



SLOVER & LOFTUS LLP

301776

ATTORNEYS AT LAW

JOHN H. LESEUR

ENTERED
Office of Proceedings
March 19, 2021
Part of
Public Record

March 19, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, D.C. 20423-0001

Re: Finance Docket No. 33792, Nobles Rock Railroad, Inc.
– Modified Rail Certificate

Dear Ms. Brown:

Attached for filing in the above-referenced proceeding please find the State of South Dakota's Verified Notice of Termination of Modified Certificate. Please note that Exhibit No. 1 to this filing is a **color map**.

We will submit the \$350 filing fee for this Notice through the Board's on-line payment system but intend to seek a refund of that fee through the Board's waiver process.

Thank you for your assistance in this matter.

Respectfully submitted,

/s/ John H. LeSeur

John H. LeSeur
*An Attorney for the State of South Dakota
Acting by and Through its Department of
Transportation*

FEE RECEIVED
March 19, 2021
SURFACE

TRANSPORTATION BOARD

FILED
March 19, 2021
SURFACE
TRANSPORTATION BOARD

Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOBLES ROCK RAILROAD, INC. – MODIFIED RAIL CERTIFICATE	))))	
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Finance Docket No. 33792

VERIFIED NOTICE OF TERMINATION OF MODIFIED CERTIFICATE

By: 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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1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for the State of South Dakota
Acting by and Through Its Department
of Transportation

Dated: March 19, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NOBLES ROCK RAILROAD, INC. – MODIFIED RAIL CERTIFICATE	))))	
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Finance Docket No. 33792

VERIFIED NOTICE OF TERMINATION OF MODIFIED CERTIFICATE

The State of South Dakota acting by and through its Department of Transportation (“State”) files this Verified Notification of Termination of Modified Certificate and in support hereof states as follows:

1. The State owns a rail line which extends between milepost 374.57 in Mitchell, SD to milepost 660.0 in Rapid City, SD, a distance of approximately 285.43 miles (“MRC Line” or “Line”). A copy of the South Dakota railroad system map showing the location of the MRC Line is appended as Exhibit No. 1.

2. The State recently announced that it had entered into an agreement with the Ringneck & Western Railroad L.L.C. (“RWR”), currently a non-carrier, to purchase the MRC Line and to operate over the unbanked sections of that Line,¹ subject to the satisfaction of specified contingencies, including requisite Surface Transportation Board (“STB”) approvals or exemptions.

3. During its Line sale due diligence process, the State confirmed that a rail carrier that was at one time authorized to do business in South Dakota – Nobles Rock Railroad,

¹ As shown in Exhibit No. 1, most the MRC Line west of Kadoka, SD is rail banked.

Inc. (“NRR”) – had never terminated its authority to provide modified certificate service over a segment of the MRC Line from milepost 378.5 west of Mitchell, SD, to milepost 517.5 at Murdo, SD, a total distance of approximately 139 miles. *See Nobles Rock Railroad, Inc. – Modified Rail Certificate*, Finance Docket No. 33792, slip op. at 1 (STB served Sept. 16, 1999) (“*Nobles Rock*”). As part of the Line sales transaction, the State agreed to file a termination notice on behalf of NRR.

5. The Board’s modified certificate rules provide that a carrier holding a modified certificate “may not terminate service over [the] line unless it first provides 60 days’ notice of its intent to terminate the service” to designated entities. 49 C.F.R. § 1150.24. These entities are the “state,” the Board, and “all persons that have utilized the line within the 6 months preceding the date of the notice.” *Id.* at § 1150.24(a) & (b). The Board has held that a line owner may provide a § 1150.24 notice on behalf of a carrier in cases where: (i) the carrier “has ceased operating on the line;” (ii) “the operating agreement that granted operating rights [to the carrier] has expired;” and (iii) the carrier “is no longer a recognized corporate entity” in the state where the line is located. *South Dakota Railway Company – Notice of Interim Trail Use & Termination of Modified Rail Certificate*, Finance Docket No. 31874, slip op. at 2 (STB served July 17, 2007); *accord Chesapeake Railroad Company – Certificate of Interim Trail Use & Termination of Modified Certificate*, Finance Docket No. 32609, slip op. at 1 n.2 (STB served Jan. 9, 2006). These three criteria are satisfied here.

6. **Ceased Operations.** NRR ceased operations over the MRC Line years ago. The exact date NRR stopped providing service is not readily available, but another carrier – the Dakota Southern Railway Company (“DSRC”) – is the only carrier currently providing

service over the MRC Line and has been the only rail carrier providing service over the Line for many years. *See Dakota Southern Railway Company – Modified Rail Certificate*, Docket No. FD 36291 (STB served June 21, 2019).² In addition, a party in an unrelated transaction informed the Board in 2000 that NRR “appears to have become insolvent or close to insolvency.” *Buffalo Ridge Regional Railroad Authority – Operation Exemption – Rail Line Between Manley and Worthington, MN*, Finance Docket No. 33925, slip op. at 1-2 n.3 (STB served Sept. 22, 2000).

7. **Expired Operating Agreement.** In 1999, NRR represented to the Board that its rights to operate over the Mitchell-Murdo segment of the MRC Line were set forth in a sublease agreement between DSRC and NRR. *Nobles Rock*, slip op. at 2. The exact date this sublease expired is not readily available, but, to the best of the State’s knowledge, it expired years ago when NRR ceased operations.

8. **Not A Recognized Corporate Entity.** NRR has not been recognized as a corporate entity in South Dakota since September 24, 2001. The State appends as Exhibit No. 2 a Certificate attesting to this fact.

9. **Notice.** The State is serving a copy of this Verified Notice on all persons that have used the MRC Line in the last six months and one party of record.

² As part of the proposed sale of the MRC Line to RWR, DSRC will be filing a notice of intent to terminate its current modified certificate operating rights, with the termination to be effective when the Line sale transaction closes. No shippers on the MRC Line will be adversely affected by DSRC’s termination notice because the proposed Line sale will not close until all required STB regulatory approvals or exemptions are obtained, including the regulatory approval or exemption authorizing RWR, once it becomes a common carrier, to provide service to the MRC Line shippers that previously had been served by DSRC.

CONCLUSION

For the reasons set forth above, the State requests that the Board accept this notice of termination of the modified certificate rights the Board previously granted NRR in this docket.

Respectfully submitted,

By: Karla L. Engle
Special Assistant Attorney General
South Dakota Department of Transportation
700 E. Broadway Ave.
Pierre, SD 57501-2586
(605) 773-3262

/s/ John H. LeSeur
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Washington, D.C. 20036
(202) 347-7170

Attorneys for the State of South Dakota
Acting by and Through Its Department
of Transportation

Dated: March 19, 2021

Exhibit No. 1

OFFICIAL SOUTH DAKOTA RAIL MAP

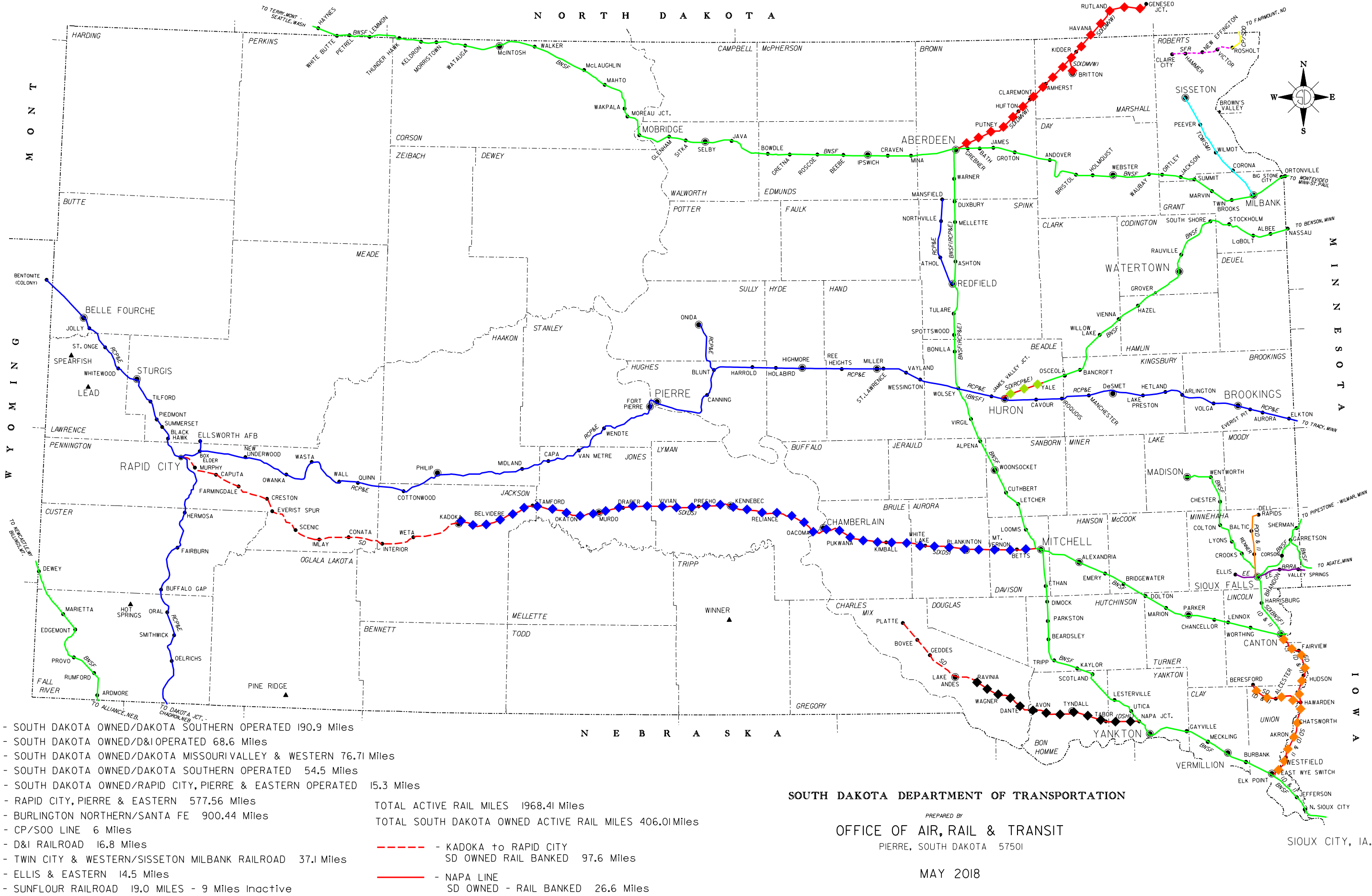


Exhibit No. 2

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

Certificate of Revocation Of Certificate of Authority

(FB, FF, FC, FN, FL)

I, **JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, by virtue of the authority vested in me by SDCL 47-8-28, § 47-27-37, and § 47-34A-1006, hereby revoke the Certificate of Authority of the below named to transact business in this state for failure to file the annual report when due.

FB-023261
NOBLES ROCK RAILROAD, INC.
TOLLEFSON, JR., HERBERT
105 NORTH MAIN
WHITE LAKE SD 57383



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this September 24, 2001.

A handwritten signature in cursive script, reading "Joyce Hazeltine".

Joyce Hazeltine
Secretary of State

VERIFICATION

I, Joel Jundt, Secretary of the South Dakota Department of Transportation, verify under penalty of perjury that I have read the foregoing Notice of Termination of Modified Certificate, know the contents thereof, and that the factual assertions set forth therein are true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verification.



Joel Jundt, Secretary
South Dakota
Dept. of Transportation

March 18, 2021

CERTIFICATE OF SERVICE

I hereby certify that this 19th day of March 2021, I have caused a copy of the foregoing
to be served by first-class mail, postage pre-paid upon the following:

Todd Yeaton, General Manager
Gavilon Grain
25035 367th Ave.
Kimball, SD 57355

Todd Longville, General Manager
Agtegra
115 N SD Hwy 273
Kennebec, SD 57544

Dave Cole, Location Manager
Dakota Mill and Grain
30744 241st St.
Presho, SD 57568

Andy Lacara, Plant Manager
Graphic Packaging
1700 W Ash Ave.
Mitchell, SD 57301

H&R Salvage
25351 405th Ave.
Mitchell, SD 57301

American Short Line and Regional Railroad Association
50 F Street, N.W.
Suite 500
Washington, D.C. 20001

/s/ John H. LeSeur
John H. LeSeur