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SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

Adverse Abandonment Proceeding

DEC 29 2004

AB Docket No. 600



Part of
Public Record

YAKIMA INTERURBAN LINES ASSOCIATION - ADVERSE ABANDONMENT
in YAKIMA COUNTY, WASHINGTON

PETITION FOR RECONSIDERATION AND CLARIFICATION

Kershaw Sunnyside Ranches, Inc. (Kershaw) seeks reconsideration and clarification of the Board's November 10, 2004 order denying its petition for adverse abandonment.

- 1. The Board erred in concluding that the public convenience and necessity does not require abandonment.**

The record does not support the Board's decision that the public convenience and necessity does not require abandonment. The Board will "preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic." (Board's decision, p. 4). However, the record reflects that no "carrier" has either expressed a desire to continue operations or taken steps to attract traffic. The term "rail carrier" is defined, in relevant part, as a person providing common carrier railroad transportation for compensation. 49 U.S.C.S. § 10102(5). YILA is not a rail carrier; it has not provided transportation for compensation. YILA has not expressed a desire to continue operations; in fact, YILA has conceded that

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DEC 29 2004

it cannot continue operations. (Declaration of Robert Kershaw, Ex. C, p. 29-30; 33-34. Also, see Verified Statement of Paul D. Edmondson).

Although BNSF assured the Board that it anticipated that “the line will be restored to rail service shortly” (see BNSF Statement of Support, filed March 12, 2004), BNSF is not a carrier on the Naches Line and offer no evidence to show any plan to restore rail service. In addition, BNSF is no longer a carrier on the line adjacent to the part of the line at issue in this case. Shortly after the Board’s decision, BNSF leased its spur lines in the Yakima Valley to a local company, Columbia Basin Railroad. (Declaration of Sarah Wixson in Support of Petition for Reconsideration and Clarification, Exhibit A).

Toppenish Simcoe & Western is not a carrier for the line. Toppenish Simcoe & Western indicated that it would be willing to serve as a carrier should Yakima County acquire the line. At the time the Board issued its decision, the Toppenish, Simcoe & Western was successfully leasing Yakima County’s existing lines. However, shortly after the Board’s decision, Yakima County took proposals from several railroad companies, including the Toppenish, Simcoe Western regarding those lines. Noticeably absent from Yakima County’s consideration, were any provisions for the acquisition or development of the Naches line. (Declaration of Sarah Wixson in Support of Petition for Reconsideration and Clarification, Exhibit A).

Yakima County, the City of Yakima and the City of Naches are not carriers. Although they may have plans for the line, none of them meet the requirement of being a “carrier [that] has expressed a desire to continue operations and has taken reasonable steps to acquire traffic.”

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2. **The Board's reliance on Colorado Springs as authority is an inexcusable departure from the essential requirements of reasoned decision making.**

Under the Administrative Procedure Act, reviewing courts are to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2). If an agency departs from its own precedent without a reasoned explanation, the agency may be said to have acted arbitrarily and capriciously. Donovan v. Adams Steel Erection, Inc., 766 F.2d 804, 807 (3d Cir. 1985). Board's decision regarding Kershaw's abandonment application departs from prior precedent. The prior precedent states that the Board will "promote continued rail service where **the carrier** has expressed a desire to continue operations **and has taken reasonable steps to acquire traffic.**" Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C.Cir. 1994) (emphasis added).

The Board states that this case is similar to City of Colorado Springs. Although several governmental entities have submitted contingent plans to rehabilitate the line, these are not plans by either an owner or operator of the line. Rather, the rehabilitation plans fail to show an obligation or present ability to operate or rehabilitate the line. As a result, the case at hand is very different from that presented in City of Colorado Springs.

In City of Colorado Springs, the line was in disrepair and had been out of service for many years. However, in City of Colorado Springs, the carrier pledged to repair it and had made efforts to solicit traffic. YILA has made no pledge to repair or to solicit traffic. Rather, YILA states that it is willing to negotiate with Yakima County. (Verified

Statement of Paul D. Edmondson, ¶3). YILA has been negotiating with Yakima County for several years, but no agreement has been reached. (*Id.* at p. 14).

In City of Colorado Springs, the carrier had an *actual* grant of \$1 million dollar in public funds that was to be applied to restoring rail service in the area. The Naches Line has received no grant of public funds. Rather, the Naches Line has the possibility of obtaining public funds subject to and dependent upon a variety of contingencies including Yakima County's acquisition of the line and legislative appropriation and approval. In contrast to City of Colorado Springs' real funding, the Naches Line has only hypothetical funding. Funding is subject to Yakima County acquiring the line and legislative approval. Declaration of Stephen Anderson on Behalf of WSDOT, paragraph 3).

Moreover, the carrier in City of Colorado Springs, had taken steps to rehabilitate the line; the carrier purchased a bridge and was ready to install it. No governmental entity or carrier has taken any steps to rehabilitate the Naches Line.

The Board's decision to deny abandonment based upon the hypothetical plans and financing of a third party entity is an unreasoned departure from established Board precedent.

3. The Board's decision conflicts with CSX and CSX Transportation Inc.

The Board's decision denying abandonment conflicts with CSX and SCW Transportation, Inc.-Adverse Abandonment Application, STB Docket No. AB-31 (Sub-No. 38), 2002 STB Lexis 881 (January 28, 2002). In CSX, another carrier sought abandonment of a portion of line that had not been used by the carrier in approximately six years. CSX sought abandonment so that it could use the tracks to improve the rail

service in the area. The Board allowed the abandonment so that the third party carrier could acquire the line and restore better service to the area.

Yakima County set forth much the same proposal here. The County proposes to acquire the line, rehabilitate it and operate it through a lease with the Toppenish Simcoe & Western Railroad¹. Kershaw knows of nothing in the regulations or STB precedent to account for differing treatment of CSX and other third party entities that wish to acquire a subject line. The Board has set forth no reason to apply a different standard here. If Yakima County is going to acquire the line let it do so within applicable framework and time frames set forth in the Board's regulations.

4. The Board's "reasonable period of time" standard to reopen or refile creates no incentive for change in the current status of the line.

The Board indicated that the proposed rehabilitation and restoration should occur within a "reasonable period of time." However, without a specific deadline, the Board has done nothing to alleviate the legal limbo that this line has existed in for years. Potentially, every year or two Kershaw could refile and get the same response—"the governmental entities proposing to reinstate operations have feasible plans to do so." Local and state government have had plans for this line for years. Implementation of any plan, however, has proved to be impossible so far. (See Declaration of Sarah Wixson in Support of Response to Objection to Filing Application, Exhibit B).

The governmental entities have stated that they are "going to" rehabilitate the line, but they do not have any obligations, as a common carrier or otherwise, to do so. In

¹ It is unclear whether the Toppenish Simcoe & Western Railroad would still be willing and able to operate the Naches Line if its lease with Yakima County is not renewed.

order to promote a beneficial use of the property, Kershaw requests that Yakima County, or other governmental entity acquire the line through an offer of financial assistance or other applicable framework set forth in the Board's regulations.

In the alternative, Kershaw requests that the Board set a specific time limit for Yakima County to acquire the line and begin to implement its rehabilitation plan. If at the end of that period, the County has not acquired the line, then the County should be required to come before the Board and demonstrate good cause why the line should not be abandoned.

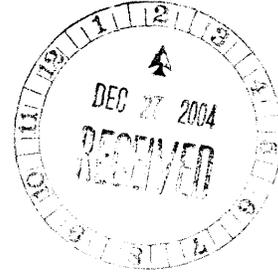
The Board's jurisdiction cannot be used as a shield. CSX and SCW Transportation, Inc.-Adverse Abandonment Application, STB Docket No. AB-31 (Sub-No. 38), 2002 STB Lexis 881 (January 28, 2002). Under Washington law, an abandoned railroad right-of-way reverts to the reversionary interest holders. Lawson v. State, 107 Wn.2d 444, 449, 730 P.2d 1308 (1986). Development of the Naches line should move forward in a timely fashion or it should revert to the reversionary interest holders.

Respectfully Submitted,

VELIKANJE, MOORE & SHORE, P.S
Attorneys for Kershaw Sunnyside Ranches

By: Sarah Wixson
Sarah Wixson

SURFACE TRANSPORTATION BOARD
Adverse Abandonment Proceeding



AB Docket No. 600

YAKIMA INTERURBAN LINES ASSOCIATION - ADVERSE ABANDONMENT
in YAKIMA COUNTY, WASHINGTON

DECLARATION OF SARAH WIXSON IN SUPPORT OF PETITION FOR
RECONSIDERATION AND CLARIFICATION

1. I am an attorney with the firm of Velikanje, Moore and Shore, P.S., counsel for Kershaw Sunnyside Ranches, Inc, I make this declaration based on knowledge of facts to which I am competent to testify and would testify at hearing.
2. Attached hereto as exhibit A are true and correct copies of articles published by the Yakima Herald Republic on December 1, 2004.
3. I attended the December 1, 2004 hearing of the Yakima County Commissioners where the lease of the County's rail lines was discussed. I voiced Kershaw's concern that the Naches Line would be left out of the county's future development plans. Mr. Ekstedt, the County Engineer, indicated that the hearing was only dealing with the TSWR lines. The draft minutes for the hearing is attached hereto as exhibit B. The final minutes will not be approved until further meeting of the commissioners.

I declare under the penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this declaration. Executed on this 19th day of December, 2004.


Sarah Wixson

DECLARATION OF SARAH WIXSON
IN SUPPORT OF PETITION FOR RECONSIDERATION
AND CLARIFICATION - 1

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Yakima Herald-Republic (WA)

December 1, 2004

Section: Main/Home Front

Rail spur to White Swan draws bids

David Lester

By DAVID LESTER YAKIMA HERALD-REPUBLIC

A Toppenish-to-White Swan rail spur that was ready to be given up for dead a dozen years ago now has several suitors.

Four companies, including the current operator and the firm newly selected to operate Burlington Northern Santa Fe Railroad short lines in the Yakima Valley, have submitted proposals to lease the 21-mile rail line from Yakima County.

The proposals will be reviewed during a public hearing at 10:30 a.m. today in the county commissioners' hearing room in the courthouse basement.

Kent McHenry, the county's traffic engineering manager, said the staff will make a recommendation to commissioners, though a final decision is not expected today.

The four firms in the running include the Toppenish Simcoe & Western Railroad, the for-profit subsidiary of the Yakima Valley Rail and Steam Museum, which operates the line for the county. The others are **Columbia Basin** Railroad of Yakima; a newly formed company, Eastern Washington Railway of Ferndale; and Watco Companies Inc., a Kansas-based short-line carrier operating primarily in the Midwest.

Columbia Basin Railroad President Brig Temple announced late Tuesday his firm had been selected by Burlington Northern Santa Fe Railroad to lease local rail facilities in the Yakima Valley.

Officials of the steam museum did not return a telephone call seeking comment Tuesday .

County Engineer Gary Ekstedt said Burlington Northern Santa Fe approached the county with a proposal to offer the White Swan line under a separate lease to make operating in the Yakima Valley more attractive to a short-line carrier.

"Burlington Northern's interest is to have someone willing to develop business in the Valley and do the things necessary to make it advantageous to receive and ship goods by rail," he said.

Columbia Basin Railroad, by virtue of its selection to lease BNSF lines, will receive extra credit in the county's review.

Gus Melonas, a BNSF spokesman in Seattle, declined comment Tuesday , other than to say discussions are under way.

The Burlington lines under review for lease include the spur to Moxee; the line along Fruitvale Boulevard; and a spur from near Prosser to Granger.

Ekstedt said Burlington Northern wants a smaller company with the flexibility to serve shippers along those lines more easily than BNSF.

McHenry said the four bids, submitted to the county a week ago, include proposals for lease fees, track maintenance,

http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=106B77C7C236A9BB&... 12/20/2004

overall qualifications and planned investments in the line.

Yakima County has owned the line since 1993 after the Yakima Valley Rail and Steam Museum sought to preserve the spur to White Swan when Washington Central Railroad, the carrier that owned the line, requested to have it abandoned.

The state Department of Transportation ultimately bought the line and turned it over to Yakima County.

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Author(s): David Lester **Date:** December 1, 2004 **Page:** **Section:** Main/Home Front

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BOARD OF YAKIMA COUNTY COMMISSIONERS
Regular Agenda Meeting
Wednesday, December 1, 2004 at 10:00AM
Commissioners Hearing Room, Yakima, Washington

EXHIBIT

B

- I. **PRESENT:** Ron Gamache, Commissioner; Jesse Palacios, Commissioner; Terry Austin, Legal Counsel; Jennifer Adams, Deputy Clerk of the Board. Jim Lewis is excused.
- II. **APPROVAL OF MINUTES: APPROVED**
- Agenda Minutes of November 2, 2004 – *Tabled on November 9, 2004 Agenda*
 - Agenda Minutes of November 9, 2004
 - Special Agenda Minutes of November 15, 2004
 - Budget Hearing Minutes of November 15, 16, and 17, 2004
 - Agenda Minutes of November 16, 2004
 - Special Agenda Minutes of November 18, 2004 (Includes November 18, 2004 Budget Hearing)
 - Agenda Minutes of November 23, 2004
- III. **CERTIFICATION OF WARRANTS: APPROVED**
- Certification of Claims Clearing Warrant No. 379202 through 380311 in the Amount of \$2,265,526.29
 - Certification of Salary Clearing Warrant No. 292616 through 293364 in the Net Amount of \$607,140.18
- IV. **PROCLAMATION:** Smoke-Free Yakima Work Sites and Indoor Public Spaces: *Presented by Dennis Klukan, Yakima Health District Director*
 Proclamation read by Jesse Palacios.
- V. **ACTION ITEMS:**

DEPARTMENT	ITEM	DESCRIPTION	ACTION TAKEN
AGING & LONG TERM CARE Helen Bradley, Director	Reso 663-2004	Approve Agreement with Avail Home Nursing, Inc., #Avail Home Nursing 2004 Respite Mod. No. 01:	APPROVED
EMPLOYMENT & TRAINING Patrick Baldoz, Director	Reso 664-2004	Approve Agreements with DC5 Apprenticeship and Training Trust, #DET-PY04-DC5ATT; and Provident Services, #DET-PY05-CEG-PROV:	APPROVED
	Reso 664-2004A	Reappoint Melody Westmoreland, Gracie Sexton, George Cockill, Shela Ross, Debbie Ireland, Kim Owen, Jesse Rodriguez, Julie Rushing, Janet St. Clair, Gary Webster, Linda Kaminski and David Rendon to the Tri-County Workforce Council for 2005:	APPROVED
CONFERENCE OF GOVERNMENTS Don Skone, Director	Agreement	2005 Administrative Services Agreement with COG:	APPROVED
PARKS Dave Veley, Director	Reso 665-2004	Set a Public Hearing Date to Consider Revision of Policy Regulation No. 23-A for Fees and Other Direct Charges for the Yakima County Parks Department: <i>Tuesday, December 21, 2004 at 10:30 a.m.</i>	APPROVED

DEPARTMENT	ITEM	DESCRIPTION	ACTION TAKEN
HUMAN RESOURCES Linda Dixon, Director	Reso 666-2004	Rescind Step Increase Suspension for Certain Non-Represented Employees of Yakima County:	APPROVED
	Reso 667-2004	Adopt a 2003-2004 Pay Plan and Employer Medical Contribution for Classified Employees Represented by Yakima County Law Enforcement Officers Guild:	APPROVED
	Reso 668-2004	Adopt a 2005 Employer Medical Contribution for Certain Non-Represented Employees of Yakima County, and Certain Classified Employees of Public Works Local 1, Maintenance & Operations Union:	APPROVED
PURCHASING Deb Anderson, Director	Reso 669-2004	Set Request for Proposals Return Date and Bid Opening for Interoperability Study and Report on Alternatives for Consolidation of Dispatching and 911 Services, and Study and Report on Interoperability Options for a Future Design of the Public Safety Radio Communications Systems in Yakima County: <i>Thursday, December 30, 2004 at 3:00 p.m. in Room 103</i>	APPROVED
	Reso 670-2004	Award Bid for Purchase of Herbicides for ER&R:	APPROVED
	Reso 671-2004	Set Bid Opening Date for Purchase of a Used Modular Office Building for the Yakima County Sheriff's Office: <i>Monday, December 20, 2004 at 1:30 p.m. in Room 103</i>	APPROVED
DEPT. OF CORRECTIONS Steve Robertson, Director	Agreement	Professional Services Renewal Agreement with David Dow & Associates:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with City of Grandview:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with Town of Granger:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with Town of Harrah:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with Town of Mabton:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with City of Moxee:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with Town of Naches:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with City of Selah:	APPROVED

DEPARTMENT	ITEM	DESCRIPTION	ACTION TAKEN
DEPT. OF CORRECTIONS Steve Robertson, Director	Agreement	2005 Local Corrections/Detention Agreement with City of Sunnyside:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with Town of Tieton:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with City of Toppenish:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with City of Union Gap:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with City of Wapato:	APPROVED
	Agreement	2005 Local Corrections/Detention Agreement with City of Zillah:	APPROVED
	PUBLIC SERVICES Vern Redifer, Director	Reso 672-2004	Set Public Hearing Date to Consider a Concomitant Agreement and Declaration of Covenant Restricting Subdivision, Concerning Property Conditionally Rezoned by Ordinance No. 10-2001: <i>Tuesday, December 21, 2004 at 10:30 a.m.</i>
Reso 673-2004		Improve Sherry Ave., from Old Naches Hwy. to Denny Ave., *PM*, C 3038:	APPROVED
Reso 674-2004		Improve Bertsch Circle, from Glead Rd., E. to Bertsch Circle; C 3017:	APPROVED
Reso 675-2004		Improve a Portion of 1 st St., White Swan, from Locust Ave. to Birch Ave.; C 3021:	APPROVED
Reso 676-2004		Improve a Portion of Hawk Rd., from Federal Land Rd. (Hubbards Ln.) to White Swan Rd., W.; C 3041:	APPROVED
Reso 677-2004		Improve Willowcrest Dr., from SR 241 to Willowcrest Dr.; C 2941:	APPROVED
Reso 678-2004		Authorize Condemnation of Right-of-Way Required for Improving a Portion of Riverside Road; C 3118:	APPROVED
Reso 679-2004		Accept as Complete, Contract No. 4183, for Improving a Portion of Woodall Road; C 3115:	APPROVED
Agreement		Execute the Consultant Agreement with HDR Engineering, Inc. for Preliminary Engineering Services for Fort Road Bridge No. 1354; C 3000:	APPROVED

DEPARTMENT	ITEM	DESCRIPTION	ACTION TAKEN
PUBLIC SERVICES Vern Redifer, Director	Agreement	Execute Local Agency Agreement and Project Prospectus with Washington State Department of Transportation for Fort Road Bridge No. 1354 Replacement; C 3000:	APPROVED
COMMISSIONERS Ron Gamache, Vice-Chairman	Reso 680-2004	Reappoint Dr. James R. Hale to the Yakima Health District Board, for a Four-Year Term to Expire Dec. 31, 2008:	APPROVED
CORPORATE COUNSEL Terry Austin, Chief Civil Deputy	Reso 627-2004	Consider Claim Numbers 37-2004 and 38-2004, as Filed by Theresa D. Moore: <i>Tabled from Nov. 9, 2004 Agenda</i> CLAIMS ARE DENIED	APPROVED
	Reso 681-2004	Consider Claim Number 59-2004, as Filed by Jim Roy: CLAIM IS DENIED	APPROVED
	Reso 682-2004	Consider Claim Number 64-2004, as Filed by Troy Carr: CLAIM IS APPROVED	APPROVED
	Reso 683-2004	Authorize Payment to Sunfair Chevrolet:	APPROVED
	Reso 684-2004	Set Public Hearing Date to Consider Ordinance 16-2004, Relating to Imposing an Excise Tax on Timber Harvested from Private and Public Lands: <i>Tuesday, December 21, 2004 at 10:30 a.m.</i>	APPROVED

VI. **PUBLIC COMMENT:** No public comment.

VII. **10:30AM – PUBLIC HEARING:** Consider Ordinance 13-2004, Approving the 3/10 of 1% Law and Justice Sales Tax:

PRESENT: Ron Zirkle, Prosecutor.

Ron Zirkle presented the ordinance. No public comments. Ron closed the hearing. Jesse thanked those involved in supporting Proposition 1. Very pleased that this proposition was passed. Jesse moved approval of the ordinance, Ron seconded and so ordered.

[ORDINANCE 13-2004]: APPROVED

Impose an Additional Sales and Use Tax for Criminal Justice Purposes, to be Collected from Those Persons from Whom the State Sales and Use Tax is Collected; Fixing the Rate of the Tax and Exemptions from Same; Providing for Administration and Distribution; Establishing a Termination Date; and Adding a New Chapter 3.11 Entitled "Additional Criminal Justice Sales Tax" to the Yakima County Code

10:30AM – PUBLIC HEARING: Consider Requests to Lease the Yakima County Toppenish to White Swan Rail Line:

PRESENT: Gary Ekstedt and Kent McHenry, Public Services.

Gary reviewed the history of the rail line and the current opportunity to lease. The County received five lease requests: Columbia Basin, Progressive Rail Inc., Watco, US Rail Partners, and Texas Northwestern. We informed the Toppenish-Simcoe of the request for lease proposals. The submitted proposals were evaluated. Gary noted there are a few questions that the County needs answered: property management issues, since this is a publicly-owned line, and the Yakama Nation is involved; the involvement allowed by the Yakima Rail and Steam Museum; proposals and levels of investment willing to be made to the line. Gary proposed closing the hearing, but allowing these questions to be answered, and to come back at the Dec. 21 Agenda. The Board can then deliberate on the decision.

Ron noted that the hearing will not be closed today, but continued to Dec. 21, 2004.

Brig Temple, 6117 Englewood Ave, Columbia Basin Railroad: Testified in favor of the selection of Columbia Basin Railroad.

John Hood, General Manager of Toppenish-Simcoe Western Railroad: Testified in favor of the selection of TSWR. Read a written statement submitted by Dick Fraley from Hush & Hush: testified in favor of TSWR.

Tom Walters, Walters Inc., 487 Young Rd: Concerned about the service he will receive for his business, which is loading and unloading freight cars.

Sara Wickson, 405 E Lincoln: Here on behalf of Kershaw Sunnyside Ranches. Testified concern over the future of the Naches Rail Line. Asked the Board to consider the Naches Line in their deliberations.

Ron noted his concern over Naches Line as well. Gary Ekstedt noted that these proceedings are strictly related to the TSWR.

Brig Temple: Testified in favor of the Naches Rail Line reopening.

Mack McCullough, Eastern Washington Railway, Ferndale: Testified in favor of John Hood and his work. Disappointed their proposal was not considered more, and requested the Board to reconsider their proposal.

Chis Ketcham, GM for Forest Products in White Swan: Testified in favor of Toppenish Simcoe. Concerned about the service they will receive.

Ron left the hearing open, and will allow correspondence to be submitted. Jesse noted the community benefits that will be obtained.

Ron noted that brief comments will be allowed on the Dec. 21 hearing.

James Flint, Zillah: Testified that the past activity of these companies should be considered.

10:30AM – PUBLIC HEARING: Consider Extending the 2004 Yakima County Budget for Various Funds:

PRESENT: Craig Warner, Chief Financial Officer.

This extension will extend budget by \$4.2 million dollars. General Fund budget just over \$60 million. No public comments. Jesse moved approval, Ron seconded and so ordered.

10:30AM – PUBLIC HEARING: Consider the Open Space Taxation Program Application Filed by Yakama Nation Fisheries Resource – ZON 04-05:

PRESENT: Dave Cook, Assessor; Anne Knapp, Planning.

Dave cautioned the Board that this will be a direct tax shift if this is approved. Other people will pay more in taxes for this being exempted.

Anne distributed a handout to the Board. Staff and Planning Commission recommend approval of this request.

Discussion included public access to the land, restrictive covenant restricting access to protective habitat; etc.

Scott Nicolai, ? Testified in favor, due to the wildlife habitat that lives on the land. Noted aesthetic value to the public, flood relief, etc.

Jesse asked about the prior zoning and tax revenue generated. Scott Nicolai noted approximately \$500 per year.

Ron closed the hearing. Jesse moved approval, Ron seconded and so ordered.

[RESO 685-2004]: APPROVED

Approve the Application for Open Space Tax Classification as Filed by Yakama Nation Fisheries Resource – ZON 04-05

10:45AM – PUBLIC HEARING: Consider Engineer's Report on File No. COD2003-634, David Griffin, Abatement of a Public Nuisance:

PRESENT: John Walkenhauer and Janna Jackson, Permit Services, David Griffin.

John presented the history of the case. Abatement warrant posted by Lee Hargroves in Dec. 2003. Vehicles and other items were removed by Poor Boys Auto Wrecking, but the property is not abated. John noted the case remains open and has not been abated. Recommends the Board approve the Engineer's Report of \$650 so we can recover our costs to date. Mr. Griffin has some serious health conditions which Code Enforcement has been trying to work with him around. At the present, the clean-up is not complete.

David Griffin: Getting ready to clean up his property as he can. Wanted to clean up his property without the County's involvement. Has financial and health issues he's dealing with, and he lives alone.

The commissioners asked how much time he might need. Mr. Griffin states he's going to try to get it cleaned up before Christmas.

Jesse noted that he will give Mr. Griffin until the end of March 2005. Would like John to go out to see if there has been progress made in December. Jesse noted the \$650 for the legal issues. Mr. Griffin stated he won't be able to pay it. Jesse asked if Mr. Griffin could make payments. John stated the monetary amount will be attached to the property as a tax lien. It's due and payable after a month.

John is in agreement about giving Mr. Griffin more time. However, he's noted on inspections that Mr. Griffin is working on vehicles at the site, which is a violation of the zoning. Foresees additional complaints on that activity if it doesn't cease.

Jesse asked Code Enforcement about the lien. He will have four years to pay off the lien before the house is foreclosed. However, it will have accrued interest and penalties in the meantime.

Mr. Griffin wants to

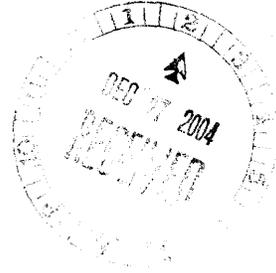
Jesse moved to accept the Engineer's Report with the extension until the end of March 2005. Ron seconded and so ordered.

BOARD OF YAKIMA COUNTY COMMISSIONERS

James M. Lewis, Chairman

Ronald F. Gamache, Commissioner

Jesse S. Palacios, Commissioner



SURFACE TRANSPORTATION BOARD

Adverse Abandonment Proceeding

AB Docket No. 600

CERTIFICATION

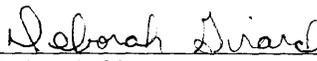
I am Deborah Girard. I hereby certify under penalty of perjury of the laws of the State of Washington that the following statements are true and correct.

I am one of the employees of the attorneys for Kershaw Sunnyside Ranches in the above-entitled matter; that I am a citizen of the United States, a resident of Yakima County, Washington, over the age of twenty-one years, and not a party to said action. On the 20th day of December 2004, I caused to be deposited via First Class Mail, postage prepaid, an original and copies of the following:

1. Petition for Reconsideration and Clarification
2. Declaration of Sarah Wixson In Support of Petition For Reconsideration and clarification.
3. Certification of Mailing

to the addresses attached to this Certification.

Dated at Yakima, Washington this 20th day of December 2004.



Deborah Girard

CERTIFICATE OF MAILING

Original and 10 copies to:

Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Copies to:

Governor Gary Locke (via Certified Mail, Return Receipt Requested)
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Mike Rowsell
WUTC
P.O. Box 47250
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Transportation & Public Construction Division
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128 North 2nd Street, Room 233
Yakima, WA 98901-2631

Federal Rail Road Administration
Attn: Joseph Pampoino
1120 Vermont Avenue, NW, 7th Floor
Washington, DC 20590

Col. John Hoffman
Military Traffic Management Command
Attn: MT-JA, RM 12N67
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120 South Third
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Washington Department of Fish and Wildlife
Attention: Ken Bevis
Yakima Screen Shop
3705 W. Washington Avenue
Yakima, WA 98902-1137

Washington State Department of Ecology – Water Quality
Central Regional Office
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Yakima, WA 98902-3452

Yakima County
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Yakima, WA 98901

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Seattle, WA 98101

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Washington State Office of Archaeology
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