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SERVICE DATE – DECEMBER 18, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
—ADVERSE ABANDONMENT—
SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y.

Decided: December 17, 2019

On September 10, 2018, the New York State Department of Environmental Conservation (the Department) filed an application under 49 U.S.C. § 10903 requesting a third-party, or “adverse,” abandonment by the Saratoga and North Creek Railway (SNCR) of approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine (the Line). Notice of the application was served and published in the Federal Register on September 28, 2018 (83 Fed. Reg. 49,151).

At the Department’s request, the Board held the proceeding in abeyance in October 2018 to permit negotiations with a potential purchaser of the Line. By decision served on August 29, 2019, the proceeding was removed from abeyance at the Department’s request (after negotiations were discontinued) and a procedural schedule was set. Following that decision, the Board received several comments. As relevant here, on September 30, 2019, the Department requested that the Board issue a Certificate of Interim Trail Use or Abandonment (CITU) over the Line. On October 18, 2019, the Department filed a letter co-signed by SNCR stating that it had discussed the Department’s CITU request with SNCR and that SNCR is willing to negotiate with the Department for trail use. The letter states that SNCR does not object to the Department’s abandonment application and will participate on a voluntary basis. The letter further states that SNCR irrevocably represents that the public convenience and necessity favor abandonment of the Line.

The Board has become aware of an action pending in the U.S. District Court for the Northern District of Illinois (District Court) in which, as part of a loan default proceeding, the San Luis & Rio Grande Railroad, Inc. (SLRG), was placed into receivership. See Big Shoulders Capital LLC v. San Luis & Rio Grande R.R., Case No. 19-cv-06029 (N.D. Ill.). On October 18, 2019, the District Court issued an order expanding the receivership to include certain SLRG affiliates and subsidiaries, including SNCR. Big Shoulders Capital, Case No. 19-cv-06029 (Oct. 18, 2019 Amended Receivership Order) (N.D. Ill.). The Amended Receivership Order authorized the receiver to take possession, custody and control of all receivership assets and enjoined all receivership parties from “commencing, prosecuting, continuing or enforcing any suit or proceeding against or affecting Receivership Parties or any part of the Receivership

Assets.” Id. at 8-9. In its Initial Report of Property and Known Liabilities, the receiver listed SNCR’s track and roadbed as an asset. Big Shoulders Capital, Case No. 19-cv-06029 (Nov. 8, 2019 Initial Report, App. 2) (N.D. Ill.). After SLRG was placed in receivership, several creditors filed an involuntary bankruptcy petition against SLRG in the U.S. Bankruptcy Court for the District of Colorado.¹ In re San Luis & Rio Grande R.R., Case No. 19-18905-TBM (Bankr. D. Colo.). Both proceedings are still open and before the courts.

Accordingly, SNCR is directed to file a supplemental submission explaining whether and how the pending receivership and bankruptcy cases affect this proceeding, including the effect of any stays in those cases. SNCR is further directed to notify the receiver and the U.S. Trustee of this proceeding by providing them a copy of this decision and notify the Board that it has done so within five days of service of this decision.

It is ordered:

1. SNCR shall serve a copy of this decision on the receiver and the U.S. Trustee and notify the Board that it has done so within five days of the service date of this decision.
2. SNCR shall file the supplemental information described above by January 15, 2020.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

¹ The petitioning creditors included San Luis Central Railroad Co., one of the parties to the Illinois receivership case.