

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ADVERSE ABANDONMENT 300542
SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y.

RESPONSE OF CHAPTER 11
TRUSTEE OF SAN LUIS & RIO
GRANDE RAILROAD TO DECISION
DATED DECEMBER 18, 2019 BY THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
April 17, 2020
Part of
Public Record

William A. Brandt, Jr., solely in his capacity as the chapter 11 trustee (the “Trustee”) for the bankruptcy estate of the San Luis & Rio Grande Railroad, Inc. (“SLRG”), the parent of Saratoga and North Creek Railway, LLC, by and through counsel, hereby files his response to the Decision of the Surface Transportation Board in the above-reference proceeding dated December 17, 2019.

On March 30, 2020, the Trustee filed a voluntary petition under chapter 11 on behalf of Saratoga and North Creek Railway, LLC (“SNCR”). SNCR’s bankruptcy case is pending before the United States Bankruptcy Court for the District of Colorado, Case No. 20-12313-TBM.

BACKGROUND

On September 12, 2019, as part of a loan default proceeding, 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.). Novo Advisors was appointed as receiver (the “Receiver”) in that proceeding. On October 18, 2019, the U.S. District Court for the Northern District of Illinois issued an order expanding the receivership to include certain SLRG affiliates and subsidiaries, including the Saratoga and North Creek Railroad (“SNCR”). *Big Shoulders Capital*, Case No. 19-cv-06029 (Oct. 18, 2019 Amended Receivership Order) (N.D. Ill.). 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 (the “Bankruptcy Court”). See *In re San Luis & Rio Grande R.R.*, Case No. 19-18905-TBM (Bankr. D. Colo.).

Because SLRG is a “railroad” as that term is defined under the Bankruptcy Code, special provisions unique to railroad reorganizations apply to the Bankruptcy Case. Specifically, the Surface Transportation Board and the Department of Transportation have the absolute right to raise and appear on any issue in a railroad case. 11 U.S.C. § 1164. Further, a trustee must always be appointed in railroad reorganizations, and the Secretary of Transportation chooses and submits to the United States trustee a list of five persons who are qualified to serve as a trustee of a railroad. The Trustee was on the list submitted by the Secretary of Transportation. 11 U.S.C. § 1163. On December 30, 2019, the Trustee was appointed as chapter 11 trustee for the bankruptcy estate of

SLRG in the Bankruptcy Case. In short, the Trustee was chosen by the Department of Transportation to operate SLRG due to his specific railroad experience and acumen.

SNCR a separate legal entity from SLRG. The Bankruptcy Court authorized, but did not direct, the Trustee to file a bankruptcy petition on behalf of SNCR. After discussions with the Surface Transportation Board and other interested parties regarding SNCR, the Trustee determined that it would be in the best interests of SNCR's creditors and the public to file a bankruptcy petition on SNCR's behalf.¹ SNCR's voluntary petition under chapter 11 of the Bankruptcy Code was filed on March 30, 2020.

THE AUTOMATIC STAY

The commencement of a bankruptcy case generally operates as an automatic stay against certain actions against the debtor and property of the debtor's bankruptcy estate. Such actions include, but are not limited to, "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case," 11 U.S.C. § 363(a)(1), "the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case," 11 U.S.C. § 362(a)(2), and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," 11 U.S.C. § 362(a)(3).

However, the automatic stay under 11 U.S.C. §§ 362(a)(1), (2) and (3) does *not* apply to "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police or regulatory power" 11 U.S.C. § 362(b)(4). Because the New York State Department of Environmental Conservation is most likely a "governmental unit" and because the adverse abandonment proceeding may be being brought pursuant to the New York State Department Of Environmental Conservation's regulatory power, the automatic stay may not apply to this instant abandonment proceeding.

REQUEST FOR CONTINUED ABEYANCE OF ABANDONMENT PROCEEDING

The Trustee is opposed to the application to abandon the SNCR railway. He filed the SNCR bankruptcy petition in order to explore a potential sale of SNCR's assets as an operating railroad. The Trustee has been and is currently having negotiations and discussions with Essex County, Warren County, the Town of Corinth, the Town of Newcomb, the Surface Transportation Board, potential bidders in such a sale, and others as to whether such a sale is possible and the parameters of such a sale process. A sale would maximize the value of the Debtor's assets for the

¹ Unlike SLRG, SNCR is not a "railroad" under the Bankruptcy Code. The definition of "railroad" under 11 U.S.C. § 101(44) is limited to a "railroad engaged in the transportation of individuals or property." Since SNCR has not been "engaged" in operating a railroad since 2018, it does not fall under the Bankruptcy Code definition. Accordingly, no trustee has been appointed for SNCR pursuant to 11 U.S.C. § 1163. Instead, the Trustee has control over SNCR due to the fact SNCR is wholly owned by SLRG.

benefit of its creditors. A sale would also ensure that the economic benefit in maintaining railroad operations in upstate New York is preserved.

The Trustee is requesting that the current abandonment proceeding be placed in abeyance for until the end of the year, ie., December 31, 2020 for the following reasons. First, it is an open question as to whether the automatic stay applies to this proceeding. The purpose of the automatic stay is to provide a debtor with “breathing room”, *i.e.*, time to marshal its assets and to prepare a plan of reorganization to maximize the value of those assets for the benefit of the Debtor’s creditors. The Trustee needs time to determine if SNCR can be sold as an operating railway in order to maximize the return to SNCR’s creditors.

Second, the Trustee needs additional time to determine if a sale can occur. Unfortunately, due the economic and social realities of the COVID-19/coronavirus pandemic, the attention and resources of local governments in the New York area are diverted to maximizing the health, safety and welfare of their citizens. Although the renewal of freight rail service to upstate New York with its attendant employment and income opportunities will most likely be a priority in the future, it is not a priority today. Discussions with local governmental officials related to the future of SNCR and the outcome of this abandonment proceeding are delayed due to the unprecedented nature of the pandemic.

Accordingly, the Trustee requests that the Surface Transportation Board continue the ongoing abeyance of this proceeding. The request is not simply for delay but to ensure that all contingencies are properly explored in order to maintain railroad operations for the region.

Dated: April 17, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2020, I caused a true and correct copy of the RESPONSE TO CHAPTER 11 TRUSTEE OF SAN LUIS & RIO GRANDE RAILROAD TO DECISION DATED DECEMBER 18, 2019 BY THE SURFACE TRANSPORTATION BOARD to be filed electronically with the Surface Transportation Board's E-Filing System and sent via First-Class mail to the following Parties of Record:

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