



## Department of Transportation Office of the Secretary

Becker-Hansen Building  
700 E. Broadway Ave.  
Pierre, SD 57501  
Phone: 605-773-3265  
FAX: 605-773-3921

TO: Government Operations and Audit Committee

FROM: Darin Bergquist  
South Dakota Department of Transportation

DATE: September 28, 2017

### **South Dakota Department of Transportation Responses to GOAC Questions** **September 2017**

1. Has Dakota Southern reported the storage of hazardous materials to the appropriate fire departments and emergency management organizations? *According to information received from the South Dakota Department of Environment and Natural Resources (DENR), Dakota Southern has reported the storage of hazardous materials to all required organizations.*

2. According to the Brule County emergency management office, there were loaded hazmat cars in the Chamberlain rail yard prior to and during the March 2017 MRC Rail Authority meeting, and the cars were discussed at that meeting. Was it Dakota Southern that told you such cars first arrived in May? *No.*

If not, who? *Department staff was first notified of the cars in storage at Kennebec by DENR. The cars in Chamberlain were still in transit to their final destination and thus were not reportable as cars in storage at that time.*

3. You responded that no party has been given permission to connect a track to the State main line in the vicinity of MP 415.8 (east of Kimball). Should permission have been obtained from the State Rail Board before a connecting track was constructed at this location? *No. The design for the MRC rehabilitation project included installation of the switch/turnout(s) at approximately MP 415.8 for the purpose of serving the planned ag facility on the north side and a planned rail park facility on the south side.*

4. You responded that you had no knowledge of a news account about State Rail Board Chairman Todd Yeaton giving consideration to building his own rail car storage facility in Kimball. Has the DOT looked into this subject since your first response to this Committee question? *Yes.*

If not, do you intend to do so? *While attending a city council meeting regarding a drainage issue, Mr. Yeaton asked a couple of questions of the council regarding the possibility of rail storage. Mr. Yeaton currently has no plans to construct a car storage facility in Kimball.*

5. Dakota Southern's lease for the MRC line and the Napa-Platte line both require Dakota Southern to keep detailed financial records and to allow the State to examine and copy these records. You indicated DOT reviewed undefined "source documentation" and it was decided an audit could not be conducted. What were the source documents? *Financial records supporting the amount of revenue received that the lease payments were based on.*

Have you encountered similar resistance from other railroads that were audited (example D&I)? *We have not encountered 'resistance' from any railroad operators in providing supporting financial information. The information provided by Dakota Southern is the most detailed provided by any operator.*

Do you have documentation from rail users, not Dakota Southern, which states that financial data is not to be released? *No.*

Are rail users in a position of being allowed to block an audit of an operator of State track? *Rail users are not a party to the lease agreements between the state/regional rail authorities/operators so they cannot 'block' potential audits of an operator.*

6. You stated that Dakota Southern's late payment this year was due to a disagreement over what constitutes car storage revenue. Does this involve cars stored on the Napa-Platte line or on the MRC line? *Napa-Platte line*

7. You indicated there is currently a disagreement between the DOT and Dakota Southern over revenue from car storage. Is there another railroad, located in another state, which is involved in the revenue earned on track belonging to South Dakota? *The state does not receive any revenue from any other railroad other than Dakota Southern on the Napa-Platte line.*

If so, please explain. *n/a*

Why did Dakota Southern decide not to conclude an agreement with the DOT? *Dakota Southern indicated to the Rail Board that they chose to move the stored rail cars to another location in order to be able to more easily access individual stored cars.*

8. You stated that to your knowledge, the State has never declined to renew a lease with a regional rail authority until it did so with the Napa-Platte Authority. Why did the State Rail Board recommend this action against the Napa-Platte Authority? *The Rail Board and Napa-Platte Regional Rail authority, following multiple meetings over a number of years and review of various proposals, disagreed as to who should be the operator on the Napa-Platte line.*

9. What State fund was used to pay for legal costs associated with the Napa-Platte Authority lease, also involving the federal Surface Transportation Board (involving the Slover & Loftus law firm and the Fletcher & Sippel law firm)? *The Rail Board retained the Slover & Loftus firm to represent the state regarding a variety of rail related issues in recent years, including those involved with the Napa-Platte line and associated Surface Transportation Board proceedings. Payment for these legal services is from the state rail fund.*

How much has been spent on legal costs associated with this issue? *\$176,670.46*

10. Did Dakota Southern earn any revenue on the Napa-Platte line during calendar years 2014, 2015, and/or 2016? *Yes. Dakota Southern earned car storage revenue on the line in both 2015 and 2016.*

11. When was the Napa-Platte Authority's lease with the State allowed to expire? *September 20, 2015*

12. What entity currently exists under State law to channel local government and/or matching federal funds for any future project involving the State owned rail line in Bon Homme and Charles Mix Counties? *Napa-Platte Regional Rail Authority*

13. Does the Napa-Platte Regional Rail Authority still exist as an entity formed by Bon Homme, Charles Mix and Yankton Counties? *Yes*

14. Dakota Southern's lease with the MRC Rail Authority, and by extension with the State, contains various obligations including the requirement that Dakota Southern observe and comply with all applicable federal, state and local laws and regulations. If it is determined that Dakota Southern has been operating in violation of law or regulation, will the DOT oppose the MRC Authority taking action to replace the company with another operator? *Any recommendation the Department might make to the Rail Board would be dependent upon the facts and circumstances of the particular situation.*