

Mr. Robin DeLoria
Supervisor

Mary Pound
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Town of Newcomb

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"Heart of the Park"



Phone: 518-582-3211

Town Board
David Olbert
Donald Bott
Joseph Novak
Lana Fennessy

Assessors
Lowell Stringer, Chair
Jennifer Fifield
Edna VanAuken

Robert Ward
Town Justice

246385

ENTERED
Office of Proceedings
September 18, 2018
Part of
Public Record

September 17, 2018

Hon. Ann D. Begeman
Chair – US Surface Transportation Board
395 E. St. SW
Washington, DC 20423

Subject: STB Docket No. AB 1261

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION - ADVERSE ABANDONMENT - SARATOGA AND NORTH
CREEK RAILWAY IN TOWN OF JOHNSBURG, NY**

Dear Ann Begeman;

The Town of Newcomb has been advised that the New York State Dept. of Environmental Conservation, under the authority of 49 U.S.C. § 10903 and 49 C.F.R. part 1152, has filed an application for adverse abandonment of the authority of the Saratoga and North Creek Railway (SNCR) to operate over a rail line commonly known as the Sanford Lake Branch or the Tahawus Line (the Line), between milepost NC 0.0 at North Creek, New York and the Line's terminus near the Tahawus Mine at milepost NC 29.71.1. Nearly half of this line is in the Town of Newcomb, Essex County, in the State of New York.

This proposed action cites public convenience and necessity, stating "there is no present or future need for freight service over the line", and that little aggregate was moved on the line since the Saratoga North Creek Railroad was approved by the STB in 2012 to use the line. Contrary to the applications claim, there are no tanker cars being stored on the tracks at this time. While there were an estimated 65 cars only on the rail sidings near the Tahawus switch yard (consisting of approximately 2,000 feet of rail, 4 lanes wide) these cars were removed in early spring, after the snow melted. There were never any tanker cars stored on the main line in Newcomb.

The NL Industries Mine site was purchased by Paul Mitchell of Tupper Lake, NY in February of 2018, he formed Mountain Endeavors LLC upon purchase and received a mining permit from NYS DEC on May 10, 2018. Mr. Mitchell estimates that there are nearly 80 million tons of already mined recyclable product on the property which can be used in asphalt and concrete businesses; as well as stone for foundation drainage and general landscape constructions. (Photos - Attachment A)

Since January 5, 2018, the Town of Newcomb has been working with Warren County Board of Supervisors, Essex County and Hamilton County legislators, NYS Assemblyman Dan Stec, NYS Senator Elizabeth Little, Fred Monroe from the Adirondack Park Agency Local Government Review Board, Paul Mitchel and Steven Potter, a retired CSX Railroad Vice President who resides in the Town of Long Lake. These meetings were facilitated by Steven Potter, requesting to meet with us to explore alternatives for the rail car storage on the Sanford Lake Branch, find a market for the materials in Tahawus and support Paul Mitchells purchase of the old Tahawus mining site.

As a result of our many meetings and email exchanges; we were able to establish contact with representatives from Omnitrax, a Colorado based company with respect to their company taking over the Tahawus Line from the Saratoga North Creek Railway. Both railroad companies continue to meet and discuss the sale of this line to Omnitrax. Paul Mitchell's Mountain Endeavors LLC, Justin Gonyo – Hudson Consulting, North Creek, Josh Putterman of Bluejay Advisors in Jacksonville Florida and Omnitrax representatives continue to seek out market avenues south of Saratoga for the stone products in Tahawus.

The Sanford Lake branch is made up of the railroad easements and rights of way in the Town of Newcomb and Town of Minerva in Essex County, the Town of Indian Lake in Hamilton County and the Town of Johnsburg in Warren County, all in the State of New York, as described as Parcels 1 through 40 in the deed from the United States of America to NL Chemical, Inc., dated 9/18/89 and recorded in Liber 954 cp 267 (Essex County), Liber 199 cp 114 (Hamilton County) and Liber 777 cp 254 (Warren County).

On November 1, 2011 KRONOS (US), INC., (the successor in interest to Kronos, Inc. as the successor in interest to NL Chemicals, Inc.), a Delaware corporation, having a principal address and place of business at 5430 LBJ Freeway., Suite 1700, Dallas, Texas 75240-2697 released and quitclaimed all right, title, interest, estate, claim and demand, which included the easements and railroad rights-of-way also known as Plancor 1245 to the SARATOGA AND NORTH CREEK RAILWAY, LLC. In 2012, SNCR obtained Board authority to operate over the Tahawus Branch. See Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line, FD 35631 (STB served June 1, 2012).

The NYS DEC application for adverse abandonment filed before the STB (Docket No. AB 1261) if approved; would end the potential future rail use of the Sanford Lake Branch protected under a temporary easement expiring in the year 2062. This line was subject of litigation in the United States District Court for the Northern District of New York, Civil No. 8431, United State of America v. 220 Acres of Land, More or Less, situated in the Counties of Essex and Hamilton, State of New York and the State of New York et.al and the judgement in that suit dated October 17, 1962.

Under 49 U.S.C. 10903(d), the standard governing any application to abandon or discontinue service over a line of railroad, including an adverse abandonment or discontinuance, is whether public convenience and necessity requires or permit the proposed abandonment or discontinuance. In implementing this standard, the STB must balance the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally. STB Docket No. AB-400 (Sub-No. 4) SEMINOLE GULF RAILWAY, L.P.—ADVERSE ABANDONMENT—IN LEE COUNTY, FL Decided: November 17, 2004.

In past decisions the Surface Transportation Board denied the petitioners' application on the ground that there is "a reasonable potential for future" use of the lines. *Norfolk S. Ry. Co.*, No. AB-290 (Sub-No. 286), 2008 WL 391303, slip op. at 3-4, 6-7 (Feb. 13, 2008) (*NS I*).

And,

The Board correctly allocated the burden to the petitioners, *see Cross Harbor*, 374 F.3d at 1186, duly balanced the relevant interests, *see id.* at 1183, and reasonably determined that preserving the right-of-way for a time in order to serve potential future demand outweighed the petitioners' interest in immediate abandonment, *see Seminole Gulf Ry.*, No. AB-400 (Sub-No. 4), 2004 WL 2618630, at *4 (STB Nov. 17, 2004);

The efforts of the Town of Newcomb and its partners to seek out a viable rail operator to support the use of the Sanford Lake Branch for removing the material aggregate from Mountain Endeavors LLC, in Tahawus and provide Barton International, in North Creek with an option to move and expand its market, is being met with skepticism from the DEC. Our vision for economic growth does not place an immediate time limit on the market for materials. The value we place on keeping the Sanford Lake Branch as an approved rail line makes both environmental and economic sense.

The DEC application does not seek abandonment of the SNCR's authority over the tracks from North Creek to Saratoga, however; an approved abandonment of the Sanford Lake Branch would severely devalue the 40-mile section of rail owned by Warren County. We strongly believe preserving the viability and future use of the Sanford Lake Branch will financially benefit Warren County and believe it should remain an approved STB rail line until the expiration of the easement in the year 2062.

The estimated life of Mountain Endeavors, LLC operation as noted in the permit issued to it by the NYS DEC is projected to be 75 years, therefore; for the Sanford Lake Branch to remain active for the remaining 43 years of the easement, such would complement the New York State Department of Environmental Conservation's and the New York State Transportation Department's position statements in 2012, where both supported the STB authorization to activate the line. To this day it is difficult for my partners to comprehend why our local efforts are not supported in Albany.

Please find attached, a resolution from the Newcomb Town Board, opposing the New York State Department of Environmental Conservation Abandonment Application (STB Docket # AB-1261) urging the Surface Transportation Board to deny in full its application for adverse abandonment of the Sanford Lake Branch in the Town of Newcomb and Town of Minerva.

Respectfully,



Mr. Robin T. Deloria -- Supervisor

Resolution of the Newcomb Town Board opposing the New York State Department of Environmental Conservation Abandonment Application STB Docket No. AB-1261 with the Surface Transportation Board of the 30-mile section of railroad commonly known as the Sanford Lake Branch, and to permit the continued operation by another operator to transfer materials from the hamlet of Tahawus, New York in the Township of Newcomb.

Whereas on September 7, 2018 the New York State Department of Environmental Conservation filed an Application to Abandon Services of the Sanford Lake Branch, STB Docket No. AB 1261 before the Surface Transportation Board;

Whereas the New York State Department of Environmental Conservation application is seeking adverse abandonment of the authority of the Saratoga and North Creek Railway, LLC to operate over the Sanford Lake Branch;

Whereas a proposal from Omnitrax, a Denver Colorado based company, submitted to the Warren County Board of Supervisor includes their intent to purchase the assets of the rail line from North Creek to the Tahawus mine for continued operation;

Whereas for the last decade Paul Mitchell of Mitchell Stone Products of Tupper Lake, N.Y. has been removing the stone known as tailings from the old mine under contract with NL Industries;

Whereas Paul Mitchell owner of Mountain Endeavors LLC, has purchased the former NL Industries titanium and iron mine site in the hamlet of Tahawus where an estimated 100 million tons of recyclable material aggregate remains;

Whereas the use of the Sanford Lake Branch to transport the material aggregate can result in the potential to create significant economic benefit for Essex County, the Town of Newcomb community and our region;

Whereas both the New York State Department of Environmental Conservation (NYSDEC) and the New York State Department of Transportation (NYSDOT) urged the Surface Transportation Board to approve Saratoga & North Creek Railway LLC (SNCR)'s Notice of Exemption for operation of the Tahawus Line on March 15, 2012; and

Whereas both the New York State Department of Environmental Conservation (NYSDEC) and the New York State Department of Transportation (NYSDOT) in its joint letter agreed that the environmental, economic, recreational and safety issues associated with the rail operations from an environmental perspective could result in a dramatic reduction of truck traffic in this sensitive area of the Adirondack Park, thereby reducing harmful emissions, lowering the region's carbon footprint and greatly diminishing dust and noise, while unsightly piles of aggregate are removed; and

Whereas both the New York State Department of Environmental Conservation (NYSDEC) and the New York State Department of Transportation (NYSDOT) also stated in their joint letter of support that "the resumption of the rail line will also add to the year-round employment base of the region, improve the safety and environmental costs of aggregate removal, ensure that this product is recycled, and reduce expensive road maintenance costs; and

Whereas the Surface Transportation Board has abandonment authority and jurisdiction to consider alternatives to a proposed third-party abandonment; now, therefore, be it

Resolved the Town Board of the Town of Newcomb urges the Surface Transportation Board to deny the application of the New York State Department of Environmental Conservation request for adverse abandonment of the authority of the Saratoga and North Creek Railway, LLC to operate over the Sanford Lake Branch; and it is further

Resolved the Town Board of the Town of Newcomb urges the Federal Surface Transportation Board to exercise its jurisdiction over the Sanford Lake Branch leading from Tahawus to North Creek, support the future use of the Sanford Lake Branch by a viable rail operator to remove the material aggregate from the Mountain Endeavors LLC at Tahawus and reject the adverse abandonment request of this line.

Resolution was moved by Councilman Bott

Seconded by Councilman Novak

Roll Call Vote:

Supervisor DeLoria	-	Aye
Councilman Bott	-	Aye
Councilman Olbert	-	Aye
Councilman Novak	-	Aye
Councilwoman Fennessy	-	Aye

This is to certify that I am the Town Clerk of the Town of Newcomb, New York. As such, I keep its official records, including its minutes and in that capacity do certify that the attached Town Board Resolution was approved during the August 28th, 2018 regular Board meeting.

Witness of my official signature and seat this 28th day of August 2018



Mary A. Gaudin
Signature Town Clerk

Attachment A – Photos

Tailing Pile at Mountain Endeavors, LLC Tahawus New York



Photo taken just south of Mining Area



Garage and Out Buildings



Alternate View of Tailings Pile



Switch Yard at Mountain Endeavors LLC, Tahawus NY



Photo Showing Tanker on Sidings (removed in spring of 2018)



CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I caused the foregoing Newcomb Town Board
**Opposition Statement to the New York State Department of Environmental Conservation
Abandonment Application Docket #: AB_1261_0** to be served by first class mail on the
following:

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

Party Of Record:

Berkman, Thomas S.
New York State Department Of Environmental Conservation
625 Broadway, 14Th Floor
Albany, NY 12233-1010

Party Of Record:

Mitchell, Paul J
Mitchell Stone Products
15 Mitchell Lane
Tupper Lake, NY 12986

Party Of Record:

Tallent, Joshua M.
163 W 125Th St
Albany, NY 12224

Party Of Record:

Taylor, Susan L.
New York State Office Of The Attorney General Environmental Protection Bureau
Office Of The Attorney General The Capitol
Albany, NY 12224-0341

Member Of Congress:

Schumer, Honorable Charles E
United States Senate
Washington, DC 20510



Mr. Robin DeLoria
Supervisor Town of Newcomb


Notary Signature

MARY A. POUND
Notary Public, State of New York
Registration No. 01PO4933473
Qualified in Essex County
Commission Expires May 31, 2022