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ENTERED
Office of Chief Counsel
March 23, 2026
Part of
Public Record

March 23, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: **FEE WAIVER REQUEST**: Finance Docket No. 36086, Dakota Southern Railway Company – Modified Certificate of Public Convenience and Necessity – Yankton, Bon Homme, and Charles Mix Counties, S.D.

Dear Chief of Case Administration:

The State of South Dakota Acting By and Through Its Department of Transportation (“State”) filed a Request for Notice of Interim Trail Use in the above-referenced docket on March 23, 2026.

49 C.F.R. § 1002.2(e)(1) provides that filing fees are waived for specified filings made by a “state . . . entity.” *Id.* The State is a qualifying “state . . . entity” (*id.*) and its filing for a Request For Notice of Interim Trail Use is among the filings qualifying for fee waivers. Therefore, the State respectfully requests that the following fee be waived and returned: \$350 (Request for Interim Trail Use filing fee).

Respectfully submitted,

/s/ John H LeSeur
John H. LeSeur
Special Attorney General

An Attorney for the State

cc: Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DAKOTA SOUTHERN RAILWAY COMPANY –	)	
MODIFIED CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY – YANKTON,	)	Finance Docket No. 36086
BON HOMME, AND CHARLES MIX	)	
COUNTIES, S.D.	)	
	)	

REQUEST FOR NOTICE OF INTERIM TRAIL USE

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Acting by and Through Its Department
of Transportation*

Dated: March 23, 2026

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DAKOTA SOUTHERN RAILWAY COMPANY –	)	
MODIFIED CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY – YANKTON,	)	Finance Docket No. 36086
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	)	

REQUEST FOR NOTICE OF INTERIM TRAIL USE

Pursuant to 49 C.F.R. § 1152.29, the State of South Dakota acting by and through its Department of Transportation (“State”) respectfully requests that the Surface Transportation Board (“STB” or “Board”) grant its request and issue a notice of interim trail use (“NITU”) under the National Trails System Act (16 U.S.C. § 1247(d)) for the rail line right-of-way between Napa Junction, South Dakota (“SD”) at Milepost (“MP”) 0.00 and Tyndall, SD at MP 20.9 (“Napa-Tyndall Segment”) and, in support hereof, states as follows.

**I.
BACKGROUND**

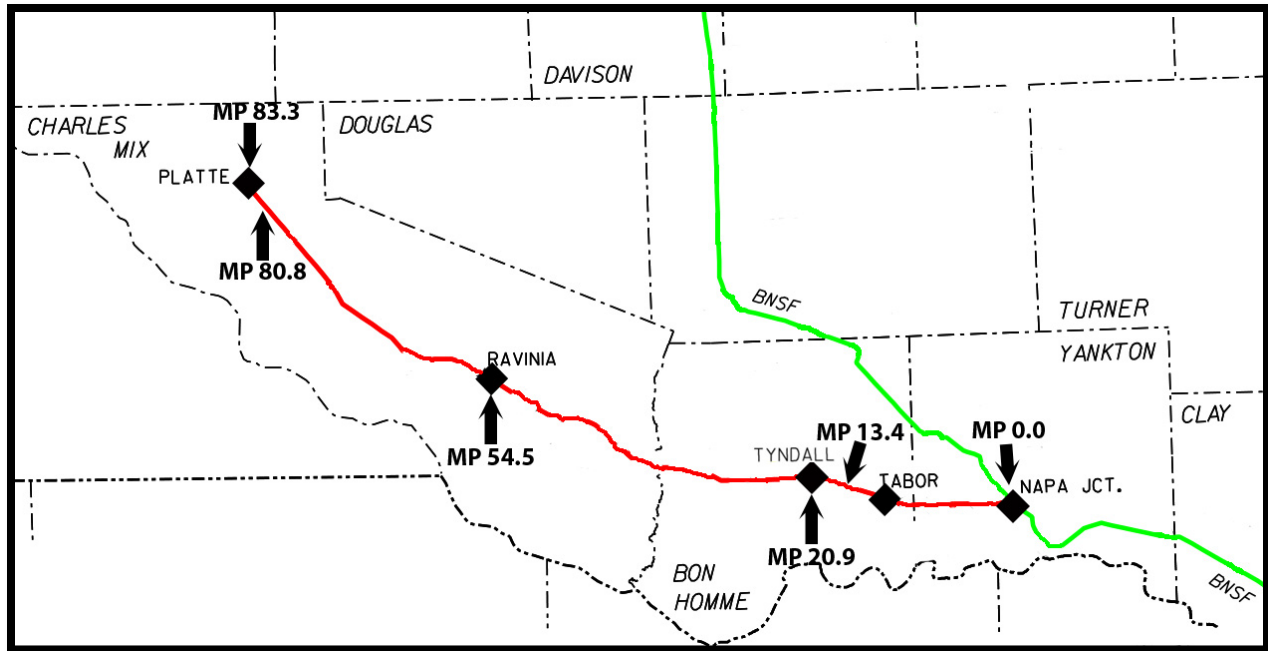
1. There was a railroad line right-of-way that ran between Napa Junction, SD (Milepost 0.00) and Platte, SD (MP 83.3) (“Napa-Platte Line” or “Line”). The entire Line was formerly part of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (“Milwaukee Road”). The Line was authorized for abandonment 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 (“ICC”) recommending abandonment.¹ Although authorized for abandonment, the Line was not abandoned; instead, it was acquired by the State in 1980 during the Milwaukee Road reorganization proceedings.²

2. For regulatory purposes, it is useful to divide the Napa-Platte Line into three separate segments: the Napa-Tyndall Segment (MP 0.00 to MP 20.9), the Tyndall-Ravinia Segment (MP 20.9 to MP 54.5), and the Ravinia-Platte Segment (initially MP 54.5 to MP 83.3). These three Segments are shown in the following map:

¹ See *In re Chi., Milwaukee, St. Paul & Pac. R.R.*, No. 77 B 8999 (N.D. Ill. June 2, 1980, Order 342A) (authorizing abandonment); *Ogilvie, Tr. of the Prop. of Chi., Milwaukee, St. Paul & Pac. R.R. – Aban. – in S.D., Iowa & Neb.*, AB-7 (Sub-No. 88), slip. op. at 15 (ICC served May 14, 1980) (recommending that the Court authorize abandonment); *S.D. Ry. – Notice of Interim Trail Use and Termination of Modified Rail Certificate*, FD 31874, slip op. at 1 (STB served Mar. 4, 2022) (discussing the history of the Line) (“SDRY 2022”).

² See *Napa-Platte Reg’l R.R. Auth. – Modified Rail Certificate*, FD 35026, slip op. at 1-2 (STB served June 14, 2007).



At Napa Junction, the Napa-Tyndall Segment connects to an active BNSF Railway Co. line.

3. In 2008, the State rail-banked the Ravinia-Platte Segment³ and subsequently abandoned the portion of the Ravinia-Platte Segment between MP 80.8 and 83.3.⁴ The portion of the Ravinia-Platte segment between MP 54.5 and MP 80.8 remains rail-banked.

³ See *S.D. Ry. – Notice of Interim Trail Use and Termination of Modified Rail Certificate*, FD 31874 (STB served July 17, 2007) (accepting the South Dakota State Railroad Board’s request for a NITU) (“*SDRY 2007*”). The State subsequently informed the Board that it and the South Dakota State Railroad Board had entered into a rail-banking agreement. See FD 31874 (State letter filed Jan. 11, 2008).

⁴ See *SDRY 2022*, slip op. at 2. Hereinafter, references to the Napa-Platte Line are to the Line between MP 0.00 and 80.8.

4. In 2023, the State rail-banked the Tyndall-Ravinia Segment.⁵ That segment remains rail-banked.

5. Between 1981 and September 2015, the State leased the Napa-Tyndall Segment to the Napa-Platte Regional Railroad Authority (“NPRRA”).⁶ During this period, the Board and its predecessor, the ICC, issued a series of common carrier operating authorities to NPRRA or its sublessees, including provisions for service over the Napa-Tyndall Segment (or portions thereof).⁷

6. In 2016, the State entered a ten-year rail line lease with the Dakota Southern Railroad Company (“DSRC”) that included the lease of the Napa-Tyndall Segment (“2016 Lease”).⁸ The 2016 Lease, as amended, called for DSRC to provide

⁵ See *State of S.D. Acting By and Through Its Dep’t of Transp. – Pet. For Declaratory Ord.*, FD 36697, slip op. at 3 (STB served Aug. 21, 2023) (“SD 2023”) (accepting the State’s request for a NITU). The State subsequently informed the Board that it had implemented interim trail use/rail banking on the Tyndall-Ravinia Segment. See FD 36697 (State letter filed Oct. 10, 2023).

⁶ See, e.g., *Napa-Platte Reg’l R.R. Auth. – Modified Rail Certificate*, FD 35026, slip op. at 2 (STB served June 14, 2007) (“NPRRA 2007”) (discussing the history of the NPRRA lease from 1981 to June 2007); *State of S.D. Acting By and Through Its Dep’t of Transp. – Adverse Discontinuance of Operating Auth. – Napa-Platte Reg’l R.R. Auth.*, AB 1253, slip op. at 2 (STB served June 27, 2018) (noting the NPRRA’s last lease with the State covering the Napa-Tyndall Segment expired on Sept. 20, 2015).

⁷ See, e.g., *Dakota S. Ry., Modified Rail Certificate*, FD 30734 (ICC served Oct. 31, 1985); *S.D. Ry. – Modified Rail Certificate*, FD 31874 (ICC served May 30, 1991); *Dakota Short Line – Lease Exemption – State of S.D.*, FD 34043 (STB served June 7, 2001); *Napa-Platte Reg’l R.R. Auth. – Lease and Operation Exemption – Dakota Short Line Corp.*, FD 35025 (STB served May 31, 2007); *NPRRA 2007*.

⁸ See *Dakota S. Ry. – Modified Certificate of Pub. Convenience and Necessity – Yankton, Bon Homme, and Charles Mix Counties, S.D.*, FD 36086, slip op. at 2 (STB served Jan. 25, 2017) (“DSRY 2017”).

common carrier rail service over the Napa-Tyndall Segment.⁹ At the State’s request, DSRC obtained a modified certificate of public convenience and necessity in the instant docket (FD 36086) to provide this service.¹⁰

7. In July 2025, the State terminated the 2016 Lease.¹¹ One of the Board’s modified certificate rules (49 C.F.R. §§ 1150.24) requires a modified certificate holder to provide sixty days’ notice of its intent to terminate service under its certificate.¹² At the State’s request, DSRC filed a notice with the Board in August 2025 stating that its modified certificate rights to provide service over the Napa-Tyndall Segment would terminate on October 6, 2025.¹³

⁹ The 2016 Lease initially applied to DSRC service between Napa, SD (MP 0.00) and Ravinia, SD (MP 54.5), which includes the Napa-Tyndall Segment. *Id.* at 1. In 2020, the parties amended the 2016 Lease to reduce the length of the leased premises to the Napa-Tyndall Segment. *See SD 2023*, slip op. at 2.

¹⁰ *See DSRV 2017*. DSRC initially obtained a modified certificate to provide service between Napa and Ravinia, SD. *Id.* In 2023, the Board issued a declaratory order terminating DSRC’s modified certificate operating rights between Tyndall and Ravinia, while leaving in place DSRC’s modified certificate rights for operations over the Napa-Tyndall Segment, thus conforming DSRC’s modified certificate operating rights to the terms of the amended 2016 Lease. *See SD 2023*, slip. op. at 3.

¹¹ *See* Letter from the State’s Secretary of Transportation to DSRC’s President dated July 21, 2025.

¹² 49 C.F.R. § 1150.24 provides that “[t]he duration of the service [under a modified certificate] may be determined in the contract between the State and the operator” and that “[a]n operator may not terminate service over a line [subject to a modified certificate] unless it first provides 60 days’ notice of its intent to terminate the service.” *Id.*

¹³ *See* FD 36086 (DSRC letter notice filed Aug. 7, 2025).

8. In October 2025, the State issued a Request for Proposals (“RFP”) asking the public for proposals to purchase the Napa-Platte Line or to lease portions of the Line, including the Napa-Tyndall Segment.¹⁴ The RFP specifically provided “[t]he [South Dakota State Railroad] Board will reject any Proposals that do not include the provision of common carrier freight rail services on the Napa-Tyndall Segment.”¹⁵ The State subsequently received proposals responding to this RFP but the South Dakota State Railroad Board concluded in February 2026 that none were acceptable.¹⁶

9. There have been no active shippers on the Napa-Tyndall Segment for many years and in recent years the Segment was used by DSRC for car storage.¹⁷ The State is currently planning to undertake a comprehensive study to determine the feasibility of returning the Napa-Platte Line to active rail service, including the Napa-Tyndall Segment.¹⁸

¹⁴ See *South Dakota Department of Transportation Invitation for Proposals to Purchase or Lease State-owned Rail Line for Common Carrier Rail Operations* (Oct. 6, 2025, as supplemented).

¹⁵ *Id.* at 4.

¹⁶ See South Dakota State Railroad Board Meeting on Feb. 25, 2026, audio recording at 7:25-12:27 (“Feb. 2026 South Dakota State Railroad Board Meeting”), available at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=88>, archived meetings.

¹⁷ See *South Dakota State Rail Plan* at 50 (Dec. 2022), available at <https://dot.sd.gov/transportation/railroads/state-rail-plans/>.

¹⁸ Feb. 2026 South Dakota State Railroad Board Meeting, audio recording at 12:28-20:57.

10. In light of these developments, the State asks the Board to grant its request to issue a NITU to rail-bank the Napa-Tyndall Segment.

II. JURISDICTION

11. “Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way and the [line owner] is willing to enter into negotiations.”¹⁹ Here, the State is the owner of Napa-Tyndall Segment; the State is willing to enter into trail use negotiations; and the Board has clearly retained jurisdiction over the Napa-Tyndall Segment because:

(a) The State acquired the Napa-Tyndall Segment in 1980 before it was abandoned (*see* ¶ 1), so the Segment remained in the national interstate commerce network, subject at that time to ICC jurisdiction.²⁰

(b) Between 1980 and October 2025, the ICC, and later the STB, exercised its jurisdiction over the Napa-Tyndall Segment by, among other things, issuing a series of operating authorities to carriers to provide common carrier service over the Segment. *See* ¶¶ 5 & 6.²¹

(c) The STB ruled in 2022 that the Napa-Tyndall Segment remained part of the national interstate commerce network because, among other reasons, DSRC had modified certificate operating rights over the line.²²

¹⁹ *SDRY 2007*, slip op. at 2.

²⁰ *Id.*

²¹ *See Beaufort R.R. – Modified Rail Certificate*, FD 34943, slip op. at 5 (STB served March 19, 2008) (“*Beaufort R.R. 2008*”) (“Lines that are eligible for the modified certificate process are subject to the Board’s jurisdiction . . .”).

²² *See S.D. Ry. – Notice of Interim Trail Use and Termination of Modified Certificate*, slip op. at 3-4.

(d) Following the DSRC's termination of its modified certificate rights in October 2025, the State took no actions to abandon the Napa-Tyndall Segment but instead initially took actions to keep the Segment in the national interstate network by seeking sale/lease proposals that required the carriers to provide common carrier service over the Segment. *See* ¶ 8.²³

(e) After the State concluded no bids to purchase/lease the Napa-Tyndall Segment were acceptable, it is now requesting approval to rail-bank the Segment (*see* ¶ 8). This request constitutes further evidence that the State intends that the Segment remain in the interstate rail network and subject to STB jurisdiction.²⁴

12. 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.”²⁵ This jurisdictional rule applies here because DSRC filed its 49 C.F.R. § 1150.24 notice in this proceeding (FD 36086) to terminate its modified certificate operating rights over the Napa-Tyndall Segment. *See* ¶ 7.

²³ *See Beaufort R.R. 2008*, slip op. at 8-9 (holding that termination of a modified rail certificate does not remove the line that was subject to the modified certificate from the STB's jurisdiction where the record shows no intent on the part of the line owner to abandon the line).

²⁴ *See Beaufort R.R. – Modified Rail Certificate*, FD 34943, slip op. at 8 (STB served May 20, 2009) (holding that a state's request for a NITU “shows an intent to preserve the right-of-way for potential future rail service . . .”).

²⁵ *SDRY 2007*, slip op. at 2 (STB served July 17, 2007) (and cases cited); *Maryland and Delaware R.R. – Modified Rail Certificate*, FD 29830, slip op. at 2 (STB served Aug. 30, 2024) (same).

III. REQUEST

13. 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 Napa Junction, SD at MP 0.00, also known as Railroad Engineers Survey Station Number 00+00, and Tyndall SD at MP 20.9, also known as Railroad Engineers Survey Station Number 1103+32.

14. 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 the State.

15. Since the Board has jurisdiction here, and the State has complied with the provisions of 49 C.F.R. § 1152.29, the State respectfully requests that the Board grant its request and issue a NITU.

16. Because the State is both the owner of the Napa-Tyndall Segment and the trail sponsor, “the negotiations that normally take place to reach a trail use agreement as contemplated under 49 C.F.R. § 1152.29 may not be needed.”²⁶ The State represents to the Board that if it implements trail use under the time frame prescribed by the Board, the State will notify the Board within ten (10) days that it has done so.

²⁶ *SD 2023*, slip op. at 3.

Respectfully submitted,

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

Dated: March 23, 2026

EXHIBIT A

Map Showing the Napa-to-Tyndall Segment

[attached hereto]

Napa to Tyndall Line Segment (Napa – Platte Line)

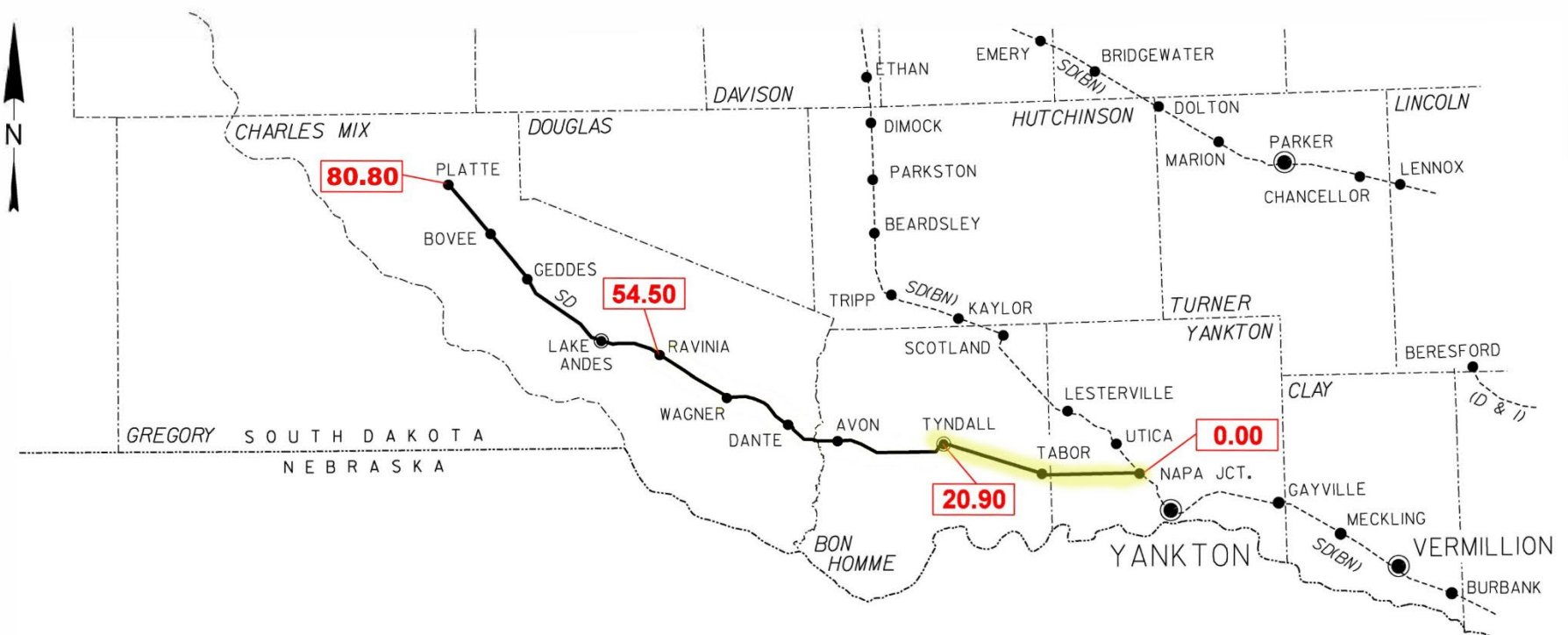


EXHIBIT B

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 previously operated by the 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 Napa-Tyndall Segment of the Napa-Platte Line, extends from railroad milepost 0.00, also known as Railroad Engineers Survey Station 00+00 near Napa Junction, S.D. to railroad milepost 20.9, also known as Railroad Engineers Survey Station 1103+32, near Tyndall, S.D., a distance of 20.9 miles in and through Yankton and Bon Homme 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

S.D., Iowa & Neb., AB-7 (Sub-No. 88) (ICC served May 14, 1980). Although authorized for abandonment, the entire line, including the Napa-to-Tyndall 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: March 20, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March 2026, I served a copy of the foregoing Request by electronic mail or postage prepaid first-class US mail on all parties of record.

/s/ John H. LeSeur
John H. LeSeur