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SURFACE  
TRANSPORTATION BOARD

MAY 17 2012

JOHN D. HEFFNER

Direct Fax 202-742-8697  
Direct Phone 202-742-8607  
Email: john.heffner@strasburger.com

**VIA HAND DELIVERY**

Ms. Cynthia A. Brown  
Chief, Office of Administration  
Section of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

FEE RECEIVED

MAY 17 2012

SURFACE  
TRANSPORTATION BOARD

232325

**RE: FD 35631, Saratoga And North Creek Railway, LLC-Operation  
Exemption-Tahawus Line**

Dear Ms. Brown:

On behalf of Saratoga and North Creek Railway, LLC ("Saratoga"), I am filing an original and ten copies of a verified Notice of Exemption under 49 U.S.C. §10902 and 49 CFR §1150.41 for that carrier's operation of a rail line known as the Tahawus Line. This Notice is submitted in response to the Board's decision served Monday May 14, 2012, inviting Saratoga to re-file for operating authority.

I am enclosing with this filing a fee check for \$1800 and a computer disk containing a word copy of the notice and the caption summary.

Sincerely yours,



John D. Heffner

Enclosure

Strasburger & Price, LLP

MAY 17 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35631**

**SARATOGA AND NORTH CREEK RAILWAY, LLC  
—OPERATION EXEMPTION—  
TAHAWUS LINE**

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Submitted By:

John D. Heffner  
Strasburger & Price  
1700 K Street, N.W.  
Suite 640  
Washington, D.C. 20006  
(202) 742-8607

Counsel for Petitioner

Dated: May 17, 2012

MAY 17 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35631**

**SARATOGA AND NORTH CREEK RAILWAY, LLC  
—OPERATION EXEMPTION—  
TAHAWUS LINE**

-----

**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Saratoga and North Creek Railway, LLC (“Saratoga”), a limited liability company and existing class III short line rail carrier, files this Notice of Exemption,<sup>1</sup> pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the “Board”) to permit it to initiate common carrier operations over about 29.71 miles of what has been a private line of railroad (“the Line” or “the Tahawus Line”). Saratoga files this notice in response to the Board’s May 14, 2012,<sup>2</sup> ruling inviting it to file a new notice for operating authority for the Line.

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<sup>1</sup> Commonly abbreviated as an “NOE.”

<sup>2</sup> In that ruling the Board denied the administrative appeal that Saratoga had filed to the Acting Director’s decision rejecting its original October 25, 2011, NOE, but found that pleadings

Presently, the Line is owned by Saratoga which had acquired it as a “private industry track” outside the Board’s regulatory jurisdiction under 49 U.S.C. §§10901-6. The Line extends between a connection with the rest of Saratoga’s railroad at MP NC 0.0 at North Creek and its northern terminus at MP NC 29.71 at Newcomb, NY, a distance of about 29.71 miles. Saratoga intends to provide common carrier freight railroad service over the subject line connecting to its existing trackage at North Creek and extending south to its connection with the Delaware & Hudson Railway d/b/a Canadian Pacific (“CP”) at Saratoga Springs, NY.<sup>3</sup>

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submitted in that proceeding were sufficient to allow the Board to determine that the use of the class exemption for this transaction would be appropriate. Saratoga and North Creek Railway, LLC-Operation Exemption-Tahawus Line, FD 35559, STB served May 14, 2012 (hereafter cited as the “*May 14, 2012 Decision*”), slip op. at 7.

<sup>3</sup> The Board had previously authorized Saratoga to operate between Saratoga Springs and Corinth and then between Corinth and North Creek in two prior proceedings. In FD 35500, it exempted Saratoga’s acquisition and operation over an exclusive, permanent operating easement on track and right of way owned by the Town of Corinth. In FD 35500, Sub-No. 1, the Board granted Saratoga an exemption to operate over trackage acquired by Warren County from CP after its abandonment. *See, Saratoga and North Creek Railway, LLC–Acquisition and Operation Exemption–Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific*, FD 25500, STB served June 1, 2011 and Saratoga and North Creek Railway, LLC–Operation Exemption–Warren County, N.Y., FD 35500 Sub. No. 1, STB served June 1, 2011.

## INFORMATION REQUIRED BY 49 CFR §1150.43

Name and Address of Applicant                      **49 CFR §1150.43(a)**  
Saratoga and North Creek Railway, LLC  
c/o Iowa Pacific Holdings, LLC  
118 South Clinton Street  
Suite 400  
Chicago, IL 60661

Applicant's Representative                      **49 CFR §1150.43(b)**  
John D. Heffner  
Strasburger & Price  
1700 K Street, N.W.  
Suite 640  
Washington, D.C. 20006  
(202) 742-8607

Statement of Agreement                      **49 CFR §1150.43(c)**

N.A. Saratoga had consummated the acquisition of the Line in 2011 pursuant to an agreement with NL Industries (“NL”).<sup>4</sup>

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<sup>4</sup> See, *May 14, 2012, Decision at 2, 8*. Inasmuch as the subject trackage is industry-owned private track and has never been operated in common carrier service, the Board found that Saratoga did not need any authority to acquire the Line as such property is outside the Board’s entry jurisdiction. *Id.* At 7-8 citing B. Willis, C.P.A., Inc.—Petition for Declaratory Order, FD 34013 (STB served Oct. 3, 2001). Private track is typically built by a shipper (or its contractors) to serve only that shipper, moving the shipper’s own goods, so that there is no “holding out” to serve the public at large. B. Willis, slip op. at 2.

Operator of the Property

**49 CFR §1150.43(d)**

Saratoga will provide all common carrier rail operations over the subject rail line.

Brief Summary of Transaction

**49 CFR §1150.43(e)**

Saratoga is a limited liability company and an existing class III short line rail carrier indirectly owned by short line holding company Iowa Pacific Holdings, LLC, and its wholly-owned noncarrier subsidiary, Permian Basin Railways.<sup>5</sup> IPH/Permian Basin formed Saratoga for the purpose of operating the entire Tahawus Line between Newcomb on the north and Saratoga Springs on the south interchanging traffic with CP at Saratoga Springs.

As the *May 14, Decision* notes, the Line was originally constructed by the United States Government early in the 20<sup>th</sup> Century to transport minerals being mined in northern New York State. More recently, the Line has been owned by NL and operated as a long private piece of railroad by CP's predecessor, the Delaware & Hudson Railroad as a contractor for that customer. On or about July

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<sup>5</sup> Saratoga in turn is wholly owned by San Luis & Rio Grande Railroad ("SLRG"), an existing class III short line rail carrier subsidiary of Permian Basin Railways. Control of Saratoga by SLRG and in turn Permian Basin Railways and Iowa Pacific Holdings was exempted by the Board in San Luis & Rio Grande Railroad—Continuance in Control Exemption—Saratoga and North Creek Railway, LLC, FD 35499, STB served June 1, 2011.

1, 2011, Saratoga restored common carrier rail service between North Creek and Saratoga Springs and issuance of this exemption will permit it to restore service over the Tahawus Line serving NL and other shippers who desire to have freight rail service. *Id.* at 2, 3, 7, and 8.

As the Board found in the *May 14, 2012, Decision*, the conversion of “private” or industry owned track to common carrier service by an existing Board-licensed rail carrier is appropriate for exemption under 49 U.S.C. §10902 and 49 CFR §1150.41. Slip op. at 7-8. The Board routinely authorizes by exemption the conversion to and common carrier operation of what had previously been private or industry-owned trackage such as that formerly owned by NL.<sup>6</sup> The fact that Saratoga will be holding out to serve the public at large is determinative of its status as a common carrier.

Other information required

(1) The name and address of the party transferring the subject property:

No property will be transferred as a result of this filing. However, Saratoga will be initiating common carrier operations over track that it had acquired outside the jurisdiction of the Board.

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<sup>6</sup> See, Effingham R.R. Co.—Pet. For Declaratory Order, 2 S.T.B. 606 (1997).

The name and address of the owner/operator is:

Saratoga & North Creek Railway, LLC  
c/o Iowa Pacific Holdings, LLC  
118 South Clinton Street  
Suite 400  
Chicago, IL 60661

(2) The proposed time schedule for consummation of the transaction:

Saratoga intends to consummate this transaction 30 days from the date of this notice, probably around mid to late June 2012.

The mileposts of the subject property, including any branch lines:

The subject trackage extends between MP NC 0.0 at North Creek and its northern terminus at MP NC 29.71 at Newcomb, NY.

The total route miles to be operated:

About 29.71 miles of railroad.

Map

**49 CFR §1150.43(f)**

A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification    **49 CFR §1150.43(g)**

Saratoga certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR §1150.43(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments **49 CFR §1150.43(h)**

Not applicable. There are no agreements applicable to the Line imposing any interchange commitments. The subject line of railroad does not physically connect with any rail lines other than the contiguous lines owned by Warren County and in turn the Town of Corinth. Consequently, Saratoga will not be able to interchange with any carriers other than CP.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. §10902.

Caption Summary **49 CFR §1150.44**

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data **49 CFR §1105**

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

The *May 14 Decision* requests that Saratoga's new notice specify the number of trains that it plans to operate on the Tahawus Line for the reasonably foreseeable future. *Id.* at 8. Saratoga anticipates operating a single roundtrip over the Line up to 5 days per week, well under the Board's threshold for an environmental review.

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

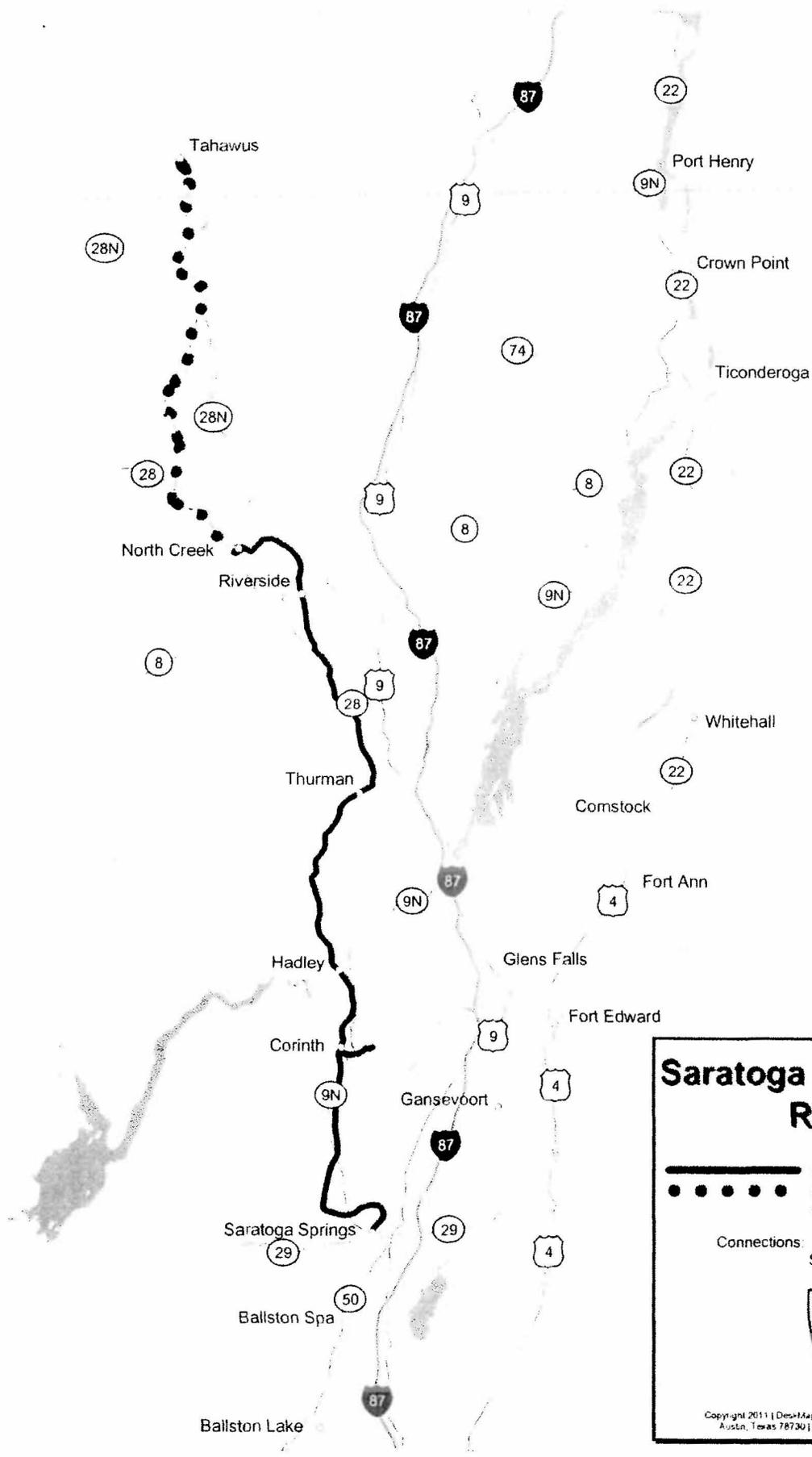
Submitted By:



John D. Heffner  
Strasburger & Price  
1700 K Street, N.W.  
Suite 640  
Washington, D.C. 20006  
(202) 742-8607  
Counsel for Petitioner

Dated: May 17, 2012

EXHIBIT A



## Saratoga & North Creek Railway

	SNC	Saratoga & North Creek Railway
	O/S	SNC - Out of Service
	CPRS	Canadian Pacific

Connections: SNC with CPRS at Saratoga Springs




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Austin, Texas 78730 | (512) 346-9330 | www.deskmap.com

Exhibit B

*Certification*

I, Edwin E. Ellis, certify that I am President of Saratoga and North Creek Railway, LLC and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

Dated: May 17, 2012



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Signature

## EXHIBIT C

### BEFORE THE SURFACE TRANSPORTATION BOARD

FD 35631

#### SARATOGA AND NORTH CREEK RAILWAY, LLC —OPERATION EXEMPTION— TAHAWUS LINE

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#### VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41

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Saratoga and North Creek Railway, LLC (“Saratoga”), a limited liability company and existing class III short line rail carrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the “Board”) to permit it to initiate common carrier operations over about 29.71 miles of what has been a private line of railroad (“the Line” or “the Tahawus Line”).<sup>1</sup> The Line extends between a connection with the rest of Saratoga’s railroad at MP NC 0.0 at North Creek and its northern terminus at MP NC 29.71 at Newcomb, NY, a distance of about 29.71 miles.

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<sup>1</sup> Saratoga files this notice in response to the Board’s ruling in Saratoga and North Creek Railway, LLC-Operation Exemption-Tahawus Line, FD 35559, STB served May 14, 2012, inviting it to file a new notice for operating authority for the Line.

Saratoga certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June \_\_, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35631, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., Strasburger & Price, 1700 K Street, N.W. – Suite 640, Washington, D.C. 20006, Telephone: (202) 742-8607, counsel for Saratoga.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

