

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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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**

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Dated: May 5, 2011

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**REPLY OF KING COUNTY, WASHINGTON TO GNP RLY'S MOTION TO STRIKE
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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,



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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:

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Dated this 5th day of May, 2011