



**SAN DIEGO & ARIZONA
EASTERN RAILWAY
COMPANY**

A NEVADA NONPROFIT
CORPORATION

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BOARD OF DIRECTORS
PAUL JABLONSKI, CHAIRPERSON
MATT DOMEN
JARED GOOCH

OFFICERS
PAUL JABLONSKI, PRESIDENT
MATT DOMEN, SECRETARY
ERIN DUNN, TREASURER

LEGAL COUNSEL
KAREN LANDERS

AGENDA

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

July 11, 2017

9:00 a.m.

Executive Committee Room
James R. Mills Building
1255 Imperial Avenue, 10th Floor

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please call the Clerk of the Board at least five working days prior to the meeting to ensure availability. Assistive Listening Devices (ALDs) are available from the Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

ACTION RECOMMENDED

1. Approval of the Minutes of April 18, 2017
Action would approve the SD&AE Railway Company Minutes of April 18, 2017. Approve
2. Statement of Railway Finances (Erin Dunn) Informational
3. Report on San Diego and Imperial Valley (SD&IV) Railroad Operations (Matt Domen) Informational
4. Report on Pacific Southwest Railway Museum (Diana Hyatt) Informational
5. Report on the Desert Line Informational
6. Proposed Revisions to MTS Board Policy No. 12 (Ownership and Operation of the San Diego and Arizona Eastern Railway) (Karen Landers)
Action would approve the proposed revisions to MTS Policy No. 12 (Ownership and Operation of the San Diego and Arizona Eastern Railway) and forward a recommendation to the MTS Board of Directors for final approval and adoption of the policy. Approve
7. Real Property Matters (Tim Allison)
 - a. Summary of SD&AE Documents Issued Since April 18, 2017 Informational
 - b. CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 54956.9(d)(1) CHRIS REIMER v. THE CITY OF NATIONAL CITY, ET AL., SCSC CASE NO. 37-2015-00038580-CU-PO-CTL Possible Action
8. Board Member Communications
9. Public Comments
10. Next Meeting Date: October 10, 2017
11. Adjournment

DRAFT 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 20th 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 1st 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 exempted 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 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 at 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 renewable-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.

President

General Counsel

2017-4-18 Draft SDAE Minutes.doc

Agenda Item No. 2

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

July 11, 2017

SUBJECT:

STATEMENT OF RAILWAY FINANCES

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a financial report for the period ending May 31, 2017.

Budget Impact

None.

DISCUSSION:

Attached are SD&AE's financial results for the period ending May 31, 2017.

As of May 31, 2017, fiscal year-to-date revenues are \$992,000 favorable to budget primarily due to the Desert Line Lease revenue not included in the budget.

Fiscal year-to-date expenses are \$10,000 favorable to budget due to favorable variances in Personnel Costs and Outside Services, which is partially offset by \$71,000 in past-due property taxes.

The Net Income for the period ending May 31, 2017, was \$869,000.

Attachment: SD&AE Operating Statement for period ending May 31, 2017

SD&AE Operating Statement FY2017-16

	FY 2016					
	Q1 Actual	Q2 Actual	Q3 Actual	Q4 Actual (Apr - May)	YTD Actual (Jul - May)	YTD Budget (Jul - May)
	Q1 Actual	Q2 Actual	Q3 Actual	Q4 Actual (Apr - May)	YTD Actual (Jul - May)	Variance
Revenues						
Right of Entry Permits	\$ 3,000	\$ 12,999	\$ 3,600	\$ 3,225	\$ 22,824	\$ (3,863)
Lease Income	19,103	19,019	24,311	14,471	76,904	8,538
Desert Line Lease Revenue	250,000	250,000	250,000	166,667	916,667	916,667
Operator Income - SD&IV 1% Freight Fee	8,500	8,500	25,487	6,200	48,687	25,687
Misc. Revenue (Cure of Default - DL lease assignment)	-	-	-	45,000	45,000	45,000
Total Revenue	280,603	290,518	303,398	235,563	1,110,081	992,028
Expenses						
Personnel Costs	2,752	4,347	6,959	5,744	19,802	21,278
Outside Services	14,059	1,830	39,826	79,708	135,424	59,836
Risk Management	3,762	4,177	3,744	2,195	13,877	99
Misc. Operating Expenses	1,146	-	-	71,000	72,146	(71,000)
Total Expense	21,719	10,354	50,529	158,647	241,249	10,213
Net Income/(Loss)	\$ 258,884	\$ 280,163	\$ 252,869	\$ 76,916	\$ 868,832	\$ 1,002,241
Reserve Balance July 1, 2016	\$ 1,581,452					
Allocated Interest Earnings - Estimated	9,167					
Operating Profit/(Loss) - YTD	868,832					
Less Desert Line Lease Revenue	(916,667)					
Reserve Balance as of May 31, 2017	\$ 1,542,784					

Agenda Item No. 3

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

July 11, 2017

SUBJECT:

REPORT ON SAN DIEGO AND IMPERIAL VALLEY (SD&IV) RAILROAD OPERATIONS

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

An oral report will be given during the meeting.

Attachment: Periodic Report for the 2nd Quarter of 2017



SD&AE Board
C/O MTS
1255 Imperial Avenue, Suite 1000
San Diego, California 92101

June 22, 2017

Periodic Report

In accordance with Section 20 of the Agreement for Operational Freight Service and Control through Management of the San Diego and Arizona Eastern Railway Company activities of interest for the 2nd Quarter of 2017 are listed as follows:

1. Labor

At the end of June 30, 2017 the San Diego & Imperial Railroad had 9 employees:

- 1 General Manager
- 1 Trainmaster
- 1 Manager - Marketing & Sales
- 1 Office Manager
- 1 Mechanical Manager
- 1 Maintenance of Way Employee
- 3 Train Service Employees

2. Marketing

Volume in the 2nd Quarter had a 39% decrease as compared to the same quarter in 2016. Bridge traffic into Mexico had a 57% decrease due to the loss of LPG traffic to modal competition. Traffic terminating or originating on the SDIY was up 28% versus last year due to additional traffic handled at the San Ysidro transload facility.

3. Reportable Injuries/Environmental

Days through year to date, June 30, 2017, there were no FRA Reportable injuries or Environmental incidents on the SDIV Railroad.

Days FRA Reportable Injury Free: 7392

4. Summary of Freight

	2017	2016	2015
Total rail carloads that moved by SDIY Rail Service in the quarter.	981	1601	1030
Total railroad carloads Terminating/Ori­ginating Mexico in the quarter.	549	1263	687
Total railroad carloads Terminating/Ori­ginating El Cajon, San Diego, National City, San Ysidro, California in the quarter.	432	338	343
Total customers directly served by SDIY in the quarter	10	11	12
Regional Truck trips that SDIY Railroad Service replaced in the quarter	2943	4803	3090

Respectfully,

Matt Domen

General Manager

Agenda Item No. 4

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

July 11, 2017

SUBJECT:

REPORT ON PACIFIC SOUTHWEST RAILWAY MUSEUM

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

A report will be presented during the meeting.

Attachment: Not submitted in time for mail-out

Agenda Item No. 5

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

July 11, 2017

SUBJECT:

REPORT ON THE DESERT LINE

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

A report will be presented during the meeting.

Attachment: Not submitted in time for mail-out

Agenda Item No. 6

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

July 11, 2017

SUBJECT:

PROPOSED REVISIONS TO MTS BOARD POLICY NO. 12 (OWNERSHIP AND OPERATION OF THE SAN DIEGO AND ARIZONA EASTERN RAILWAY) (KAREN LANDERS)

RECOMMENDATION:

That the SD&AE Board of Directors approve the proposed revisions to MTS Policy No. 12 (Ownership and Operations of the San Diego and Arizona Eastern Railway) and forward a recommendation to the MTS Board of Directors for final approval and adoption of the policy.

Budget Impact

None.

DISCUSSION:

MTS staff is proposing updates to Board Policy No. 12, "Ownership and Operation of the San Diego and Arizona Eastern Railway Company". The purpose of the modifications is to update the policy to reflect the current freight operators and related business practices in particular for the Desert Line.

Attachment: Proposed Revisions to Policy No. 12 (red-line version)



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
619/231-1466
FAX 619/234-3407

Policies and Procedures

No. 12

SUBJECT:

2/12/047/20/2017

Board Approval:

OWNERSHIP AND OPERATION OF THE SAN DIEGO AND ARIZONA EASTERN
RAILWAY COMPANY

PURPOSE:

To establish a method for handling matters relating to the management, operations, administration, and property of the San Diego and Arizona Eastern (SD&AE) Railway Company. (SD&AE).

BACKGROUND:

~~The~~In 1979, the San Diego Metropolitan Transit System (MTS) purchased SD&AE as a means of assuring right-of-way for actual and proposed light rail transit (LRT) projects. FreightAs required by federal law, MTS is responsible for maintaining freight service is continued by contract over on portions of the SD&AE right-of-way by RailTex, Inc. MTS does not directly operate freight service. Instead, through its subsidiary, San Diego Imperial Valley Railroad Company, Inc. (collectively referred to as "SD&IV"). MTS alsolease or operating agreements, MTS contracts with San Diego Trolley, Inc. for passenger service-out freight service rights and obligations to third party railroads.

1. Ownership and Control. SD&AE is a nonprofit public benefit corporation registered in the State of Nevada. MTS is the sole ownermember of the SD&AE. SD&AE is an exempt organization under Internal Revenue Code section 501(c)(3). SD&AE has no separate staff or employees. MTS provides all staff resources for the benefit of SD&AE. The MTS Board of Directors has appointed the MTS Chief Executive Officer as the President of SD&AE. Unless otherwise



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

stated herein, matters for SD&AE should comply with applicable MTS Board Policies covering MTS actions and authority.

2. Freight Operations-Carrier Contracts.

a. Main Line (12th & Imperial to San Ysidro), Orange Line, and Coronado Branch: Through an "Agreement for the Operation of Freight Service and Control through Management," dated March 8, 1984, as amended, SD&AE and MTS contracted contract with RailTex San Diego & Imperial Valley Railroad (SD&IV) to operate freight service over the SD&AE Main Line, Orange Line and to manage the SD&AE. RailTex, Inc., with the consent of MTS, assigned its contract to SD&IV. Coronado Branch . The Coronado Branch is not currently operational.

3. Transit Passenger Operations. The agreement between SD&AE, MTS, and RailTex for the operation of freight service excludes passenger operations. Where trackage is jointly used by passenger and freight operations the agreement states, "MTS, through San Diego Trolley, Inc., shall have exclusive dispatching control, provided that reasonable provisions shall be made for orderly, scheduled freight service during nighttime "window" or such other times acceptable to San Diego Trolley, Inc. so as not to unreasonably interfere with the Operating Company's obligation to maintain effective freight service."

b. Desert Line. Through an agreement dated December 21, 2012, as amended, MTS and SD&AE contracted with Baja California Railroad, Inc. (BJRR) to operate freight service and maintain the Desert Line.

c. Substitution of Freight Contractors. From time to time, through negotiation or through exercise of contractual or legal rights, an individual freight contractor may be replaced. SD&IV and BJRR are collectively referred to in this Policy No. 12 as the "Freight Contractors". In the event SD&IV or BJRR are replaced as a freight contractor on an MTS railroad line, the replacement contractor shall be considered a "Freight Contractor" under this Policy No. 12.

3. Transit Passenger Operations. MTS has expressly reserved the right to operate passenger services on the SD&AE right-of-way. MTS currently operates passenger service on the Main Line and the Orange Line portions of the SD&AE right-of-way. Because the Main Line and Orange Line trackage is jointly used by freight and passenger operations, the Federal Railroad Administration (FRA) has imposed a temporal separation between freight (heavy rail) and trolley (light rail) services. Freight is provided with an absolute block of track usage nightly. MTS and SD&IV may agree to revise the absolute block days and / or times by mutual agreement so long as it is compliant with federal law.

4. Management of the SD&AE Board of Directors. The Board of Directors of SD&AE is composed of three members: a representative of MTS, to be selected by MTS (currently the Chief Executive Officer or his designated representative) and two representatives of SD&IV, to be selected by SD&IV. In the event that SD&IV defaults with regard to freight operations, MTS (as the owner of the SD&AE) has the right to remove SD&IV directors on the SD&AE Board and

replace them with MTS directors. SD&IV provides management for SD&AE. It is contemplated that SD&AE will function as a land-holding company as opposed to acting as an operator ~~the Freight Contractors~~. As set forth below, the role of the SD&AE Board of Directors is to advise and consult with MTS regarding proposed projects or uses that may impact both freight and passenger services, and to authorize the SD&AE President to take certain actions. As the sole member / owner of SD&AE, the MTS Board of Directors may directly approve actions and projects affecting SD&AE right-of-way or other assets and liabilities.

5. SD&AE Business Operations. It is contemplated that SD&AE will function as a land-holding company as opposed to acting as a railroad operator.

POLICY:

1. Management Relationships—Freight Operations. MTS has no immediate involvement in the day-to-day management of freight operations by ~~SD&IV~~ its Freight Contractors. All matters concerning freight shippers, the quality of freight service, the maintenance of the freight right-of-way, freight operator labor and freight management will be handled by ~~SD&IV~~ the Freight Contractors, and all problems relating thereto will be referred thereto by MTS without action.

The foregoing notwithstanding, as a public agency, MTS may be subject to criticism by the public for freight operations conducted over the SD&AE right-of-way. MTS can be expected to request certain actions or make certain recommendations to ~~SD&IV~~ the Freight Contractors to preserve a positive quality of freight service and community confidence in MTS and ~~SD&IV~~ the Freight Contractors. MTS will in such instances endeavor:

- (a) to work with ~~SD&IV~~ Freight Contractors;
- (b) To identify ~~SD&IV~~ or BJRR as the action agent in all public communications and actions; and
- (c) only in extreme cases involving public safety or dereliction of service responsibility seek direct action from the Boards of Directors of SD&AE and/or MTS.

2. Management Relationships—Joint Operations and Right-of-Way Matters. As the owner of SD&AE, MTS will have the final decision in all matters involving joint operation and right-of-way. ~~The desires/needs of SD&IV as freight operator~~ the Freight Contractors and ~~the desires of San Diego Trolley, Inc. as transit~~ MTS trolley passenger operator operations will, at all times, be given full consideration. ~~Through SD&AE, MTS may take actions affecting the operational status of the joint passenger/freight corridors (actual or proposed) and the physical status of all corridors only with.~~ Subject to the full prior knowledge and consent of MTS. ~~Such Freight Contractors contractual rights, such~~ actions will may include but not be limited to:

- (a) The granting, changing, or canceling of easements and other rights affecting the right-of-way.
- (b) Changes in scheduled freight operations, equipment, and maintenance that might impact passenger operations, safety, and service.
- (c) The negotiation and agreement with local government entities and agencies on matters concerning grade crossings, street improvements or changes, bicycle paths, pedestrian access, and public safety.
- (d) The location, construction, and content of advertising structures.
- (e) The review of adjacent improvements (subdivisions, rezonings, construction of industrial facilities and shopping centers, recreational facilities, etc.) that might impact passenger operations directly or indirectly through constraints imposed on passenger or freight operations. SD&IVThe Freight Contractors shall work with the MTS staff in all matters where the SD&AE is the legal entity entering agreements, granting rights, making concessions, reviewing proposals, or otherwise interacting with the community.

In the event that MTS staff and SD&IV staff are unable to reach an agreement, the matter, with 3. SD&AE Board action, will be referred to the MTS Board of Directors and the SD&IV Board of Directors for resolution within the scope and authority legally residing with the various parties to the dispute.

SD&AE Board Meetings.

3. SD&AE Monitoring by MTS.

- (a) Participation on Board. Board membership on the SD&AE gives MTS management a direct line of communication on all significant matters relating to the SD&AE.
- (b) Quarterly Reports to MTSSD&AE Board. OnSD&AE Board meetings are scheduled on a quarterly basis, SD&IV management is required to. At each SD&AE Board meeting, the Freight Contractors shall report items of significance as they affect the SD&IV and its operations toSD&AE, MTS or the obligations under the Freight Contractors' agreements with MTS.
- (c) Monthly Review Reports to SD&AE Board. MTS staff willand the Freight Contractors shall confer with SD&IV staff on a regular basis, such conferences to include a review of on the following areas of concern, and report on such items at each SD&AE Board meeting:
 - (1) Cash-flow problems/financial status.

- (2) Requests for changes, additions, deletions of easements and other rights affecting the right-of-way, and physical assets of the SD&AE.
- (3) Maintenance of way activities.
- (4) Customer complaints.
- (5) Schedule adherence/problems.
- (6) Freight moved.
- (7) Customers gained/lost.
- (8) Capital investment activities.
- (9) Marketing efforts.
- (10) Labor relations/employment level.
- (11) Community relations—noise, crossings, accidents, repair upgrading requests, easements/property requests.
- (12) Results of Federal Railroad Administration (FRA)/Public Utilities Code (PUC) Inspections.
- (13) Other areas of concern.

(d) ~~MTS or its representatives shall have the unrestricted right at all reasonable times to inspect and audit the physical properties, books, and records of SD&AE and the SD&IV, and the physical properties, books, and records of the freight and transit operators, which are pertinent to SD&AE freight and/or transit operations.~~

~~Audits, reviews, and/or inspections will be conducted at least once a year.~~

PROCEDURES:

1. Matters Related to Freight Operations. All inquiries, requests, complaints, and suggestions concerning freight operations received by MTS will routinely be referred to ~~SD&IV~~the Freight Contractors by MTS. ~~SD&IV~~Freight Contractors' management will, to the extent possible and subject to limitations of this policy and the written ~~agreement~~agreements between the parties, resolve the matter directly with the initiator without participation by MTS. MTS will not be or become an ombudsman in freight matters. However, public safety or other public considerations may ~~indicate~~require MTS involvement from time to time; for example, as a mediator or communications conduit. The delicate balance required is to show MTS acting responsibly and constructively while not undermining the authority of ~~SD&IV~~the Freight Contractors as the action agent.

2. Matters Related to Joint Operations and Right-of-Way Considerations. All inquiries, requests, complaints, suggestions, and actions to be taken with regard to transit passenger operations and joint-track operations will be referred to San Diego Trolley, Inc/MTS.
3. Processing Applicants/Applications Affecting SD&AE or MTS Property. All applications and requests relating to SD&AE or MTS property will be referred to MTS staff for initial review, recommendation, and processing:
 - (a) All applications that seek rights to construct items such as utilities, drainage structures, roadway improvements/widening, signs, or freight leads will be reviewed by MTS staff.
 - (1) All applications that may affect ~~other SDTI or SD&IV Freight Contractor~~ operations will be referred in writing by MTS staff to SDTI and SD&IV Freight Contractors with replies in writing requested by a specific date.
 - (2) Applications viewed favorably by the applicable staffs shall be referred to the Board of Directors of SD&AE for implementation and final endorsement by the MTS Board of Directors or the Board's designated designee.
 - (3) Where appropriate, general counsel for MTS and the MTS insurance consultant will review proposed actions and comments and/or make recommendations.
 - (4) ~~Where circumstances dictate expedited handling, the MTS Chief Executive Officer may, with consent of SD&IV management, grant a temporary right of entry if~~(4) For routine right-of-entry permits or revocable real property rights, the SDAE President may execute real property permits and agreements upon a determination that the applicant's activity will not be detrimental to freight and/or transit operations and/or safety. All permits or agreements issued shall be reported at the next scheduled SD&AE Board meeting.
 - (5) All final agreement documents between SD&AE and/or SD&IV management and applicants will be reviewed by MTS general ~~counsel~~General Counsel before execution. Such agreements will utilize standard forms and conditions where possible.
 - (6) MTS staff will maintain a log of all applications. Staff will ensure that prompt action is taken at each step so that applications may be promptly processed.
 - (7) MTS shall establish and charge applicants fees for such processing, based upon the actual costs incurred, as determined by the ~~Director of Engineering and Construction.~~ Such fees shall

be waived when the applicant is SD&IV or SDT MTS Board Policy No. 50.

4. Use of Fees Paid by SD&IV and Railway Museum. Such fees shall be reserved by MTS in a rail improvement fund and made available to SD&AE for such capital improvements and other rail uses as may, from time to time, be recommended by SD&IV and approved by MTS. Monies existent in this rail improvement fund shall be invested in accordance with MTS's applicable statutes and the interest earned on the invested money shall accrue to the fund. These fees paid by the Railway Museum shall be used on capital improvements and other rail uses within the areas or properties licensed for museum use.
4. Ratification of SD&AE Actions by MTS Board. All reports and actions taken by the SD&AE Board shall be presented for ratification at the next scheduled MTS Board meeting.

POLICY.12.OWNERSHIP OPERATION SDAE RAILWAY CO
7/11/06

Original Policy adopted on 1/14/80.

Policy revised 2/28/83.

Policy revised 10/18/84.

Policy revised 6/25/92.

Policy revised/renumbered on 2/12/04.

Policy revised on 7/20/17.

Agenda Item No. 7a

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

July 11, 2017

SUBJECT:

SUMMARY OF SD&AE DOCUMENTS ISSUED SINCE APRIL 18, 2017

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

Since the April 18, 2017, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-16-657: Right of Entry Permit to the City of La Mesa for its Flag Day Parade.
- S200-17-658: License agreement with Pacific Bell for aerial fiber crossings east of Campo in San Diego County.
- S200-17-660: Right of Entry Permit to West Coast General Co. for construction of the North Avenue Crossing in the City of Lemon Grove.
- S200-17-661: Right of Entry Permit to Kunzik & Sara Construction, Inc. for construction adjacent to the right-of-way south of Wagner on Marshall Avenue in the City of El Cajon.
- S200-17-662: Right of Entry Permit to the San Diego County Bicycle Coalition for the 2017 Bike the Bay event.
- S200-17-663: Right of Entry Permit to the Navy SW Morale Welfare & Rec for the 30th Annual Bay Bridge Run.