

216537

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

May 11, 2006

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



Re: **Finance Docket No. 34871**
Wyoming Dakota Railroad Properties, Inc.-- Acquisition and
Operation Exemption -- Dakota, Minnesota & Eastern Railroad Corp.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Notice of Intent of Wyoming Dakota Railroad Properties, Inc. to File Verified Notice of Exemption Pursuant to 49 C.F.R. § 1150.35(d)**, dated May 11, 2006.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Wyoming Dakota
Railroad Properties, Inc.

ENTERED
Office of Proceedings

MAY 12 2006

Part of
Public Record

TJL:tl

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34871

WYOMING DAKOTA RAILROAD PROPERTIES, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION



**NOTICE OF INTENT OF
WYOMING DAKOTA RAILROAD PROPERTIES, INC.
TO FILE VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.35(d)**

ENTERED
Office of Proceedings

MAY 12 2006

Part of
Public Record

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR WYOMING DAKOTA
RAILROAD PROPERTIES, INC.**

Dated: May 11, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34871

WYOMING DAKOTA RAILROAD PROPERTIES, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

**NOTICE OF INTENT OF
WYOMING DAKOTA RAILROAD PROPERTIES, INC.
TO FILE VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.35(d)**

Wyoming Dakota Railroad Properties, Inc. ("WDRPI"), a non-carrier, hereby files this Notice of Intent pursuant to 49 C.F.R. § 1150.35(a) and states that, on or after May 26, 2006, it intends to file a verified notice of exemption pursuant to 49 C.F.R. § 1150.31, *et seq.* to acquire the authority issued by the Surface Transportation Board under 49 U.S.C. § 10901 to Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") to construct and operate approximately 280 miles of rail line between Wall, South Dakota and the Powder River Basin region of northeastern Wyoming and in Minnesota (the "PRB Line"). WDRPI is an indirect, wholly-owned subsidiary of DM&E. The substitution of WDRPI for DM&E in the PRB Line construction project will facilitate financing for the project, but will not change the nature, effect or implementation of the project as previously considered and approved by the Board. WDRPI will comply with all environmental conditions and other legal requirements relating to the construction in the same manner as DM&E would have.

The projected annual revenues of WDRPI, once WDRPI acquires and exercises the construction and operation authority for the PRB Line, will be within the range for Class II rail carriers.

In accordance with the requirements of 49 C.F.R. §§ 1150.33 and 1150.35, WDRPI submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the non-carrier applicant herein is as follows:

Wyoming Dakota Railroad Properties, Inc.
140 North Phillips Avenue
Sioux Falls, South Dakota 57104

Applicant's Representative: 49 C.F.R. § 1150.33(b)

WDRPI's representative to whom correspondence regarding this transaction should be addressed is as follows:

William C. Sippel
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

WDRPI and DM&E expect shortly to execute an agreement providing for the transfer from DM&E to WDRPI of DM&E's STB authority to construct and operate the PRB Line and other rights and interests of DM&E with respect to the PRB Line.

Operation of the Property: 49 C.F.R. § 1150.33(d)

Once constructed, the PRB Line will be operated by WDRPI or another rail carrier in the DM&E corporate family. In the latter circumstance, the operator will seek separate and appropriate STB authority prior to the commencement of rail service.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

WDRPI is a new, non-carrier subsidiary of Cedar American Rail Holdings, Inc. ("CARH"). CARH is, in turn, a wholly-owned subsidiary of DM&E, and functions as a holding company for DM&E and Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), another wholly-owned CARH subsidiary. DM&E is a Class II common carrier by rail which operates approximately 1100 miles of trackage in the states of Minnesota, South Dakota, Wyoming, Nebraska and Iowa. IC&E is a Class II common carrier by rail which operates approximately 1400 miles of trackage in the states of Iowa, Illinois, Kansas, Missouri, Minnesota and Wisconsin.

The Board has recently given final approval under 49 U.S.C. § 10901 for a proposal by DM&E to extend its rail line further westward into the Powder River Basin coal fields of northeastern Wyoming. Dakota, MN & Eastern R. -- Construction -- Powder River Basin, 3 S.T.B. 847 (1998) ("PRB I"), 6 S.T.B. 8 (2002) ("PRB II"); Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, Finance Docket No. 33407 (STB served February 15, 2006) ("PRB III"). Specifically, the STB authorized DM&E to construct a new rail line from a connection with DM&E's existing rail line at Wall, South Dakota to eleven mine locations in the Powder River Basin region of northeastern Wyoming,¹ a distance of approximately 262 miles in Custer, Fall River, Jackson and Pennington Counties, South Dakota and Campbell, Converse, Niobrara and Weston Counties, Wyoming. DM&E was directed to use the so-called "Alternate C" routing for the PRB Line, incorporating route variations known as the Phiney Flat Alternative, WG Divide Alternative, Black Thunder North Mine Alternative and North Antelope East Mine Loop. PRB II, 6 S.T.B. at 47. DM&E also was

¹ The eleven mines were Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle and Antelope. See PRB I, 3 S.T.B. at 849, n.2.

authorized to construct an approximately 13-mile connector line south of Mankato, Minnesota, utilizing so-called "Alternative M-2," and a short connection at Owatonna, Minnesota, utilizing so-called "Alternative O-4." PRB II, 6 S.T.B. at 47.

WDRPI has been formed as a new entity within the DM&E corporate family to undertake actual construction and operation of the PRB Line. Pursuant to STB exemption in this docket and an agreement between the parties, WDRPI will acquire DM&E's construction and operation authority under 49 U.S.C. § 10901 for the PRB Line, subject to all environmental, routing and other conditions. Utilizing a separate company to build and operate the new line will enhance financing options and flexibility for the project. For example, financing the new line separately may be attractive for investors with interest in a new line dedicated to coal rather than a general freight railroad. Using a separate company to construct and operate the PRB Line also creates options to reduce dilution to existing DM&E common shareholders and to limit the amount of risk associated with the new construction that is borne by the existing railroad. Prior line construction projects in the PRB have used a similar form, for much the same reason. See Chicago & N.W. Transp. Co. -- Construction, 363 I.C.C. 905, 931-934 (1981) (construction of rail lines in connection with Powder River Basin project of Chicago & North Western Transportation ("CNW") undertaken by new CNW subsidiary Western Railroad Properties Inc. ("WRPI"), allowing limited investment in WRPI by another rail carrier).

The intra-corporate substitution of WDRPI for DM&E as the entity that will construct and operate the new PRB Line will not change any of the transportation, traffic, operational or environmental factors considered and addressed by the Board in PRB I, PRB II and PRB III. WDRPI will construct and operate the line in the same manner as DM&E would have, and will comply fully with all environmental conditions and mitigation measures imposed

by the Board in Finance Docket No. 33407. WDRPI will not be involved in the rehabilitation of DM&E's existing east-west main line between Wall, South Dakota and Winona, Minnesota.

In a prior case involving nearly identical circumstances, the Board found that the transfer of construction and operation authority for a new line to a non-carrier corporate affiliate is a transaction within the Board's jurisdiction under 49 U.S.C. § 10901 and the proper subject of a notice of exemption under 49 C.F.R. § 1150.31, et seq. See Tongue River Railroad Company, Inc. -- Acquisition and Operation Exemption -- Tongue River Railroad Company, Finance Docket No. 33644 (STB served November 13, 1998)

Because CARH already directly controls IC&E, it will require Board approval to continue in control of WDRPI once WDRPI exercises the construction and operation authority obtained herein and becomes a rail carrier. Similar approval is required for DM&E, which is itself a rail carrier and also indirectly controls IC&E. Concurrently with the notice of exemption to be filed by WDRPI in this docket, DM&E and CARH expect jointly to file a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(3) in Finance Docket No. 34872, Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. -- Intra-Corporate Family Transaction Exemption -- Wyoming Dakota Railroad Properties, Inc. for that intra-corporate family control transaction.

The name and address of the railroad transferring the authority to construct and operate the PRB Line to WDRPI is as follows:

Dakota, Minnesota & Eastern Railroad Corporation
140 North Phillips Avenue
Sioux Falls, South Dakota 57104

WDRPI intends to commence construction activities on the PRB Line as soon as financing arrangements for the project are completed. It is currently anticipated that operations

on the PRB Line will begin during 2009. In no event would WDRPI undertake such construction or operation prior to June 16, 2006, the effective date of the notice of exemption to be filed in this docket.

Map: 49 C.F.R. § 1150.33(f)

A map indicating the area to be served by the PRB Line, including origins, termini, stations, cities and states, is attached as Exhibit A to this Notice.

Certification of Class III Status: 49 C.F.R. § 1150.33(g)

Not applicable.

General Statement - Service Intentions: 49 C.F.R. § 1150.35(b)(1)

The proposed transaction will have no service impacts because the PRB Line has not yet been constructed and no operations are currently conducted. WDRPI intends to operate the PRB Line and serve shippers in the same manner that DM&E would have if DM&E were to construct and operate the line. WDRPI and DM&E expect to exchange trains and change crews at the Middle West Staging and Marshaling Yard at Wall, South Dakota, a proposed facility already presented to and approved by the Board in Finance Docket No. 33407. The Mankato connector line and (if constructed) the Owatonna connection would likely be operated by DM&E pursuant to a separate lease or trackage rights arrangement with WDRPI.

General Statement - Labor Impacts: 49 C.F.R. § 1150.35(b)(2)

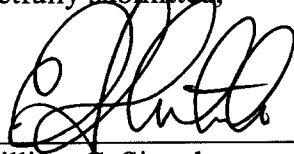
The transaction will have no labor impacts because the PRB Line has not been constructed and there are no employees on the line. Given that there are no "affected line(s)", no "employees on the affected line(s)" and no "workplace of the employees on the affected line(s)" involved in the proposed transaction, the provisions of 49 C.F.R. §§ 1150.32(e) and

1150.35(c)(3) are inapplicable here. WDRPI expects to hire the same number and type of employees on the PRB Line as DM&E would have.

Service Requirements: 49 C.F.R. § 1150.35(c)

Attached as Exhibit B is a certificate of service confirming that this Notice of Intent has been served on each of the governmental parties identified in 49 C.F.R. § 1150.35(c)(1) and (2). Because there are no employees or shippers on the PRB Line, which has yet to be constructed, the notice provisions of 49 C.F.R. § 1150.35(c)(3) and (4) are not applicable.

Respectfully submitted,

By: 

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR WYOMING DAKOTA
RAILROAD PROPERTIES, INC.**

Dated: May 11, 2006

North Dakota

Minnesota

South Dakota

Wyoming

DM&E
DAKOTA, MINNESOTA & EASTERN RAILROAD

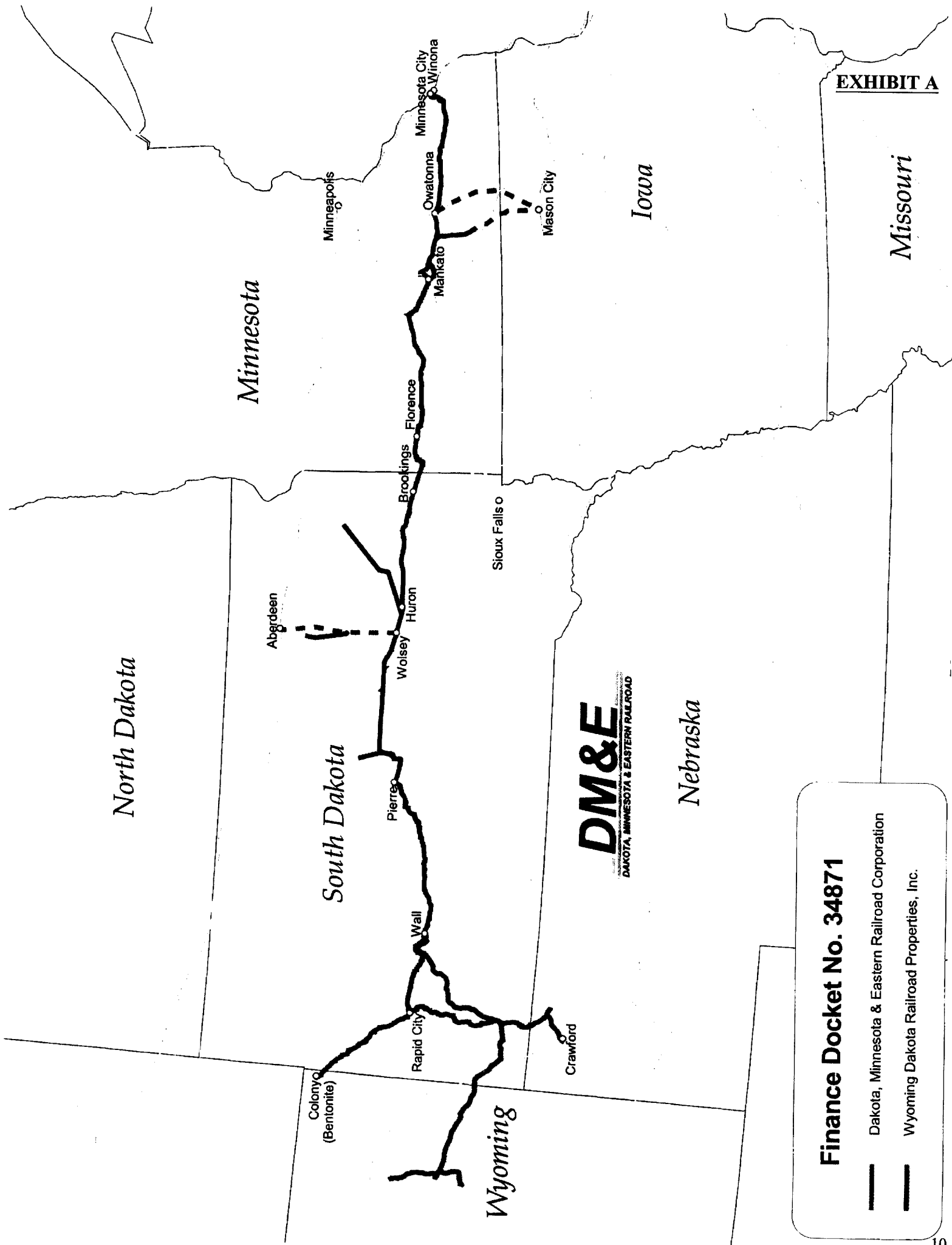
Nebraska

Iowa

Missouri

Finance Docket No. 34871

-  Dakota, Minnesota & Eastern Railroad Corporation
-  Wyoming Dakota Railroad Properties, Inc.



CERTIFICATE OF SERVICE
PURSUANT TO 49 C.F.R. § 1150.35(c)

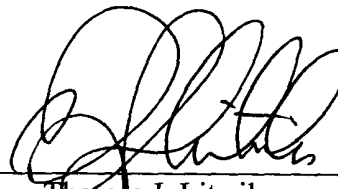
In accordance with the requirements of 49 C.F.R. § 1150.35(c), I hereby certify that on this 11th day of May, 2006, a copy of the foregoing **Notice of Intent of Wyoming Dakota Railroad Properties, Inc. to File Verified Notice of Exemption Pursuant to 49 C.F.R. § 1150.35(d)** was served by first class mail, postage prepaid, upon the Governors and Departments of Transportation for each state in which the subject rail line is to be located, as follows:

Hon. M. Michael Rounds
Governor
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501

Hon. Dave Freudenthal
Governor
State of Wyoming
200 West 24th Street
Cheyenne, WY 82002-0010

Ms. Judith M. Payne
Secretary
South Dakota Department of Transportation
700 East Broadway Avenue
Pierre, SD 57501

Mr. John Cox
Director
Wyoming Department of Transportation
5300 Bishop Boulevard
Cheyenne, WY 82009-3340

A handwritten signature in black ink, appearing to read 'T. Litwiler', is written over a horizontal line.

Thomas J. Litwiler