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Town of Newcomb

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"Heart of the Park"



Phone: 518-582-3211

November 17, 2021

Scott M. Zimmerman, Acting Director,
Office of Proceedings
Surface Transportation Board
395 E Street, SW Washington, DC 20423

Re: New York State Department of Environmental Conservation – Adverse Abandonment
Saratoga and North Creek Railway in Town of Johnsbury, NY STB Docket No. AB 1261

Dear Mr. Zimmerman:

On September 30, 2021, a motion to dismiss the adverse abandonment proceeding under Docket No. AB-1261 was filed, by William A. Brandt, Jr. chapter 11 trustee for the bankruptcy estate of the San Luis & Rio Grande Railroad, Inc., the parent of Saratoga and North Creek Railway (SNCR).

On October 12, 2021, the Department of Environmental Conservation filed a request to extend its time until November 17, 2021, to reply to the Trustee's amended motion. The Department stated that the Trustee consented to the request. On October 15, 2021, the request for an extension of time to reply to the Trustee's motion to dismiss the abandonment was granted.

For the reasons contained in this reply letter and supported by our previous filings under AB-1261, the Town of Newcomb and Essex County supports the Trustee's motion to dismiss the application of the New York State Department of Environmental Conservation's request for third-party, or "adverse," abandonment of the Saratoga and North Creek Railway (SNCR).

In the matter of AB-1261, the New York State Department of Conservation (DEC) began its request for adverse abandonment on December 19, 2017, citing "the public interest strongly favors its request for abandonment due to the unique and exceptional significance of New York's Adirondack Park to its citizens." The application further stated, that is sought "adverse abandonment of the authority of the Saratoga and North Creek Railway, LLC ("SNCR"), held by the Trustee.

The State of New York's DEC quest to have the line abandoned is contravening to the future economic potential this line possesses. Concerning public interest, the DEC did not ask for the input or advice from the local town or county government. Our local law governs development within our community and the Town of Newcomb has an approved land use and development plan approved by the Adirondack Park Agency. This Agency was created by the State Legislature to develop long-range public and private land use plans. The Park is not endangered by the existence of the rail line, nor was it from the rail car storage on the sidings. These cars were not derelict, were certified clean and never contained petroleum products. We believe railroad purposes under federal law include the use of the track sidelines for storage of cars necessary to move product.

When these proceedings began in 2017, neither the Town of Newcomb nor the Essex County Board of Supervisors were informed of the DEC interest in seeking the adverse abandonment of the line. We first learned of the abandonment proceedings in September of 2018, (nearly 10 months later) when the Town of Newcomb's Deputy Supervisor happened to purchase a newspaper in Plattsburgh, NY and read the public notice. This publication is not distributed in our community. While there may have been no procedural errors when these proceedings began, certainly; the "public interest" should have included the local government interest of the county and town wherein the rail line exists. The DEC decision to exclude local government yet seek favor from the STB for "public need and convenience" is in our opinion poor governance on their part.

When the DEC and the New York State Attorney General's Office began putting its case together for seeking adverse abandonment of the SNCR, Paul Mitchell of Tupper Lake, NY had formed Mountain Endeavors LLC upon purchase of the Tahawus mine in February of 2018. Mr. Mitchell received a 95-year mining permit from NYS DEC on May 10, 2018.

In previous filings under this docket, the Town of Newcomb and Mr. Mitchell have reported to the STB that there are nearly 80 million tons of already mined recyclable product on the property and are now learning that concentrations of "rare earth elements" are present in this aggregate. These rare earth elements remain of strategic importance to the United States Defense Department and further study of the quantity of these materials justifies the STB's denial of the adverse abandonment. Today, the search for these elements is considered the "Gold Rush of the 21st Century". Currently, the all-but-sole source for rare earths is China, and this presents a national security issue. In comparison, millions of tons of aggregate have already been mined and stored at Tahawus, the norther terminus of this railroad.

Similar to the national security need which spawned the building of the railroad during World War II, the potential access to these elements via this railroad will be of critical national security importance in the years to come. These rare earth elements are essential for manufacturing and production of cell phones, x-ray and MRI equipment, hybrid cars, wind turbines, strategic military hardware and other technological items.

On Friday November 6, 2021, a "Declaration on behalf of the Town of Newcomb" was submitted to the UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO. In re: SARATOGA AND NORTH CREEK RAILWAY, LLC, Debtor Bankruptcy Case No. 20-12313 TBM Chapter 11. In the declaration submitted to the Bankruptcy Court we supported the Trustee's determination to place the Tahawus rail line in public auction, whereby a common carrier railroad operator would have an opportunity to bid on the line. The sale of this line to a responsible railroad operator, enhances the potential for the reactivation of this railroad.

In conclusion, the State of New York, since the beginning of these abandonment proceedings has continually asserted misleading objection statements stating that the Tahawus line was "not suitable for freight or passenger service". In its withdrawal letter to the STB on June 14, 2019, OmniTRAX stated "the Tahawus Line possesses sound commercial prospects for the right operator, but it has concluded that continued pursuit of this opportunity is not right for OmniTRAX at this time

We believe the public interest is better served by allowing the sale of this line to be decided through "public auction", while at the same time view the third-party abandonment application of the DEC as being an impediment to potential buyers. Abandonment of this line removes the STB Federal jurisdiction.

On behalf of the Town of Newcomb and the Essex County Board of Supervisors, we respectfully ask that the third-party or adverse abandonment application, Docket No. AB-1261, be denied by the STB. We have further resolved that this adverse abandonment request is completely unnecessary as there remains "a reasonable potential for future use of the lines". The local public interest is best served by the STB retaining authority over this line and dismissing the abandonment application file by the New York State Department of Environmental Conservation.

Respectfully,

A handwritten signature in blue ink, appearing to read "Robin DeLoria", written over a horizontal line.

Robin DeLoria – Supervisor Town of Newcomb

A handwritten signature in blue ink, appearing to read "Shaun Gilliland", written over a horizontal line.

Shaun Gilliland – Chairman Essex County Board of Supervisors

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2021 , I caused the foregoing filing with the Surface Transportation Board. New York State Department of Environmental Conservation Abandonment Application Docket #: AB_ 1261 0 to be served by first class mail on the following Parties of Record:

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

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Signed – Robin T. DeLoria
Supervisor Town of Newcomb