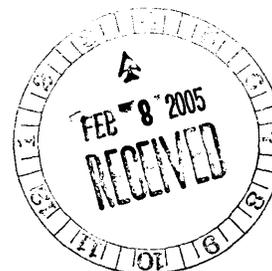




ACKERSON KAUFFMAN FEX

ATTORNEYS, P.C.

WASHINGTON, DC • PALO ALTO, CA



CECILIA FEX  
ADMITTED IN D.C. & MD  
fex@ackersonlaw.com

February 8, 2005

Hand Delivered

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
FEB - 9 2005  
Part of  
Public Record

Re: Docket No. AB-6 (Sub-No. 335X) > 213207  
Burlington Northern Railroad Company – Abandonment Exemption – Between  
Klickitat and Goldendale, WA

and

Docket No. AB-6 (Sub-No. 346X) 213208  
Burlington Northern Railroad Company – Abandonment Exemption – in Klickitat  
County, WA

Dear Secretary Williams:

On February 7, 2005, Tracy and Lorraine Zoller, William Giersch, David and Kristen Mattson, and Allen Tooke (“Petitioners”), by counsel, filed their Petition to Re-Open AB-6, Sub. Nos. 335X & 346X, to Declare Certain Right-of-Way Segments *De Jure* Abandoned, to Declare the Remaining Right-of-Way Segment *De Facto* Abandoned, and to Revoke Authority for Trail Use Due to Loss of Federal Jurisdiction, with Exhibits in support thereof.

Exhibit “A” was the Declaration of Lori Zoller in Support of the Petition to Reopen and Exhibit “D” was the Declaration of Curt Dreyer. Only copies of these declarations were included with the original petition.

Enclosed please find the original and 11 copies of these exhibits/declarations. Please file appropriately and, in addition, time-stamp one copy of the exhibits/declarations to be returned by the courier.

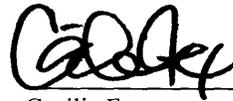
*The Honorable Vernon A. Williams*

*February 8, 2005*

*Page 2*

Thank you for your consideration in this matter. If you have any questions or concerns, I can be reached at the below-referenced numbers.

Sincerely,



Cecilia Fex  
Counsel for Petitioners

Enclosures

cc: Charles H. Montange, Esq.  
Joseph Shorin, Esq.  
Sarah Whitley, Esq.  
City of Goldendale (Legal Dept.)



BEFORE THE  
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-6; SUB. NOS. 346X & 335X

BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
IN KLICKITAT COUNTY, WA, (Sub-No. 346X) 7 213207

and,

BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
BETWEEN KLICKITAT AND GOLDENDALE, WA,  
(Sub-No. 335X) 7 213207

ENTERED  
Office of Proceedings

DECLARATION OF LORI ZOLLER IN SUPPORT OF PETITION FEB - 9 2005  
TO RE-OPEN AB-6 SUB. NOS. 335X & 346X

Part of  
Public Record

I, Lori Zoller, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am of lawful age, and am qualified and authorized to file this Declaration, Executed on February 3, 2005

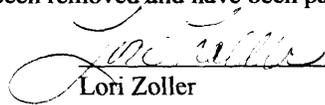
1. I and my husband Tracy Zoller are the owners of property in Klickitat County, Washington.
2. My property is burdened by the former Burlington Northern and Santa Fe Railway Company – referred to in the Petition as the “Klickitat Branch Line” – that extends from Lyle, Washington, through Klickitat, and onward to Warwick, Washington. My property is located approximately nine miles north of Lyle and approximately four or five miles south of Klickitat.
3. I am familiar with the properties owned by the other Petitioners in this matter. Mr. Giersch and Mr. Tooke own property just south of my

property.

4. Mr. Giersch, Mr. Tooke, and my husband and I own property that are burdened by the right-of-way that is subject to Docket No. AB-6 (Sub. No. 346X).
5. The Mattsons own property just south of Warwick. Their property is burdened by the right-of-way that is subject to Docket No. AB-6 (Sub. No. 335X).
6. As to the right-of-way subject to Sub. No. 335X, the furthest point at which the Klickitat Branch Line right-of-way might be located is where it dead-ends at and to the east of Uecker Road near Warwick. There is no physical presence of the right-of-way remaining to the west of that road. In addition, to the east of Uecker Road, the former right-of-way appears to have been farmed over and the former railroad right-of-way between the end-point of the Klickitat Trail to Uecker Road is no longer physically there.
7. Attachment 1 hereto is a true and correct copy of an order pertaining to a quiet title action that concerns the properties located at and around the area in which this right-of-way dead-ends.
8. With respect to ¶ 9, below, as to the location and end point of the Branch Line at Lyle, I am very familiar with the tax county records showing where the trail ends, the quit claim deed obtained by the Rails-to-Trails Conservancy from BNSF for the right-of-way, and the physical area in Lyle

where the trail ends.

9. The portion of the Klickitat Branch Line that was conveyed for trail use stops at the north side of Highway 14 in Lyle. The tracks that previously crossed Highway 14 have been removed and have been paved over.

  
Lori Zoller

# **ATTACHMENT 1**

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FILED

FEB 07 2000

SAUNDERS, Clerk  
KLICKITAT COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KLICKITAT

PATRICIA WOODS, et al )  
Plaintiffs, )  
vs. ) No. 97-2-00241-4  
BURLINGTON NORTHERN and SANTA ) ORDER QUIETING TITLE  
FEE RAILWAY COMPANY, a )  
corporation, )  
Defendant. )

This matter having come on regularly for hearing upon the joint motion of the parties and the court having considered the records and files herein and now adopting and approving the stipulation of the parties on file herein and now deeming itself to be fully advised in these premises it is hereby

ORDERED, ADJUDGED AND DECREED that the parties plaintiff below named are hereby, each and several, quieted in their respective title's to those certain parcels of real property below described, being strips of land 60 feet in width and hereafter referred to as "the right-of-way", free and clear of any claim of right, title or interest on the part of the defendant, said parcels of real property lying and being in Klickitat County, State of Washington and each more particularly described as follows:

*Pakow and Hanson*  
ATTORNEYS AT LAW  
117 East Main Street  
Goldendale, WA 98620  
Tel. (509) 773-4988  
Fax (509) 773-3143

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1. Raymond Mattson:

The Northerly half of the right-of-way located over and across all of Section 19, Township 3 North, Range 15 East, W. M.

2. John D. Miller; Mary Ann Miller; James H. Miller; and Donava H. Miller:

All of the right-of-way located over and across the Northeast quarter of Section 20, Township 3 North, Range 15 East, W. M.

3. Stephen Rex Miller:

All of the right-of-way located over and across the Northeast quarter of Section 16, Township 3 North, Range 15 East, W. M.; and All of the right-of-way located over and across the Southeast quarter of the Southeast quarter of Section 10, Township 3 North, Range 15 East, W. M.; except portions thereof lying within the Plat of Centerville, if any.

4. Mike Woods & Cheryl Woods:

All of the right-of-way located over and across the Northwest quarter of Section 15, Township 3 North, Range 15 East, W. M.;

5. D. H. Cameron; Dale Cameron & Bruce Cameron:

All of the right-of-way located over and across Section 11, Township 3 North, Range 15 East, W. M.; except portions thereof lying within the Plat of Centerville.

6. Corinne M. Linden:

All of the right-of-way located over and across the South half of Section 1, and the East half of the Northwest quarter of Section 12, all in Township 3 North, Range 15 East, W. M.

7. Patricia Gow:

All of the right-of-way located over and across the South half of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section 6, Township 3 North, Range 16 East, W. M.

*Prakow and Hansen*  
ATTORNEYS AT LAW  
117 East Main Street  
Goldendale, WA 98620  
Tel. (509) 773-4988

1 8. Rande Enyeart and Mary Ann Enyeart:

2 The Southeasterly half of the right-of-way in the Southwest quarter  
3 of the Northwest quarter and the Northwest quarter of the  
4 Southwest quarter of Section 29, and all of the right-of-way the  
5 Northeast quarter of Section 31, Township 4 North, Range 16 East,  
6 W. M.

7 9. H. W. English, Inc.

8 All of the right-of-way located over and across the Northwest  
9 quarter of Section 20, Township 3 North, Range 15 East, W. M.

10 10. Glenn McClaskey:

11 All of the right-of-way located over and across the North half of the  
12 Northeast quarter of Section 15, Township 3 North, Range 15 East,  
13 W. M.; except portions thereof lying within the Plat of Burford's  
14 Addition to the Town of Centerville.  
15

16 11. Patricia Woods and Ronald Powell:

17 All of the right-of-way located over and across the South half of  
18 Section 16, Township 3 North, Range 15 East, W. M.  
19

20 12. Robert Niemela by Saxton Deed "Ahola Land".

21 All of the right-of-way located over and across the Southeast  
22 quarter of the Southeast quarter of Section 17; and the Southerly  
23 half of the right-of-way located over and across the Southeast  
24 quarter and the Northeast quarter of Section 19, Township 3 North,  
25 Range 15 East, W. M.  
26

27 13. "Delores Cooper and Winston and Linda Kennedy"

28 All of the right-of-way located over and across Block 2, Burford's  
29 addition to the Town of Centerville, according to the duly recorded  
30 plat thereof, records of the office of the Auditor of Klickitat County.  
31

32 14. Max Fernandez:

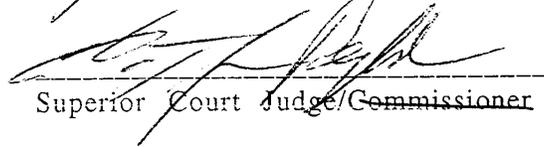
The Southerly half of the right-of-way located over and across the  
Southwest quarter of Sec. 19, Township 3 North, Range 15 E., W. M.

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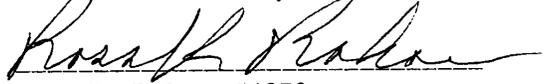
15. Nate Kayser and Jacki Kayser, his wife:

All of the right-of-way located over and across the West Half of the Northwest quarter of Section 12, Township 3 North, Range 15 East, W. M.

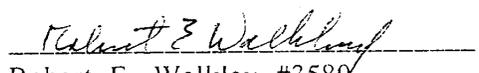
Dated this 7th day of Feb, 2005

  
Superior Court Judge/Commissioner

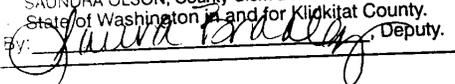
Presented upon Stipulation of the Parties  
for Immediate Entry Without Further Notice



Ross R. Rakow #4879  
Of Attorneys for Plaintiffs

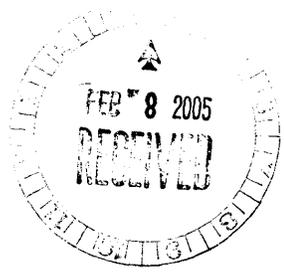


Robert E. Walkley #3589  
Of Attorneys for Defendants BNSF

The foregoing instrument consisting of 4 pages has been compared and is a true and correct transcript of the original thereof on file in the records of my office.  
Dated this 2 day of Feb, 2005.  
SAUNDRA OLSON, County Clerk and Ex-Officio of the State of Washington and for Klickitat County.  
By:  Deputy.

*Rakow and Hanson*  
ATTORNEYS AT LAW  
117 East Main Street  
Goldendale, WA 98620  
Tel. (509) 773-4988  
Fax (509) 773-3143

*Handwritten initials*



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. AB-6; SUB. NOS. 346X & 335X**

BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
IN KLINKITAT COUNTY, WA, (Sub-No. 346X)  
and,  
BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
BETWEEN KLINKITAT AND GOLDENDALE, WA,  
(Sub-No. 335X)

**DECLARATION OF CURT DREYER**

I, Curt Dreyer, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am of lawful age, and am qualified and authorized to file this Declaration, Executed on February 3, 2005

- 1. Attachment 1 hereto is a true and correct copy of a June 12, 2002, letter sent by me, as the Planning Director for the Klickitat County Planning Department, to the Washington State Parks and Recreation Commission.

*Curt Dreyer*  
Curt Dreyer

# **ATTACHMENT 1**



## Klickitat County PLANNING DEPARTMENT

228 W. Main St., MS: CH-17, Goldendale, Washington 98620  
VOICE: 509 773-5703 or 1 800 785-7239  
FAX: 509 773-6206

June 12, 2002

Washington State Parks and Recreation Commission  
P.O. Box 42650  
Olympia, WA 98504-2650

RE: Klickitat Rails to Trails

Dear Commission members:

The Klickitat County Board of Commissioners has requested me to reiterate their opposition to conversion of the Klickitat rail corridor to a public trail.

In a June 24, 1998 letter to Robert Williams, then-Regional Forester of the Pacific Northwest Region, (attached) the county commissioners expressed frustration with the Forest Service's persistent dodging of the issues related to a conversion from rail to trail before and after issuance of an EA (Environmental Assessment). The EA estimates total use of the rail-trail to be about 80,000 people per year, with a majority using the rail corridor in summer months, which raises a number of issues. The most important issues are:

- Fire. The Klickitat River canyon area becomes very dry in late summer and is highly susceptible to wild fires. Per the EA, response times range from about 45 minutes to 1 and ½ hours. A major fire occurred in the Klickitat River Canyon about 1992 – fortunately, most residents are conscious of fire dangers and there have been few fires since. Increased use by an estimated total of 80,000 people per year (primarily during the fire season) will undoubtedly result in annual fires along the rail corridor; the limited access to many parts of the rail-trail corridor may translate into loss of property, timber and lives.
- Emergency Response. With 80,000 people using a narrow strip of land that is literally the “backyard” to many landowners, due to the narrowness of the river valley, conflicts will undoubtedly occur. Law enforcement/response to trespass, vandalism, unleashed dogs, people/cattle conflicts, littering, accidents, illegal camping, etc. will fall to the Klickitat County Sheriff's Department which would need to increase staffing to respond to all of the calls.

Other considerations include:

- Cultural resources, which occur along much of the rail-trail corridor, have not been adequately addressed (see attached minutes, with comments by Harkenrider, USFS).
- In some areas of the former rail corridor, the river has completely washed away rail improvements. The 1996 flood damages were estimated by FEMA to be \$9,165,274 (see attached estimate); the repair would certainly cost more by today's dollars; additionally other damages have occurred in the ensuing years.
- The rail corridor has not been surveyed – in many places, the rail line is physically outside the legal easements due to many years of repair following annual flooding. Thus, the rail-trail may require yet undetermined construction costs.
- The Klickitat River, above Pitt (at River mile 11), and the entire length of Swale Creek are not within the Wild and Scenic River Corridor. This fact may hinder the ability of the USFS to assume management responsibilities of the entire 31 miles.
- Swale Creek is the site of major improvements for fish habitat that have obliterated former signs of rail improvements – rebuilding of a rail-trail may require a location outside of the river bottom.
- Local residents do care about the aesthetics of the Klickitat River. Invariably, gum wrappers, Kleenex, sandwich bags, and plenty of other items are accidentally, or carelessly, would be dropped by trail users, to be picked up by wind gusts and deposited in the Klickitat River. Already, one can find abundant trash in the River, left by those rafting or boating on the River.
- Much of the area is open range for cattle. Open range is not compatible with trail use, unleashed dogs, and small children.

There are reasons why the Forest Service has not moved forward in planning of a Klickitat rail-trail project, i.e. unresolved issues. We hope you will consider the many unresolved issues and reach a decision to return the property to the Rails-to-Trails Conservancy and avoid further expenses to the taxpayers of Washington State.

Sincerely,

  
Curt Dreyer  
Planning Director

Enc: 6/24/98 correspondence to Regional Forester, 1996 FEMA estimate of repairs,  
1/14/01 Commissioner minutes