

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel

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December 19, 2017

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

244900

ENTERED
Office of Proceedings
December 27, 2017
Part of
Public Record



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

Dear Ms. Brown:

Please find enclosed an original plus 10 copies of a Petition for Partial Waiver of Abandonment Regulations and for Exemption in the above-referenced case. As this is filed on behalf of the New York State Department of Environmental Conservation, an agency of New York State, I request a waiver from the filing fees in accordance with 49 C.F.R. § 1002.2(e)(1).

Please date stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

If you have any questions, please contact the undersigned.

Sincerely,

Thomas S. Berkman
Deputy Commissioner
and General Counsel

Enclosure

FILED
December 27, 2017
SURFACE
TRANSPORTATION BOARD



Department of
Environmental
Conservation

FEE RECEIVED
December 27, 2017
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1261
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION –
ADVERSE ABANDONMENT – SARATOGA AND NORTH CREEK RAILWAY IN
TOWN OF JOHNSBURG, NY



**PETITION FOR PARTIAL WAIVER OF ABANDONMENT REGULATIONS
AND FOR EXEMPTION**

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502(a), The New York State Department of Environmental Conservation ("Department") hereby seeks partial waiver of regulations governing railroad abandonments at 49 C.F.R. § 1152, Subpart C, and exemption from certain provisions of 49 U.S.C. §§ 10903 and 10904. The waiver and exemption are sought in conjunction with an application that the Department intends to file for adverse abandonment (the "Application") of the authority of Saratoga and North Creek Railway ("SNCR") to operate over the Tahawus Branch, originating at MP NC 0.0 at North Creek, New York and proceeding north at a distance of approximately 29.71 miles into Essex and Hamilton Counties to a terminus at MP NC 29.71 near the Tahawus Mine (the "Tahawus Branch"). A map of the Tahawus Branch is attached to this Petition as Appendix A.

As the Surface Transportation Board ("Board") has recognized, several of the regulatory requirements for ordinary railroad-initiated abandonments are "inapplicable or unheeded" for an adverse abandonment initiated by a third party, and the Department respectfully requests that the Board waive those requirements so that an adverse application may subsequently be filed. *City of Chicago, Ill -Adverse Abandonment -*

Chicago Terminal R.R. In Chicago, Ill, STB Docket No. AB-1036, at 3 (served July 8, 2009) ("Chicago Terminal").

Background

1. The Adirondack Park

The public interest strongly favors this request for abandonment due to the unique and exceptional significance of New York's Adirondack Park to its citizens. The State of New York has a long history of protecting the scenic beauty, ecological integrity and recreational opportunities afforded by the Adirondack Park. The State's first step in protecting land within the Adirondack area was taken in 1885, when legislation was enacted mandating that State owned land within the Adirondacks, known as the Forest Preserve, would be "forever kept as wild forest land." Seven years later, in 1892, legislation was enacted creating the Adirondack Park, including both State and private lands located generally in the Adirondack Mountain region of northern New York State. The initial purpose of the Park was to designate a concentrated area within which the State would acquire additional lands for inclusion in the Forest Preserve.

In 1894, the citizens of the State decided that statutory protection of the Forest Preserve was inadequate and voted to enshrine protection of the Forest Preserve in the State Constitution. That constitutional protection continues today – 123 years of uninterrupted constitutional protection. It is now found in Article XIV, Section 1 of the State Constitution and provides that the lands of the Forest Preserve shall be forever kept as wild forest land, that the timber situated thereon may not be sold, removed or destroyed, and that Forest Preserve land may not be leased, sold or exchanged, or be taken by and private or public corporation. These constitutional restrictions are the

most stringent of anywhere in the world and displays the State's long-term commitment to perpetually protect these special lands.

The Adirondack Park currently encompasses 6.1 million acres, 2.6 million acres of which are State owned, constitutionally protected Forest Preserve land. The State also holds conservation easements on approximately 750,000 acres of privately owned land, restricting them from development and providing for additional public recreational opportunities. The Park is also home to more than 10,000 ponds and lakes, 30,000 miles of rivers and streams, and a wide variety of habitats including wetlands and old-growth forests. There are 102 towns and villages and the year-round population is 132,000, with an additional 200,000 seasonal residents. It is larger than Yellowstone, Yosemite, Glacier, Grand Canyon and Great Smoky Mountains National Parks combined. In fact, it is the largest parkland in the continental United States, and contains the largest wilderness area east of the Mississippi River. It is also one of the most biologically diverse regions of the world. The federal government has recognized the historical significance of Forest Preserve lands within the Adirondack Park, listing them on October 15, 1966 on the National Register of Historic Places.

Forest Preserve lands are governed by the Adirondack Park State Land Master Plan and managed by the Department. The Master Plan classifies Forest Preserve lands based upon their character and ability to withstand use. Forty-six percent of Forest Preserve lands within the Adirondack Park are classified as Wilderness, the most restrictive classification, where any use of motor vehicles or motorized equipment is severely restricted.

Millions of tourists visit the park annually, and they come to enjoy the Adirondack Park's iconic scenic beauty, and to hike, hunt, fish, camp, canoe, and generally enjoy nature and fresh air. Many come to enjoy the remote settings of this vast Park. Flatwater and whitewater canoeing and kayaking are very popular. And the Park's numerous lakes, ponds, rivers and streams link to provide paddling routes ranging from under a mile to more than a hundred miles.

There are 1500 miles of designated hiking trails in the Forest Preserve. Tourists also visit the Adirondack Park in winter to downhill and cross country ski, snowshoe, ice climb, hike and winter camp. Although restricted from much of the Park, snowmobile enthusiasts can ride on a large network of trails. Annually, almost twice as many people visit the Adirondacks than the Grand Canyon. The tourists who come support the communities which provide lodging, food, gas and other services.

2. The Tahawus Branch

The Tahawus Branch was originally intended to facilitate the transportation of freight from the former mine owned and operated by NL Industries. In 2012, SNCR, a subsidiary of Iowa Pacific Holdings, obtained STB authorization to become a common carrier for freight along this line. The Department initially objected to SNCR's application to resume operations. However, Iowa Pacific emphasized the employment, environmental and energy benefits that would be created through the operation of a freight line, and committed that in the event it ever sought to discontinue service, upon abandonment it would designate the railroad right of way for the use as a trail under the terms and conditions of the National Trails Act. SNCR's parent company, Iowa Pacific

Holdings, also agreed to allow the use of snowmobiles on its right of way over the winter.

As a result of these assurances, the Department withdrew its objections to SNCR's application to use the Tahawus Branch for freight. However, SNCR's operations have never satisfied these objectives nor has it fulfilled its commitment to provide for snowmobile use.

The Tahawus Branch runs along the Upper Hudson and Boreas Rivers and crosses the Opalescent River. It is wholly within the Adirondack Park and crosses state owned Forrest Preserve and private lands. It starts from the hamlet of North Creek in the Town of Johnsburg and dead ends at the Tahawus Mine in the Town of Minerva. While there are some sidings, there is only one track. Based on information and belief, the Tahawus Branch does not carry freight. In addition, the two potential users of this Branch – the Tahawus mine and the Barton mine – have no current or future plans to use this Branch. The only user of the Tahawus Branch is a rail biking operation based in North Creek. This business provides seasonal biking on the rails for 3 miles on the tracks.

In 2015 SNCR proposed storing tanker cars on this Branch. This proposal was met with significant opposition and SNCR subsequently canceled its plans. SNCR currently stores some railcars along this Branch. These railcars appear to be abandoned and have broken windows and peeling paint. In October, SNCR advised Warren County (the owner of the railroad easement immediately south of the Tahawus Branch and with whom SNCR has a license agreement to use said easement) that it can no longer afford to maintain the railroad tracks, and that it plans to store up to 2,000

railcars owned by third parties on the Branch for ten years. It stated that it rented this storage to third-party railcar owners to generate needed revenues for track maintenance and rail operation costs. SNCR also stated that if the county opposed this storage, it could pay SNCR not to undertake this plan. Both Warren and Essex Counties have passed resolutions objecting to this proposed storage. Despite this mounting opposition, railcars began to be delivered to the Tahawus Branch for storage in October of this year.

Assuming that SNCR's plan to store 2,000 railcars for 10 years on the Tahawus Branch comes to fruition, there will be over 20 miles of track blocked by the storage, completely precluding it from any possible freight use and proving that it is not needed for such use. It will also result in a 20-mile long visual blight and environmental and ecological hazard in the heart of New York's most valued parkland. The State, its localities, and its citizens have made protecting the Adirondack Park one of its highest priorities. The supreme public interest of protecting the Adirondack Park completely outweighs any SNCR's supposed plan to raise revenue.

The Department's earlier support of the SNCR's application for a freight line on the Tahawus Branch through the Forest Preserve was intended to provide an environmentally sound alternative to truck traffic, foster economic development within the region, as well as provide a recreational opportunity for snowmobile use in the winter. The Department never intended, nor has it ever agreed, that Iowa Pacific should turn this 30-mile corridor in the Forest Preserve into a commercial disposal site.

The Adirondack Park has retained an abundance of natural resources and open spaces due to the consistent, on-going and ever present awareness by the people of

the State of New York to conserve, protect and preserve this unique treasure. This Department has the power and duty provide for the care, custody and control of the Forest Preserve in the Adirondack Park. It is in the defense of this natural resource that it is seeking relief from the Board.

Waivers Requested

The Board has found that much of the information required by the Board's abandonment proceeding regulations is inapplicable or irrelevant to an application for adverse discontinuance or abandonment. See *Chicago Terminal; Alloy Property Company, LLC—Adverse Abandonment—Chicago Terminal Railroad in Chicago, Ill.*, STB Docket No. AB-1258 (served August 16, 2017)(“Alloy”); see also *Seminole Gulf Railway, L.P. -Adverse Abandonment - in Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4) (served June 9, 2004) (“Seminole Gulf”) (citing *Napa Valley Wine Train, Inc. -Adverse Abandonment - in Napa Valley, CA*, STB Docket No. AB-582, served Mar 30, 2001 (“Napa Valley”); *Chelsea Property Owners Abandonment-Portion of Consolidated Rail Corp's West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub-No. 1094) (served July 19, 1989). Consistent with that precedent, the Department requests waivers from the following provisions:

System Diagram Map (49 C.F.R. §§ 1152.10 to 1152.14 and §1152.24(e)(I)): The Department seeks a waiver of all requirements in 49 C.F.R. §§ 1152.10 to 1152.14 and 49 C.F.R. § 1152.24(e)(I) as well as exemption from the underlying statutory provisions of 49 U.S.C. § 10 03(c)(2). These provisions require the carrier to maintain, file, and publish a System Diagram Map and require a line to appear on the System Diagram Map for at least 60 days before an abandonment application can be filed for the specific

line. Waiver of this requirement is appropriate because the Department does not own the Tahawus Branch and cannot amend, file, or publish the System Diagram Map. The waiver of this requirement is consistent with the Board's practice in adverse abandonment cases. *See Alloy at 3; Chicago Terminal at 5; Norfolk S. Ry. Co. -Adverse Abandonment- St. Joseph Cty., JN.*, STB Docket No. AB-290 (Sub-No. 286) at 4 (served Oct. 26, 2006) ("St. Joseph County").

Notice of Intent (49 C.F.R. § 1152.20): The Department intends to file and publish a notice of the proposed adverse abandonment, as required by 49 C.F.R. § 1152.20. The Department requests a waiver of several of the service and posting requirements for the notice that are not appropriate for this proceeding:

Significant Users of the Tahawus Branch: The Department requests a waiver of 49 C.F.R. § 1152.20(a)(2)(i) and exemption from the statutory provisions of 49 U.S.C. § 10903(a)(3)(D), which require service of the notice upon all significant users of the Tahawus Branch. Because there are no users of the Tahawus Branch, significant or otherwise, these provisions are inapplicable. The line is currently only being used for SNRC's storage operations and other recreational purposes. Petitioner will serve the notice on SNCR.

The Governor: The Department requests a waiver of 49 C.F.R. § 1152.20(a)(2)(i) which requires service of notice on the Governor of each state directly affected by the abandonment or discontinuance. The Tahawus Branch is wholly in the state of New York, and as the Department is an executive administrative agency of the State of New York, the Governor is aware of this petition and proposed application.

Labor Organizations: The Department also requests a waiver of 49 C.F.R. § 1152.20(a)(2)(xii) and 49 C.F.R. § 1152.20(a)(2)(ix), which requires service of the notice upon the headquarters of all duly certified labor organizations that represent employees on the affected rail lines and service on the U.S. Railroad Retirement Board. Ongoing rail service is not provided on the Tahawus Branch, and therefore there are no railroad employees who would be affected by an adverse abandonment of the Tahawus Branch. The Department does not have access to information related to past employees. Furthermore, the Department has no information on whether any of SNRC's employees are represented by a union, as this information is entirely within the railroad's control. The Board has waived this requirement in similar past cases. See *Chicago Terminal* at 4-5.

Amtrak: The Department requests a waiver of 49 C.F.R. § 1152.20(a)(2)(i) which requires service of notice on Amtrak if Amtrak operated over the involved line. Amtrak does not and has never operated over the Tahawus Branch.

Stations and Terminals: The Department requests a waiver of 49 C.F.R. § 1152.20(a)(3) and exemption from the underlying statutory provision at 49 U.S.C. § 10903(a)(3)(B), which require the notice to be posted at each station and terminal along the lines. There are no stations or terminals currently operating along the Tahawus Branch. The Board has waived this requirement in similar past cases. See *Alloy* at 3; *Hartwell First United Methodist—Adverse Aban. & Discontinuance—Hartwell R.R. & the Great Walton R.R., in Hart Cty., Ga.*, Docket No. AB-1242, at 4 (STB served Aug. 30, 2016) (“Hartwell”).

Publication of Notice of Intent: The Department requests a partial waiver of 49 C.F.R. § 1152.20(a)(4) which requires the publication of the Notice of Intent at least once during each of three consecutive weeks in a newspaper of general circulation in each county in which any part of the line is located. This requirement will delay the adverse abandonment proceedings. In the alternative, the Department proposes that the Notice of Intent be published once in a newspaper of general circulation in each county in which any part of the Branch is located.

Form of Notice of Intent (49 C.F.R. § 1152.21): As the Board has recognized, the form of the notice set forth in § 1152.21 is inappropriate for use in an adverse abandonment proceeding. Therefore, the Department requests a waiver of the prescribed form for the notice, and proposes instead to use the form of notice set forth in Appendix B. The Board has approved form changes in adverse abandonment cases when the substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.11. See *Alloy* at 4, *Hartwell* at 3; *St. Joseph County* at 3; *Chicago Terminal* at 3; *Seminole Gulf* at 2-3.

Contents of Application (49 C.F.R. § 1152.22): The Department also requests a waiver of provisions of 49 C.F.R. § 1152.22 that require an application to include information that is outside Petitioner's control or that is otherwise inconsistent with an adverse application. These provisions are detailed below:

System Diagram Map Information (49 C.F.R. § 1152.22(a)(5)): The Department requests a waiver of the requirements of 49 C.F.R. § 1152.22(a)(5), which requires information on whether the subject lines are included on the carrier's System Diagram Map, the date upon which the lines were first listed on the System Diagram Map, and a

copy of the line descriptions which accompanies the carrier's System Diagram Map. For the reasons detailed above, waiver of these requirements is appropriate because the Department, as a third party applicant, does not have access to SNCR's current System Diagram Map and has no ability to control the inclusion of the Tahawus Branch on that map. The Board has granted waivers of these requirements in prior cases. See *Chicago Terminal* at 5; *Yakima Interurban Lines Assocs. -Adverse Abandonment- in Yakima Cty., WA.*, STB Docket No. AB-600 at 3 (served Feb. 6, 2004).

Condition of Property (49 C.F.R. § 1152.22(b)): The Department requests a waiver of the § 1152.22(b) requirement to describe "[t]he present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing; miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1 safety standards)." The Board has recognized that "this information generally is not available to a third-party abandonment applicant" and that this requirement should be waived in adverse abandonment cases. *Chicago Terminal* at 5-6; see *St. Joseph County* at 5.

Service provided (49 C.F.R. § 115 .22(c)): The Department also requests waiver of the § 1152.22(c) requirement to describe service being provided on the Tahawus Branch. No service is being provided on the Tahawus Branch, and as an adverse applicant the Department is not in a position to describe any past service patterns on the Tahawus Branch. Waiver of this requirement is consistent with prior Board decisions in adverse abandonment cases. See *Chicago Terminal* at 5-6; *St. Joseph County* at 5.

Revenue and cost data (49 C.F.R. § 1152.22(d)): The Department does not have access to any of the revenue and cost data requested by § 1152.22(d), and the Board has regularly waived this provision for third-party applicants. See *Chicago Terminal* at 5-6; *St. Joseph County* at 5.

Rural and community impact (49 C.F.R. § 1152.22(e)): The Department also requests a waiver of the § 1152.22(e) requirement to describe the rural and community impact of abandonment. No service is being provided on the Tahawus Branch, and as an adverse applicant the Department is not in a position to describe the past significant users and past tonnage information. See *Hartwell* at 4.

Federal Register Notice (49 C.F.R. § 1152.22(i)): The Department further requests that the form of the draft Federal Register notice, as required by 49 C.F.R. § 1152.22(i), be modified as appropriate for an adverse abandonment case. The Department proposes to utilize the form of draft Federal Register notice set forth in Appendix C. See *Alloy* at 4.

Notice of Consummation (49 C.F.R. § 1152.29(e)(2)): The Department requests a waiver of the one-year authorization limit in 49 C.F.R. § 1152.29(e)(2). As the Board has previously held, it is not appropriate to place a time limit on an applicant to consummate an adverse abandonment, because the third party petitioner does not have control over the timing of consummation until it obtains control of the property from the railroad, which can involve proceedings under state law. *Chicago Terminal* at 6.

Exemptions Requested

Offers of Financial Assistance: The Department seeks an exemption from the requirements of 49 U.S.C. § 10904. and a related waiver of the provisions for offers of financial assistance ("OFA") set forth in 49 C.F.R. § 1152.27. As the Board has recognized in past cases, the OFA provisions serve no useful purpose in an adverse abandonment case. See, e.g., *Chicago Terminal* at 6-7. If the Board were to grant the Department's application for adverse abandonment, the Board would be withdrawing its exclusive jurisdiction over the right-of-way to permit the application of state, local, or other federal laws because there is no overriding federal interest in interstate commerce with this Tahawus Branch under these circumstances. It would be "fundamentally inconsistent" with such a ruling for the Board to then permit OFAs to subsidize or replace SNCR's rail service. *Id.* at 7; *Alloy* at 5; *Hartwell* at 5. This exemption thus meets the 49 U.S.C. § 10502 criteria for an exemption: (1) application of OFA provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) OFA provisions are not needed to protect shippers from the abuse of market power.

Failure to exempt this case from section 10904 "could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate." *St. Joseph County*, at 6 (citing *Kansas City Pub. Ser. Frtg. Ops. - Abandonment Exemption*, 7 I.C.C.2d 216, 225 (1990)). For these reasons, the Board should exempt this case from OFA requirements and waive the related OFA regulation

Public Use Procedures: The Department seeks an exemption from the requirements of 49 USC §10905 and 49 CFR §1152.28, for the same reasons articulated for the Offers of Financial Assistance provision exemptions above. See *Chicago Terminal* at 7.

Request for Expedited Consideration

In accordance with 49 USC §10101, none of the exemptions or waivers requested herein interfere with the national rail transportation policy. The Department respectfully requests that the Board grant the waivers and exemptions sought herein.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'T. Berkman', is written over the text 'Respectfully submitted,'.

Thomas S. Berkman
Deputy Commissioner
and General Counsel

Dated: December 19, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2017, I caused the foregoing Petition for Partial Waiver of Abandonment Regulations and for Exemption to be served by first class mail or more expedient method upon the following:

Saratoga & North Creek Railway, LLC

c/o Iowa Pacific Holdings, LLC

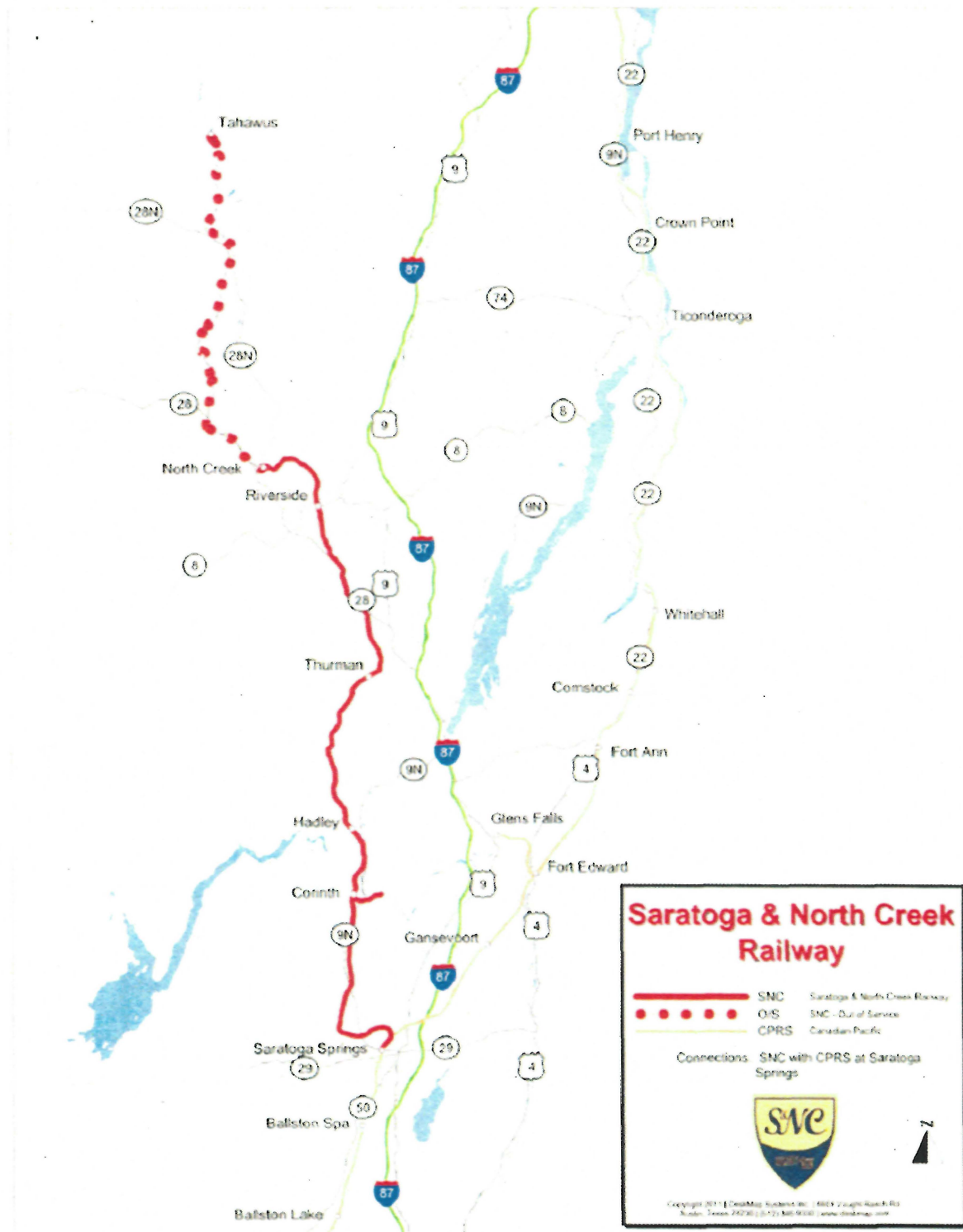
118 South Clinton St., Suite 400

Chicago, IL 60661



Jeanne Meal

APPENDIX A – Map



APPENDIX B
DRAFT NOTICE OF INTENT

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1261

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

DRAFT NOTICE OF INTENT

The New York State Department of Environmental Conservation ("Applicant") gives notice that on or about December XX, 2017, it intends to file with the Surface Transportation Board ("Board"), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of the Saratoga and North Creek Railway, LLC ("SNCR") to operate over the rail line originating at MP NC 0.0 at North Creek, New York and proceeding north a distance of approximately 29.71 miles into Essex and Hamilton Counties to a terminus at MP NC 29.71 near the Tahawus Mine (the "Tahawus Branch" or "Line"). The affected railroad Line is situated in U.S. Postal Zip Codes 12853 and 12851. The Line does not have stations. The reasons for the proposed abandonment include (i) the absence of current use of the Line pursuant to the authority granted to SNCR by the Board; (ii) the lack of any reasonably foreseeable future need for rail service on the Line; and (iii) the prospect for beneficial non-rail use of the property. In addition, there are significant environmental health and safety concerns with the current use of the property.

There are no documents in Applicant's possession to indicate that the Line contains federally granted rights-of-way. Any such documentation that might come into Applicant's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the requirements set forth in *Oregon Short Line Railroad-Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham & Bonneville Counties, ID*, 360 I.C.C. 91 (1979)

The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. The application will include Applicant's entire case for abandonment. Any interested person, after the application is filed on or about [Month][Day], 2017, may file with the Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing the application. All interested persons should be aware that following any abandonment of rail service and

salvage of the line, the line may be suitable for other public uses, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including their use of the Line or the public interest represented; (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service; and (4) any rebuttal of material submitted in the application.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding: (i) environmental impact; (ii) impact on rural and community development; (iii) recommended provisions for protection of the interests of employees; (iv) suitability of the properties for other public purposes pursuant to 49 U.S.C. § 10905; and (v) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 U.S.C. § 1152.29. Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E. St S.W., Suite 100, Washington D.C. 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, (name and address, phone, fax, email). Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application.

A commenting party or protestant may participate in the proceeding as its interest may appear. If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed. Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Persons seeking further information concerning the abandonment procedures may contact the Surface Transportation Board or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, et seq.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA (or EIS) will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

APPENDIX C
DRAFT FEDERAL REGISTER NOTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION –
ADVERSE ABANDONMENT – SARATOGA AND NORTH CREEK RAILWAY IN
TOWN OF JOHNSNBURG, NY

DRAFT FEDERAL REGISTER NOTICE

The New York State Department of Environmental Conservation ("Applicant") gives notice that on December XX, 2017, it filed with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of the Saratoga and North Creek Railway, LLC ("SNCR") to operate over the rail line originating at MP NC 0.0 at North Creek, New York and proceeding north a distance of approximately 29.71 miles into Essex and Hamilton Counties to a terminus at MP NC 29.71 near the Tahawus Mine (the "Tahawus Branch" or "Line"). The affected railroad Line is situated in U.S. Postal Zip Codes XXXX. The Line does not have stations.

There is no documentation in the Applicant's possession that indicates that the Line contains federally granted rights-of-way. Any such documentation relating to this abandonment in the Applicant's possession will be made available promptly to those requesting it. The application can be viewed on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. The Applicant's case for abandonment was filed with the application.

The interest of railroad employees will be protected by (same reference to labor protection provisions as in NOI.)

Any interested person may file with the Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days after the application is filed. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by

appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide: (i) Recommended provisions for protection of the interests of employees; (ii) A request for a public use condition under 49 U.S.C. 10905; and (iii) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 6 U.S.C. § 1247(d) and 49 U.S.C. §1152.29.

Persons seeking information concerning the filing of protests should refer to 49 C.F.R. §1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB-1258 and should be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, D.C. 20423. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant: name and address, phone; fax; email. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service.

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, et seq. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the section of Environmental Analysis will be served upon all parties of record and. upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.