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March 24, 2022

VIA ELECTRONIC FILING

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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
March 24, 2022
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:

This letter responds to the letter filed by the National Association of Reversionary Property Owners (“NARPO”) on March 18, 2022.

1. On March 7, 2022, NARPO filed a letter petition asking the Surface Transportation Board (“STB” or “Board”) to terminate the replacement Notice of Interim Trail Use (“NITU”) the Board issued in this proceeding on March 4, 2022 (“Replacement NITU”). NARPO asserted that the Replacement NITU should be terminated because, according to NARPO, the line segment subject to the Replacement NITU is not connected to the National Rail System.

2. On March 18, 2022, the South Dakota State Railroad Board (“SDRB”) filed a letter responding to NARPO’s petition (“SDRB Reply” or “Reply”). In its Reply, SDRB asked the Board to deny NARPO’s termination request because the rail line subject to the Replacement NITU – the portion of the Napa-Platte Line between mileposts 54.5 and 80.8 – is connected to the National Rail System at Ravinia, SD. *See* SDRB Reply at 1-2.

3. Immediately after receiving SDRB’s Reply filing, NARPO filed a letter on March 18, 2022 that raised two new contentions: (i) the segment of the Napa-Platte Line between Ravinia SD (at milepost 54.5) and Napa Junction (at milepost 0.0)

(“Napa-Ravinia Segment” or “Segment”) is not part of the National Rail System because no carrier holds operating rights over this Segment; and (ii) the tracks on this Segment have been removed.

4. NARPO’s March 18, 2022 letter is a reply to SDRB’s Reply. Replies-to-replies are not ordinarily permitted under the Board’s Rules of Practice. *See* 49 C.F.R. § 1104.13(c) (“A reply to a reply is not permitted.”). SDRB requests that the Board not consider NARPO’s unauthorized reply. If the Board does decide to exercise its discretion to consider NARPO’s reply, SDRB respectfully requests that the Board also consider the following brief sur-reply.

5. NARPO’s contention that no carrier holds operating rights over the Napa-Ravinia Segment is wrong. The Dakota Southern Railway Company (“DSRC”) currently holds modified certificate rights over this Segment. *See Dakota S. Ry. – Modified Certificate of Pub. Convenience & Necessity – Yankton, Bon Homme, and Charles Mix Cntys., S.D.*, FD 36086, slip op. at 1-2 (STB served Jan. 25, 2017) (“*Modified Certificate Decision*”) (approving DSRC’s modified certificate notice to operate over the portion of the Napa-Platte Line between “MP 0.0” and “MP 54.5”).¹

6. NARPO’s contention that the rail tracks on the Napa-Ravinia Segment have been removed is also wrong because these tracks have not been removed and, more importantly, the Segment remains part of the National Rail System because (i) DSRC holds modified certificate rights to conduct operations over it and (ii) the State of South Dakota, which owns this Segment, has no intention of abandoning it. *See Beaufort R.R. – Modified Rail Certificate*, STB Finance Docket No. 34943, slip op. at 5-6 (STB served Mar. 19, 2008).

7. SDRC again respectfully requests that the Board deny NARPO’s request to terminate the Replacement NITU.

¹ SDRB cited the *Modified Certificate Decision* in its Reply but inadvertently referenced DSRC’s modified certificate operating rights as applying to transportation over the rail-banked segment between Ravinia and Platte, not (as is the case) to transportation over the Napa-Ravinia Segment.

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Respectfully submitted,

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cc: All Parties of Record