

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

MAY - 5 2011

Part of
Public Record

STB Docket No. AB-6 (Sub-No. 463X)

229461

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

229462

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

229463

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**REPLY OF KING COUNTY, WASHINGTON TO GNP RLY'S MOTION TO STRIKE
OR REJECT OR IN THE ALTERNATIVE FOR LEAVE TO REPLY**

Communications with respect to this pleading should be addressed to:

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
E-mail: epilsk@kaplankirsch.com
E-mail: afultz@kaplankirsch.com

Counsel for King County, Washington

Dated: May 5, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**REPLY OF KING COUNTY, WASHINGTON TO GNP RLY'S MOTION TO STRIKE
OR REJECT OR IN THE ALTERNATIVE FOR LEAVE TO REPLY**

On April 13, 2011, the City of Redmond submitted a letter informing the Board as a matter of information and courtesy that Redmond intended to salvage rails along a one-mile section of the right-of-way subject to the Certificate of Interim Trail Use at issue in these proceedings. The salvage work is necessary to allow Redmond to complete an important public utility project on land it owns, and Redmond's letter makes clear that Redmond is taking care to ensure that such work is compatible with the possible restoration of rail service on the right-of-way. King County, Washington (the "County"), as trail sponsor, does not believe that the project will interfere with the rail banking obligation. Accordingly, the County is supportive of

Redmond's project. Further, because the project will not interfere with the railbanking obligation, this Board lacks the jurisdiction to regulate or otherwise stop the project.

GNP Rly Inc. ("GNP") has latched onto this informational filing as a pretext to reargue the merits of its Petitions, in spite of the Board's admonition that no further filings on the merits were permissible. In light of the extensive briefing in this matter, the County would only make two brief points that demonstrate the complete lack of merit to GNP's filing.

First, the premise of GNP's filing is that Redmond's construction activities on one mile of the Redmond Spur would somehow preclude GNP from instituting its proposed freight rail service on other portions of Redmond Spur. Putting aside the factual errors of this argument, Redmond's actions could not possibly foreclose any putative rail service by GNP because (as previously explained in the County's comments on GNP's petitions) GNP lacks any legal right or privilege to use the Spur for such service.

Second, the Board lacks the jurisdiction to regulate, much less enjoin, Redmond's current activities on the right-of-way. The Board recently restated its longstanding position that its "role under the Trails Act [16 USC 1247(d)] is limited and largely ministerial." *National Trails System Act and Railroad Rights-of-Way*, Docket No. EP 702 at 5, STB served Feb. 16, 2011. Under that precedent, the "Board does not 'regulate activities over the actual trail, and [has] no involvement in the type, level, or condition of the trail. . . .'" *Id.* (quoting *Ga. Great S. Div. – Aban. & Discontinuance Exemption – Between Albany & Dawson, in Terrell, Lee, & Dougherty Counties, Ga.*, 6 STB 902, 907 (2003)). As the Board has previously held:

[49 U.S.C. § 1247(d)] imposes only two conditions on interim trail use: the railbanking requirement (that the right-of-way be subject to future reactivation of rail service), and the requirement that the trail user assume liability for the property's management and taxes.

CSX Transp., Inc. – Abandonment Exemption – In Monroe and Owen Counties, IN, Docket No. AB-55 (Sub-No. 514X) at 2 (Service Date Sept. 30, 1997). Under this very limited jurisdiction, the Board recognized that that the Trails Act imposes no bar to a trail user making changes to the right-of-way “even if those structural changes were to make it difficult to return the line to freight operation” *The Baltimore and Ohio Railroad Co., Metropolitan Southern Railroad Co. and Washington and Western Maryland Railway Co. – Abandonment and Discontinuance of Service – In Montgomery County, MD and the District of Columbia*, Docket No. AB 119 (Sub. No. 112) at 2 (Service Date Feb. 22, 1990). A trail user’s only obligation is to take the necessary actions to permit the restoration of service at the time service is restored. *Id.*; see also EP 702 at 7 (“Issues such as who should bear the cost to restore rail service are best addressed as they arise in the context of an individual case.”).

Even if GNP could make a colorable showing that Redmond’s activities would impair the future restoration of rail service (which it has not), such a showing is immaterial because that would not prevent Redmond from undertaking activities; it would only trigger the obligation to remove any obstacles to restoration whenever service is restored. Accordingly, GNP’s request is, at best, premature and the relief it requests is beyond the Board’s jurisdiction.

WHEREFORE, the County respectfully requests this Board to deny GNP's Motion to Strike or Reject or in the Alternative for Leave to Reply.

Respectfully submitted,



Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
KAPLAN KIRSCH & ROCKWELL LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

Counsel for King County, Washington

Dated: May 5, 2011

CERTIFICATE OF SERVICE

I hereby certify that I am providing a copy of the foregoing REPLY OF KING COUNTY, WASHINGTON TO GNP RLY'S MOTION TO STRIKE OR REJECT OR IN THE ALTERNATIVE FOR LEAVE TO REPLY upon the following parties of record by first class mail with postage prepaid and properly addressed:

Tom Carpenter
International Paper
International Place I
6400 Poplar Avenue
Memphis, TN 38197

Kristy D. Clark
David T. Rankin
BNSF Railway Company
2500 Lou Menk Drive
AOB-3
Fort Worth, TX 76131

Matthew Cohen
Hunter Ferguson
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

Don Davis
Master Builders Association of King and
Snohomish Counties
335 116th Avenue SE
Bellevue, WA 98004

John D. Heffner
James H.M. Savage
John D. Heffner, PLLC
1750 K Street, N.W., Suite 350
Washington, DC 20006

Kevin M. Sheys
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006

Karl Morell
Ball Janik LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005

Dean Kattler
Waste Management of Washington Inc.
13225 NE 126th Place
Kirkland, WA 98034

Denis Law
City of Renton
1055 South Grady Way
Renton, WA 98057

John F. Marchione
City of Redmond
16532 NE 98th Court
Redmond, WA 98052

Isabel Safora
Port of Seattle
P. O. Box 1209
Seattle, WA 98111

Steve Sarkozy
City Manager
P. O. Box 90012
Bellevue, WA 98009

Kurt Triplett
City of Kirkland
125 5th Avenue
Kirkland, WA 98033

David T. Ralson, Jr.
Foley & Lardner LLP
3000 K Street, N.W., Suite 500
Washington, DC 20007

Ernest F. Wilson
17509 NE 38th Court
Redmond, WA 98052

Kathy Cox
Marketing Philharmonic
218 Main Street #668
Kirkland, WA 98033

Jordan Wagner
Central Puget Sound
Regional Transit Authority
401 S. Jackson Street
Seattle, WA 98104

Tay Yoshitani
The World Trade Center
Baltimore, MD 21202-3041

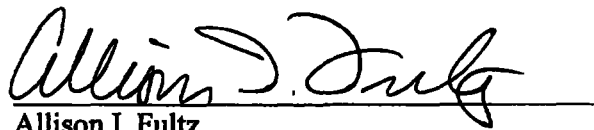
Jean M. Cerar
Issaquah Valley Trolley
P. O. Box 695
Issaquah, WA 98027

Mike Bates
Woodinville Lumber, Inc.
15900 Woodinville-Redmond Road, N.E.
Woodinville, WA 98072

Andrea C. Ferster
Rails-to-Trails Conservancy
2121 Ward Court, N.W., 5th Floor
Washington, DC 20037

Lawrence J. Warren
City of Renton
P. O. Box 626
Renton, WA 98057

Paul Zimmer
Eastside Rail Now
P. O. Box 3524
Bellevue, WA 98009


Allison I. Fultz

Dated this 5th day of May, 2011