



## THE TULALIP TRIBES

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

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July 18, 2016  
Chairman Daniel R. Elliott III  
Surface Transportation Board  
395 E Street S.W.  
Washington D.C. 20423

ENTERED  
Office of Proceedings  
July 20, 2016  
Part of  
Public Record

**RE: Tesoro Petition for Declaratory Order, STB Finance Docket No. 36041**

Dear Chairman Elliott and Board members:

The Tulalip Tribes is a federally recognized Indian tribe comprised of the Snohomish, Snoqualmie, Skykomish tribes and allied bands. The Tulalip Indian Reservation was reserved as a homeland for the Tulalip people pursuant to the 1855 Treaty of Point Elliott (12 Stat. 927). The 22,000 acre Tulalip Reservation is located in Washington State along the shores of Port Gardner and Port Susan.

The Tulalip Tribes has reviewed the Surface Transportation Board (STB) petition submitted by Tesoro regarding a BNSF rail line that passes through tribal trust lands on the Swinomish Indian Reservation and over waters in which the Swinomish hold treaty fishing rights. Tulalip has also reviewed the Federal District Court filings in a pending case between the Swinomish Indian Community and BNSF that deal with the same BNSF rail line. Given the intertwined federal Indian law issues and pending Federal Court proceeding addressing the same dispute, Tulalip urges the STB to dismiss the Tesoro STB petition.

Tulalip's Reservation is located just to the south of the Swinomish Indian Reservation and the BNSF rail line runs near the eastern boundary of the Tulalip Reservation. The Tulalip Reservation contains numerous Right-of-Ways through tribal trust lands. The Federal Courts are the proper forum for resolving federal legal issues involving Indian trust land Right-of-Ways. The petition brought by Tesoro necessarily overlaps with these federal law issues unique to Indian trust property (25 U.S.C. §§ 323-28 and regulations at 25 C.F.R. part 169) as well as distinct issues related to the enforcement and interpretation of agreements with Indian tribal governments. Piecemealing dispute resolution between the Federal Court and the STB in parallel proceedings will create confusion and potentially conflicting decisions. The Federal Courts have long experience resolving these issues and are best suited to address the Indian Country Right-of-Way laws and to evaluate the unique historical facts that govern these issues.

Thank you for your consideration of the Tulalip Tribes' position on this matter.

Sincerely,

Mel Sheldon Jr.  
Chairman, Tulalip Tribes

Certificate of Service

I hereby certify that this 19<sup>th</sup> day of July, 2016, I have caused a copy of the foregoing to be served by first class mail upon the following:

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