

LAW OFFICES

JOHN D. HEFFNER, PLLC

1750 K STREET, N.W.

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**SURFACE
TRANSPORTATION BOARD**

BY HAND

May 16, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20324-0001

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**SURFACE
TRANSPORTATION BOARD**

**RE: FD 35499, San Luis & Rio Grande Railroad--Continuance-in-Control
Exemption--Saratoga And North Creek Railway, LLC**

**FD 35500, - Saratoga And North Creek Railway, LLC-- Acquisition
And Operation Exemption- Delaware And Hudson Railway Company,
Inc. d/b/a Canadian Pacific**

**FD 35500, Sub-No. 1- Saratoga And North Creek Railway, LLC-- 229522
Operation Exemption--Warren County, NY**

Dear Ms. Brown:

On behalf of applicants, San Luis & Rio Grande Railroad and Saratoga And North Creek Railway, LLC, I am submitting the following three exemption notices:

- (1) in FD 35499, a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) for San Luis & Rio Grande Railroad to continue in control of Saratoga And North Creek Railway, LLC;

(2) in FD 35500, a verified notice of pursuant to 49 CFR 1150.31 for Saratoga And North Creek Railway, LLC to acquire and operate a permanent and exclusive freight easement: and

(3) in FD 35500, Sub-no. 1, a verified notice of pursuant to 49 CFR 1150.31 for Saratoga And North Creek Railway, LLC to operate a line of railroad.

I am including with these filings a copy of each document on a computer diskette as well as two checks totaling \$3200 to cover the requisite filing fees. Because the filing fee for one carrier to control another carrier is slightly higher than that originally anticipated I am including my own check for the additional \$100.

Respectfully submitted,


John D. Hefner

Enclosures

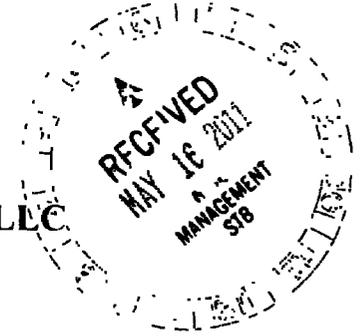
cc: Mr. Edwin Ellis

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35500 Sub-No. 1

**SARATOGA AND NORTH CREEK RAILWAY, LLC
—OPERATION EXEMPTION—
WARREN COUNTY, NY**



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VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

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**SURFACE
TRANSPORTATION BOARD**

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3333

FILED

MAY 16 2011

**SURFACE
TRANSPORTATION BOARD**

Counsel for Petitioner

Dated: May 16, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35500 Sub-No. 1

**SARATOGA AND NORTH CREEK RAILWAY, LLC
—OPERATION EXEMPTION—
WARREN COUNTY, NY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

Saratoga and North Creek Railway, LLC (“Saratoga”), a limited liability company and noncarrier, 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 operate about 39.07 miles of a previously abandoned railroad line currently owned by Warren County, NY (“the County”), a noncarrier. The County will be granting Saratoga operating rights over this line, but will retain ownership of the tracks and right of way as a non-carrier. Because the County acquired the tracks and right of way after abandonment, it did not become a carrier subject to the jurisdiction of the ICC, now the Board, and its entry into an operating agreement with Saratoga will not subject it to Board jurisdiction.¹ The

¹ See, Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions, 363 I.C.C. 132 (1980).

subject trackage extends between MP 55.89 at or near Corinth, NY, and MP 94.96 at North Creek, NY.²

INFORMATION REQUIRED BY 49 CFR 1150.33

Name and Address of Applicant **49 CFR 1150.33(a)**
Saratoga and North Creek Railway, LLC
c/o Iowa Pacific Holdings, LLC
118 South Clinton
Suite 400
Chicago, IL 60661

Applicant's Representative **49 CFR 1150.33(b)**
John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3333

Statement of Agreement **49 CFR 1150.33(c)**

² The subject trackage connects south of Corinth with a line of railroad that extends to MP 39.44 at Saratoga Springs, NY, where it connects with a main line of the Delaware & Hudson Railway Company, Inc., d/b/a Canadian Pacific ("CP"). The Corinth-Saratoga Springs segment was acquired about six years ago by the Town of Corinth, NY ("the Town") in *State of Maine* transaction and CP retained the exclusive, permanent railroad operating easement and the common carrier obligation. See, The Town of Corinth, NY-Acquisition and Operation Exemption, FD 34803, STB served March 9, 2006 and Maine, DOI-Acq. Exemption, ML Central R. Co., 8 I.C.C.2d 835, 836-37 (1991) (*State of Maine*). The subject trackage continues north of North Creek to Tahawus and was historically operated as exempt industry trackage.

Saratoga is presently negotiating the terms of a license agreement with the County to restore service over the County-owned line of railroad as part of a larger transaction described below. Saratoga anticipates reaching an agreement with the County shortly.

Operator of the Property **49 CFR 1150.33(d)**

Saratoga will provide all common carrier rail operations over the subject rail line. The County will retain ownership of the tracks and right of way as a non-carrier.

Brief Summary of Transaction **49 CFR 1150.33(e)**

Saratoga is a newly established limited liability company and noncarrier organized and wholly owned by San Luis & Rio Grande Railroad (“SLRG”), an existing class III short line railroad. SLRG formed Saratoga for the purpose of acquiring and operating the subject rail line and the connecting line to Saratoga Springs owned by the Town. SLRG is a subsidiary of short line railroad holding company, Permian Basin Railways (“PBR”), which owns five other class III noncontiguous short line railroads operating in the United States.³

In 1996 the County purchased the track and right of way from CP after CP had obtained abandonment authority from the former Interstate Commerce Commission. The County acquired the track and right of way to preserve the line

³ Iowa Pacific Holdings, LLC, a noncarrier holding company, owns PBR.

intact for excursion service and possible future freight service. Since the line has been abandoned, the County did not become a carrier subject to the jurisdiction of the ICC as a result of the acquisition. Although no freight service has been provided over the subject line since the time of that sale, a previous carrier operated a scenic excursion rail service over the line. The County will be granting Saratoga operating rights over the line, but will retain ownership of the tracks and right of way as a non-carrier. Saratoga intends to restore that excursion service from Saratoga Springs all the way to North Creek and will resume providing common carrier rail freight service over both this line and the connecting Corinth-Saratoga Springs line interchanging freight at Saratoga Springs with CP.

Other information required

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

No property will be transferred, only operating rights will be granted to the operator. The property will continue to be owned by:

County of Warren
Department of Public Works
261 Main Street
Warrensburg, NY 12885

The County will remain as non-carrier.

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

Saratoga intends to consummate this transaction at least 30 days from the effective date of this notice, probably around late June or early July 2011.

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

The subject trackage extends between MP 55.89 at or near Corinth, NY. and MP 94.96 at North Creek, NY.

The total route miles to be operated:

About 39.07 miles of railroad.

Related transactions

There are two other transactions related to this filing. First, Saratoga will be acquiring from CP an exclusive, permanent railroad operating easement and common carrier obligation over the segment of line currently owned by the Town. This transaction has been docketed as FD No. 35500, Saratoga and North Creek Railway, LLC, Acquisition and Operation Exemption-Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific. Second, inasmuch as Saratoga has been established by and is controlled by SLRG, an existing class III short line railroad subject to the Board's jurisdiction, SLRG is filing simultaneously with this exemption a Notice of Exemption under 49 CFR 1180.2(d)(2) docketed as FD 35499, San Luis & Rio Grande Railroad-Continuance in Control Exemption.

Map

49 CFR 1150.33(f)

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

Certificate of Carrier Classification **49 CFR 1150.33(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 1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments **49 CFR 1150.33(h)**

Not applicable. The subject line of railroad does not physically connect with any rail lines other than the contiguous line owned by the Town and the exempt industry spur north of North Creek. Consequently, Saratoga will not be able to interchange with any other carriers. Disclosure of Intent to Transport Waste

Saratoga's license with the Town does not permit the collecting, sorting, loading, unloading, transferring, or transporting of municipal solid waste ("MSW") or construction and demolition ("C&D") material so it will not be handling this traffic on the County's line as well. It is anticipated that the license with the County will also restrict the handling of such material on or over the subject trackage.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. 10901.

Caption Summary **49 CFR 1150.34**

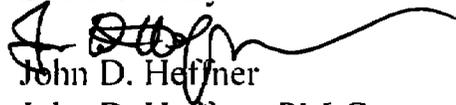
A caption summary in the prescribed form is attached as Exhibit C to this Notice.

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 1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 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

John D. Heffner, PLLC

1750 K Street, N.W.

Suite 200

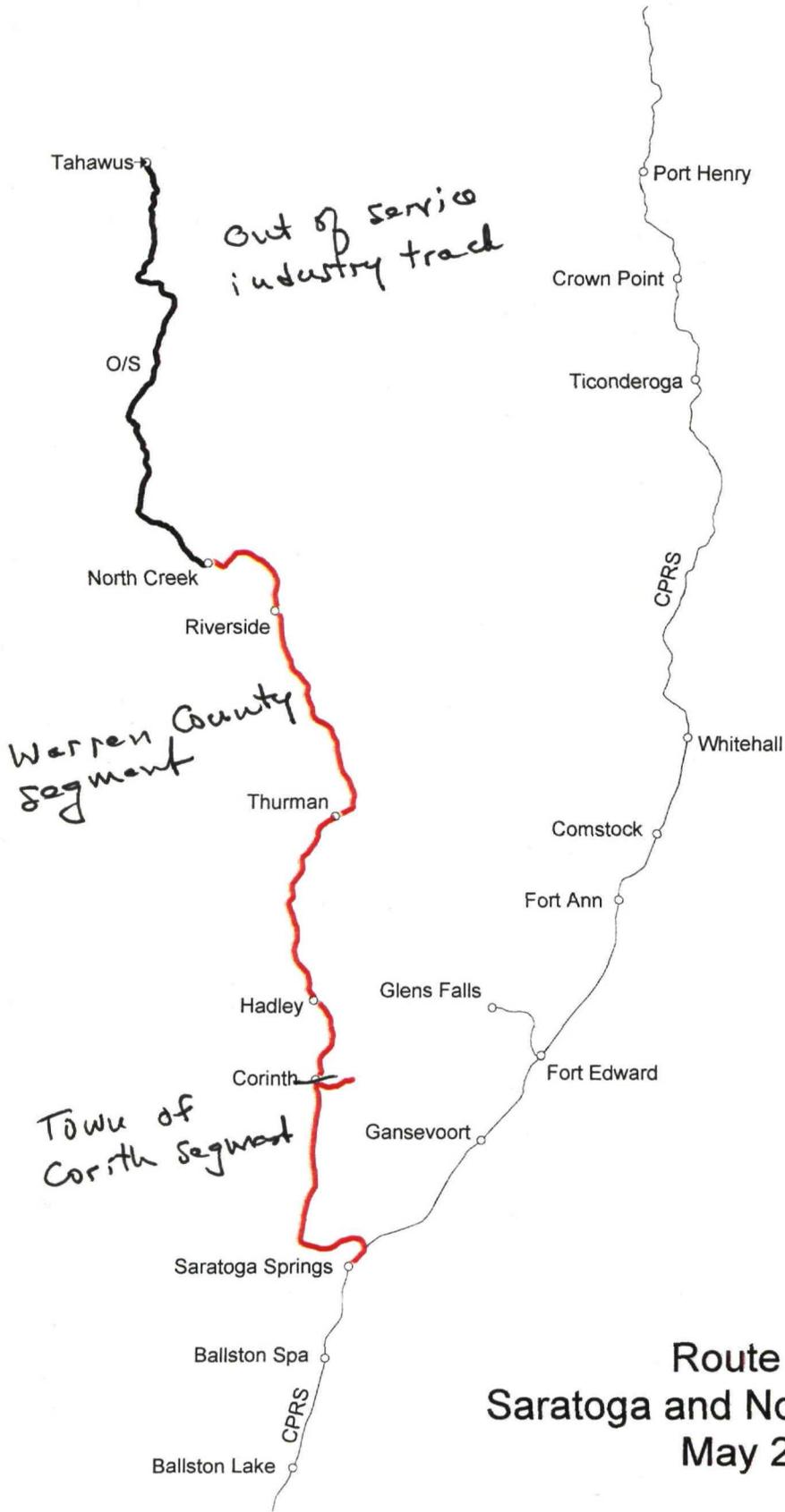
Washington, D.C. 20006

(202) 296-3334

Counsel for Petitioner

Dated: May 16, 2011

EXHIBIT A



Route Map
Saratoga and North Creek Rwy
May 2011

Exhibit B

Certification

I, Edwin E. Ellis, certify that I am President of Saratoga & 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: April 28, 2011

Signature

A handwritten signature in black ink, appearing to be 'E. Ellis', written over a horizontal line.

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35500 Sub-No. 1

**SARATOGA AND NORTH CREEK RAILWAY, LLC
—OPERATION EXEMPTION—
WARREN COUNTY, NY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

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This proceeding is related to two other proceedings. Concurrently with this filing, Saratoga is submitting two other verified notices of

exemption: (1) in FD 35499, San Luis & Rio Grande Railroad-Continuance in Control Exemption, San Luis & Rio Grande Railroad, an existing class III short line railroad, seeks an exemption to continue in control of Saratoga and (2) in FD 35500, Saratoga and North Creek Railway, LLC-Acquisition And Operation Exemption-Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific, Saratoga seeks to acquire and operate CP's exclusive, permanent retained railroad operating easement and common carrier rights and obligations on a connecting line owned by the Town of Corinth.

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 May __, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD No. 35500 Sub-no. 1, 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., John D. Heffner, PLLC, 1750 K Street, N.W. – Suite 200, Washington, D.C. 20006, Telephone: (202) 296-3334, counsel for Saratoga; and and Eric M. Hocky, Thorp, Reed & Armstrong, LLP, One Commerce Square, Suite 1910, Philadelphia, PA 19103, (215) 640-8523, counsel for Warren County. .

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided:

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

