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**SURFACE
TRANSPORTATION BOARD**

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SURFACE TRANSPORTATION BOARD

Adverse Abandonment Proceeding

AB Docket No. 600



**ENTERED
Office of Proceedings**

DEC 11 2003

**Part of
Public Record**

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

ADVERSE ABANDONMENT APPLICATION

FILED

DEC 11 2003

TRANSPORTATION BOARD

a. General

1. Applicant: Kershaw Sunnyside Ranches, Inc. ("Kershaw").
2. Kershaw is not a common carrier subject to 49 U.S.C. Subtitle IV, chapter 105.
3. Kershaw seeks abandonment by Yakima Interurban Lines Association (YILA) of approximately 1 mile of the Naches Line, which consists of approximately 11.29 miles of rail line between milepost 2.97, at Fruitvale, WA, and milepost 14.26, at Naches, WA.
4. There is no system diagram map available for this carrier. Maps showing the location of the rail line are attached as Exhibit B to the Declaration of Robert

Petition for Abandonment
SW/14820ce

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Velikanje, Moore & Shore, P.S.
P.O. Box 22550
Yakima, WA 98907

Kershaw.

5. None exists to our information and belief. YILA is a noncarrier. The line at issue is the only line held by YILA.

6. Reasons for filing the application:

Kershaw requests that the Surface Transportation Board (Board) authorize the abandonment of a portion of the Naches Line. The Naches line consists of approximately 11.29 miles of rail line between milepost 2.97, at Fruitvale, WA, and milepost 14.26, at Naches, WA.

The rail line was acquired by YILA from Burlington Northern and Santa Fe Railway (BNSF) in 1999 (Finance Docket No. 33719). Kershaw seeks abandonment only of that portion of the line which crosses its property which is approximately one mile. The line traverses United States Postal Service ZIP Code 98908.

The line occupies a railroad right-of-way that was granted in 1905 for railroad purposes only. (Declaration of Robert Kershaw, Exhibit A). BNSF acquired the line in 1996. BNSF took the line out of service in 1997, due to poor track conditions. The line has not been in service and has not had any local traffic on it for approximately seven years. (Declaration of Robert Kershaw, Ex. C).

Shortly after obtaining the line YILA, received a \$516,000 loan from the State of

Washington in order to rehabilitate the line. (Declaration of Robert Kershaw, Exhibit H). YILA mishandled the loan proceeds and what funds remained were not sufficient to rehabilitate the line. YILA was unable to fulfill the terms of the loan agreement and defaulted on the loan. Id.

An April 2001 study by Wilbur Smith Associates reflects a total estimated cost to rehabilitate the line of \$2,014,237. (Declaration of Robert Kershaw, Exhibit F). In addition, according to YILA's operation manager, Jerry Henderson, YILA is "well over a million dollars in debt and has no way of ever paying that debt." (Declaration of Robert Kershaw, Exhibit C, p. 33, lines 1-2). YILA has no current plans or funds to rehabilitate the line. There are currently \$750,000 in liens against the line. (Declaration of Robert Kershaw, Exhibit C, p. 30, lines 6-16). YILA offered to quit claim the line to the State in exchange for forgiveness of the approximate \$516,000 of debt. (Declaration of Robert Kershaw, Exhibit C, p. 19, lines 13-18). The State refused. Id.

As of April 2001, YILA was liquidating its assets. (Declaration of Robert Kershaw, Exhibit C, p. 7). YILA has been "negotiating" with Yakima County and the City of Yakima regarding the line for at least two years. (Declaration of Robert Kershaw, Exhibit C, p. 14). However, no one has initiated any action before the Board and no agreements have been reached. To date, the line remains idle.

The Board will authorize abandonment of a rail line only if "the present or future public convenience and necessity require or permit" abandonment. 49 U.S.C. §10903(d).

The standard for an adverse abandonment is the same standard for abandonments under 49 U.S.C. § 10903. The Board balances the potential burden on shippers and communities against the burden on the rail carrier from continued operation. The record indicates that abandonment of the line is appropriate.

The continued operation of the line by YILA is not economically justified. There has been no traffic on the line for approximately seven years. YILA lacks the resources to repair and maintain its property and cannot cure the numerous defects to bring the line up to Federal Railroad Administration (FRA) standards. Given the amount of liens and the estimated costs of rehabilitating the line, the line is not a viable candidate for any other carrier. (Declaration of Robert Kershaw, Exhibit G).

The burden on shippers and the community if the line were to be abandoned is minimal. The line's former shippers have used alternative transportation services for at least seven years. There is also motor carrier service available via State Highway 12 which is adjacent to the line. Thus, abandonment will not have any material effect on the movement of traffic because alternative transportation is available to and currently used by the former shippers.

Abandonment of the line is also consistent with the public interest. Sufficient traffic is not available to justify continued operation or further investment in the line. Moreover, the line is in disrepair and is completely covered by vegetation in areas. (Declaration of Robert Kershaw, Exhibit F, p.28, ¶ 17.2.1). The line has become a

community eyesore, but also poses numerous hazards. (Declaration of Robert Kershaw, Exhibits E and F). The unchecked growth of vegetation results in a fire hazard of the track and surrounding properties and is a violation of Federal Railroad Administration (FRA) regulations. See 49 C.F.R. § 213.37. In addition, the vegetation also promotes the proliferation of noxious weeds and pests which is of particular concern in this largely agricultural area and is a violation of Washington law. (Declaration of Robert Kershaw, ¶ 12.) See RCW 17.04.010 et. seq.; Washington Administrative Code 16-750-020.

The Board has stated that “where no overriding public interest in continuing rail service in interstate commerce exists, we will not allow our jurisdiction to shield a railroad, or any party seeking relief before us, from the legitimate processes of state law.” See Modern Handcraft, Inc.--Aban., 363 I.C.C. 969 (1981) (Modern Handcraft); Kansas City Pub. Ser. Frgt. Operation--Exempt.--Aban., 7 I.C.C.2d 216, 224-226 (1990); and Chelsea Property Owners--Aban.--The Consol. R. Corp., 8 I.C.C. 773, 778 (1992), aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994). There is no overriding public interest in continuing service on this line. The line at issue has been in legal limbo for several years. The State of Washington refused to accept it. (Declaration of Robert Kershaw, Exhibit C, p. 19, lines 13-18). No other public or private entity has shown any interest in assuming responsibility for the line. Kershaw seeks to bring the line out of purgatory and put the land to beneficial use.

7. All correspondence should be sent to designated representative:

Velikanje, Moore and Shore, P.S.
P.O. Box 22550
405 East Lincoln
Yakima, WA 98907

8. The line traverses United States Postal Service ZIP Code 98908.

b. Condition of properties

The line is in complete disrepair. (See Declaration of Robert Kershaw, Exhibit, F and I.) The line had been inoperable for several years when it was acquired by YILA and YILA has made no significant progress in rehabilitating the line. Currently, the line has numerous and substantial defects and large sections of track are missing. Id.

Cahill Inc., completed a Track Report in April 2001. (Declaration of Robert Kershaw, Exhibit F.) The inspection was limited by snow and the amount of vegetation on the line. (Declaration of Robert Kershaw, Exhibit F, p.3). Nonetheless, the inspector noted numerous and substantial repairs would be necessary “just to make the line passable.” (Declaration of Robert Kershaw, Exhibit F, p.3 and Appendix A). The inspector further stated that “[i]t can be said with certainty that the line has FRA Class 1 defects that are not listed in this report.” (Declaration of Robert Kershaw, Exhibit F, p. 3.) The total estimated cost to rehabilitate the line is \$2,014,237. (Declaration of Robert Kershaw, Exhibit F.)

Since the line has been out of service, vegetation on the line has been a constant

problem. (Kershaw, ¶ 12). Because the line runs through apple orchards, Kershaw sprays the line with herbicides five to six times a year to reduce the prevalence of noxious weeds and other pests detrimental to the apple crop. Id. In the areas not sprayed with herbicides on a regular basis, the line is covered with thick woody vegetation. (Kershaw, ¶ 12, Ex. J).

In addition, the line is difficult and sometimes dangerous to cross over. Portions of the line on the Kershaw property are covered with rock and debris. (Declaration of Robert Kershaw, Exhibit J.) In other places, the rail bed has eroded so completely that the ties are actually suspended by the rail. (Declaration of Robert Kershaw, Exhibit J.)

c. Service Provided

There has been no service on the line in the base year or in any year since 1997. The lines are in disrepair and YILA has no funds with which to repair them. In addition, even if the tracks were operable, YILA does not have an operable locomotive.

(Declaration of Robert Kershaw, Exhibit C, p.15, lines 10-22).

1. No trains have operated on the line during the base year.
2. No miles of track have been operated during the base year.
3. No locomotive units have operated during the base year.
4. No tonnage or carloads of any commodity have moved on the line in the base year.
5. There has been no overhead or bridge traffic during the base year.

6. There have been no crews on the line during the base year.
7. No maintenance has been performed on the line during the base year.
8. There has been no change in train service on the line in the last two years.
9. BNSF took the line out of service in 1997 due to poor track conditions resulting in decline in traffic.

d. Revenue and cost data.

1. Revenues and Costs for Base Year: Pursuant to its bylaws, YILA is a non-profit organization. (Declaration of Robert Kershaw, Exhibit C, p. 21, lines 6-12).

There are no revenues attributable to the line for the base year. The avoidable costs to YILA if the line is abandoned is unknown.

2. Revenues and Costs for Forecast Year: According to YILA's operation manager, Jerry Henderson, YILA is "well over a million dollars in debt and has no way of ever paying that debt." (Declaration of Robert Kershaw, Exhibit C, p. 33, lines 1-2). YILA has no current plans or funds to rehabilitate the line. There are currently \$750,000 in liens against the line. (Declaration of Robert Kershaw, Exhibit C, p. 30, lines 6-16). Therefore, there are no foreseeable future revenues, avoidable costs or reasonable returns for the Forecast year.

3. The estimated subsidy payment for the Base year, if any, is unknown.

e. Rural and community impact

1. There are no stations on the line. Based on the United States 2000 census

information, the population of Yakima County is 222,581.

2. The line has been out of service since 1997. There are no significant users as defined by 49 C.F.R. § 1552.2(1).

3. There are other rail lines nearby which are currently meeting the needs of shippers in the area. State Highway 12 is adjacent to the line and is readily accessible to meet transportation needs.

4. The land may not be appropriate for other public uses. The line passes through the middle of Kershaw's property. (Kershaw, ¶ 11). On one side of the line is apple orchard; on the other side of the line there is a warehousing operation. Id. Both activities present health and safety concerns if the land is put to public use.

First, Kershaw applies pesticides to the orchard numerous times a year. (Kershaw, ¶ 13). Under Washington law, no person, other than an "appropriately trained and equipped handler" may enter and remain in an area that has been treated with agricultural pesticides. Washington Administrative Code 296-307-12015. The timing and location of pesticide application are dependent upon numerous factors including weather and wind speed and direction. (Kershaw, ¶ 13). The logistics of restricting public access to the area during pesticide application is problematic.

Second, there are four designated rail crossings on the Kershaw property. These crossings are traversed daily by heavy machinery including forklifts, tractors, trucks and other farming equipment. (Kershaw, ¶ 14). If this land were put to public use, it would

be difficult to maintain normal business operations. Id.

More importantly, with the periodic application of pesticides and the constant moving of heavy equipment, it would be extremely difficult to ensure the safety of the public. Id. There would be a greater risk of liability and markedly increased insurance costs.

In addition, the right-of-way originally granted in 1905 was for railroad purposes only. (Declaration of Robert Kershaw, Exhibit A). Kershaw holds a reversionary interest in the property. Id.

f. Environmental impact.

The line has not been operating for approximately seven years. An official abandonment of the line will not significantly alter the condition of the surrounding land and environment. Kershaw has submitted an environmental report pursuant to 49 C.F.R. §§1105.

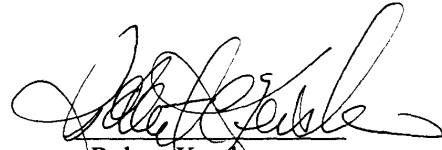
g. Passenger service

There is no passenger service on the line.

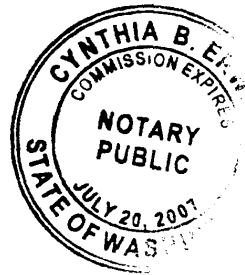
State of Washington
County of Yakima

Robert Kershaw, makes oath and says that he is the President of Kershaw Sunnyside Ranches, Inc. applicant herein; that he has been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing application in STB-AB 600; that he has carefully examined all the statements in the application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matter

relied upon in the application and that all representations set forth therein are true and correct to the best of his knowledge information, and belief.


Robert Kershaw

Subscribed and sworn to before me, Cindy Erwin in and for the State and County above named, this 1st date of July, 2003.



SURFACE TRANSPORTATION BOARD

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CERTIFICATION

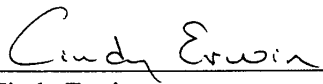
I am Cindy Erwin. I hereby certify under penalty of perjury of the laws of the State of Washington that the following statements are true and correct.

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 8th day of October 2003, I caused to be deposited via UPS Next Day Air, an original and 10 copies of the Adverse Abandonment Application to the Surface Transportation Board. Additionally, on the 8th day of October 2003, I caused to be deposited in the United States mail, via First Class Mail, postage prepaid, the following:

Adverse Abandonment Application

to the addresses attached to this Certification.

Dated at Yakima, Washington this 8th day of October 2003.


Cindy Erwin

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

Governor Gary Locke
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Mike Rowswell
WUTC
P.O. Box 47250
Olympia, WA 98504-7250

Stephen Anderson
WSDOT - Rail Office
P.O. Box 47387
Olympia, WA 98507-7387

Dr. Michael Tate, Dean and Director
State Cooperative Extension Service
P.O. Box 646230
Pullman, WA 99164-6230

Theo Thomas
State Cooperative Extension Service - Yakima Office
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
200 Stovall Street
Alexandria, VA 22332-5000

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Washington State Attorney General's Office
120 South Third
Yakima, WA 98901-2869

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
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

Yakima County
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Yakima, WA 98901

U.S. Fish and Wildlife Service
Mark Miller, Supervisor
215 Melody Lane, Suite 119
Wenatchee, Washington 98801

Mr. Martin Rodriguez
U.S. Soil Conservation Service
200 Cheyne Road
Zillah, WA 98953-9764

National Park Service Headquarters
Director
1849 C Street NW
Washington, DC 20240

National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

Yakima County Assessor's Office
128 N. 2nd Street
Courthouse Room 112
Yakima, WA 98901

Region 10
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1200 Sixth Avenue
Seattle, WA 98101

U.S. Army Corp of Engineers
4735 East Marginal Way South
Seattle, WA 98134-2385

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