

222 545



Wipf & Cotton, L.L.C.

A Professional Limited Liability Company
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107 South Main Avenue
Wagner, South Dakota 57380-0370
June 2, 2008

Kenneth W. Cotton
ASSOCIATE
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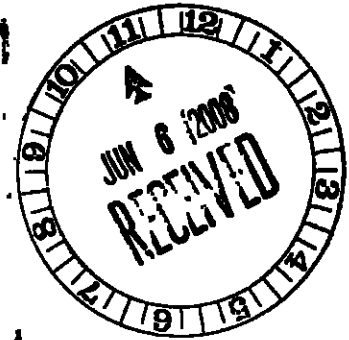
VIA FEDERAL EXPRESS

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

FEE RECEIVED

JUN - 6 2008

**SURFACE
TRANSPORTATION BOARD**



Re: **Finance Docket No. 35149**
Mitchell-Rapid City Regional Railroad Authority – Modified
Rail Certificate – Between Caputa and Rapid City, SD

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Notice of Mitchell-Rapid City Regional Railroad Authority for Modified Certificate of Public Convenience and Necessity Pursuant to 49 C.F.R. § 1150.23**, dated June 2, 2008. A check in the amount of \$1,400, representing the appropriate fee for this filing, and a computer diskette containing the text of the Notice in MS Word 2003 format are attached.

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,

Kenneth W. Cotton
Attorney for Mitchell-Rapid City
Regional Railroad Authority

ENTERED
Office of Proceedings
JUN 6 - 2008
Part of
Public Record

Enclosures
cc: Mr. Bruce Lindholm

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35149

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY
-- MODIFIED RAIL CERTIFICATE --
BETWEEN CAPUTA AND RAPID CITY, SD



FEE RECEIVED

JUN - 6 2008

**SURFACE
TRANSPORTATION BOARD**

**NOTICE OF MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY FOR
MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

FILED
JUN 6 - 2008
**SURFACE
TRANSPORTATION BOARD**

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Office of Proceedings
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Part of
Public Record

Kenneth W. Cotton
Wipf & Cotton Law Offices LLC
107 South Main Street
Wagner, South Dakota 57380
(605) 384-5471

**ATTORNEY FOR MITCHELL-RAPID CITY
REGIONAL RAILROAD AUTHORITY**

Dated: June 2, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO 35149

**MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY
-- MODIFIED RAIL CERTIFICATE --
BETWEEN CAPUTA AND RAPID CITY, SD**

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**NOTICE OF MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY FOR
MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

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**SURFACE
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Kenneth W. Cotton
Wipf & Cotton Law Offices LLC
107 South Main Street
Wagner, South Dakota 57380
(605) 384-5471

**ATTORNEY FOR MITCHELL-RAPID CITY
REGIONAL RAILROAD AUTHORITY**

Dated: June 2, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35149

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY
-- MODIFIED RAIL CERTIFICATE --
BETWEEN CAPUTA AND RAPID CITY, SOUTH DAKOTA.

**NOTICE OF MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY FOR
MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

Mitchell-Rapid City Regional Railroad Authority ("MRCRRA"), a political subdivision of the State of South Dakota, hereby files this Notice For a Modified Certificate of Public Convenience and Necessity pursuant to 49 C.F.R. § 1150.23 to operate a line of railroad between Caputa and Rapid City, South Dakota (the "Caputa-Rapid City segment") owned by the South Dakota Department of Transportation ("SDDOT").

In accordance with the requirements of 49 C.F.R. § 1150.23, MRCRRA submits the following:

Information Regarding the Operator: 49 C.F.R. § 1150.23(b)(1)

The name and address of the operator is:

Mitchell-Rapid City Regional Railroad Authority
c/o Mr. Kenneth Cotton
Wipf & Cotton Law Offices LLC
107 South Main Street
Wagner, South Dakota 57380

MRCRRA was formed on March 16, 1987. Attached as Exhibit A is a Certificate of Incorporation and an Establishing Agreement for MRCRRA. 49 C.F.R. § 1150.23(b)(1)(i)

The Member(s) of MRCRRA are the County(ies) of Davison, Aurora, Brule, Lyman, Jones, Jackson. Its Chairman and Board of Directors are: Thomas Greenway (Chairman), Tom Schroeder, Brad Carson, Kim Halverson, Monte Aker and John Rodgers. None of the Members or the Directors have any present affiliation with a rail carrier. 49 C.F.R. § 1150.23(b)(1)(ii).

With respect to financial responsibility, MRCRRA receives funds from an agreement with its operator based on rail cars handled on line. MRCRRA also has the authority, as necessary, to levy taxes for railroad purposes pursuant to SDCL § 49-17A-21, 21.1 and 22. 49 C.F.R. § 1150.23(b)(1)(iii).

Information About the Prior Abandonment: 49 C.F.R. § 1150.23(b)(2)

The Caputa-Rapid City segment is part of a larger line of railroad (from Mitchell to Rapid City, South Dakota) that was acquired by the State of South Dakota from the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("MILW") after the line was approved for abandonment by MILW's bankruptcy court. Richard B. Olgivie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Company -- Abandonment -- In South Dakota, Iowa and Nebraska, Docket No. AB-7 (Sub-No. 88) (ICC served May 14, 1980); In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor, No. 77 B 8999 (N.D. Ill., June 9, 1980), Order No. 342A.

The State of South Dakota, through its Department of Transportation, has leased the Caputa-Rapid City segment to MRCRRA by lease dated April 7, 2008.

Dates of Operation: 49 C.F.R. § 1150.23(b)(3)

The Caputa-Rapid City segment is currently non-operational. MRCRRA is evaluating options for rehabilitation of the line and resumption of operations. MRCRRA's

existing lease with the State (attached hereto as Exhibit B) extends for a term of 5 years, and MRCRRA's operational authority under this modified certificate would extend for a comparable term unless earlier terminated.

Description of Service: 49 C.F.R. § 1150.23(b)(4)

The Caputa-Rapid City segment extends from Milepost 646.0 near Caputa, South Dakota (Railroad Survey Station 738+84) a distance of 13.6 miles through the County of Pennington and terminating at Milepost 659.6 (Railroad Survey Station 52+49) in Rapid City, South Dakota, a total distance of approximately 13.6 miles. See map attached as Exhibit C. At Milepost 659.6, the line has interchange capability with the Dakota, Minnesota & Eastern Railroad Corporation.

The line is currently out of service and requires rehabilitation before actual rail operations can be recommenced. This Modified Certificate will facilitate the process of determining how and whether rail service can be recommenced. Upon any such resumption of rail operations, MRCRRA would provide service in its own name through a third-party contract operator, or by a sublease of the line to a third-party rail carrier.

In the event that MRCRRA engages the services of a third-party operator or rail carrier, it will require that the entity obtain adequate liability insurance coverage.

There are no preconditions which shippers must meet to receive service other than substantial rehabilitation of the line.

Information Regarding Subsidizers: 49 C.F.R. § 1150.23(b)(5)

It is not currently anticipated that there will be any subsidizers of the Caputa-Rapid City segment. MRCRRA could receive railroad trust funds for rehabilitation of the line from the State of South Dakota, but no such plans currently exist.

Financial Responsibility of Subsidizer: 49 C.F.R. § 1150.23(b)(6)

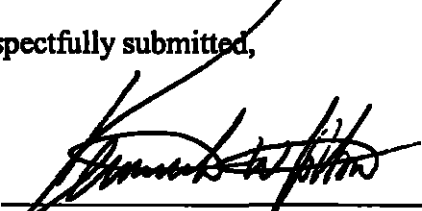
If it becomes necessary or desirable for the State of South Dakota to provide subsidies for the Caputa-Rapid City segment, the South Dakota State Rail Board may do so pursuant to the terms of SDCL § 49-16C-3.

Environmental and Historic Preservation Data: 49 C.F.R. Part 1105

Under 49 C.F.R. § 1105.6(c)(2), MRCRRA's operation of the Caputa-Rapid City segment pursuant to a modified certificate is exempt from the Board's environmental reporting requirements. The proposed operation will not result in significant changes in carrier operations (i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105 7(e) or (5)).

Under 49 C.F.R. § 1105 8(a), MRCRRA's operation of the Caputa-Rapid City segment also is exempt from historic preservation reporting requirements. The proposed operation will not result in the lease, transfer or sale of a railroad's rail lines, sites or structures.

Respectfully submitted,

By: 

Kenneth W. Cotton
Wipf & Cotton Law Offices LLC
107 South Main Street
Wagner, South Dakota 57380
(605) 384-5471

**ATTORNEY FOR MITCHELL-RAPID CITY
REGIONAL RAILROAD AUTHORITY**

Dated: June 2, 2008

VERIFICATION

State of South Dakota)
)
County of Charles Mix) ss:

Thomas Greenway, being duly sworn, deposes and says that he is the Chairman of the Mitchell-Rapid City Regional Railroad Authority, that he has read the foregoing Notice of Modified Certificate for Public Convenience and Necessity and knows the facts asserted therein, and that the same are true as stated

MITCHELL-RAPID CITY REGIONAL
RAILROAD AUTHORITY, A South
Dakota Political Subdivision.

By: Thomas Greenway
Name: Thomas Greenway
Title: Chairman

SUBSCRIBED AND SWORN TO
before me this 2nd day
of June, 2008.

Joan A. Payer
Notary Public-South Dakota

My Commission expires: 1-11-2011

Filed this 16th day of
March, 1987

Boyd Hagelstine

SECRETARY OF STATE

ESTABLISHING AGREEMENT

MRC REGIONAL RAILROAD AUTHORITY

RECEIVED

MAR 16 1987

Secretary of State

THIS ESTABLISHING AGREEMENT, made this 3rd day of March, 1987, among the political subdivision which have executed this agreement, hereinafter referred to as the "Members", pursuant to the resolution of the governing body of each political subdivision authorizing such execution included in Exhibit "A" attached hereto and made a part hereof by reference.

ARTICLE I.

PURPOSE AND SCOPE

There is hereby created and incorporated a regional railroad authority under the provisions of Chapter 49-17A of South Dakota Codified Laws, 1983 Revision, and acts amendatory thereto, which shall be a political subdivision of the State of South Dakota, to exercise a part of the sovereign power of the State of South Dakota.

ARTICLE II.

NAME

The name of the regional railroad authority created and incorporated by this establishing agreement shall be the Regional Railroad Authority, hereinafter referred to as the "Authority".

ARTICLE III.

MEMBERS

1. The names of the political subdivisions of the State of South Dakota which have approved this agreement are and the initial Members of the Authority are as follows: the South Dakota Counties of Davison, Aurora, Brule, Lyman, Jones, and Jackson.

2. Any political subdivision qualified under Chapter 49-17A of South Dakota Codified Laws, 1983 Revision, and acts amendatory thereto, desiring to join the Authority subsequent to the date of this agreement, shall do so by

depositing with the Chairman of the Authority a supplement to this agreement executed by such political subdivision and a resolution of the governing body (as defined by SDCL 49-17A et seq.) of such political subdivision authorizing such execution. A political subdivision shall become a member of the Authority upon approval of its executed supplement to this agreement by the Members of the Authority and the filing of the same with the South Dakota Secretary of State.

ARTICLE IV.

LIABILITY OF MEMBERS

The political subdivisions which are Members of the Authority and its Commissioners, officers and agent, shall not be liable for the actions of the Authority.

ARTICLE V

REPRESENTATIVES

The names and addresses of the persons appointed by the resolutions approving this agreement as the representatives of the subdivisions, respectively, in the exercise of their powers as Members of the Authority, are as follows:

County of Davison:

Thomas Greenway, RR#4, Mitchell, SD 57301

County of Aurora:

Dwight A. Johnson, RR#2, Box 74A, Plankinton, SD 57338

County of Brule:

James Gough, Kimball, SD 57355

County of Lyman:

Richard J. Bertens, Jr., PO Box 85, Menominee, SD 57544

County of Jones:

Helen Louder, PO Box 18, Draper, SD 57531

County of Jackson:

Clifford Parks, PO Box 250, Kadoka, SD 57543

ARTICLE VI.

BOARD OF COMMISSIONERS

The Board of Commissioners of the Authority shall be comprised of the six representatives of the Members of the Authority, selected by the governing bodies of the Members hereto.

The names and addresses of the initial Board of Commissioners, each of whom shall serve for a term of one year, or until his or her successor is elected and qualified, are as follows:

Thomas Greenway, RR#4, Mitchell, SD 57301

Darrell A. Johnson, RR#2, Box 74A, Plankinton, SD 57368

James Gough, Kimball, SD 57355

Richard J. Mertens, Jr., PO Box 85, Kemmerer, SD 57544

Helen Louder, PO Box 18, Draper, SD 57531

Clifford Parks, PO Box 250, Kadoka, SD 57543

ARTICLE VII.

REGISTERED OFFICE

The registered office of the Authority shall be PO Box 85, Kemmerer, SD 57544 and its registered agent at such office is Richard J. Mertens, Jr.

ARTICLE VIII.

BY-LAWS AND RATES

The Commissioners of the Authority shall adopt and amend such by-laws and rates as they may deem appropriate to govern the operations of the Authority.

ARTICLE IX.

AMENDMENTS

This instrument may be amended or approved by a majority of the members of the Authority; provided, however, a unanimous vote of the members is required to amend or approve any provision relating to the capital structure of the Authority.

ARTICLE X.

TAX CERTIFICATION

The Authority shall not certify to any of the governing bodies of the Members any tax levy without having first received the approval for such certification from the governing body to whom such certification is made.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first above written, in counterparts, each of which shall constitute an original copy but all of which together shall constitute one and the same instrument.

COUNTY OF DAVISON

BY: Herb Heinert
Herb Heinert, Chairman

ATTEST:

John Carter
John Carter, Secretary

(SEAL)

ARTICLE VIII.

BY-LAWS AND RATES

The Commissioners of the Authority shall adopt and amend the by-laws and rates as they may deem appropriate to carry out the purposes of the Authority.

ARTICLE IX.

MEMBERS

There shall be a Board of Commissioners consisting of five members, to be appointed by the County Board of Aurora, Illinois, and to hold office for a term of four years.

The Board of Commissioners shall elect one of its members to be its President and one to be its Vice-President, and shall also elect a Clerk and a Treasurer.

The Authority shall have the right to sue and be sued, to contract and to be contracted with, and to hold real and personal property, and to do all such things as may be necessary or proper for the carrying out of its purposes and the governing of the water supply of the County of Aurora, Illinois.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be signed and sealed with their first and true seals, and in presence of a notary public, each of whom shall constitute an official copy, and all of which together shall constitute due and true evidence of the foregoing.

COUNTY OF AURORA

BY:

Darrel E. Johnson, Chairman

ATTEST:

Darlene Haines, Auditor

COURT OF BRIT

LAWRENCE BRUNSON

COUNTY OF LEHMAN

BY: *R. A. Martin*
CLERK OF THE COURT

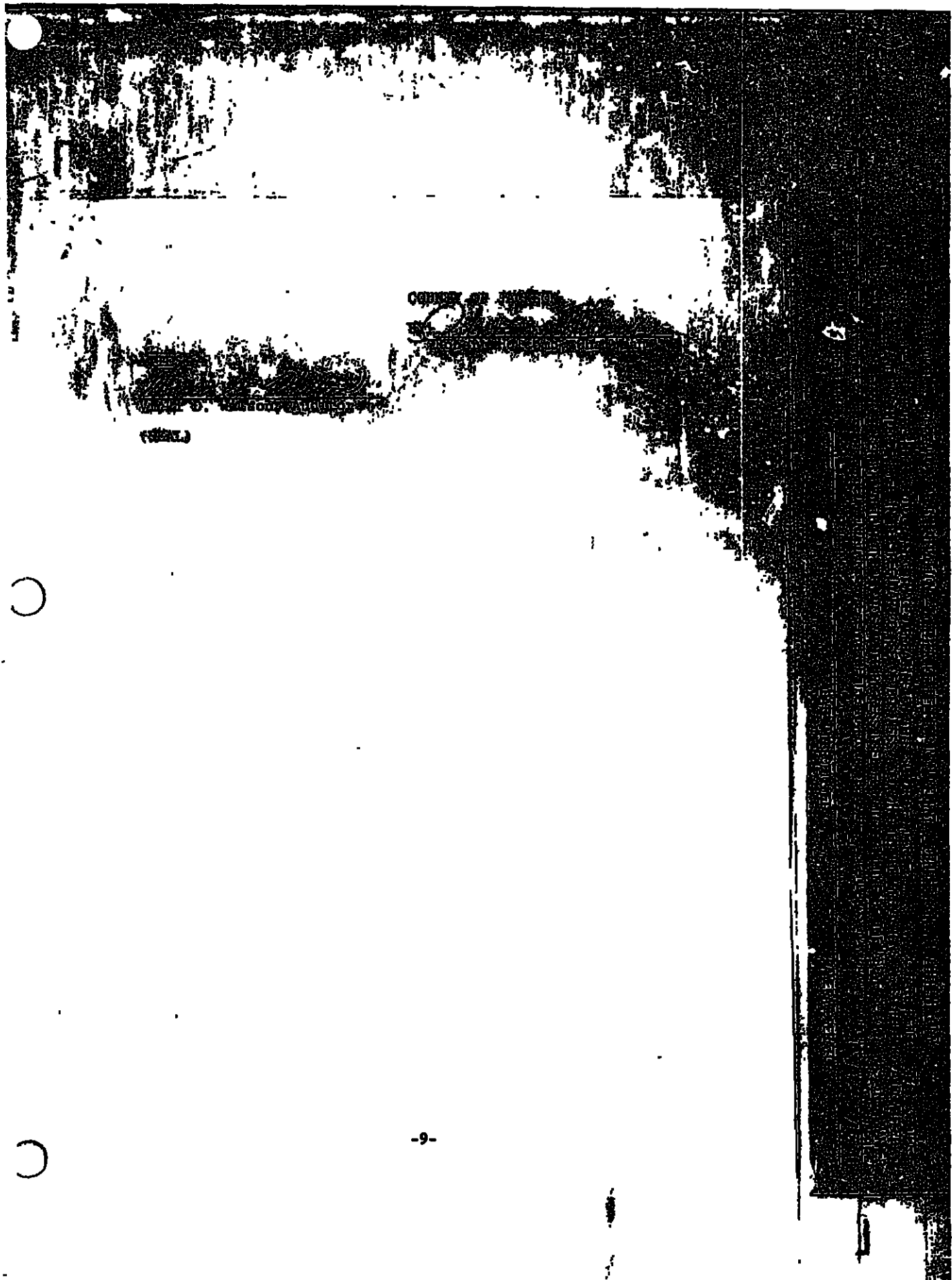


CORREY OF JONES

BY:

JOHN H. HARRIS, JR.

(SEAL)



Filed this 16th day of
March 1987

7 - Hazelton

RESOLUTION AUTHORIZING EXECUTION OF

SECRETARY'S AGREEMENT ESTABLISHING THE MRC REGIONAL RAILROAD AUTHORITY

BE IT RESOLVED: That the County of Davison hereby joins in the formation of MRC Regional Railroad Authority, pursuant to provisions of Public Law 94-172, and acts amendatory thereto, and be it further,

RESOLVED: That the Chairman and the County Auditor be and they are authorized to execute such establishing agreement on behalf of the County of Davison.

RESOLVED: That Thomas Greenway be and he is named as the initial representative from the County of Davison to the Board of Commissioners of the MRC Regional Railroad Authority; and be it further,

RESOLVED: That the County Auditor shall cause a certified copy of this Resolution to be filed with the Secretary of State, and shall file a copy of this Establishing Agreement of the MRC Regional Railroad Authority in the permanent records of the County of Davison.

CERTIFICATION

I, the undersigned, the duly elected and acting Auditor of the County of Davison, do hereby certify that the above and foregoing Resolution was duly adopted by the County Commissioners of the County of Davison at a (regular or special) called meeting held on March 3rd, 1987, upon a motion by Cunningham, which was seconded by Gaetz, with the following members voting:

AYE: Gaetz, Fortier, Cunningham, Greenway, Heinert

NO: None

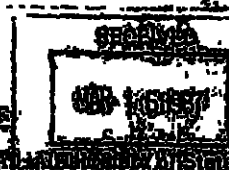
ABSENT, NOT VOTING: None

Upon the recording of such vote, the Chairman declared the Resolution adopted and, together with the undersigned, executed the Establishing Agreement and affixed the official seal thereto.

IN WITNESS WHEREOF, I have hereunto affixed my signature and official seal this 3rd day of March 1987.

John P. Fortier
County Auditor
County of Davison

Filed this 16th day of
March, 1987



RESOLUTION AUTHORIZING EXECUTION OF
"AGREEMENT ESTABLISHING THE MRC REGIONAL RAILROAD AGREEMENT"

SECRETARY OF STATE

BE IT RESOLVED: That the County of AURORA
hereby joins in the formation of said Regional Railroad
Authority, pursuant to provisions of South Dakota Revised
Laws 1974, and acts amendatory thereto; and be it further:

RESOLVED: That the Chairman and the County Auditor are
hereby authorized to execute such action, subject to the
approval of the County of Aurora, and be it
further:

RESOLVED: That the County Auditor shall
as the County Auditor of the County of Aurora,
do this, and certify the same to the Secretary of State,
and the same shall be a part of the permanent records of the County.

RESOLVED: That the County Auditor shall
certified copy of this Resolution to the Secretary of State,
Secretary of State, and also to the County Auditor of the
Establishing Agreement of the Regional Railroad Authority
Authority in the permanent records of the County of
AURORA.

CERTIFICATION

I, the undersigned, the duly elected and acting Auditor
of the County of Aurora, do hereby certify
that the above and foregoing Resolution was duly adopted by
the County Commissioners of the County of Aurora
at a (regular or special) called meeting held on March
3rd, 1987, upon a motion by Lex Waller, which
was seconded by Kenneth VanGendern, with the following members
voting:

AYE: Darrel Johnson, Lex Waller, Rodney Olivier, Kenneth VanGendern

NO: None

ABSENT, NOT VOTING: Leland Glissendorf

Upon the recording of such vote, the Chairman declared the
Resolution adopted and, together with the undersigned,
executed the Establishing Agreement and affixed the official
seal thereto.

IN WITNESS WHEREOF, I have hereunto affixed my
signature and official seal this 3rd day of March,
1987.

Darlene Haines
County Auditor Darlene Haines
County of Aurora

on the 16th day of
January, 1987

James Gough



**RESOLUTION AUTHORIZING EXECUTION OF
ESTABLISHING THE MRC REGIONAL RAILROAD AUTHORITY**

RESOLVED: That the County of Brule, hereby joins in the formation of MRC Regional Railroad Authority, pursuant to South Dakota Compiled Laws 49-17A, and acts as a member, and be it further

That the Chairman and the County Auditor are authorized to execute such establishing agreement on behalf of the County of Brule, and be it further

RESOLVED: That JAMES GOUGH has been elected as the initial representative from the County of Brule to the Board of Commissioners of the MRC Regional Railroad Authority, and be it further

RESOLVED: That the County Auditor shall cause a certified copy of this Resolution to be filed with the Secretary of State, and shall file a copy of the Establishing Agreement of the MRC Regional Railroad Authority in the permanent records of the County of Brule.

RESOLVED: That the adoption of this resolution and authority granted to enter into the formation of MRC Regional Railroad Authority is conditioned upon the redrafting of proposed Article IX of the proposed establishing agreement, dealing with amendments, so as to require a unanimous vote for amendment of Article X, which provides that the Authority shall not certify to any of the governing bodies of the Members any tax levy without having first received the approval for such certification from the governing body, to whom such certification is made; and be it further.

RESOLVED: That the adoption of this resolution and authority granted to enter into the formation of MRC Regional Railroad Authority is condition upon the adoption of similar resolutions and participation in the MRC Regional Railroad Authority by all of the following counties: Aurora, Lyman, Jones and Jackson, in addition to Brule County.

CERTIFICATION

I, the undersigned, the duly elected and acting Auditor of the County of Brule, do hereby certify that the above and foregoing Resolution was duly adopted by the County Commissioners of the County of Brule at a (regular or special) called meeting held on the 24 day of FEBRUARY, 1987, upon a motion by **JAMES GOUGH**, which was seconded by **MILFORD MARKUS**, with the following members voting:
LORENE GUST, MILFORD MARKUS, JAMES GOUGH, RONALD BAIREY & LAWRENCE SWANSON.

AYE: FOUR

NO: ONE

ABSENT, NOT VOTING:

After the recording of each vote, the Chairman read the Resolution adopted and, together with the undersigned, signed the Resolution and affixed the official seal of the Board.

IN WITNESS WHEREOF, I have hereunto affixed my signature and official seal this 24 day of February, 1957.


Chairman, Board of Directors

Form No. 16a day of
March, 1987

Joyce Hagelstine

RESOLUTION AUTHORIZING EXECUTION OF

AGREEMENT ESTABLISHING THE MRC REGIONAL RAILROAD AUTHORITY
SECRETARY OF STATE

BE IT RESOLVED: That the County of Jefferson hereby joins in the formation of MRC Regional Railroad Authority, pursuant to provisions of South Dakota Revised Laws 40-124, and acts amendatory thereto; and be it further,

RESOLVED: That the Chairman and the County Auditor are hereby authorized to execute and establishing agreement on behalf of the County of Jefferson and its if necessary,

RESOLVED: That R. J. Mertens has been elected as representative from the County of Jefferson to the Board of Commissioners of the MRC Regional Railroad Authority; and be it further,

RESOLVED: That the County Auditor shall cause a duly certified copy of this Resolution to be filed with the Secretary of State, and shall file a copy of the Establishing Agreement of the MRC Regional Railroad Authority in the permanent records of the County of Jefferson.

CERTIFICATION

I, the undersigned, the duly elected and acting Auditor of the County of Jefferson, do hereby certify that the above and foregoing Resolution was duly adopted by the County Commissioners of the County of Jefferson at a (regular or special) called meeting held on Feb. 17, 1987, upon a motion by Oller which was seconded by Boe, with the following members voting:

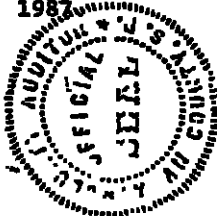
FOR: Mertens, Oller, Reuer, Boe, Tracy.

NO: None

ABSENT, NOT VOTING:

Upon the recording of such vote, the Chairman declared the Resolution adopted and, together with the undersigned, executed the Establishing Agreement and affixed the official seal thereto.

IN WITNESS WHEREOF, I have hereunto affixed my signature and official seal this 17th day of February 1987.



Deputy James Schmidt
County Auditor
County of Jefferson

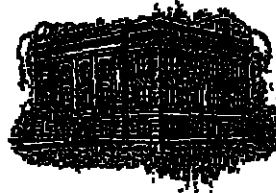
Lynn County, South Dakota

OFFICE OF

THE COUNTY AUDITOR

P. O. Box 38 - Telephone 805/308-2247

Kennebec, South Dakota 57544



C E R T I F I C A T I O N

I, Joyce Schmitt, Deputy Auditor for Lynn County, do hereby
certify that the true and correct copies of the original documents
relating to the establishment of the Regional Authority for the
establishing a regional authority and the distribution of the
Exemption of "Agreement Establishing the REC Regional Authority"
that is found on page 275, Commissioner's Record #10, the original document
is on file in the Auditor's Office.

Dated at Kennebec, South Dakota, this 23rd day of February, 1987.


Joyce Schmitt
Lynn County Deputy Auditor

Filed this 14th day of

March, 1987

RESOLUTION AUTHORIZING EXECUTION OF

AGREEMENT ESTABLISHING THE MRC REGIONAL RAILROAD AUTHORITY

Joyce Haglund
RESOLVED: That the County of Jones, in the formation of the Regional Railroad Authority, State Secretaries of South Dakota (codified laws 49-17), and

RESOLVED: That the Chairman and the County Auditor are hereby authorized to execute such establishing agreement on behalf of the County of Jones, with Article IX amended to require a

RESOLVED: That Helen Louder has been elected as the County Auditor and shall execute the same.

RESOLVED: That the County Auditor shall execute the same and shall file a copy of the Establishing Agreement of the MRC Regional Railroad Authority in the permanent records of the County of Jones.

CERTIFICATION

I, the undersigned, the duly elected and acting Auditor of the County of Jones, do hereby certify that the above and foregoing Resolution was duly adopted by the County Commissioners of the County of Jones at a (regular or special) called meeting held on March 3, 1987, upon a motion by Don Weber, which was seconded by Warren Melcher, with the following members voting:

AYE: Don Weber & Warren Melcher

NO:

ABSENT, NOT VOTING: Helen Louder

Upon the recording of such vote, the Chairman declared the Resolution adopted and together with the undersigned, executed the Establishing Agreement and affixed the official seal thereto.

IN WITNESS WHEREOF, I have hereunto affixed my signature and official seal this 3rd day of March, 1987

John Brunsell
County Auditor
County of Jones

Filed this 16th day of

March, 1987

RECEIVED

MAR 16 1987

Joyce Hagalline

RESOLUTION AUTHORIZING EXECUTION OF

AGREEMENT ESTABLISHING THE MRC REGIONAL, BARTON

RESOLUTION OF THE BOARD: That the County of Barton hereby joins in the formation of MRC Regional Authority, pursuant to provisions of State Statute Chapter 48-174, and acts amendatory thereto, and be it further.

RESOLUTION That the Chairman and the County Auditor, the undersigned, to execute such establishing agreement on behalf of the County of Barton; and be it further.

RESOLUTION That the County Auditor, the undersigned, be and he is authorized to execute such establishing agreement on behalf of the County of Barton; and be it further.

RESOLUTION That the County Auditor, the undersigned, be and he is authorized to execute such establishing agreement on behalf of the County of Barton; and be it further.

CERTIFICATION

I, the undersigned, the duly elected and acting Auditor of the County of Jackson, do hereby certify that the above and foregoing Resolution was duly adopted by the County Commissioners of the County of Jackson at a (regular or special) called meeting held on February 24, 1987, upon a motion by Ray Garton, which was recorded by Larry Byrd, with the following members voting:

AYE: Ray Garton, Larry Byrd, Clarence Reutter, Jack Evans and Bob Holcomb.

NO:

ABSENT, NOT VOTING:

Upon the recording of such vote, the Chairman declared the Resolution adopted and, together with the undersigned, executed the Establishing Agreement and affixed the official seal thereto.

IN WITNESS WHEREOF, I have hereunto affixed my signature and official seal this 24th day of February, 1987.

W. D. Wilson
County Auditor
County of Jackson

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF AMENDMENT

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the certified copy of the resolution authorizing Pennington County to join the MRC REGIONAL RAILROAD AUTHORITY pursuant to SDCL 49-17A have been received into 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 Amendment to MRC REGIONAL RAILROAD AUTHORITY.

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 10th day of June, 1993.



A handwritten signature in cursive script, reading "Joyce Hazeltine".

JOYCE HAZELTINE
SECRETARY OF STATE

Filed 10th day of June 1993

9 3 0 7 2 5 7 0 1 0 9

RECEIVED
JUN 10 1993
CLERK OF COURT

Cheryl Kandaras
SECRETARY OF STATE

RESOLUTION AUTHORIZING PENNINGTON COUNTY
TO JOIN THE MRC REGIONAL RAILROAD AUTHORITY

BE IT RESOLVED: That the County of Pennington, South Dakota hereby joins the MRC Regional Railroad Authority, pursuant to the provisions of SDCL 49-17A, et. seq., and acts amendatory thereto; and be it further,

RESOLVED: That the Chairman of the Pennington County Commissioners, and the Pennington County Auditor, are hereby authorized to execute on behalf of Pennington County, any and all documents necessary in order to join the MRC Regional Railroad Authority, previously formed by the Counties of Davison, Aurora, Brule, Lyman, Jones, and Jackson, South Dakota, on or about the 16th day of March, 1987; and be it further,

RESOLVED: That Don Mitsel has been elected as the representative from the County of Pennington to the Board of Commissioners of the MRC Regional Railroad Authority; and be it further,

RESOLVED: That the Pennington County Auditor shall cause a duly certified copy of this Resolution to be filed with the Secretary of State, and shall file a copy of the Establishing Agreement of the MRC Regional Railroad Authority in the permanent records of the County of Pennington.

CERTIFICATION

I, the undersigned, duly elected and acting Auditor of the County of Pennington, State of South Dakota, do hereby certify that the above and foregoing Resolution was duly adopted by the County Commissioners of the County of Pennington, State of South Dakota, at a "Regular or Special" called meeting, held on March 16, 1993, upon a Motion by Fred Schick, which was seconded by Cheryl Kandaras, with the following Members voting:

AYE: Cheryl Kandaras, Fred Schick, Neal Strand, Kathy Work, Don Kelly

9 5 0 7 2 3 / 0 4 0 ;

NO:

ABSENT, NOT VOTING:

Upon the recording of such vote, the Chairman declared the Resolution adopted and, together with the undersigned, executed the endorsement joining the MRC Regional Railroad Authority and affixed the official seal of Pennington County, South Dakota thereto.

IN WITNESS WHEREOF, I have hereunto affixed my signature and official seal this 16th day of March, 1991.

Julie A. Johnson
Pennington County Auditor



9 0 7 2 5 1 0 4 0 9

ENDORSEMENT TO ESTABLISHING AGREEMENT
OF THE MRC REGIONAL RAILROAD AUTHORITY

THIS ENDORSEMENT to the Establishing Agreement of the MRC Regional Railroad Authority, which said Establishing Agreement was entered into on the 3rd day of March, 1987, by and between the Counties of Davison, Aurora, Brule, Lyman, Jones, and Jackson, is hereby made and executed by Pennington County, South Dakota, pursuant to SDCL 49-17A-11, for purposes of Pennington County, South Dakota, joining the MRC Regional Railroad Authority, which was granted its Certificate of Incorporation from the State of South Dakota, on March 16, 1987.

Pennington County, South Dakota hereby executed this endorsement and hereby becomes a member of the MRC Regional Railroad Authority.

Dated this 18 day of March, 1993

COUNTY OF PENNINGTON

BY: Thomas Greenway

Chairman

ATTEST:

Julie A. Johnson
Auditor

Approval and Acceptance of Endorsement by MRC Regional Railroad Authority:

The undersigned Chairman and Secretary of the MRC Regional Railroad Authority hereby approve and accept the above Endorsement of Pennington County, South Dakota, and hereby authorize and direct that Pennington County, South Dakota, shall from this day forward, be a member of the MRC Regional Railroad Authority, and the Secretary of State of South Dakota is hereby authorized and directed to issue an Amended Certificate of Incorporation setting forth Pennington County, South Dakota. admission into the MRC Regional Railroad Authority.

Thomas Greenway
Thomas Greenway, Chairman

ATTEST:

Tom Schaefer
Secretary

Receipt No
File No RA000007

Filed at Request of
WIFE & COTTON
KENNETH COTTON
107 S MAIN STREET
MACYER SD 57380

AMENDMENT AM
OF

MRC REGIONAL RAILROAD AUTHORITY

(ADDED PENNINGTON COUNTY)

State of South Dakota

Office of Secretary of State

"

Filed in the office of the Secretary of State on
the 14th day of JUNE 19 93

David W. Haggline
Secretary of State

By _____
Deputy

Fee Received

no charge

713615

**AGREEMENT BETWEEN
MRC REGIONAL RAILROAD AUTHORITY
AND THE STATE OF SOUTH DAKOTA**

THIS AGREEMENT made and entered into this 7th day of April, 2008, by and between the MRC Regional Railroad Authority, hereinafter called "Authority", and the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Local Transportation Programs, hereinafter called "State".

WITNESSETH:

WHEREAS, the State is owner of the Rail Facilities more fully described in Appendix 1 hereto attached and made a part hereof;

NOW, THEREFORE, Authority and State do hereby mutually agree as follows:

1. Facility Description. The State shall permit the Authority to use the Rail Facilities described in Appendix 1 hereto.

It is understood and agreed that the Rail Facilities are leased in "as is" condition. State shall have no responsibility to make any improvements, modifications, rehabilitation, maintenance or other change to the Rail Facilities for the purpose of this agreement.

2. Operating Rights. The State hereby permits Authority to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service and car storage. The rights granted Authority herein relate solely to the provision of rail service and car storage on the Rail Facilities and Authority may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
3. Provision of Operations. If the Authority, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract shall be entered into without the prior consent of the State. Any sublease between Authority and an operator to provide rail service over Rail Facilities, or to permit the sublessor to use the Rail Facilities for car storage, shall be expressly made subject to all of the terms, conditions and limitations contained in this Agreement.
4. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, State shall retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.

5. Caputa to Rapid City rail line Inspection. The State or its duly authorized representative, upon reasonable notice to Authority, shall have the right to inspect any and all Rail Facilities for the purpose of verifying Authority's compliance with the terms and conditions of this Agreement.

Further, it is agreed by the State and Authority that upon request of the State an FRA inspector and/or any other qualified and reliable rail inspector mutually agreeable to the parties hereto, shall perform an inspection of the Caputa to Rapid City trackage (Caputa, South Dakota to East Boulevard in Rapid City, South Dakota) within a reasonable amount of time after this agreement is executed, and said inspection shall form the base inspection from which future discussions involving the condition of the said trackage will be based. Upon request of the State, regular rail inspections on the Caputa to Rapid City rail line shall be conducted at least annually thereafter, upon such terms and conditions as may from time to time be agreeable between the parties hereto. The parties further agree that they will mutually share the expenses for said inspections. The Authority agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed one year, depending upon the seriousness of said deficiency.

6. Responsibility for Rehabilitation. The State shall have no responsibility for rehabilitating the Rail Facilities.
7. Additions to Rail Facilities. The State hereby grants to the Authority the right to make such Additions to the Rail Facilities as Authority may require to permit rail freight service or car storage, at Authority's sole expense. The term "Additions(s)" as used herein shall mean capital improvements that are in addition to the Rail Facilities. Authority shall own and have the right to remove any of said Additions which can be removed without causing the Rail Facilities to be less serviceable than before said Addition was made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, shall become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this lease agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure shall remain under all circumstances the property of the State of South Dakota.
8. Maintenance. The State shall have no obligation to perform any maintenance of the Rail Facilities. The Authority shall be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and shall include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting, highway-rail grade crossing maintenance and renewal and other necessary repairs and work.

9. **Force Majeure.** This Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of the parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any cause of force majeure, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Agreement or any subsequent sublease agreement. If restoration is not made, then this Agreement shall be void without penalty to either party.

10. **Payment.** Authority hereby agrees to make annual payments to the State based on trackage used for any freight traffic or rail car storage on the following Rail Facilities, as follows:

ALL THAT RAILROAD PROPERTY from the NW1/4 of the SW1/4 of Section 6, Township 1 South, Range 10 east of the Black Hills Meridian, at Caputa, South Dakota also known as Milepost 646.0±, Railroad survey station 738.84 (1,162 ft east of the east switch in Caputa), and extending in a westerly direction a distance of approximately 13.6 miles in and through the County of Pennington, State of South Dakota, and terminating at the NE1/4 of the NE1/4 of Section 1, Township 1 North, Range 7 east of the Black Hills Meridian, also known as Milepost 659.6±, Railroad survey station 21+25, (the east right of way line at East Boulevard located in Rapid City), in the county and state above referenced, as shown on the print attached hereto marked Exhibit "A", and by this reference made a part hereof, subject to the rights of other existing and future lessees, including those listed on Exhibit "A".

Authority shall pay to State, as rent for the use of Rail Facilities the sum of Three Thousand Six Hundred Eight-two Dollars (\$3,682) per annum, payable annually in advance.

11. **Liability of Authority.** The Authority shall indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of the Authority, its representatives, officers, employees or agents, including Authority's Operator.
12. **Complaint Resolution Procedure.** In the event the South Dakota State Railroad Board or South Dakota Office of Local Transportation Programs receives a written complaint regarding the conduct of operations on the facilities described herein, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing shall be provided to all interested parties, including, but not limited

to, the party filing the complaint, the Program Manager of the Office of Local Transportation Programs, the Authority, and the Authority's operator, or any other railroad conducting operations on the facilities pursuant to a sublease agreement with the Authority. Any hearing held pursuant to this provision shall be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties shall be allowed to present oral and written information to the Board. After considering all information presented, the Board shall issue a written decision, which shall be binding to this agreement as if incorporated as a provision herein. The decision of the South Dakota State Railroad Board shall be final and no party hereto shall be entitled to any right of appeal from its decision.

This complaint resolution procedure paragraph shall be included in any sublease agreement that the Authority may issue to any operator while this lease is in effect.

13. Laws to be Observed. The Authority and its Operator shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. The Authority and its operator shall at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and shall protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree, whether by the Authority or its operator.
14. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power of authority granted to them by or within the scope of this Agreement, there shall be no liability upon any member of the State or the Authority or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.
15. Assignment. Authority shall not assign its rights or delegate its duties under this Agreement or any part thereof, without prior written consent of the State. An approved assignment, including assignments occurring by operator contracts, will not relieve the Authority of its primary responsibility to the State.
16. Amendment. No term or provision of this Agreement may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.

17. Term. This Agreement shall continue in full force and effect for a period of five (5) years from and after the date first above written, unless terminated by either party hereto upon ninety (90) days notice, or for fault, as set forth below. Upon termination of this Agreement, Rail Facilities shall be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement.
18. Termination for Fault. Should either Authority or State substantially fail to perform its obligations under this Agreement, and continue in such default for a period of ninety (90) days, the party not in default shall have the right at its option, after first giving sixty (60) days written notice thereof by certified mail to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this agreement. It is further agreed that inadequate or substandard performance by the operator which persists in excess of one hundred twenty (120) days after the Authority has been made aware of the inadequate or substandard conduct, shall constitute a basis upon which the State may terminate this agreement under this paragraph.
19. Notice. Except as expressly provided otherwise, all notices or other communications hereunder shall be in writing and shall be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class, postage prepaid to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State: Program Manager, Local Transportation Programs
SD Department of Transportation
700 Broadway Avenue East
Pierre SD 57501-2586

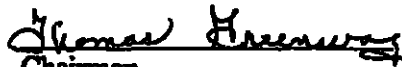
For the Authority: MRC Regional Railroad Authority
% Ken Cotton, Attorney
PO Box 370
Wagner SD 57380-0370

20. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other sections, paragraphs, sentences, clauses or phrases of this Agreement, which shall remain in full force and effect as if the section, paragraph, sentence, clause or phrase declared, determined or adjudged, invalid, illegal, unconstitutional or otherwise unenforceable was not originally a part thereof.

21. Entire Agreement. This Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings or agreements between the parties are hereby abrogated and withdrawn except as provided herein.
22. Common Carrier. The Authority shall maintain Common Carrier status on this line.

The parties hereto have caused this Agreement to be executed and attested to by their duly authorized officers on the date and year first above written.

MRC REGIONAL RAILROAD AUTHORITY


Chairman

STATE OF SOUTH DAKOTA

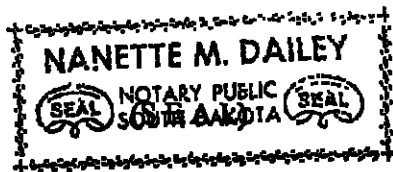

Darin P. Bergquist, Secretary
Department of Transportation

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA)

: SS
COUNTY OF) Hughes

On this 7th day of April, 2008, before me, a Notary Public, within and for said County and State, personally appeared Thomas Greenway, known to me to be the Chairman of the MRC Regional Railroad Authority who executed the above document and acknowledged to me that he did sign the foregoing document for the purposes herein stated.



Nanette M Dailey
NOTARY PUBLIC
My Commission Expires: 11-21-2011

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA)

: SS
COUNTY OF HUGHES)

On this 17th day of April, 2008, before me, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, Department of Transportation, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same freely.

(S E A L)

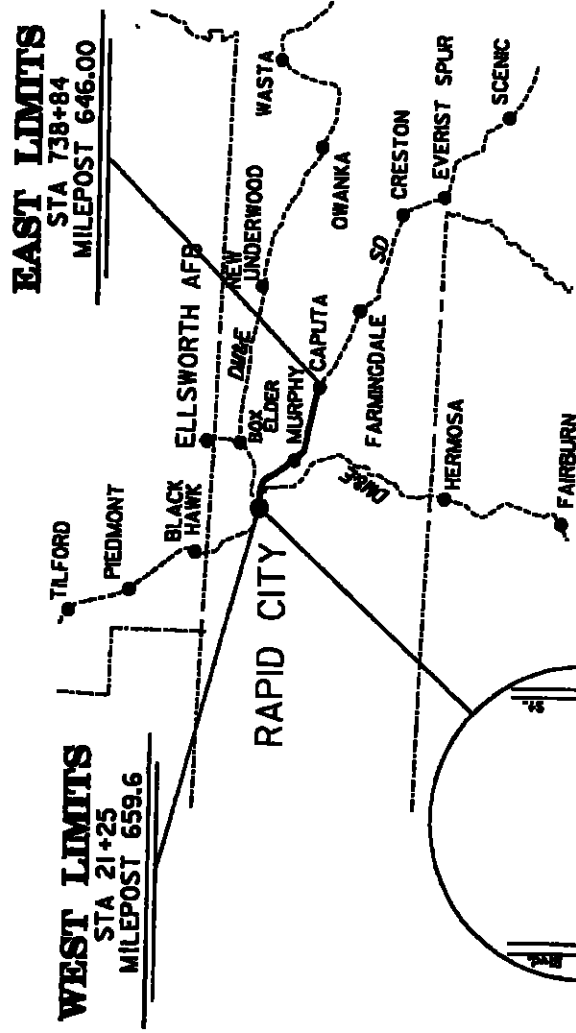
Amy Campbell
NOTARY PUBLIC
My Commission Expires: 8-3-13



APPENDIX 1

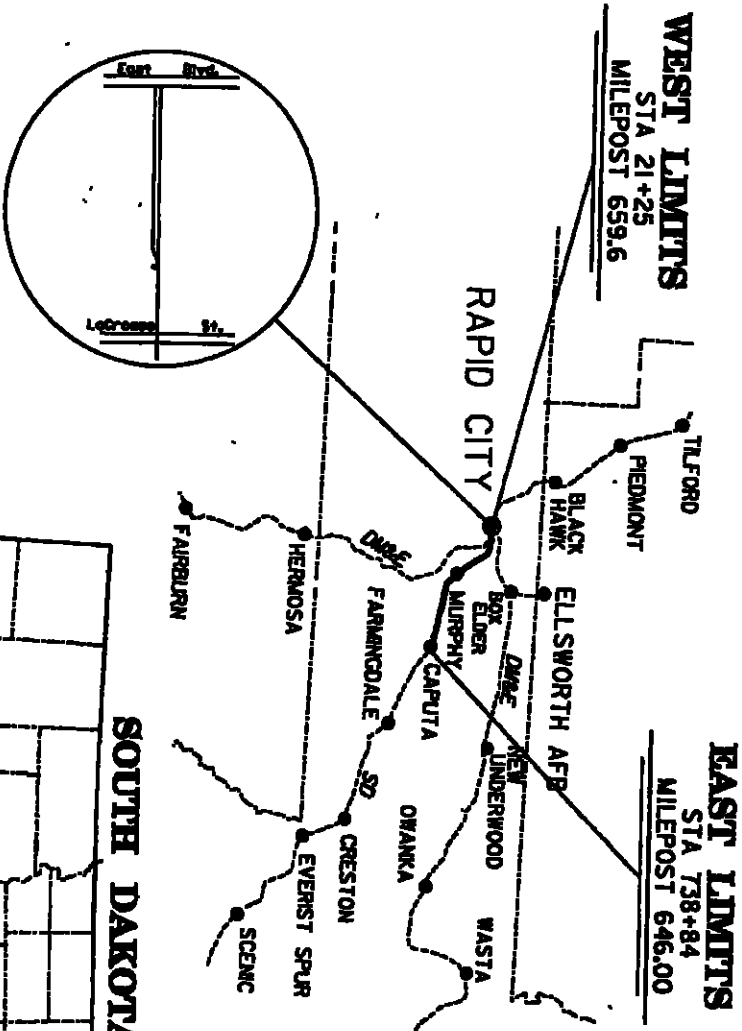
ALL THAT RAILROAD PROPERTY from the NW1/4 of the SW1/4 of Section 6, Township 1 South, Range 10 east of the Black Hills Meridian, at Caputa, South Dakota also known as Milepost 646.0±, Railroad survey station 738.84 (1,162 ft east of the east switch in Caputa), and extending in a westerly direction a distance of approximately 13.6 miles in and through the County of Pennington, State of South Dakota, and terminating at the NE1/4 of the NE1/4 of Section 1, Township 1 North, Range 7 east of the Black Hills Meridian, also known as Milepost 659.6±, Railroad survey station 21+25, (the east right of way line at East Boulevard located in Rapid City), in the county and state above referenced, as shown on the print attached hereto marked Exhibit "A", and by this reference made a part hereof, subject to the rights of other existing and future lessees, including those listed on Exhibit "A'.

EXHIBIT A STATE OF SOUTH DAKOTA CAPUTA to RAPID CITY RAIL LINE



PROJECT LOCATION

STATE OF SOUTH DAKOTA

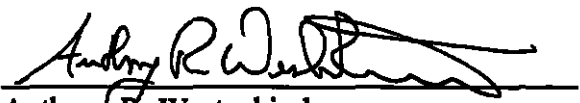


CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Mitchell-Rapid City Regional Railroad Authority for Modified Certificate of Public Convenience and Necessity Pursuant to 49 C.F.R. § 1150.23 was served on the following parties via U.S. First-Class Mail, postage prepaid, from Chicago, Illinois on this 5th day of June, 2008.

Association of American Railroads
Car Service Division
50 F Street, N.W.
Washington, DC 20001

American Short Line and Regional Railroad Association
50 F Street, N.W.
Suite 7020
Washington, DC 20001


Anthony R. Westenkirchner