



The mission of the ADIRONDACK COUNCIL is to ensure the ecological integrity and wild character of the ADIRONDACK PARK for current and future generations.

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October 18, 2018

Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, D.C. 20423

246510

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

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

Dear Ms. Brown:

The Adirondack Council appreciates the opportunity to submit its comments to the Surface Transportation Board ("STB") in the above referenced proceeding.

The Adirondack Council supports the Application for Adverse Abandonment by the New York State Department of Environmental Conservation ("NYS DEC") for the reasons detailed below. Further, the Adirondack Council does not oppose the NYS DEC's motion, filed on October 16, 2018, to hold the adverse abandonment proceeding in abeyance for 90 days to allow for negotiations regarding future corridor use, and a prohibition on long-term storage of rail cars on the subject line.

The Adirondack Council is a not-for-profit environmental organization with two offices in New York State and with membership comprised of thousands of individuals residing in all 50 states.

The mission of the Adirondack Council is to ensure the ecological integrity and wild character of the Adirondack Park for current and future generations. We envision an Adirondack Park with clean water and air and large wilderness areas, surrounded by working forests and farms and vibrant local communities.



DEFENDING THE EAST'S GREATEST WILDERNESS

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SUSTAINABLE FORESTRY INITIATIVE

To achieve our vision for the Adirondack Park, we:

- sponsor and publish research;
- educate the public and policy makers;
- advocate for regulations, policies and funding to benefit the Park's environment and communities;
- monitor compliance, proposals, legislation and policies impacting the Park; and,
- take legal action when necessary to uphold constitutional protections and agency policies established to protect the Adirondacks.

The Adirondack Council receives no government funding. All funding support is provided by generous private individuals and foundations who care about protecting all that is special about the Adirondacks.

The Adirondack Park preserves the largest intact temperate deciduous forest in the world and is home to at least 87 rare species, moose, eagles, loons and heritage strain brook trout. The Park is the largest in the contiguous United States, bigger than Yellowstone, Yosemite, Glacier and Grand Canyon National Parks combined. It contains six million acres (9,300 square- miles), covers one-fifth of New York State and is equal in size to neighboring Vermont.

More than half of the Adirondack Park is private land, devoted principally to hamlets, forestry, agriculture, and open-space recreation. The Park is home for 130,000 permanent and 200,000 seasonal residents in 120 hamlets and 9 villages. The Park hosts 12 million visitors yearly.

Nearly half of the Park is publicly owned Forest Preserve, protected as "Forever Wild" by the NYS Constitution since 1894. About 1.1 million acres of these public lands are protected as Wilderness, where non-mechanized recreation may be enjoyed. Most of the public land (more than 1.4 million acres) is Wild Forest, where motorized uses are permitted on designated waters, roads and trails.

This application by the NYS DEC for adverse abandonment is supported by the many failures of the current operator of the subject rail line—the Saratoga North Creek Railway ("SNCR").

SNCR is an operator that failed to meet its promises in its application to operate as a common carrier before the Surface Transportation Board and to the elected officials of the State of New York, as well as the state agencies and local governments that supported the company. It is an operator that has reneged on its financial obligations to those same local governments and is in arrears in its tax obligations.

SNCR is an operator that was willing to put the natural resources of New York's Adirondack Park at risk by taking several actions completely inconsistent with the pristine setting of the rail corridor.

SNCR first proposed in 2015 to transport not-yet-cleaned derelict oil tankers into the Park to store on its rail right of way within the Park's Wild, Scenic and Recreational river corridors. These designated river corridors are heavily regulated in state law. The Wild, Scenic and Recreation rivers system was established to protect the purity of the rivers running through them

and the scenic views for those boating on the river. Moreover, much of the Sanford Line in question crosses state forest preserve lands, which by operation of Article 14 of the New York State Constitution are forever protected as wild forest lands. Fortunately, after a public outcry by the Adirondack Council and others, based on these and other concerns, the company backed off this plan.

Relief was short lived. Ignoring the concern for the protection of nationally significant natural resources and communities within the Adirondack Park, the company's previous promises to the State, STB and others, and legal concerns, SNCR in 2017 did situate obsolete tankers on this rail line. The company claimed they were cleaned. The Company claimed they would store cars on the siding and the main line, and that the cars would remain in the same Wild, Scenic and Recreational river corridors for what it called "indefinite storage." This action created an impediment to wildlife passage, as well as a long-term hazard as the tankers decayed and an immediate aesthetic offense that was bound to adversely impact tourism in our state park.

The Adirondack Council, the Governor of the State of New York, the Attorney General of the State of New York, the Comptroller of the State of New York, and our two U.S. Senators Schumer and Gillibrand; together with thousands of New Yorkers were outraged. People contacted Warren Buffet because a Berkshire Hathaway company owned the used cars. Warren Buffet immediately responded, did the right thing, and directed that his companies used rail cars not now or ever in the future be stored in the Adirondack Park. The Adirondack Council thanked Mr. Buffet for this action and he wrote and thanked the Adirondack Council for making him aware of the issue saying "our cars should never have been stored there in the first place".

As the largest environmental organization in the Adirondack Park, The Adirondack Council has been supporting the Application for Adverse Abandonment by the New York Department of Environmental Conservation for several reasons.

First, SNCR has failed to abide by its commitment to the STB and the businesses and local governments along its route to establish commercial freight service. We are mindful that some local government officials hold out hope that a future operator on the line might invest the capital to improve the rail infrastructure and find an economic opportunity to ship stone aggregate tailings from Tahawus, in the interior of the Adirondack Park, to distant markets. This was the vision offered by the SNCR in its application to the STB years ago when it sought authority to operate the line—but that never happened. The only rock moved on the line was a publicly touted, one-time shipment of garnet from a garnet mine in North River, more than 20 miles south of Tahawus.

In the event that a new operator should step forward now in partnership with the private owner of the tailings at the end of the line in Tahawus, we would seek closer scrutiny of such an application before the STB. One working fiction from the original application to the STB by SNCR lingers: The notion that truck traffic from the tailings mine would be supplanted by the establishment of freight rail service, and therefore the environmental impact on road use and air quality would be greatly reduced. The reality is that the truck traffic out of the mine at the present time serves to deliver stone aggregate to meet regional demand.

The rail line, if the investments were made to make it operable for this purpose, would serve distant markets such as NYC and Long Island where truck delivery from the mine is not economic. It would be an irrational business model for the owner of the tailings mine site to abandon regional sales of aggregate in favor of rail transport to other markets, given the enormous supply of tailings on the site. Logically, he would simply serve both. Any economic or environmental benefit to the community would be limited. Emissions would actually increase.

Second, we support the application for adverse abandonment to prevent further actions by SNCR that are inconsistent with and potentially harmful to the natural resources of the Adirondack Park, through which the line currently extends. The application by the NYDEC under consideration in this proceeding states:

Abandonment will advance the public interest by neutralizing a risk to the Forest Preserve while allowing the State and its municipalities the freedom to explore other potential uses for the Line.

Approval of the application will neither mandate the removal of the rails nor determine the long-term fate of the right of way. What it will do is remove an operator that has abandoned the purposes for which it sought permission to use the line, while endangering the environmental protections that safeguard some of New York's most precious natural resources and most popular tourism destinations. Adverse abandonment would give state agencies and the local governments in which the line is located, in consultation with all citizens of New York, an opportunity to plan for a better future for the rail right of way – one that is complementary to and consistent with the purposes for which the Adirondack Park was established in 1892.

The Tahawus rail line legal status is uncertain and temporary: Legal interests that SNCR acquired in this corridor, if any, were limited, and regardless, and expire in 2062. Sections of the line are Forest Preserve and if they have not yet reverted will revert to "Forever Wild."

The Tahawus mine is closed and most of the land around it has been purchased by the State, making it part of the Adirondack Forest Preserve ensuring it's protection under the NYS Constitution as "Forever Wild." The quantity of stone to remove from the site is finite and limited, and the potential for future activation and expansion of the mine is non-existent.

It seems unlikely that freight service will be reestablished and given legal and physical restrictions it seems even more unlikely that it can be sustained. Any use that is established will at best be temporary. The State's proposed adverse abandonment would allow, as the filing states, an opportunity for the state, local government and other stakeholders to jointly evaluate the costs, risks and potential rewards of alternative uses, and make an informed decision in the best interest of all.

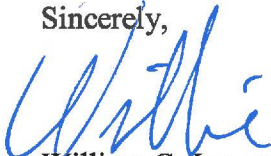
October 18, 2018

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The Adirondack Council does not oppose a new operator establishing service on the line to haul stone from and help restore the Tahawus mine site before any remaining legal interests in the line expire in 2062 if adequate controls are in place to prohibit storage of used oil trains or other long-term storage of rail cars, or other use not compatible and complimentary with the State's preservation of the Adirondack Park and protection of natural resources including the Hudson and Boreas Rivers.

For the reasons stated herein, the Adirondack Council supports the Application for Adverse Abandonment by the New York State Department of Environmental Conservation; but also does not oppose the State's request for a 90 day temporary suspension of the adverse abandonment proceeding to allow for negotiations regarding future corridor use, and a prohibition on long-term storage of rail cars on the subject line.

Sincerely,

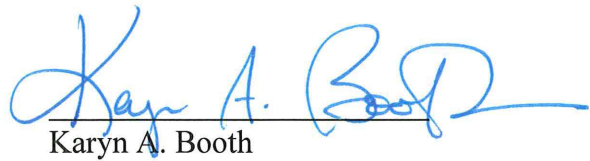


William C. Janeway
Executive Director

cc: Joshua Tallent, NYS Office of Attorney General, Environmental Protection Bureau

CERTIFICATE OF SERVICE

I hereby certify that on this day, October 18, 2018, I have served a copy of the foregoing
Comments by U.S. Mail to all Parties of Record in this proceeding.


Karyn A. Booth