

# MINUTES

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

April 18, 2017

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 18, 2017, at 9:00 a.m.

The following persons, constituting the Board of Directors, were present: Paul Jablonski, Matt Domen, and Jared Gooch. Also in attendance were members from:

San Diego Metropolitan Transit System:	Tim Allison, Karen Landers, Wayne Terry, Shiela Dilayre
Pacific Southwest Railway Museum:	Dave Tomeraasen, Diana Hyatt, James Caestecker
Pacific Imperial Railroad, Inc.:	Victor Constantino
SD Freight/Burlington No. Santa Fe:	John Hoegemeier
Mintz Levin:	Antony Nash

### 1. Approval of Minutes

Mr. Domen moved to approve the Minutes of the January 17, 2017, SD&AE Railway Board of Directors meeting. Mr. Jablonski seconded the motion, and it was unanimously approved.

Ms. Landers noted that the agenda format has been revised going forward akin to the MTS Board agenda wherein items for review do not require a "motion to receive" but instead are informational items.

### 2. Statement of Railway Finances

Shiela Dilayre (sitting in for Erin Dunn) reviewed the Statement of Railway Finances for the period ending February 28, 2017 (attached to the agenda item).

#### Action Taken

Informational item only. No action taken.

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

Matt Domen reviewed the SD&IV Periodic Report for activities for the first quarter of 2017 (attached to the agenda item). Mr. Jablonski commended SD&IV on coming up on its 20<sup>th</sup> year of injury-free reporting to the FRA.

#### Action Taken

Informational item only. No action taken.

4. Report on Pacific Southwest Railway Museum Operations

Diana Hyatt introduced Dave Tomeraasen, Pacific Southwest Railway Museum (PSRM) Board Treasurer. Ms. Hyatt reviewed PSRM's 1<sup>st</sup> quarter report (attached to the agenda item).

Mr. Jablonski stated that he has been getting e-mails from an organization that is conducting an on-line petition for the Carrizo Gorge Scenic Railroad. This group is petitioning MTS Board Chair Harry Mathis to allow train service through the Carrizo Gorge. Ms. Landers noted for the record that MTS has no association with this organization—no requests have ever been approved, and it has no rights through this area. Mr. Jablonski added that the petition is being generated through Change.Org, and five people have signed the petition. Mr. Jablonski forwarded the e-mail to Diana Hyatt so that she can follow up with the organization.

Action Taken

Informational item only. No action taken.

5. Report on the Desert Line

a. Report on the Desert Line

Karen Landers gave an update on the status of Desert Line activities. She stated that last Thursday, the MTS Board of Directors formally consented to an assignment of the Pacific Imperial Railroad (PIR) Desert Line lease to International Transportation Associates (ITA), which is an entity created by Baja Rail. The bankruptcy court has been overseeing the sale of PIR's assets—one of which is its interest in the Desert Line lease. This is essentially the master lease and the obligations and rights for the last ten miles; PIR previously subleased the first 60 miles to Baja Rail. The MTS Board and all parties have signed a consent approval. Ms. Landers stated that it is her understanding that yesterday was the last day for anyone to object with the bankruptcy court. Ms. Landers is waiting for formal confirmation from PIR and Baja Rail that the transaction has closed.

Victor Constantino with PIR stated that he will forward the final determination from the judge to Ms. Landers.

Ms. Landers clarified that for all intents and purposes, Baja Rail and/or its entity ITA is now in control of the PIR lease. The transfer of any other PIR assets is pending the court's final determination. Ms. Landers stated that MTS will be working with Baja Rail to negotiate an amended and restated lease agreement. Currently, there is a sublease and master lease, which will be merged into one agreement directly with Baja Rail. The time lines will also be addressed in the new lease. The current time line for the entire line to be completed is by December 2018. Given the current delays of the bankruptcy and other issues, that time line is no longer realistic. The new lease and time lines will go to the MTS Board of Directors for approval possibly at the May 2017 meeting or no later than the June 2017 meeting.

Ms. Landers reported that plans submitted by Baja Rail will be reviewed by MTS's engineer, Dan Davis. MTS has given Mr. Davis a list of specific information needed. At this point, the goal is to initially go bridge-by-bridge starting with Bridge 66 (just east of the Museum) first because that will open up all the way to Jacumba. All of the materials that will be used must meet MTS's standards before installation. Ms. Landers noted that

there has been a delay because she has requested that Baja Rail get an environmental attorney-issued opinion. Ms. Landers added that it is believed that the work on the bridges includes repair and replacement and is accepted under CEQA, but she wants Baja Rail to have an independent CEQA attorney provide that opinion.

Ms. Landers stated that Baja Rail is eager to get started, and MTS is trying to accommodate the work as soon as possible. She added that there are other things that are needed that can be worked on concurrently. Ms. Landers reported that things are moving along, and Baja Rail has made a significant investment—especially by purchasing the asset out of the bankruptcy. She expects that Baja Rail will move diligently to get to the point of operations.

#### Action Taken

Informational item only. No action taken.

b. Identification and Disposal of Abandoned Personal Property / Rolling Stock on the Desert Line

Ms. Landers stated that MTS has authorized Baja Rail to go out and clean up at Jacumba Depot area. Additionally, train cars and equipment have been there since 2012 when a lease was formally issued to PIR, and there are no good records of who put them there or when. Ms. Landers stated that for efficient freight operations to begin, any unnecessary items need to be removed. There are no records of lease or storage agreements for this equipment, so they've been stored without MTS's express consent and without paying any storage fees. Ms. Landers explained that it is necessary to give notice to people who may claim an ownership interest. She added that Ms. Hyatt and others from the Museum provided a list (see attachment to the agenda item) last year of some of the items that they were aware of that are on the line.

Ms. Landers asked that the Board be aware and authorize staff to go through a process to send out a notice to anyone who would relay that they would like to be notified, such as the people who are associated with Carrizo Gorge Railway. She added that they would have 30 days to submit a claim with proof of ownership and a plan to remove the rolling stock by June 1. There is a caveat because some of the items are further out on the rail; due to the embargo on the line, no one should go out and traverse the rails to get their items. Before anyone removes any items from the property, they need to have MTS's consent and agreement. For items on the line that cannot be moved by truck, a plan will have to be devised to allow removal by the owner once the rail is accessible and the items can be removed expeditiously.

Ms. Hyatt noted a correction to Attachment A. The two SD&AE box cars are only at Campo House Track (they are listed as being at Jacumba as well).

- Public Speaker – Antony Nash

Mr. Nash stated that he represents Gary Sweetwood who will claim some of the equipment listed—specifically the locomotives. Mr. Nash provided his business card and asked to be sent a notice regarding the process that Ms. Landers mentioned previously. He also asked to interface to understand exactly what SD&AE will be requiring in terms of evidence of ownership and a plan to remove equipment as his client believes that he owns many of the pieces of equipment.

Ms. Landers reiterated that it will be a formal process that will follow rules related to abandoned property, but it is also "come as you go." She stated that submittal of a claim of ownership will be required and information related to the claim. If no one else makes a claim for the same property by the deadline and there is no dispute as to ownership during that period, then plans could be made for removal. She added that if someone else did make a claim to the same property, a resolution would have to be determined. The end goal is to identify any property claimed by a third party and how to remove it. If no one makes an ownership claim, then the property in question could be owned by SD&AE (but it is not assumed). SD&AE would be authorized to decide what to do with the property. Ms. Landers clarified for Mr. Nash that May 18, 2017, is the deadline to make a claim.

Ms. Landers clarified the process of identifying potential third parties who may own property. She stated that she is open to any suggestions. She reached out to former parties of Mr. Sweetwood. Discussion ensued, and it was decided that Mr. Gooch would make contact with Union Pacific (UP) and Ms. Landers would make contact with Ed Kravitz to notify them regarding identifying potential third parties who may own property. Ms. Hyatt suggested putting a publication in one of the industry magazines. Ms. Landers will send a notice to the Secretary of State Web site as the registered agent for service for Carrizo Gorge Railway Company. She added that Mr. Sweetwood may also have suggestions as to whom to contact. It was noted that there are three locomotives owned by PIR that are not on the list.

Ms. Landers agreed with Mr. Domen that as to the June 1 removal deadline, the assets that can be trucked off of the line will be done so expeditiously. She added that the deadline date may be flexible within reason. She clarified that MTS does have a right to assess storage fees; however, Ms. Landers is proposing that if a third party can prove ownership and make a plan to remove assets as soon as possible, then storage fees could be waived. Ms. Landers added that if someone made a claim of ownership after the asset was auctioned off, then all storage fees and the cost of auction would be recovered before turning over any proceeds.

Mr. Jablonski stated that storage fees could be attached but could be waived if deemed acceptable to SD&AE upon disposition of the assets.

Mr. Domen stated that some of the locomotives on the line have been leaking. He questioned whether SD&AE would have to cover the cost of any clean-up. Ms. Landers responded that currently any clean-up that is necessary is covered under the lease with Baja Rail. She stated that an assessment of the clean-up should be made. Ms. Landers and MTS staff will be going on a site visit to Campo and Jacumba on Friday. She extended an invitation to anyone who would like to accompany staff on this visit.

#### Action Taken

Mr. Domen moved to approve authorizing staff to take all necessary and appropriate steps to identify and remove abandoned property on the Desert Line. Mr. Jablonski seconded the motion, and it was unanimously approved.

6. Real Property Mattersa. Summary of SD&AE Documents Issued Since January 17, 2017

Tim Allison noted that since the January 17, 2017, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-16-643: Right of Entry Permit to the Earth Mechanics, Inc. to perform geotechnical studies for the Bayshore Bikeway Segment 8B in Chula Vista.
- S200-17-644: Right of Entry Permit to San Diego Charter Co. for running shuttle service from the Spring Street Trolley Station.
- S200-17-645: Right of Entry Permit to Park N Play for running shuttle service from the Spring Street Trolley Station.
- S200-17-654: Right of Entry Permit to SC Valley Engineering, Inc. to perform storm drainage repair in the City of El Cajon.
- S200-17-655: Right of Entry Permit to Vailston Company, Inc. for sidewalk repair in the City of San Diego along the Orange Line in the Encanto neighborhood.

Action Taken

Informational item only. No action taken.

b. Easement for Street Improvements for the City of La Mesa

Tim Allison gave a PowerPoint presentation. He explained the City of La Mesa's improvements along Spring Street south of Interstate 8 in La Mesa. He showed easements that are thought to have been historically granted to public agencies that had control over the area. He pointed out the areas that are covered under existing easements. He explained that instead of trying to find the historical documents, it was decided that it would be easier to grant an easement to cover the sidewalk and retaining-wall improvements requested by the City of La Mesa. Mr. Allison showed the area that would be covered by a new easement. He stated that today's action would be to approve an easement for the areas that should have already been covered by easements but that staff was unable to locate.

Board members discussed concerns regarding major safety issues associated with adding a sidewalk at grade next to a busy freeway off-ramp, which would also allow pedestrians to cross railroad tracks without having any railroad crossing gates or signage upgrades approved by the California Public Utilities Commission (CPUC). Board members agreed that those safety measures would have to be incorporated before they would approve any easements in this location. Wayne Terry added that he relayed that message a recent meeting with City of La Mesa staff. He stated that the City of La Mesa and the CPUC were interested in incorporating a pedestrian crossing at grade adjacent to the original crossing and add a pedestrian gate as well as a push gate as an improvement to the original crossing. Mr. Terry's advice to the CPUC was to submit a formal General Order 88-B application for a new crossing but the CPUC

representative indicated that the Commission would not approve it. Discussion followed regarding current pedestrian access and signage.

Action Taken

Mr. Domen moved to approve issuing an easement to the City of La Mesa for sidewalk and retaining-wall improvements along Spring Street contingent upon the MTS CEO's satisfaction regarding the resolution of all necessary safety enhancements/improvements related to pedestrian crossings. Mr. Jablonski seconded the motion, and it was unanimously approved.

c. Licenses for Aerial Fiber East of Campo

Tim Allison reviewed AT&T's request for licenses for aerial fiber-crossing within the SD&AE right-of-way east of Campo. He added that the poles exist and the plan is to overlap new fiber to the existing lines because the capacity is running low. Mr. Allison stated that the action would grant an amended/restated license for aerial telephone and fiber lines.

Action Taken

Mr. Domen moved to approve licenses for aerial fiber-crossing within the SD&AE right-of-way east of Campo. Mr. Jablonski seconded the motion, and it was unanimously approved.

d. Campo Indian Band Renewable Energy Project

Mr. Allison presented this item for direction from the Board regarding a proposal by Archer Cleantech, Inc. (Archer) and the Campo Band of Mission Indians (Campo) for a renewal-energy project on Campo lands, which would require routing a private transmission line through existing Desert Line right-of-way. Mr. Allison introduced Paul Blaha with Archer and Marcus Cuero with the Campo Tribal Council. Mr. Allison stated that the SD&AE Board was presented a few years ago with a similar request from a company called Soitec; however, that project was never completed. He stated that this current project has a lot of momentum and would include wind and solar energy. Mr. Allison added that the parties wanted to find out if SD&AE was amenable to such a project before putting forth a lot of money. Mr. Blaha defined the areas noted on the attachment to the agenda item. Mr. Allison discussed the areas on the attachment where Baja Rail may potentially operate, which would require that there be certain agreements in place in regard to engineering and any necessary regulatory actions. He added that staff wants to have the ability to negotiate with Archer through the regulatory process.

Discussion followed regarding the location of the proposed aerial lines and potential issues in relation to the proximity of the railroad. Mr. Blaha discussed next steps, which include applying to join a CAL ISO Study by April 30 that—if approved—would give Archer permission to study the project further and work through engineering scenarios.

Mr. Jablonski stated that he does not have any problem with further studies, but he has concern with a one-sided study; he would want to know if there were any downsides that may not be recognized. Mr. Allison responded that could be part of the action, and Dan Davis could be brought in to conduct a study (that Archer would need to fund).

Mr. Blaha confirmed for Ms. Landers that the CAL ISO Study is a requirement for the connectivity, which would be basically at or near the right-of-way. The connectivity is not a physical connection, but it is something that needs to be studied. He also clarified that Archer has already confirmed the feasibility of the project to be the best solution and is satisfied with the economic potential.

Ms. Landers stated that we would need to scope out the questions that we have from a railroad standpoint regarding studies and funding. Mr. Jablonski added that an agreement would be necessary before proceeding. Mr. Allison stated that the value would need to be determined as well during negotiations. Mr. Blaha acknowledged a request from Mr. Jablonski to look into the economics of using conduit. Mr. Jablonski reiterated the need to understand any of the downsides to the project. Ms. Landers added that consideration must also be given to any future double-tracking and the fact that there would need to be enough room in the right-of-way to operate.

#### Action Taken

Informational item only. No action taken.

#### 7. Board Member Communications

Ms. Landers confirmed for Board members that Baja Rail will attend future meetings and give quarterly reports.

#### 8. Public Comments

There were no additional public comments.

#### 9. Next Meeting Date

The next meeting of the SD&AE Railway Company Board of Directors is on July 11, 2017.

#### 10. Adjournment

The meeting was adjourned at 10:05 a.m.

  
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President  
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General Counsel