

SERVICE DATE – JUNE 21, 2021

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: June 21, 2021

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 of the Saratoga and North Creek Railway (SNCR) over 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).

By decision served on December 18, 2019, the Board sought supplemental information regarding a pending receivership proceeding involving the San Luis & Rio Grande Railroad, Inc. (SLRG) and certain SLRG affiliates and subsidiaries, including SNCR, in the U.S. District Court for the Northern District of Illinois<sup>1</sup> and a pending bankruptcy proceeding involving SLRG in the U.S. Bankruptcy Court for the District of Colorado (the Bankruptcy Court).<sup>2</sup> The Bankruptcy Court appointed William A. Brandt, as chapter 11 trustee for the bankruptcy estate of SLRG (the Trustee) and authorized him to file a bankruptcy petition on behalf of SNCR. On March 3, 2020, the Board held the proceeding in abeyance for 60 days to allow the Trustee time to determine whether to file a bankruptcy petition on behalf of SNCR.

The Trustee responded on April 17, 2020, stating that on March 30, 2020, he filed a voluntary petition under chapter 11 on behalf of SNCR in Bankruptcy Court.<sup>3</sup> The Trustee stated that the commencement of a bankruptcy case generally operates as an automatic stay under 11 U.S.C. § 362(a), but asserted that there was some question as to whether it applied to these proceedings. The Trustee requested that the Board continue to hold the proceeding in abeyance until December 31, 2020, so he could determine whether SNCR could be sold as an operating

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<sup>1</sup> Big Shoulders Capital LLC v. San Luis & Rio Grande R.R., Case No. 19-cv-06029 (N.D. Ill.).

<sup>2</sup> In re San Luis & Rio Grande R.R., Case No. 19-18905-TBM (Bankr. D. Colo.).

<sup>3</sup> In re Saratoga and N. Creek Ry., Case No. 20-12313-TBM (Bankr. D. Colo.).

railroad. By decision served on May 19, 2020 (May 2020 Order), the proceeding was held in abeyance until further order of the Board.

On December 14, 2020, the Trustee filed a letter stating he is opposed to the Department's adverse abandonment application and requested that the Board continue holding the proceeding in abeyance. On March 5, 2021, the Department stated that it opposes any request for further abeyance and urged the Board to promptly resolve the proceeding. The Trustee responded on April 30, 2021, requesting that the proceeding be placed in abeyance until September 30, 2021, as he continues to discuss the sale of SNCR with potential bidders. According to the Trustee, the question of whether an automatic stay applies has not been resolved and additional time is needed to discuss and negotiate the sale of SNCR with potential bidders.<sup>4</sup>

Pursuant to the May 2020 Order, this proceeding remains in abeyance until further order of the Board. The Trustee will be directed to file a status report by September 30, 2021, and to promptly notify the Board if a sale of SNCR is finalized or the bankruptcy proceeding concludes before that date.

It is ordered:

1. Pursuant to the May 2020 Order, this proceeding remains in abeyance until further order of the Board.

2. The Trustee shall file a status report by September 30, 2021, and shall promptly notify the Board if a sale of SNCR occurs or the bankruptcy proceeding concludes prior to that date.

3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

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<sup>4</sup> The Town of Newcomb, N.Y. filed a letter on March 12, 2021, stating that it is opposed to the Department's adverse abandonment application and supports the sale of SNCR and its potential use. The Town of Newcomb and the Essex County Board of Supervisor filed a letter on June 8, 2021, in response to the Trustee's April 30, 2021 letter, stating that they are opposed to the adverse abandonment application and support the efforts of the Trustee to sell SNCR as an operating rail line.