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LEGAL DEPARTMENT
200 South Third Street
Yakima, Washington 98901-2830

January 22, 2004

Via FedEx Overnight
(Original Letter and 10 copies)

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

ENTERED
Office of Proceedings

JAN 23 2004

Part of
Public Record

RE: Yakima Interurban Lines—Adverse Abandonment—in Yakima County, Washington,
AB 600

Dear Mr. Williams:

Please enter my appearance in this proceeding on behalf of the City of Yakima. The rail line at issue in this proceeding extends from the vicinity of Yakima to the town of Naches in Yakima County. The City wishes to see the rail line preserved and restored for public use. Abandonment of the line would have a serious adverse impact on rural and community development.

Moreover, the City of Yakima operates a 48-inch concrete transmission main within portions of the Naches Rail corridor. This water transmission main provides the domestic water supply for most of the City of Yakima. Abandonment of the rail line could adversely affect the operation of Yakima's domestic water system.

Yakima County has previously filed objections to the adequacy of the adverse abandonment application and to the petition for waiver filed by Kershaw Sunnyside Farms in this proceeding. The City of Yakima hereby joins in those objections and in the County's request that the petition for waiver be denied and the adverse abandonment application rejected for filing.

One of the major deficiencies in Kershaw's adverse abandonment application is that it seeks an abandonment authorization for a relatively short segment located essentially in the middle of the line. Kershaw evidently restricts its adverse abandonment application to that portion of the line solely because that portion abuts Kershaw property. In effect, Kershaw wishes to treat the matter as a kind of quiet title proceeding.

Abandoning what amounts to an arbitrary segment in the middle of the line severs the entire end of the line at Naches. Moreover, there is no reason to think that such an abandonment results in a logical terminus for the remainder of the line on the east side of Kershaw's proposed abandonment. In particular, the de facto terminus of the line on the east side of Kershaw's proposed abandonment makes no sense from the point of view of serving prospective shippers, storing cars, or allowing equipment to run around cars or turn. It creates a rump line of limited utility.



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Pursuant to 49 U.S.C. § 10903(d), STB may allow an abandonment "only if the Board finds that the present or future public convenience and necessity require or permit the abandonment. . . ." Furthermore, the statute provides that "[i]n making the finding, the Board shall consider whether the abandonment . . . will have a serious, adverse impact on rural and community development." This implies that the abandonment application must deal with logical termini as determined from the point of view of rail operations. In short, under § 10903(d), an abandonment application, even if adverse, cannot be limited in the fashion of a state-law quiet title suit for particular parcels along a rail line.

Additionally, it is simply not possible to make the findings required under § 10903(d), or to address the impact on rural and community development, when the adverse abandonment application misstates its de facto scope. If Kershaw wishes to seek an adverse abandonment authorization, then it should be directed to file papers which seek such authority either for the entire line or for a segment with logical termini, with the termini based on at least some attention to rail operating needs. The application before the agency must accordingly be rejected for filing.

I certify service by fax transmission and/or certified mail, return receipt requested, of this letter on the date hereof, as set forth below.

Respectfully submitted,



Raymond L. Paoella
City Attorney

RLP:klw

cc: Sarah Wixson, Velikanje Moore & Shore, P.O. Box 22550, Yakima, WA 98907 (via fax 509-453-6880 and certified mail) (for Kershaw)

Jeanne A. Cushman, Office of the Attorney General, Transportation and Public Construction Division, 905 Plum Street, Building 3, P.O. Box 40113, Olympia, WA 98504-0113 (via fax 360-586-6847 and certified mail) (for Washington Department of Transportation)

Charles H. Montange, 426 N.W. 162nd Street, Seattle, WA 98177 (via fax 206-546-3739 and certified mail) (for Yakima County)

Heidi L. Evatt, Fraser Stryker Law Firm, 500 Energy Plaza, 409 South 17th Street, Omaha, NE 68102-2663 (via fax 402-341-8290 and certified mail) (for Level 3)

Barbara Satler (STB) (via fax only 202-565-9004)

**CITY OF YAKIMA
LEGAL
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FAX TRANSMITTAL COVER SHEET

DATE: **January 22, 2004**

TO: **Barbara Satler**

LOCATION: **Surface Transportation Board**

FAX NUMBER: **(202) 565-9004**

FROM: **Raymond L. Paoella
City Attorney**

TRANSMITTER'S NAME: **Reva**

This transmittal consists of **3** pages, including this cover letter.

COMMENTS: Letter to Hon. Vernon Williams, Secretary, Surface
Transportation Board, dated January 22, 2004



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