

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No. 35380**

**SAN LUIS & RIO GRANDE RAILROAD  
PETITION FOR A DECLARATORY ORDER**

**REPLY TO UPDATE OF  
CONEJOS COUNTY CLEAN WATER INC.**

Submitted by  
John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-3334

Dated: March 31, 2011

**BY E-FILING**

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On March 29, 2001, Conejos County Clean Water Inc., (“CCCW”), one of the public commenters and Protestants in the above-captioned proceeding, filed what it termed an “update” to comments it previously submitted earlier in March 2011. CCCW filed this “update” to advise the Board of a settlement in the civil litigation between local environmental groups and the U.S. Department of Energy (“DOE”)<sup>1</sup> concerning the transportation of contaminated dirt originating at DOE’s Los Alamos facility. CCCW asks the Board to dismiss as “speculative” the Petition for a Declaratory Order initiated by the San Luis & Rio Grande Railroad (“SLRG”). SLRG opposes CCCW’s request.

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<sup>1</sup> 10CV02663, Conejos County Clean Water, Inc., Et Al v. U.S. Department of Energy, Et Al, U.S. District Court for the District of Colorado (hereafter “the DOE Litigation”)

COMMENTS OF  
SAN LUIS & RIO GRANDE RAILROAD

The “update” correctly states that the Federal District Court in Denver hearing the DOE Litigation approved a settlement dated March 29, 2011. That settlement appears to forbid DOE from using SLRG’s Antonito transload facility for handling contaminated dirt originating at DOE’s site at Los Alamos, NM, until DOE prepares an environmental impact statement pursuant to the National Environmental Policy Act. SLRG is not a party to that civil litigation and DOE is not a party to the declaratory proceeding before the Board.

SLRG is unalterably opposed to CCCW’s request. While SLRG has satisfied itself that DOE has indeed entered into such a settlement and that the settlement has been approved by the District Court, it has no direct bearing on the matter before the Board. Although SLRG desires to handle the contaminated dirt generated by the DOE facility and shipped by *EnergySolutions* as DOE’s contractor, this traffic represents only a part of the transload business that SLRG hopes to develop at Antonito. Despite the fact the settlement agreement requires DOE to comply with the EIS requirement, DOE has also committed to the State of New Mexico to clean up this site as expeditiously as possible. Thus, assuming that DOE proceeds promptly to prepare an EIS, the Board could well be faced with a replay of this proceeding in a few months or a year when *EnergySolutions* would again seek to move this freight by rail over SLRG. Dismissal now would merely

require new filings by SLRG and other parties and more expense as well as more proceedings before the Board as local interests would likely oppose any new movement of the contaminated dirt. Dismissal now would be contrary to administrative economy and efficiency as it would ultimately require the Board to expend even more of its limited resources at a later date.

In all deference to the EIS, the Board should recognize CCCW's "update" as another implement in its "toolbox" of dilatory tactics. Back in May 2010 *EnergySolutions* and SLRG had negotiated a settlement with local officials that would have provided many of the benefits that are likely to be achieved through an EIS mandated by this settlement. Sensing an adverse political reaction, local officials then declined to approve the very settlement that they had spent several weeks negotiating. SLRG predicts that local groups including but not limited to the CCCW will again try to block the railroad from using the Antonito transload facility relying on the local land use code, the Conejos County Land Use Code ("CCLUC") as their weapon of choice, regardless of whether or not the DOE prepares an EIS that would permit it to use SLRG's facility there.

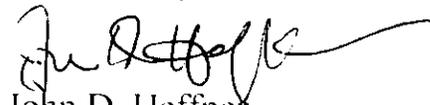
SLRG asserts one additional reason why the Board should continue this proceeding and find that federal law preempts the CCLUC. Simply stated, SLRG intends to market and use the Antonito facility to handle a wide variety of other traffic. It intends to advertise the availability of this facility to potential customers

and to work with its principal connecting railroad, the Union Pacific, to develop traffic there as soon as possible. It has every reason to believe that the local population will attempt to enforce the CCLUC against SLRG for handling freight-all-kinds at Antonito whether the traffic takes the form of aggregates, steel beams, or agricultural produce.

CONCLUSION

CCCW's assertions aside, SLRG asserts that the use of this facility is not speculative but is very real and imminent and that a controversy continues to exist. Accordingly, SLRG requests that the Board continue its deliberations and issue a ruling finding that federal law preempts the CCLUC.

Respectfully submitted,



John D. Heffner  
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Certificate of Service

I, John D. Heffner, hereby certify that a copy of the foregoing "Reply to Update" of Conejos County Clean Water Inc. was sent to all parties in this proceeding by first class United States Mail and by electronic mail where address known this 1<sup>st</sup> day of April 2011 and was sent to Conejos County Clean Water Inc. by electronic mail this 31<sup>st</sup> day of March 2011.



John D. Heffner