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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
April 18, 2023

	)	Part of
THE STATE OF SOUTH DAKOTA ACTING BY	)	Public Record
AND THROUGH ITS DEPARTMENT OF	)	
TRANSPORTATION – PETITION FOR	)	Finance Docket No. 36697
DECLARATORY ORDER	)	
	)	

REQUEST FOR INTERIM TRAIL USE

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Acting By and Through Its Department
of Transportation

Dated: April 18, 2023

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April 18, 2023
**SURFACE
TRANSPORTATION BOARD**

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April 18, 2023
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REQUEST FOR INTERIM TRAIL USE

Pursuant to 49 C.F.R. § 1152.29, the State of South Dakota acting by and through its Department of Transportation (“SDDOT” or the “State”) respectfully requests that the Surface Transportation Board (“Board”) accept this request for interim trail use of the rail line segment between Tyndall, S.D. and Ravinia, S.D., and in support hereof, states as follows:

1. On April 18, 2023, the State filed a Petition For Declaratory Order (“Petition”) asking the Board to terminate Dakota Southern Railway Company’s (“DSRC”) modified certificate common carrier service rights over the State-owned line segment between Tyndall, SD at MP 20.9, also known as Engineer’s Survey Station Number 1103+32, and Ravinia, SD, at MP 54.5, also known as Engineer’s Survey Station Number 1707+17. The State’s Petition contains a detailed discussion of the history of this line segment and the State incorporates that discussion by reference.

3. The Board has jurisdiction to impose interim trail use in a proceeding where a state line owner requests and obtains an order from the Board terminating the modified certificate rights held by the line operator. *See S.D. Ry. –*

Notice of Interim Trail Use & Termination of Modified Rail Certificate, slip op. at 2, FD 31874 (STB served July 17, 2007) (“the Board has jurisdiction to issue a [Notice of Interim Trail Use] in a proceeding . . . to terminate operations under a modified certificate”).

4. 49 C.F.R. § 1152.29(a)(1) requires that the trail sponsor submit a map and accurate description of the right-of-way, or portion thereof, to be banked.

Exhibit A contains a map showing the involved right-of-way to be banked, which accurately describes the State-owned line segment between Tyndall, S.D. at MP 20.9, also known as Engineer’s Survey Station Number 1103+32, and Ravinia, S.D. at MP 54.5, also known as Engineer’s Survey Station Number 1707+17.

5. 49 C.F.R. § 1152.29(a)(2)-(3) requires that the trail sponsor provide a “Statement of Willingness to Assume Financial Responsibility” (“Statement”) for the line to be banked. **Exhibit B** contains a Statement executed by SDDOT.

6. Since the Board has jurisdiction here, and SDDOT has complied with the provisions of 49 C.F.R. § 1152.29, SDDOT respectfully requests that the Board accept its request for interim trail use.

Respectfully submitted,

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Dated: April 18, 2023

EXHIBIT A

Map Showing the Tyndall-to-Ravinia Segment

[attached hereto]

Tyndall to Ravinia Line Segment

(Napa Jct.-Platte Line)

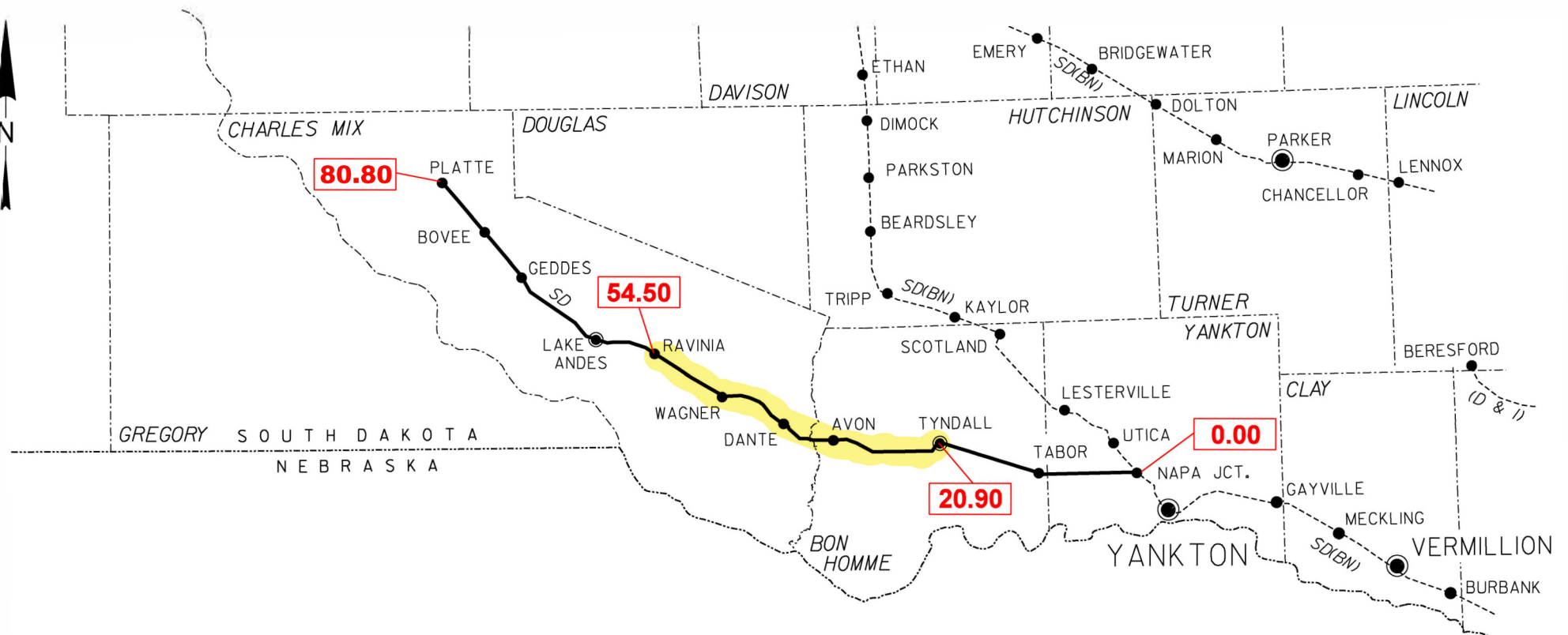


EXHIBIT B

Statement of Willingness to Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the right-of-way owned by the State of South Dakota Acting By and Through its Department of Transportation (“SDDOT” or “State”) and currently operated by Dakota Southern Railway Company (“DSRC”), SDDOT is willing to assume full responsibility for (1) managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the State against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way. The property, known as Tyndall-Ravinia Segment of the Napa-Platte Line, extends from railroad milepost 20.9, also known as Engineer’s Survey Station 1103+32 near Tyndall, S.D., to railroad milepost 54.5, also known as Engineer’s Survey Station 1707+17, near Ravinia, S.D., a distance of 33.6 miles in and through Bon Homme and Charles Mix Counties, S.D. The right-of-way is part of a line of railroad that was authorized for abandonment in 1980 by the United States District Court for the Northern District of Illinois following the issuance of a report by the Interstate Commerce Commission recommending abandonment. *See In re Chi., Milwaukee, St. Paul & Pac. R.R.*, No. 77 B 8999 (N.D. Ill. June 2, 1980, Order 342A); *Richard B. Ogilvie, Tr. of the Prop. of Chi., Milwaukee, St. Paul & Pac. R.R. – Aban. – in S.D., Iowa & Neb.*, AB-7 (Sub-No. 88) (ICC served May 14, 1980). Although authorized for abandonment, the entire line, including the Tyndall-to-Ravinia Segment, was not abandoned but instead

was acquired by the State in 1980 (a portion of the end segment of the line right-of-way located in the Platte, SD area was abandoned in 2022). A map of the property depicting the right-of-way is attached in Exhibit A. SDDOT acknowledges that use of the right-of-way is subject to the sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on DSRC on the same date it is being served on the Board.


Joel Jundt, Secretary
South Dakota Department of Transportation

Dated: April 17, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April 2023, I served a copy of the foregoing by postage prepaid, first-class US mail on:

Mr. Michael Williams
President
Dakota Southern Railway Company
10100 N. Ambassador Drive, Suite 105
Kansas City, Missouri 64153

/s/ John H. LeSeur

John H. LeSeur