



**SAN DIEGO & ARIZONA
EASTERN RAILWAY
COMPANY**

A NEVADA NONPROFIT CORPORATION

1255 IMPERIAL AVENUE, SUITE 1000
SAN DIEGO, CA
92101-7490
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BOARD OF DIRECTORS

WAYNE TERRY, CHAIRPERSON
MATT DOMEN
DAVID FRANKLIN, JR.

OFFICERS

SHARON COONEY, 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

October 5, 2021

9:00 a.m.

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

****Meeting will be held via Zoom****

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.

*Virtual meeting instructions can be accessed by clicking on "Meeting Link and Webinar Instructions" at the following link: <https://www.sdmts.com/about-mts-meetings-and-agendas/sdae>. Click the following link to access the meeting: <https://us02web.zoom.us/j/83777653100>.

ACTION RECOMMENDED

1. Approval of the Minutes of July 13, 2021 Approve
Action would approve the SD&AE Railway Company Minutes of July 13, 2021.
2. Statement of Railway Finances (Erin Dunn) Informational
Action would receive a report for information.
3. Report on San Diego and Imperial Valley (SD&IV) Railroad Operations (Matt Domen) Informational
Action would receive a report for information.
4. Report on Pacific Southwest Railway Museum (Diana Hyatt) Informational
Action would receive a report for information.
5. Report on the Desert Line (Karen Landers) Informational
Action would receive a report for information.
6. Real Property Matters (Heather Furey) Informational
 - a. Summary of SD&AE Documents Issued Since July 13, 2021.
7. San Diego and Arizona Eastern Railway Company Board of Directors Meeting Schedule – Amendment to Bylaws to Hold One Annual Board of Directors Meeting Per Year (Karen Landers) Approve
Action would approve an amendment to the *Meetings Section 3.06* of the "Bylaws of the San Diego & Arizona Eastern Railway Company" to require one annual SD&AE Board of Directors meeting per year and to update the location of such meetings.

8. Board Member Communications
9. Public Comments
10. Next Meeting Date: To be determined.

DRAFT MINUTES

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

July 13, 2021

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 July 13, 2021, at 9:00 a.m. via Zoom and in person.

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

San Diego Metropolitan Transit System:	Tim Allison, Erin Dunn, Karen Landers
Pacific Southwest Railway Museum:	Diana Hyatt
Other:	Reena Deutsch, Jim Lundquist, Tim Garrett

1. Approval of Minutes

Mr. Domen moved to approve the Minutes of the February 25, 2021, SD&AE Railway Board of Directors meeting. Mr. Gooch seconded the motion, and it was unanimously approved.

2. Statement of Railway Finances

Ms. Dunn reviewed Statement of Railway Finances (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 second quarter of 2021 (attached to the agenda item).

Action Taken

Informational item only. No action taken.

4. Report on Pacific Southwest Railway Museum Operations

Ms. Hyatt reviewed the Pacific Southwest Railway Museum (PSRM) report for the first and second quarters of 2021, which includes January through June 2021 (attached to the agenda item). Ms. Hyatt added that PSRM rebuilt the east end abutment of the bridge at Division (this information was not included in the report).

Action Taken

Informational item only. No action taken.

5. Report on the Desert Line

Ms. Landers reported that about 18 months of negotiations were unsuccessful in coming to a mutual agreement to cure Baja California Railroad's (BJRR's) default under the Desert Line Lease. BJRR had been in default since the January 2020 missed payment (before the pandemic started) and has continued to be in default to this day.

On June 21, 2021, MTS formally terminated a mediation process that it had been in with BJRR, and MTS reaffirmed its earlier termination of the lease.

Ms. Landers explained that BJRR is objecting to the termination, so MTS is still in limbo as to how to validate that action so that MTS can move forward completely. MTS is working on how to unwind the agreement. She added that MTS will be going out on the Desert Line to document its current condition and then meet with SANDAG, Caltrans, and other stakeholders to review options to move the Desert Line project forward outside of the agreement that MTS had with BJRR.

Action Taken

Informational item only. No action taken.

6. Real Property MattersSummary of SD&AE Documents Issued Since February 25, 2021

Since the February 25, 2021, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-21-752: Purchase and Sale Agreement with SLF – Moss Street, LLC, to quitclaim a spur easement at Moss Street in the City of Chula Vista.
- S200-21-754: Easement quitclaim at Moss Street in the City of Chula Vista.
- S200-21-755: Right of Entry Permit to EDM International, Inc. for anchor inspections on behalf of SDG&E at various locations.
- S200-21-756: Right of Entry Permit to Group Delta Consultants to perform soil sampling along the Coronado Branch for the Bayshore Bikeway Segment 5 Project in the City of National City.
- S200-21-757: Right of Entry Permit to VCI Construction to construct underground fiber conduits along Commercial Street at 25th Street in the City of San Diego.
- S200-21-758: Right of Entry Permit to Southwest Pipeline & Trenchless Corp. to rehabilitate existing underground sewer pipelines and manholes at 54th Street in the City of San Diego.
- S200-21-759: Right of Entry Permit to Kimley-Horn and Associates, Inc. to perform visual inspections at 8th Street in the City of National City.

- S200-21-760: Right of Entry Permit to AirX Utility Surveyors, Inc. to perform potholing to locate utilities at 30th Street in the City of San Diego.
- S200-21-762: Right of Entry Permit to Southern California Railway Museum to remove a decommissioned traction power substation at F Street in the City of San Diego.
- S200-21-764: Right of Entry Permit to Casa Familiar, Inc. for a 5k walk event at Smythe Crossing in the City of San Diego.

Action Taken

Informational item only. No action taken.

7. Election to Fill Board Member Position

Mr. Terry acknowledged Mr. Gooch's contributions on the SD&AE Board over the past few years. Mr. Gooch thanked the Board and added that he has moved to South Dakota.

Ms. Landers clarified that under the agreement with Genesee and Wyoming (GW), GW selects two SD&AE Board members and MTS selects one SD&AE Board member. Today's action would forward a recommendation to the MTS Board of Directors at its next meeting to elect David Franklin, Jr. to replace Mr. Gooch.

Mr. Domen moved to forward a recommendation to the MTS Board of Directors to elect David Franklin Jr. with Genesee and Wyoming as an SD&AE Board member to replace Jared Gooch. Mr. Gooch seconded the motion, and it was unanimously approved.

8. Board Member Communications

Mr. Terry stated he will follow-up today for Mr. Domen as to when use of the double-track can begin by getting in contact with engineering because they were going to have a consultant look at the area with the slope issues in El Cajon.

Mr. Gooch thanked members for his time on the Board and for everyone's professionalism. Mr. Terry responded that it has been good working with Mr. Gooch, and Ms. Landers thanked him for his cooperation with the meeting schedules.

9. Public Comments

There were no public comments.

10. Next Meeting Date

The next meeting of the SD&AE Railway Company Board of Directors is on Tuesday, October 5, 2021.

11. Adjournment

The meeting was adjourned at 9:11 a.m.

Chairperson

General Counsel

2021-7-13 SDAE Draft Minutes

Agenda Item No. 2

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

October 5, 2021

SUBJECT:

STATEMENT OF RAILWAY FINANCES

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a financial report for the year ending June 30, 2021, and preliminary report for the quarter ending September 30, 2021.

Budget Impact

None.

DISCUSSION

Attached are SD&AE's financial results for the fiscal year ending June 30, 2021. Please note the reserve allocation is not yet final.

Fiscal year revenue was \$2,000 over budget but down \$480,000 from the fiscal year ending June 30, 2020, primarily due to \$500,000 in Desert Line Lease revenue recognized in the previous fiscal year.

Expenses were \$24,000 favorable to budget primarily due to a positive variance in Risk Management costs. Compared to the fiscal year ending June 30, 2020, expenses were up \$24,000 primarily due to an increase in Outside Services.

The Net Income for fiscal year 2021 was \$46,000.

Staff has begun the first quarter fiscal year 2022 process and Attachment B represents preliminary forecasted results. Revenues are expected to be \$9,000 under budget and preliminary expenses are \$54,000 favorable to budget. Final quarter end numbers will be presented at the next Board meeting.

The preliminary Net Income for the quarter ending September 30, 2021 is expected to be \$20,000.

Attachments: SD&AE Operating Statement for year ending June 30, 2021
SD&AE Preliminary Operating Statement for quarter ending September 30, 2021

SD&AE Operating Statement FY2021

	FY 2021			FY 2020	
	YTD Actual	YTD Budget	Variance	Actuals	Variance
Revenues					
Right of Entry Permits	\$ 53,419	\$ 45,000	\$ 8,419	\$ 38,958	\$ 14,461
Lease Income	83,721.87	85,000	(1,278)	78,542	5,179
Desert Line Lease Revenue	-	-	-	500,000	(500,000)
Operator Income - SD&IV 1% Freight Fee	30,956.48	36,000	(5,044)	30,647	309
	<u>30,956.48</u>	<u>36,000</u>	<u>(5,044)</u>	<u>30,647</u>	<u>309</u>
Total Revenues	\$ 168,098	\$ 166,000	\$ 2,098	\$ 648,147	\$ (480,050)
Expenses					
Personnel Costs	\$ 24,350	\$ 25,000	\$ 650	\$ 41,392	\$ 17,042
Outside Services	45,918.22	50,000	4,082	5,306	(40,612)
Risk Management	31,918.92	50,156	18,237	22,661	(9,258)
Misc. Operating Expenses	19,902.48	21,200	1,298	21,464	1,562
	<u>19,902.48</u>	<u>21,200</u>	<u>1,298</u>	<u>21,464</u>	<u>1,562</u>
Total Expenses	\$ 122,090	\$ 146,356	\$ 24,266	\$ 90,823	\$ (31,267)
Net Income/(Loss)	<u>\$ 46,008</u>	<u>\$ 19,644</u>	<u>\$ 26,364</u>	<u>\$ 557,324</u>	<u>\$ (511,316)</u>

Reserve Balance July 1, 2020	\$ 448,711
Allocated Interest Earnings - Estimated	5,650
Operating Profit/(Loss) - YTD	46,008
Gain on Sale of Property	188,950
Estimated Reserve Balance as of June 30, 2021	\$ 689,318

SD&AE Operating Statement FY2022

	FY 2022			FY 2021	
	Q1 Actual	YTD Budget	Variance	Actuals	Variance
Revenues					
Right of Entry Permits	12,525	\$ 11,250	\$ 1,275	\$ 8,554	\$ 3,971
Lease Income	18,296	21,249	(2,953)	16,876	1,420
Operator Income - SD&IV 1% Freight Fee	-	7,500	(7,500)	9,000	(9,000)
Total Revenues	\$ 30,821	\$ 39,999	\$ (9,178)	\$ 34,430	\$ (3,609)
Expenses					
Personnel Costs	\$ 2,477	\$ 6,377	\$ 3,900	\$ 1,841	\$ (636)
Outside Services	1,511	17,644	16,133	8,984	7,473
Risk Management	6,036	33,720	27,685	9,300	3,265
Misc. Operating Expenses	398	6,888	6,490	2,966	2,568
Total Expenses	\$ 10,422	\$ 64,629	\$ 54,207	\$ 23,091	\$ 12,669
Net Income/(Loss)	\$ 20,399	\$ (24,630)	\$ 45,029	\$ 11,339	\$ 9,060

Reserve Balance July 1, 2021 **\$ 689,318**

Allocated Interest Earnings - Estimated
 Operating Profit/(Loss) - YTD 20,399
 Gain on Sale of Property

Estimated Reserve Balance as of September 30, 2021 **\$ 709,717**

Agenda Item No. 3

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

October 5, 2021

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 3rd Quarter of 2021



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

September 28, 2021

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 3rd Quarter of 2021 are listed as follows:

1. Labor

At the end of September 30, 2021, the San Diego & Imperial Railroad had 8 employees:

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

2. Marketing

Volume in the 3rd Quarter had a 24% increase as compared to the same quarter in 2020. Traffic terminating on SDIY saw small growth, with the addition of one new customer. Bridge traffic into Mexico increased approximately 40%. Products linked to industrial sectors are performing well with strong agriculture products (malt & beans), steel, lumber, and LPG to Mexico.

3. Reportable Injuries/Environmental

Days through year to date, June 30, 2021, there were no FRA Reportable injuries or Environmental incidents on the SDIV Railroad.

Days FRA Reportable Injury Free: **8774**

4. Summary of Freight

	2021*	2020	2019
Total rail carloads that moved by SDIY Rail Service in the quarter.	967	781	835
Total railroad carloads Terminating/Originating Mexico in the quarter.	624	446	490
Total railroad carloads Terminating/Originating El Cajon, San Diego, National City, San Ysidro, California in the quarter.	343	335	345
Total customers directly served by SDIY in the quarter	10	9	12
Regional Truck trips that SDIY Railroad Service replaced in the quarter	2901	2343	2505

**Volumes for 3rd QTR 2021 are estimates as month end has not closed*

Respectfully,

Matt Domen

General Manager

Agenda Item No. 4

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

October 5, 2021

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: Report not submitted in time for mail-out

Agenda Item No. 5

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

October 5, 2021

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.

Agenda Item No. 6

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

October 5, 2021

SUBJECT:

SUMMARY OF SD&AE DOCUMENTS ISSUED SINCE JULY 1, 2021

RECOMMENDATION:

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

Budget Impact

None.

DISCUSSION:

Since the July 1, 2021, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-22-768: Right of Entry Permit to United States Customs & Border Protection Agency to access SD&AE property to install a barrier at the northern entrance of the Desert Line railroad crossing tunnel.
- S200-22-769: Right of Entry Permit to Clear Channel Outdoor, LLC to perform billboard maintenance at various locations within SD&AE railroad right-of-way.
- S200-21-759: Right of Entry Permit to Kimley-Horn and Associates, Inc. to perform visual inspections at 8th Street in the City of National City.
- S200-21-725: License Agreement to AT&T to install aerial fiber at railroad milepost DL 61.87.
- S200-21-724: License Agreement to AT&T to install aerial fiber at railroad milepost DL 85.92.
- S200-21-723: License Agreement to AT&T to install an underground fiber facility at railroad milepost DL 85.92 (Campo Depot)

Agenda Item No. 7

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

October 5, 2021

SUBJECT:

SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY BOARD OF DIRECTORS MEETING SCHEDULE – AMENDMENT TO THE BYLAWS TO HOLD ONE ANNUAL BOARD OF DIRECTORS MEETING PER YEAR

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors approve an amendment to the *Meetings Section 3.06* of the “Bylaws of the San Diego & Arizona Eastern Railway Company” to require one annual SD&AE Board of Directors meeting per year and to update the location of such meetings.

Budget Impact

None.

DISCUSSION:

Article 3 of the “*Bylaws of the San Diego and Arizona Eastern Railway Company*” (SD&AE) governs the Board of Directors. Section 3.06 “Meetings” provides that regular meetings of the SD&AE Board of Directors shall be held at least quarterly. MTS General Counsel is proposing amending Section 3.06 of the SD&AE Bylaws to only *require* an annual regular meeting. In order to align with the fiscal year budget calendar, staff proposes that the annual meeting be held on the second Tuesday of October, or on a date in October requested by the Board Chair. The Bylaws already provide that additional meetings may be scheduled on an as-needed basis as requested by the SD&AE President, the Board Chair, or any two Directors.

Currently, SD&AE contracted operators submit quarterly reports at quarterly SD&AE meetings as informational items. The makeup of the SD&AE Board of Directors is an advisory committee to the full MTS Board of Directors, and any actions by the SD&AE Board requires MTS Board ratification at its next meeting. MTS Policy No. 12 “*Ownership and Operation of the San Diego and Arizona Eastern Railway Company*” outlines the method for handling matters pertaining to management, operations, administration, and SD&AE property. MTS as the owner of SD&AE makes the final decision involving joint operation and right-of-way.

Any actions items needed in relation to the ownership and operation of SD&AE could go directly from staff to the MTS Board of Directors for approval. Additionally, MTS designated staff have signatory authority granted by the MTS Board of Directors under MTS Policy No. 41 (*Signature Authority*) allowing the execution of MTS documents and payment processing.

Therefore, MTS General Counsel is proposing the following amendment to Section 3.06 of the SD&AE Bylaws to hold regular meetings annually, and to update the location of such meetings:

*Section 3.06. A R*egular meetings of the Board of Directors shall be held at least ~~quarterly~~ **annually in October or November on the second Tuesday of October of each year, or on another date in October at the request of the Board Chair. Regular and special meetings shall take place at the MTS headquarters located at 1255 Imperial Avenue, 10th Floor, San Diego, or via a publicly accessible virtual format.** ~~at any place within or without the State of Nevada which has been designated from time to time by resolution of the Board or by written consent of all members of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation. Special meetings of the Board may be held either at a place so designated or at the principal office.~~

Under the *Amendments Section 5.04* of the Bylaws, it states that the “...*The Board of Directors , by a majority vote of the whole Board at any meeting, may amend these Bylaws ...*”

Attachment: Proposed Bylaw Amendment

BYLAWS OF
SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY
ARTICLE 3 - DIRECTORS

NUMBER

Section 3.06. A ~~R~~regular meetings of the Board of Directors shall be held at least ~~quarterly~~ annually on the second Tuesday of October each year, or on another date in October at the request of the Board Chair. Regular and special meetings shall take place at the MTS headquarters located at 1255 Imperial Avenue, 10th Floor, San Diego, or via a publicly accessible virtual format. ~~at any place within or without the State of Nevada which has been designated from time to time by resolution of the Board or by written consent of all members of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation. Special meetings of the Board may be held either at a place so designated or at the principal office.~~

Bylaws Amendment
10/5/2021