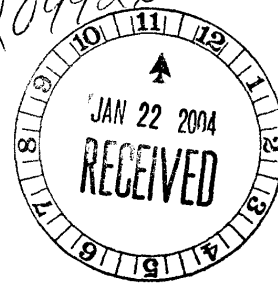


209926

SURFACE TRANSPORTATION BOARD

Adverse Abandonment Proceeding

AB Docket No. 600



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

ENTERED
Office of Proceedings

JAN 22 2004

Part of
Public Record

RESPONSE TO YAKIMA COUNTY'S OBJECTIONS TO
THE FILING OF APPLICATION

Kershaw has filed an adverse abandonment application. In appropriate instances, such as situations involving adverse applications, the Board and its predecessor agency, the Interstate Commerce Commission, have waived inapplicable and unneeded portions of the abandonment regulations.¹ Kershaw made every effort to comply with the notice and application requirements and the filing substantially conformity with the regulations. 49 C.F.R. § 1152.24.

1. Publication of Notice

Kershaw published the Notice in the Yakima Herald-Republic pursuant to 49 C.F.R. § 1152.20. The last publication date was September 29, 2003.

¹ See Napa Valley Wine Train, Inc.-Adverse Abandonment-in Napa Valley, CA, STB Docket No. AB-582 (STB served Mar. 30, 2001) and cases cited therein.

Kershaw submitted its petition for waiver and its application for abandonment contemporaneously on October 8, 2003. In a letter dated November 7, 2003, which was received by counsel on November 17, 2003, the Board stated, "Before we will be able to make a determination on your fee waiver request, we will need a verified statement demonstrating that neither you, nor anyone affiliated with this case, have sufficient funds to pay the filing fee in your proceeding before the Board." (See Declaration of Sarah Wixson, Exhibit A).² Kershaw, unable to provide such a statement and not wishing to delay the proceedings any further, paid the \$16,500 filing fee. However, by the time Kershaw's counsel received a letter from the Board, the 30 day period from the publication of the last notice.

Yakima County states that Kershaw should have first sought waivers and then filed its application. The Board normally requires that the filing fee be submitted with the fee waiver application. If the waiver is granted, the fee, or presumably a portion thereof, is refunded. However, according to STB Decision, STB Ex Parte No. 542 (Sub-No.6), an applicant may seek a waiver without filing the fee so long as the substantive document is filed contemporaneously. Id. Therefore, Kershaw properly filed its abandonment application with the waiver request.

Kershaw published in the local newspaper for three consecutive weeks. In addition, an article appeared in the Yakima Herald-Republic regarding the proposed abandonment and other related issues on October 6, 2003. Despite the notice, and the article, only one person has requested a copy of the filings. (See Declaration of Sarah

²Kershaw maintains that the mere *ability* to pay does not mean that payment is not a financial hardship. In addition, the ability to pay does not relate to the "best interest of the public" prong set forth in 49 C.F.R. §1002.2(e)(2).

Wixson, ¶ 2, Exhibit B). Kershaw went to considerable expense in publishing the notice, the delay in the filing of the application was dependent upon factors outside Kershaw's control. Kershaw respectfully submits that it has substantially complied with the requirements of 49 C.F.R. 21 1152.20(a)(4).

2. Service of Notice

An applicant must serve copies of its Notice of Intent on all persons designated in 49 C.F.R. 1152.20(a)(2). As indicated by the Certificate of Service appended to the Application, Kershaw has complied with the service requirements of § 1152.20, and § 1152.24, including service on the Governor, Gary Locke.

Furthermore, pursuant to 49 C.F.R. 1152.24(d), we have provided copies of the application material to "whomever requests it." Thus far, the only person who has requested a copy of the material is Jim Berg, local counsel for Level 3. (Declaration of Sarah Wixson, Exhibit C).

3. Adequacy of the Notice of Intent

Yakima County states that the Notice of Intent is deficient because Kershaw fails to name the mileposts designating the section of the line it seeks to abandon. The line is in such a dilapidated condition, (*see* Declaration of Robert Kershaw, Exhibits H and I), that Kershaw was unable to find any mileposts on its property. The section of the line being abandoned is encompassed within the line described. Detailed maps are attached to the application at Exhibit B and J. Exhibit J shows the property lines of the Kershaw property. Exhibit A sets forth the legal descriptions of the property as well as the Historical Report. The notice stated that the application would be available for public

inspection on or after October 10, 2003. Apart from Jim Berg, attorney for Level 3, no member of the public came into the offices of Velikanje, Moore and Shore or asked for a copy of the notice. (Declaration of Sarah Wixson, ¶ 4). The line in question is not large, it is only about 11 miles long in total. The publication of the notice is intended to put the public on notice, the notice as published accomplished that goal.

4. Posting

Yakima County faults Kershaw for failing to post pursuant to 49 C.F.R. § 1152.20 (3). An applicant must post a copy of its Notice of Intent at each agency station and terminal on the line to be abandoned. (If there are no agency stations on the line, the Notice of Intent should be posted at any agency station through which business for the involved line is received or forwarded.) To Kershaw's knowledge there are no agency stations on this line. Yakima Interurban Lines Association is essentially defunct, to Kershaw's knowledge there is no "business on the line" to be "received or forwarded." Furthermore, the Board has held that "compliance with these requirements is not feasible by a third-party applicant." Salt Lake City Corporation, STB Docket No. AB-33 (Sub-No. 183) (2001).

5. De facto abandonment of the entire line

Rather than seek a waiver of the historic and environmental reports, Kershaw sought to comply with as many of the Board's requirements as possible, and completed these reports on that portion of the line in which it has a reversionary interest. Yakima County faults Kershaw for not seeking to abandon the entire line and states that a rail carrier would never file as Kershaw has. However, unlike a rail carrier, Kershaw does not have an interest in the entire line. Kershaw does not purport to speak for other

adjacent land owners nor does it have access to the information that would be required to seek an abandonment of the line over property held by other individuals or entities.

Furthermore, contrary to the County's assertions, there has been no prejudice to the community of Naches, shippers or potential shippers on the line by filing in the manner in which Kershaw did. The interests of the Town of Naches are not being ignored. Rather, the Town of Naches applied for and received a substantial Rural Community Assistance Grant in 2003 for "survey, engineering and design and construction documents for the Naches trail and depot project." (Declaration of Sarah Wixson , Exhibit D). The description of the project states that "[t]he town [of Naches] is committed to completion of this project which is consistent with the rural, environmentally responsible lifestyle, and to create an economic benefit for the surrounding area." Id. Although the Town of Naches has not yet weighed in on either side of the issue, it is noted that in order to complete its trail project, the rail line would likely have to be abandoned. See 16 U.S.C.A. § 1247(d).

Furthermore the environmental and historical reports submitted by Kershaw meet the applicable requirements of the regulations. These reports are not the final word on environmental and historical issues, but are designed to alert the Board, the public and various agencies with regard to possible issues that may arise if abandonment is granted. Furthermore, the environmental and historical reports appear to be designed to address any impacts abandonment may have on the community's resources. This line has been out of operation for approximately seven years, the only environmental and historical impact as a result of abandoning the line, would arise upon the removal of the track or buildings along the line. If the line were abandoned, Kershaw would seek to have the

track removed from its property. Kershaw would arguably have little influence as to how the salvage operation is conducted on its own property. However, Kershaw would have absolutely no control over the disposition of track and other materials on other property along the line. Arguably, the line on other properties would remain in the same dilapidated condition as it has for the past seven years.

In addition, the depot will not be effected by Kershaw's proposed abandonment. As noted above, funds have already been obtained, and plans drawn up to preserve the depot. Kershaw is in support of the Town of Naches' plan for the depot. None of the relief that Kershaw seeks in its abandonment petition will have any impact on those plans.

6. Filing Fee

In as much as Kershaw has paid the filing fee in full, its request for a waiver of all or a portion of that fee should have no bearing on whether the application is accepted or rejected by the Board. The County's motivation for objecting to the waiver of the filing fee is questionable. The County has no interest in whether Kershaw's fee is reduced or waived except to the extent it increases Kershaw's cost and burden of bringing this action before the Board and is a deterrent to other adjacent land owners who may wish to be heard on this issue.

The standards for determining whether to grant a waiver of a fee turns on more than a mere ability to pay. If it were otherwise, the Board's requirement that an applicant submit the request for a fee waiver along with the full filing fee would put an applicant in an impossible position. The submission of the filing fee would be proof that the waiver should not be granted. This is not the standard set forth in the regulations.

A filing fee may be waived if “in the best interest of the public or if payment of the fee would impose an undue hardship upon the requestor.” 49 C.F.R. §1002.2(e)(2). Although the regulations apply to all those who seek an abandonment, the regulations were admittedly drafted for *carriers*, not individual land owners. A \$16,500 filing fee is an onerous burden for any individual land owner, particularly when the result is uncertain. Governmental bodies and bankrupt carriers can qualify for a greatly reduced fee. Other non-profit groups, as cited by the County, indeed have to pay a fee even when seeking a public purpose, see NTC v. STB, 120 F.3d 901, 906-07 (8th Cir. 1997). However, in NTC v. STB, the filing fee for a non-profit organization was reduced from \$650 to \$150. Id. at 907. A \$150 fee or even the previous \$650 fee is not comparable to the \$16,500 fee required in this case.

The submission of the abandonment application is in the best interest of the public. Kershaw has taken the laboring oar on this issue in large part because no one has showed any intention taking steps rectify the situation. The line has sat idle for seven years. The entity responsible for it, Yakima Interurban Lines Association, has neither the funds nor the means to even maintain the line free of vegetation.

Neither the State of Washington nor the County of Yakima have taken any steps to rectify the deplorable condition of the line or restore rail service to the area. In fact, on April 23, 2003, the Washington Utilities and Transportation Commission entered an order which exempted the line from rail crossing requirements. The Commission further made a finding of fact that there was no intention “to operate on-track equipment of any kind on the line . . . in the foreseeable future.” (Declaration of Sarah Wixson, Exhibit E). Filing of the adverse abandonment application is in the best interest of the public because it will force state and local agencies to address the issues with this line, that have so far been ignored.

7. Consummation

The abandonment consummation notification requirements in 49 C.F.R. 1152.24(f), as well as the 1-year authorization limit in 1152.29(e)(2) are not appropriate because they presuppose control over consummation once the Board's decision is issued. That is not the case in an adverse abandonment because the applicant must usually invoke state law to obtain control of the property. A waiver of this provision for a third-party applicant is appropriate.

State of Washington
County of Yakima

Sarah Wixson, makes oath and says that she is an attorney with Velikanje, Moore and Shore, P.S., counsel for Kershaw Sunnyside Ranches, Inc., applicant herein; that she has been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing declaration 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.



Sarah Wixson

Subscribed and sworn to before me, Cindy Erwin, in and for the State and County above named, this 16th date of January, 2004.

ENTERED
Office of Proceedings

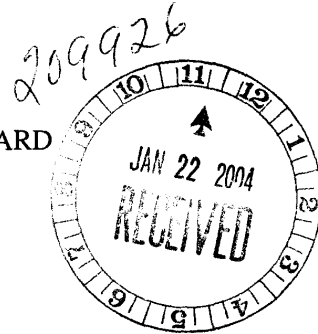
SURFACE TRANSPORTATION BOARD

JAN 22 2004

Adverse Abandonment Proceeding

Part of
Public Record

AB Docket No. 600



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

DECLARATION OF SARAH WIXSON IN SUPPORT OF
RESPONSE TO OBJECTION TO FILING OF APPLICATION

1. I am an associate at the firm of Velikanje, Moore and Shore, counsel for Kershaw Sunnyside Ranches, Inc. (Kershaw). I make this declaration on knowledge of facts to which I am competent to testify and would testify at trial.
2. Attached hereto as Exhibit A is a true and correct copy of a letter dated November 7, 2003 from the Surface Transportation Board. The date stamp of November 17, 2003 on the upper right hand corner of the letter is a true and correct reflection of when the offices of Velikanje, Moore and Shore received a copy of this letter.
3. Attached hereto as Exhibit B is a true and correct copy of an article published by Yakima Herald-Republic on October 6, 2003, regarding Kershaw and the issues regarding the rail line sought to be abandoned.
4. Attached hereto as Exhibit C is a true and correct copy of correspondence between the offices of Velikanje, Moore and Shore and Jim Berg, counsel for Level 3. No other member of the public has requested copies of the application documents.

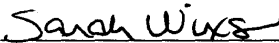
Declaration of Sarah Wixson
SW/17073ce

5. Attached hereto as Exhibit D is a true and correct copy of the USDA's report of Rural Community Assistance Grants awarded to the Pacific Northwest Region-Washington State for the Fiscal Year 1994-2003. On January 15, 2004, I spoke with Jeff Ranger, (509) 653-2647, who is listed as the recipient of the grant. Mr. Ranger indicated that the grant was awarded in 2003.

6. Attached hereto as Exhibit E is a true and correct copy of Order No. 01 issued by the Washington Utilities and Transportation Commission date April 23, 2003.

State of Washington
County of Yakima

Sarah Wixson, makes oath and says that she is an attorney with Velikanje, Moore and Shore, P.S., counsel for Kershaw Sunnyside Ranches, Inc., applicant herein; that she has been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing declaration 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.


Sarah Wixson

Subscribed and sworn to before me, Cindy Erwin, in and for the State and County above named, this 16th date of January, 2004.

Exhibit A



Office of the Secretary

Surface Transportation Board
Washington, D.C. 20423-0001

NOV 17 2003

November 7, 2003

Robert Kershaw
c/o Velikanje, Moore & Shore, P.S.
P.O. Box 22550
Yakima, WA 98907

In re: STB Docket No. AB-600, Yakima Interurban Lines Association- Adverse Abandonment in Yakima County

Dear Mr. Kershaw:

This letter is in response to your fee waiver request on behalf of Kershaw Sunnyside Ranches, Inc. (Kershaw Ranches) in the referenced matter. The \$16,300 filing fee was not submitted with the filings in question. In your request for the waiver, you argue that the filing fee is an undue hardship on Kershaw Ranches.

The Board's regulations at 49 CFR 1002.(e)(2)(ii) permit the agency to waive a filing fee if payment of the fee would impose a hardship on the requestor. In your waiver request, you support your claim of hardship simply by indicating the assessed valuation of the property involved. You do not, however, indicate the income produced by Kershaw Ranches, whether Kershaw Ranches is affiliated with other profitable corporations, or why it would be a hardship for you, or others that might benefit from the relief you seek in the proceeding, to pay the fee. Before we will be able to make a determination on your fee waiver request, we will need a verified statement demonstrating that neither you, nor anyone affiliated with this case, have sufficient funds to pay the filing fee in your proceeding before the Board. Upon receipt of your submission, a decision will be made upon your fee waiver request.

If you have any questions, please contact me at your earliest convenience.

Sincerely yours,

Vernon A. Williams

Exhibit B

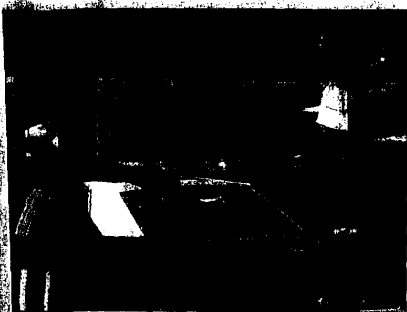


BRIAN FITZGERALD/Yakima Herald-Republic

Washington State Fair with a battle it out Sunday during a 10-lap race called Bump to Pass in the first of four events leading up to an all-out Demolition Derby.

Light in a Crunch

and clash contrast with a calm and successful fair run



BRIAN FITZGERALD/Yakima Herald-Republic

Yakima Shannon Davis tries to involve the crowd with a little language during voting for the "Best Appearance" vehicle in the demolition derby. Davis' car, sponsored by Alpine Tire and the Sugar Shack, tied with another vehicle.

The winner is ...

Demolition derby results/3D

entrance sold between 300 and 400 pounds of chicken. On Saturday and Sunday alone, the Davis High School Booster Club peeled and sold 6 tons of corn-on-the-cob at \$2 a piece.

Revelers also loved the nightly parades and the family circus, both new additions to the fair this year, Phillips said.

Several fair workers said they were tired and ready for the fair to end — but many will return next year.

"As long as they'll have me here, I'll be here," said Glen Harrington, 44, the gate captain, as he stood at the main gate, watching the final crowds ramble into the fair. Harrington has worked at the state fair for five years. His favorite part of the job is meeting people, he said, adding that he was "hooked" after his first year.

"I'm a lifer," he said. Meetings for next year's fair are already under way, Phillips said.

were busier.

As of Sunday evening, 111 children had gone through the "Lost Tots" office.

One of the longest lines for rides was at the Zipper, where only "one or two" thrill-seekers got sick throughout the entire length of the fair, a ride operator said.

On the busiest days, a single fajita stand near the main

"It's as if people are afraid to get involved in the thing."

— NACHES MAYOR
CHARLES ROSS

Dreams Derailed

Complications match the number of ideas for reviving rail from Yakima and Naches

By DAVID LESTER
YAKIMA HERALD-REPUBLIC

Dreams abound along the highway that connects Yakima and Naches.

There is the dream of growing a business, expanding to meet the demands of a dynamic apple industry.

Others involve a trail, a tourism boon, a bustling business and a brighter future for a community.

Unfortunately, those dreams are in conflict.

They collide head-on like two runaway freight trains on the Naches rail spur, an unused and deteriorating 11-mile line that parallels the highway.

Even its most ardent supporters, who envision an operating railroad someday, would have to agree the line isn't much to look at. It is covered by rocks and dirt in at least one place; ties and rails hang suspended in the air elsewhere, evidence of a doomed rebuilding effort.

In short, the whole thing is a mess.

The woes of the Naches rail line aren't all physical.

Interested parties — and there are a lot of them — have been waiting for someone to take the lead to clear up the financial mess that made the century-old line a target of lawsuits, liens, a critical state audit and finger pointing since 2000.

"It is legally complex, financially complex and politically complex," observes Yakima County planner Phil Hoge, assigned by county commissioners to follow the issue.

Hoge is a rail enthusiast, treasurer of Yakima Valley Trolleys, the group that rose from the ashes left by its predecessor and current owner of the line, the Yakima Interurban Lines Association. The association operated the historic Yakima trolleys.

Because of the complexity, the issue of the Naches spur has remained in limbo.

Like others, officials of the town of Naches have speculated



Kershaw

PLEASE SEE RAIL PAGE 6A

RAIL/Somebody won't be happy with the eventual outcome

Continued from Page 1A

about the future of the line. The town would like to renovate the train station in Naches as a tourist attraction, said Mayor Charles Ross, who describes Naches as a bystander in the debate over the spur.

"It's as if people are afraid to get involved in the thing," Ross said.

After years of inactivity, however, something is stirring along the Naches spur, and it could happen very quickly.

And the certain outcome is that someone's dreams will be dashed.

Forcing the issue

At the center of this tangled web is longtime fruit grower and shipper Bob Kershaw of Yakima. Kershaw, president of Kershaw Sunnyside Ranches and the owner of land over which one mile of the spur runs, is tired of waiting for someone to do something to get the rail issue off dead-center.

He will file a petition Friday seeking to have that portion of the line through his property abandoned. The petition will be filed with the federal Surface Transportation Board, the agency solely responsible for rail lines nationwide.

Kershaw wants to expand the fruit packing line for Kershaw Fruit and Cold Storage, a subsidiary of Kershaw Sunnyside Ranches.

But he can't because a deed his grandfather signed in 1905 granted right of way for the rail line. The line abuts the company's complex of offices, storage and packing facilities along Highway 12, east of Naches. As long as the right of way exists, Kershaw can't proceed with his dream.

He describes as folly the idea that there is a future for rail service to Naches, certainly not enough to justify the money that would have to be spent to satisfy the liens, repair the line and start a railroad.

He says the entire line would have to be replaced to carry the larger-volume freight cars needed to interest potential users of the line. The figure would be well in excess of \$1 million by most estimates.

"That is just dreaming," says Kershaw, whose pioneer ancestors started in the cattle business more than 120 years ago. "It all goes down to cash and run afford it. Can the state afford to put millions of dollars in a rail line and convince the taxpayers it is workable?"

No everyone agrees with him, including local rail supporters and the state, which is the largest lienholder for bills left unpaid the last time restoring the line was attempted.

The state is owed \$516,000 for a loan the state made to former Interurban Lines President George Inness. Inness walked away in 2000, leaving uncompleted repairs and debts that drove the Interurban Lines Association out of business.

Another \$329,000 in liens and judgments is owed to other creditors growing out of that same uncompleted work.

Should the federal agency agree with Kershaw early in 2004, the chances for an operating railroad to Naches and beyond will be gone forever.

Challengers exist

As a result, Kershaw finds himself arrayed against the state, the interurban group, a major telecommunications company that has fiber optic communications cables buried under the spur line, and possibly Yakima County. The county is viewed as the most logical agency that could assume control of the line for future rail use. The city of Yakima is another possibility.

But county commissioners aren't interested unless the liens are resolved by someone else and



"No one in their right mind would run a rail car up this thing," says Bob Kershaw of the Naches rail line, much of which is in disrepair. The railroad runs through Kershaw

Fruit and Cold Storage land, and Bob Kershaw would like to have the railroad declared abandoned so the company could use that property to expand its fruit-packing operation.

there is money available to have the line repaired. The county can't use public funds to satisfy the liens.

County Administrator Doug Cochran said it would take some convincing for commissioners to change their position.

"That could stem from someone coming along and making a case the commissioners are persuaded by or with enough financial leverage to clear it up," Cochran says.

The state has talked about providing the money to complete repairs. Again, there is the issue of the liens that no one has provided a solution to, even though one lienholder, Yakima National Bank, has offered to take less than the \$200,000 it is owed to resolve the issue, according to Richard Karstens, bank president and chief executive officer.

On the sidelines watching with interest — but not taking an active role — are Naches and the Yakima Greenway Foundation.

Kershaw has challenged the legality of Level 3 Communications, a Colorado-based international communications provider. Kershaw has won a victory in Yakima County Superior Court last year when Judge Heather Van Nuss ruled Level 3 trespassed on his property. Rights granted for a rail line, she concluded, don't extend to telecommunications equipment.

The only solution for Level 3, she added, is to condemn Kershaw's property and pay him to use his land.

Jim Berg, a Yakima attorney who represents Level 3 in the Kershaw lawsuit, says the issue is whether Burlington Northern Santa Fe Railroad had the authority under the 1905 deed to let Level 3 lay its cable.

He argues the state constitution and state law granted rights to Level 3 to use railroad rights of way.

Level 3 has appealed Van Nuss' judgment to the state Court of Appeals.

Abandonment could force the firm to remove the cables. That would affect Yakima County, which obtained rights to some of Level 3's fiber optic strands for a countywide communications system that also involves monitoring county roads in inclement weather.

The county held out for the strands rather than accept payment from the company for use of county right of way.

Rails to Trails

Kershaw has offered to keep open one possible use of the 11 miles of rail corridor. He said he believes a trail would be a great asset to the community.

To further that goal — and regain full control of the portion of the existing line behind his packing plant — he is offering to donate land along his western boundary, between the highway and his office, to maintain the corridor for a trail. That would occur, Kershaw points out, without costing taxpayers a dime.

A trail would extend the existing Greenway path system that ends near 40th Avenue and Fruitvale Boulevard all the way to Naches.

"A trail would be great for the community. We would take the property through us and give trail property around us," Kershaw said.

Al Brown, Greenway executive director, says the nonprofit organization supports trail expansion. Greenway directors, however, have done nothing more than attend meetings about the spur.

"The Greenway is very interested in trying to preserve a trail corridor in some fashion that will benefit the community in multiple ways," he says. "Our place in that process is still being defined."

But Kershaw's offer of land doesn't fit with what most see as the necessary first step for a trail — saving the rail corridor.

His preferred route for a trail wouldn't accommodate a train, a minimum requirement under a 1983 federal law that allows abandoned rail corridors to remain intact.

The law, commonly known as railbanking, preserves the corridor but must be able to be used for a railroad should service ever resume.

Kershaw's offered route creates too sharp a turn and wouldn't qualify for railbanking, county officials say.

Without railbanking, abandonment would mean the corridor would be lost. Kershaw said he doesn't believe that is the ultimate outcome. Others say it is a matter open to legal interpretation.

Future rail service

Kershaw's petition will be challenged by the interurban lines association, which remains in existence in name only as the owner of the rail line.

Burlington Northern conveyed the line to the association in 1999.

Yakima attorney Paul Edmondson, the association's legal counsel, said he believes there is a future for rail service.

There is one potential user. Layman Lumber Co. owner Kathy Kratzer said her company would use the line were it available to ship both wood chips and lumber from its mill west of Naches.

"We have to truck lumber to Yakima to be loaded on rail cars. It would be a lot better for us," she said. "Our chips would be cheaper to ship."

Kratzer did not have an estimate of the savings or how many rail cars her firm would use.

Edmondson said Layman's desire shows a need exists for the line.

"There is a future for that line. There have been some feasibility studies done by the state that justified the initial funding. Gas prices have not gone down," he said.

Edmondson said Kershaw isn't considering the long term.

"He poo-pooes the idea of economic development when the Yakima economy could sorely use it," he says. "It is shortsighted to try to break up a rail corridor."

The state also wants to see the rail line re-established and has talked about providing money to complete the job left undone when Inness walked away.

The state rail division, the largest lienholder among the 14 that exist, lent Inness \$516,000 to rebuild the line.

Lisa LaFond, a spokeswoman for the state Department of Transportation, said the agency is considering steps that might be taken to oppose the abandonment petition.

"We really want to get the line back into service. The state Legislature has recognized freight rail as an important part of a balanced transportation system. The Naches line is no different," she said.

An operating rail line would remove some truck traffic from Highway 12.

The county's role

Yakima County also wants to see the chance for rail maintained. Commissioner Jim Lewis says the county would take over the line in a minute if it were free of liens and there was money in hand to repair the line.

But with the status quo, the

county will remain on the sidelines in the abandonment debate.

County commissioners last month asked its Public Works Department to contact all parties to determine whether any interest exists to tackle the problems of the Naches line one more time.

Gary Ekstedt, assistant Public Works director for transportation services, said if the county receives lukewarm interest, the meeting won't take place.

Ekstedt said the Kershaw petition means the clock is now ticking on the future of the Naches line.

"Someone is going to have to step up pretty quickly if railbanking is the preferred way to go," he said. "The challenge is the liens."

Ekstedt said the state Transportation Department has indicated a willingness to resolve its lien and have the county take over the line as long as the objective is to restore rail service. The other lienholders are another matter.

"The challenge is to try to point your finger at who to negotiate with them. The essence of the whole stalemate is to get someone to raise their hand and say we will do the negotiating," he said.

The Yakima National Bank's Karstens says the county is a natural to assume leadership over the future of the line. He said the bank's interest is to see the corridor retained. Whether future use is for a rail or a railroad is a question for someone else to answer.

Karstens says the state Attorney General's office approached the bank several months ago offering to provide the money to the county to satisfy the bank's lien. He said the bank agreed to take a diminished amount of money over three years interest-free if it would help retain the corridor as a community asset.

But nothing happened and Karstens has the same view as a number of other people — saving the corridor seems to be a worthwhile idea. There is, however, no one apparently willing to take the controls and guide this issue to the station.

"It seems like a natural to me. The state has a desire to make it happen. Naches wants it to happen, some shipper wants it to happen, and the county seems to want to make it happen," Karstens said. "No one is stepping up and saying 'Make it happen.'"

ATTAC

Continued from

The raid was a tactic for Israel to stop Palestinian suicide bombings, assassinations, strikes and attacks, and it added to the tensions between the two sides.

Israel said it would not be responsible for the actions of its soldiers. The Israeli army spokesman said the raid was a tactical move to stop Palestinian attacks.

In the West Bank, the Israeli army said it was not responsible for the actions of its soldiers. The Israeli army spokesman said the raid was a tactical move to stop Palestinian attacks.

The leader of the Hamas group, Khaled Meshaal, said the raid was a tactical move to stop Palestinian attacks. He said the Israeli army was not responsible for the actions of its soldiers.

The strike was a tactical move to stop Palestinian attacks. The Israeli army said it was not responsible for the actions of its soldiers. The Israeli army spokesman said the raid was a tactical move to stop Palestinian attacks.



Mehdad Karstens

Syria U.N. on Ai

UNITED NATIONS — Syria urged the Security Council to condemn the Syrian government for its aggression against the opposition.

Syria's United Nations representative, Fayez al-Khatib, said the Syrian government was responsible for the aggression against the opposition.

A Syrian official said the Syrian government was responsible for the aggression against the opposition. He said the Syrian government was not interested in a peaceful resolution of the conflict.

Israel's attack on the Syrian border was a tactical move to stop Palestinian attacks. The Israeli army said it was not responsible for the actions of its soldiers.

The meeting after delegates time to consult with the Syrian government. No other meeting was scheduled on the day.

Exhibit C

James S. Berg
E-mail - jsberg@yvn.com

Cheryl I. Epperson
Legal Assistant
E-mail - cheryle@yvn.com

LAW OFFICES OF
JAMES S. BERG, PLLC

105 NORTH THIRD STREET
YAKIMA, WA 98901

Telephone
(509) 453-3322

Facsimile
(509) 249-0619

October 14, 2003

Mr. Kevan T. Montoya
Velikanje, Moore & Shore, P.S.
P.O. Box 22550
Yakima, WA 98907

RE: *Kershaw Sunnyside Ranches v. Level 3 Communications*
Yakima County Superior Court Case No. 00-2-01550-9

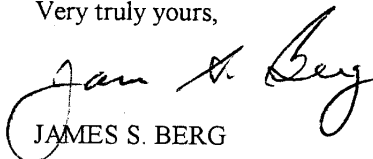
Dear Kevan:

This letter follows my voicemail message to you on Monday, October 13, 2003, wherein I asked that you provide us a copy of any application that the Kershaws file related to seeking abandonment of the railroad right of way running through their property. Obviously, Level 3 is most interested in that application and wants to know when it was, or is going to be, filed.

If you are unwilling to meet this request, please so advise so that I can inform my clients.

Thank you for your cooperation.

Very truly yours,


JAMES S. BERG

JSB/nb

cc: Mark Laughlin
Fraser Stryker Meusey Olson Boyer & Bloch, PC

\\CHERYL\CLIENT DATA\Clients\Level 3\Montoya_ltr101303.doc

OCT 15 2003

Velikanje Moore & Shore, P.S.

attorneys at law

VMS

John S. Moore
Morris G. Shore
George F. Velikanje
Alan D. Campbell
James C. Carmody
Carter L. Field

J. Jay Carroll
Mark E. Fickes
Douglas L. Federspiel
Brendan V. Monahan
Kevan T. Montoya
Nancy L. Livingston

Metiner G. Kimel
Travis W. Misfeldt
Garon K. Jones
James S. Elliott
Sarah L. Wixson

October 16, 2003

Via AMS

James S. Berg
James S. Berg, PLLC
105 North 3rd Street
Yakima, WA 98901

RE: *Kershaw Sunnyside Ranches, Inc./Surface Transportation Board*

Dear Mr. Berg:

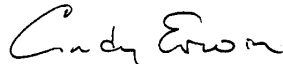
Pursuant to your letter dated October 14, 2003, enclosed please find one copy of each of the following:

1. Adverse Abandonment Application;
2. Petition for Waiver of Pre-Filing Requirements for Adverse Abandonment Application;
3. Affidavit; and
4. Declaration of Robert Kershaw in Support of Adverse Abandonment Application.

If you have any questions about the enclosed documents, please do not hesitate to contact our office.

Sincerely,

VELIKANJE, MOORE & SHORE, P.S.



Cindy Erwin
Legal Assistant to
Kevan T. Montoya

enclosures

16346ce

cc: Robert Kershaw

Exhibit D



Rural Community Assistance Grants
Awarded by State and Private Forestry, Cooperative Programs
Pacific Northwest Region - Washington State
Fiscal Year 1994-2003



County: Yakima

Recipient: Yakama Indian Nation Chris Cassidy 509-865-5121	FS Funds: \$51,909
Project Title: Veneer Worker Training	Leveraged Funds: <u>\$13,000</u>
	Total Project: <u>\$64,909</u>

Description: Funds are for the development of a training program for the Yakama Indian Nation veneer processing facility. The training program will provide a means to create jobs for members of the local Yakama Indian Nation.

WAEC-94-035
Wenatchee

Recipient: City of Grandview C. J. Sewell 509-882-9200	FS Funds: \$53,000
Project Title: Wastewater Recovery Study	Leveraged Funds: <u>\$39,900</u>
	Total Project: <u>\$92,900</u>

Description: This study will determine the technical and economic feasibility of constructing a full-scale byproduct recovery pre-treatment system for the City's wastewater treatment plant. The high cost of wastewater disposal is a deterrent to new businesses who want to locate in this community. This potential alternative recovery system would mitigate this high cost.

WAEC-96-003
Gifford Pinchot

Recipient: Yakima Valley Community College Linda Kaminski 509-574-4636	FS Funds: \$75,674
Project Title: Greater Grandview Initiative	Leveraged Funds: <u>\$88,686</u>
	Total Project: <u>\$164,360</u>

Description: Job skills training for up to 90 students. Training will be based on the local communities business needs. Currently the courses offered include welding, computer training, english as a second language, and nursing assistance courses. The Lower Yakima communities of Grandview and Sunnyside want to diversify beyond the current agricultural based economy. This initiative is a partnership of education, job skills training providers, and local employers who seek to provide customized training which will benefit local business, provide higher wage jobs, and keep community people employed locally.

WAEC-97-003
Wenatchee

Recipient: Yakima County Development Association David McFadden 509-575-1140	FS Funds: \$4,993
Project Title: Economic Development Investmnt	Leveraged Funds: <u>\$0</u>
	Total Project: <u>\$4,993</u>

Description:

WAEC-98-002
Wenatchee

Recipient: Washington Assoc. of Minority Entrepreneurs Pedro Garza 509-453-5133	FS Funds: \$25,000
Project Title: Technology for Rural Small Bus	Leveraged Funds: <u>\$0</u>
	Total Project: <u>\$25,000</u>

Description:

WAEC-98-003
Wenatchee



Rural Community Assistance Grants
Awarded by State and Private Forestry, Cooperative Programs
Pacific Northwest Region - Washington State
Fiscal Year 1994-2003



County: Yakima

Recipient: Hispanic Chamber of Commerce Polo Aguilera 509-952-2386	FS Funds: \$9,999 Leveraged Funds: \$2,500 Total Project: \$12,499
Project Title: Hispanic Resource Directory	
Description: Funding this project will identify and survey all Hispanic Businesses in the Yakima Valley area to gather the information necessary for development of a Hispanic Business Directory to serve as a resource guide for minority procurement. In addition to enhancing networking among Hispanic business and other businesses, it will transition Hispanic businesses into new technology for expansion. The formal database of Hispanic businesses will be maintained and updated annually. The guide developed through this grant will provide a network mechanism to assist all small businesses in securing contracts, particularly produce, with large institutions (eg., schools, prisons) and coordinating the logistics of planting and harvesting schedules.	
WAEC-99-011 Wenatchee	
Recipient: Yakima County Fire Prevention Bureau James Lewis 509-574-1500	FS Funds: \$38,500 Leveraged Funds: \$16,500 Total Project: \$55,000
Project Title: Wildfire Watch	
Description: Funding will help reduce fire risk in the interface areas through enforcement of the requirements of the recently adopted Urban Wildland Interface Code. In addition, community education programs will enhance voluntary participation in wildfire mitigation efforts. We hope this project enables Yakima County to construct a "disaster resistant" community that can protect both the citizens in wildland interface areas and the wildland areas themselves from the hazards that occur from human habitation. In addition, we hope this project increases local capacity and expands community partnerships.	
WNFP-01-006 Olympic	
Recipient: Yakima County Public Works Vern Redifer 509-574-2300	FS Funds: \$25,000 Leveraged Funds: \$7,000 Total Project: \$32,000
Project Title: Fuels Utilization and Marketing	
Description: Funding for this project will enable Yakima County to conduct a feasibility study to determine the size and location of a biomass plant as well as identify other necessary fuels and users of the steam and/or power that will be generated by the facility. Biomass fuels could be utilized including municipal solid waste, animal waste, agricultural and industrial waste and sewage and paper sludge. A five-megawatt biomass power plant would create approximately 25 jobs. Additionally, the plant would generate an undetermined number of other local jobs related to the harvesting forest fuels and transporting them to the facility.	
WNFP-02-011 Gifford Pinchot	
Recipient: Town of Naches Jeff Ranger 509-653-2647	FS Funds: \$40,000 Leveraged Funds: \$25,000 Total Project: \$65,000
Project Title: Naches Trail & Depot Design/Eng	
Description: Funds for this project will provide for survey, engineering and design and construction documents for the Naches trail and depot project. The funds will provide engineering for the trail, exterior design for the Depot and design for a restroom facility behind the existing depot. The completion of these documents will allow Naches to move forward to implementing the project. Completion of the project will stimulate job creation, increase tourism and provide quality of life. The town is committed to completion of this project which is consistent with the rural, environmentally responsible lifestyle, and to create an economic benefit for the surrounding area.	
WANW-02-039 Gifford Pinchot	



Rural Community Assistance Grants
Awarded by State and Private Forestry, Cooperative Programs
Pacific Northwest Region - Washington State
Fiscal Year 1994-2003



County: Yakima

Recipient: Naches Valley Chamber of Commerce
Lynne Davis 509-653-2165

FS Funds: \$20,000
Leveraged Funds: \$11,000
Total Project: \$31,000

Project Title: Community Action Plan

Description: Funding for this project will produce a Community Action Plan for the town of Naches and surrounding area that will identify a common vision for the future. An analysis identifying community strengths and weaknesses will be used to develop a specific list of projects that will move the community to its envisioned future. Completion of this plan will identify opportunities to promote economic diversification and enhance the local economy. The chamber seeks to develop a future which brings greater economic prosperity to the people of the community.

WAEC-03-013
Gifford Pinchot

Yakima Summary

# of Grants:	10	Total Awarded:	\$344,075
		Total Leveraged Funds:	\$203,586
		Total Investments:	\$547,661

Exhibit E

SERVICE DATE

APR 23 2003

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

THE WASHINGTON UTILITIES	)	DOCKET NO. TR-030518
AND TRANSPORTATION	)	
COMMISSION,	)	ORDER NO. 01
	)	
Petitioner,	)	
	)	ORDER AUTHORIZING THE
v.	)	INSTALLATION OF "EXEMPT"
	)	CROSSING SIGNS AT 14
YAKIMA COUNTY AND THE	)	RAILROAD-HIGHWAY GRADE
YAKIMA INTERURBAN LINES	)	CROSSINGS ALONG THE 1W LINE
ASSOCIATION	)	IN YAKIMA COUNTY
	)	
Respondents.	)	
.....	)	

Certified this 11th day of Jan, 2004 as a true copy
of the original order of the Washington Utilities and
Transportation Commission.
Wicky Hernandez for *Carole Washburn*
Secretary

BACKGROUND

- 1 On April 23, 2003, Commission Staff (Staff) requested that the Commission authorize the installation of R15-3 "exempt" crossing signs at 14 public railroad-highway grade crossings along the 1W line in Yakima County, between railroad milepost 4.30 and 13.60. The crossings are listed individually as an attachment to this Order.
- 2 Respondents have consented to an entry of an order by the Commission without further notice or hearing.
- 3 Currently, the 1W line is out of service with no plans to resume rail operations in the foreseeable future. There are 18 railroad-highway grade crossings along the line, however, four of them are located within the city of Yakima and therefore not subject to Commission authority. Despite the lack of rail traffic, RCW 46.61.360 requires that vehicles carrying passengers for hire, school buses, and transporters of hazardous substances must stop at each of the crossings to look and listen for trains unless "an official traffic control device as designated by the

DOCKET NO. TR-030518
ORDER NO. 01

PAGE 2

Washington Utilities and Transportation Commission pursuant to RCW 81.53.060 (i.e. exempt sign) gives notice that the stopping requirement imposed by this section does not apply." Since there is no train traffic on the line, the purpose of the stopping requirement is defeated. Staff requested that the Commission authorize the installation of these signs at the 14 crossings listed in the attachment in the interest of improving traffic efficiency and reducing the potential for rear-end collisions related to vehicle stops. Commission Staff asks that the authority be limited by certain conditions, specified in the request and set out in the ordering portion of the Order, below.

- 4 Yakima County has agreed to install the signs denoting the exemption, and has asked that as long as the crossings are designated as exempt, they be relieved of their duty to repaint the railroad pavement markings on the roadway approaches to each of the crossings. It has also committed, in writing, that it will remove the exempt signs and that it will repaint the pavement markings prior to any resumption in train traffic.

FINDINGS AND CONCLUSIONS

- 5 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over public railroad-highway grade crossings within the state of Washington. *Chapter 81.53 RCW.*
- 6 (2) The 14 railroad-highway grade crossings listed in the attachment to this Order are public crossings within the state of Washington.
- 7 (3) Each of the crossings is the intersection of a Yakima County public roadway with the "1W" line of the Yakima Interurban Lines Association. The Association does not operate on-track equipment of any kind on the line, and has no intention to do so in the foreseeable future. The Association has committed that it will notify the Commission and Yakima

County prior to resuming operations, and that it will not conduct operations until the crossings are properly signed for operations.

- 8 (4) RCW 81.53.060 requires that the Commission grant approval prior to the modification of warning devices at public railroad-highway grade crossings within the State of Washington.
- 9 (5) Commission Staff recommended that the Commission authorize the installation of R15-3 "exempt" signs at each of the 14 railroad-highway grade crossings listed in the attachment to this Order, subject to specified conditions.
- 10 (6) This matter was brought before the Commission at its regularly scheduled meeting on April 23, 2003.
- 11 (7) After examination of the request by Commission Staff on April 23, 2003, and giving consideration to all relevant matters and for good cause shown, the Commission authorizes the installation of "exempt" signs at the crossings, subject to the conditions set out in the Order, below.

ORDER

THE COMMISSION ORDERS:

- 12 The Commission authorizes the installation of R15-3 "exempt" signs at the 14 railroad-highway grade crossing located along the 1W line and listed in the attachment to this Order, subject to the following conditions:

- (1) The installations must comply with applicable standards specified in the U.S. Department of Transportation *Manual on Uniform Traffic Control Devices*.

DOCKET NO. TR-030518
ORDER NO. 01

PAGE 4

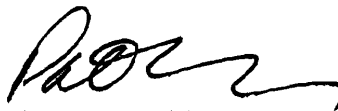
- (2) The Yakima Interurban Lines Association or any successor railroad company proposing to operate trains over tracks through any of the crossings must notify Yakima County and the Commission, in writing, at least 30 days prior to any resumption in rail traffic on the 1W line at any crossing authorized for "exempt" signage in this Order.
- (3) Yakima County must remove the exempt signs and must repaint the railroad pavement markings on the roadway approaches on any affected crossing prior to any resumption of rail traffic on the 1W line.
- (4) Upon completion of the installations authorized in this Order, Yakima County must notify the Commission. Acceptance of the installations is subject to inspection by Commission Staff, verifying that the crossings are in full compliance with law, regulation, and the conditions specified herein.

DATED at Olympia, Washington, and effective this 23rd day of April, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



MARILYN SHOWALTER, Chairwoman



PATRICK J. OSHIE, Commissioner

ATTACHMENT A

Naches Line crossings for exemption

<u>Road name</u>	<u>USDOT number</u>	<u>WUTC number</u>	<u>Warning devices</u>
Clover Lane	103901J	1W 4.30	Passive
Old Naches Highway	103902R	1W 5.20	Signals with gates
Mitchell Drive N.	103903X	1W 5.80	Passive
Mapleway Road	103905L	1W 6.20	Passive
N. Gleed Road	103908G	1W 6.80	Passive
E. Gleed Road	103909N	1W 6.90	Passive
Hall Road	103911P	1W 7.20	Passive
Eschbach Road	103912W	1W 8.00	Passive
New Kershaw Road	103916Y	1W 8.60	Passive
Locust Lane	103922C	1W 11.30	Passive
Allen Road	103924R	1W 12.20	Passive
Shafer Lane	103928T	1W 13.20	Passive
Naches Avenue	103929A	1W 13.40	Passive
Tieton Avenue	103931B	1W 13.60	Passive

209926

SURFACE TRANSPORTATION BOARD

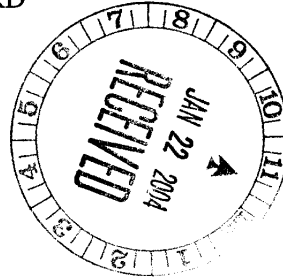
ENTERED
Office of Proceedings

Adverse Abandonment Proceeding

JAN 22 2004

AB Docket No. 600

Part of
Public Record



CERTIFICATION

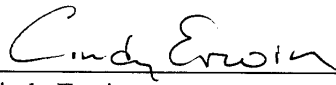
I am Cindy Erwin. I hereby certify under penalty of perjury of the laws of the State of Washington that the following statements are true and correct.

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 16th day of January 2004, I caused to be deposited via First Class Mail, postage prepaid, copies of the following:

1. Response to Yakima County's Objections to the Filing of Application; and
2. Declaration of Sarah Wixson in Support of Response to Objection to Filing of Application.

to the address attached to this Certification.

Dated at Yakima, Washington this 16th day of January 2004.


Cindy Erwin

Original and 10 copies to:

Barbara Satler
STB Office of Proceedings
1925 K Street, N.W.
Washington, D.C. 20423-0001

Copies to:

James S. Berg
James S. Berg, PLLC
105 North 3rd Street
Yakima, WA 98901

Mark C. Laughlin
Fraser, Stryker, Meusey, Olson, Boyer & Bloch, P.C.
500 Energy Plaza, 409 South 17th Street
Omaha NB 68102-2663

Charles H. Montange
Attorney at Law
426 NW 162nd Street
Seattle, WA 98177

Jeanne Cushman
Office of the Attorney General
Transportation and Public Construction Division
P.O. Box 40113
Olympia, WA 98504-0113

Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001