

January 16, 2018



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BY HAND

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

244983

ENTERED
Office of Proceedings
January 16, 2018
Part of
Public Record

RE: FD 36164, Ulster & Delaware Railway Revitalization Corp. Petition for Declaratory Relief

Dear Ms. Brown:

I am filing on behalf of the Ulster & Delaware Railway Revitalization Corp. an original and ten copies of a Petition for Declaratory Relief under 49 U.S.C. §1321 and 5 U.S.C. §554(e). Also I am submitting a copy of this filing on a disk and a filing fee check payable to the Board for \$1400.

Please date stamp and return for our files one copy of this filing.

Sincerely yours,


John D. Heffner

Enclosures

cc: service list

FILED
January 16, 2018
SURFACE
TRANSPORTATION BOARD
9647471.1/SP/15556/1467/011618

FEE RECEIVED
January 16, 2018
SURFACE
TRANSPORTATION BOARD

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36164

**ULSTER & DELAWARE
RAILWAY REVITALIZATION CORP.
PETITION FOR DECLARATORY RELIEF**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
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Suite 717
Washington, D.C. 20036
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Counsel for Petitioner

Dated: January 16, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36164

**ULSTER & DELAWARE
RAILWAY REVITALIZATION CORP.
PETITION FOR DECLARATORY RELIEF**

I.
INTRODUCTION

Pursuant to 49 U.S.C. §1321 and 5 U.S.C. §554(e), the Ulster & Delaware Railway Revitalization Corp. (hereafter “U&D”) petitions the Surface Transportation Board (“the Board”) to issue a declaratory order (1) as to whether a line of railroad located in Ulster County, NY (“the County”), known as the Catskill Mountain Branch (“the Line”) has been abandoned and (2) if so, whether the conversion of that line’s right of way into a trail could be done pursuant to the National Trails Act (“NTA”). U&D submits that *if* the Line has indeed been abandoned, it is therefore outside the Board’s jurisdiction. Accordingly, any conversion of the line into a “rail trail” could not be undertaken pursuant to the NTA and the Board should issue decision to that effect. Because this case presents unique legal issues, U&D requests that the Board institute a declaratory relief proceeding seeking public comment or, alternatively, provide appropriate guidance to the public. Should the Board conclude that the Line has *not* been authorized for

abandonment, U&D seeks an order compelling the County to cease and desist from any further salvage activity absent agency approval.

II. STATEMENT OF FACTS

U&D is a non-profit tax exempt section 501(c)(3) New York corporation established in 2016. It is dedicated to the preservation of the Line as a historic rail corridor served by the excursion railroad passenger service provided by the Catskill Mountain Railroad (“CMRR”).

In order for the Board to fully understand the circumstances behind U&D’s Petition, U&D presents some background information. The Line is a segment of a railroad that formerly extended between Kingston at MP 2.9 and Bloomville at MP 86.6 in Ulster, Delaware, and Schoharie Counties, NY. It connects at Kingston with a north-south mainline of CSX Transportation commonly known as “the River Line.”

The Line was originally constructed by a predecessor of the bankrupt Penn Central Transportation Company. The United States Railway Association (“USRA”) analyzed the Line for inclusion in Consolidated Rail Corporation in its *Final System Plan* (the “FSP”). However, USRA declined to designate it for conveyance to Conrail with the result that it was identified in the *FSP* as “available

for subsidy.”¹ Absent a subsidy, the line was an abandonment candidate under the former section 304 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§701,744 (“3R Act”).

In 1979 Ulster County (“the County”) purchased the 38.6 mile segment of the Line within its boundaries from the Penn Central estate. The line west of the Ulster County border was sold to the Catskill Revitalization Corporation and is currently being operated by the Delaware and Ulster Railroad. U&D understands that Conrail performed some limited freight operations over the eastern most portion of the Line during the 1980’s. In 1982 the County leased its entire portion of the line between Kingston and Phoenicia to CMRR to provide an excursion railroad passenger service. Subsequently, the County and CMRR executed a series of additional agreements that extend CMRR’s operations over portions of the Line until as late as December 31, 2020.

During the years starting 1987, the Line has suffered a series of devastating weather events. In 1987 a flood washed out a segment of the Line near the Line’s western end at Phoenicia. That segment was repaired and returned to service. In 2005 another flood severely damaged a portion of the Line at Phoenicia. CMRR volunteers again restored that portion to service. Disaster struck again on August

¹ A copy of the relevant pages of the *FSP* is attached as Exhibit A.

28, 2011, when flooding attributable to Hurricane Irene damaged portions of the railroad near Phoenicia.

Starting around 2006, local trail advocates began promoting a plan to convert portions of the Line into a recreational path. Studies were undertaken to consider the possibility of establishing a trail that would coexist with continued tourist rail service. Local officials proposed various plans that either contemplated trail use with rail service over segments or conversion of the right of way into a recreational trail without any rail service. The County engaged an attorney experienced in rail trail issues to seek Board authority to convert the Line to trail use. However, U&D can find no evidence of any trail use request filed with the Board. Finally, in 2013, the outgoing Commissioner of the New York City Department of Environmental Protection (“NYCDEP”) (which owns an easement on the part of the Line adjacent to a reservoir) proposed a trail over the portion of the Line between MP 10 and MP 21.6. U&D is attaching as Exhibit B an executed Memorandum of Agreement between the County and NYCDEP which specifically allows Ulster County to institute rail freight operations over the NYCDEP easement by means of a modified certificate filing at the Board. That document also assumes that the County will seek a determination from the Board allowing interim trail use under the NTA.² Similarly, a document issued by the Ulster

² See, Memorandum of Agreement at 8.

County Planning Department attached here as Exhibit C also assumes continuation of rail operations over the Kingston and Mount Tremper segments of the corridor.

The lease from the County to CMRR expired by its terms on May 31, 2016. The County would not consider a new lease but, rather, issued permits to CMRR for operation on two segments. The segment between MP 3.6 and MP 8.33 is covered by a permit that expires on Dec. 31, 2020. The segment between Cold Brook at MP 22.1 and MP 27.5 at Phoenicia was covered by a short-term permit that ran from Aug. 1 to Oct. 31, 2016. That permit was not renewed with the result that CMRR has conducted no operations on that segment since Oct. 31, 2016.³

Events leading U&D to file this petition are as follows. After negotiations to preserve tourist rail service over segments of the Line broke down, the County made arrangements to scrap the Line and preserve it as a recreational trail. While the permit covering the eastern-most segment of the Line appears to enable continued tourist operations until Dec. 31, 2020, it has many conditions. Among others, the County could terminate the permit if CMRR contacted the Board to discuss the status of the Line as abandoned or as a rail trail under the NTA! In that regard, U&D's Stephanie Bonk contacted the Board to ascertain the Line's status as an abandoned railroad. A copy of her email correspondence with members of

³ See, [https://en.wikipedia.org/Catskill Mountain Railroad](https://en.wikipedia.org/Catskill_Mountain_Railroad), a copy of which is attached to this filing as Exhibit D provides background information on the CMRR.

the Board's Office of Public Assistance, Government Affairs, and Compliance ("OPAGAC") is attached as Exhibit E.

On January 8, 2018, U&D and CMRR officers learned that the County had begun salvage efforts.⁴ Although U&D recognizes that the Board lacks jurisdiction to decide commercial issues or halt the salvage of a line once legally abandoned, it seeks the Board's guidance in connection with civil litigation it will file shortly in the appropriate New York State Court.

III. ARGUMENT

As a threshold matter this Petition presents two questions of first impression requiring Board clarification. Under 5 U.S.C. §554(e) and 49 U.S.C. §1321, the Board may issue a declaratory order to remove uncertainty. *See, Petition of Norfolk Southern Railway Company For Expedited Declaratory Order*, FD 35949 (STB served Feb. 25, 2016) and cases cited therein. The uncertainty here is whether an abandonment that the 1973 Regional Rail Reorganization Act purports to authorize requires any further action before it becomes effective. If abandoned, does the underlying right of way enjoy the same protected "railroad status" that a line abandoned and converted into a trail under the provisions of the NTA and the Board's regulations at 49 CFR §1152.29 possess? The Board should either initiate a declaratory relief proceeding with an opportunity for public participation or, at

⁴ A copy of a story appearing on the *Trains* magazine website is attached as Exhibit F.

the least, provide the public with guidance. This determination is significant because the right of way constituting the Line consists of reversionary easements. Under the terms of those documents U&D believes that title will revert to the adjoining landowners once rail service terminates and the track is removed. And once that happens, any interest that both the County and the NYCDEP have in maintaining a trail over the right of way also vanishes.

A. The Status of the Line as an Abandoned Railroad is Unclear.

The starting point for our discussion is the abandonment provision of the 3R Act at 45 U.S.C. §744(b) which states as relevant:

- (1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. *Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.* [emphasis supplied].⁵

Under the Board's current abandonment rules, an abandonment does not become effective until the Board issues a decision authorizing abandonment, there are no unresolved or pending offers of financial assistance, the applicant terminates service, there are no unresolved public use, historic and/or environmental requirements imposed by the Board, and the applicant submits a letter to the Board *consummating* the abandonment. After that the applicant is free to commence

⁵ Subsection (c) is irrelevant as it deals with service provided under an operating subsidy.

salvage. *Aban. And Discon. Of R.Lines And Transp. Under 49 U.S.C. 10903*, 1 S.T.B. 894, 904-906 (1996), 2 S.T.B. 311, 315-318 (1997) (decision on reconsideration). Once the abandonment becomes effective, the Board loses jurisdiction and state law applies. *See, Hayfield & No. R. Co. v. C&NW Transp. Co.*, 467 U.S.622, 634, 635 (1984)(*Hayfield*); *Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions*, 366 I.C.C. 132 (ICC 1981)(*Common Carrier Status*); and *Maryland Transit Administration- Abandonment Exemption –In Somerset County, MD*, slip op. at 2-3, Docket AB 590 (Sub No. 1X)(STB served May 14, 2015)(cited as *MTA*).

Prior to the enactment of the ICC Termination Act the procedures regarding the effectiveness of an abandonment were more informal. In the absence of the abandoning carrier filing a letter of consummation, the Board looked to the applicant's *intent* to see whether an abandonment had been fully consummated. *Black v. I.C.C.*, 762 F.2d 106, 114 (D.C. Cir. 1985); *MTA, supra* at 3. The critical question was whether the applicant demonstrated a permanent intent to terminate rail service forever. Section 744(b) appears to require that notice of the abandonment be given at least 30 days before it is effective. U&D is unaware of whether or when that notice was ever provided. Even the OPACAG staff is uncertain as to whether the Line has been abandoned. As OPACAG's Mr. Forestall stated,

“Ulster County apparently acquired the right-of-way of the Branch from Penn Central in lieu of back taxes. The subsequent history of the Ulster & Delaware is not clear, but I found no further dockets pertaining to it in ICC or Board records. It is not possible to draw any hard conclusion about the status of the line in question. To the extent 1) that it was not transferred to Conrail, 2) that it has been devoid of freight traffic, and 3) that it has been disconnected from the freight network, it would be easy to suppose that it is abandoned. But that is purely speculation on my part.” See, Exhibit E.

Moreover, the fact that the County and the NYCDEP appear to be operating under the expectation that this Line is suitable for use as a trail under the NTA suggests that the Line has either not been abandoned or the requisite intent to permanently terminate service is missing. If so, the Board has the power to act and has taken action in the past to forbid carriers from terminating service, abandoning a line, or salvaging track absent prior Board approval and should do so here. *Central Oregon & Pacific Railroad, Inc.-Coos Bay Rail Line*, FD 35130 (STB served April 11, 2008)(failure to provide service treated as unlawful abandonment; carrier required to restore service) and *Colorado Wheat Administrative Committee, Et Al, v. V And S Railway, LLC*, No. 42140 (STB served May 7, 2015)(Board enjoined rail carrier from salvaging track prior to abandonment approval).

B. Can a rail line that was abandoned prior to the enactment of the National Trails Act be converted into a rail trail under the provisions of that law?

Assuming that the Line was properly abandoned under the 3R Act, the second question simply is whether it is eligible for conversion into a trail under the NTA. For the reasons stated below, U&D submits the answer is “no.” However, it

requests Board confirmation of this point. In fact, the Interstate Commerce Commission ruled in 1986 that the NTA provisions *do not apply* [emphasis supplied] to abandonments of bankrupt carriers such as the Penn Central. *Rail Abandonments-Use of Rights-Of-Way as Trails*, 2 I.C.C.2d 591, 600, 602. And as an abandoned piece of right of way, the Line would be subject to state law. *Hayfield*; *Common Carrier Status*; and *MTA*, *supra*).

As reversionary easements, the adjoining landowners would be entitled to reclaim those parcels destroying the utility of the right of way for both continued tourist rail service and *for use as a trail* [emphasis supplied].

Simply stated, if the Line was properly abandoned under the 3R Act, that action took place some seven years before the enactment of the Trails Act in 1983. Under the Board's Trails Act regulations, a trail is treated as a "railroad" subject to its jurisdiction. *Cf.* 16 U.S.C. §1247(d). In the case of a reversionary easement the integrity of the right of way is preserved vis a vis the claims of adjoining landowners. While the landowners might have a "takings claim" against the United States Government, the "line" is preserved as a corridor. *Presault v. Interstate Commerce Commission*, 853 F.2d 145 (2nd Cir. 1988), *rev'd* on the takings question, 494 U.S. 1 (1990).

Under the Board's trail use regulations and precedent, a line approved for abandonment can be converted into a trail any time before the abandonment is

consummated providing the party seeking trail use agrees to the normal regulatory requirements.⁶ *Fritsch v. I.C.C.*, 59 F.3rd 248 (D.C. Cir. 1996). Once an abandonment is consummated, the Board loses jurisdiction over the line and the ability to designate it for trail use. *Id*; *MTA, supra*; *Rails-to-Trails Conversions: A Review of Legal Issues Planning & Environmental Law*, Sept. 2006, Vol. 58, No. 9, p. 4. (article by Andrea Ferster, Esq.).

Accordingly, if the Board finds that the Line was indeed abandoned before the enactment of the NTA, it lacks the jurisdiction to designate it for trail use and should issue an opinion to that effect.

IV. CONCLUSION

U&D requests that the Board institute a declaratory relief proceeding seeking public comment or, alternatively, provide appropriate guidance to the public. Should the Board conclude that the Line was never fully abandoned, it should issue a ruling directing the County to cease its salvage activities pending further agency order.

⁶ To accept full responsibility for (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way; and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way; and to acknowledge that the line may be converted back into common carrier rail service at some future date. 49 CFR §1152.29.

Respectfully submitted



John D. Heffner

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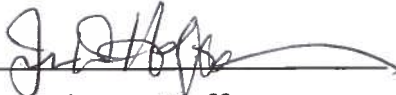
Counsel for Petitioner

Dated: January 16, 2018

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing Petition for Declaratory Relief dated January 16th, 2018, was sent by U.S. mail to the following in this proceeding.

Beatrice Havranek, Esq.
Ulster County Attorney
244 Fair Street
Kingston, NY 12402


John D. Heffner

Dated: January 16, 2018

EXHIBIT A

WALLKILL VALLEY BRANCH

USRA Line No. 136

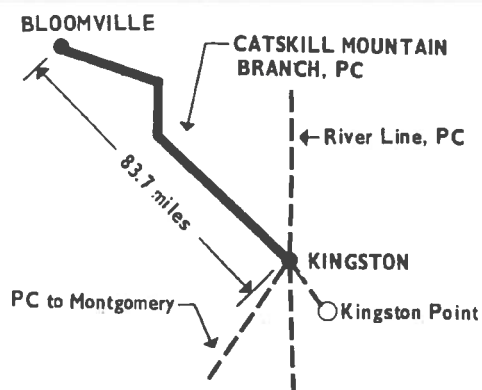
Penn Central

The Wallkill Valley Branch, extending from *Kings-ton* (Milepost 0.0) to *Montgomery, N.Y.* (Milepost 33.0), a distance of 33.0 miles, in Ulster and Orange Counties, N.Y., a line which was recommended for inclusion on page 626 of the Preliminary System Plan, shall be transferred to the Consolidated Rail Corp.

CATSKILL MOUNTAIN BRANCH

USRA Line No. 137

Penn Central



The Catskill Mountain Branch, formerly part of the New York Central RR, extends from *Kingston* (Milepost 2.9) to *Bloomville, N.Y.* (Milepost 86.6), a distance of 83.7 miles, in Ulster, Delaware and Schoharie Counties, N.Y. At Kingston, this branch connects with the River Line and the Wallkill Valley Branch of the PC (see Line No. 136).

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:

West Hurley	0
Phoenicia	3
Grand Hotel Station	0
Fleischmann's	42
Arkville	7
Halcottville	1
Roxbury	346
Grand Gorge	23
Stamford	334
Hobart	3
South Kortright	87
Bloomville	6

Total carloads generated by the line..... 852

Average carloads per week	16.4
Average carloads per mile	10.2
Average carloads per train	9.5
1973 operating information:	
Number of round trips per year	90
Estimated time per round trip (hours)	23.0
Locomotive horsepower	1,800
Train crew size	4

Public Comments on Preliminary System Plan

The Catskill Mountain Transportation Corp. (CMTC), said this line could show a profit of \$90,701 on the assumption that the line would produce \$100,429 in additional revenues with assurance of improved and expanded service. Included was a surcharge of \$2 per ton which shippers on the line would be willing to pay on all freight shipped or received on the line. Lutz Feed and Briggs Lumber Co. stated that they offered PC such a surcharge 3 years ago but have never received a reply.

CMTC reported it had three qualified men thoroughly check "every inch" of roadbed on the Catskill branch and submitted a 200-page, mile-for-mile report describing the condition of the roadbed. The report concluded that total rehabilitation costs for the branch would be \$467,000 or \$47,000 per year.

CMTC also pointed out the following errors in USRA's analysis of the line:

- USRA stated there were 180 round trips, but there were not more than 90.
- The average number of cars per train was 10, not 4.7.
- The line has only one turnout every 5 miles instead of one every 2 miles as estimated by USRA's average.
- The line has only one crossing every 3 miles instead of one per mile as estimated by USRA's average.

Lutz Feed and Briggs Lumber account for 50 percent of the traffic on the line. These companies stated that the line now meets FRA Class I standards and could be brought to Class II standards with a minimum of work. Lutz predicts that its traffic would grow 25 percent if the line remains in service.

Lutz Feed receives 20,000 tons of feed per year. Lutz, Briggs and Wadler Lumber stated that loss of service would have a serious effect upon their competitive positions.

Williamson Veneer has reopened a plant at Fleischmann's which will generate at least 35 carloads per year.

Husky Industries of Grand Gorge and Stamford would build a new plant with a rail siding if assured of continued service. The plant would produce 90 carloads per year.

The New York DOT noted the following station errors: Roxbury generated 445 carloads and Stamford generated 449 carloads. New York DOT recommended

that the line be evaluated as the Kingston to Stamford branch since service is not warranted beyond Stamford.

Information for Line-Transfer Decision

Revenue received by PC-----	\$404,358
Average revenue per carload-----	\$475
Variable (avoidable) cost of continued service:	
Cost incurred on the branch line-----	659,739
Cost of upgrading branch line to FRA	
Class I: (1/10 of total upgrading cost)-	97,579
Cost incurred beyond the branch line---	328,175
Total variable (avoidable) cost-----	1,085,493
Net contribution (loss): total-----	(681,135)
Average per carload-----	(799)

This line would require upgrading to meet the requirements of the Federal Railroad Administration's minimum safety standards (Class I track, which has a maximum safe operating speed of 10 m.p.h.). Based on available information, this upgrading would include the replacement of a total of 18,000 crossties (an average of 215 crossties per mile).

This line was reanalyzed using 90 round trips per year and 23 hours per round trip.

Service to this line generated a loss of \$681,135 in 1973. Recovery of this loss would require approximately a ninefold increase in traffic or a 168-percent rate increase. The inclusion of an additional 214 carloads on this line, as reported by New York DOT, would reduce this loss to \$662,000. In addition, with the reduced rehabilitation reported in the testimony presented to the RSPO, the loss would still be \$612,000. The surcharge of \$2 per ton offered by the shippers would further reduce the loss to \$534,102.

Disposition

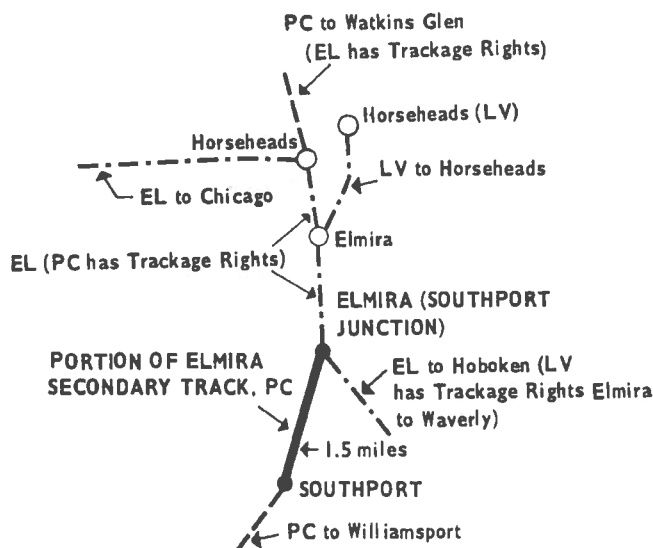
The Catskill Mountain Branch is *not* designated for transfer to Consolidated Rail Corp. and is available for subsidy pursuant to section 304 of the Act. Public officials have recommended that certain rail rights-of-way be used for other public purposes if rail service is discontinued. For line-specific recommendations, see section C of this appendix.

PORTION OF THE ELMIRA SECONDARY TRACK

USRA Line No. 230a

Penn Central

This portion of the Elmira Secondary Track, formerly part of the Pennsylvania RR, extends from *South-*



port (Milepost 74.0) to Elmira (Southport Junction), N.Y. (Milepost 75.5), a distance of 1.5 miles in Chemung County, N.Y. At Elmira, this line connects with the Jersey City-to-Chicago line of the EL over which PC has trackage rights to Horseheads (see Line No. 231a). From Southport, this line continues to Williamsport (See Line No. 230). LV also serves Elmira and Horseheads via trackage rights over the EL from Waverly to Elmira.

Traffic and Operating Information

Stations (with their 1973 carloads) served by this line:	
Elmira (Southport) ¹ -----	114
Total carloads generated by the line-----	114
Average carloads per week-----	2.2
Average carloads per mile-----	76.0
Average carloads per train-----	2.2
1973 operating information:	
Number of round trips per year-----	52
Estimated time per round trip (hours)-----	1.0
Locomotive horsepower-----	2,000
Train crew size-----	4

¹ Includes only traffic on segment.

Public Comments on Preliminary System Plan

Thatcher Glass Manufacturing Co. has a \$30 million plant at Elmira which uses this line and Line No. 231a. The plant consumes 120,000 tons of sand and 43,000 tons of soda ash per year.

Linn S. Chapel Co., Inc. of Elmira reported that it shipped 114 carloads over this line in 1973 and 142 carloads in 1974 and contended that the line would meet USRA's criteria for inclusion in ConRail. USRA attributed only 48 carloads to the entire line.

The data available indicates that the USRA analysis included two locomotives per trip. The traffic involved does not appear to warrant a second unit.

EXHIBIT B

MEMORANDUM OF AGREEMENT
Between
THE CITY OF NEW YORK
By and Through
THE NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
And
THE COUNTY OF ULSTER
In Connection With
THE ASHOKAN RAIL TRAIL PROJECT

THIS MEMORANDUM OF AGREEMENT ("Agreement") made the ^{4th}16 day of June, 2015, between the **CITY OF NEW YORK ("CITY")**, a municipal corporation of the State of New York, having an office and principal place of business at City Hall, New York, New York acting by and through its **DEPARTMENT OF ENVIRONMENTAL PROTECTION ("DEP")**, a municipal corporation, having its principal offices at 59-17 Junction Boulevard, Flushing, New York 11373, and the **COUNTY OF ULSTER ("COUNTY")**, a municipal corporation and a county of the State of New York, having its principal offices at 244 Fair Street, Kingston, New York 12401. For purposes of this Agreement, the City, DEP and the County shall each be referred to as a "Party" and shall be referred to collectively as the "Parties."

WITNESSETH

WHEREAS, the City of New York operates a water supply system that provides high quality drinking water to over nine million people in New York State; and

WHEREAS, the City is the fee owner of certain water supply property including the Ashokan Reservoir and watershed lands adjacent to the Ashokan Reservoir ("Watershed Property") located in Ulster County; and

WHEREAS, in an agreement dated June 15, 1911, the City granted to the Ulster and Delaware Railroad Company, a perpetual and exclusive easement to some portions of the Watershed Property, totaling approximately 11.5 miles along the rail corridor for "railroad purposes" (the "Ashokan Railroad Easement");¹ and

WHEREAS, the County acquired approximately 38.6-miles of the Ulster & Delaware Railroad ("U&D Railroad") between the City of Kingston and the Delaware County border at Highmount from The Penn Central Corporation and The Owasco River

¹ AGREEMENT Between THE ULSTER AND DELAWARE RAILROAD, COMPANY, and THE CITY OF NEW YORK, In the Matter of THE LOCATION OF THE TRACKS OF THE RAILROAD COMPANY AND THE DAMAGES TO IT GROWING OUT OF THE CONSTRUCTION BY THE CITY OF NEW YORK OF THE ASHOKAN RESERVOIR – Agreement dated June 15, 1911.

Railway Inc. by Quitclaim deed dated July 24, 1979 and, as such, is the current owner and successor in interest to the Ashokan Railroad Easement; and

WHEREAS, if freight rail use is infeasible, the County, as evidenced by the Ulster County Legislature's Resolution 275 dated August 19, 2014 that specified trail use only on the Ashokan Railroad Easement, seeks to develop, in an environmentally sensitive manner, the existing railroad corridor along the Ashokan Railroad Easement into a recreational trail; to be known as the Ashokan Rail Trail and displayed in Exhibit A annexed hereto; and

WHEREAS, the County has proposed to take steps to preserve the U&D Railroad corridor for future rail service and/or interim use as a non-motorized public recreational trail under the provisions of the National Trails System Act, 16 U.S.C. sec. 1247 (d) and implementing regulations at 49 C.F.R. §1152.29; and

WHEREAS, the City has agreed as a joint project to work cooperatively with the County and to provide, as specified herein, financial support and other assistance to develop the Ashokan Railroad Easement into the Ashokan Rail Trail, which will improve public access to the Watershed Property, expand recreational opportunities in the County, preserve the corridor for freight rail use, and increase economic development and tourism opportunities in the communities along the Ashokan Rail Trail; and

WHEREAS, the County will design the Ashokan Rail Trail, subject to DEP approval, obtain any required permits and approvals, undertake environmental review in coordination with the City, and construct the Ashokan Rail Trail consistent with the approved design; and

WHEREAS, the County and the City have agreed, at the County's request, to ensure that the Ashokan Rail Trail will be constructed, operated and maintained in a manner fully protective of the City's water supply and, to that end, upon DEP's approval of the completed design, the County will develop and operate the Ashokan Rail Trail under a Land Use Permit issued by the City pursuant to Title 15, Chapter 17 of the Rules of the City of New York and, consistent with the terms of this Agreement; and

WHEREAS, if and when the County obtains from the federal Surface Transportation Board ("STB") a Certificate (or Notice) of Interim Trail Use, or upon written request from the City or the County, the Parties shall modify the existing Ashokan Rail Easement or establish an alternative property interest to allow conditional trail use ("Modified Ashokan Rail Easement") to incorporate the terms of the Land Use Permit to ensure such land use conditions run with the land for so long as the trail use continues in accordance with the terms of the Modified Ashokan Rail Easement and the County acknowledges until such time as the Modified Ashokan Rail Easement is executed by the Parties, the terms of the Land Use Permit shall continue to govern use of the Ashokan Rail Trail.

NOW, THEREFORE, in consideration of the foregoing, the City and the County agree, consistent with the terms below, to cooperatively develop the Ashokan Railroad Easement into the Ashokan Rail Trail and allow the public use thereof. This Agreement shall apply to the easement as described and granted to the Ulster and Delaware Railroad Company by the City of New York in an agreement dated June 15, 1911 and recorded on April 18, 1913 in Liber 443 Page 58 in the Office of the Ulster County Clerk which was conveyed to the County by quitclaim deed, as recorded on August 10, 1979 in Liber 1414 Page 933 in the Office of the Ulster County Clerk, consisting of approximately 11.5 miles. The Parties mutually agree hereto as follows:

Section 1. City Obligations

A. The City, through DEP, shall contribute financial assistance to the County in an amount not to exceed Two Million, Five Hundred Thousand Dollars (\$2,500,000), which shall be administered by the County toward the planning, design and construction of the Ashokan Rail Trail in accordance with the terms and conditions set forth in this Agreement.

i. Within ninety (90) days of the City's registration of this Agreement, DEP shall make a payment to the County in the amount of One Million Dollars (\$1,000,000). The County may choose not to commence work on the Ashokan Rail Trail until such time as it receives the initial payment.

ii. Upon written request and following a showing by the County that it has paid out or obligated at least Fifty Percent (50%) of the initial payment of One Million Dollars (\$1,000,000). DEP shall make a further payment of Five Hundred Thousand Dollars (\$500,000).

iii. Upon written request and following a showing by the County that it has paid out or obligated at least Fifty percent (50%) of the \$1.5 Million (\$1,500,000), DEP shall make a payment in the additional amount of Two Hundred Fifty Thousand Dollars (\$250,000);

iv. DEP shall make three additional payments of Two Hundred Fifty Thousand Dollars (\$250,000) each consistent with the terms of this paragraph. Each payment shall be made upon written request and following a showing by the County that it has paid out or obligated at least Fifty percent (50%) of the previous \$250,000 payment.

v. The County shall deposit all funds received from DEP in an interest bearing account, not to be comingled with funds from other sources. Interest earned on any portion of the Two Million, Five Hundred Thousand Dollars (\$2,500,000) may be used by the County for any of the allowed purposes as set forth in and in accordance with this Agreement. Any funds received by the

County from DEP that are not expended, including unspent interest, for the purposes set forth in this Agreement, shall be returned to DEP within thirty (30) days of the completion of all activity and transactions related to this Agreement, or the termination of this Agreement.

vi. The Parties may modify timing of the above structured payments by mutual written agreement in response to changes in the cost, scope of work, and/or schedule for completion.

B. The City shall continue to support the County in obtaining, from the Catskill Watershed Corporation (CWC) Catskill Fund for the Future, an additional One Million Dollars (\$1,000,000) in grant funding available in the New York City Watershed as well as provide future support for additional CWC funding to cover any increases in construction costs directly attributable to the Rules and Regulations for the Protection From Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources ("Watershed Regulations"), 15 Rules of the City of New York (RCNY) Chapter 18, 10 New York Codes, Rules and Regulations (NYCRR) Part 128, and not otherwise required by federal or State law; and

C. In addition to the funding set forth in this Section 1, paragraph A, upon the County's satisfaction of 2G below, the City shall fund, design, construct, operate, and maintain public trailheads, with facilities, including, directional and interpretive signage, sanitary facilities, public parking, and other mutually agreed upon trail support amenities, at locations, mutually agreed upon by the Parties, on Watershed Property or adjacent properties. The City shall also, considering input from the County, provide additional entrance points for bicyclists and pedestrians along Watershed Property, which points do not require parking and related facilities, as long as these points are conducive to the security, operation and/or water quality of the Ashokan Reservoir.

D. The City, using its engineering judgment and operational experience, shall accommodate bicycle and pedestrian traffic, including consideration of a possible dedicated shared-used lane for walking and bicycling, when the City reconstructs the Ashokan Dividing Weir Bridge and the Route 28A Bridge in Boiceville, also known as the Five Arch Bridge.

E. The City shall work with the County to foster tourism, develop interpretive signage relating to the unique history of the Ashokan Reservoir, Catskill Park, and U&D Railroad and upon substantial completion of construction of the Ashokan Rail Trail, promote awareness and responsible use of the Ashokan Rail Trail.

F. The City shall be responsible for all costs associated with any relocation or reconstruction of the Ashokan Rail Trail resulting from DEP activities, including reconstruction of dikes, overpasses, bridges, culverts, roadways, or other DEP

facilities that require the temporary closure and/or rebuilding of portions of the Ashokan Rail Trail. During such construction activities, DEP shall, using its engineering judgment and operational experience, design and construct alternative Ashokan Rail Trail routes to avoid areas of construction, to the extent feasible, and will seek to minimize disruption to public access to the Ashokan Rail Trail. DEP shall obtain input from the County, on the location and design of any required alternate routes or trail closures. In the event that DEP determines, based upon its engineering judgment and operational experience, that an alternate route cannot be safely designed at a reasonable cost so as to not affect the use of the trail, portions of the trail may be closed temporarily and DEP may create temporary trailheads and trails to accommodate such closures.

G. The City, by means of a Land Use Permit, shall allow access to the Ashokan Railroad Easement by the County's employees, consultants and agents for the purpose of conducting necessary planning and engineering studies associated with the design and implementation of the Ashokan Rail Trail. In addition, the City, by means of a Land Use Permit or, consistent with paragraph 3D below, a Modified Ashokan Railroad Easement, shall allow the County's employees, consultants and agents any necessary access for construction, security, operation, and maintenance of the Ashokan Rail Trail as well as allow public access to the trailheads and Ashokan Rail Trail until the resumption of railroad operations and/or termination of the County's public trail use.

Section 2. County Obligations

- A. With the exception of the aforementioned trailheads, the County shall be fully responsible for all planning, design, and construction activities required for the Ashokan Rail Trail, including coordination of community input with DEP involvement. The County will be responsible for acquiring and expending any additional funding required for the planning, design, construction, operation and maintenance of the Ashokan Rail Trail beyond the amount of funding provided by the City pursuant to this Agreement. The County may hire any contractors, subcontractors and/or consultants necessary for the planning, design, and construction of the Ashokan Rail Trail and they shall have access to the Ashokan Railroad easement therefore.
- B. Upon completion of construction, the County, through its employees, agents, contractors, subcontractors, and/or consultants, shall be fully responsible for the operation and maintenance of the Ashokan Rail Trail excluding the trailheads, which the City shall construct, operate and maintain. The County, through its employees, agents, contractors, subcontractors, and/or consultants, shall construct, operate and maintain the Ashokan Rail Trail in a manner that does not endanger, injure or pollute, or otherwise negatively impact, any property or water supply of the City.

- C. The County shall consult and include DEP in the environmental review and planning process for the Ashokan Rail Trail, and prior to any construction, the final design of the Ashokan Rail Trail shall be subject to approval by DEP, which approval shall not be unreasonably withheld. The design shall also include necessary public safety measures including the use of barriers such as fencing or guardrails, use of materials which are not deemed impervious² under the Watershed Regulations for the trail surface unless otherwise mutually agreed upon, and signage identifying the Watershed Property as part of the City's public drinking water system and highlighting the City's and County's cooperation in developing the Ashokan Rail Trail. The County, through its employees, agents, contractors, subcontractors, and/or consultants, shall construct the Ashokan Rail Trail and related facilities in accordance with the DEP-approved design documents.
- D. The County shall act as lead agency for the State Environmental Quality Review Act ("SEQRA") and complete all necessary documents for the construction, operation and maintenance of the Ashokan Rail Trail. With the cooperation of the City and the DEP, the County shall include in its SEQRA review the design, construction, operation and maintenance of the trailheads as well as any other related improvements to be undertaken by DEP with respect to the Ashokan Rail Trail. If the County decides to conduct an environmental review of the Ashokan Rail Trail only, rather than of the entire U&D Railroad corridor, the County shall include, to the extent possible, an analysis of any potential cumulative impacts of the planned future trail development. If the County subsequently conducts an environmental review of additional areas of the U&D Railroad corridor in the New York City Watershed, the County shall afford DEP all the rights of an involved agency during the environmental review(s) of such proposed project(s).
- E. The County shall be responsible for obtaining all required federal, State and local permits and approvals for design, construction, operation and maintenance of the Ashokan Rail Trail, including compliance with the City's Watershed Regulations. DEP will work in good faith with the County to schedule a pre-application conference with respect to any required DEP permits or approvals and to expeditiously process and facilitate any required DEP permits or approvals for construction of the Ashokan Rail Trail.

² *"Impervious surface means an area which is either impervious to water or which substantially prevents the infiltration of water into the soil at that location. Impervious surfaces include, but are not limited to, paving, concrete, asphalt, rooftops, and other hard surfacing materials, and do not include dirt, crushed stone or gravel surfaces."* Rules and Regulations for the Protection From Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources §18-16 Definitions (54).

- F. The County shall advise the City when it has received the Certificate (or Notice) of Interim Trail Use and confirm that no appeals, requests for stays, reconsideration or reopening or other actions that would delay the effective date of the Certificate (or Notice) have been filed. If any such appeal or other petition for stay, reconsideration, or reopening has been filed, the County shall advise the City when any such proceeding has been concluded and the effective date of the Certificate (or Notice) has occurred.
- G. Upon DEP's written approval of the completed design of the Ashokan Rail Trail; as well as all other necessary permits and approvals pursuant to federal, State, City and local laws, rules and regulations to construct, operate and maintain the Ashokan Rail Trail and associated structures, including but not limited to culverts and bridges, DEP will issue the County a Land Use Permit pursuant to Title 15, Chapter 17 of the Rules of the City of New York, including the terms and conditions specified in Exhibit B, attached hereto, granting the County permission to construct, operate and maintain the Ashokan Rail Trail, excluding the trailheads. Such terms shall not unreasonably interfere with the public's use of the Ashokan Rail Trail. The County shall and shall cause its employees, agents, contractors, subcontractors, and/or consultants, to shall comply with the terms of the Land Use Permit for so long as it is in effect.

Section 3. Railbanking or Abandonment of the U&D Railroad

- A. The Parties agree that their respective counsel shall continue to discuss the legal implications of and consult with each other on any potential action by the County in connection with federal Railbanking pursuant to 16 U.S.C. Sec. 1247 (d) of the National Trails System Act or other legal action to enable the Ashokan Rail Trail to be developed along the Ashokan Railroad Easement.
- B. In connection with the County's potential pursuit of an Abandonment or Railbanking submission to the STB, the County shall provide the City an opportunity to review and comment on any submission to the STB at least 30 days prior to its filing at the STB. The County shall work in good faith to incorporate the City's comments and concerns into its submission to the STB in connection with the Ashokan Railroad Easement and shall update the City on the progress of any submission. As long as Ulster County is in compliance with this Agreement, and any Land Use Permit and/or easement for the Ashokan Rail Trail that is in effect governing the County's use of the rail corridor through City property, the City agrees that it will not oppose in any manner the County's request for Abandonment or Railbanking at the STB. The City reserves its right to comment on such submission to ensure that any action by the STB is consistent with the purposes of this Agreement and in particular, the development and operation of the Ashokan Rail Trail in an environmentally sensitive manner.

- C. The City acknowledges that this Agreement in no way impinges on or diminishes Ulster County's right to allow a railroad operator or the County to seek a modified certificate of public convenience and necessity under STB rules in order to establish the feasibility of freight operations on the line. The County acknowledges that this Agreement in no way impinges or diminishes the City's rights with respect to ensuring that any future use of the rail corridor is conducted in an environmentally sensitive manner which includes, but is not limited to, asserting whatever legal rights it may have before the Surface Transportation Board to protect such interests.
- D. Upon the County obtaining a determination from the STB allowing interim trail use over the Ashokan Railroad Easement, and/or upon written request from the City or the County, the County and the City shall promptly execute a Modified Ashokan Rail Easement which will provide for the County's use of the Ashokan Railroad Easement for trail use. Such Modified Ashokan Rail Easement shall contain, but shall not be limited to, the conditions set forth in Exhibit B to ensure that the Ashokan Rail Trail is constructed, operated and maintained in an environmentally sensitive manner. Pending execution of such Modified Ashokan Rail Easement, the Land Use Permit shall continue to govern the operation of the Ashokan Rail Trail.
- E. Except as the parties consensually agree to undertake in the future as set forth herein, this agreement does not modify or extinguish in any manner whatsoever the Ashokan Railroad Easement as described in the Book of Deeds at Liber 443, Page 58 as filed in the Office of the Ulster County Clerk.

Section 4. Effective Date and Term

- A. This Agreement shall not take effect until it is executed by the Parties and registered by the City pursuant to Section 328 of the City Charter. The Effective Date of this Agreement shall be the date it is registered pursuant to Section 328.
- B. This Agreement shall terminate five (5) years after the Effective Date except that in the event that the County obtains a determination from the STB allowing interim trail use over the Ashokan Railroad Easement, or the City or the County has made a written request for the Parties to execute a Modified Ashokan Rail Easement, this Agreement shall extend until such time as the County has executed such Modified Ashokan Rail Easement. This Agreement may also be extended by mutual written consent of the Parties.
- C. This Agreement may be terminated by either DEP or the County upon one hundred and twenty (120) days written notice to the other Party. Upon receipt of such notice of termination, the County shall seek to minimize the expenditure of funds under this Agreement and shall not incur new costs to the extent practicable. In the event of such termination, the City agrees to reimburse or otherwise compensate the County, within sixty (60) days of termination, for all

reasonable costs and/or expenses, actual and/or obligated by the County for costs incurred through the date of such termination.

Section 5. Indemnification

The Parties shall mutually and reciprocally indemnify each other and their respective officers, employees, and agents, and save each other harmless from any liability, damage, claims, demands, costs or losses arising directly or indirectly out of their officers', employees', or agents' respective acts or omissions pursuant to this Agreement, provided however, that: (1) County's indemnification of City extends solely to County's administration of activities and transactions funded with DEP Funds; and (2) in no event or instance shall County have any liability, under any circumstance(s), for lawsuits, property damage, or any other injury suffered by trail users, property owners or anyone else as a result of, or in any way related to or caused, directly or indirectly, by City's acts, omissions, obligations and/or responsibilities related to this Agreement; and (3) in no event or instance shall the City have any liability, under any circumstance(s) for lawsuits, property damage, or any other injury suffered by trail users, property owners or anyone else as a result of, or in any way related to or caused, directly or indirectly, by County's acts, omissions, obligations and/or responsibilities related to this Agreement.

Section 6. Notices

Unless otherwise specified, all notices required or permitted for herein shall be in writing and sent by certified mail with postage prepaid, by hand, by over-night courier, or by facsimile confirmed by any of the previous methods, addressed to the Parties as shown below or at such other addresses as such Parties may designate in writing from time to time:

To DEP: New York City Department of Environmental Protection
71 Smith Avenue
Kingston, New York 12401
Attn: Ira Stern, Chief, Natural Resources Division
Fax: (845) 338-1296 Phone: (845) 340-7207

With a copy to: New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373
Attn: General Counsel
Fax: (718) 595-6543 Phone: (718) 595-6555

To the County: Hon. Michael P. Hein
Ulster County Executive

P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 334-5724 Phone: (845) 340-3800

With a copy to: Beatrice Havranek, Esq.
County Attorney
P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 340-3691 Phone: (845) 340-3685

John Parete,
Chair, Ulster County Legislature
P.O. Box 1800
Kingston, New York 12402-1800
Fax: (845) 340-3900 Phone: (845) 340-3651

Section 7. Agreement is a Legally Binding Contract

The respective commitments of the Parties to this Agreement are in consideration of each other, thereby making this Agreement a legally binding contract enforceable by the County and the City in a court of competent jurisdiction.

Section 8. Employees

A. The County and the City agree that the County and its employees, agents, contractors, subcontractors, and/or consultants, are independent contractors and not employees of the City, DEP, or any department, agency, or unit of the City and further agree that neither the County nor its employees, agents, contractors, subcontractors, and/or consultants will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency, or unit thereof.

B. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities, or obligations of the County, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the County, for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits, and Social Security, except as specifically stated in this Agreement, to any person, firm, or corporation.

C. Nothing in this Agreement shall impose any liability or duty on the County for the acts, omissions, liabilities, or obligations of the City, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the City, for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, worker's compensation, disability benefits, and Social

Security, except as specifically stated in this Agreement, to any person, firm, or corporation.

D. The City shall not be responsible, nor have any liability, for the County's design, construction, operating and maintenance of the Ashokan Rail Trail, except for the trailheads developed and maintained by the City.

E. The provisions of this Agreement shall not be deemed to create any right of action in favor of Third Parties, including any property owners, against the County or the City or their respective officers and employees.

Section 9. Force Majeure

The obligations set forth in this Agreement may be delayed if either Party cannot comply with the terms of this Agreement because of an act of God, war, strike, or other condition as to which conduct on the Ashokan Rail Trail of the Party or its agent was not the proximate cause; provided, however, that such Party notifies the other Party in writing within ten (10) business days of obtaining knowledge of any such condition and requests an appropriate extension of the relevant terms of this Agreement, and provided further that such Party will make its best efforts to provide for alternative arrangements to fulfill the obligation.

Section 10. Cooperation

The Parties acknowledge and agree that during the term of this Agreement they will promptly provide each other with all documentation, reports, and information that the other Party reasonably requests in order to fulfill its obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by, or an obligation of either Party, to provide documents or information protected by or to waive the attorney-client privilege or the attorney-work product privilege.

Section 11. Compliance with Law

The Parties represent and warrant that all actions taken pursuant to the terms of this Agreement shall comply with any and all applicable federal, State, and local laws, rules, and regulations, including State and local procurement laws and regulations.

Section 12. Investigations

The County and the City agree to cooperate fully and faithfully with any investigation, audit, or inquiry relating to the subject matter of this Agreement conducted by a federal, New York State, County, or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit, or inquiry.

Depending on the facts and circumstances, any breach or violation of the foregoing may be deemed a breach or violation of a material provision of this Agreement.

Section 13. Counterparts

This Agreement may be executed in one or more counterpart(s), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 14. Entire Agreement, Amendments, and Assignments

This Agreement contains the entire understanding between the Parties with respect to the subject matter herein and supersedes any prior agreements or understandings, either oral or written. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. This Agreement may be amended only upon mutual written agreement signed by both Parties. This Agreement may not be assigned by either Party without the written consent of the other Party.

Section 15. Headings

The headings herein are for reference purposes only.

Section 16. Severability

If any provision of this Agreement or its application should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of all other provisions and the application thereof shall not in any way be affected or impaired.

*****Signature Page Follows*****

CORPORATION COUNSEL CONTRACT APPROVAL

Agency DEP

E-PIN 82615T0008001

Contractor COUNTY OF ULSTER DEPT OF PUBLIC WORKS

Approved as to form

Certified as to legal authority

Electronically Signed By AMRITA BARTH

Date 06/04/2015 18:16

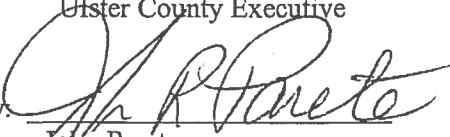
Acting Corporation Counsel

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the latest date written below.

COUNTY OF ULSTER

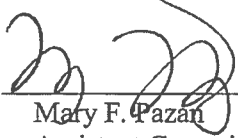
By: 
Michael P. Hein
Ulster County Executive

Date: June 11, 2015

By: 
John Parete
Chair, Ulster County Legislature

Date: June 10, 2015

THE CITY OF NEW YORK, acting by and through
the New York City Department of Environmental Protection

By: 
Mary F. Pazan
Assistant Commissioner

Date: 6/16/15

Approved as to form and
Certified as to Legal Authority:

Acting Corporation Counsel of the
City of New York

Date: _____

ACKNOWLEDGMENTS

STATE OF NEW YORK

SS:

COUNTY OF ULSTER

On the 11th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **Michael P. Hein**, to me known, being by me duly sworn did depose and say that he is the **Ulster County Executive**, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.


Notary Public

MARK LONGTOE
Notary Public, State Of New York
Reg. No. 02LO6086350
Qualified In Ulster County
Commission Expires January 21, 20 19

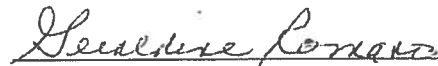
STATE OF NEW YORK

SS:

COUNTY OF ULSTER

On the 10th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **John Parete**, to me known, being by me duly sworn did depose and say that he is the **Chairman of the Ulster County Legislature**, the individual described herein and who executed the foregoing instrument, and that he signed his name thereto as authorized by said municipal corporation.

GERALDINE ROMANO
Notary Public, State of New York
Qualified In Ulster County
Reg. No. 01RO4767409
My Commission Expires: 9/30/2018


Notary Public

STATE OF NEW YORK

SS:

COUNTY OF QUEENS

On the 16th day of June in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally came **Mary F. Pazan**, to me known, being by me duly sworn did depose and say that she is the **Assistant Commissioner of the Department of Environmental Protection of the City of New York**, the individual described herein and who executed the foregoing instrument, and that she signed her name thereto as authorized by said municipal corporation.

NAOMI BURRUS
Notary Public, State of New York
No. 01BU6304146
Qualified In Queens County
Commission Expires May 27, 20 18

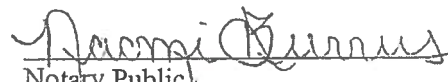

Notary Public

EXHIBIT C



Ulster County Rail Trail Project: “Ashokan Rail Trail”

Ulster County Department of Planning- December 2016- Fact Sheet

PROJECT DESCRIPTION:

Proposed in 2012 by County Executive Mike Hein, the *Ashokan Rail Trail (ART)* will create an 11.5-mile recreational trail along the northern edge of the Ashokan Reservoir between West Hurley and Boiceville. The *ART* will be developed on the County-owned Ulster & Delaware (U&D) Railroad Corridor pursuant to Ulster County Legislative Resolution No. 488 of December 2015 and in cooperation with the New York City Department of Environmental Protection (DEP). The *ART* segment of the U&D has not been used for train service in 40 years and was delineated for conversion to a rail trail as part of the County’s segmented “rail-with-trail” policy, which also allowed tourism rail operations in the Kingston and Mount Tremper segments of the U&D corridor.

Planning, preliminary engineering design, and environmental review for the *ART* began in June 2016 and construction is slated to begin in late 2017. The *ART* will be 10 to 12 feet in width and surfaced with a compacted crushed stone surface. The project includes drainage improvements, regrading of the former railbed, installation of signage and fencing, development of trail amenities, and connection to three major trailheads, which are being designed and constructed by the DEP. The construction will include replacement of the destroyed Boiceville Trestle and replacement of the failed major culvert at Butternut Creek as well as measures to protect water quality in the Ashokan Reservoir. The *ART* will also include interpretive signage regarding the history of the Ashokan Reservoir, Esopus Valley communities, U&D Railroad and Catskill Park.

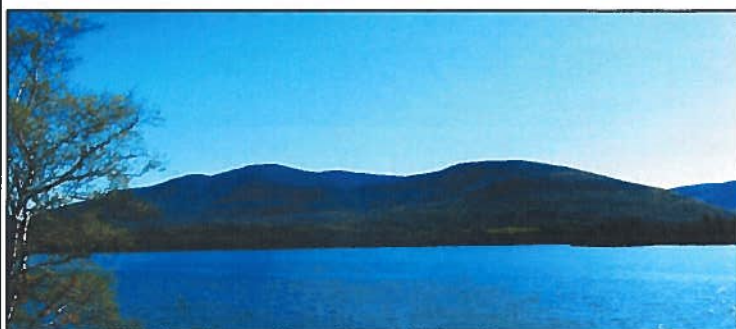
Once completed, the *ART* will be open to the public dawn-to-dusk, year-round for non-motorized uses, such as hiking, bicycling, running, cross-country skiing, and snowshoeing. The *ART* will provide the first public access to the incredibly scenic northern shores of the Ashokan Reservoir without a special DEP permit in more than a century. The *ART* will also be a key component of a developing interconnected rail trail system linking the Walkway Over the Hudson to the Catskill Park.



PROJECT GOALS:

The *ART* is part of Ulster County’s initiative to develop its growing rail trail network into a world-class trail system extending from the Walkway Over the Hudson to the Ashokan Reservoir and Catskill Park. The goals of the *ART* include:

- Promoting tourism and economic development
- Expanding outdoor recreational opportunities
- Improving public health through exercise
- Linking communities to open space and nature
- Providing trail opportunities for persons with disabilities and limited mobility
- Improving fishing/ hunting access on DEP lands
- Enhancing the quality of life in Ulster County



**PUBLIC COMMENTS ARE
WELCOMED AND CAN BE SENT TO:**

Ulster County Planning Department
PO Box 1800
Kingston, NY 12402 or
planning@co.ulster.ny.us

EXHIBIT D

Catskill Mountain Railroad

The **Catskill Mountain Railroad** (reporting mark **CMRR**), is a heritage tourist railroad based in Kingston, New York, that began operations in 1982. The railroad leases a 5 mile portion of the former New York Central Railroad Catskill Mountain branch from Kingston to Stony Hollow, New York. The tracks are owned by Ulster County, New York which bought them in 1979 from estate of the Penn Central Railroad. The railroad's current permit with Ulster County expires on December 31, 2020.

Contents

History

- Catskill Mountain Railroad
- Expansion and Setbacks 1991-2005
- Volunteer Resurgence
- Kingston Operations Resume
- West End Expansion
- Hurricane Irene

U&D Corridor Transitions

Operations

- Phoenicia-Cold Brook
- Kingston-West Hurley
- Shokan
- Ridership

Long-term goals

- Kingston-Glenford Dike
- Kingston-Phoenicia (MP 2.9 to 27.85)
- West of Phoenicia (MP 27.85 to 41.4)
- Interchange with CSX at Kingston
- Stations and Maintenance Yards
- Proposed Track Additions

Roster of equipment

- Locomotives
- Passenger equipment
- Other equipment

Photo gallery

See also

References

External links

History

In 1979, Ulster County purchased the 38.6-mile segment of the former Catskill Mountain Branch from Kingston to the

Catskill Mountain Railroad



Terminus Kingston-Stony Hollow, New York

Commercial operations

Built by Ulster & Delaware Railroad

Original gauge 4 ft 8½ in (1,435 mm)

Preserved operations

Owned by Ulster County, New York

Operated by Catskill Mountain Railroad

Reporting mark CMRR

Preserved gauge 4 ft 8½ in (1,435 mm)

Commercial history

Closed 1976

Preservation history

August 9, 1982 CMRR begins operations

Headquarters Kingston, New York

Website

catskillmtrailroad.com/
(http://catskillmtrailroad.com/)

county line near Highmount, which was to become the Catskill Mountain Railroad.

Catskill Mountain Railroad



The seal of the Catskill Mountain Railroad has been used as decoration on railroad equipment and structures

In 1982, Ulster County leased its entire 38.6 mile portion of the line to the new Catskill Mountain Railroad (CMRR). On August 9, 1982, CMRR initially began operations in Phoenicia, using track cars and trailers to haul tourists and tubers three miles along Esopus Creek to Mt. Pleasant station. The railroad was incorporated on March 7, 1983 as a for-profit railroad corporation in the state of New York.

In 1985, the CMRR began running full-sized equipment consisting of CMRR No.1, "The Duck", a flat car and caboose. Earl Pardini became President to help guide them through the transition. Pardini was with the D&U at its startup, helping to train its engineers and conductors. He agreed to come aboard, and the CMRR embarked on a period of serious expansion.

In 1986, Ulster County reconnected the line with Conrail at Kingston. The railroad purchased a variety of second-hand locomotives, coaches and freight cars which were shipped by rail to Kingston. Some of the equipment was refurbished and used immediately, while the rest sat in storage until needed. Also in 1986, the CMRR

signed its first multi-year lease with Ulster County, for five years, and began switching freight for the Kingston Recycling Center.

In 1987, a devastating flood washed out Campground Curve, between Phoenicia and Mt. Tremper. In conjunction with NYSDOT and Ulster County, this damage was repaired and service restored in 1988. Operations focused on Phoenicia to Mt. Tremper, with limited operations in Kingston.

Expansion and Setbacks 1991-2005

The railroad entered into a 25-year lease with Ulster County in 1991. Railroad operations ended at busy Route 28 in Mt. Pleasant. The crossing had been out of service for many years, and the railroad needed to replace it if it was to continue east toward Kingston. The project received approval and after about ten years, public funding was provided to complete reconstruction of the crossing and installation of warning lights and gates. The new crossing was put into service in October 2004, offering the railroad its first significant expansion.

Then tragedy struck CMRR. On April 1, 2005, a devastating flood nearly wiped out the railroad, and caused much damage to the tracks and equipment in Phoenicia. After several weeks of volunteer effort, the line was reopened in summer 2005. Around this time, interest increased in using some segments of the rail corridor in Ulster County for a recreational trail.

Volunteer Resurgence

During the winter of 2006, the railroad reorganized its efforts as new volunteers came forward. A group from the nearby Ulster & Delaware Railroad Historical Society were among the first to offer assistance. Brush-cutting and clearing the right of way took first priority. A high-profile activity with immediate results, the cleanup effort motivated more volunteers to join. By the end of 2006, the volunteer force had increased to 45 full members and 30 provisional members. They cleared nearly 20 miles of brush from the mainline.

Kingston Operations Resume

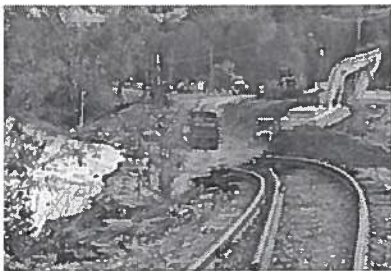
In 2007 the railroad began track repairs in Kingston in line with the "ski lift" concept recommended in the ALTA Engineering study for railroad operation from Kingston to West Hurley. The railroad restored tracks in Kingston, with service opening to Washington Avenue in December 2008. In late 2009, the railroad opened more track west of Washington Avenue and offered additional seasonal service throughout that year. From 2007 to 2009, close to two miles of track had been rebuilt in Kingston, from Cornell Street to the foot of Bridge C9.

For three years, the CMRR worked to complete the rehabilitation of Bridge C9 over Esopus Creek in Kingston. The bridge was opened for service on December 7, 2012, enabling track rehabilitation westward with Route 209 being the first destination. Route 209, MP 5.42, was reached on September 21, 2013, and Hurley Mountain Road, MP 5.94, was reached on November 16, 2014. The track is now open to MP 6.45 west of Hurley Mountain Road. The first passenger train to Route 209 ran on October 19, 2013, and the first to Hurley Mountain Road on November 21, 2014.

West End Expansion

Through 2007 and 2008, work also continued on opening the .6 mile Cold Brook Extension. The first train arrived at Cold Brook Station on July 4, 2008: the first regularly scheduled passenger train to arrive at the station since 1954. Because Cold Brook station remains privately owned, the railroad maintained no agency there and there are no facilities to board or discharge passengers. In 2009, the CMRR repaired track another .8 miles to the Boiceville Bridge at MP 21.3, for work trains only.

By 2010, the physical limit of track restoration was reached on the "western" end of the operable railroad. To the west of Bridge Street in Phoenicia is a major washout preventing any serious restoration work without outside funding. To the east, the railroad rebuilt tracks up to the limit of Bridge C30 (Boiceville Trestle). This was a total of 6.4 miles of operable track at its greatest extent.



Tracks being repaired after damage from Hurricane Irene

Hurricane Irene

On August 28, 2011, CMRR was devastated by flooding as a result of Hurricane Irene. Flood waters inundated the yard at Phoenicia, scouring the right of way and threatening the depot. A significant washout occurred at Campground Curve, similar to the one in 1987. All operating equipment had been moved to safe ground at Mt. Tremper, east of Campground Curve. Additional damage had been incurred where damage from a previous washout was already underway. In the non-operating segment east of Cold Brook station, the most significant damage was the loss of three of the four spans of Boiceville Trestle (Bridge C30) to rising flood waters. There was no significant damage to the restored tracks in the

Kingston area.

The CMRR resumed operations on September 10, 2011, on a shortened length of track near Mount Tremper. The washout at Campground Curve was repaired in late 2011, except for reinstallation of track. Operations west of Mt. Tremper commenced on August 5, 2012.^[1] In November 2012, the County informed the CMRR that several repair projects had been approved by FEMA. Seven projects, including restoration of the Boiceville Trestle, were approved for \$2.3 million. However, the County informed CMRR that it would not begin the projects unless CMRR agreed to terminate its lease from Kingston to the Ashokan Reservoir.

On August 3, 2013, the CMRR started reconstruction work of track on Campground Curve as part of returning to Phoenicia. This was done assuming that the County would not initiate a FEMA-funded project for this repair. The CMRR completed repairs to Phoenicia on August 7, 2015.

At the end of its lease with Ulster County, the CMRR ran from Phoenicia at MP 27.5 to the washout at MP 23.3, as the FEMA funds were never released for the trestle and washout repairs.

U&D Corridor Transitions

On January 24, 2006, when the Kingston *Daily Freeman* announced "Trail Plan Could Mark End of Line for Railroad", trail advocates began promoting a plan to convert segments of the county-owned railroad corridor into a recreational path, which would limit the length and location of the tourist train excursions. ALTA Engineering was hired to devise a rail-with-trail plan for the line in Ulster County. The final report stated the following:

"The future vision of the Ulster & Delaware Rail + Trail is a significant opportunity for local communities, Ulster County, and the region. The combination of two historic tourist railroads, the trolley and railroad museums, restored historic sites, and a trail for multiple uses will complement the tourism and recreation economy of the Catskill Mountain Region. The project can become a model of sustainable transportation and cooperation between a wide range of public, private, and nonprofit partners."

[2]

On October 4, 2012, Ulster County Executive Michael P. Hein announced in his 2013 budget a plan to remove 32 miles of rails in Ulster County to be replaced by a trail, leaving the Phoenicia-Cold Brook segment, and ending Kingston operations. He planned to start removing rails in 2013, using \$642,000 in scrapping revenues to provide revenue for his budget. The budget was adopted by the Ulster County Legislature on December 4, 2012. The CMRR's lease, however, remains in effect until May 31, 2016.^[3] There is no reference to scrapping the railroad in the proposed 2014 Ulster County Budget.

Three days after the 2013 budget was approved, the CMRR opened Bridge C9 in Kingston for passenger train service, and began bringing passengers across the bridge for the first time in over 50 years.

On February 19, 2013, CMRR published a rail-with-trail study for MP 3 to 11 in response to a request from the County made on October 15, 2012. The rail-with-trail plan was rejected without review by the county on March 7, 2013.

On June 5, 2013, Ulster County hired Andrea C. Ferster, Esq., who was also general counsel to the Rails to Trails Conservancy, to file an application to the Surface Transportation Board to "rail bank" the railroad for future trail use.

On June 12, 2013, CMRR was served with a Notice to Cure. In a meeting with the Ulster County Executive, held on June 24, 2013, the CMRR was asked to vacate the line from Kingston to the Ashokan reservoir, and told that unless it complied, its lease would be terminated on July 12. CMRR filed a Yellowstone Injunction on July 9 and was granted a TRO prohibiting the county from terminating the lease pending the outcome of a court decision on August 6. The Yellowstone Injunction was granted on November 6, 2013. Ulster County issued a notice of appeal on December 17, 2013.

On December 11, 2013, the outgoing New York City DEP commissioner announced a plan to support a trail along the U&D right of way from MP 10 to MP 21.6.

On December 8, 2014, the Ulster County Executive announced that, assuming certain requirements were met, a little more than two miles of tourist passenger train service could remain in Kingston, from the eastern end of Kingston Plaza, MP 3.6, to Hurley Mountain Road, MP 5.94.



Phoenicia Station, site of the Empire State Railway Museum

On April 19, 2015, the Ulster County Legislature passed a resolution to create a nine-member legislator only committee to study the entire U&D corridor in Ulster County and make recommendations on long term use, including rail, trail or rail with trail with recommendations due by November 30, 2015.^[4]

On May 15, 2015, the Ulster County Legislature passed a resolution to sign a Memorandum of Agreement with the New York City Department of Environmental Protection to begin spending planning dollars on a future conversion of the 11.5 mile railroad easement owned by the County in the Ashokan Reservoir to trail use.^[5]

On December 15, 2015, Stone Consulting completed a report on the Highest and Best uses of the U&D Corridor.^[6]

On December 15, 2015, the Ulster County Legislature passed a resolution making rail with trail the official policy from Chandler Drive (MP 3.58) in Kingston to just past 28a in Stony Hollow (MP 8.33), allowing the railroad to continue operations in Kingston and for 4.75 miles west. The segment from 28a to MP 10 will be studied further "provided that trail connectivity co-located on the corridor shall be preserved". This gives the CMRR a potential long-term home in Kingston and could allow the railroad to expand west as far as MP 10. It also confirmed that rail will remain from the Route 28a bridge in Boiceville (MP 21.6) to Phoenicia (MP 27.9). Any further rail expansion along the north side of the Ashokan Reservoir would be dependent on consent from the NYCDEP and the Ulster County Legislature. The Stone Consulting report found there were no physical restrictions to rail alongside trail from MP 10 to 11, with the only restriction to rail use being imposed by the agreement between Ulster County and NYCDEP.^[6] This resolution effectively ends the fight on rail vs. trail on the former U&D corridor, with rail and trail proponents pledging to work together from now on.

On April 19, 2016, the County and the CMRR settled their lawsuit contingent on the CMRR vacating its yard at Cornell Street in Kingston on May 1, 2016, ceasing operations on May 31, 2016 (the end of its lease term), and removing its equipment from the railroad by July 30, 2016. The litigation cost the CMRR \$700,000, but allowed the railroad to operate to the end of its lease with Ulster County on May 31, 2016.

On July 18, 2016, the Ulster County Executive announced that permits had been signed for the CMRR to continue operating in Kingston from MP 3.6 to 8.33 until December 31, 2020, and from MP 23.3 to 27.8 until October 31, 2016. The permits were issued on August 4, 2016, and service resumed on August 6, 2016.

On December 14, 2017, the Ulster County Legislature voted to remove all railroad tracks from MP 10.01 to MP 21.59, permanently severing the U&D Corridor, and eliminating the CMRR's plans to return to the Glenford Dike and Phoenicia with full-service passenger operations.

[7] [8]

Operations

Phoenicia-Cold Brook

The CMRR operated a tourist excursion train from Phoenicia Railroad Station, Phoenicia, MP 27.5 to Cold Brook Railroad Station, MP 22.1. Its trains originated from the former U&D station in Phoenicia, which is also home to the Empire State Railway Museum. Passengers boarded trains at Phoenicia or Mount Tremper Railroad Station, MP 25.2.

Initially, service was provided by track cars hauling trailers between Phoenicia and Mount Tremper. Realizing that the future lies in conventional railroad equipment hauled by locomotives, two flatcars were rebuilt as open air bench cars to accommodate passengers. A Porter 50-ton switcher was enlisted to haul the expanded consist. A 1922-vintage wooden caboose often (ex-D&H 35952) brought up the rear, and offered additional capacity.

In early 2004 the caboose was taken out of service and replaced with a restored coach of Lackawanna heritage. This coach greatly increased the capacity of each train, and also helped offer "all-weather" service. In late 2004, service was extended to MP 22.7. It was extended further to Cold Brook Station, MP 22.1, on July 4, 2008.

On May 6, 2010, Phoenicia operations acquired a new locomotive, former LIRR/SIRY Alco S1 407, which was placed in service on May 7, 2010. It has been the workhorse engine for Phoenicia operations since the start of the 2010 season. A second coach was put into service on October 2, 2010, just in time for the Fall Foliage trains.

In 2011, construction of a new switch and siding began at MP 24.75, to park maintenance equipment and give the work train a place to alight. It was completed on May 25, 2012.

For the 2012 season, the train ran initially from Mt. Tremper west to MP 23.3 where subgrade repairs are necessary due to Hurricane Irene. On August 5, 2012, after repairs were made at MP 25.5, the passenger train began running west to the next damaged section at MP 25.8, one half mile west of Mt. Tremper. On August 6, 2015, service was restored to Phoenicia Station after extensive track repairs were completed by the CMRR.

Work trains generally consisted of transfer caboose 697 (ex-CR 18015) and "The Duck," a small Davenport switcher. Equipment restoration and maintenance takes place at the railroad's open-air facilities. The original Phoenicia section house is used by the railroad to store tools and supplies for the track crew.

On August 4, 2016, CMRR was granted a permit to resume operations on this segment of the U&D Corridor through October 31, 2016. However, the County has elected to use a rail bike (www.railexplorers.net) company as the operator for this segment starting in 2017. The CMRR moved all its equipment to its adjacent property in Phoenicia in January, 2017, where it remains today.

In May, 2017 Rail Explorers announced it would not be operating on the western section of the line in 2017, though it plans to start operations in 2018. The line is not being used in 2017.

Kingston-West Hurley

CMRR also had a yard in Kingston, referred to as "Cornell Street Yard." In 2009, a new siding was constructed to expand the yard facilities to allow for the storage and restoration of passenger cars for expanded tourist train operations. The CMRR was forced to vacate the yard by the County on May 1, 2016.

Since November 2006, volunteers have re-opened track in Kingston. The passenger operable section stretches from Cornell Street (MP 3.0) to past Hurley Mountain Road (MP 6.45).. Work trains access the line to MP 11 at the Glenford Dike at the Ashokan Reservoir.

On December 6, 2008, the railroad inaugurated seasonal tourist runs between Downs Street (MP 3.2) and Washington Avenue (MP 4.37). A small ticket office and loading platform was constructed off Westbrook Lane (MP 3.78) opposite Kingston Plaza to support passenger operations in 2008. Trains are powered by Alco RS-1 401 (ex-GMRC 401), and consist of converted flatcar 278 (ex-LBR 26) and refurbished caboose 675 (ex-PRR 477672). The critical Washington Avenue crossing was reopened for limited use in 2008, and the track was opened to Bridge C-9 (MP 5) on November 15, 2009 for the 2009 Kingston Holiday Train. Repairs to Bridge C9 started in September 2011, and were completed on December 3, 2012. The bridge was certified on December 7, 2012, and the first passenger train ran across the bridge on December 8. On September 21, 2013, CMRR workers completed track rehabilitation up to NYS Route 209 (MP 5.42). The next day, work began on the next extension past 209 to Hurley Mountain Road (MP 5.94). In late 2014 track was expanded to MP 6.13, and in late 2015 to MP 6.45, over 1/2 mile west of Hurley Mountain Road.

In April 2016, the line was reopened for work trains to MP 11 on the Glenford Dike at the Ashokan Reservoir.

Shokan

CMRR's third base of operations was at MP 16.4 at Shokan, New York, at the site of the former Ashokan Railroad Station. The operating equipment there consisted of a self-powered crane, flat car, and an ex-Susquehanna caboose (privately owned). Shokan also served as a base for the CMRR's track car crews, who were charged with maintenance of the section of the line inaccessible to full sized equipment, from MP 11 to bridge C30 at MP 21.3. The CMRR removed all its equipment in Shokan by rail on July 21, 2016. All tracks at Shokan are scheduled for removal in 2018.

Ridership

The CMRR's ridership dramatically increased with the addition of Polar Express and Thomas the Tank engine events in Kingston in 2014. Historic ridership is as follows:

2008 - Kingston 884, Phoenicia 7,155, total 8,039

2009 - Kingston 1,546, Phoenicia 6,767, total 8,313

2010 - Kingston 2,044, Phoenicia 10,211, total 12,255

2011 - Kingston 2,618, Phoenicia 6,684, total 9,302

2012 - Kingston 3,065, Phoenicia 8,463, total 11,528

2013 - Kingston 4,575, Phoenicia, 10,248, total 14,823

2014 - Kingston, 31,289, Phoenicia, 8,981, total 40,270

2015 - Kingston, 27,230, Phoenicia, 12,129, total 39,359

2016 - Kingston, 29,148, Phoenicia, 9,595, total 38,743

2017 - Kingston, 36,361 (estimated)

In 2016, through credit card receipts, the CMRR broke down the origins of its Polar Express ridership (24,196 riders) as follows:

Kingston and Ulster County - 10.6% Long Island and NYC - 23.5% Rockland and Sullivan Counties - 8.1% Orange County - 17.8% Westchester and Putnam County - 14.6% Dutchess County - 12.0% Capital Region - 2.2% Other NYS - .9% New Jersey - 3.7% Other US - 6.0% International - .2% Walk-ons - .3%

Long-term goals

Kingston-Glenford Dike

Although the CMRR is only currently allowed to operate to MP 8.33 in Stony Hollow, the railroad may eventually be allowed to operate to Basin Road at MP 10.01 at the border of the NYCDEP easement.

The CMRR has requested of the County and the NYCDEP both a short extension to MP 10.3 so that it can bring passengers to the new rail trail trailhead on the Ashokan Reservoir Trail.

Additionally, the CMRR has requested from the County and the NYCDEP a further extension to the Glenford Dike at MP 11.1 so that it can run lunch, dinner and scenic trains to this particularly spectacular view of the Ashokan Reservoir visible from this location.

Kingston-Phoenicia (MP 2.9 to 27.85)

The CMRR's former long-term goal was to run tourist trains on the entire 25-mile run from Kingston to Phoenicia. The goal was negated on November 14, 2017, when the Ulster County legislature voted to remove the tracks from the middle third of the line for a rail trail.

West of Phoenicia (MP 27.85 to 41.4)

The CMRR never had plans to reopen this section of the line to service. However, the neighboring DURR in Delaware County has also expressed interest in resuming service possibly all the way to Big Indian (MP 36.4). Ulster County has no current plans for trail conversion of this section, but it is designated as trail-only in the County's long-term plans.

Interchange with CSX at Kingston

The CMRR has been isolated from the national network since Conrail removed its Kingston interchange switch in 1996. The CMRR had planned to eventually reconnect its line to the national rail network: CSX (successor to Conrail) at Kingston. However, the County plans to remove all rail from the CSX connection at MP 2.9 to Chandler Drive in 2018, thereby isolating the CMRR from the national rail system permanently, and eliminating any possibility of future freight operations. The CMRR continues to ask that rails be left in this section of the line embedded in the new asphalt trail so that the connection to CSX can be maintained for future use.

Stations and Maintenance Yards

The CMRR's current station at Westbrook Lane is temporary and the railroad seeks a permanent station in Kingston for its operations. Four locations have been proposed by the CMRR: 1) West End of Kingston Plaza, 2) Center of Kingston Plaza, 3) Best Western (near Washington Avenue) and 4) Midtown (at the former Kingston Train Station near the CSX connection). To date no location has been worked out with the County and the City of Kingston.

Since being removed from its long-term yard at Cornell Street in Kingston, the CMRR has proposed four locations for a permanent yard at alternate locations in Kingston. To date no location has been worked out with the County and the City of Kingston. This forces the CMRR to store and maintain all its equipment out in the open on the main line.

Proposed Track Additions

The CMRR currently operates on a 5 mile track with a single 150 foot siding In Kingston, making operations and switching extremely difficult. The CMRR is requesting permission to install a run-around siding in Kingston and one at its eventual western terminus to eventually allow engine-first operation on the entire line.

Roster of equipment

Locomotives



No. 29

CMRR owns two American Locomotive Company (ALCO) RS-1 locomotives, No. 401 (Ex-Green Mountain Railroad (GMRC) No. 401, Ex Gulf, Mobile and Ohio Railroad (GM&O) No. 1052, Ex Illinois Terminal Railroad No. 1056, née 756); and No. 2361 (former Alter Scrap No. 2361, Ex-Soo Line Railroad (SOO) 2361). Only 401 is operational at this time. In 2010, 2361 was repainted and evaluated for reactivation; it was given a new number, 400.

In May 2010, the CMRR acquired its latest locomotive, former Long Island Railroad/Staten Island Railway Alco S-1 407. This engine is the workhorse for operations out of Mt. Tremper and Phoenicia.

CMRR No. 29, "The Goat" is an Ex-Navy 50 ton H. K. Porter, Inc locomotive, which was a backup engine and main engine for worktrain service. CMRR No. 1, "The Duck", another worktrain locomotive, is an Ex-Army 38 ton Davenport Locomotive Works locomotive. Only "the Duck" is operational and is located currently in Phoenicia. #29 is currently for sale. It has a double-reduction gearing system in the trucks. The traction motors are mounted at 90 degrees to the axles, and have bevel pinions on the armature shafts. These bevel pinions drive a larger bevel ring gear in a gear case. One one truck, the locking nut on the traction motor armature shaft came loose, and the bevel pinion jammed in the ring gear, locking up the truck. The bevel pinion jammed against the ring gear and bent it.

In 2014, the CMRR acquired a 1942 GE 45-tonner, numbered 42, from the Railroad Museum of New England. The locomotive is currently stored at the yard in Kingston.

Passenger equipment

Phoenicia equipment consists of two Ex-Navy 50 foot flatcars, No. 271 an 272, that have been converted to open-air passenger service with the addition of side walls and benches, and two former Erie Lackawanna Railway (EL) Multiple unit (MU) trailers that have been completely renovated: No. 4321 entered service as CMRR No. 701 in 2004, and No. 4332 entered service on October 2, 2010 as CMRR No. 702. Another MU trailer, No. 4322, has recently been moved from storage at Kingston for restoration back to active service. It will most likely be numbered as CMRR No. 703 upon completion.



No. 42

Kingston equipment consists of two flat cars, one 40-foot, CMRR No. 278 (ex-Lowville & Beaver River No. 26), and another 50-foot (ex-Army No. 35112), which are each fitted with a canopy roof, four former Long Island Rail Road commuter coaches, CMRR 2940, 2949, 2962, and 2911, and an N5B Caboose, CMRR No. 675 (Ex-PRR 477672, PC 22800, CR 20003). The CMRR recently required Ontario Northern 832 (former Norfolk & Western No. 1727) and is renovating the car for first class service.

Another U.S. Army 50 foot flatcar is being converted to passenger use. No. 35111, which is stored in Phoenicia.

Other equipment

CMRR also rosters several pieces of freight equipment used in work train and storage service. In Kingston, this includes two 50-foot boxcars, former D&H 26076 and NYC 72462, used for storage. An ex-Army Difco dump car and 40-foot flat car (CMRR 201 (Ex LBR No. 27)) are used for work train service. Additionally, the railroad has in storage west of Kingston a ballast hopper (former NYC No. 51467) and a gondola (former PRR No. 518399).

In Shokan, there is a self-powered ex-Navy crane, CMRR 991, a 40-foot tender flat CMRR 291 (ex-Army 35305), and a privately owned caboose CMRR 674 (ex Susquehanna 117), all used for work train service. The frame and trucks of former LS&I caboose No. 6, which were bought by a CMRR volunteer in the 1980s, are in storage at Shokan.

In Phoenicia, a 40-foot box car (Ex-LV 65100) is used for storage, and a former Army Difco dump car, a 40-foot flatcar, CMRR 202 (Ex-CV 7704) and an N6A transfer caboose, CMRR 697 (Ex NYC/PC/CR 18015), are used for worktrain service. Phoenicia equipment also includes a privately owned N5G steel caboose, CMRR 673 (former Lehigh Valley 95041). This caboose was used as a gift shop at Mt. Tremper for many years before it was returned to the rails in 2010.

Photo gallery



No. 29 in action



Car No. 701



Car No. 271



Phoenicia Station NRHP marker



Flanger Sign



Mile marker



Mount Pleasant station



Whistle post



Flanger Sign



Yard limit marker



Kingston Holiday Shuttle at Westbrook Station



Kingston Holiday Shuttle at Washington Avenue

See also

- Kingston, New York railroad stations

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External links

- Catskill Mountain Railroad Company (<http://www.catskillmtrailroad.com/>)
- Save the Rails (<http://www.savetherails.org/>)
- Ulster County Resolution 488 Dated December 15, 2015 (<https://www.scribd.com/doc/293454811/488-15-1Resolution-No-488-December-15-2015-Amending-Resolution-No-275-Of-2014-Establishing-A-Policy-For-A-Rail-With-Trail-Along-The-County-Owned/>)
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- CMRR Kingston to Glenford Dike 2015-2020 Business Plan (https://web.archive.org/web/20150915174157/http://catskillmtrailroad.com/cmrr_business_plan_kingston.pdf)
- CMRR 2013 Timetable (https://web.archive.org/web/20131017200536/http://www.catskillmtrailroad.com/pdf/CMRR_Brochure2013.pdf)
- CMRR Rail with Trail Study (https://web.archive.org/web/20131010103140/http://catskillmtrailroad.com/reports/CMRR_Report-RailWithTrail-MP3-11.pdf)
- CMRR 2012 Annual Progress Report (https://web.archive.org/web/20150915214125/http://catskillmtrailroad.com/media/CMRR_ProgressReport2012.pdf)
- CMRR 2011 Annual Progress Report (https://web.archive.org/web/20150915214109/http://catskillmtrailroad.com/media/CMRR_ProgressReport2011.pdf)
- CMRR 2010 Annual Progress Report (https://web.archive.org/web/20120402085745/http://www.catskillmtrailroad.com/media/CMRR_ProgressReport2010.pdf)
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- CMRR 2008 Annual Progress Report (https://web.archive.org/web/20091025004255/http://www.catskillmtrailroad.com/media/CMRR_ProgressReport2008.pdf)
- Comprehensive CMRR Equipment Roster (<http://members.trainweb.com/milepost51/durrcmrrrosters.html#CMRR>)
- Delaware and Ulster Railroad (<https://web.archive.org/web/20060901150717/http://www.durr.org/>)
- Empire State Railway Museum (<http://www.esrm.com/>)

- [Trolley Museum of New York \(Kingston\) \(http://www.tnny.org/\)](http://www.tnny.org/)
- [Ulster & Delaware Railroad Historical Society \(http://www.udrrhs.org/\)](http://www.udrrhs.org/)

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EXHIBIT E

Heffner, John D.

From: bonkers08 <bonkers08@aol.com>
Sent: Monday, January 08, 2018 3:16 PM
To: Heffner, John D.
Subject: FW: Status of the Catskill Mountain Branch (Ulster & Delaware)
Attachments: Catskill_Mtn_Branch_FSP_VII.PDF

Sent from my Verizon. Samsung Galaxy smartphone

----- Original message -----

From: "Meyer, Gabriel" <Gabriel.Meyer@stb.gov>
Date: 12/18/17 09:59 (GMT-05:00)
To: bonkers08@aol.com
Subject: FW: Status of the Catskill Mountain Branch (Ulster & Delaware)

From: Forstall, Alfred
Sent: Monday, December 04, 2017 4:29 PM
To: 'Bonkers08@aol.com' <Bonkers08@aol.com>
Subject: Status of the Catskill Mountain Branch (Ulster & Delaware)

Dear Ms. Bonk:

Board records indicate that the Penn Central filed with the ICC for authority to abandon the Ulster & Delaware between Kingston and Bloomville, in Delaware, Schoharie, and Ulster Counties under docket number AB 5 sub no. 10 (PENN CENTRAL TRANSPORTATION CO.) on May 3, 1972. The ICC apparently did not issue a decision in this docket before the USRA began the reorganization of Penn Central and the other northeastern carriers, because the Catskill Mountain Branch appears in the Final System Plan (FSP). (Attached is a copy of the entry in the FSP for the branch.) Please note that the Catskill Mountain Branch was not slated for transfer to Conrail.

As you mentioned on the phone, Ulster County apparently acquired the right-of-way of the Branch from Penn Central in lieu of back taxes. The subsequent history of the Ulster & Delaware is not clear, but I found no further dockets pertaining to it in ICC or Board records.

It is not possible to draw any hard conclusion about the status of the line in question. To the extent 1) that it was not transferred to Conrail, 2) that it has been devoid of freight traffic, and 3) that it has been disconnected from the freight network, it would be easy to suppose that it is abandoned. But that is purely speculation on my part.

I hope this information is helpful. Please do not hesitate to contact me if further questions arise.

Sincerely,

Fred Forstall



Opinions expressed by employees of the Rail Customer & Public Assistance Program (RCPA) of the Surface Transportation Board are theirs alone, and do not represent opinions of, or by, the Board or its Commissioners or Directors. Formal opinions of the Board may only be obtained via a formal proceeding. Positions taken by RCPA employees might not be followed by the Board should a formal proceeding be initiated; and spoken or written comments may be withdrawn by the Board at its discretion. All matters discussed with RCPA employees are confidential and subject to the same confidentiality provisions as administrative dispute resolutions pursuant to 49 C.F.R. 1109.3 and 5 U.S.C. 574. Except as specifically set forth in 5 U.S.C. 574, neither RCPA employees nor the parties to an informal matter before the RCPA shall disclose any informal dispute resolution communication.

Catskill_Mtn_Branch_FSP_VII.pdf

EXHIBIT F

Tracks used by Catskill Mountain Railroad to be removed

By Wayne Laepple | January 11, 2018

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KINGSTON, N.Y. — A contractor has begun removing track along the Ashokan Reservoir, effectively ending a years-long effort by a tourist railroad to access the scenic area. A recreational trail will replace the track.

In November, the Ulster County Legislature ordered 11.5-miles of former Ulster & Delaware Railroad along the reservoir removed. The adjacent property, owned by the New York City Department of Environmental Protection, fronts on the reservoir that supplies New York City's drinking water. The city insisted that the corridor be used for a trail or the railroad but not both.

Ernie Hunt, president of the Catskill Mountain Railroad, which operates over the rail line, remains ~~opposed to the project~~ **Up To 54% off the newsstand price!**

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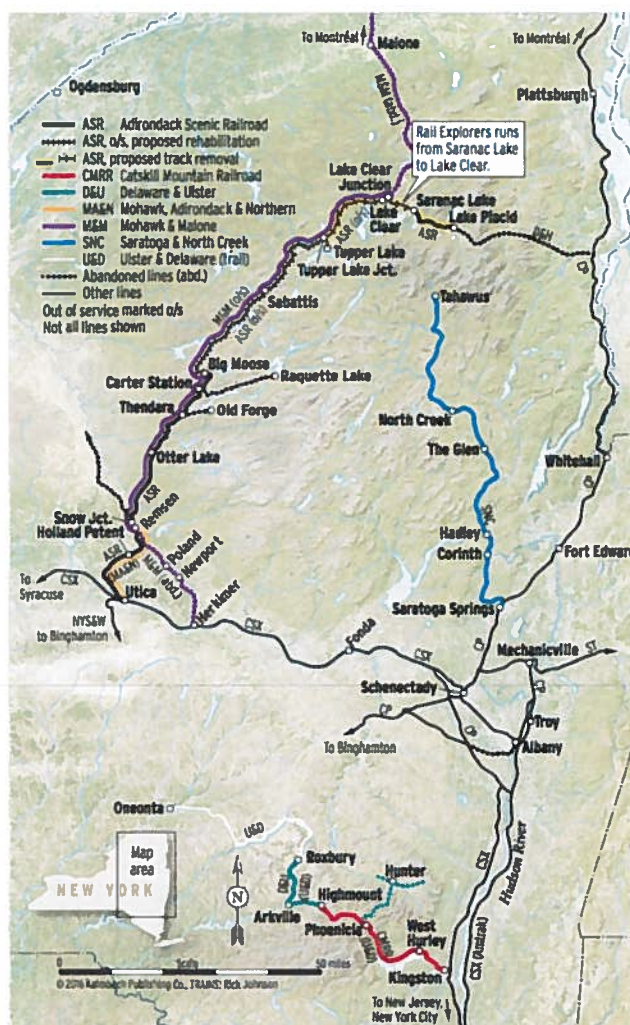
setback. He tells local media he believes the railroad may someday return to the scenic overlook at the Glenford Dike, 1.1 miles beyond the current end of track. Right now, Hunt and his volunteers will focus on rebuilding and upgrading the 8.3 miles available from Kingston to Ulster, N.Y.

"The CMRR's long-term goal is that we intend to rebuild the track to the Glenford Dike once we have renovated the track up to the reservoir easement area," Hunt tells Trains News Wire.

Catskill Mountain has been embroiled in controversy with the county for several years. The group was evicted from its base in Kingston, and it lost its operating rights on the other end of the reservoir. During the last two or three years, the tourist operation has rebuilt several miles of track and has increased its ridership substantially with special events. In 2017, the railroad carried about 30,000 passengers.

The issue has been a hot one in recent years, featuring lawsuits and counter-suits by the county and the railroad, in addition to substantial support and condemnation of both sides by the public in newspapers and public meetings of the county legislature. The county bought the railroad from Conrail in 1976.

In November, the county signed a \$943,000-contract with a salvage firm to remove rail, ties and other track materials. In addition, the contractor will remove 2,300 trees. The contractor will dispose of all materials and retain the proceeds of any sales. The trail is set to be complete by May 2019.



Tourist railroad lines threatened by conversion to rail-trails, as of July 2016.

TRAINS Illustration: Rick Johnson

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