

GALANDA BROADMAN

An Indian Country Law Firm

March 13, 2015

VIA U.S. MAIL AND EMAIL

Michael Chait
Elizabeth Findley
Bradley Scarp
Counsel for BNSF
Montgomery Scarp, PLLC
Seattle Tower, 27th Floor
1218 Third Avenue
Seattle, Washington 98101

RE: BNSF's Second Data Requests to Yakama Nation
BNSF v. Yakima County
Dockets TR-140382 and TR-140383

Dear Counsel:

This is to provide notice pursuant to the applicable regulations and laws governing the above-referenced action that Yakama Nation cannot supply answers to the data requests that were e-mailed on March 3, 2015. Given the broad nature of the requested information, the fact that some of the requested information is not within the ken or control of the Yakama Nation, and the unavailability and busy schedules of elected Tribal officials, staff, and other officials and witnesses, Yakama Nation is unable to assemble the requested data and fully respond within the ten business days allotted under the applicable rules. I estimate that the requests can be answered by April 10, 2015. The estimated response date preserves Yakama Nation's right to furnish and supplement or amend and revise the objections to the data requests furnished herein, without waiver.

Below, please find the Yakama Nation's initial objections to the latest data requests to the Yakama Nation from your client, which are subject to amendment. Generally, Yakama Nation objects to the nature of the discovery requests as irrelevant to the issues to be addressed in the instant adjudicative proceedings and not reasonably calculated to the discovery of relevant information within the knowledge or control of the Yakama Nation. Furthermore, the information sought from the Yakama Nation in these second data requests is largely available to BNSF and BNSF has had ample opportunity to obtain it through its own means (i.e., from

another source aside from the Yakama Nation's tribal government, which are more convenient, less burdensome, and less expensive). Yakama Nation further objects generally to the instructions and definitions in BNSF's second data requests to the Yakama Nation to the extent those definitions and instructions exceed the scope and purpose of the discovery rules governing this adjudicative proceeding. Subject to the foregoing and the following objections, Yakama Nation is working to provide information responsive to BNSF's second set of data requests and intends to supplement these responses with such information by the date indicated herein.

BNSF DATA REQUEST NO. 35

Yakama Nation objects to BNSF Data Request No. 35 as overly broad and unduly burdensome with respect to the request for identification of "each funeral procession which proceeded from the Satus Longhouse to the cemetery referenced in exhibit 4 to the prefiled testimony of Al Pinkham, in the past five (5) years." Yakama Nation further objects to the extent this data request seeks information that is privileged or confidential pursuant to Yakama Nation laws, customs, and traditions; or to the extent the information sought in this data request is not in the possession, knowledge, or control of the Yakama Nation. Furthermore, BNSF's request for the identity of decedents is irrelevant and not reasonably calculated to lead to the discovery of information relevant to the issues in the instant adjudicative proceeding. In addition, Yakama Nation objects to the extent the specific information requested in this data request may not be within the knowledge or control of the Yakama Nation, and, if available, is obtainable from another source. Further BNSF has had ample opportunity to obtain the information sought from the sources of said information. Notwithstanding the foregoing, Yakama Nation may provide information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 36

Yakama Nation objects to BNSF Data Request No. 36 as vague and ambiguous as to the phrase "their property." Individuals may lease or own property, or simply work on properties that could be negatively impacted by BNSF's proposed closure of the railroad crossing at North Stevens Road. Yakama Nation further objects to the extent this data request seeks information that is not in the possession, knowledge, or control of the Yakama Nation. Yakama Nation also objects to BNSF Data Request No. 36 as overly broad and unduly burdensome with respect to discovering and furnishing to BNSF the identity of "each individual" that would be

negatively impacted in accessing “their property” if BNSF is permitted to close the railroad crossing at North Stevens Road. In addition, Yakama Nation objects to the extent that the information sought in this discovery request is readily obtainable by BNSF through BNSF’s reasonable efforts to investigate the impacts of its proposed closures that are more convenient, less burdensome, and less expensive to the Yakama Nation; moreover, BNSF has had ample opportunity to obtain the information sought in this discovery request. Notwithstanding the foregoing, Yakama Nation notes that any property owners or individuals using the properties in and around the North Stevens Road railroad crossing who utilize the crossing at North Stevens Road at issue in this proceeding may be negatively impacted if BNSF is permitted to close this railroad crossing. Finally, Yakama Nation may provide additional information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 37:

Yakama Nation objects to BNSF Data Request No. 37 as vague and ambiguous as to the phrase “each member.” Yakama Nation further objects to the extent this data request seeks information that is privileged or confidential pursuant to Yakama Nation laws, customs, and traditions; or to the extent the information sought in this data request is not in the possession, knowledge, or control of the Yakama Nation. Yakama Nation also objects to BNSF Data Request No. 37 as overly broad and unduly burdensome with respect to the demand that Yakama Nation furnish the identity of “each individual” that would be negatively impacted in accessing “their property” if BNSF is permitted to close the Barnhart Road railroad crossing. In addition, Yakama Nation objects to the extent that the information sought in this discovery request is readily obtainable by BNSF through BNSF’s reasonable efforts to investigate the impacts of its proposed closures that are more convenient, less burdensome, and less expensive to the Yakama Nation; moreover, BNSF has had ample opportunity to obtain the information sought in this discovery request. Notwithstanding the foregoing, Yakama Nation notes that each and every member of and visitor to the Satus Longhouse who presently uses the Barnhart Road crossing likely finds said crossing to provide the easiest access to the Satus Longhouse. Furthermore, Yakama Nation may provide additional information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 38:

Yakama Nation objects to the extent this data request seeks information that is privileged or confidential pursuant to Yakama Nation laws, customs, or traditions; or to the extent the information sought in this data request is not in the possession or control of the Yakama Nation. Furthermore, Yakama Nation objects to this data request because it is overly broad and unduly burdensome with respect to the demand for “all documents” relative to a culturally sensitive and significant matter involving the funeral services and associated religious practices of Yakama members and other Native Americans. Notwithstanding the foregoing, Yakama Nation may provide information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 39:

Yakama Nation objects to the extent this data request seeks information that is not in the possession or control of the Yakama Nation. In addition, Yakama Nation objects to the extent that the information sought in this discovery request is readily obtainable by BNSF through BNSF’s reasonable efforts to investigate the history of flooding in the areas that will be impacted by its proposed closures; moreover, BNSF has had ample opportunity to obtain the information sought in this discovery request. Notwithstanding the foregoing, Yakama Nation may provide information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 40:

See objections and response provided with respect to BNSF DATA REQUEST NO. 39 above.

BNSF DATA REQUEST NO. 41:

Yakama Nation objects to BNSF Data Request No. 41 as vague and ambiguous as to the phrase “each family.” Yakama Nation further objects to the extent this data request seeks information that is privileged or confidential pursuant to Yakama Nation laws, customs, and traditions; or to the extent the information sought in this data request is not in the possession or control of the Yakama Nation. Yakama Nation also objects to BNSF Data Request No. 41 as overly broad and unduly burdensome with respect to securing the identity of “each family” that, pursuant

to Satus Longhouse Leader Roy Dick's testimony, finds the Barnhart Road railroad crossing vital. In addition, Yakama Nation objects to the extent that the information sought in this discovery request is readily obtainable by BNSF through BNSF's reasonable efforts to investigate the impacts of its proposed closures that are more convenient, less burdensome, and less expensive to the Yakama Nation; moreover, BNSF has had ample opportunity to obtain the information sought in this discovery request. Notwithstanding the foregoing, Yakama Nation may provide information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 42:

Yakama Nation objects to BNSF Data Request No. 42 to the extent this data request seeks information that is privileged or confidential pursuant to federal or Yakama Nation laws, customs, and traditions; or to the extent the information sought in this data request is not in the possession or control of the Yakama Nation. Yakama Nation also objects to BNSF Data Request No. 42 as overly broad and unduly burdensome with respect to securing the identity (including all information BNSF contends is required in "identifying" these individuals, such as business and home phone numbers) of "the occupant and/or lessor" of 25 allotments. In addition, Yakama Nation objects to the extent that the information sought in this discovery request is readily obtainable by BNSF through BNSF's reasonable efforts to investigate the impacts of its proposed closures that are more convenient, less burdensome, and less expensive to the Yakama Nation. As Yakama Nation has previously advised BNSF, the information sought herein is related to land held in trust by the Yakama Nation's trustee, the United States of America, which government's agencies are subject to public disclosure laws that BNSF is at liberty to make use of. Moreover, BNSF has had ample opportunity to obtain the information sought in this discovery request from sources other than the Yakama Nation. Notwithstanding the foregoing, Yakama Nation may provide information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 43:

Yakama Nation objects to BNSF Data Request No. 43 as vague and ambiguous as to the phrase "factual basis." Yakama Nation further objects to the extent this data request seeks information that is privileged or confidential pursuant to Yakama Nation laws, customs, and

traditions; or to the extent the information sought in this data request is not in the possession or control of the Yakama Nation. Yakama Nation also objects to BNSF Data Request No. 43 as overly broad and unduly burdensome with respect to the request that Yakama Nation furnish BNSF with information that is readily obtainable by BNSF on economic information with respect to all agricultural leaseholds that may be adversely impacted by BNSF's proposal to close the two railroad crossings at issue in the instant adjudication; moreover, BNSF has had ample opportunity to obtain the information sought in this discovery request. Notwithstanding the foregoing, Yakama Nation may provide information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

BNSF DATA REQUEST NO. 44:

See objections and response provided with respect to BNSF DATA REQUEST NO. 43 above.

BNSF DATA REQUEST NO. 45:

Yakama Nation objects to BNSF Data Request No. 45 as overly broad and unduly burdensome with respect to the request for identification of all communications over the past three years between "representatives" of the Yakama Nation and Yakima County "representatives" regarding the railroad crossings and corresponding petitions to close these crossings. Yakama Nation further objects to the extent this data request seeks information that is privileged or confidential pursuant to Yakama Nation laws, customs, and traditions and pursuant to attorney-client privilege or the attorney work product doctrine; or to the extent the information sought in this data request is not in the possession or control of the Yakama Nation. Furthermore, BNSF's request is irrelevant and not reasonably calculated to lead to the discovery of information relevant to the issues in the instant adjudicative proceeding. Notwithstanding the foregoing, Yakama Nation may provide information responsive to this data request as it consults with its witnesses and other individuals with information within the knowledge and control of the Yakama Nation who may have responsive information to this data request.

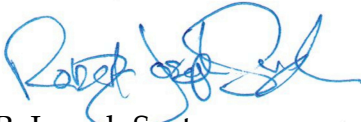
BNSF DATA REQUEST NO. 46:

See objections and response provided with respect to BNSF DATA REQUEST NO. 45 above.

BNSF DATA REQUEST NO. 47:

Yakama Nation objects to the extent this data request seeks information that is privileged or confidential pursuant to Yakama Nation laws, customs, and traditions and pursuant to attorney-client privilege and the attorney work product doctrine. Furthermore, BNSF's request is irrelevant and not reasonably calculated to lead to the discovery of information relevant to the issues in the instant adjudicative proceeding.

Very truly yours,



R. Joseph Sexton

Attorney at Law

joe@galandabroadman.com

cc: Yakama Nation Office of Legal Counsel