" for the president.

White House counselor Kellyanne Conway, the first lady's chief of staff, said in a speech to the region before Tuesday's special election, charged that even a single vote could affect Trump's policy agenda on Capitol Hill.

"Every vote counts at the ballot box, but every vote counts in Washington right now too," she told a dozen campaign volunteers at an Allegheny County GOP office. She added later, "The president wants a reliable vote in Washington."

Conway acknowledged she was the "warm-up band" for the White House's final push to preserve a Republican congressional seat in Pennsylvania's 18th district, a working-class region that stretches from the Pittsburgh suburbs to the West Virginia border. The president is scheduled to attend a local rally on Saturday followed by his son, Donald Trump Jr., on Monday.

The high-profile reinforcements from the president's orbit were welcomed by

Saccone, a 49-year-old state representative, who has wholeheartedly embraced Trump throughout his campaign. Trump's Saturday visit will be his second in two months. Daughter Ivanka Trump appeared with Saccone in a separate visit last month as well and praised him as "a champion" for Republican priorities.

Beyond propaganda, the Republican National Committee, which is the White House's political arm, has spent more than \$1.1 million so far to support Saccone and committee spokesman Rick Goss. Other notable groups allied with the GOP have spent nearly \$8 million on advertising in the race, which is more than seven times the amount invested by national Democratic allies not affiliated with the Lamb campaign.

"Everybody wants to help," the Republican candidate continued. "It's the President Trump with winning — there's so much help we're going to get tired of help."

The White House is not taking any chances in the latest Trump-era special election, knowing that the result will inevitably reflect upon the president.

Democrats have even performed in virtually every contest across the country since Trump took the White House. And the sting of the GOP's embarrassing December defeat in Alabama's special Senate race, in which

Trump lost his name and title to fellow Republican nominee Roy Moore, is still fresh.

Trump's Saturday visit will be his second in two months. Daughter Ivanka Trump appeared with Saccone in a separate visit last month as well and praised him as "a champion" for Republican priorities.

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Trump lost his name and title to fellow Republican nominee Roy Moore, is still fresh.

Former Trump Campaign Chairman Pleads Not Guilty To Charges

BY MATTHEW BARAKAT

Associated Press

ALEXANDRIA, Va. — President Donald Trump's former campaign chairman said Tuesday he faces trial in the District of Columbia.

A federal judge in Alexandria on Thursday set a July 10 trial date for Paul Manafort. A grand jury there indicted Manafort on charges that he hid from the Internal Revenue Service tens of millions of dollars he earned advising pro-Russian officials in Ukraine. Manafort's lawyer, Kevin Downing, had asked for a trial date in November, citing the complexity of the case. Prosecutors say they were ready to start the trial in May.

U.S. Senior Judge T.S. Ellis III picked the July date, though he did not foreclose the possibility of granting an extension to the defense if warranted.

Most of the charges against Manafort have been filed in the District of Columbia, where Manafort is scheduled for trial in September. But prosecutors say they were required to bring the

tax and bank fraud charges in Virginia because they lacked venue in the nation's capital. In court papers, prosecutors said they asked Manafort if he'd be willing to waive venue and have the case prosecuted in the District, but he refused.

The 32-count indictment trove by the Alexandria grand jury accuses Manafort of hiding \$2 million through offshore accounts, to disguise income he earned from his work in Ukraine and shield it from federal taxes. The indictment also accuses him of bank fraud, saying that his income from the Ukraine dried up, he lied on mortgages and loan applications

At Thursday's court hearing, Ellis questioned whether a 32-count indictment was overkill and should be reduced to 18 counts. He also asked if the counts directly apply to Manafort; the other 14 apply to Manafort's associates, who struck a plea deal last month and no longer face charges in Virginia.

Ellis also questioned the efficiency of bringing simultaneous prosecutions in the District and Virginia, though he acknowledged that Manafort could not be forced to waive his right to be tried in the proper venue.

The charges are part of Special Counsel Robert Mueller's investigation into Russian efforts to influence U.S. elections. Downing said the charges against Manafort go beyond the authority of Mueller's mandate, and advised the judge he will move to dismiss the case on those grounds. He already has filed a civil suit in the District, making the same argument.

Manafort did not speak during the hearing, which was his first appearance in Virginia. His lawyer officially entered a not guilty plea on Manafort's behalf.

The judge imposed similar bail conditions on Manafort to those already in place in the District, including house confinement. But because the District and Virginia use different systems, Manafort will be required to wear two distinct monitoring devices.

1600 Other Real Estate

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All real estate advertised in this newspaper is subject to the Federal Fair Housing Act, which makes it illegal to advertise any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status or national origin, in the sale, rental or financing of housing or in an attempt to make any such preference, limitation or discrimination. Familial status includes children under the age of 18 living with parents or legal guardians, pregnant women and people securing custody of children under the age of 18.

In addition, South Dakota State Law also prohibits discrimination based on ancestry and creed.

This paper will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dealings advertised hereon are available on an equal opportunity basis. If you believe you have been discriminated against in connection with the sale, rental or financing of housing, call the South Dakota Fair Housing Ordinance at 877-533-6161.

1605 Apartment For Rent

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1 & 2 Bedroom Orchard Square, 418 W. 15th, for elderly or persons with disabilities. Rent based on income and skogen utilities. Equal Housing Opportunity. 605-665-2603 or 605-665-2603-3941

1-Bdrm \$400. Scotland, SD. Free utilities. Pets Allowed. Remodeled. \$50 deposit. 602-84-0872 or 806-740-4350

1-Bedroom apartment in Gayville. Some utilities included. Laundry facilities, off-street parking. No pet/smoking. Lease, deposit and references required. Larry's Rentals 605-664-9014 or 605-661-0067 after 5pm

2-Bedroom apartment in Gayville. Some utilities included. Laundry facilities, off-street parking. Available April 1st. No pet/smoking. Lease, deposit and references required. Larry's Rentals 605-664-9014 or 605-661-0067 after 5pm

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2 Bedroom, Between the 50s, 8th & Dakota, Yankton. Rent based on income. Equal Housing Opportunity. 605-661-8001 or Skogen Company 605-263-3941

2 & 3 Bedroom Townhouses. Canyon Ridge, Yankton. Must qualify by family size and income. 605-664-8888 or Skogen Company 605-263-3941

Large 1-bedroom apartment with washer/dryer/dishwasher, garage, patio. No pet/smoking. Lease & references required. 567.50/month. 605-665-3888 for showing

LINCOLN ARMS, 800 W. 1st. AFFORDABLE APARTMENTS FOR SENIORS 55+. 2-bed-room, \$485/month. Heat/water furnished. Laundry facilities. 605-751-9005 or 605-668-2202

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Newly remodeled 2-bedroom, full basement house, 3 miles North Yankton on Hwy 81. 605-961-3999

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American Harvest pellet stove with chimney pipe, good condition, \$200. Call 406-768-2375

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Twln bed wooden headboard & frame \$40. Call 605-668-0366 or w4ve message

1770 Home Appliances

Kitchen Appliances: Very good condition. Electric stove \$225 Refrigerator \$275. Dishwasher \$150. Microwave \$25. All 4 piece pkg \$600. 605-665-4212

2010 Legal and Public Notices

Notice of 30 Day Comment Period and Public Meeting

South Dakota Housing Development Authority, in partnership with the Governor's Office of Economic Development, will be holding a public comment meeting to solicit comments on the draft of

BEFORE THE SURFACE TRANSPORTATION BOARD WASHINGTON, DC 20423

STB Docket No. AB-1253

STATE OF SOUTH DAKOTA ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION - ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY - NAPA-PLATTE REGIONAL RAILROAD AUTHORITY

NOTICE OF INTENT TO FILE APPLICATION FOR ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY

The State of South Dakota, acting by and through its Department of Transportation ("SDOT") gives notice that on or about March 30, 2018, it intends to file with the Surface Transportation Board ("STB") in Washington, D.C. 20423, an application seeking permission for the adverse discontinuance of the rail service operating authority held by the Napa-Platte Regional Railroad Authority ("NPRRA") over an approximately 12.4 mile rail line extending between Milepost 5.0 near the town of J.D. 50 and Milepost 13.4 at Near Road, SD ("Napa-Tabor Line"). The Napa-Tabor Line is situated in Yankton and Bon Homme Counties, South Dakota and traverses U.S. Postal Zip Codes 57406, 57478, and 57683. The line does not have stations. The reason for the proposed discontinuance is that the State's use of the Napa-Tabor Line for NPRRA has expired and NPRRA has not sought permission to discontinue its operating rights. The State now wishes the Napa-Tabor Line to Dakota Southern Railway Company ("DSRC") DSRC has obtained a modified certificate of public convenience and necessity to provide common carrier service over the Napa-Tabor Line.

There are no documents in the State's possession that indicate that the Napa-Tabor Line contains federally granted rights-of-way. Any such documentation that might come into the State's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's website, www.stb.gov, or a copy can be secured from the State's representative, whose names and addresses appear below. The application will include the State's entire case for discontinuance. Based on rulings made by the Board in its decision served in this proceeding on May 31, 2017, this proposed discontinuance will not be subject to offers of financial assistance under 49 U.S.C. § 10504 (49 C.F.R. § 1152.27 of the Board's rules), needs by public use conditions under 49 U.S.C. § 10505 (49 C.F.R. § 1152.28 of the Board's rules), requests for trail use conditions under 16 U.S.C. § 1247(d) (49 C.F.R. § 1152.29 of the Board's rules), or imposition of labor protective conditions under 49 U.S.C. § 10503(b).

Notwithstanding the above, if the application is filed, may file with the Board written comments concerning the proposed adverse discontinuance or protests to it. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings, or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including a description of the protestant's use of the line or, if protestant does not use the line, information concerning the group or public interest it represents; (3) the protestant's specific reasons why it opposes the application including information regarding its reliance on the involved service; and (4) the protestant's rebuttal of material submitted in the application.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

These parties filing protests to the proposed discontinuance should be prepared to participate actively either in the oral hearing or through submission of their entire case in the form of verified statements and arguments at the time they file a protest.

Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Written comments and protests should indicate the proceeding designation, STB Docket No. AB-1253 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E. Street, SW, Washington, DC 20424-0001 no later than 45 days after the application is filed. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served on the following representatives of the State: John H. Lecher, Stover & Lecher LLP, 1224 17th Street, NW, Washington, DC 20036, (202) 347-7170 and Karla L. Engle, Special Assistant Attorney General, South Dakota Department of Transportation, 700 E. Broadway Ave., Pierre, SD 57501-2566, (605) 773-5263.

Written comments and protests may be sent to the Board either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's e-filing website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 C.F.R. Part 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding in accordance with 49 C.F.R. § 1154.12(a).

The Board's May 31, 2017 decision served concurrently with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Persons seeking further information concerning discontinuance proceedings may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0228 or refer to the full discontinuance regulations at 49 C.F.R. part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Board decisions and notices are available on the Board's website at www.stb.gov.

Published three times at the approximate cost of \$1,179.20

2010 Legal and Public Notices

third party bids and developer the limits.

The Emergency Solutions Grants (ESG) Program funds can be used for emergency shelter, shelter operations, homeless prevention, rapid re-housing and administrative expenses. Proposed changes to the ESG program include the removal of the minimum grant amount.

The Housing Trust Fund (HTF) is a program that complements existing federal, state and local efforts to increase and preserve the supply of decent, safe and sanitary housing for extremely low-income households, including homeless families. Proposed changes to the HTF program include changes to the project cost limitations, subsidy amount and creating a funding set-aside for Service-Connected housing.

The Housing Tax Credit program is a tax credit incentive to encourage the development of housing for low-income households. Proposed changes to the program include changes to the project cost limitations, project selection criteria, required use of bond proceeds, developer fee limits, operating revenue requirements and the basis for depreciation.

The Housing Opportunity Fund (HOF), created by SDCL 11-13, is designed to promote economic development by expanding the supply of decent, safe, sanitary and affordable housing targeted to low and moderate income families and individuals. Proposed changes to the HOF include allowing in-going submission of applications, change in administration of development assistance and project cost limitations.

The public meeting is an opportunity for the public to provide their comments, suggestions and ideas of the draft plans. Final plans will be available by May 2018. Persons interested in making comments may do so by appearing at one of the public meetings on March 27, 2018, or by sending written comments to SDHDA, attention: Lorraine Poth, PO Box 1237, Pierre, SD 57501, by fax (605) 773-5134 or email: lpoth@sdhda.org.

All comments are due by 5:00 PM, April 12, 2018. The public meeting on March 27, 2018, will be held at several locations throughout the state through the Dakota Digital Network (DDN). The meeting will begin at 2:00 PM CDT (1:00 PM MDT). DDN sites that are available for this meeting are:

Aberdeen: Northern State University Library Room 117
Brookings: San Dakota State University Payette Center SPC Room 203
Eagle: Eagle Butte High School

Michelle Mitchell Technical Institute C-PC Room 153
Pierre: Capitol Building Room A
Rapid City: South Dakota School of Mines & Technology Public Room

Spaulding: Black Hills State University Library Room 911
Sioux Falls: University Center Room FADM 143
Watertown: Department of Transportation

portion building
Yankton Department of Transportation Building

Copies of the draft plans may be obtained without charge from SDHDA at PO Box 1237, Pierre, SD 57501-1237, by calling (605) 773-5131 or by visiting SDHDA website at www.sdhda.org.

South Dakota Housing Development Authority (SDHDA) does not discriminate against any person because of race, creed, color, religion, sex, handicap, familial status, or national origin.

Published once at the total approximate cost of \$49.33

347-14-21
NOTICE OF ANNUAL MEETING AND ELECTION OF DIRECTORS OF B-Y WATER DISTRICT

NOTICE IS HEREBY GIVEN that pursuant to SDCL of 1967, 46-16-26, as amended, the annual meeting of B-Y Water District shall be held in the Scotland VFW Building, 531 First Street, Scotland, South Dakota, on Wednesday, March 28, 2018, at 1:30 p.m. for the purpose of electing directors to succeed those whose terms are about to expire.

Those directors whose terms are about to expire are as follows: those they represent are:

• Mike Welch: Division No. 1, which is comprised of Huston Hill, Yutan, 92-54, and Gayville, Yankton County, South Dakota.

• James Stark: Division No. 2, which is comprised of Union, 93-51, and 93-56, Yankton County, South Dakota.

• Gary Kronish: Division 3, which is comprised of Tabor, Cleveland, Bon Homme, and Tabor "S", Bon Homme County, South Dakota.

• Mark Schaeffer: Division No. 10, which is comprised of Township of Sweet, Kasaul, Wolf Creek, Capital, "N" Wintersburg, and "S" Wintersburg, Hutchinson County, South Dakota.

The terms of each elected director at said meeting shall commence upon the first board meeting following their election and shall continue for a period of three years thereafter and shall continue until his successor is duly elected and qualified.

No person shall be qualified to hold office as a member of the Board of Directors if he or she shall be a land owner or tenant residing in B-Y Water District and within the Division he wishes to represent.

Every owner of land and every tenant within the district shall be entitled to cast a vote at the election for each division to be elected thereat.

Signature: Lawrence Schwartz
Published three times at the total approximate cost of \$54.53.

3414-21
DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY

Proposed Flood Hazard Determinations for the City of Yankton and Yankton Sioux Tribe, Charles

2010 Legal and Public Notices

third party bids and developer the limits.

The Emergency Solutions Grants (ESG) Program funds can be used for emergency shelter, shelter operations, homeless prevention, rapid re-housing and administrative expenses. Proposed changes to the ESG program include the removal of the minimum grant amount.

The Housing Trust Fund (HTF) is a program that complements existing federal, state and local efforts to increase and preserve the supply of decent, safe and sanitary housing for extremely low-income households, including homeless families. Proposed changes to the HTF program include changes to the project cost limitations, subsidy amount and creating a funding set-aside for Service-Connected housing.

The Housing Tax Credit program is a tax credit incentive to encourage the development of housing for low-income households. Proposed changes to the program include changes to the project cost limitations, project selection criteria, required use of bond proceeds, developer fee limits, operating revenue requirements and the basis for depreciation.

The Housing Opportunity Fund (HOF), created by SDCL 11-13, is designed to promote economic development by expanding the supply of decent, safe, sanitary and affordable housing targeted to low and moderate income families and individuals. Proposed changes to the HOF include allowing in-going submission of applications, change in administration of development assistance and project cost limitations.

The public meeting is an opportunity for the public to provide their comments, suggestions and ideas of the draft plans. Final plans will be available by May 2018. Persons interested in making comments may do so by appearing at one of the public meetings on March 27, 2018, or by sending written comments to SDHDA, attention: Lorraine Poth, PO Box 1237, Pierre, SD 57501, by fax (605) 773-5134 or email: lpoth@sdhda.org.

All comments are due by 5:00 PM, April 12, 2018. The public meeting on March 27, 2018, will be held at several locations throughout the state through the Dakota Digital Network (DDN). The meeting will begin at 2:00 PM CDT (1:00 PM MDT). DDN sites that are available for this meeting are:

Aberdeen: Northern State University Library Room 117
Brookings: San Dakota State University Payette Center SPC Room 203
Eagle: Eagle Butte High School

Michelle Mitchell Technical Institute C-PC Room 153
Pierre: Capitol Building Room A
Rapid City: South Dakota School of Mines & Technology Public Room

Spaulding: Black Hills State University Library Room 911
Sioux Falls: University Center Room FADM 143
Watertown: Department of Transportation

portion building
Yankton Department of Transportation Building

Copies of the draft plans may be obtained without charge from SDHDA at PO Box 1237, Pierre, SD 57501-1237, by calling (605) 773-5131 or by visiting SDHDA website at www.sdhda.org.

South Dakota Housing Development Authority (SDHDA) does not discriminate against any person because of race, creed, color, religion, sex, handicap, familial status, or national origin.

Published once at the total approximate cost of \$49.33

347-14-21
NOTICE OF ANNUAL MEETING AND ELECTION OF DIRECTORS OF B-Y WATER DISTRICT

NOTICE IS HEREBY GIVEN that pursuant to SDCL of 1967, 46-16-26, as amended, the annual meeting of B-Y Water District shall be held in the Scotland VFW Building, 531 First Street, Scotland, South Dakota, on Wednesday, March 28, 2018, at 1:30 p.m. for the purpose of electing directors to succeed those whose terms are about to expire.

Those directors whose terms are about to expire are as follows: those they represent are:

• Mike Welch: Division No. 1, which is comprised of Huston Hill, Yutan, 92-54, and Gayville, Yankton County, South Dakota.

• James Stark: Division No. 2, which is comprised of Union, 93-51, and 93-56, Yankton County, South Dakota.

• Gary Kronish: Division 3, which is comprised of Tabor, Cleveland, Bon Homme, and Tabor "S", Bon Homme County, South Dakota.

• Mark Schaeffer: Division No. 10, which is comprised of Township of Sweet, Kasaul, Wolf Creek, Capital, "N" Wintersburg, and "S" Wintersburg, Hutchinson County, South Dakota.

The terms of each elected director at said meeting shall commence upon the first board meeting following their election and shall continue for a period of three years thereafter and shall continue until his successor is duly elected and qualified.

No person shall be qualified to hold office as a member of the Board of Directors if he or she shall be a land owner or tenant residing in B-Y Water District and within the Division he wishes to represent.

Every owner of land and every tenant within the district shall be entitled to cast a vote at the election for each division to be elected thereat.

Signature: Lawrence Schwartz
Published three times at the total approximate cost of \$54.53.

3414-21
DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY

Proposed Flood Hazard Determinations for the City of Yankton and Yankton Sioux Tribe, Charles

portion building
Yankton Department of Transportation Building

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Pierre: Capitol Building Room A
Rapid City: South Dakota School of Mines & Technology Public Room

Spaulding: Black Hills State University Library Room 911
Sioux Falls: University Center Room FADM 143
Watertown: Department of Transportation

portion building
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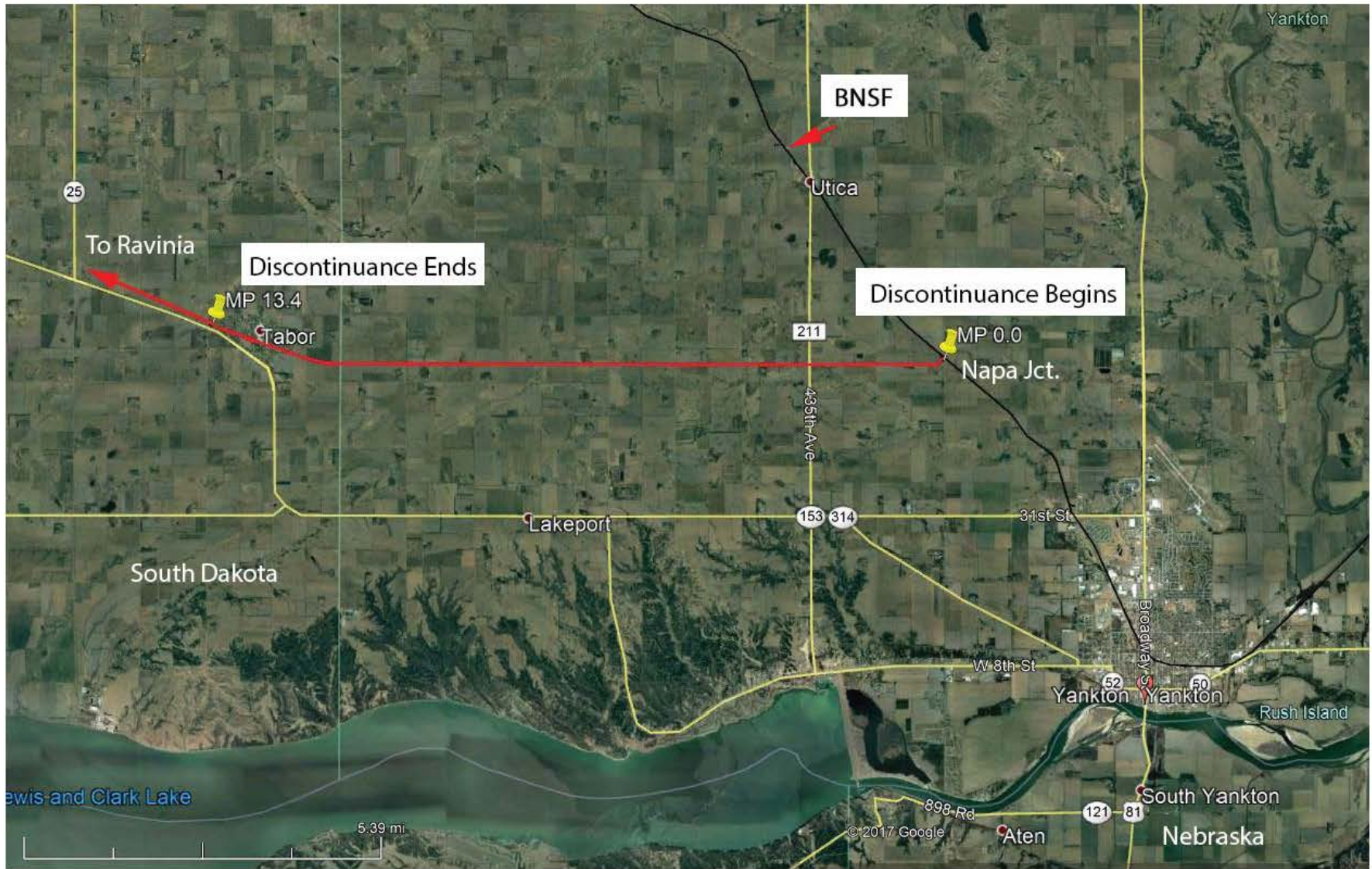
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NOTICE OF ANNUAL MEETING AND ELECTION OF DIRECTORS OF B-Y WATER DISTRICT

ATTACHMENT 5



ATTACHMENT 6

Draft Federal Register Notice

FR- _____

SURFACE TRANSPORTATION BOARD

[STB Docket No. AB-1253]

State of South Dakota Acting by and Through Its Department of Transportation – Adverse
Discontinuance of Operating Authority – Napa-Platte Regional Railroad Authority

On _____, the State of South Dakota, acting by and through its Department of Transportation (“State”), filed an application under 49 U.S.C. § 10903 asking the Surface Transportation Board (“Board”) to authorize the third-party, or “adverse,” discontinuance of operating authority held by the Napa-Platte Regional Railroad Authority (“NPRRA”) on a line of railroad extending from railroad milepost 0.0 near Napa Jct., SD to milepost 13.4+/- near Tabor, SD (“Line”), a distance of approximately 13.4 miles in the Counties of Yankton, SD and Bon Homme, SD. The Line includes no stations and traverses through United States Postal Service ZIP codes 57058, 57078, and 57063.

According to the State, it owns the Line and its lease of the Line to NPRRA has expired. The State also represents that NPRRA is a non-operating common carrier that has not provided any common carrier service over the Line since NPRRA obtained authority to so in 2007;¹ that the State now leases the Line to an operating common carrier – the Dakota Southern Railway Company (“DSRC”); and that, at the State’s request, the DSRC has obtained a modified certificate of public convenience and necessity that authorizes DSRC to provide common carrier service over the Line and to provide common carrier service over a connecting rail line segment

¹ See Napa-Platte Reg’l R.R. Auth. – Lease and Oper. Exempt. – Dakota Short Line Corp., FD 35025 (STB served May 31, 2007).

owned by the State extending from milepost 13.4 +/- near Tabor, SD to milepost 54.5 near Ravinia, SD (“Connecting Line Segment”).² The State now seeks Board permission through an adverse discontinuance proceeding to terminate NPRRA’s regulatory authority to lease and operate the Line.

In a decision served in this proceeding on May 31, 2017, the Board granted a petition filed by the State for exemptions from several statutory provisions and for waivers of certain Board regulations governing rail line discontinuances. Because the State has made arrangements with DSRC to provide common carrier service on the Line, all interested persons should be aware that this application is for adverse discontinuance and will not result in the abandonment of service over the Line. Therefore, as discussed in the Board’s May 31, 2017 decision, the Board has exempted this proceeding from the offer of financial assistance (“OFA”) requirements at 49 U.S.C. § 10904 and waived its OFA regulations at 49 CFR § 1152.27, and the Board will not entertain requests for a public use condition under 49 U.S.C. § 10905 (49 CFR § 1152.28) or a trail use condition under 16 U.S.C. § 1247(d) (49 CFR § 1152.29).

² See Dakota S. Ry. Co. – Modified Certificate of Pub. Convenience and Necessity – Yankton, Bon Homme, and Charles Mix Counties, SD, FD 36086 (STB served Jan. 25, 2017). According to the State, its lease of the Connecting Line Segment to NPRRA has expired; the State requested NPRRA to file a notice at the Board terminating the modified certificate operating rights NPRRA obtained to provide service over the Connecting Line Segment in Napa-Platte Reg’l R.R. Auth. – Modified Certificate, FD 35026 (STB served June 14, 2007); and NPRRA refused to do so. The State filed a declaratory order petition asking the Board to terminate NPRRA’s modified certificate operating rights over the Connecting Line Segment. See State of S. Dakota, Acting by and Through its Dep’t of Transp. – Pet. for Declaratory Order, FD No. 36096 (Filed Feb. 8, 2017). The Board granted this petition in its decision served in FD No. 36096 on June 14, 2017 and issued an order terminating NPRRA’s modified certificate rights over the Connecting Line Segment. The Line and the Connecting Line Segment are segments of a single branch line the State acquired in 1980 extending between milepost 0.0 near Napa Jct., SD and milepost 83.3 near Platte, SD (“Napa-Platte Line”). The portion of Napa-Platte Line extending between milepost 54.5 near Ravinia, SD and milepost 83.3 near Platte, SD has been rail banked. See S.D. Ry. – Notice of Interim Trail Use & Termination of Modified Rail Certificate, FD 31874 (STB served July 17, 2007).

All interested persons should also be aware that the Line now constitutes NPRRA's entire rail system. Therefore, as discussed in the Board's May 31, 2017 decision, the Board will not impose labor protective conditions in this proceeding.

The State represents that the Line does not contain federally granted rights-of-way. Any documentation in the State's possession will be made available promptly to those requesting it. The State's entire case in chief for adverse discontinuance was filed with the application.

Any interested person may file written comments concerning the proposed adverse discontinuance or protests (including protestant's entire opposition case) by _____ [45 days after the application is filed]. Persons who may oppose the proposed adverse discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR § 1152.25. The State's reply, if any, is due by _____ [60 days after the application is filed].

All filings in response to this notice must refer to Docket No. AB 1253 and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW, Washington DC 20423-0001; (2) John H. LeSeur, Slover & Loftus LLP, 1224 17th Street, NW, Washington, DC 20036, (202) 347-7170; and (3) Karla L. Engle, Special Assistant Attorney General, South Dakota Department of Transportation, 700 E. Broadway Ave., Pierre, SD 57501-2586, (605) 773-3262.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any persons using e-filing should comply with the instructions found

on the Board's website (<http://www.stb.gov>), at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR § 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding. 49 CFR § 1104.12(a).

The Board's May 31, 2017 decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Board decisions and notices are available on our website at <http://www.stb.gov>.

Decided: _____

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Draft Federal Register Notice

FR- _____

SURFACE TRANSPORTATION BOARD

[STB Docket No. AB-1253]

State of South Dakota Acting by and Through Its Department of Transportation – Adverse
Discontinuance of Operating Authority – Nappa-Platte Regional Railroad Authority

On _____, the State of South Dakota, acting by and through its Department of Transportation (“State”), filed an application under 49 U.S.C. § 10903 asking the Surface Transportation Board (“Board”) to authorize the third-party, or “adverse,” discontinuance of operating authority held by the Napa-Platte Regional Railroad Authority (“NPRRA”) on a line of railroad extending from railroad milepost 0.0 near Napa Jct., SD to milepost 13.4+/- near Tabor, SD (“Line”), a distance of approximately 13.4 miles in the Counties of Yankton, SD and Bon Homme, SD. The Line includes no stations and traverses through United States Postal Service ZIP codes 57058, 57078, and 57063.

According to the State, it owns the Line and; its lease of the Line to NPRRA has expired; ~~it has requested NPRRA to obtain authorization from the Board to discontinue the operating authority NPRRA obtained from the Board in 2007 to conduct common carrier operations over the Line;~~¹ ~~and NPRRA has refused to do so.~~ The State also represents that NPRRA is a non-operating common carrier that has not provided any common carrier service over the Line since NPRRA obtained authority to do so in 2007;² that the State now leases the Line

¹ ~~See Napa-Platte Reg'l R.R. Auth. – Lease and Oper. Exempt. – Dakota Short Line Corp., FD 35025 (STB served May 31, 2007).~~

² ~~See Napa-Platte Reg'l R.R. Auth. – Lease and Oper. Exempt. – Dakota Short Line Corp., FD 35025 (STB served May 31, 2007).~~

to an operating common carrier – the Dakota Southern Railway Company (“DSRC”); and that, at the State’s request, the DSRC has obtained a modified certificate of public convenience and necessity that authorizes DSRC to provide common carrier service over the Line and to provide common carrier service over a connecting rail line segment owned by the State extending from milepost 13.4 +/- near Tabor, SD to milepost 54.5 near Ravinia, SD (“Connecting Line Segment”).³ The State now seeks Board permission through an adverse discontinuance proceeding to terminate NPRRA’s regulatory authority to lease and operate the Line.

In a decision served in this proceeding on May 31_____, 2017, the Board granted a petition filed by the State for exemptions from several statutory provisions and for waivers of certain Board regulations governing rail line discontinuances. Because the State has made arrangements with DSRC to provide common carrier service on the Line, all interested persons should be aware that this application is for adverse discontinuance and will not result in the abandonment of service over the Line. Therefore, as discussed in the Board’s May 31, 2017_____ decision, the Board has exempted this proceeding from the offer of financial

³ See Dakota S. Ry. Co. – Modified Certificate of Pub. Convenience and Necessity – Yankton, Bon Homme, and Charles Mix Counties, SD, FD 36086 (STB served Jan. 25, 2017). According to the State, its lease of the Connecting Line Segment to NPRRA has expired; the State ~~has~~-requested NPRRA to file a notice at the Board terminating the modified certificate operating rights NPRRA obtained to provide service over the Connecting Line Segment in Napa-Platte Reg’l R.R. Auth. – Modified Certificate, FD 35026 (STB served June 14, 2007); and NPRRA ~~has~~-refused to do so. The State ~~has~~-filed a declaratory order petition asking the Board to terminate NPRRA’s modified certificate operating rights over the Connecting Line Segment. See State of S. Dakota, Acting by and Through its Dep’t of Transp. – Pet. for Declaratory Order, FD No. 36096 (Filed Feb. 8, 2017). The Board granted this petition in its decision served in FD No. 36096 on June 14, 2017 and issued an order terminating NPRRA’s modified certificate rights over the Connecting Line Segment. The Line and the Connecting Line Segment are segments of a single branch line the State acquired in 1980 extending between milepost 0.0 near Napa Jct., SD and milepost 83.3 near Platte, SD (“Napa-Platte Line”). The portion of Napa-Platte Line extending between milepost 54.5 near Ravinia, SD and milepost 83.3 near Platte, SD has been rail banked. See S.D. Ry. – Notice of Interim Trail Use & Termination of Modified Rail Certificate, FD 31874 (STB served July 17, 2007).

assistance (“OFA”) requirements at 49 U.S.C. § 10904 and waived its OFA regulations at 49 CFR § 1152.27, and the Board will not entertain requests for a public use condition under 49 U.S.C. § 10905 (49 CFR § 1152.28) or a trail use condition under 16 U.S.C. § 1247(d) (49 CFR § 1152.29).

All interested persons should also be aware that the Line ~~now, and the Connecting Line Segment,~~ constitutes NPRRA’s entire rail system. Therefore, as discussed in the Board’s ~~May 31, 2017~~ decision, the Board will not impose labor protective conditions in this proceeding. ~~if it grants the State’s adverse discontinuance application in this proceeding to terminate NPRRA’s operating rights over the Line and, as requested by the State in a companion proceeding,⁴ terminates NPRRA’s regulatory authority to operate over the Connecting Line Segment.~~

The State represents that the Line does not contain federally granted rights-of-way. Any documentation in the State’s possession will be made available promptly to those requesting it. The State’s entire case in chief for adverse discontinuance was filed with the application.

Any interested person may file written comments concerning the proposed adverse discontinuance or protests (including protestant’s entire opposition case) by _____ [45 days after the application is filed]. Persons who may oppose the proposed adverse discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should

⁴ ~~See State of S. Dakota, Acting by and Through its Dep’t of Transp. Verified Pet. for Declaratory Order, FD No. 36096 (Filed Feb. 8, 2017).~~

file a protest, observing the filing, service-, and content requirements of 49 CFR § 1152.25. The State's reply, if any, is due by _____ [60 days after the application is filed].

All filings in response to this notice must refer to Docket No. AB 1253 and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW, Washington DC 20423-0001; (2) John H. LeSeur, Slover & Loftus LLP, 1224 17th Street, NW, Washington, DC 20036, (202) 347-7170; and (3) Karla L. Engle, Special Assistant Attorney General, South Dakota Department of Transportation, 700 E. Broadway Ave., Pierre, SD 57501-2586, (605) 773-3262.

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_____The Board's May 31, 2017_____decision waived compliance with its environmental and historic review regulations because the Board found that it was unlikely that the discontinuance would result in any environmental impacts or salvage. Accordingly, no environmental or historic assessment will be prepared in this proceeding.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Assistance for the

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Decided: _____

By the Board, Rachel D. Campbell, Director, Office of Proceedings.