



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

December 8, 2021

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VIA ELECTRONIC FILING

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

ENTERED
Office of Proceedings
December 8, 2021
Part of
Public Record

Re: Docket No. FD 31874, South Dakota Railway Company – Notice
of Interim Trail Use and Termination of Modified Rail Certificate

Dear Ms. Brown:

Enclosed for e-filing in the above referenced docket, please find a Notice of Intent to Terminate Interim Trail Use pursuant to 49 C.F.R. § 1152.29(d)(2), submitted on behalf of the South Dakota State Railroad Board.

Please contact the undersigned if you have any questions regarding this filing. Thank you for your attention to this matter.

Respectfully submitted,

A. Rebecca Williams

An Attorney for the South Dakota
State Railroad Board

Enclosure

	)	
SOUTH DAKOTA RAILWAY COMPANY –	)	
NOTICE OF INTERIM TRAIL USE AND	)	Finance Docket No. 31874
TERMINATION OF MODIFIED RAIL	)	
CERTIFICATE	)	
	)	

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Dated: December 8, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SOUTH DAKOTA RAILWAY COMPANY –	)	
NOTICE OF INTERIM TRAIL USE AND	)	Finance Docket No. 31874
TERMINATION OF MODIFIED RAIL	)	
CERTIFICATE	)	
	)	

NOTICE OF INTENT TO TERMINATE INTERIM TRAIL USE

Pursuant to 49 C.F.R. § 1152.29(d)(2), the South Dakota State Railroad Board (“SDRB”) submits this Notice of Intent to Terminate Interim Trail Use (“Notice”) over the end segment of the Napa-Platte Line between milepost (MP) 80.8 and MP 83.3 and, in support hereof, states as follows:

1. The Napa-Platte Line right-of-way starts at Napa Junction, SD (MP 0.0) and extends 83.3 miles west to Platte, SD (MP 83.3). *See* Exhibit A. The Napa-Platte Line was authorized for abandonment in 1980 but, prior to being abandoned, was acquired by the State of South Dakota (“State”). *See Ogilvie – Aban. – in S.D., Iowa, & Neb.*, AB 7 (Sub.-No. 88) (ICC served May 14, 1980); *Napa-Platte Reg’l R.R. Auth. – Modified Rail Certificate*, FD 35026, slip op. at 1-2 (STB served June 14, 2007).

2. In 1991, the South Dakota Railway Company (“SDRC”) obtained a modified certificate of public convenience and necessity to operate over the Napa-Platte Line. *See South Dakota Ry. – Modified Rail Certificate*, FD 31874 (ICC served May 30, 1991). SDRC subsequently ceased its operations over the Napa-Platte Line and forfeited its status as a corporate entity in South Dakota. *See South Dakota Ry. – Notice of Interim*

Trail Use & Termination of Modified Rail Certificate, FD 31874, slip op. at 1 (STB served July 17, 2007) (copy attached hereto as Exhibit B).

3. On May 15, 2007, the State of South Dakota Department of Transportation (“SDDOT”) filed a notice with the Surface Transportation Board (“Board”) on behalf of SDRC of its intent to terminate service over the Napa-Platte Line under its modified certificate. *Id.* This notice was accepted by the Board. *Id.* at 2.

4. In conjunction with SDDOT’s notice, SDRB, a political subdivision of the State, filed a request on May 15, 2007 asking the Board to issue a notice of interim trail use (“NITU”) under the National Trails System Act, 16 U.S.C. § 1247(d), for the segment of the Napa-Platte Line between MP 54.5 in Ravinia, SD and MP 83.3 in Platte, SD (“Ravinia-to-Platte Segment”). *Id.* at 1.

5. On July 17, 2007, the Board granted SDRB’s request and issued an NITU for the Ravinia-to-Platte Segment. *Id.* at 2 (copy in Exhibit B). On January 11, 2008, counsel for SDDOT and the South Dakota Railroad Authority, under the auspices of SDRB, notified the Board that the parties had “entered into an agreement for interim trail use of the Ravinia-Platte line (Milepost 54.5 to Milepost 83.3).” *See* Letter from Myles L. Tobin to Anne Quinlan, Acting Secretary, Board (Jan. 11, 2008).

6. SDRB hereby notifies the Board that it intends to terminate interim trail use at the end of the Ravinia-to-Platte Segment of the Napa-Platte Line between MP 80.8 and MP 83.3, while continuing to be the trail sponsor for the remaining portion of the Ravinia-to-Platte Segment between MP 54.5 and MP 80.8. SDRB is authorized to state that SDDOT supports SDRB’s Notice.

7. In order to perfect this transaction, SDRB requests that the Board:
(i) reopen this proceeding; (ii) vacate the current NITU, effective on the date of the Board's vacation order; and (iii) issue a replacement NITU for the remaining portion of the Ravinia-to-Platte Segment of the Napa-Platte Line between MP 54.5 and MP 80.8.

8. In conjunction with this Notice, SDRB and SDDOT are jointly filing a second notice to correct their prior representations to the Board in this proceeding concerning the extent of the State's ownership of portions of the Ravinia-to-Platte Segment of the Napa-Platte Line between MP 80.8 and MP 83.3.

Respectfully submitted,

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Attorneys for the South Dakota
State Railroad Board

Dated: December 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December 2021, I caused a true and correct copy of the foregoing Notice of Intent to Terminate Interim Trail Use to be served via first-class mail on all parties of record in this proceeding.

A handwritten signature in black ink, appearing to read "AR Williams", written over a horizontal line.

A. Rebecca Williams

An Attorney for the South Dakota
State Railroad Board

EXHIBIT A
MAP

Napa-Platte Line

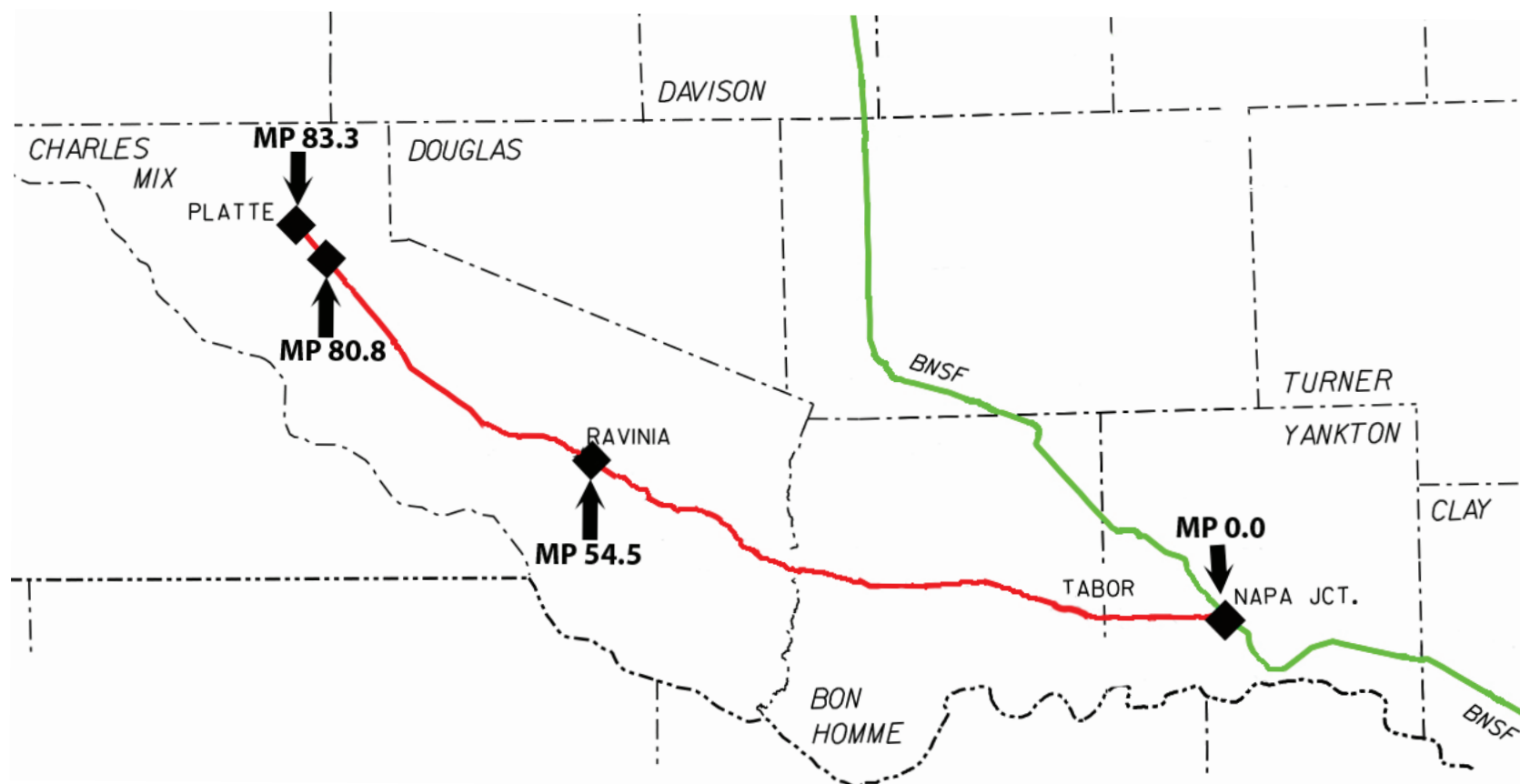


EXHIBIT B

NOTICE OF INTERIM TRAIL USE

38058
DO

SERVICE DATE – JULY 17, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Finance Docket No. 31874

SOUTH DAKOTA RAILWAY COMPANY—NOTICE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE

Decided: July 16, 2007

In South Dakota Railway Company—Modified Rail Certificate, Finance Docket No. 31874 (ICC served May 30, 1991), South Dakota Railway Company (SDRC) was issued a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate approximately 83.3 miles of rail line between milepost 0.0, at a point known as Napa Junction, SD, and milepost 83.3, in Platte, SD (the Line).

On May 15, 2007, pursuant to 49 CFR 1150.24, the South Dakota Department of Transportation (SDDOT), on behalf of the State of South Dakota (State), filed notice on behalf of SDRC of its intent to terminate service over the Line under the modified certificate. SDDOT claims that SDRC has ceased operating over the Line, and that, at least as of December 31, 1994, has not exercised its operating rights. SDDOT adds that it is filing this notice on SDRC's behalf because SDRC has forfeited its status as a corporate entity in South Dakota¹ and because the parties' operating agreement has expired.²

The South Dakota State Railroad Board (SDRB), a political subdivision of the State, pursuant to 49 CFR 1152.29, concurrently filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) Trails Act), for the segment of the Line between milepost 54.5 in Ravinia, SD, and milepost 83.3 in Platte (Ravinia-Platte segment). SDRB also submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. See 49 CFR 1152.29. SDDOT states that it supports SDRB's request for a NITU and

¹ A copy of a certification to that effect from the South Dakota Secretary of State is attached.

² SDRC subleased the line from the Napa-Platte Regional Railroad Authority (NPRRA), which leased the Line from the State.

that it is willing to negotiate a trail use/rail banking agreement with SDRB for the Ravinia-Platte segment.³

Under 49 CFR 1150.24, an operator (in this instance, SDRC) must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate. Here, SDDOT's request on SDRC's behalf to terminate service under the modified certificate will be granted because: (1) SDRC has ceased operating on the line; (2) the operating agreement that granted operating rights to SDRC has expired; and (3) SDRC is no longer a recognized corporate entity in South Dakota. See Chesapeake Railroad Company—Certificate of Interim Trail Use and Termination of Modified Rail Certificate, STB Finance Docket No. 32609 et al. (STB served Jan. 9, 2006).

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way and the carrier is willing to enter into negotiations. Moreover, the Board has jurisdiction to issue a NITU in a proceeding where a notice is filed under 49 CFR 1150.24 to terminate operations under a modified certificate. See, e.g., Sammamish Transportation Company—Notice of Interim Trail Use and Termination of Modified Certificate, Finance Docket No. 33398 (Sub-No. 1) (STB served Feb. 26, 1998); Wisconsin and Calumet Railroad Company, Inc.—Notice of Interim Trail Use and Termination of Modified Certificate, Finance Docket No. 30724 (Sub-No. 1) (ICC served Aug. 8, 1989).

Because SDRB has met the requirements of 49 CFR 1152.29, a NITU will be issued for the Ravinia-Platte segment. SDRB is free to negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, the line may be fully abandoned. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for a notice of interim trail use under the Trails Act is accepted.

³ Operations on the remaining segments of the Line will continue. On May 15, 2007, NPRRA filed: (1) a notice of exemption under 49 CFR 1150.31 to lease from the State and to operate a segment of the Line between milepost 0.0 near Napa and milepost 13.4+/- near Tabor, SD; and (2) a notice for a modified rail certificate under 49 CFR 1150, Subpart C, Modified Certificate of Public Convenience and Necessity, to operate another segment of the Line between milepost 13.4+/- near Tabor and milepost 54.5 near Ravinia. See Napa-Platte Regional Railroad Authority—Lease and Operation Exemption—Dakota Short Line Corp., STB Finance Docket No. 35025 (STB served May 31, 2007) and Napa-Platte Regional Railroad Authority—Modified Rail Certificate, STB Finance Docket No. 35026 (STB served June 14, 2007).

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

4. If interim trail use is implemented and the user subsequently seeks to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking has been reached by the 180th day after service of this decision and notice (until January 13, 2008), interim trail use may be implemented. If no agreement is reached by that time, the line may be fully abandoned.

6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary