

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177
(206) 546-1936
FAX: (206) 546-3739



29 August 2006
by express

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Black Hills Transportation, Inc.
d/b/a Deadwood, Black Hills & Western
Railroad -- exemption -- Modified
Certificate of Public Convenience
and Necessity, F.D. 34924

FILED
AUG 30 2006
SURFACE
TRANSPORTATION BOARD

filing of notice of modified PCN

Dear Mr. Williams:

Enclosed for filing please find the original and ten copies of a notice for a modified certificate of public convenience and necessity pursuant to 49 C.F.R. § 1150.31 - .34. Also enclosed please find a check in the amount of \$1400 to cover the filing fee.

Thank you for your assistance in this matter.

Respectfully submitted,


Charles H. Montange
for Black Hills Transportation, Inc.

Encls (notice, check)

cc. Mr. Ralph Justin
Mr. Pat Beaudette
(w/encls.)

ENTERED
Office of Proceedings

AUG 30 2006

Part of
Public Record

FILE RECEIVED
AUG 30 2006
SURFACE
TRANSPORTATION BOARD

BEFORE THE SURFACE TRANSPORTATION BOARD

Black Hills Transportation, Inc.)
d/b/a Deadwood, Black Hills & Western)
Railroad -- exemption -- modified) F.D. 34924
certificate of public convenience)
and necessity)

Notice for Modified Certificate
of Public Convenience and Necessity

This is a notice for modified certificate of public convenience and necessity pursuant to 49 C.F.R. § 1150.23. In accordance with the requirements of § 1150.23(b), operator Black Hills Transportation, Inc., d/b/a Deadwood, Black Hills & Western Railroad ("DBHWR" or "Operator"), states as follows: DBHWR is authorized pursuant to the contract into which it has entered with Northern Hills Regional Railroad Authority ("NHRRA"), an incorporated political subdivision of the State of South Dakota, 510-1/2 National Street, Belle Fourche, South Dakota 57717, to seek operational authority pursuant to 49 C.F.R. § 1150.21, et seq., for the line described as MP 0.0 at Whitewood, South Dakota, to MP 9.01 at Deadwood, South Dakota, a distance of approximately 9.01 miles in Lawrence County, South Dakota.

The line in question is formerly a portion of the Chicago & North Western Railway Company (CNW). Although authorized for abandonment by the Interstate Commerce Commission in Finance Docket No. 26079, the line was subsequently acquired by units of the State of South Dakota and ultimately ownership passed to NHRRA. DBHWR as operator intends to provide both freight and passenger services over the line. The line requires

reconstruction for these purposes. Accordingly DBHWR as shown below requests the imposition of certain preconditions upon the provision of freight rail service in order to ensure construction and operation costs are recoverable.

1. Name and address of the operator. Black Hills Transportation, Inc. d/b/a Deadwood, Black Hills & Western Railroad, 789 Main Street, Deadwood, SD 57732. The articles of incorporation are attached as Appendix A. The names and addresses of all officers and directors are attached as Appendix B. As to financial responsibility, Operator is completing an application for an RRIF loan through the Federal Railroad Administration for construction activities. Operator and NHRRA are also pursuing issuance of tax free municipal bonds for construction expenses. In addition, Operator has received in excess of \$4,000,000 in capital contributions from its shareholders. NHRRA and Operator believe that DBHWR has sufficient financial responsibility for operation of the project provided the preconditions set forth herein are adopted. A current balance sheet for DBHWR is attached as Appendix C.

2. Information about prior abandonment. The line which is the subject of this notice was formerly owned by the CNW. The line was authorized for abandonment by the Interstate Commerce Commission (ICC) in Chicago & N.W. Railway Co. Abandonment--Lawrence County, S.Dakota, Finance Dkt. 26079, served May 20, 1970. A copy of the relevant order is attached in Appendix D.

3. Period of operation; agreement with State. The period

provided for operation is currently indefinite. A copy of the NHRRA resolution authorizing this notice is attached as Appendix E. DBHWR has an agency contract with NHRRA but this agreement will be amended or supplanted prior to actual commencement of operations.

4. Service to be provided. Operator will provide freight rail service over the line from MP 9.01 at Deadwood to MP 0.0 at Whitewood. A letter of support from prospective shipper Pete Lien & Sons, Inc. is attached as Appendix F. DBHWR expects to interchange with Dakota, Minnesota and Eastern Railroad (DME) at that location, more particularly described in Appendix G. DBHWR also expects to provide passenger service, but that service will not interfere with freight operations. DBHWR's agreement with the State (NHRRA) provides for liability insurance coverage satisfactory to NHRRA to be in place upon commencement of rehabilitation or operations. Although DBHWR currently has insurance (\$1,000,000 general liability), Operator intends to obtain additional insurance coverage at such time as it commences rehabilitation or actual operation. Based on quotes from insurance brokers, DBHWR expects to be able to obtain insurance satisfactory to NHRRA for approximately \$25,000 for freight. Passenger operations would require an additional premium.

Commencement of rehabilitation or operations is contingent upon shippers meeting the following preconditions:

a) Entry into binding written commitments to provide funding

for restoration purposes equal to a sum no less than \$13,000,000. This sum may be increased in the event a third party engineering study identifies needs requiring a greater amount of rehabilitation necessary to improve the facilities in order to achieve 25 mph operation in accordance with applicable standards.

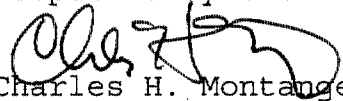
b) Entry into binding written commitments sufficient to assure carloadings (or payments in lieu thereof) in an amount no less than 1000 carloads per year (an amount judged adequate to cover all costs associated with maintenance, operation and capitalization of the line).

5. Name and address of any subsidizers. At this time, no entity has committed to subsidize operations on the line, or Operator. NHRRA on no account shall be required to pay a subsidy.

6. Financial responsibility of subsidizers. Not applicable.

For the convenience of the Board, a map showing the location of the Deadwood to Whitewood rail line and the interconnection with DME is attached as Appendix H.

Respectfully submitted,


Charles H. Montange
for Black Hills Transportation,
Inc., d/b/a Deadwood, Black Hills &
Western Railroad

Attachments:

Appendix A: Articles of Incorporation
Appendix B: Officers and Directors
Appendix C: Financial Responsibility
Appendix D: Orders authorizing abandonment
Appendix E: Authorization for filing by NHRRA (subdivision of
South Dakota)
Appendix F: Pete Lien & Sons letter
Appendix G: Interconnection location
Appendix H: Map

Appendix A: Articles of Incorporation

Secretary of State

State Capitol, Ste 204
500 East Capitol Avenue
Pierre, South Dakota
57501-5070
sdsos@state.sd.us



Chris Nelson
Secretary of State

Chad Heinrich
Deputy

To: REED C RICHARDS
RICHARDS & RICHARDS
PO BOX 373
DEADWOOD SD 57732

From: Secretary of State Chris Nelson
Corporations Division

Date: November 18, 2003

Re: BLACK HILLS TRANSPORTATION, INC.
Domestic Business Articles of Incorporation

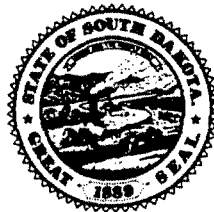
The articles of incorporation have been received and filed on behalf of **BLACK HILLS TRANSPORTATION, INC..**

Enclosed is the Certificate attached to the duplicate articles along with a receipt for the filing fee of \$1100.00.

SD law requires the filing of a corporate annual report with our office between the anniversary date of incorporation and prior to the first day of the second month following. The report is due the year following incorporation. An annual report form will be mailed to the registered agent/address listed in the articles for timely filing. Please contact our office if the address changes or if the form is not received.

Thank you.

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

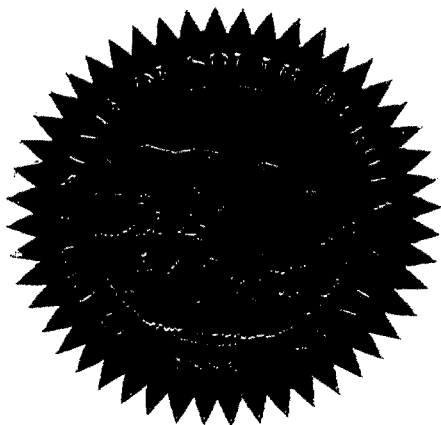
Certificate of Incorporation Business Corporation

ORGANIZATIONAL ID #: DB047540

I, **Chris Nelson**, Secretary of State of the State of South Dakota, hereby certify that the Articles of Incorporation of **BLACK HILLS TRANSPORTATION, INC.** duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY, and by virtue of the authority vested in me by law, I hereby issue this Certificate of Incorporation and attach hereto a duplicate of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this November 18, 2003.



Chris Nelson

Chris Nelson
Secretary of State

Filed this 18th day of
Nov, 2003
Chris Nelson
SECRETARY OF STATE

RECEIVED

NOV 18 03

AD. SEC. of STATE

ARTICLES OF INCORPORATION OF

BLACK HILLS TRANSPORTATION, INC.

These Articles of Incorporation are executed by the undersigned for the purpose of forming a South Dakota corporation under SDCL 47-2 et. seq.

ARTICLE I.

The name of the corporation is BLACK HILLS TRANSPORTATION, INC.

ARTICLE II.

The period of existence shall be perpetual.

ARTICLE III.

The purpose or purposes for which the Corporation is to engage in the business of operating railroads and other transportation businesses in the Black Hills area and related work and such other business activities as shall be considered desirable by the Directors, and to make and execute any and all agreements for the purposes outlined, including agreements for borrowing of money, to construct, own, purchase, maintain, operate, sell, lease or dispose of real and personal property which may be necessary or advisable for the carrying on of the business of the Corporation; and to do all other things subsidiary, necessary or contingent for carrying out and into effect the main

purposes of the Corporation; and to enter into partnerships and any and all other lawful purposes for which corporations may be incorporated under this Act.

ARTICLE IV.

The total number of shares of stock that the Corporation shall have authority to issue, one class, common, is five million shares and the par value of such shares is One Dollar (\$1.00) per share, which amounts, in the aggregate, to Five Million Dollars (\$5,000,000.00).

Transfer of shares shall be restricted as set forth in the By-Laws of the Corporation.

ARTICLE V.

The Corporation will not commence business until consideration of the value of at least One Thousand Dollars (\$1,000.00) has been received for the issuance of shares.

ARTICLE VI.

The Bylaws of the Corporation shall be adopted by the Directors and may be amended only as provided therein, provided that such By-Laws and amendments thereto shall not conflict with the provisions of these Articles of Incorporation and the South Dakota Corporation Law.

ARTICLE VII.

The name and address of the initial registered agent and the initial registered office is:

Mr. Reed C. Richards
789 Main Street
Deadwood, S.D. 57732

ARTICLE VIII.

The number of Directors constituting the initial Board of Directors shall be one, the name and address of such Director is as follows:

Mr. Terry Kranz
211 Deerpath
Lead, S.D. 57754

The Directors shall elect the regular officers of the Corporation in the manner provided in the By-Laws.

ARTICLE IX.

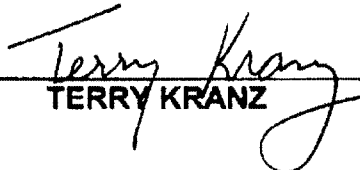
The name and address of the incorporators are as follows:

Mr. Terry Kranz
211 Deerpath
Lead, S.D. 57754

ARTICLE X.

These Articles may be amended by a vote of two-thirds (2/3) of the Directors of the Corporation at any annual meeting or any special meeting called for that purpose.

Executed in duplicate this 28 day of August, 2003.


TERRY KRANZ

STATE OF SOUTH DAKOTA)
):SS
County of Lawrence)

Terry Kranz, being duly sworn, deposes and states that he is the person described in and who signed the foregoing Articles of Incorporation as the Incorporator therein; that the Incorporator intends in good faith to form a corporation for the purposes set forth in said Articles and not for the purpose of enabling any Corporation or incorporator to avoid the provisions of SDCL 37-1 et. seq. relating to unlawful trade practices and laws amendatory thereto.

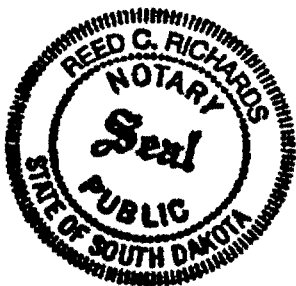
Executed this 28 day of August, 2003.

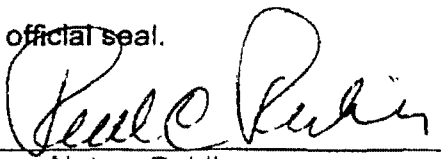

TERRY KRANZ

STATE OF SOUTH DAKOTA)
):SS
County of Lawrence)

On this the 28th day of August, 2003, before me, the undersigned officer, personally appeared Terry Kranz, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.




Notary Public
My comm. ex. 6-3-05

CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, REED C. RICHARDS, hereby give my consent to serve as the registered agent for BLACK HILLS TRANSPORTATION, INC.

Dated: August 28, 2003.


REED C. RICHARDS

Appendix B: Officers and Directors

Black Hills Transportation, Inc.

Board of Directors as of June 30, 2006

Michael P. Reynolds, President

Dunbar Enterprises LLC

403 National Street

Suite #1

Rapid City, SD 57702

605-716-0525 O

605-390-3210 C

Reynolds@dunbarltd.com

Tim Hctor

T.E. Hctor & Company Real Estate

3705 Telegraph Road

Ventura, CA 93003

805-642-3235

Lisa Lien, Vice President

Pete Lien & Sons

PO Box 440

Rapid City, SD 57709-0440

605-342-7224

Diana Kranz

P.O. Box 12632

Green Bay, WI 54307-2632

920-499-0470

Stanford Adelstein, Secretary

PO Box 2624

Rapid City, SD 57709-2624

605-394-3310 X11 O

sma@rapidnet.com

Dr. Allen Overbaugh

Black Hills Railroad Development

211 Palmetto Road

Gulf Breeze, FL 32561

850-932-8397

Tobin Morris, Treasurer

215 West Sioux Ave.

Pierre, SD 57501

605-224-5557 O

605-280-5559 C

tmorris@northlandsecurities.com

Ralph Justen

Black Hills Transportation, Inc.

789 Main Street

Deadwood, SD 57732

605-722-4528

Pete Lien

Pete Lien & Sons

PO Box 767

Rapid City, SD 57709-0440

605-342-7224

Dan Drella

Director of Rail Management

Schneider National Trucking

2566 Indian Hills Drive

Green Bay, WI 54313-4900

920-496-9667 H

800-558-6767 Ext#3079 O

920-737-8886 O

terindan@new.rr.com

Black Hills Transportation, Inc.

Officers of the Corporation as of June 30, 2006

Ralph Justen, President
789 Main Street
Deadwood, SD 57732
605-722-4528

Pat Beaudette, Vice President
789 Main Street
Deadwood, SD 57732
605-722-4528

Reed C. Richards, Secretary/Treasurer
789 Main Street
Deadwood, SD 57732
605-578-2572

Appendix C: Financial Responsibility

10:15 AM
08/29/06
Accrual Basis

Deadwood Black Hills and Western Railroad
Balance Sheet
As of August 29, 2006

	Aug 29, 06
ASSETS	
Current Assets	
Checking/Savings	
Checking	4,157.02
Deposit w/N. Hills Regional RR	5,500.00
First Western Bank Savings	147,552.39
First Western Credit Line	10,410.93
Pete Lien & Sons, Inc. Material	796,377.15
Total Checking/Savings	963,997.49
Total Current Assets	963,997.49
Fixed Assets	
Accumulated Depreciation	-296.75
Equipment Purchase	5,273.46
Leasehold Improvements	65.00
Office Equipment	5,256.69
Other Fixed Assets	2,639,564.25
Total Fixed Assets	2,649,862.65
Other Assets	
Accumulated Amortization	-146.67
Organization Costs	1,100.00
Total Other Assets	953.33
TOTAL ASSETS	3,614,813.47
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	-10,390.79
Total Accounts Payable	-10,390.79
Credit Cards	
American Express	13,079.83
Total Credit Cards	13,079.83
Other Current Liabilities	
First Western Bank	40,932.34
Payroll Liabilities	6,682.76
Total Other Current Liabilities	47,615.10
Total Current Liabilities	50,304.14
Long Term Liabilities	
Dr. Alan Overbaugh	8,000.00
Terry Kranz	5,809.00
Total Long Term Liabilities	13,809.00
Total Liabilities	64,113.14
Equity	
Additional Paid in Capital	-150,000.00
Capital Stock	
Total Capital Stock	4,210,000.00
Retained Earnings	-291,604.33
Net Income	-217,695.34
Total Equity	3,550,700.33
TOTAL LIABILITIES & EQUITY	3,614,813.47

Appendix D: Orders Authorizing Abandonment

SERVICE DATE
MAY 20, 1970

CERTIFICATE AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 5, held at its office in Washington, D. C., on the 13th day of May, 1970.

Finance Docket No. 26079

CHICAGO & NORTH WESTERN RAILWAY CO. ABANDONMENT--
LAWRENCE COUNTY, S. DAKOTA

Upon consideration of the application filed under section 1(18) of the Interstate Commerce Act on February 24, 1970, by the Chicago and North Western Railway Company for permission to abandon a portion of its line of railroad beginning at Milepost 0.0 at Whitewood and extending westerly to Milepost 9.01 at Deadwood, a distance of approximately 9.01 miles in Lawrence County, S. Dakota; and of protests to said application filed by the Railway Labor Executives' Association and the Brotherhood of Railway, Airline, and Steamship Clerks on the ground that the proposed abandonment, if permitted, would have an adverse effect upon the employees of the applicant; and

It appearing, That the interest of employees will be protected by the imposition of appropriate conditions; that there is no shipper opposition to the proposal; that the major shipper on the line is relocating to Whitewood, S. Dak., and the line does not generate enough traffic otherwise to warrant its maintenance which has significant grades and almost continuous curvature; that there is adequate alternate transportation facilities serving the territory now served by the said line; and that rehabilitation, maintenance, and operation of the line would impose an undue and unnecessary burden on applicant and upon interstate commerce:

It is hereby certified, That, subject to the same conditions for the protection of employees as set forth in Chicago, B. & N. W. R. Co. Abandonment, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Railway Company of that portion of its line described above;

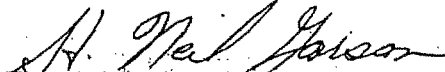
It is ordered, That this certificate and order shall take effect and be in force from and after 35 days from the date of its service; and that tariffs applicable to the line herein permitted to be abandoned may be canceled upon notice to this Commission and to the general public by not less than 10 days filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act;

It is further ordered, That, when filing schedules canceling tariffs applicable to said line, the applicant shall in such schedules refer to this certificate and order by date and docket number;

It is further ordered, That, if the authority herein granted is exercised, applicant shall submit for the consideration of this Commission two copies of the journal entries showing the retirement of the line from service, and confirm in writing to this Commission, immediately after abandonment, the date on which the abandonment has actually taken place; and

It is further ordered, That, if the authority granted in this certificate and order is not exercised within one year from its effective date, it shall be of no further force or effect.

By the Commission, Review Board Number 5.


H. NEIL GARSON

(SEAL)

Secretary

Appendix E: NHRRA Authorization

**A RESOLUTION AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO
THE SURFACE TRANSPORTATION BOARD PURSUANT TO 49 C.F.R.-
1150.21-.24
FOR A MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE and
NECESSITY**

WHEREAS pursuant to the Agency Agreement between Northern Hills Regional Railroad Authority(NHRRRA) and Black Hills Transportation, Inc., (BHTI), dated December 1, 2003, "NHRRRA desires to reestablish passenger and other rail service to the Northern Black Hills area including, but not limited to service between Whitewood and Deadwood, South Dakota" and,

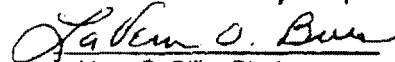
WHEREAS NHRRRA has appointed BHTI as agent to assist NHRRRA in accomplishing its objective and purpose of reestablishing passenger and other rail service to the Northern Black Hills, and

NOW, THEREFORE, BE IT RESOLVED by the NORTHERN HILLS REGIONAL RAILROAD AUTHORITY that the NORTHERN HILLS REGIONAL RAILROAD AUTHORITY does hereby authorize BLACK HILLS TRANSPORTATION, INC., to file a notice pursuant to 49 C.F.R. 1150.21-.24 with the Surface Transportation Board to accomplish NHRRRA's objective and mission of reestablishing passenger and other rail service to the Northern Black Hills.

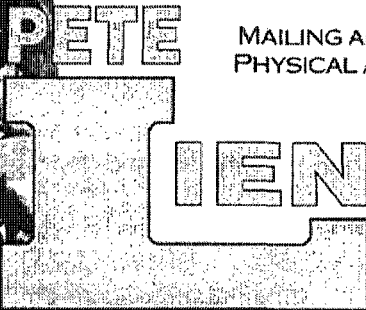
DATED this 18th day of AUGUST, 2006


Attest

By: Northern Hills Regional
Railroad Authority


LaVern O. Bills, Chairman

Appendix F
Pete Lien & Sons Letter



MAILING ADDRESS: P.O. BOX 440 RAPID CITY, SD 57709-0440 PH. 605-342-7224
PHYSICAL ADDRESS: 3401 UNIVERSAL DR. RAPID CITY, SD 57702 FX. 605-342-6979

•PETE LIEN & SONS •BIRDSALL SAND & GRAVEL •COLORADO LIEN CO.
•DAKOTA BLOCK CO. •DAKOTA STEEL & SUPPLY •TRANS COLORADO CONCRETE

PETER C. LIEN
1898 - 1969 FOUNDER

BRUCE H. LIEN
FOUNDER

CHARLES H. LIEN
FOUNDER
CHAIRMAN

PETER C. LIEN
PRESIDENT

& Sons, Inc.

LaVerne O. Bills, Chairman
Northern Hills Regional Railroad Authority
510 ½ National Street
Belle Fourche, SD 57717

8/28/2006

Dear Mr. Bills:

I am President of Pete Lien and Sons, Inc. We employ approximately 500 people in South Dakota, Wyoming, and Colorado. We mine and process limestone, iron ore, sand, and gravel. We also produce calcined lime, ready mix concrete, masonry block, and fabricated steel. We are aware that the Northern Hills Regional Railroad Authority (NHRRA) is an incorporated political subdivision of the State of South Dakota formed pursuant to South Dakota Statute SDCL 49-17A. Pursuant to this statute NHRRA's objective is "...to reestablish passenger and other rail service to the Northern Black Hills area, including, but not limited to service between Whitewood and Deadwood, SD."

Pete Lien and Sons, Inc., is interested in seeking rail freight service on the line between Whitewood and Deadwood, SD. In the event that rail service is restored between Whitewood and Deadwood, SD, our company would like to ship sand, concrete rock, and ballast by rail on this line. Depending upon market development, Pete Lien and Sons, Inc., initially projects 1000 to 1100 annual car shipments of aggregates on the line between Whitewood and Deadwood.

We would ship aggregate materials in rail cars with capacities of 70 to 100 tons depending upon our gradation specifications, intended use, and unloading capabilities. Our company's rail freight service on the line would be interchanged or trackage rights exercised via Whitewood Junction, SD for furtherance beyond by NHRRA's operator or a third party carrier.

I appreciate this opportunity to ship product via rail.

Sincerely

Pete Lien
President
Pete Lien and Sons, Inc.

Appendix G
point of interchange

Black Hills Transportation Inc., &
Deadwood Black Hills and Western Railroad

Interchange with Dakota Minnesota and Eastern Railroad in Whitewood, SD

Legal Description

That portion of the right of way of the former Chicago and North Western Railway Company's Whitewood to Deadwood line in the SE ¼ of Section 21, Township 6 North, Range 4 East, B.H.M. within the corporate limits of Whitewood, terminating on the southerly property line of the Dakota, Minnesota & Eastern Railroad Corporation's Rapid City to Colony, WY Main Line right of way, at an easterly termination point being DM&E Main Line survey station 14601+79 and a westerly termination point being DM&E Main Line survey station 14608+08.

Appendix H

Map

D&ME Railroad to Colony, Wyoming

Spearfish
Exit 17

Whitewood

Reconstructed Rail Line
Whitewood to Deadwood

880' Railroad Tunnel

Canyon Park Station

Deadwood

Deadwood Station

Sturgis

Original DM&E Railroad To Rapid City

Sturgis Station
Exit 30 - Hwy 14A

Deadwood, Black Hills & Western
Railroad

Rail Service Route
Whitewood to Deadwood, SD

90

85

85

14A

14A