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15 August 2007



Hon. Vernon Williams  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20024

Re: Yakima Interurban Lines Association --  
Abandonment Exemption -- Yakima County, WA,  
AB 600 (Sub-no. 1X)

Dear Mr. Williams.

On June 28, 2007, this Board recorded as filed a letter, entitled "notice of railbanking," dated June 26, 2007, from Yakima County and Yakima Interurban Lines Association notifying this Board that YILA had transferred to the County all portions of the Naches Branch, other than those covered by a section 106 condition, pursuant to 16 U.S.C. § 1247(d) and this Board's authorizations under 49 C.F.R. § 1152.29. The Board's website (e-library, filings) records the letter as a notice that a trail use agreement has been reached. By letter dated August 2, 2007, Yakima County indicated that it had now accepted a deed for the parcels covered by the section 106 condition, which by that point had been removed by this Board. The Board has not entered that letter as filed in its e-library under filings. However, Yakima County wishes the record to be clear that it has now acquired, for railbanking purposes pursuant to 16 U.S.C. § 1247(d), all portions of the Naches Branch at issue in this proceeding.

In a document entitled "Response to Motion to Correct" which this Board records as filed on August 9, 2007, Kershaw Sunnyside Ranches claims that "[n]o trails use agreement exists between the County, YILA or any other entity. .... no copy of a trail use agreement exists in the record." There is no requirement that a trails use agreement be filed with the Board. However, as it happens, YILA and the County entered into a railbanking agreement which was filed with this Board in this document on March 23, 2007, and appears in this Board's e-library, filings, for that date. All contingencies in that agreement have now been fulfilled or waived, and as noted, County has now acquired the property. KSR's claim on August 9, 2007 is belied by the record.

It is important to understand KSR's motivation. KSR has threatened to bring spurious claims against the County if the

County refuses to sever the railroad corridor where it crosses through property owned by KSR. KSR states that it wishes to develop that portion of the railroad right of way as a loading dock for trucks at a warehouse, and such use is not compatible with either trail or rail use. KSR in the past has argued that the entire Naches Branch involved in this proceeding was severed from connection to the interstate rail network and thus no longer eligible for railbanking. This Board rejected that argument in YILA -- Abandonment Exemption -- in Yakima County, AB 600 (Sub-no. 1X), served October 31, 2006, slip. op. at p. 3 (finding that YILA's line was still connected to interstate network because BNSF did not abandon the lead to the mainline and instead leased same to Central Washington Railroad Company).

The County has explained to KSR that KSR in effect is insisting that the County voluntarily sever the Naches Branch at KSR's property line, and that, under KSR's own arguments, this would render the remainder of the corridor into the Town of Naches potentially ineligible for railbanking. This is contrary to trail use. County is mystified that KSR, which claims to support trail use, nonetheless continues to threaten spurious litigation unless the County takes actions which KSR has elsewhere argued are totally incompatible with trail use. County's objective is and remains to keep the entire Naches Branch covered in this proceeding intact under 16 U.S.C. § 1247(d). To this end, County is reluctantly prepared to continue to respond with KSR's spurious and vexatious litigation until KSR grows tired of same, although County hereby puts KSR on notice that it reserves the right to pursue attorneys fees and costs wherever the legal equivalent of F.R.C.P. 11 is available.

In a more positive light, Yakima County has explained to KSR that a more productive approach would be for KSR to furnish an alternative right of way compatible with rail reactivation. If that alternative railroad corridor were approved by this Board as acceptable under 16 U.S.C. § 1247(d)<sup>1</sup> and if it did not impose burdens on County taxpayers, it would be acceptable to

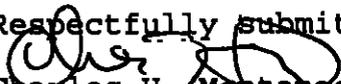
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<sup>1</sup> In Burlington Northern -- Abandonment Exemption-- between Klickitat and Goldendale, AB 6 (Sub-no. 335X), served June 8, 2005, the "Trail Owners" acquired a 25 foot easement which encompassed rail reactivation rights adjacent to a former BNSF rail corridor. The Board relied in part on that fact in rejecting a petition to revoke on grounds of severance. Slip op. at p. 5. This decision suggests that an alternative route that is compatible with rail reactivation is consistent with continued regulation of the entire corridor under 16 U.S.C. § 1247(d) (i.e., defeats a claim of severance arising from non-rail/non-trail use of a segment for which the alternative route is a substitute).

County. Yakima County believes that it would be a far better use of the Board's resources if the Board were to dismiss KSR's spurious claims and instead advise KSR what regulatory filings, if any, would be necessary to relocate the railbanked portion of the Naches Branch currently traversing KSR's property to a location elsewhere, but in a fashion compatible with continued railbanked status for the rail line in its entirety. Again, Yakima County does not support severance of the Naches Branch, for that risks its loss for either trail or rail reactivation purposes. In contrast to KSR, the County does act consistently with railbanking and trail use of the Naches Branch. Any claim by KSR to the contrary is spurious.

By my signature below, I certify service on Kevan Montoya, counsel for KSR, at 401 E. Lincoln Ave., Yakima, WA 98901 by U.S. Mail, postage pre-paid, first class on the above date.

Respectfully submitted,

  
Charles H. Montange  
for Yakima County

cc. Yakima County, City of Yakima,  
Town of Naches, YILA