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November 11, 2011

Cynthia A. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

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MANAGEMENT
SIS

Re: FD 35559 Saratoga and North Creek Railway LLC – Operation Exemption – File # 231173

Dear Ms. Brown:

On behalf of Protect the Adirondacks! Inc. (“Protect!”), a 501(C) (3) not-for-profit conservation organization incorporated in the State of New York, I am writing to protest the Notice of Exemption (“Notice”) filed with the Surface Transportation Board (“STB”) on October 25 by John D. Heffner, Esq. of Strasburger and Price, 1700 K Street NW, Suite 640, Washington, DC 20006-3817 for the Saratoga and North Creek Railway, LLC (“SNCR”), c/o Iowa Pacific Holdings, LLC, 118 South Clinton Street, Suite 400, Chicago, IL, 60661. An additional ten (10) copies of this letter are enclosed.

In its Notice, SNCR has omitted much important information. Protect! believes that collectively these omissions seriously misrepresent the situation. This case is much more complex than Mr. Heffner and SNCR have represented to the STB. It is our objective in this letter to present additional information that may assist the Board in making a decision as to whether or not to approve the requested exemption at this time.

SNCR, a Class III carrier, states in its Notice that during the present month of November it will implement an agreement that it already has executed with NL Industries Inc. (“NL”) of 3 Lincoln Centre, 5430 LBJ Freeway, Suite 1700, Dallas TX, 75240-2697 to purchase from NL what SNCR references as the “Tahawus Line” or, just, “the Line,” which in fact is an elongated industrial spur that runs for 29.71 miles from North Creek, N.Y. northward to its terminus at the location of the former mining hamlet of Tahawus where NL’s former ilmenite mine was located. As a common carrier, SNCR intends to operate a tourist train over the entire 29.71 miles of track.

Please be aware that the right-of-way ("ROW") for the Tahawus line exists as easements on a mix of public and private land. In other words, NL does not own the ROW in full fee title. Also, NL's ownership of the ROW easements is disputed, as discussed below.

SNCR represents in the Notice that the trackage from North Creek to Tahawus is seamlessly of a piece with that which runs southward from North Creek to Saratoga Springs where it connects with the main line, operated by Canadian Pacific, for which SNCR received an exemption from the STB last June and began operating on July 1. However, it is not all of a piece, with the North Creek to Tahawus line having been built as a spur for one purpose, and for one purpose only, which is fully documentable in deeds and court records. That singular purpose is hauling ilmenite ore from Tahawus. In proposing to operate on this spur as a common carrier, SNCR is trying to make the spur into something it was never legally intended to be.

Basis for Protect!'s Protest of the Notice of Exemption

1. In 1826 the MacIntyre Mine began mining for magnetite iron ore on the Hudson River near its headwaters, at the base of the south side of the High Peaks of the Adirondack Mountains. By 1855 the enterprise had failed because of its isolation, transportation costs to take out the smelted iron, and an impurity in the ore, ilmenite, that was costly to remove in the smelting process.

2. Fast forward to 1940 when NL purchased the property to mine, in open pits next to the Hudson River, for the ilmenite ore, from which titanium dioxide is derived. This was a strategic mineral during World War II because its major sources were overseas. With the threat of German submarines being ever-present, a domestic source of ilmenite had to be developed.

3. In 1941, under wartime emergency powers, the federal government appropriated, by eminent domain, ROW easements on which to construct a rail spur from North Creek to the new NL mine where the hamlet of Tahawus was being built. It is important to note, once more, that the federal government did not appropriate a fee title interest in the ROW lands, only easements. And, of the approximately 30 miles of ROW easements, 13 miles are on State-owned Forest Preserve land and 17 miles are on a number of parcels of privately-owned land. The private land easements were permanent, whereas those on the State Forest Preserve were term easements, as discussed below. The rail spur was constructed in 1941 by the federal government at a cost of \$3.0 million. Immediately thereafter the ROW easements, the rails and other appurtenances were leased to NL and the hauling of ore began.

4. The State Forest Preserve was established by state law in 1885, and in 1894 it was given protection under the State Constitution, today numbered as Section 1 of Article 14. It is inviolate as "forever wild" land and cannot be "leased, sold or exchanged" unless an exception is made by enactment of legislation in each of two successive two-year sessions of the State Legislature, with each bill signed into law by the Governor, and then approved by the voters in a referendum as a proposition on the ballot in the next statewide general election.

5. The entire State Forest Preserve, lying in the Adirondack and Catskill counties that are named in law, is a National Natural Landmark on the National Register of Historic Places, as well as on the State Register of Historic Places. The Adirondack Forest Preserve is managed by the NYS

Department of Environmental Conservation ("DEC")(625 Broadway, Albany , N.Y. 12207) under the guidance of the Adirondack Park State Land Master Plan ("APSLMP"). The 13-miles of State Forest Preserve on which the Tahawus rail spur lies is all within the Vanderwhacker Wild Forest Unit Management Area as classified by the Adirondack Park Agency (see below) under the APSLMP.

6. The Tahawus rail spur lies entirely within the Adirondack Park. In 1892, the Adirondack Park was created by State law as an area within which to acquire land for the State Forest Preserve. Today the Park, after several expansions of its boundaries, is now about six million acres in size, roughly the size of Vermont, New Hampshire or Massachusetts. Within the Park there is a checkerboard pattern of private land and State Forest Preserve land, in a roughly 52 to 48 percent ratio. In 1971, the State of New York established the Adirondack Park Agency ("APA") (P.O. Box 99, Ray Brook, N.Y., 12477) to administer the private land in the Park in accordance with an ecologically-based State-adopted Land Use and Development Plan, to classify State land under the APSLMP and to approve unit area management plans prepared by DEC, among other duties.

7. In response to the 1941 appropriation by the federal government of the ROW easements on the State Forest Preserve, in violation of Article 14 of the State Constitution, the State of New York, after direct personal correspondence between Governor Lehman and President Roosevelt, and the Association for Protection of the Adirondacks, Inc. ("Association"), one of Protect!'s predecessor organizations, went to federal court for relief. The State, wanting the easements and rails on the State Forest Preserve removed at the end of World War II, lost in the lower court, obtained a split decision in the U.S. Court of Appeals, and requested the U.S. Supreme Court to take the case. That didn't happen and there it ended. The final result was that the term for the easements on the State Forest Preserve was fixed to terminate 15 years after the end of the war because the federal agency said that it needed that time to amortize its \$3.0 million investment in the construction of the railroad spur. However, President Truman did not declare the war to be officially over until 1952, meaning that the easements wouldn't revert to the fee title owners of the land until 1967. In any event, once NL began operating the railroad beyond the end of the war, there was no longer a "wartime emergency," and the operation was thereafter solely for the commercial benefit of NL.

8. In 1962, the federal General Services Administration ("GSA"), under pressure from Congress to sell surplus property, proposed to sell the ROW easements and rails to NL. The State objected, whereupon GSA instituted another eminent domain proceeding and extended the term of the easements on the State Forest Preserve for 100 years to 2062. This time the State did not go to court, presumably because of the negative experience in the 1940s. In 2012 we will be halfway to 2062.

9. Then, in 1982, NL ceased active mining at Tahawus and thus began a series of events that clearly indicate that NL will never again haul ore on the rail spur again.

a. Until 1989, NL used the railroad to ship out crushed stone from the tailings piles, for use as road building material. In the summer of that year, NL sold the rolling stock and abandoned the rail spur. Since then some magnetite iron ore from the tailings piles has continued to be taken out by truck.

b. In the fall of 1989, GSA auctioned the spur (ROW easements, rails, appurtenances). NL was the sole bidder, at \$950,000. A month later it put its new property at arm's length for tax

purposes by turning it over to the Essex County Industrial Development Agency with the right to buy it back at any time for one dollar.

c. After passage of the State Environmental Quality Bond Act in 1986, DEC started negotiations with NL to buy in fee that part of NL's 11,500 acre mining property that was north of the open pits and runs up into the High Peaks, while taking a conservation easement on the southerly part of the property. After 1989 this negotiation changed. Throughout the entire 1990s NL wanted to sell the entire property, clearly indicating its intention to never start mining again. However, the State could not purchase all of it because the area around the pits and the mill buildings was seriously contaminated.

d. By the mid-1990s DEC had requested the Open Space Institute ("OSI"), a not-for-profit regional land trust, to continue the negotiation. In 2003 OSI purchased about 10,000 acres, leaving NL with 1,200 acres, the contaminated core of the property. OSI, after getting subdivision approval from APA in April, 2006, subsequently sold 7,000 acres of the High Peaks portion to the State and 3,000 acres in the southerly part of the property to a private industrial forestland company, while retaining a few small parcels.

e. In February 2005, NL and OSI obtained a letter from the NYS Department of Transportation which said that the rail spur was considered by that agency to be abandoned. Then, in June, 2005, OSI and NL applied jointly to APA to subdivide the rail spur and remove the rails on the 13-mile State Forest Preserve section of the ROW and northward of that segment, while leaving them in place on the southerly end of the spur to provide service to Barton Mines. After more than 100 years of operation, Barton Mines still produces thousands of tons of some of the best industrial garnets in the world. Since the abandonment of the rail spur by NL in 1989, this product has been hauled out by truck. This application was withdrawn by OSI and NL at the end of 2005 after questions were raised by Protect!'s predecessor organization, the Association, about ownership of the ROW easements.

f. In 2006, NL demolished all of the mill buildings on its remaining property and began cleaning up the site.

Questions and Issues Raised By the Notice

A. There is no "Tahawus Line." and there never was a Tahawus Line. There is only the abandoned industrial spur from North Creek to Tahawus and the now defunct NL mine where active mining stopped in 1982, and there has been a steady shut-down ever since.

B. A study in 2004 estimated that it would cost at least \$5.0 million to rehabilitate the Tahawus rail spur and bring it up to safety standards. That cost would be higher now. It would take a substantial amount of time to carry out this work. Yet SNCR suggests at the bottom of page 2 of its Notice that it will be ready to operate as a common carrier "upon acquisition."

C. The Notice says nothing about the fact that the ROW consists of easements rather than land owned in fee. This is a major omission.

D. On page 5 of the Notice, SNCR advises that it will restore service on the Tahawus rail spur and "serve NL and other shippers who desire to have rail service." However, as discussed above, NL has ceased mining and there is nothing left at the NL site except a small office structure. There is no crusher, and there are no other structures. However, Barton Mines is still shipping thousands of tons of garnets a year by truck and might want rail service again, at the southern end of the spur. . There are no other potential non-carrier industrial customers near the Tahawus spur.

E. SNCR states that it will use all 29.71 miles of this trackage, suggesting that the northern terminus of the common carrier service will be on the highly contaminated 1200-acres of NL industrial mined land that NL could not sell to the State, raising questions of passenger safety. Further, it is in a very isolated area, with nothing around for miles. Passengers would have to be bused from that location near the foot of the High Peaks to other places, raising questions about whether or not a marketing study has been done.

F. Protect! disagrees with the Notice's claim on page 8 that the action is exempt from environmental review. Because the Tahawus spur has been abandoned since 1989, the resumption of rail traffic will result in an increase in rail traffic of over 100% and an increase in rail yard activity at the currently unused northern terminus of over 100%. Therefore, the action exceeds the thresholds of 49 C.F.R. 1105.7(e)(4) & (5), so it is not exempt under 49 C.F.R. 1105.6(c)(2). Instead, it appears that the action requires an Environmental Assessment, and potentially an Environmental Impact Statement, under 49 C.F.R. 1105.6(b)(4)(i) and other applicable regulations.

G. Likewise, it appears that a Historic Report is required under 49 C.F.R. 1105.8(a), et seq. All of the State Forest Preserve is a National Natural Landmark, listed on the National Register of Historic Places, including that land which underlies the 13-miles of ROW easements on the Vanderhacker Wild Forest State lands. It would seem that an historic assessment should be required. Part of that assessment would include the fact that the State Forest Preserve has very strong protection under Article XIV of the State Constitution for over a century, a level of protection unlike that provided for federal lands or for public lands in any other state. The statement on page 8 of the Notice to the effect that the transaction is exempt from historic review "if rail operations will continue" is puzzling because the Tahawus rail spur has not continued operating at all. NL ceased operating in 1989 and the spur has been deemed abandoned by the New York State Department of Transportation for many years.

Conclusions

The Tahawus rail spur was abandoned 22 years ago. Further, court records and decds show that the ROW easements on the Forest Preserve were taken by eminent domain during a wartime emergency, strictly for the purpose of constructing a rail spur over which to haul ilmenite ore from Tahawus. These ROW easements cannot legally bc used for any other purpose.

Under these circumstances, the ROW easements should be considered as having been extinguished and as having reverted to the fee title owners of the ROW land, including, but not limited to, the Forest Preserve lands belonging to the State of New York. With the ROW easements having reverted, the rails constitute an illegal occupancy of the State Forest Preserve and they should be removed by NL, or any subsequent owner, as soon as possible.

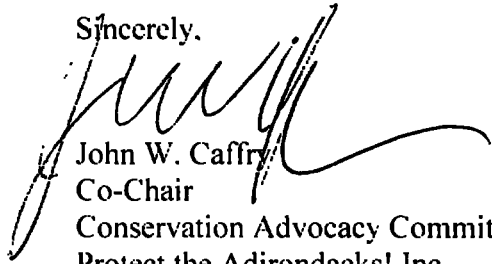
NL is well aware of Protect!'s position in this matter. On March 1, 2010 Protect! wrote to Harold Simmons, NL's board chairman and CEO, offering to support the rail removal plan that NL and OSI submitted jointly to APA in June, 2005. This plan would leave the rails in place from North Creek northward to Barton Mines and remove the rails on the State Forest Preserve and northward from there to Tahawus. This offer was contingent on recognition by NL that the ROW easements on the State Forest Preserve land had reverted to the State's fee title ownership. We received no reply.

If SNCR proceeds with its proposal to buy the ROW easements and the rails and appurtenances, it will also be buying the potential title problems described in this letter.

We hope that STB will proceed to carefully review this matter in accordance with the applicable law and regulations.

Please let us know if we can provide any other information that will aid STB in making its decision.

Sincerely,



John W. Caffry
Co-Chair
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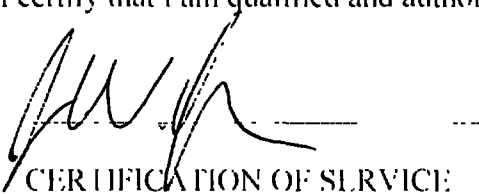
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VERIFICATION

I, John W. Caffry, as Co-Chair of the Conservation Advocacy Committee of Protect the Adirondacks! Inc. declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. Further, I certify that I am qualified and authorized to file this pleading.

November 11, 2011



CERTIFICATION OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail.

November 11, 2011

