

National Association of Reversionary Property Owners

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FD31874

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

NARPO submits this comment to clarify misstatements.

Counsel for the South Dakota State Railroad Board (SDRRB) takes issue with NARPO's March 7, 2022 letter responding to SDRRB request to terminate a portion of a NITU issued to what was then known as the South Dakota Railroad Authority (at least by this name in this particular filing). NARPO stated that the rail line from MP 54.5 to MP 0.0 was not an active rail line connected to the National Rail System so the rail line from MP 54.5 to MP 80.0 was not connected to the National Rail System and thus was not able to be considered for a NITU.

On 5/15/2007, the SDDOT applied to the STB to terminate its modified certificate from MP 0.0 to MP 83.3. On 7/16/2007 the STB allowed SDDOT to terminate if modified certificate from MP 0.0 to MP 83.3, and

the STB also entertained a request for a NITU on the portion of the line from MP 54.5 to MP 83.3. On 1/11/2008, the South Dakota Railroad Authority informed the STB they agreed with SDDOT for a Trail Use Agreement from MP 54.5 to MP 83.3.

There is no NITU from MP 0.0 to MP 54.5 and the modified certificate has been terminated for that line segment so it appears that the rail line is completely severed from the National Rail System. Looking at Google Maps for the entire 83.3 mile rail line in question, there are no tracks and all but three small bridges have been removed decades ago. Some farms are using the former right of way for farming. NARPO finds it hard to grasp how this rail line is connected to the National Rail System as we stated in our March 7, 2022 letter to the STB. Actually the STB should not have allowed the NITU back in 2008 as the STB approved termination of the only part of the rail line that was connected to the National Rail System.

Almost the entire right of way was acquired with reversionary easement deeds either with recorded easements or through the Congressional Act of March 3, 1871 easements that are reversionary, see **Brandt v. US, 572 US 93 (2014)**.

Again, NARPO requests the STB to terminate any and all NITUs on the rail line in FD 31874.

Richard Welsh--NARPO

All parties of record with current email addresses were served March 18, 2022.