

# MINUTES

## BOARD OF DIRECTORS MEETING OF THE SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY

April 10, 2012

A meeting of the Board of Directors of the San Diego & Arizona Eastern (SD&AE) Railway Company, a Nevada corporation, was held at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101, on April 10, 2012, at 9:00 a.m.

The following persons, constituting the Board of Directors, were present: Bob Jones, Randy Perry, and Paul Jablonski. Also in attendance were:

MTS staff:	Tim Allison, Karen Landers, Wayne Terry, Linda Musengo, Lynda Marquis
San Diego & Imperial Valley R.R. staff:	Matt Domen
Pacific Southwest Railway Museum:	Diana Hyatt
Carrizo Gorge Railway, Inc.:	Sheila Lemire, Chas McHaffie, Randall Polcyn
Burlington Northern Santa Fe:	John Hoegemeier
Law Offices of Michael A. Gardiner:	Michael Gardiner

### 1. Approval of Minutes

Mr. Jablonski moved to approve the Minutes of the January 24, 2012, SD&AE Railway Board of Directors meeting. Mr. Jones seconded the motion, and it was unanimously approved.

### 2. Statement of Railway Finances

Linda Musengo reviewed the financial statement for the 1st quarter of 2012 (attached to the agenda item). Ms. Musengo explained that due to server issues (over the past two weeks), current financial data has not been available. Once these issues are resolved, an updated report will be submitted at the next meeting.

Karen Landers added that \$625,000 in income is anticipated as a result of a General Services Administration (GSA) condemnation case, which will replace the Greyhound income that SD&AE no longer receives.

#### Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

### 3. Report on San Diego and Imperial Valley Railroad (SD&IV) Operations

Matt Domen presented the report of activities for the 1st quarter of 2012 (attached to the agenda item).

Mr. Domen clarified for Mr. Jablonski that the monthly railcar traffic for gas has increased, and SD&IV is going to receive over 100 cars in the next 48 hours. He added that the volume of traffic for gas is averaging 5 to 10 cars per day. Mr. Domen stated that there has been a continuous volume of railcar traffic with over 200 cars in April, and he anticipates about 300 cars in May.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

4. Report on Pacific Southwest Railway Museum Operations

Diana Hyatt presented the 1st quarter of 2012 report (attached to the agenda item). In response to the Museum's request to install a 36-inch drain pipe under the mainline away from the tracks (east of mile post 66 in Campo), Tim Allison clarified for the Board that staff has extensively reviewed the drainage issues over the past years, which are due to the construction of the Campo Hills Housing Project. Mr. Allison stated that the issues are complicated, and there are a lot of factors involved. He added that Bureau Veritas did a lot of work regarding water runoff issues in 2006. Mr. Allison reported that there are concerns that a 36-inch pipe might create problems elsewhere. An engineering analysis of installing a pipe would be needed to research downstream effects, environmental issues, etc.

Ms. Hyatt added that Museum personnel have tried to work with the County of San Diego to help to rectify the issues, but there has been no action to date. She clarified for the Board that the Museum is primarily the entity being affected.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

5. Report on the Desert Linea. Report on the Desert Line

Sheila Lemire reviewed the 1<sup>st</sup> quarter report (attached to the agenda item).

Karen Landers stated that she received an e-mail sent by Ed Kravitz (attached) who was inquiring about two railcars (Metra Coach Car #7774 and Metra Cab Car #8728) that were purchased several years ago from CZRY by his client IFE Leasing but that were never delivered. Mr. Kravitz requested a response as to whether the sale would be honored or IFE's money would be refunded. Ms. Lemire responded that she received the e-mail from Ms. Landers and called Mr. Kravitz. Ms. Lemire stated that Mr. Kravitz told her that he located the cars on the line and took pictures of them; she will follow up on his request and report back to the Board. Mr. Allison added that the railcars are located at Dubbers spur siding, which is north of Interstate 8 toward Carrizo Gorge.

Mr. Jablonski noted that a revision to page 5a-6 of the report (attached) was submitted by CZRY.

Action Taken

Mr. Jones moved to receive the report for information. Mr. Jablonski seconded the motion, and it was unanimously approved.

5. Report on the Desert Line – Continued –b. Assignment of Carrizo Gorge Railway, Inc. Operating Rights

Karen Landers stated that Pacific Imperial Railroad, Inc. (PIR) is requesting that SD&AE and MTS acknowledge and consent to the assignment of the CZRY Desert Line Operating Agreement to PIR (supporting documentation is attached to the agenda item). Under the current agreement, SD&AE, SD&IV, and CZRY are required to consent and approve. The SD&AE Board's recommendation would be forwarded to the MTS Board for approval, and SD&IV would go through its own procedures.

Mr. Jones asked if the documentation supports the request. Ms. Landers responded that the documents were signed by Dwight Jory, who was the President of CZRY at the time that Amendment No. 3 was signed (on January 7, 2012).

Public Comment:

- Michael Gardiner (Law Offices of Michael A. Gardiner) – Mr. Gardiner stated that he represents Ken Kahan, who is a CZRY shareholder. Mr. Gardiner requested that the following issues be considered before SD&AE Board approval of Amendment No. 3:
  1. The proposed assignee PIR is a Delaware Corporation and is not qualified to do business in the state of California. Mr. Gardiner believes that bars approval of a contract regarding rights to operate in the state of California.
  2. The contract itself is illegal because no notice was given to CZRY shareholders or Mr. Kahan. This contract potentially exposes all of the assets of CZRY.
  3. There was no approval by CZRY shareholders or no request for shareholders to approve the disposition of potentially all of the assets of CZRY.
  4. There is a failure of consideration for CZRY to have bargained for the acquisition of PIR for SD&IV's rights on the line, which would have alleviated concerns regarding potentially imminent rights over the Desert Line.

Mr. Gardiner requested that this matter be tabled until the next meeting to determine if PIR has addressed its failure to qualify to do business in the state of California.

- Randy Polcyn – (New Director of CZRY) – Mr. Polcyn stated that Agenda Item 5b proposes to assign CZRY's rights and obligations to PIR (under "Recommendation"), but further along in the item, the assignment goes to Pacific Imperial Industries, LCC (PII) (page 5b-1 of the agenda item under "a") and then to PIR.

Ms. Landers explained that the operating agreement is currently in the name of CZRY. The Board is aware of moves being made between CZRY and some of its creditors and shareholders. She added that it is not required to do multiple assignments from CZRY to PII to PIR, and that this action is acknowledging that the documents that were provided go from CZRY to PII and from PII to PIR; the

entity that holds these assigned rights (subject to SD&IV and SD&AE approval) is PIR.

Ms. Landers stated that she was not aware of the issue regarding PIR's right to do business in the state of California. It is her understanding that PIR has an interim operating agreement with CZRY wherein CZRY continues to operate and do the work on the line on behalf of PIR (PIR would need to go through STB's processes before taking over the operations).

Mr. Jablonski added that the agenda item states that as of November 1, 2011, there was an Assignment Agreement between PII and PIR (transfer of operating and trackage rights to PIR).

Mr. Jones stated that he is aware of Delaware corporations operating in the state of California and also sat on one of the boards. He added that unless something has changed since 2010, PIR's right to do business in the state of California shouldn't be an issue.

- Michael Gardiner (public speaker) – Mr. Gardiner responded that there is nothing wrong with a Delaware corporation operating a railroad in California if it is qualified to do business. The problem is that PIR is not qualified to do business in California. He added that PIR can rectify the issue but has not, which he believes should bar approval of this request at this time. Mr. Gardiner feels that the Board should look into this issue before approving assigning the operating rights, which can be terminated with 30 days' notice without any requirement that this body be made aware of the termination.

Ms. Landers responded that this issue could be resolved by approving Amendment No. 3 contingent upon confirmation that PIR is authorized to do business in state of California.

Mr. Jablonski asked if there is any documentation stating that CZRY will be authorized to continue to conduct business after this action regardless of who owns it.

- Randy Polcyn (public speaker) – In response to Mr. Jablonski's question, Mr. Polcyn referenced page 5b-2 of the agenda item, which states *Pursuant to a November 10, 2011, "Interim Operating Agreement" between PIR and CZRY, CZRY continues to operate on the Desert Line, under the supervision of PIR and subject to PIR's discretion.*

Mr. Jablonski added that the people who are doing business as CZRY are qualified to do business in California.

#### Action Taken

Mr. Jablonski moved to authorize the SD&AE President to consent to Amendment No. 3<sup>1</sup> of the Carrizo Gorge Railway, Inc. (CZRY) 2002 Operating Agreement (MTDB Doc. No. S200-02-194) assigning CZRY's rights and obligations to Pacific Imperial Railroad (PIR) contingent upon General Counsel's confirmation that PIR is licensed to operate in the state of California (before going to the MTS Board for approval). Mr. Jones seconded the motion, and it was unanimously approved.

<sup>1</sup> The actual Amendment No. is 4 (for future reference).

6. Real Property Matters

Tim Allison reported that he has not been able to access the documents executed because agency servers are down, so he will have that information for the next meeting.

Ms. Landers reported that SDG&E served SD&AE with an eminent domain complaint in regard to its East County Substation Project that will cross SD&AE right-of-way. Ms. Landers stated that there are some deficiencies in the lawsuit. She added that normally SDG&E works with staff to acquire an easement voluntarily. SDG&E has included SD&AE as a defendant with another private property owner in the complaint. Ms. Landers is working with SDG&E to hopefully resolve the issue and will give an update. Mr. Allison added that there will be three crossings involved when SDG&E makes official contact with us.

7. Board Member Communications

None.

8. Public Comments

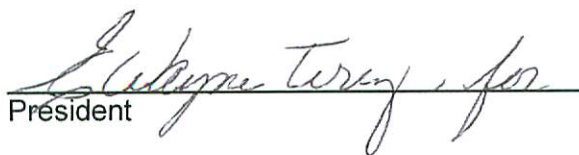
None.

9. Next Meeting Date

The next meeting of the SD&AE Railway Company Board of Directors is on Tuesday, July 10, 2012.

10. Adjournment

The meeting was adjourned at 9:37 a.m.

  
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President

  
\_\_\_\_\_  
General Counsel

JGardetto/  
DRAFT MINUTES SDAE 2012-4-10

Attachments: E-mail Dated 4/9/12 from Ed Kravitz  
Revised page 5a-6 to Carrizo 1<sup>st</sup> Quarter Report

## Jan Gardetto

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**From:** Ed Kravitz <ekatsdrp@yahoo.com>  
**Sent:** Monday, April 09, 2012 7:46 AM  
**Cc:** Jan Gardetto; Philip Sheridan  
**Subject:** STATUS OF MISSING I.F.E. LEASING's RAILCARS ?  
**Attachments:** sheridan bos carrizo metra cars.jpg; Sheridan bos czry cars B.jpg; gorge to h's 049.jpg; gorge to h's 026.jpg; gorge to h's 028.jpg

Dear Copied Parties:

With the latest SDAE Railway Board Meeting Tuesday morning at 9:00 AM, I would like to remind participants that it has been over a year since I first asked the SDAE Railway Board to address the status of two railcars purchased from CZRY by my client IFE Leasing (several years ago). These cars were never delivered for interchange at San Ysidro or other interchange as agreed.

Will someone please ask Gary Sweetwood or Mr. McCaffee whether the attached bills of sale will be honored? Will the cars ever be interchanged to IFE Leasing? Will CZRY refund the purchase prices and applicable interest if cars are not delivered ?

I can't be there but, during public comments I would certainly appreciate it if someone would ask "*whoever the responsible party is*" to respond to myself or IFE Leasing declaring what action will or will not be taken in this matter.

As you know, we recently determined that the cars had not been fully scrapped, but some parts in the running gear had been removed.

Your attention to this matter would be most appreciated.

*Ed Kravitz <[charter@rent-a-train.com](mailto:charter@rent-a-train.com)>  
San Diego & Midwestern Railway Partners LLC  
619-890-8894*

Bill of Sale  
For  
Metra Coach Car #7774

Carrizo Gorge Railway, whose principal place of business is 2295 Fletcher Parkway Suite 101, El Cajon, CA. 92020 (the Seller), in consideration of the sum of Six Thousand Five Hundred dollars. (\$6,500.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, convey, transfer, set over and deliver unto IFE Leasing, a Nevada Corporation, having their principal place of business at 207 Channel Dr. Novato CA. 94945 (the Buyer) all of the Seller's right, title and interest and equity in and to the following railroad equipment

One Metra Coach Car, #7774

Seller agrees that it is the lawful owner of the above described equipment; that same is free from all liens, encumbrances, claims, adverse interest and or legal processes of creditors against the same; that it has full right and legal authority to sell the same; and that it will warrant and defend title to the same against any and all claims thereunto pertaining. These two pieces are sold in its present existing condition and except for the foregoing warranty of title, ownership and legal authority, no other warranties, expressed or implied, or presentations whatsoever are made as to the same by Seller, and this sale to the Buyer is final without recourse to the Seller.

Dated at El Cajon this 19<sup>th</sup> day of July 2007.

Carrizo Gorge Railway

  
\_\_\_\_\_  
Daniel Singer  
President *CS*

STATE OF CALIFORNIA  
COUNTY OF San Diego

The forgoing instrument was acknowledged before me this 3 day of July, 2007 by

DANIEL SINGER,  
Witness my hand and official seal

My commission expires Nov. 29, 09

  
\_\_\_\_\_  
Notary Public



**Bill of Sale**  
**For**  
**Metra Cab Car #8728**

Carrizo Gorge Railway, whose principal place of business is 2295 Fletcher Parkway Suite 101, El Cajon, CA. 92020 (the Seller), in consideration of the sum of Seven Thousand Five Hundred dollars. (\$7,500.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, convey, transfer, set over and deliver unto IFE Leasing, a Nevada Corporation, having their principal place of business at 207 Channel Dr. Novato CA. 94945 (the Buyer) all of the Seller's right, title and interest and equity in and to the following railroad equipment

**Metra Cab Car, #8728**

Seller agrees that it is the lawful owner of the above described equipment; that same is free from all liens, encumbrances, claims, adverse interest and or legal processes of creditors against the same; that it has full right and legal authority to sell the same; and that it will warrant and defend title to the same against any and all claims thereunto pertaining. These two pieces are sold in its present existing condition and except for the foregoing warranty of title, ownership and legal authority, no other warranties, expressed or implied, or presentations whatsoever are made as to the same by Seller, and this sale to the Buyer is final without recourse to the Seller.

Dated at El Cajon this 19<sup>th</sup> day of July 2007.

Carrizo Gorge Railway

  
Daniel Singer  
President Coo

STATE OF CALIFORNIA  
COUNTY OF San Diego

The forgoing instrument was acknowledged before me this 3 day of <sup>AUG.</sup> July, 2007 by  
**DANIEL SINGER.**  
Witness my hand and official seal

My commission expires Nov. 29, 2009

  
Notary Public







8728



7774

Emergency Entry Pull Strip-Remove Wickets

## REVISED

# CARRIZO GORGE RAILWAY, INC.

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## VI. Mexican Railroad

Carrizo Gorge Railway is in negotiations with the State of Baja California, Mexico. Here is an update of Carrizo Gorge Railway, Inc. Mexico's Operation.

### CURRENT MEXICO PERSONNEL

#### 5 Trust Employees

~~Carrizo Gorge Railway is the rail freight operator for the State of Baja California, Mexico and continues to employ the following personnel dedicated to freight service south of the border.~~

~~Here is an update of Carrizo Gorge Railway, Inc. Mexico's Operation.~~

### CURRENT MEXICO PERSONNEL

- ~~1~~ Director of Operations
- ~~1~~ Supervisor of Operations
- ~~3~~ Dispatchers
- ~~3~~ Train Engineers
- ~~6~~ Conductors
- ~~1~~ Mechanic
- ~~1~~ Division Engineer
- ~~1~~ Track Inspector
- ~~1~~ Track Supervisor
- ~~8~~ Track laborer
- ~~2~~ Traffic