

MINUTES

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

October 27, 2022

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 October 27, 2022, at 9:00 a.m.

The following persons, constituting the Board of Directors, were present: Wayne Terry and Matt Domen. David Franklin, Jr. was absent. Others in attendance were members from:

San Diego Metropolitan Transit System: Sharon Cooney, Erin Dunn, Karen Landers, Brian Riley,
Sean Myott
Pacific Southwest Railway Museum: Stephen Hager

1. Approval of Minutes

Mr. Domen moved to approve the Minutes of the October 5, 2021, SD&AE Railway Board of Directors meeting. Mr. Terry seconded the motion, and it was unanimously approved.

2. Statement of Railway Finances

Ms. Dunn reviewed Statement of Railway Finances for the year ending June 30, 2022 (attached to the agenda item).

Action Taken

Informational item only. No action taken.

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

Mr. Domen reviewed the SD&IV Periodic Report for activities for the third quarter of 2022 (attached to the agenda item).

Mr. Domen confirmed for Mr. Terry that SD&IV has 2 shippers--AJM Packaging and Toro Irrigation--working 1 day a week on Sunday nights in El Cajon.

Action Taken

Informational item only. No action taken.

4. Report on Pacific Southwest Railway Museum Operations

Mr. Hager reviewed the Pacific Southwest Railway Museum (PSRM) report for the quarters 1, 2, and 3 of 2022 (attached to the agenda item).

Mr. Hager stated that he took over as President of PSRM in February. PSRM has a new Director of Operations—Martin Caestecker—who took over for Michael Edwards. Mr. Hager and Mr. Caestecker will be the points of contact for SD&AE.

Mr. Hager reported that PSRM has continued its twice-annual weed spraying on the Desert Line. PSRM took delivery of a locomotive by truck in August, which was a significant expense. He stated that PSRM is in support of getting the Desert Line running—even in Mexico—so that PSRM can make some of the trips.

Mr. Hager noted in the report a request to repair the two Highway 94 crossings in Campo. They are about 25 years old, the batteries are at the end of their useful lives, the gates are old and fragile, and the lights are obsolete. The report attached to the agenda item outlines all of the proposed upgrades to bring them up to modern standards. The current estimate is approximately \$24,000. Mr. Hager added that PSRM is hoping to use California Public Utilities Commission (CPUC) funding or any other funding available—possibly from SD&AE—to make those upgrades.

Mr. Terry asked if PSRM has been pursuing funds for upgrades from the regulatory side. Mr. Hager responded that PSRM has requested Caltrans funding with no success. Mr. Terry suggested contacting the CPUC. Mr. Hager responded that it is PSRM's understanding that the CPUC provides an annual appropriation. He asked if those funds go to SD&AE or if PSRM would need to pursue the funds. Ms. Landers responded that staff has not been asked that question before and she does not know the answer. Mr. Hager will research it and get back to everyone with the findings. Mr. Terry will follow up with MTS Finance and also send an inquiry to the PUC regarding potential funding.

Mr. Hager clarified that the crossings are functional but the crossing equipment is in poor shape—especially the batteries.

Mr. Hager reported that PSRM has been looking into getting the Cattle Creek Trestle in Campo Valley back into service after 15 years of no service due to its advanced age and structural issues. PSRM would like to replace it with a culvert that would be more economical in the long run. Mr. Hager said that PSRM is trying to determine if there are any easements under the bridge for horses and cattle or whether smaller culverts can be added so that people can't cross. Mr. Myott responded that he will investigate.

Ms. Landers stated that during a recent hi-rail trip with Fred Byle and his team to check the condition of the line, Mr. Byle felt that it was worth exploring what it would take to get the bridge back into service. Ms. Landers said that PSRM could potentially do the inspections and maintenance. Mr. Hager added that the bridge is about 50 feet long, and that would give PSRM about 8 more miles of operations under the current lease.

Action Taken

Informational item only. No action taken.

5. Report on the Desert Line

Ms. Landers gave an update on the Desert Line. Ms. Landers reiterated that the lease with Baja Rail was terminated about a year ago. In looking at next steps, past experience with the Desert Line Baja Rail process shows that this project is not going to be viable solely in private hands. Therefore, it will require some level of public investment and will need public agencies to step in and do an analysis of what it would take to make the line viable. Ms. Landers

reported that MTS reached out to SANDAG and Caltrans, and Caltrans is very interested in the project. Caltrans received a grant for a little over \$400k for this fiscal year to do a feasibility study. Ms. Landers will follow up with Caltrans to check on the status. The plan is to have Caltrans do a market feasibility study and come up with a project plan and seek grants that might be available; until Caltrans completes its studies, Desert Line activities are on hold.

- Public Speaker – Mitch Beauchamp

Mr. Beauchamp stated that he has been trying to get the Desert Line back open but that has been stalled by the prior investor. There is a washout at the bottom of Mountain Spring grade that has not been maintained over the past years causing it to back up, and there is nothing to support the existing rail.

Mr. Beauchamp stated that Mexico has to be involved in order for the Desert Line to operate or it will not work. He feels that Caltrans will be wasting money for another study, and he does not think this is the way to go. Mr. Beauchamp feels that what has been going on in the past is horrible, and everyone is responsible. He also hopes that ANK is not used to look at the value of the rail as scrap and instead the rails are kept on the railroad. Ms. Landers clarified that there is no action by MTS to scrap the rails.

Mr. Beauchamp commented that he is working with a group that is very interested in the Desert Line project, and working with Mexico binationally is the only way to get it done. Mr. Beauchamp complimented Fred Byle who has been a dependable strength for the whole system.

Action Taken

Informational item only. No action taken.

6. Real Property Matters

Summary of SD&AE Documents Issued Since October 5, 2021

Sean Myott stated that since the October 5, 2021, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-20-713.1: Right of Entry Permit Amendment (Time Extension) to Ortiz Corporation to access SD&AE property to replace and install a sixteen-inch water main at approximate MP EL 2.7 (30th & Commercial) via jack and bore method.
- S200-21-756.1: Right of Entry Permit Amendment (Time Extension) to Group Delta Consultants to perform soil sampling and geotechnical boring at five (5) locations as part of National City's Bayshore Bikeway Segment 5 project.
- S200-22-270: Right of Entry Permit to AM Ortega Construction, Inc. to perform potholing and installation of new electrical conduit for SDG&E at Cesar Chavez Parkway and 25th Street.
- S200-22-767: Right of Entry Permit to Badger Daylighting Corporation to perform potholing at milepost SL 7.4 to locate utilities in advance of an SDG&E jack and bore operation to install underground electrical utilities.

- S200-20-726.2: Right of Entry Permit Amendment (Time Extension) to Orion Construction to install a 12" water main and perform street improvements on behalf of the City of San Diego AC Water & Sewer Group 1024 project located at 61st Street to 65th Street and 65th Street/Imperial Avenue to Herrick Street (approximate milepost EL 7.20).
- S200-20-729.2: Right of Entry Permit Right of Entry Permit Amendment (Time Extension) to Hal Hays Construction to install an eighteen inch (18") welded cement lined steel pipe inside the existing thirty inch (30") at Elm Ave.
- S200-22-776: Right of Entry Permit to T.Y. Lin International to perform land survey data collection and soil sampling for the design of SANDAG's Palomar Street Grade Separation Project (SANDAG CIP No. 1210091).
- S200-21-766: Right of Entry Permit to HMS Construction, Inc. to install conduit at various locations (I-5 Civic Center Dr Bridge, I-5 Palm City Bridge, Beyer Blvd and 905) for the California Department of Transportation.
- S200-22-774: Right of Entry Permit to MJ Ratzlaff, Inc. to complete public improvements for the City of San Diego at 2995 Commercial Street including replacement of sidewalk, curb, and gutter, a new D-25 curb outlet, landscape, and water utility installations.
- S200-22-779: Right of Entry Permit to Life Sports Foundation allowing participants of the 2022 Campagnolo Gran Fondo San Diego bike event to cross over railroad tracks at 8th Street, Palomar Street and Gunpowder Point Drive in Chula Vista, CA on Sunday, April 3, 2022.
- S200-22-771: Right of Entry Permit to Ortiz Corporation to install 12-inch steel water pipe inside a 36-inch steel casing pipe beneath the tracks by jack and bore method, installation of an additional 12-in steel pipe and PVC pipe by cut and cover trenching, and the abandonment of existing 8-inch water pipe beneath tracks at the 69th St crossing.
- S200-22-270.1: Right of Entry Permit Amendment (Time Extension) to AM Ortega Construction, Inc. to perform potholing and installation of new electrical conduit for SDG&E at Cesar Chavez Parkway and 25th Street.
- S200-22-781: Right of Entry Permit Navy Region Southwest Morale, Welfare and Recreation Department to Allowing event participants of the Navy's 35th Annual Bay Bridge Run/Walk to cross over tracks on Sunday, May 15, 2022 at the Cesar Chavez Parkway railroad crossing and Harbor Drive.
- S200-22-782: Right of Entry Permit to Sweatpants Media for video shoot at Pacific Southwest Railway Museum - 750 Depot Street, Campo, CA 91906 from May 11, 2022 – May 13, 2022.
- S200-22-784: Right of Entry Permit to the City of La Mesa allowing participants of the City of La Mesa Flag Day Parade to cross over tracks on June 4, 2022 at La Mesa Boulevard railroad crossing.
- S200-22-778: Right of Entry Permit to Caster Properties to construct a three-story self-storage facility adjacent to the right of way at 825 Hollister Street, San Diego, CA.

- S200-22-780: Right of Entry Permit to the Pacific Southern Railway Museum Association to unload a locomotive from a delivery truck onto the railroad track at the Pacific Southern Railway Museum Association located at 750 Depot Street, Campo, CA.
- S200-20-729.3: Right of Entry Permit Right of Entry Permit Amendment (Time Extension) to Hal Hays Construction to install an eighteen inch (18") welded cement lined steel pipe inside the existing thirty inch (30") at Elm Ave.
- S200-22-783: Right of Entry Permit to RDS Contracting, Inc. perform grading, and removal and installation of a perimeter fence as part of the construction of a self-storage facility at 620 & 640 Marshall Avenue, El Cajon, CA.
- S200-22-775: Right of Entry Permit to Albus-Keefe & Associates MTS's Palm Avenue Station parking lot and right of way (2340 Palm Ave, Chula Vista, CA) for exploratory drilling and soil sampling.
- S200-22-787: Right of Entry Permit to Quality Infrastructure Corporation to conduct field surveys to locate utilities, curb lines, rails, traffic equipment, and miscellaneous features for proposed improvements near the 28th Street railroad at-grade crossing in conjunction with SANDAG's Bayshore Bikeway Barrio Logan project.
- S200-21-758.1: Right of Entry Permit to Southwest Pipeline & Trenchless Corporation to rehabilitate existing sewer mains via manholes on behalf of the City of San Diego at 54th St. to Pitta St. (approximate milepost EL 5.7-6.0).
- S200-22-788: Right of Entry Permit to San Diego County Bicycle Association allowing participants of the Bike the Bay bike event to cross over railroad tracks on Harbor Drive at Cesar Chavez Parkway, Harbor Drive south of Schley, Marina Parkway at Bay Boulevard, Bay Boulevard at E Street, Sunday, August 28, 2022.
- S200-23-790: Right of Entry Permit to Eagle Paving Company, Inc. to perform slurry seal maintenance on Broadway in Lemon Grove, CA between Main Street and Lemon Grove Avenue.
- S200-21-747: License Agreement to the City of San Diego to install a new trunk sewer at railroad milepost BS 1.28 (Harbor Drive).
- S200-21-749.1: Right of Entry Permit Amendment (Time Extension) to Aguirre & Associates to perform surveys on behalf of the City of Lemon Grove at the Central Ave. and San Miguel railroad crossings.
- S200-23-793: Right of Entry Permit to Odin Construction Solutions to transport approximately 350,000 cubic yards of materials from Otay River Floodplain over the railroad crossing at Bay Boulevard, Chula Vista and the entrance to Port of San Diego's property.

Action Taken

Informational item only. No action taken.

7. Ratification of Transit-Oriented Development (TOD) Agreements; Delegation of Authority to SD&AE President

Ms. Landers gave a PowerPoint presentation to clear up and consolidate some rail property issues. She explained as background that the management of MTS and SD&AE rail assets are

all handled by MTS staff. When MTS first started the trolley, it purchased the SD&AE Railway entity from Southern Pacific and with SD&AE came all of its real estate assets. MTS has essentially operated SD&AE as a land-holding entity, and the freight operations that came with SD&AE have been contracted out to SD&IV. Everything aside from the freight operations has been handled by MTS staff. Permits are signed by the MTS CEO who also sits as the SD&AE President. MTS staff is doing a lot more in the way of property activity and now also Transit-Oriented Development (TOD) at MTS transit stations. Currently, the TODs are reviewed and approved by staff and then sent to the MTS Board for final approval to make those developments happen.

Ms. Landers stated that the first step in the TOD process is to ensure that there will not be any operational conflicts—either with MTS light rail or heavy rail—so as to ensure that the projects are not encroaching on rail offloading or impairing rail service.

Ms. Landers reported that the real estate footprints of the TODs at Palm Avenue and Beyer Avenue recently approved by the MTS Board show that SD&AE right-of-way expands slightly into the parking lots. She added that MTS ground leases these areas to the developer—so there would be a sliver of SD&AE property in addition to the MTS-owned property. Therefore, the action requested today is to have the SD&AE Board acknowledge and approve these types of activities and delegate the authority to pursue them through the SD&AE President. Ms. Landers stated that MTS needs the ability to grant rights in those areas to accommodate the projects.

Ms. Landers stated that this action would be the easiest way to create a new ground lease parcel to transfer a portion of the SD&AE right-of-way to MTS. MTS would then own the fee of the whole area making it easier to create the TOD footprint. This would also ensure that the SD&AE President can execute ground lease documents, other covenants and regulatory agreements that come with financing structures, easements for utilities, and other items.

Ms. Landers stated that today's action would ratify the MTS Board's approval for the Palm Avenue TOD and the Beyer Blvd. TOD so that there is no question that there is full authority to move forward with those projects. Today's action would also delegate authority to the SD&AE President to approve the documents necessary to carry out these and all future projects so long as the projects have been approved by the MTS Board and do not materially impair freight operations on adjacent SD&AE right-of-way.

Action Taken

Mr. Terry moved to approve:

1. Ratifying the San Diego Metropolitan Transit System's (MTS's) Board of Directors October 14, 2021 approval of Disposition and Development Agreements (DDAs) for a TOD project with National Community Renaissance of California, a California nonprofit public benefit corporation (National CORE) and Malick Infill Corp, a California corporation (Malick Infill) at the Palm Avenue Trolley Station;
2. Ratifying the MTS Board of Director's March 10, 2022, approval of a DDA for a TOD project with Beyer Family Housing L.P. at the Beyer Boulevard Trolley Station; and
3. Delegating to the SD&AE President the authority to approve DDA agreements, ground leases, easements, fee transfers, restrictive covenants, regulatory agreements, and other real estate transactions or documents necessary to carry out projects on SD&AE

property so long as such projects have been approved by the MTS Board of Directors and do not materially impair freight operations on adjacent SD&AE right-of-way.

Mr. Domen seconded the motion, and it was unanimously approved with Mr. Franklin absent.

8. Election of SD&AE Chairperson and Board Member

Ms. Landers reported that Mr. Terry will be retiring in November 2022 from MTS, and approval of today's action would: (1) elect Brian Riley to replace Mr. Terry as SD&AE Chairperson and Board Member; and (2) forward a recommendation to the MTS Board of Directors for approval.

Action Taken

Mr. Terry moved to: (1) elect Brian Riley to replace Mr. Terry as SD&AE Chairperson and Board Member; and (2) forward a recommendation to the MTS Board of Directors for approval. Mr. Domen seconded the motion, and it was unanimously approved with Mr. Franklin absent.

9. Board Member Communications

There were no Board member communications.

10. Public Comments

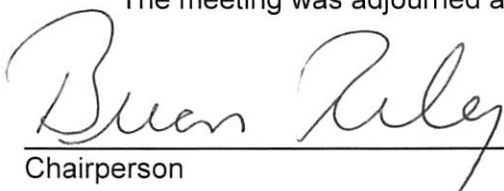
There were no public comments.

11. Next Meeting Date

The next meeting of the SD&AE Railway Company Board of Directors is on Tuesday, October 10, 2023.

12. Adjournment

The meeting was adjourned at 9:26 a.m.



Chairperson



General Counsel

2022-10-27 SDAE Minutes