



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

STB Docket No. AB-864X

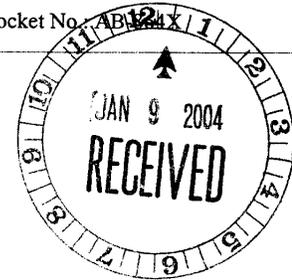
AMY KLOBUCHAR COUNTY ATTORNEY

January 6, 2004

ENTERED
Office of Proceedings

JAN - 9 2004

Part of
Public Record



The Honorable Vernon Williams
Secretary, Surface Transportation Board
1925 K Street NW
Washington D.C. 20423-0001

Re: Hennepin County Regional Railroad Authority - Abandonment of a Line of
Railroad located in McLeod, Carver and Hennepin Counties, MN, between
milepost 24.6 and milepost 68.5 (U.S. Postal Zip Codes 55323, 55350, 55354,
55356, 55360, 55361, 55364, 55367, 55375, 55381, 55384, 55387, and 55391)
- STB Docket No.: AB-864X

209817

Dear Secretary Williams:

This letter and ten copies summarizes and attaches for filing additional
environmental comments HCRRA has received subsequent to Hennepin County
Regional Railroad Authority's filing of its Environmental and Historical Report
pursuant to 49 CFR 1105 and HCRRA's response; and HCRRA's Motion for a
Protective Order for the material attached to the Motion as Exhibit D and Proposed
Protective Order attached to the Motion as Exhibit E.

I have enclosed a duplicate copy of this letter and motion and a self addressed
stamped envelope to be stamped with the filing date and returned to the undersigned.

By copy of this letter, the motion and attachments, the parties on the attached
service list are being served via U.S. Mail.

The additional environmental comments and HCRRA's response consist of the
following:

- 1) As to Paragraph 8, Biological Resources, of the Environmental Report, on page
15, HCRRA received a follow-up letter on December 26, 2003 from the U.S.
Fish and Wildlife Service, Patrick G. Carroll. Exhibit A. Prior to
implementation of future rail transportation use, the rail line upon abandonment
may be developed for interim trail use. Several of HCRRA's rail corridors that
HCRRA has acquired for future rail use support interim trail uses that are
compatible with future rail use. HCRRA's 29th Street Corridor which connects to
the Hiawatha Light Rail Transit Corridor, the Kenilworth Corridor which still
supports freight rail service, and the SW LRT Corridors which are the subject of
current rail transit studies all have interim trail uses. The Environmental Report
summarizes these corridors in Paragraph 1, Proposed Action and Alternatives,
footnote 1, contained on page 8. The U.S. Fish and Wildlife Service requests that
the Litchfield Wetland Management District Office be notified in the event trail
development occurs to ensure that the habitat adjoining the rail line will not be
disturbed.

- 2) As to Paragraph 7, Safety, of the Environmental Report, on page 15, on December 31, 2003, HCRRA received a letter from Sheryl A. Corrigan, Commissioner of the Minnesota Pollution Control Agency (MPCA). The MPCA states it is concerned about the potential environmental impacts of abandonment, in particular, proper disposal of solid and hazardous waste, asbestos, contaminated soil, storage tanks and storm water runoff. In its letter, the MPCA states that it will review the Environmental and Historic Reports prepared by HCRRA and will supply written comments. Exhibit A-1. HCRRA served these reports on the MPCA on December 23, 2003, and will also serve the MPCA with this environmental supplement.
- 3) As to Paragraph 3(i) Land Use of the Environmental Report, on page 11, HCRRA received a letter from Chris Slania, Planning Liaison of the City of Wayzata, on December 31, 2003. The City states it is "enthusiastic," "sees no adverse affects to the community" and states that the abandonment is consistent with the goals of the City's Comprehensive Plan and the proposed use of the land area. Exhibit A-2.
- 4) As to Paragraph 3(ii), Land Use of the Environmental Report, on page 11, on January 6, 2004, HCRRA received a letter from Paul Flynn, State Resource Conservationist of the USDA - Natural Resources Conservation Service. The USDA-NRCS states that the abandonment is not likely to permanently affect agricultural land, which precludes the need for further action. Exhibit A-3.
- 5) As to Paragraph 3 (i), Land Use, of the Environmental Report, on page 11, HCRRA received a follow-up letter on December 26, 2003 from the City Administrator of the City of the Village of Minnetonka Beach. Exhibit B. The City states that the proposed abandonment is not in conformance with the City's Comprehensive/Land Use Plan, which provides that the "rail line continue to be used for rail purposes." HCRRA acquired the rail line to preserve it for freight rail use if economically feasible, and to preserve the line as an intact linear corridor for future rail transportation use. Preservation of the rail line for future rail transit appears to be compatible with the City's future plans. The City appears only to have disagreement with potential interim use of the corridor for trail use prior to implementation of rail transit.

The City erroneously submits that HCRRA has not made a good faith effort to restore freight rail operations to the Line. On December 22 and 23, 2003, HCRRA provided the City with copies of documentation regarding the proposed abandonment and HCRRA's efforts to restore freight service to the Line. (The City's follow-up letter is dated December 16, 2003 and was apparently mailed prior to receiving the provided documentation). See transmittal letters contained in Exhibit 2 of the Environmental Report.

The Environmental Report at Paragraph 1, Proposed Action and Alternatives, describes the actions taken by HCRRA to resume freight rail service on the Line. HCRRA has concluded that due to the dormancy of the Line during and prior to

previous owner Dakota Rail, Inc.'s ownership, shippers had made alternative non-rail arrangements to move product, and have determined that non-rail alternatives provide greater flexibility and efficiency for their "just-in-time" material needs. The capital necessary to bring the poor condition of the rail line back to operating condition and to start rail operations anew is too substantial in comparison to the potential revenue stream that could be obtained from business on the Line.

Attached as Exhibits C-1, C-2 and D is supporting documentation of HCRRA's efforts to restore freight rail service. Included is HCRRA's Request for Lease Proposal for Lease of the Dakota Rail Line for Freight Railroad Operations (Exhibit C-1), and the list of parties expressing interest in the Line to whom the Lease Proposal was sent (Exhibit C-2). Attached as Exhibit D to the Motion for Protective Order and identified as Confidential Materials Subject to a Request for a Protective Order is a copy of the Feasibility Study for Resuming Freight Rail Operations prepared for HCRRA. Exhibit D is submitted as a separate packet attached to the Motion and marked on the outside "Confidential Materials Subject to Request for a Protective Order." The Study was available to potential operators upon entering into a confidentiality agreement to protect the contents of the Study, though no potential operator requested or received a copy of the Study.

If the STB desires additional documentation as to HCRRA's efforts to restore freight rail service, HCRRA will provide it.

If you have any questions regarding the above referenced matter, please feel free to contact me.

Sincerely,



MARILYN J. MALONEY
Assistant Hennepin County Attorney
Telephone: (612) 348-7754
FAX: (612) 348-8299

MJM:kd

Enclosure

C: Parties on the Attached Service List
Marcia Wilda

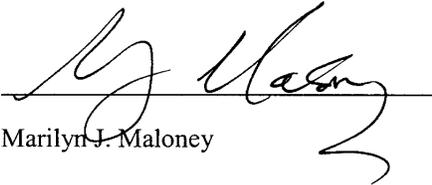
Exhibit A	Letter of U.S. Fish and Wildlife Service
Exhibit A-1	Letter of Minnesota Pollution Control Agency
Exhibit A-2	Letter of City of Wayzata
Exhibit A-3	Letter of USDA -Natural Resources Conservation Service
Exhibit B	Letter of the City of the Village of Minnetonka Beach
Exhibit C-1	Request for Lease Proposal for Freight Rail Operators
Exhibit C-2	List of Parties Expressing Interest in Line Operations
Motion for Protective Order	
Exhibit D	Confidential Materials - Feasibility Study
Exhibit E	Proposed Protective Order

CERTIFICATE OF COMPLIANCE WITH SERVICE REQUIREMENT

**OF ADDITIONAL ENVIRONMENTAL COMMENTS, HCRRA'S
RESPONSES AND MOTION FOR PROTECTIVE ORDER**

The undersigned hereby certifies that she served the foregoing letter to the STB dated January 6, 2004 containing Additional Environmental Comments, HCRRA's Responses and Motion for Protective Order as to Exhibit D for the proposed abandonment in Docket No. AB 864X via first class U.S. Mail, on January 6, 2004, as required by C.F.R. Section 1105.7 (c), to the parties listed on the attached Service List.

Dated: January 6, 2004


Marilyn J. Maloney

SERVICE LIST FOR
ENVIRONMENTAL & HISTORIC REPORT
STB DOCKET NO. AB-864X

FEDERAL AGENCIES

Appropriate Regional Office(s) of the
U.S. Environmental Protection Agency

U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Mail Code: MP-10J
Chicago, IL 60604

U.S. Environmental Protection Agency State Official

Minnesota Department of Natural Resources
500 Lafayette Rd.
St. Paul, MN 55155-4040

U.S. FISH AND WILDLIFE SERVICE

U.S. Fish and Wildlife Service
Region 3
One Federal Drive
Federal Drive
Fort Snelling, MN 55111

Scott Glup, Project Leader
Litchfield Wetlands Management District
U.S. Fish and Wildlife Service
22274 - 615 Avenue
Litchfield, MN 55355

Dan P. Stinnett, Field Supervisor
U.S. Department of the Interior
Fish and Wildlife Service
Twin Cities Field Office
4101 East 80th Street
Bloomington, MN 55425-1665

U.S. ARMY CORPS OF ENGINEERS

U.S. Army Corp. of Engineers
St. Paul District
Attn: Joe Yanta
190 5th St. East
St. Paul, MN 55101-1638

NATIONAL PARK SERVICE

National Center for Recreation and Conservation
Office of the Director
1849 C Street, NW
Washington, DC 20240

U.S. SOIL CONSERVATION SERVICE

State Conservationist-USDA Soil Conservation Service
600 Farm Credit Building
375 Jackson St.
St. Paul, MN 55101-1854

NATIONAL GEODETIC SURVEY

DOC/NOAA
National Geodetic Survey N/NGS23
Attn: Frank Maida
1315 East West Highway Station 8736
Silver Spring, MD 20910-3282

STATE AGENCIES

STATE CLEARINGHOUSE

The State of Minnesota has no designated clearinghouse

STATE DEPARTMENT OF TRANSPORTATION

Minnesota Rail Service Improvement Program
Office of Freight & Commercial Vehicle Operations
Department of Transportation
Al Vogel
1110 Centre Point Curve
Mail Stop 420
Mendota Heights, MN 55120

STATE ENVIRONMENTAL PROTECTION AGENCY

Minnesota Department of Natural Resources
500 Lafayette Rd.
St. Paul, MN 55155-4040

Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155-4194

Minnesota Office of Environmental Assistance
520 Lafayette Road
N Floor 2
St. Paul, MN 55155-4100

STATE HISTORIC PRESERVATION OFFICE

Mr. Dennis Gimmestad
Minnesota Historical Society
State Historic Preservation Office
Director, Review and Compliance Department
345 Kellogg Boulevard West
St. Paul, MN 55102-1906

**OTHER POLITICAL ENTITIES and/or INDIAN RESERVATIONS
THROUGH WHICH THE LINE RUNS**

CARVER COUNTY

Chair of Board
Carver County Board of Commissioners
600 East 4th St.
Chaska, MN 55318

Bob Hendricks
Carver County Attorney's Office
Carver County Government Center
Justice Center
600 East 4th Street
Chaska, MN 55318

HENNEPIN COUNTY

Chair of Board
Hennepin County Board of Commissioners
A2400 Government Center
300 South Sixth Street
Minneapolis, MN 55487

MCLEOD COUNTY

Chair of Board
McLeod County Board of Commissioners
830 11th St. East
Glencoe, MN 55336

Commissioner Sheldon Nies
McLeod County Regional Railroad Authority
1118 Jefferson Street South
Hutchinson, MN 55350

Ronald J. McGraw
Attorney at Law
P.O. 98
Hutchinson, MN 55350

CITY OF ST. BONIFACIUS

City of St. Bonifacius
Planning Commission
8535 Kennedy Memorial Drive
St. Bonifacius, MN 55375

CITY OF HUTCHINSON

City of Hutchinson
Planning Commission
111 Hassan Street SE
Hutchinson, MN 55350

CITY OF THE VILLAGE OF MINNETONKA BEACH

City of the Village of Minnetonka Beach
Planning Commission
Attn: Richard Krier
PO Box 146
Minnetonka Beach, MN 55361

Robert G. Mitchell, Jr. Esq.
Lindquist & Vennum P.L.L.P.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274

CITY OF MOUND

City of Mound
Planning Commission
5341 Maywood Road
Mound, MN 55634

CITY OF ORONO

City of Orono
Planning Commission
PO Box 66
Crystal Bay, MN 55323

CITY OF SPRING PARK

City of Spring Park
Planning Commission
4943 Warren Avenue
Spring Park, MN 55384

CITY OF WAYZATA

City of Wayzata
Planning Commission
600 Rice Street
Wayzata, MN 55391

METROPOLITAN COUNCIL

Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, MN 55101-1626

Jim Barton
Metropolitan Council
Mears Park Centre
230 East Fifth Street
St. Paul, MN 55101

ADDITIONAL ADDRESSEES:

STATE ENVIRONMENTAL PROTECTION AGENCY

Beth Lockwood, Supervisor, Environmental Review Unit
Minnesota Pollution Control Agency
Regional Environmental Management Division
520 Lafayette Road
St. Paul, MN 55155-4194

U.S. SOIL CONSERVATION SERVICE

Paul Flynn
State Resource Conservationist
USDA - Natural Resources Conservation Service
375 Jackson Street, Suite 600
St. Paul, MN 55101-1854

STB Docket No.: AB-864X

EXHIBIT A

ADDITIONAL ENVIRONMENTAL MATERIAL

Letter of U.S. Fish and Wildlife Service



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Bishop Henry Whipple Federal Building
1 Federal Drive
Fort Snelling, MN 55111-4056

IN REPLY REFER TO:

FWS/NWRS-RE – General

December 23, 2003

Ms. Marilyn J. Maloney
Assistant Hennepin County Attorney
C-2000 Government Center
300 South Sixth Street
Minneapolis, Minnesota 55487

Dear Ms. Maloney:

This office has been in contact with Ms. Marsha Wilden, Hennepin County, concerning the proposed abandonment of the rail line in McLeod, Carver, and Hennepin Counties, Minnesota; STB Docket No. AB-864X.

Ms. Wilden informed us that the tracks will be removed according to standard removal practices and that the rail bed will be considered for future recreational use. We do not have any concerns at this time regarding the rail line abandonment. We are requesting that our Litchfield Wetland Management District Office be notified when future trail development takes place. They will work with the relevant offices to ensure that the habitat adjoining the rail line will not be disturbed.

If you have any questions, please contact Shirley Karman, at 612/713-5105.

Sincerely,

Patrick G. Carroll
Senior Realty Officer
Division of Realty

cc: Litchfield WMD
22274 615 Ave.
Litchfield, MN 55355

STB Docket No.: AB-864X

EXHIBIT A-1

ADDITIONAL ENVIRONMENTAL MATERIAL

Letter of Minnesota Pollution Control Agency



Minnesota Pollution Control Agency

Office of the Commissioner

December 30, 2003

Ms. Marilyn J. Maloney
Assistant Hennepin County Attorney
Office of the Hennepin County Attorney
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

Dear Ms. Maloney:

Thank you for your letter dated November 25, 2003, requesting comments on potential environmental effects and applicable water quality standards regarding the proposed abandonment of a 43.9-mile rail line from milepost 24.6 at Wayzata, Minnesota to milepost 68.5 at Hutchinson, Minnesota.

The Minnesota Pollution Control Agency (MPCA) is concerned about the potential environmental impacts of this abandonment activity. Our concerns relate to the proper disposal of solid and hazardous waste, asbestos, contaminated soil and above and under ground storage tanks. Storm water runoff to adjacent surface water is also a concern. Other environmental concerns may arise as abandonment proceeds.

It is the MPCA's understanding that the Hennepin County Regional Railroad Authority (HCRRA) will prepare and submit an Environmental and Historic Report (Report) to the MPCA and the Surface Transportation Board's Section on Environmental Analysis (SEA). The SEA will use the information compiled in the Report to prepare an Environmental Assessment document that will assess the environmental impacts of the proposed abandonment, if any.

The MPCA will review the Report and Environmental Assessment and supply written comments. Please submit all documents to Beth Lockwood, Supervisor, Environmental Review Unit, Regional Environmental Management Division, MPCA. If you have questions, please contact Beth Lockwood, of my staff, at (651) 296-7780.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheryl A. Corrigan".

Sheryl A. Corrigan
Commissioner

SAC/ED:dac

cc: John Evans, Hennepin County Environmental Services
Beth Lockwood, MPCA

STB Docket No.: AB-864X

EXHIBIT A-2

ADDITIONAL ENVIRONMENTAL MATERIAL

Letter of City of Wayzata



City of Wayzata
600 Rice Street East
Wayzata, MN 55391-1799

Planning Department

December 30, 2003

Marilyn Maloney
Assistant Hennepin County Attorney
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

RE: Notice of Exempt Abandonment, Docket No. AB-864X

Dear Ms. Maloney:

This letter is in response to the correspondence the City of Wayzata received from your office regarding the abandonment of the rail line from Wayzata to Hutchinson, MN. The City is enthusiastic about the proposed alternate uses of the trail line. Due to the location and nature of this activity we see no adverse affects to the community.

This proposal is consistent with the goals of Wayzata's Comprehensive Plan and the proposed land use for the area.

Please feel free to contact me if you have any questions regarding this issue. Thank you for your time and cooperation.

Sincerely,

Chris Slania
Planning Liaison

STB Docket No.: AB-864X

EXHIBIT A-3

ADDITIONAL ENVIRONMENTAL MATERIAL

Letter of USDA - Natural Resources Conservation Service



Natural
Resources
Conservation
Service

375 Jackson Street, Suite 600
St. Paul, MN 55101-1854
Phone: (612) 602-7900
Fax: (612) 602-7914

December 30, 2003

File Code: 190-15-13

IN REPLY

REFER TO: Environmental review for Docket No. AB 864 (Sub. No. 1X) Hennepin County Regional Railroad Authority – Notice of Exempt Abandonment.

Ms. Marilyn Maloney
Assistant Hennepin County Attorney
Hennepin County Attorney's Office
A2000 Hennepin County Govt. Center
300 South Sixth St.
Minneapolis, MN 55487

Dear Ms. Maloney:

The Natural Resources Conservation Service (NRCS) has reviewed the above referenced project. The project sponsors are not USDA program benefit recipients, thus the wetland conservation provisions of the 1985 Food Security act, as amended are not applicable. It should be noted, however, that actions by a non-USDA participant third party (project sponsor) which impact agricultural wetlands owned or operated by USDA participants, may jeopardize the owner/operators USDA eligibility. If such impacts are anticipated, the owner/operator should contact the county Farm Service Agency (FSA) office to consider an application for a third party exemption.

If as a result of your proposal you are affecting agricultural lands, and if any federal monies are involved, it is a requirement that a Farmland Policy Protection Act (FPPA) site assessment be appropriately filed. Because of the location and type of activity proposed, this project is not likely to permanently affect agricultural land. This precludes the need for further action on this project as required by the FPPA. However, if the project should be modified such that agricultural lands may be permanently affected, consultation should be reinitiated.

Sincerely,

PAUL FLYNN
State Resource Conservationist

STB Docket No.: AB-864X

EXHIBIT B

ADDITIONAL ENVIRONMENTAL MATERIAL

Letter of the City of the Village of Minnetonka Beach

City of the Village of Minnetonka Beach

Mayor
James Gasch

Treasurer
Jan Dahlen

Administrator
Roxy Traxler

Council Members
Joann Anderson
David Bergerson
Jack Foss
Nell Mathews

2945 Westwood Road Mailing Address: P.O. Box 146
Minnetonka Beach, MN 55361
(952) 471-8878 (952) 471-7416 (fax)
Email: mtkabch@qwest.net

December 16, 2003

RECEIVED

DEC 26 2003

Civil Division

REC'D
DEC 24 2003
CIVIL DIVISION

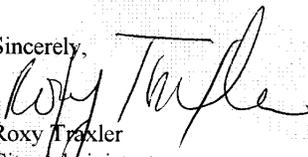
Surface Transportation Board
C/o Hennepin County Assistant Attorney Marilyn Maloney
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

**RE: Comments on Docket No. AB-864X, Hennepin County Regional Rail
Authority – Notice of Exempt Abandonment in McLeod, Carver and
Hennepin Counties, Minnesota**

The Minnetonka Beach City Council, at the December 8, 2003 meeting, passed a motion finding that the proposed abandonment is not in conformance with the City's Comprehensive Plan/ Land Use Plan.

The Comprehensive Plan adopted by the Planning Commission, City Council and approved by the Metropolitan Council on December 10, 2003 provides that the rail line continue to be used for rail purposes.

Sincerely,


Roxy Traxler
City Administrator
City of Minnetonka Beach

CITY OF THE VILLAGE OF MINNETONKA BEACH

RESOLUTION NO. 120301

A RESOLUTION MAKING FINDINGS AND DETERMINING THAT
THE PROPOSED ACTION TO ABANDON THAT PART OF HENNEPIN
COUNTY REGIONAL RAIL AUTHORITY'S RAILROAD IN THE CITY OF
THE VILLAGE OF MINNETONKS BEACH IS INCONSISTENT WITH
THE EXISTING LAND USE PLAN

Whereas, the Planning Commission has adopted a Comprehensive Plan including a land use plan dated July 10, 2002 such Plan being approved by the Metropolitan Council, and

Whereas, the Planning Commission received notice of Exempt Abandonment from the Hennepin County Regional Rail Authority on November 25, 2003, and;

Whereas, The Hennepin County Rail Authority has asked the Planning Commission to assist the Authority in identifying whether the proposed action of abandonment is consistent with the City's existing land use plan, and;

Whereas, the Hennepin County Regional Rail Authority, although requested, has not provided the Planning Commission with any information indicating that the railroad should or should not be abandoned, and;

Whereas, the Hennepin County Regional Rail Authority has not attempted to operate a railroad at any time during the last two years, and;

Whereas, Surface Transportation Board environmental regulations 49 C.F.R. part 1105 require that the Planning Commission provide comment as to consistency with the land use plan, and;

Whereas, the Planning Commission has received a report from the Planning and Zoning Administrator finding that the proposed action is inconsistent with the land use plan and other elements of the City's Comprehensive Plan.

12/23/03

STB Docket No.: AB-864X

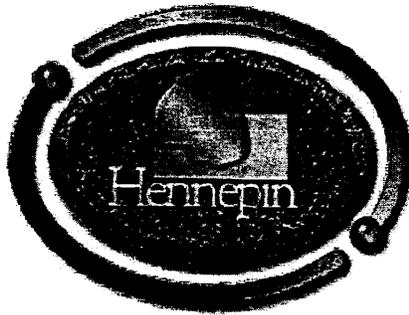
EXHIBIT C-1

ADDITIONAL ENVIRONMENTAL MATERIAL

Request for Lease Proposal for Lease of the Dakota Rail Line for Freight Railroad
Operations

REQUEST FOR LEASE PROPOSALS

**LEASE OF THE DAKOTA RAIL LINE FOR FREIGHT RAILROAD
OPERATIONS
WAYZATA TO HUTCHINSON, MINNESOTA**



ISSUED BY HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

417 North 5th Street
Minneapolis, MN 55401

LEASE OF DAKOTA RAIL LINE FOR FREIGHT RAILROAD OPERATIONS

WAYZATA TO HUTCHINSON, MINNESOTA

Purpose

This Request for Lease Proposals (RFLP) is issued by Hennepin County Regional Railroad Authority (HCRRA) to solicit proposals for lease of the Dakota Rail Line for freight railroad operations. The line is forty-four miles long and runs from Wayzata to Hutchinson, Minnesota, in the counties of Hennepin, Carver and McLeod. It is sometimes referred to as the Hutchinson Branch.

Brief History of Line

The Hutchinson Branch was originally constructed as a Great Northern Railway branch route in the late 1800's and was more recently owned by the Burlington Northern (BN) railroad. In 1985 BN abandoned the route and sold it to Dakota Rail, Inc. Dakota Rail, Inc. assumed freight rail operations and the branch became known as the Dakota Rail Line. The new owner filed for bankruptcy reorganization in 1988. While the line was in bankruptcy, it acquired new owners. The new owners sold the line to RailAmerica, Inc. in 1995. The line was embargoed in 2000, and has been dormant since that time.

In 2001, RailAmerica filed with the Surface Transportation Board a petition to abandon the line. On December 28, 2001, in cooperation with the McLeod and Carver County Regional Railroad Authorities and the State of Minnesota, HCRRA acquired the line to resume freight rail operations, if economically feasible, and to otherwise preserve the corridor for future rail service, including passenger rail. As part of the purchase agreement, Dakota Rail, Inc. (RailAmerica) has retained salvage rights to all trackage currently located on the rail corridor.

HCRRA is a political subdivision of the State of Minnesota organized under Minnesota Statutes Chapter 398A for the purpose of preserving and improving local rail service and providing for the preservation of abandoned rail right-of-way for future transportation uses. It is authorized by Minnesota Statutes 398A.04, subd. 11, to lease the line to third parties for freight rail operations. HCRRA is not an operating railroad and does not hold itself out to be so.

Proposal Process

The Lease Proposal Process will consist of two phases: a Qualifying Phase and then, for those potential lessees selected by HCRRA as finalist "Qualified Proposers," a Due Diligence Phase. HCRRA is not responsible for any costs incurred by Proposers in preparing applications for either the Qualifying Phase or Due Diligence Phase of the Proposal Process. In addition to reviewing the

relevant attachments to this RFLP, applicants may 1) submit questions in writing to HCRRA to clarify this RFLP and 2) view public information in HCRRA's possession regarding the Dakota Rail Line at HCRRA's offices in Minneapolis, Minnesota. Applicants qualified to participate in the Due Diligence Phase of the Proposal Process will also be provided with a Due Diligence Packet containing confidential marketing feasibility information regarding the Dakota Rail Line. At the conclusion of the Due Diligence Phase of the Proposal Process, HCRRA intends to negotiate with that potential lessee with whom HCRRA can make the most satisfactory arrangements to meet its needs.

Qualifying Phase of the Proposal Process

To be considered for the Qualifying Phase of the Proposal Process applicants must submit to HCRRA:

- 1) An application conforming with the Qualifying Phase Submission Requirements contained in Appendix A and the Lease Proposal Format identified below;
- 2) A signed copy of a written agreement not to contact potential shippers on the line during the Qualifying Phase of the Proposal Process, contained in Appendix A; and
- 3) A one thousand dollar (\$1,000) non-refundable fee payable to Hennepin County Regional Railroad Authority for purposes of defraying HCRRA's costs to review submissions.

Due Diligence Phase of the Proposal Process

Based upon submissions during the Qualifying Phase of the Proposal Process, HCRRA will invite those applicants, hereinafter referred to as "Qualified Proposers," that it deems, in its sole discretion, to be most suitable to participate in the Due Diligence Phase of the Proposal Process.

Qualified Proposers are expected to perform their own due diligence assessment which may include contacting potential shippers on the line, entry onto to the line by high rail upon permission from HCRRA, or other due diligence as the Qualified Proposer deems appropriate.

Qualified Proposers who return to HCRRA a signed copy of a confidentiality agreement protecting "shipper information" and "third party trade secrets" will be provided with a Due Diligence Phase Packet containing confidential market feasibility information regarding the Rail Line and identifying what additional submissions HCRRA requires for the Due Diligence Phase of the Proposal Process.

To be considered for the Due Diligence Phase of the Proposal Process, Qualified Proposers who have been invited by HCRRA to participate must submit:

- 1) A signed copy of a confidentiality agreement, a copy of which is attached hereto as Appendix B, that Proposer will be governed by the Minnesota Data Practices Act regarding "third party trade secrets" and regarding "shipper information" in accordance with 49 USC Sec. 11904; and
- 2) An application conforming with the Due Diligence Phase Submission Requirements provided by HCRRA to Qualified Proposers who have returned a signed copy of the confidentiality agreement to HCRRA.

HCRRA will review and consider all timely submitted applications from those Qualified Proposers who have submitted a signed confidentiality agreement.

HCRRA also reserves the right to solicit other applicants for the Due Diligence Phase of the Proposal Process regardless of whether or not they have participated in the Qualifying Phase.

Schedule

The anticipated completion date for selection of Qualified Proposers is **April 11, 2003**. The anticipated completion date for the Due Diligence Phase is **July 25, 2003**.

Timetable

March 4, 2003	Request for Lease Proposals sent out
March 4, 2003 to March 14, 2003	Public materials available for viewing
March 14, 2003	Written questions from prospective applicants to clarify the RFLP are due
March 21, 2003	HCRRA's response to written questions due
March 28, 2003	Qualifying Proposals with \$1,000 application fee due
March 28 to April 11, 2003	Review of Qualifying Proposals accompanied by appropriate fee and application
April 11, 2003	Invitation to submit Due Diligence Proposals made to Qualified Proposers
April 18, 2003	Request for Due Diligence Packet with signed confidentiality agreement due
April 25, 2003	Due Diligence Packet Sent to Qualified Proposers returning signed confidentiality agreement

June 27, 2003	Due Diligence Proposals by Qualified Proposers due
June 27 to July 25, 2003	Review of Due Diligence Proposals
July 25, 2003	Negotiations for lease begin with selected Due Diligence Proposer(s)
August 22, 2003	Proposed lease for freight rail operations completed

Proposals for the Qualifying Phase of the Proposal Process must be received by HCRRA no later than Friday, March 28, 2003, at 4:00 PM. Proposals received after that time will be returned unreviewed to the applicant.

Request for Due Diligence Packet with signed confidentiality agreement from applicant(s) selected as Qualified Proposers must be received by HCRRA no later than April 18, 2003, at 4:00 PM. Requests received after that time will be returned unreviewed to the applicant.

Proposals from Qualified Proposers for the Due Diligence Phase of the Proposal Process must be received by HCRRA no later than June 27, 2003, at 4:00 PM. Proposals received after that time will be returned unreviewed to the applicant.

HCRRA reserves the right to make adjustments to any element of the Timetable after providing notice to each prospective lessee who has notified HCRRA of its intent to propose.

Issuance

This RFLP is issued and administered by the Hennepin County Housing, Community Works and Transit division on behalf of HCRRA.

Inquiries, Questions

Prior to submitting applications for the Qualifying Phase of the Proposal Process, Prospective applicants may address questions to clarify this RFLP in writing to the following name and address:

Hennepin County Regional Railroad Authority
 Attn: Marcia Wilda
 417 North Fifth Street
 Minneapolis, MN 55401-1362
 Marcia.Wilda@co.hennepin.mn.us

Questions to clarify this RFLP must be received by HCRRA by 4:00 PM on Friday, March 14, 2003.

HCRRA will answer all written requests to clarify this RFLP that have been received prior to Friday, March 14, 2003, at 4:00 PM. Copies of the questions

and answers will be transmitted to each prospective lessee who has notified HCRRA of its intent to propose.

It is requested that all applicants provide their e-mail address to HCRRA in order to expedite this process. No other technical assistance will be offered by HCRRA in regard to this Request for Lease Proposals.

Additionally, prior to submitting an application for the Qualifying Phase of the Proposal Process, prospective applicants may view public information in HCRRA's possession regarding the Dakota Rail Line at HCRRA's offices in Minneapolis, Minnesota. Applicants requesting copies will be charged reasonable copying costs. To facilitate the inquiry process, prospective applicants are requested to schedule their review of materials between the hours of 9:00 AM and 4:00 PM between the dates of March 3 to March 14, 2003 by contacting Marcia Wilda by e-mail or at 612-348-8537.

Relevant Preliminary Information

Attached as Appendix C are summary materials regarding past freight railroad operations on the Line as follows:

1. Surface Transportation Board Decision Granting Exemption From Prior Approval Requirements For Abandonment, Dakota Rail, Inc.—Abandonment Exemption—In Mcleod, Carver, and Hennepin Counties, Mn, AB 472 1 X, November 29, 2001, and
2. Excerpts from submissions to Surface Transportation Board by Dakota Rail, Inc.:

Verified Statements of Robin Bergeron, General Manager of Dakota Rail, Inc.

Mark D. Garvin, Chief Engineer of RailAmerica, Inc., holding company that controlled Dakota Rail, Inc.

Limitations

The issuance of this RFLP constitutes only an invitation to submit lease proposals to HCRRA. Any proposal submitted, as provided herein, constitutes a recognition of the fact that the proposal is not a bid and is not being submitted as a part of the bid process and of the fact that HCRRA, in its sole discretion, may require negotiation of the terms of any lease for freight rail operations between HCRRA and any Proposer(s).

This RFLP does not commit HCRRA to enter into a lease for freight rail operations, to pay any costs incurred in the preparation of a proposal for this

request, to procure or contract for services or enter into a lease based upon highest rental fee to be paid to HCRRA. HCRRA reserves the right to accept or reject any or all lease proposals received as a result of this RFLP, to negotiate with all potential lessees (including those who have not participated in the Lease Proposal Process) or to cancel in part or in its entirety this RFLP, if it is in the best interest of HCRRA to do so. HCRRA reserves the right to request additional information regarding fiscal, technical or other matters relevant to proposed freight railroad operations from Qualified Proposers participating in the Due Diligence Phase of the Proposal Process.

HCRRA reserves the right to negotiate pertinent lease terms contemporaneously with any number of potential lessees as it deems in its best interest whether or not such potential lessee has submitted a proposal. It is the intent of HCRRA to enter into a lease agreement with that potential lessee with whom HCRRA can negotiate the most satisfactory arrangements to meet its needs. HCRRA may enter into negotiations for a lease for freight rail operations based on the proposals received. It is not required to discuss with any applicant any application or proposal received. Each application and proposal should, therefore, be submitted in the most favorable terms from a cost, programmatic and technical standpoint. HCRRA reserves the right not to enter into any lease for freight rail operations if in its sole discretion it determines that freight rail operations will not be economically feasible.

HCRRA reserves the right to make adjustments to any element of the Timetable after providing notice to each prospective lessee who has notified HCRRA of its intent to propose.

The HCRRA expressly reserves to itself, the Carver and McLeod County Regional Railroad Authorities and the Minnesota Department of Transportation, any and all current and future non-rail related revenues, including, but not limited to, those derived from building and vacant land leases, fiber optics, mono-poles and other telecommunications transmission facilities.

Evaluation of Proposals

Evaluation of proposals will be based on the following criteria:

1. Demonstrated understanding of freight rail operations and adequacy of operating plan;
2. Previous experience with relevant rail operations;
3. Annual rental to be paid to HCRRA based upon minimum annual rent plus a percentage of gross freight revenues;
4. Qualifications of personnel who will conduct rail operations;
5. Availability of key personnel to oversee rail operations;

6. Ability to meet HCRRA lease requirements;
7. Ability to provide economically viable freight rail service;
8. Ability to meet all federal and state regulations applicable to freight railroad operations, including proper authorizations for operations and rail service; applicable labor requirements, and, discontinuance of freight rail service, if it should become necessary;
9. Demonstrated understanding of rail freight and customer service issues, as well as strength of overall marketing plan;
10. Statement of finances and demonstration of adequate financial resources and rail service management experience to provide freight rail operations and meet rail related obligations and risks; and
11. Quality, economic viability, and community and regional impact of overall business, financing and marketing plans submitted.

Leasing Procedures

HCRRA intends to enter into a Lease Agreement for freight rail operations with the successful Proposer upon payment by the selected Proposer to HCRRA of

- 1) A closing fee in the amount of \$5,000,
- 2) A refundable security deposit in the amount of \$20,000,
- 3) The first year's rent, and
- 4) A payment bond or other financial security for the use and benefit of persons furnishing labor and materials engaged to perform rehabilitation and capital improvements for freight rail operations on the Premises.

Lease rent payments to HCRRA shall consist of a) an annual rental fee in the minimum amount of \$10,000 paid in advance and b) a variable lease fee based upon a percentage of annual gross freight revenues payable at the end of each lease year. The lease will be for a term of five (5) years, at a minimum, with conditional rights to renew. See Appendix D for lease provisions that will be contained in any lease for freight rail operations that HCRRA might enter into with the selected lessee. Proposals should indicate the Proposer's willingness to agree to such lease provisions.

Lease Proposal Format

Applicants are instructed to use the following format in preparing their lease proposals. The Proposal Format section of the proposals should be complete, but RESPONSES MAY NOT EXCEED twenty (20) single-sided pages in length and should be prepared using a standard 12-point font. Narrative pages may be single-spaced. This twenty-page restriction includes a budget and supporting narrative, but does not include the Proposal Synopsis page. The Attachments

and Appendices should also be limited to twenty pages in length and contain résumés, previous or on-going rail operations, and letters of support/recommendation. Pages in excess of these 20-page maximums will be removed from the application prior to examination of the proposal. See Appendix A for the Qualifying Phase Submission Requirements. HCRRA will send Due Diligence Phase Submission Requirements to those Qualified Proposers invited by HCRRA to participate in the Due Diligence Phase of the Lease Proposal Process after the Proposer has returned, in response to HCRRA's invitation, a signed copy of the confidentiality agreement attached hereto as Appendix B.

Cover Letter

Provide a cover letter that identifies the Proposer.

The Proposer shall agree that it is responsible for all terms, conditions, promises, data, representations, and all information included in its proposal.

Lease Proposal Synopsis

All applicants must provide a synopsis of their lease proposal, maximum length two (2) pages. Include in this synopsis: applicant/partner name, address, contact person, phone number, e-mail address; previous experience with rail operations and other relevant information. Briefly describe the Proposer's understanding of and plans for freight rail operations on the Dakota Rail Line, in approximately 250 words, and include this in the lease proposal synopsis.

Application

Applications shall include responses to the items listed as required for the specific Lease Proposal Phase for which the applicant is making a submission, and shall identify which Phase of the Lease Proposal Process (the Qualifying Phase or Due Diligence Phase) for which the application is submitted.

Disclosures

Proposers must identify past or present involvement in the rail project area and all current rail operations within Minnesota that are public in nature.

Submissions

All applicants must submit the original proposal plus five (5) copies to:

Hennepin County Regional Railroad Authority
Attn: Marcia Wilda
417 North Fifth Street
Minneapolis, MN 55401-1362

APPENDICES	
A	Qualifying Phase Submission Requirements (Cover Letter and Attachments to Cover Letter)
B	Confidentiality Agreement for Due Diligence Phase Invitees Only
C	Relevant Preliminary Information – Excerpts from Dakota Rail, Inc.'s filings with the Surface Transportation Board regarding freight rail operations on the Dakota Rail Line
D	Lease Provisions

APPENDIX A
Qualifying Phase Submission Requirements

Applicants for the Qualifying Phase of the Proposal Process shall submit the following:

Cover Letter and Attachments:

Hennepin County Regional Railroad Authority
Attn: Marcia Wilda
417 North Fifth Street
Minneapolis, MN 55401-1362

Re: Application for Qualifying Phase of the Lease Proposal Process
for Lease of the Dakota Rail Line for Freight Railroad Operations,
Wayzata to Hutchinson, Minnesota

[Identify Proposer] submits the original and five (5) copies of the attached Lease Proposal Synopsis and Application for the Qualifying Phase of the Lease Proposal Process for a lease for freight rail operations on the Dakota Rail Line with the Hennepin County Regional Railroad Authority. Proposer agrees that it is responsible for all terms, conditions, promises, data, representations, and all information included in this proposal. Proposer agrees if it is selected by HCRRA to lease the Dakota Rail Line for freight railroad operations, it is willing and able to agree to Hennepin County Regional Railroad Authority's Freight Rail Operations Lease Provisions contained in Appendix D of the Request for Lease Proposals (RFLP) or similar terms.

Sincerely,

Cover Letter Attachments:
Lease Proposal Synopsis (five copies)
Application (five copies)
Agreement not to contact potential shippers
Application Fee (One thousand dollar (\$1,000) non-refundable fee payable to HCRRA)

Lease Proposal Synopsis
(maximum two (2) pages)

1. Applicant/partner name

2. Address

3. Contact Person

4. Phone Number

5. E-mail

6. Previous experience with rail operations

7. Brief description of Proposer's understanding of and plans for freight rail operations on the Dakota Rail Line (approximately 250 words)

**Agreement of No Contact With Potential Shippers
During the Qualifying Phase
of Lease Proposal Process**

APPLICANT is interested in submitting to the Hennepin County Regional Railroad Authority a Lease Proposal for Lease of the Dakota Rail Line from Wayzata to Hutchinson, Minnesota, for Freight Railroad Operations.

APPLICANT understands that the Lease Proposal Process consists of two phases – the Qualifying Phase and the Due Diligence Phase. The Qualifying Phase of the Lease Proposal Process is designed to identify potential applicants who are Qualified Proposers. In the Due Diligence Phase of the Lease Proposal Process HCRRA will review Lease Proposals submitted by Qualified Proposers at HCRRA's invitation after each Qualified Proposer has had an opportunity to complete a due diligence investigation of the potential for restoring freight railroad service to the Dakota Rail Line.

As a condition to being considered for the Qualifying Phase of the Lease Proposal Process, APPLICANT hereby agrees that it will not contact potential shippers during the Qualifying Phase of the Lease Proposal Process.

Applicant's Signature
Title: _____
Date: _____

Note: An official of the proposing organization must sign this agreement.

**Application For Qualifying Phase
Of Lease Proposal Process**

[Identify Proposer] responds to the below listed questions for the Qualifying Phase of the Lease Proposal Process as follows:

1. Provide previous experience with rail operations and other relevant information demonstrating qualifications to engage in freight rail operations. Attach relevant resumes, list of previous or on-going rail operations and letters of support/recommendation.

2. Describe the organization you would establish to operate and manage freight rail service on the Dakota Rail Line. Applicants should be specific about team members' responsibilities when describing other rail operations. This description should identify key personnel assigned to rail operations, as well as an identified operations manager. The proposal will include a description of reporting relationships among team members, illustrating accountability, responsibility, and decision-making authority.

3. Describe the work approach and format your firm will utilize to engage in rail operations. Include:

a) Your overall marketing strategy.

b) The strategy you would utilize in pricing your services.

c) Intended service patterns.

- d) Transportation issues, such as estimated locomotive and equipment needs, how equipment would be acquired and how equipment maintenance and inspections would be performed.

- e) Infrastructure issues, such as how maintenance would be handled, plans (if any) to upgrade the existing track structure, etc.

- f) Personnel issues, such as estimated employee count, general responsibilities of each employee, where offices would be located, use of contracted labor, joint use of employees in conjunction with another rail operation, etc.

- g) How financial and accounting tasks would be handled and by whom.

**APPENDIX B
Confidentiality Agreement**

(To be submitted by Qualified Proposers only upon invitation by HCRRA to participate in the Due Diligence Phase of the Lease Proposal Process)

The Hennepin County Regional Railroad Authority has invited the undersigned PROPOSER to submit a Proposal for a Lease of the Dakota Rail Line for Freight Railroad Operations as part of the Due Diligence Phase of the Lease Proposal Process. The Due Diligence Phase of the Lease Proposal Process is based upon review of Lease Proposals that are submitted after Qualified Proposers invited by HCRRA have had an opportunity to complete a due diligence investigation of the potential for restoring freight railroad service to the Dakota Rail Line, including contact with potential shippers.

As a condition to being considered for the Due Diligence Phase of the Lease Proposal Process, PROPOSER hereby agrees that it will protect as nonpublic any information that it gathers as part of its due diligence investigation for purposes of submitting a Lease Proposal that would meet the definition of "trade secret information" under the Minnesota Data Practices Act, Minn. Stat. Sec. 13.37 (b) if it were in the possession of the government. (Copy of statute attached.) Further Proposer agrees to abide by the provisions of Title 49 USC Sec. 11904, which prohibits the disclosure to unauthorized persons of certain shipper information, including any applicable information furnished by HCRRA to Proposer. (Copy of statute attached.) PROPOSER agrees to defend, indemnify and hold HCRRA harmless from any disclosure by PROPOSER in violation of the above-referenced statutes.

Proposer's Signature
Title: _____
Date: _____

Note: An official of the proposing organization must sign this agreement.

Attachment to Confidentiality Agreement

13.37 General nonpublic data. Subdivision 1. Definitions. As used in this section, the following terms have the meanings given them.

(b) "trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

49 USCA Sec. 11904, Unlawful disclosure of information

(a) A--

(1) rail carrier providing transportation subject to the jurisdiction of the Board under this part, or an officer, agent, or employee of that rail carrier, or another person authorized to receive information from that rail carrier, that knowingly discloses to another person, except the shipper or consignee; or

(2) person who solicits or knowingly receives, information described in subsection (b) without the consent of the shipper or consignee shall be fined not more than \$1,000.

(b) The information referred to in subsection (a) is information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation provided under this part, or information about the contents of a contract authorized under section 10709 of this title, that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee.

(c) This part does not prevent a rail carrier providing transportation subject to the jurisdiction of the Board under this part from giving information--

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another rail carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(d) An employee of the Board delegated to make an inspection or examination under section 11144 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined not more than \$500, imprisoned for not more than 6 months, or both.

(e) A person that knowingly discloses confidential data made available to such person under section 11163 of this title by a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall be fined not more than \$50,000.

APPENDIX C

1. Surface Transportation Board Decision Granting Exemption From Prior Approval Requirements For Abandonment, Dakota Rail, Inc.—Abandonment Exemption – In Mcleod, Carver, and Hennepin Counties, Mn, AB 472 1 X, November 29, 2001, and
2. Excerpts from submissions of most recent freight rail operator on Dakota Rail Line to Surface Transportation Board:

Verified Statements of Robin Bergeron, General Manager of Dakota Rail, Inc.

Mark D. Garvin, Chief Engineer of RailAmerica, Inc., holding company that controlled Dakota Rail, Inc.

DECISION

STB Docket No. AB-472 (Sub-No. 1X)

DAKOTA RAIL, INC.-ABANDONMENT EXEMPTION-IN McLEOD, CARVER, AND
HENNEPIN COUNTIES, MN

Decided: November 29, 2001

By petition filed on August 13, 2001,⁽¹⁾ Dakota Rail, Inc. (Dakota Rail) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903⁽²⁾ to abandon its entire rail line from milepost 24.6, near Wayzata, to the end of the line at milepost 68.5, in Hutchinson, a distance of approximately 43.9 miles, in McLeod, Carver, and Hennepin Counties, MN. Protests and comments were filed by Carver County Regional Rail Authority, Hennepin County Regional Railroad Authority (HCRRA), the City of Hutchinson, MN, the Institute of Scrap Recycling Industries, Inc. (ISRI), Lake Minnetonka Parks and Trails, Inc., Minnesota Department of Transportation (MN/DOT), the City of Minnetonka Beach, MN, the City of Mound, MN, Norwesco, Inc. (Norwesco), the City of Orono, MN, Suburban Hennepin Regional Park District, MN, the City of Spring Park, MN, and the City of Wayzata, MN. The City of Minnetrista, MN (Minnetrista), requests issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). Dakota Rail replied.⁽³⁾ In addition, U.S. Representatives James L. Oberstar, Martin Olav Sabo, and Mark R. Kennedy jointly filed a letter urging us to give full and fair consideration to offers from local governments to preserve the rail corridor. We will grant the exemption, subject to public use, environmental, and historic conditions.

App. C

BACKGROUND

The line was previously abandoned by the former Burlington Northern Railroad Company (BN).⁽⁴⁾ Subsequently, Dakota Rail acquired the right to operate the line, as well as an option to acquire the real estate.⁽⁵⁾ Dakota Rail provided service on an as-needed basis, transporting on average approximately 420 carloads annually. Dakota Rail states that it was informed by MN/DOT that the volume was insufficient for eligibility for receipt of public funding for track repairs and rehabilitation.⁽⁶⁾ Then, on February 2, 2000, an embargo on the line was published, limited to all hazardous materials and dangerous commodities. An embargo of all stations, limiting traffic to a "permit-only basis" for safety reasons, followed on May 16, 2000. This embargo was lifted on November 8, 2000, for non-hazardous materials and non-dangerous commodities for all stations except Hutchinson, but due to line conditions, traffic remains on a permit-only basis. A \$700 per car surcharge was imposed on December 4, 2000. No traffic has moved over the line since May 16, 2000. Since then, Dakota Rail's customers have used motor carriage, or rail/motor service involving transloading freight from other railroads to trucks for final deliveries. The area surrounding the line is accessible by Minnesota Routes 7 and 12 and Hennepin County Route 15.

Dakota Rail seeks to abandon the line asserting that the revenues anticipated from traffic on the line are outweighed by the projected costs of line rehabilitation and maintenance, and opportunity costs. It provides data illustrating the steady decline in traffic on the line and the decline in customer demand.⁽⁷⁾ It anticipates that these trends will continue and that, after rehabilitation, the line will generate no more than 470 carloads of traffic per year, resulting in \$366,325 in gross revenue. It estimates that the cost for rehabilitating the line to Federal Railroad Administration (FRA) Class 1 condition would exceed \$11,000,000, but that, by making minor and limited repairs to the bridges and rail, along with spot resurfacing, the line could be restored to service for \$506,488. Dakota Rail calculates maintenance costs for a completely rehabilitated line to be \$130,980 annually, or about \$3,000 per mile, which it states is conservative compared to the line's historic average. It estimates annual post-rehabilitation operating costs to be \$271,470, and opportunity costs to be \$587,405, resulting in an economic loss of \$492,550 a year.

App. C

Comments and Protests. Several entities have filed requests that Dakota Rail's petition be denied based on the volume of protests and on the need for more time to review the abandonment proposal. They seek preservation of the rail corridor for transportation or other public uses. ISRI urges denial of the petition alleging a continuing need to use the rail line for shipping purposes. ISRI alleges that there is at least one (unidentified) scrap recycling business on the line that Dakota Rail has refused to serve, but admits that it has other service available, albeit less convenient and more costly. ISRI also asserts that the line was and remains viable, ignoring the prior abandonment by BN. ISRI does not submit any evidence challenging petitioner's data.⁽⁸⁾ Other commenters have requested imposition of a public use condition and a NITU, or simply urge that the right-of-way be left intact for transportation purposes. Some have stated an intent to participate in the Board's OFA process. None of the commenters submitted any evidence challenging petitioner's economic data.

DISCUSSION AND CONCLUSIONS

Dakota Rail's petition for exemption fully comports with our regulations and, when viewed in the light of the comments that have been filed, provides a sufficient basis for us to determine whether a need for service over the line exists. Thus, the petition will not be denied on the basis that Dakota Rail should be required to file an application for abandonment authority. Neither will the petition be denied on the grounds that the timeline for a petition for exemption is insufficient for those parties working towards a plan to pursue alternative uses for the rail corridor. By statute, we have no more than 110 days from the date of filing of either a petition for exemption or an application for abandonment authority to issue a decision on the merits. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997). In any event, our regulations governing OFAs (49 CFR 1152.27), public use conditions (49 CFR 1152.28), and trail use/rail banking (49 CFR 1152.29) provide additional time after the 110-day time period to permit consideration of alternative uses for the line.

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or

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service

from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving Dakota Rail of the cost of maintaining the line segment [49 U.S.C. 10101(5) and (9)]. Although the line might be marginally profitable at the projected traffic level of 470 carloads, the costs associated with its rehabilitation and maintenance do not justify continuing service on the line. When opportunity costs are factored in, the burden on Dakota Rail from continuing rail service outweighs the potential benefits to shippers, particularly here, where alternative means of transportation are available and where the line's shippers have not shown specific harm. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No shippers have been served by the line since May 2000 and none has shown specific harm that would result from the abandonment proposal. Alternative transportation service, including motor carrier service and motor/rail service, is presently being used to meet area shipping needs. Nevertheless, to ensure that the shippers served by the line are informed of our decision, we will require Dakota Rail to serve a copy of this decision on them within 5 days of the service date and certify to us that they have done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. However, we do not normally impose employee protective conditions when a carrier abandons its entire line unless the evidence shows the existence of: (1) a corporate affiliate that will continue

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substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.-Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.-Abandonment, 354 I.C.C. 784 (1978) (Northampton). Dakota Rail proposes to abandon its entire line. If the abandonment exemption is granted, Prairie Holding Corp., a subsidiary of RailAmerica, intends to sell Dakota Rail's stock to McKnight, which will abandon the line and develop the real estate. No Dakota Rail affiliate will continue these or similar rail operations. Thus, Dakota Rail does not appear to have any corporate affiliate or parent for which the proposed abandonment could yield a benefit to a rail operation above relief from deficit operations. Further, no one has attempted to show that the situation under Northampton for imposing labor protection in entire line abandonments exists in this case. Under the circumstances, we will not impose labor protective conditions.

Dakota Rail has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local government agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 12, 2001, and requested comments by November 12, 2001.

In the EA, SEA recommends that three conditions be imposed on the abandonment. In response to the concerns of the Historical Society that the historical significance of the line does not appear to have been evaluated, SEA recommends that Dakota Rail retain its interest in, and take no steps to alter the historic integrity of, all sites and structures on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. SEA also recommends that Dakota Rail notify the National Geodetic Survey prior to any salvage activities that might disturb or destroy any geodetic markers on the right-of-way, and allow 90 days after the issuance of any decision granting abandonment authority for the National Geodetic Society to survey the line for historical benchmarks or monumentation. Finally, in response to the ongoing evaluation for the presence of hazardous materials along the line by the Minnesota Pollution Control Board

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(MPCB), SEA recommends that Dakota Rail consult with MPCB prior to undertaking any salvage operations.

In response to the EA, SEA received comments from MPCB, requesting that Dakota Rail comply with all applicable environmental regulations prior to salvaging the line and that, should Dakota Rail encounter any contaminants in the rail line right-of-way during any salvage activities, it should report them to the appropriate governing agency and investigate, clean up, and/or dispose of the contaminants in accordance with applicable laws, rules, and/or statutes of the governing agency. SEA recommends that this condition be imposed on a decision authorizing abandonment of this line. No other comments were received in response to the EA.

We will impose the conditions recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented in accordance with SEA's four conditions, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As stated, Minnetrista requests interim trail use. It has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. Dakota Rail has not agreed to negotiate trail use. Therefore, because the Trails Act permits only voluntary interim trail use, a NITU cannot be issued for the line segment. See Rail Abandonments-Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. SEA indicated in its EA that the right-of-way may be suitable for other public use following abandonment. Minnetrista also requests that a public use condition be imposed covering the line.⁽⁹⁾ Specifically, Minnetrista requests that Dakota Rail be precluded from: (1)

disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. It seeks a 180-day period in order to negotiate with Dakota Rail.

Minnetrista has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed covering the 43.9-mile line, commencing with the effective date of this decision. We note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested persons to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, Dakota Rail is not required to deal exclusively with Minnetrista, but may engage in negotiations with other interested persons.

The parties should note that the operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over public use. See Trails, 2 I.C.C.2d at 608. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Dakota Rail of the above-described rail line, subject to the

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condition that Dakota Rail shall leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a period of 180 days from the effective date of this decision, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use, and the conditions that Dakota Rail: (1) retain its interest in, and take no steps to alter the historic integrity of, all sites and structures on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) notify the National Geodetic Survey prior to any salvage activities that might disturb or destroy any geodetic markers on the right-of-way, and allow 90 days after the issuance of any decision granting abandonment authority for the National Geodetic Society to survey the line for historical benchmarks or monumentation; (3) consult with MPCB prior to undertaking any salvage operations; and (4) comply with all applicable environmental regulations prior to salvaging the line, and should it discover any contaminants in the right-of-way during salvage activities, it shall report them to the appropriate governing agency and investigate, clean up, and/or dispose of any contaminants in accordance with applicable laws, rules, and/or statutes of the governing agency.

2. Dakota Rail is directed to serve a copy of this decision on all shippers within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 10, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which is currently set at \$1,000. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA.**"

5. Provided no OFA has been received, this exemption will be effective on December 30,

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2001. Petitions to stay must be filed by December 17, 2001, and petitions to reopen must be filed by December 26, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Dakota Rail shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Dakota Rail's filing of a notice of consummation by November 30, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams

Secretary

1. Notice of the filing was served and published in the Federal Register on August 31, 2001 (66 FR 46063).

2. In its petition, Dakota Rail also sought exemption from the requirements of 49 U.S.C. 10904 [offer of financial assistance (OFA) procedures] and 49 U.S.C. 10905 [public use conditions]. In its response to comments in opposition, filed on October 12, 2001, Dakota Rail withdrew its requests for exemptions from the OFA and public use provisions. According to Dakota Rail, it originally sought the exemptions from 49 U.S.C. 10904 and 10905 because it believed that would expedite the abandonment process and any

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<http://www.stb.dot.gov/decisions/ReadingRoom.nsf/51d7c65c6f78e79385256541007f0580/5f1b144232a2d22...> 2/6/2003

subsequent sale of the line. With regard to a possible sale of the line, on August 1, 2001, Prairie Holding Corp., a subsidiary of RailAmerica, Inc. (RailAmerica), and the parent of Dakota Rail, entered into a Letter of Intent to sell its stock in Dakota Rail to McKnight Rail Road, L.L.C. (McKnight). McKnight is a to-be-formed Illinois Limited Liability Corporation that is the acquisition vehicle for MidAmerica Development & Management Corporation and ELM Investments, L.L.C. On August 23, 2001, the Board granted Dakota Rail's request for a protective order with respect to the Letter of Intent. Dakota Rail has agreed to provide the Letter of Intent and other relevant documents to parties considering submission of an OFA.

3. In addition to the October 12 reply, Dakota Rail filed an earlier response, on September 24, 2001, to the comments of HCRRA and those of McLeod County Regional Railroad Authority (MCRRA), which addressed petitioner's environmental report.
4. See Burlington Northern Railroad Company-Abandonment in Hennepin, Carver, and McLeod Counties, MN, ICC Docket No. AB-6 (Sub-No. 247) (ICC served Aug. 12, 1985).
5. Dakota Rail did not exercise the real estate option, instead entering a Contract for Deed and Operating Agreement (Contract for Deed) between Dakota Rail, as buyer, and MCRRA, as seller. The Contract for Deed consisted of the assumption of a mortgage between MCRRA, as mortgagor, and the State of Minnesota, acting through MN/DOT, and a United States Government lien. Dakota Rail maintains that MCRRA has no authority over the sale of the property under the Contract for Deed, as the Contract for Deed is silent as to the sale of Dakota Rail stock and confers no rights upon MCRRA regarding the stock. MCRRA requests that MCRRA be recognized as the fee owner of the property at issue, further noting that its purpose for the land, as stated in the Contract for Deed, was the maintenance of a corridor for public use through 2008. We make no finding as to the ownership of the right-of-way because it is not germane to our decision in this abandonment proceeding.
6. MN/DOT states that Dakota Rail has an outstanding track rehabilitation loan and that Dakota Rail's assertion that it is ineligible to receive public funding is simply incorrect. Dakota Rail states that, at the time of the sale of stock to McKnight, or earlier, the loan from MN/DOT will be repaid through MCRRA.
7. According to Dakota Rail, traffic on the line has shown an overall decline, as follows: 965 carloads in 1995; 724 carloads in 1996; 615 carloads in 1997; 720 carloads in 1998; 435 carloads in 1999; and 176 carloads prior to the embargo in 2000.

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8. Another shipper, Norwesco, merely opposed petitioner's request for exemption from the OFA provisions of 49 U.S.C. 10904 with respect to a 12.4-mile segment of the line. Because petitioner has withdrawn its request for exemption from section 10904, Norwesco's interest has been satisfied. Dakota Rail served a copy of the petition on six other shippers, but none filed comments.

9. Other commenters also requested a public use condition and the imposition of various environmental and financial disclosure requirements on Dakota Rail. As noted below, any public use condition imposed is for the benefit of all interested persons. The other conditions requested by these parties are unnecessary because our environmental regulations and financial assistance procedures provide for consideration of these matters, as appropriate. Therefore, they will not be imposed.

VERIFIED STATEMENT OF ROBIN BERGERON

I am Robin Bergeron, and have been the Business Development Manager of the Dallas, Garland & Northeast Railroad, Inc. ("DGNO") since April 10, 2000. Prior to becoming the Business Development Manager of DGNO, I was the General Manager of Dakota Rail, Inc. ("Dakota Rail") between June 1992 and August 1996, having started working there in 1982. In that job I was responsible for the operation of Dakota Rail and relations with our customers.

I am familiar with the 43.66-mile Dakota Rail line between milepost 24.6, near Wayzata, MN and milepost 68.5, at Hutchinson, MN, the end of the line, in McLeod, Carver, and Hennepin Counties, MN, the end of the line (the "Line" or the "Hutchinson Branch"). I am submitting this verified statement in Docket No. AB-472 (Sub-No. 1X), *Dakota Rail, Inc.—Abandonment Exemption—(Between Wayzata and Hutchinson) in McLeod, Carver, and Hennepin Counties, MN*, to describe Dakota Rail's past traffic and future traffic prospects and the cost of operating over the Line.

The number of customers and volume of traffic on the Hutchinson Branch have steadily declined from 965 carloads in 1995 to 724 carloads in 1996 to 615 carloads in 1997, in part because of the poor condition of the Line. The following Table

shows the number shipments per year per shipper for 1998, 1999, and 2000.

TRAFFIC ON THE HUTCHINSON BRANCH

SHIPPER	CARLOADS PER YEAR			
	1998	1999	2000 ¹	TOTAL
3M	418	207	46	671
Burns Philip Foods	0	4	0	4
Pure Culture	34	0	0	34
Hutch Iron & Metal	43	30	16	89
Lester Building	102	62	32	196
Polyfoam	5	11	1	17
Glencoe Butler	5	0	0	5
Norwesco	113	117	81	311
Tri-City Paving	0	4	0	4
Total	720	435	176	1,331

The Line was embargoed May 16, 2000, so the traffic volume for 2000 is not representative. However, on an annualized basis, there would have been 470 carloads in 2000. The 176 carloads in 2000 generated \$137,372.21 in gross revenue, which, when annualized, would be \$366,325.88. No traffic has moved on the Line in 2001.

Within weeks of the purchase of the stock of Dakota Rail by RailAmerica in September 1995, 3M, the largest customer on the Line dramatically reduced its rail use. Despite many meetings with our customers, traffic has continuously declined (it is less than one-half the level of traffic in 1994). The Minnesota Department of Transportation ("MNDOT") has decided that because of the decline in traffic there is not sufficient traffic on the Line for Dakota Rail to receive funding from MNDOT.

In 1999, Dakota Rail conducted a survey of customers in order to prepare a five-year traffic projection. We projected carloads of 640 in 1999, 643 in 2000, 647 in 2001, 658 in 2002, and 658 in 2003. As can be seen by comparing these projections to the actual traffic in the Table above, actual traffic and revenues have not met the projections.

Dakota Rail has no reason to believe that traffic would meet the projections, even if the Line were repaired. Moreover, the projected traffic is insufficient to justify the rehabilitation required on the Line.

On February 2, 2000 an embargo on the Line limited to all hazardous materials and dangerous commodities was published. For safety reasons, it was followed by a May 16, 2000 embargo of all stations with traffic limited to a "permit-only basis". This embargo was lifted for non-hazardous materials and dangerous commodities on November 8, 2000 as to all stations except Hutchinson due to the condition of the bridge at Milepost 67.9; a bridge that crosses the Crow River and is also referred to as the 3M bridge. Traffic now moves on a permit-only basis.

Dakota Rail imposed a \$700 per car surcharge on the Line on December 4, 2000 in an attempt to raise revenue to be able to fund the rehabilitation and maintenance of the Hutchinson Branch. This has not worked, as no traffic has moved over the Line since May 16, 2000.

West of St. Bonifacius, the Line is paralleled by Minnesota Route 7. East of St. Bonifacius, the towns of Mound, Spring Park, Minnetonka Beach, and Wayzata are served by Hennepin County Route 15. Wayzata is also served by Minnesota Route 12 and the Burlington Northern and Santa Fe Railway Company. The commodities shipped by the customers on the Hutchinson Branch include plastic resin, flakes, plasticizer, fuel, scrap metals, lumber, polyfoam, alcohols and poly tanks, which are all susceptible to diversion to motor carriage. Since the embargo, motor carriage or other railroads in a

¹ The Line was embargoed on May 16, 2000. The traffic has been pro rated based on 4.5 out of 12 months.

transload operation have handled all traffic to Dakota Rail's customers. Dakota Rail's customers have alternate transportation service available.

Even if the Line is rehabilitated to Federal Railroad Administration Class I status, operations will be restricted to 10 miles per hour. The following operating analysis makes the following assumptions: only the four largest shippers on the Line will receive traffic, Dakota Rail will operate once-a-week (meaning that each car delivered will accrue eight days of car hire), and shipments will be received regularly. Norwesco, located at St. Bonifacius will receive 216 carloads (four per week for 44 weeks and five per week for eight weeks). 3M, located in Hutchinson will receive 123 carloads (two per week for 33 weeks and three per week for 19 weeks). Hutchinson Iron & Metal, located in Hutchinson will receive 43 carloads (one per week for 43 weeks). Finally, Lester Building, located in Lester Prairie will receive 85 carloads (two per week for 34 weeks and one per week for 18 weeks).

Dakota Rail will serve the customers on the Line with a special train from Wayzata. Each train will have between seven and 12 loaded cars and will pick-up between seven and 12 empty cars for delivery to BNSF. I estimate that it will take a crew of two people the maximum allowable twelve hours, if everything goes right and according to schedule, to prepare and inspect the locomotive, build the train, conduct the necessary Federal Railroad Administration tests, drop off and pick-up cars for each customer, return to Wayzata, interchange the empty cars to BNSF, and tie-up the locomotive.² Each employee costs about \$30 per hour, including fringe benefits, and the locomotive will cost at least \$250 per trip. In addition there are supplies, sand, oil and

² This does not account for snow removal, which is a considerable task in northern Minnesota.

fuel costs, which I conservatively estimate to be \$150 per trip. Each trip on the Hutchinson Branch will cost Dakota Rail about \$1,120, which includes the cost of the locomotive of \$250, the cost of supplies, sand, oil and fuel of \$150, and the cost of employees of \$720 (two employees at \$30 per hour each for 12 hours). Operating once per week will cost about \$58,240 annually.

In addition for railroad controlled cars, Dakota Rail will incur car hire costs. Car hire is about \$25 per car per day. Dakota Rail interchanges cars with the BNSF at Wayzata, MN. It will take seven days for Dakota Rail to receive the loaded car from BNSF, deliver the loaded car to the customer, return and pick-up the empty car, and then deliver the car to BNSF, a car hire cost of \$175 per car. For 470 cars, the annual car hire cost will be \$82,250.

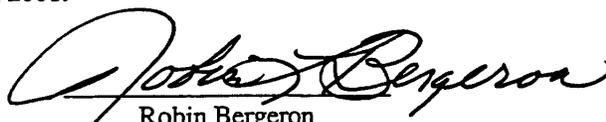
In my opinion, if the Line were repaired and put back into service, Dakota Rail could, at best, expect about 470 carloads of traffic annually, generating about \$370,000 in gross annual revenue. This low level of traffic is not enough to convince the State to contribute to rehabilitating the Line, nor is it enough to generate a return for Dakota Rail after paying maintenance, operations, car hire, interest, and the cost of rehabilitation.

I have also reviewed Mr. Garvin's Verified Statement concerning the rehabilitation and maintenance-of-way expenses for the Line and agree with him.

VERIFICATION

I, Robin Bergeron, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 10, 2001.


Robin Bergeron

VERIFIED STATEMENT OF MARK D. GARVIN

My name is Mark D. Garvin and I am Chief Engineer of RailAmerica, Inc. ("RailAmerica"), a shortline holding company that controls Dakota Rail, Inc. ("Dakota Rail"). I have a B.S. in Civil Engineering from Michigan Technological University. My engineering work in the railroad industry began over 20 years ago on Conrail as a management trainee. I soon became an assistant track supervisor in charge of track maintenance. I joined Grand Trunk Western Railroad Company as a track supervisor, in charge of system track gangs performing capital projects. I joined RailAmerica as a Project Manager and became Chief Engineer in January 1997. My current duties include the acquisition of track equipment and material, the selection and training of maintenance of way personnel, the engineering evaluation of potential acquisition properties, and the development of maintenance and rehabilitation plans for properties acquired by RailAmerica.

I am familiar with the 43.66-mile Dakota Rail line between milepost 24.6, near Wayzata, MN and milepost 68.5, at Hutchinson, MN, the end of the line, in McLeod, Carver, and Hennepin Counties, MN, the end of the line (the "Line" or the "Hutchinson Branch"). The Line was embargoed on February 2, 2000 limited to all hazardous materials and dangerous commodities. For safety reasons, it was followed by a May 16, 2000 embargo of all stations with traffic limited to a "permit-only basis". This embargo was lifted for non-hazardous materials and dangerous commodities on November 8, 2000 as to all stations except Hutchinson due to the condition of the bridge at Milepost 67.9, a bridge that crosses the Crow River. Traffic now moves on a permit-only basis. No traffic has moved since May 16, 2000. The Hutchinson Branch consists of 34.77 miles of

56-pound rail, 8.75 miles of 66- pound rail and 0.14 miles of 90- pound rail. The 56- pound and the 66-pound rails were rolled in 1888 and long ago exceeded their useful life.

I will discuss the needed rehabilitation of the Hutchinson Branch and its cost and the annual maintenance-of-way requirements and cost once the Line is rehabilitated. In addition I will provide some historical background as far as derailments.

1. Rehabilitation.

It is my judgement based on my long experience in the railroad industry that to rehabilitate this line using 56-pound and/or 66-pound rail would not be economical or efficient. First, there may not be enough 56-pound and/or 66-pound rail readily available to replace the broken rails on the Line. Second, the use of 56-pound and/or 66-pound rail (i) requires special inefficient operations where Dakota Rail would have to inspect the Hutchinson Branch before and after every train operated over it, (ii) prevents Dakota Rail from using 263,000-pound or 286,000-pound cars on the Line, restricting the equipment available to serve the customers on the Line, and (iii) requires Dakota Rail crews to constantly replace the 56-pound and 66-pound rail, which was made over 100 years ago and has exceeded its useful life. Finally, because of the size difference between 56- pound and 66-pound rail and other rail, particularly the 112-pound rail that should be used on the Hutchinson Branch, the rail could not be mixed without harming operations and increasing operating costs. Therefore, I have determined that to bring the Line to Federal Railroad Administration ("FRA") Class I condition, the 56-pound and 66-pound rail on Hutchinson Branch must be replaced with 112-pound rail.

The Line has 43.52 miles of 56-pound and 66-pound rails, which requires 459,572 feet of rail.¹ The Attachment to this Verified Statement shows the quantities of materials and labor needed to repair the 43.52-mile portion of the Hutchinson Branch. I believe that after the Line is rehabilitated, it could be operated at FRA Class 1 with the limited amount of 90-pound rail that is currently on the Hutchinson Branch.

This analysis will address ballast, track structure, the bridges, and grade crossings. A summary of the costs to rehabilitate the Line and the siding to FRA Class I condition is in the Attachment.

A. Ballast.

New ballast must be added to the Hutchinson Branch. I estimate that 600 tons of ballast per mile is required at a cost of \$17.20 per ton. It will cost \$345 per carload to deliver the ballast (between 85-86 tons per carload) and it will require a crew of four people about 22 days to dump the ballast (\$30 per hour per person) for the Line and siding. The total cost of ballast will be \$577,951.20.

B. Track Structure.

The track structure is built upon the ballast. The first step is removing the old track, which I have included in my labor and equipment calculations. The track structure consists of ties, tie plates, track, spikes, joint bars, bolts and washers.

The track structure is based upon 39-foot sections because this is the standard length of a stick of rail, which is not continuously welded. On a branch line such as this, there is no justification for continuously welded rail. A 39-foot stick of 112-pound rail

¹ 43.52 miles x 5,280 feet/mile x 2 (two rails per single-line track).

weighs 1,456 pounds.² Based on a survey of the cost of 112-pound rail, Dakota Rail can acquire it for \$350 per ton or \$254.80 per 39-foot stick of 112-pound rail,³ or \$509.60 per pair of rail sticks. Every pair of rail sticks will require a minimum of five good ties to meet FRA Class I requirements. 49 CFR §213.109(c) and (d). Each tie will cost \$50.

To connect two rail sticks to five ties requires 10 tie plates (two per tie) and 20 spikes (two per tie plate). Each tie plate costs \$2.65 and each spike costs \$0.24.

Connecting one 39-foot section of rail with the next one requires the use of joint bars, bolts, and washers. Connecting one stick of rail to another from different sections requires the use of two joint bars (\$21.50 per pair) per stick of rail, four bolts (at a cost of \$156 per keg of bolts containing 100 per keg) per stick of rail and eight washers (at a cost of \$175 per keg of washers containing 400 per keg) per stick of rail. Since there are two sticks of rail per section of rail, to connect sections of rail would require four joint bars (costing \$43), eight bolts (costing \$12.48), and 16 washers (costing \$7).

Each 39-foot section of rail would cost \$853.38.

In addition, there are labor costs for removing and replacing the rail, as well as equipment costs. It takes a three person crew 7.2 person hours at \$30 per hour to remove and replace each stick of rail. The equipment used in replacing the rail costs \$50 per hour during the 2.4 hours it takes to remove the old rail and replace it. Once all of the rail is in place, it needs to be surfaced. Surfacing costs \$0.50 per foot of rail.

C. The Bridges.

In addition to the roadbed, the bridges must be rehabilitated at a total cost of

² Every three-foot length of 112-pound rail weighs 112 pounds. There are 13 three-foot segments in every 39-foot stick of rail, so the calculation is $13 \times 112 = 1,456$.

³ $1,456/2,000 \times \$350 = \254.80 .

\$106,850, plus an additional \$70,500 to repair the bridge at milepost 67.9. The total cost to repair the bridges on the Line is \$177,350.

D. Grade Crossings.

There are 56 asphalt grade crossings that must be rebuilt at a cost of \$15,000 each.

E. The Cost of Removing the Restrictions on the Line

All operations over the Line are limited to permit only because of the physical condition of the Line. To eliminate these restrictions will cost \$506,488 for rail repairs (\$266,888), bridgework (\$200,000), and spot surfacing (\$39,600).⁴

2. Maintenance-of-way.

The normalized maintenance that I have calculated is based upon the rehabilitation of the Line to FRA Class I condition being completed. The normalized costs to keep the Hutchinson Branch at FRA Class I standards are \$3,000 per mile for a total of \$130,980 annually. Normalized maintenance includes a number of items, including ties, rail surfacing, and ballast.

Tie replacement costs are based on an eight-year cycle of 136 ties per mile, which is an average of 17 ties per year per mile at a cost of \$50 per tie, \$850 per mile.

Surfacing and lining track would be performed at the same time as tie replacement. The track structure is raised about two inches and new ballast is applied at the rate of five ballast carloads per mile every eight years, or 0.625 carloads of ballast per mile per year. The costs incurred include ballast unloading, the actual surfacing and track

⁴ The transportation of hazardous materials and dangerous commodities over the Line is embargoed. This embargo will continue despite the \$506,488 in repairs because of the substantial amount of light-weight rail on the Line.

alignment after the ballast is dumped, crew cost, work train expense and sales tax, which combine to cost \$1,035 per mile.

Past maintenance costs for the Line were \$73,033 in 1995 (\$1,673 per mile), \$202,742 in 1996 (\$4,644 per mile), \$231,038 in 1997 (\$5,292 per mile), and \$110,8900 in 1998 (\$2,540 per mile), an average of \$3,537 per mile per year.

3. Derailments.

The age and the size of the rail on the Line have resulted in numerous derailments in the past. In 1997 there were five derailments that cost Dakota Rail \$50,000. Derailments increased to 12 in 1998, costing \$130,000. In the last full year of operation, 1999, there were seven derailments that that cost Dakota Rail \$142,500.

ATTACHMENT 1

COST OF REHABILITATION OF THE HUTCHINSON BRANCH

ITEM	NUMBER	UNITS	UNIT COST	TOTAL COST
Ballast	26,196	Tons	\$ 17.20	\$ 450,571.20
Labor to Dump Ballast	704	Hours	\$ 30.00	\$ 21,120.00
Ballast Freight Delivery	308	Cars	\$ 345.00	\$ 106,260.00
Ties – Installed	29,460	Each	\$ 50.00	\$ 1,473,000.00
Rail	11,784	Rails	\$ 254.80	\$ 3,002,563.20
Tie Plates	58,920	Each	\$ 2.65	\$ 156,138.00
Spikes	117,840	Each	\$ 0.24	\$ 28,281.60
Joint Bars	23,568	Pair	\$ 21.50	\$ 253,356.00
Bolts	47,136	Each	\$ 1.56	\$ 73,532.16
Washers	94,272	Each	\$ 0.44 ⁵	\$ 41,479.68
Recover/Replace Rail Labor	84,844.8	Hour	\$ 30.00	\$ 2,545,344.00
Equipment Costs	28,281.6	Hour	\$ 50.00	\$ 1,414,080.00
Surfacing – Two Passes	922,099	Feet	\$ 0.50	\$ 461,049.50
Bridges		Bridge	\$ 177,350	\$ 177,350
Rebuild Grade Crossings	56	Each	\$ 15,000.00	\$ 840,000.00
TOTAL				\$11,044,125.20

⁵ Actually \$0.4375 per washer. This number is used to calculate the total.

VERIFICATION

I, Mark D. Garvin, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 13, 2001



Mark D. Garvin

APPENDIX D
HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY FREIGHT RAIL
OPERATIONS LEASE PROVISIONS

The following are sample lease provisions. Proposer must indicate in the proposal their willingness and ability to agree to these, or similar terms.
FUTURE RAIL OPERATIONS AND OTHER TRANSPORTATION USES

TENANT acknowledges that the Premises were acquired by HCRRA specifically and solely for the purpose of providing economically feasible freight rail service, and to otherwise preserve the Premises for future transportation uses, including but not limited, to freight, light and commuter rail, bicycle, bus and foot travel. Nothing in this Lease shall be deemed to evidence any change by HCRRA of its intended use of the Premises, and if at such time HCRRA introduces passenger rail service on the Premises, TENANT shall accommodate joint use of the Premises for freight rail and passenger rail service.

This Lease is for the sole purpose of providing freight rail operations on HCRRA's freight railroad easement so long as those operations are economically feasible. This Lease Agreement does not grant to TENANT the right to acquire ownership to HCRRA's freight railroad easement or to the underlying real property. It is expressly understood that title to the corridor shall remain with the owners of the underlying real property, being the Hennepin, Carver and McLeod Regional Railroad Authorities. The owners expressly reserve to themselves and the Minnesota Department of Transportation all current and future non-rail related revenues, including, but not limited to, those derived from building and vacant land leases, fiber optics, mono-poles and other telecommunication transmission facilities.

LEASE TERM

The term of this Lease shall be for a period of _____commencing on _____ **[the date the lease is executed by both parties]** and terminating at midnight on _____, **[5 year, at a minimum, fixed term, with conditional right to renew]** unless the Minnesota Department of Transportation has not consented in writing to this Lease prior to execution by the parties. In such event this Lease shall commence upon delivery of the written consent to both of parties.

TENANT shall have the option to renew this Lease for additional periods of _____ subject to approval by HCRRA.

LEASED PREMISES

The Leased Premises, hereinafter referred to as "Premises," consists of HCRRA's interest in a freight railroad easement being one hundred (100) feet in

width, fifty (50) feet on each side of the centerline of the main track to the extent the underlying real property owned by HCRRA and the Carver and McLeod County Regional Railroad Authorities extends to that width, identified in Exhibit A to this Lease Agreement, extending from Hutchinson to Wayzata, Minnesota and hereinafter referred to as "Right of Way" including the following:

- (1) HCRRA's interest in all lines of railroad between the point of connection with the Burlington Northern and Santa Fe, in the vicinity of Wayzata and Hutchinson, Minnesota contained within the Right of Way;
- (2) HCRRA's interest in any industrial spurs or other spur track rights of way appurtenant to the Right of Way;
- (3) HCRRA's right to use any bridges, retaining walls, and other similar structures upon, over, under, across, or appurtenant to the Right of Way, including grade crossing protection signals and other signal and communication equipment;
- (4) HCRRA's interest in any permits, licenses, ordinances, easements, or other rights permitting the occupation of the Right of Way and the operation of a railroad over the Premises including (but not limited to) rights to cross, traverse, or operate in or upon public streets and rights of way, and specifically including any rights and obligations of HCRRA to provide common carrier freight rail service on the Premises; and
- (5) HCRRA's interest in the railroad Right of Way located in public streets and other public rights of way.

The Premises shall be used solely for maintaining and performing freight railroad operations upon the Premises. HCRRA's interest, the interests of Carver and McLeod County Regional Railroad Authorities and the Minnesota Department of Transportation, in and to all non-rail related properties, and the right to receive current and future revenue therefrom, including, but not limited to, those derived from building and vacant land leases, fiber optics, mono-poles and other telecommunication transmission facilities are specifically excluded from this Lease Agreement.

CLOSING FEE

Upon execution of this Lease Agreement by both parties, TENANT shall pay to HCRRA a nonrefundable Closing Fee in the amount of \$5,000.00.

RENTAL

- A. Base Rent. Until termination of the Lease, TENANT will pay an annual base rental of \$_____ [minimum of \$10,000] to HCRRA for the right to provide freight rail operations on the Premises. The first rental payment

shall be due _____ and shall thereafter be paid annually by the same date by delivery in person or mail to HCRRA at the address set forth in the Notice Section of this Lease Agreement.

B. Gross Freight Revenue. TENANT shall pay to HCRRA on an annual basis _____ percent of gross freight revenues from freight rail operations attributable to the Premises. The first payment shall be due on _____ **[end of first year lease term]** and shall thereafter be paid annually by the same date by delivery in person or mail to HCRRA at the address set forth in the Notice Section of this Lease Agreement.

C. Taxes. TENANT shall pay promptly to taxing authorities when due all taxes, with respect to TENANT's freight rail operations on the Premises. HCRRA will pay all taxes, if any, attributable to any passenger transportation system installed by or at the direction of HCRRA.

REPORTING REQUIREMENTS, HCRRA'S RIGHT TO AUDIT BOOKS AND RECORDS

TENANT shall provide complete financial statements on an annual basis, or more frequently if requested by HCRRA, for the purposes of determining financial viability of providing freight rail service on the Premises, and to verify Gross Freight Revenue, on an ongoing basis. The financial statement shall include a traffic summary, number of rail cars shipped, traffic reports, car load and revenue statement, gross revenue, net revenue, income statement and capital expenditures. TENANT agrees that HCRRA, the State Auditor or any of their duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, records, etc., which are pertinent and involve transactions relating to this Lease Agreement. Such material must be retained for six years by the TENANT after lease termination or cancellation. TENANT's accounting practices and procedures relevant to this Lease shall also be subject to examination by any or all of the aforesaid persons as often as and during such times as aforesaid. Release of any information obtained pursuant to this Section shall be governed by the Minnesota Data Practices Act, 49 USC Sec. 11904 and other applicable statutes, rules and regulations.

SECURITY DEPOSIT

Upon execution of this Lease Agreement by both parties, TENANT shall pay to HCRRA a security deposit in the amount of \$20,000 (hereinafter referred to as "Security Deposit"), which along with accrued interest, less permitted deductions, will be returned to TENANT upon the happening of:

- i) Termination of the lease and

- ii) Discontinuance of rail service by TENANT, or if rail service proves not to be economically feasible, consummation of abandonment of freight rail operations on the Premises, or other similar regulatory proceedings in accordance with the terms of this Lease Agreement.

Prior to disbursement to TENANT under this Section, HCRRA may reduce the amount of the Security Deposit by all amounts expended by HCRRA necessary to undertake any regulatory procedures for which the TENANT is obligated to perform, but fails to do so, prior to the Termination Date as provided in the Sections entitled TERMINATION OF LEASE AGREEMENT and FREIGHT RAILROAD REGULATORY OBLIGATIONS OF THE PARTIES.

OBLIGATION OF TENANT TO PROVIDE FREIGHT RAIL OPERATIONS, CONTROL, MAINTENANCE AND ENTRY

Until termination of the Lease Agreement, TENANT shall have the sole and exclusive obligation to provide freight rail service on, to and from the Premises. At its sole cost and expense, TENANT shall have exclusive direction and control of the Trackage upon the Premises for purposes of providing freight rail service subject to the rights of HCRRA, and Dakota Rail, Inc., set forth in this Lease Agreement.

TENANT shall have the right to:

- 1) Operate trains, engines and cars for freight rail service over the Premises for its sole benefit, and shall not, except as otherwise provided in this Lease Agreement without prior written permission by HCRRA, which permission shall not unreasonably be withheld, permit any third party to operate trains, engines or cars over the Premises;
- 2) Exclusively provide freight railroad service to any industry, team, or house track existing on the Premises on the date of this Lease Agreement or as otherwise may be required by law; and
- 3) Use the existing roadbed, bridges, and other existing railroad facilities for freight rail service.
- 4) Access over other portions of adjacent property owned by HCRRA for the sole purpose of maintaining and performing freight railroad operations over the Premises. Such access shall not unreasonably interfere with activities of HCRRA or other users permitted by HCRRA upon the Premises.
- 5) Handle Hazardous Materials at speeds not to exceed ten miles per hour or less, provided such handling is covered in the amounts required under the insurance provisions herein, and the State of Minnesota, HCRRA, and the Carver and McLeod County Regional Railroad Authorities are named

insureds, and TENANT does not operate Hazardous Materials over excepted Trackage.

TENANT shall maintain the Trackage, at a minimum, at Federal Railroad Administration (FRA) Class 1 Standards, and shall not operate Hazardous Materials over excepted Trackage.

Buildings and other structures located on the Right of Way owned by HCRRA or the Carver and McLeod County Regional Railroad Authorities may be included for freight railroad operations under separate agreement.

The management and operation of the Premises for freight railroad purposes shall be under the direction and control of TENANT. TENANT shall have the power to change its operations, management and operating practices on or over the Premises as in its judgment may be necessary, expedient or proper for the operations herein intended, consistent with the provisions of this Lease Agreement.

TENANT must supply all locomotives, rolling stock, and maintenance of way equipment necessary to operate and maintain the railroad for freight railroad operations, unless otherwise agreed. TENANT must provide all employees necessary for operation, maintenance and any other functions necessary to run the railroad. TENANT may utilize independent contractors for any of these functions, but in the event TENANT contracts with third parties for rehabilitation of the line or other capital improvements, the payment bond posted under this Lease Agreement must be sufficient to pay for labor and materials expended on or to the Premises.

TENANT shall determine all means and employ all persons necessary to operate, maintain, repair and renew the Trackage, as well as crossings, crossing signals, ditches, roadbeds, bridges, and communication lines within the Premises which may be necessary for its use of the Trackage.

TENANT shall perform all construction, derailment or wreck clearing, maintenance, repair and renewal of the Trackage, including any additions thereto it may deem necessary or desirable for the safe and efficient operation of all trains except that, at a minimum, TENANT shall maintain the Trackage at FRA Class 1 Standards. TENANT's obligation for maintenance and repairs shall include any repairs to overhead bridges necessitated by reason of interference with freight railroad operations, which repairs are not required for any other purpose.

TENANT is responsible for all interline negotiations and agreements, as well as division agreements with other carriers. TENANT is also responsible for all rate making and marketing with freight shippers and potential shippers, as well as obtaining Surface Transportation Board (STB) and any other governmental approvals necessary for operations.

TENANT, and not HCRRA, shall bear all financial responsibility for any and all costs and expenses arising out of freight rail service initiated and maintained by TENANT, including without limitation all maintenance of way, rehabilitation and capital expenditures, and all other obligations for which TENANT is responsible under this Lease Agreement. HCRRA shall have no responsibility in any manner for any such expenses. TENANT is solely responsible for arranging any government-assisted rehabilitation program, including negotiation thereof, but HCRRA's consent will be required prior to TENANT accepting the benefit of funds therefrom.

TENANT is responsible for resolving any complaints or other objections raised by Minnesota citizens, governmental units, or other interested parties arising out of railroad operations.

TENANT acknowledges that Dakota Rail, Inc. has reserved rights to all track, rail, crossing protection and tie plates and other track materials ("Track Materials") existing on the Property on December 28, 2001, subject to the right to conduct freight rail operations over them, and agrees to provide notice to Dakota Rail, Inc. in accordance with that certain Track Materials Easement Agreement dated December 28th, 2001 (HCRRA Agreement No. A19351) prior to removing or replacing any of the same. Upon termination of this Lease Agreement, all Track Materials incorporated into the track structure by TENANT on the Premises shall become the property of HCRRA without any further compensation.

BOND

Prior to contracting for rehabilitation and capital improvements to the Premises, TENANT shall post a payment bond or other financial security for the use and benefit of all persons furnishing labor and materials engaged to perform rehabilitation and capital improvements for freight rail operations on the Premises in an amount sufficient to provide payment for all just claims for labor and materials as they become due. The bond shall be increased from time to time to an amount sufficient to pay for anticipated labor and materials.

PASSENGER RAIL SERVICE

HCRRA reserves the sole and exclusive right at any time to introduce passenger rail service on the Premises, in which event, HCRRA will pay costs to improve the Premises to accommodate such service. TENANT may continue freight rail operations but must revise operations, including hours of operation, to meet the requirements of passenger rail operations.

RAIL CAR STORAGE

TENANT shall not store or park railroad cars, nor permit the storage or parking of railroad cars, at any location on the Premises except such cars as are actually used to service rail users located on or adjacent to the Premises. Any rail cars required to be stored for the use of such rail users shall be parked in the vicinity of the loading or unloading tracks of said users. The provisions of this Section shall apply, except where HCRRA has expressly agreed in writing to a variance identifying the specific duration and location of permitted rail car storage.

TERMINATION OF LEASE AGREEMENT

A. Following the effective date of an order either permitting TENANT to discontinue freight rail service or permitting abandonment of the Dakota Rail Line, and the occurrence of either of the following:

- 1) sixty (60) days after notice of termination served by either party on the other, or
- 2) the expiration of the lease term,

this Lease Agreement and the rental obligation will terminate (Termination Date).

The Security Deposit, including accrued interest less deduction permitted by this Lease Agreement, will be paid to TENANT, no later than 30 days after the Termination Date.

B. The Lease Agreement will terminate no sooner than _____ years **[five (5) years, at a minimum]** following the date of this Lease Agreement except as otherwise provided in this Lease Agreement. After the end of the initial term of **[five (5) years]** either Party may terminate this lease by written notice to the other as provided in paragraph D of this Section.

C. Both TENANT and HCRRA shall have the right to terminate this Lease Agreement at an earlier date than that provided in paragraph B in the event cessation of local rail freight traffic continues for a period of one year or more after the parties have executed this Lease Agreement, or in the event the last user of rail freight service along the Premises ceases operations or otherwise makes clear that it has no further need for rail service. Additionally, HCRRA may terminate this Lease Agreement at an earlier date based upon its reasonable determination that freight railroad operations are not economically viable and have no reasonable prospect of becoming viable in two years or less.

- D. A party must initiate any permitted termination by written notice in accordance with the Notice provisions of this Lease Agreement to the other party of its desire to terminate the Lease Agreement.

FREIGHT RAILROAD REGULATORY OBLIGATIONS OF THE PARTIES

- A. TENANT is responsible for obtaining STB and any other governmental approvals necessary for operations.
- B. If TENANT desires to terminate the Lease Agreement or the Lease term is about to expire with no renewal, TENANT shall have the obligation to seek to obtain, by Notice of Exemption, abandonment application, or such other filing as may be necessary to obtain authorization to terminate common carrier railroad freight service on the Premises at its expense.
- C. In the event HCRRA desires to terminate the Lease Agreement, HCRRA shall have the obligation to obtain regulatory approval for abandonment or termination of freight railroad operations at its expense. TENANT agrees to cooperate in any such effort, including preparation of, and making available to HCRRA, necessary traffic, accounting and financial data in a form suitable for STB or other regulatory application. TENANT also agrees that HCRRA may proceed in the name of the TENANT to prosecute and complete any such procedure. TENANT agrees to provide any requested data for regulatory filing within ninety days of request by HCRRA.
- D. If cessation of local rail freight traffic continues for a period of one year or more after the parties have executed this Lease Agreement, or in the event freight operations and infrastructure maintenance activities on the Premises have ceased for a period of sixty (60) days or more after freight rail operations have resumed, or the last user of freight rail service along the Premises ceases operations or otherwise makes clear that it has no further need for rail service, TENANT shall file with the STB a request for abandonment authority of the Dakota Rail Line, the earlier of i) within six months after the date that the last user ceases operations or ii) within six months after that date on which local railroad traffic has last originated or terminated on the Premises. TENANT further agrees to use its best efforts to obtain any necessary regulatory abandonment approval for itself and any other users within one year of said filing.
- E. HCRRA agrees to cooperate in any such effort. In the event more than one year elapses before necessary regulatory approval is obtained by TENANT, or earlier at TENANT's request, HCRRA may, at its option, proceed in the name of the TENANT to prosecute and complete any necessary regulatory procedure to obtain authorization for such cessation and deduct the cost of said proceedings from the Security Deposit.

TENANT shall have no obligation to appeal an adverse regulatory decision, but shall be obligated to refile for abandonment approval no later than one year after any such denial. In any event, TENANT shall have no obligation to refile for abandonment approval subsequent to a denial more than twice.

- F. In the event regulatory approval to cease freight rail operations is not received within one year of a party's last filing required by this Section, or is denied in whole or in part, TENANT agrees to transfer its railroad freight service common carrier obligations to HCRRA or HCRRA's designee.

LIABILITY AND INSURANCE

While conducting operations over the Premises, TENANT agrees to defend, indemnify, and hold harmless HCRRA, its Commissioners, officers, agents, and employees from any liability, claims, damages, costs, judgments, or expenses resulting directly or indirectly from the act or omission of TENANT, its agents, employees, customers, tenants, or invitees, occurring on or from the Premises (including, those related to environmental matters as outlined in the Environmental section of this Agreement).

In order to protect HCRRA, TENANT and those listed above under the indemnification provisions, TENANT at all times during the term of this Lease Agreement and beyond such term when so required, shall have and keep in force insurance as follows:

A policy or policies of insurance covering the liability to which TENANT is or may be subject to under this Lease Agreement. TENANT shall carry liability and property damage insurance coverage with single limit of at least \$10,000,000. HCRRA must be shown as a named insured. Coverage must include claims and indemnification for payment of claims under the Federal Employers Liability Act (FELA) and liability coverage for Hazardous Materials in the event TENANT handles said material.

An umbrella or excess policy over primary liability coverages are an acceptable method to provide the required insurance amounts. The above establishes minimum insurance requirements. It is the sole responsibility of the TENANT to determine the need for and to procure additional insurance that may be needed in connection with this Lease Agreement. All insurance policies shall be open to inspection by HCRRA, and copies of policies shall be submitted to HCRRA upon written request.

Any and all such insurance shall be written so that the insurer shall have no claim or recourse of any kind whatsoever against HCRRA in connection therewith.

The TENANT shall not commence freight rail operations until it has obtained required insurance and filed an acceptable Certificate of Insurance with HCRRA. The certificate shall be amended to show that Hennepin County Regional Railroad Authority will receive 30 days written notice in the event of cancellation, non-renewal, or material change in any described policies.

LABOR RELATIONS

TENANT and HCRRA each shall be responsible for conducting their own labor relations with any labor organization either representing or seeking representation among either's employees, and each shall regulate or seek to adjust all disputes that may arise with respect to their employees without involving the other party. Either party may freely enter into any contract with any labor organization representing or seeking representation among its own employees. Neither party shall obligate the other party to its employees or to any union representing its employees. Each party shall give written notice to the other of any labor dispute that prevents or threatens to prevent timely performance under this Lease Agreement, including all relevant information concerning the dispute that may impact upon this Lease Agreement. Notwithstanding the foregoing, all freight rail operations by TENANT shall comply with the provisions of Minn. Stat. Sec. 398A.08, as it may from time to time be amended, which provides:

Minn. Stat. 398A.08 Employment preference. Individuals who have been previously employed by railroads, any part of whose property or assets are acquired pursuant to Laws 1980, chapter 616, shall have priority, based upon their length of service with that railroad, in employment with a purchasing carrier or other operator of a railroad incorporating that property or those assets.

INDEPENDENCE OF PARTIES

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the TENANT as the agent, representative or employee of HCRRA for any purpose or in any manner whatsoever. TENANT and HCRRA hereby declare that they are acting independently, and agree that neither is as an employee of the other; nor are any of their respective employees considered at any time an employee of the other. TENANT has and hereby retains full control of its freight rail operations and full control of all the employment, compensation and discharge of all employees of TENANT assisting in its performance hereunder. TENANT and HCRRA each shall be fully responsible for all matters relating to payment of their employees, including compliance with Social Security, Railroad Retirement, withholding taxes and all other laws and regulations governing such matters. TENANT and HCRRA each shall be responsible for their own acts and those of their agents, officers,

employees, lessees, and contractors in the performance of rail operations pursuant to this Lease Agreement.

Any and all personnel of TENANT or other persons, while engaged in the performance of any work or services required by TENANT in conducting freight rail operations, shall not have a contractual relationship with HCRRA and shall not be considered employees of HCRRA, and any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the TENANT, its officers, agents, contractors or employees shall in no way be the responsibility of HCRRA; and TENANT shall defend, indemnify and hold HCRRA, its commissioners, officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from HCRRA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability severance pay and PERA.

NO THIRD PARTY BENEFICIARIES

The terms of this Lease Agreement are for the sole benefit of the parties and do not create any beneficiary rights in third parties.

ASSIGNMENT

TENANT shall not assign, sublet, transfer or pledge this lease and/or the services to be performed hereunder, whether in whole or in part, without prior written consent of HCRRA.

ENVIRONMENTAL

TENANT shall not create or permit any condition of the Premises that could present a threat to human health or to the environment (Environmental Matters). TENANT shall bear the expense of all practices or work, preventative, investigative or remedial, which may be required because of any conditions of and from the Premises caused by TENANT or any use of the Premises by TENANT or those claiming by, through, or under TENANT, during TENANT's period of occupancy or during TENANT's ownership or use prior to the date of this Lease. TENANT expressly agrees that the indemnification defense and hold harmless obligations it assumes in this Lease Agreement regarding Environmental Matters shall survive cancellation of this Lease. TENANT agrees that statutory limitation periods on actions to enforce these obligations shall not

be deemed to commence until HCRRA discovers any such health or environmental impairment and a remedial action plan necessary for development of the Premises to its highest and best use has been identified and approved by appropriate local, state and federal regulatory agencies. TENANT hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

HCRRA shall have the right, but not the duty, to enter upon the Premises from time to time to inspect the Premises for Environmental Matters and in the course thereof to conduct soil and groundwater testing. HCRRA shall conduct any such inspections or testing so as to minimize interference with TENANT's business operations. HCRRA's entry onto the Premises pursuant to this paragraph shall not relieve the TENANT's obligation to pay rent under this Lease.

At the request of HCRRA, upon the termination of the Lease, or during the term hereof, TENANT shall pay for the services of a state-approved contractor to sample any visibly contaminated areas of the Premises. For any contaminated areas, TENANT's contractor shall provide remediation recommendations to HCRRA, and shall perform remediation to the satisfaction of HCRRA. Copies of the results shall be forwarded to HCRRA by TENANT to ensure that the Premises are returned to HCRRA reasonably free of Environmental Matters and in compliance with all applicable environmental laws, ordinances, regulations and requirements. The provisions of this paragraph shall survive the termination of this Lease.

Notwithstanding the foregoing, TENANT is not responsible, by virtue of the terms of this Lease, for any Environmental Matters existing on the Premises prior to TENANT's use or occupancy of the Premises.

RIGHT OF ENTRY

HCRRA may enter the Premises at any time to examine, inspect, or protect the Premises and to make alterations, renovations, or repairs or to show the Premises to prospective tenants or purchasers. HCRRA reserves the right to enter, and make alterations upon, the Premises, provided that such entry and alterations do not unreasonably interfere with TENANT's freight railroad operations and are in accord with other provisions of this Lease Agreement. HCRRA shall have the right to inspect the Premises at any time on reasonable (not to exceed three days) notice, and require suspension of operations at any time that applicable state or Federal safety standards are not being met.

ACCEPTANCE

TENANT accepts the Premises subject to any want or failure at any time of HCRRA's title to the Premises or any part thereof and TENANT shall assume any damages sustained by TENANT in connection therewith. TENANT accepts the Premises subject to rights of any party, including HCRRA, in and to any existing roadways and easements. TENANT agrees to provide to HCRRA or

other tenants of HCRRA access over and through the Premises on these roadways and easements should such access be deemed necessary by HCRRA. TENANT accepts said Premises subject to the right of HCRRA, its employees, agents and contractors to walk upon said Premises to repair adjacent property and the right of HCRRA, its employees, agents and contractors to temporarily place equipment upon the Premises for the purpose of maintaining, repairing or inspecting or constructing upon HCRRA's adjacent property. This Lease Agreement is subject to the rights of all licenses, permits and easements for communications facilities, fiber optics lines, mono-poles, poles, wires, pipelines, sewers and billboards that exist or may be placed upon, across, above, or underneath the Premises by HCRRA, its employees, agents, licensees and representatives or grantees. HCRRA reserves unto itself, its employees, agents, licensees and representatives or grantees the right to place additional communications facilities, fiber optics lines, mono-poles, poles, wires, pipelines, sewers and billboards upon, across, above, or underneath the Premises and agrees that any such additional placements shall be conducted in a manner as to not unreasonably interfere with TENANT's operations thereon.

COOPERATION AGREEMENT, LOAN AGREEMENT AND MORTGAGE

The terms of this Lease Agreement are subject to the rights of the State of Minnesota contained in Agreement between Hennepin, Carver and McLeod County Regional Railroad Authorities and the State of Minnesota dated December 23, 2002 (MnDot Agreement No. 84001, HCRRA No. A06072) and Mortgage of Hennepin County Regional Railroad Authority to the State of Minnesota (HCRRA No. A06062) dated November 14, 2002) in including those provisions requiring the written consent of the Minnesota Department of Transportation prior to commencement of the terms of this Lease.

DEFAULT

If TENANT shall fail to fulfill its obligations under this Lease properly and timely, or if TENANT shall violate any of the covenants, agreements, or stipulations of this Lease, thereupon HCRRA shall have the right to terminate this lease if TENANT has not cured the default after receiving seven days written notice. This Lease may then be terminated by HCRRA by giving at least three days written notice to TENANT of such termination and specifying the effective date thereof. In such event, the provisions of paragraph C of the FREIGHT RAILROAD REGULATORY OBLIGATIONS OF THE PARTIES shall apply except that HCRRA may deduct the cost of any necessary railroad proceedings it is required to undertake from the Security Deposit.

Notwithstanding the above, TENANT shall not be relieved of liability to HCRRA for damages sustained by HCRRA by virtue of any breach of this lease by TENANT.

It is agreed that any right or remedy provided for herein shall not be considered as the exclusive right or remedy of HCRRA for any default in any respect by the TENANT, but such right or remedy shall be considered to be in addition to any other right or remedy hereunder or allowed by law, equity, or statute.

HCRRA's failure to insist upon strict performance of any covenant, agreement, or stipulation of the lease or to exercise any right herein contained shall not be a waiver or relinquishment of such covenant, agreement, stipulation, or right, unless HCRRA consents thereto in writing. Any such written consent shall not constitute a waiver or relinquishment in the future of such covenant, agreement, stipulation or right.

EXHIBIT C-2

ADDITIONAL ENVIRONMENTAL MATERIAL

List of Parties Expressing Interest in the Line To Whom the Lease Proposal for Freight
Rail Operations was Sent

INITIAL MAILING REQUEST FOR LEASE PROPOSALS 3-4 and 3-5-03

Blacklands Railroad
Attn: Wayne Defebaugh
630 Church Street
Sulphur Springs, TX 75482

Kurt Gaylor
607 Grove Street NW
Shellsburg, IA 52332

Amfahr Consulting
2590 Queensport Road
Woodbury, MN 55125

David Albertson
4701 W. Branch Road
Orono, Mn 55364

Joseph Sherrer
8920 235th St.
Lakeville, MN 55044

Trolley Enterprises, Inc.
Attn: Jody Perez
998 South Military Trail
Deerfield Beach, FL 33442

Interstate Management Group
Attn: Wayne F. Angel
P.O. Box 2475
Orange Park, FL 32067-2475

Greg Hanson
1048 Springhill Dr.
Saginaw, TX 76179

Clark Johnson Jr. / Consultant
3315 St. Paul Avenue
Minneapolis, MN 55416

Progressive Rail, Incorporated
Attn: Timothy Eklund
Airlake Industrial Park
21778 Highview Avenue
Lakeville, MN 55044

Doyle Terrell
POB 6763
Fort Smith, AR 72903-6763

John Messner
8853 Maplebrook Ct.
Brooklyn Park, MN 55445

Janelle Collier
Minnesota Department of Transportation
Office of Freight and Commercial Vehicle Operations
395 John Ireland Blvd.
MS470
St. Paul, MN 55155

Mr. Alan Ott
76354 465th Street
Hector, Mn 55342

INITIAL MAILING REQUEST FOR LEASE PROPOSALS 3-4 and 3-5-03

Kurt Zuppke
6925 Abbywood Lane
Chaska, MN 55318

G. Robert Mangels, Jr.
221 14th Avenue NW
New Brighton, MN 55112

Shinteck
Attn: Jack Henson
P.O. Box 1843
Clemson, SC 29633

Railcar Management Inc.
Attn: Gary Griswell
1819 Peachtree Rd NE
Suite 303
Atlanta, GA 30309

A & K Railroad Materials, Inc.
Attn: John Doane
1505 South Redwood Road
P.O. Box 30076

Koch Materials Company
Attn: Mike Ernst
P.O. Box 2338
Wichita, KS 67201

Tom McFarland PC
208 South LaSalle Rm 1890
Chicago, IL 60604

Commissioner Sheldon Neis
McLeod County
830 11th Street E., Suite 101
Glencoe, MN 55336

Roger Gustafson
Carver County
600 E. 4th Street, Box 6
Chaska, MN 55318

Peter Johnson
Lake Minnetonka Park & Trails
1055 E. Wayzata Boulevard, Suite 300
Wayzata, MN 55391

Greg Weber
Midwest Rail Associates
2022 East 7th St.
Fremont, Nebraska 680205

Melvin Jessup
Adrian Clinton & Southern Railway
75419 12th Avenue
South Haven, Michigan 49090

LIST OF PARTIES CONTINUING TO EXPRESS INTEREST WHO RECEIVED
4-8-03 NOTICE THAT DEADLINE FOR APPLICATION EXTENDED TO 4-25-03

Melvin Jessup Adrian Clinton & Southern Railway 75419 12 th Avenue South Haven, MI 49090	Wayne Defebaugh Blackland Railroad 630 Church Street Sulphur Springs, TX 75482	G. Robert Mangels, Jr. 221 14 th Avenue N.W. New Brighton, MN 55112
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LIST OF PARTIES CONTINUING TO EXPRESS INTEREST, OR MIGHT BE
INTERESTED, WHO RECEIVED 5-11-03 NOTICE THAT DEADLINE FOR
APPLICATION EXTENDED TO 6-30-03

Robin Bergeron 3901 Halifax Drive Rowlett, TX 75088	Melvin Jessup Adrian Clinton & Southern Railway 75419 12 th Avenue South South Haven, MI 49090	Wayne Defebaugh Blackland Railroad 630 Church Street Sulphur Springs, TX 75482
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G. Robert Mangels Jr.
221 14th Avenue N.W.
New Brighton, MN 55112

PARTY WHO REQUESTED AND RECEIVED COPIES BY MAIL OF THE
REQUEST FOR LEASE PROPOSALS ON 6-5-03

Rich Holte
3801 Benjamin Drive
Woodbury, MN 55125

PARTY WHO REQUESTED AND RECEIVED COPIES BY FACSIMILE OF THE
REQUEST FOR LEASE PROPOSALS ON 10-22-03

Stan Patterson
531 Hooper Lane
Old Town, Idaho 83822
Facsimile #: 208 437-3432