

RECEIVED

MAR 30 2015

MONTGOMERY SCARP, PLLC

**To Yakima County:**

Each data response must state the name of the person who prepared the response, and the name of any witness who is knowledgeable about and can respond to questions concerning the response.

**DEFINITIONS**

**IDENTIFY:** Unless otherwise defined in the data request itself, the term “identify” (or “identity”), when used with reference to an individual person means to state his/her full name, present home address, present business address, present home telephone number, and present business telephone number; his/her present or last known position and business affiliation; and his/her position and business affiliation at the time in question. The term “identify” (or “identity”), when used with reference to a partnership, joint venture, trust, corporation or other entity, means to state the full legal name of such entity; each and every trademark, trade name or other name under which such entity does business; the entity’s street address, mailing address and telephone number; and the identity of the chief operation officer, manager, trustee or other principal representative. The term “identify” (or “identity”), when used with reference to documents, means to state specifically (a) the type of document involved (e.g., whether interoffice memorandum, etc.), together with information sufficient to enable defendants to identify the document, such as its date, the name of any addressee, the name of any signor, the title or heading of the document and its approximate number of pages; and (b) the identity of the person last known to have possession of the document, together with the present or last known location of the document.

**DOCUMENT:** The term “document” means any written, electronic, recorded or other graphic matter, however produced or reproduced. It includes all matter that relates or refers in whole or in part to the subjects referred to in any data request. If a document has been prepared in several copies, or if additional copies have been made, and the copies are not identical or have undergone alteration, each non-identical copy is a separate “document.” This definition includes, but is not limited to, the following: any paper, writing, chart, memo, note, letter, interoffice memo, intra-office memo, report, study, statement, map, log entry, drawing, photograph, sketch, picture, tape recording, electronic document, or record of any type or description, and any other verbal or pictorial representation of any event or idea which has transpired, whether meant for communication to others or for personal need.

**COMMUNICATION(S):** The term “communication(s)” shall mean any contact, oral or written, formal or informal, at any time or place and under any circumstances whatsoever, by which information of any nature was transmitted or transferred including, without limitation, the giving or exchanging of information by talk, gestures, DOCUMENT(S), or any other means, or any request for information by any such means.

Docket No. TR-140382 and TR 140383  
BNSF's Second Data Requests to Yakima County  
March 27, 2015  
Page 2

**REPRESENTATIVE(S)**: The term "representative(s)" shall mean and include the past and present agents, representatives, officers, directors, employees, attorneys, accountants, consultants, investigators, partners, affiliates, predecessors, and/or any other individual or entity acting on behalf of the individual or entity designated.

**RELATING TO or REGARDING**: documents "relating to" or "regarding" a given subject matter are documents that, whether directly or indirectly, constitute, memorialize, contain, concern, embody, reflect, identify, state, deal with, comment on, respond to, set forth, describe, analyze, support, contract, or are in any way pertinent to that subject matter.

**COUNTY**: The "County" shall mean and refer to Yakima County and its Representatives.

**YAKAMA NATION**: The "Yakama Nation" shall mean and refer to the Yakama Nation and its representatives.

**BARNHART ROAD CROSSING**: The "Barnhardt Road Crossing" shall mean USDOT Crossing Number 104526P, Milepost 62.40, which is the subject of BNSF's petition TR-140383.

**NORTH STEVENS ROAD CROSSING**: The "North Stevens Road Crossing" shall mean USDOT Crossing Number 104516J, Railroad Milepost 68.40, which is the subject of BNSF's petition TR-140382.

**PETITIONS**: BNSF's petitions in TR-140383 and TR-140382 are referred to collectively as BNSF's "petitions."

## DATA REQUESTS

### **BNSF DATA REQUEST NO. 31:**

Please identify each property served by Husch and Husch Fertilizer and Chemicals, as referenced at page 1:22-23 of the prefiled testimony of Ed Boob, within a ten (10) mile radius of either the North Stevens Road Crossing or the Barnhart Road Crossing. For purposes of this data request the term "identify" shall mean to state the name of the customer, the address of the property being serviced, the parcel number of the property being serviced, the location of each point of ingress and egress for the property being serviced, and the number of deliveries made in the past five (5) years to each property being serviced.

### **ANSWER TO DATA REQUEST NO. 31:**

Objection. Petitioner seeks information from a non-party. The data request is improperly directed to respondent Yakima County. See WAC 480-07-400(c)(iii). The information sought is neither known nor maintained by Yakima County. The information is known only to non-party Husch and Husch Fertilizer and Chemicals, which may consider the information sought to be propriety or confidential. Yakima County has no unique access to this information. To the extent Husch and Husch is willing to release this information, it is equally available to petitioner. Petitioner is simply trying to shift the inconvenience and expense of investigating its case to Yakima County. The County should not bear the inconvenience or expense of trying to obtain this information from a non-party on behalf of petitioner. WAC 480-07-400(3).

Date prepared: 3/23/15

Preparers: Quinn N. Plant

Witnesses with knowledge about this response: Quinn N. Plant, Kent McHenry

### **BNSF DATA REQUEST NO. 32:**

Please identify each property served by Simplot Soil Builders, as referenced at page 1:23-24 of the prefiled testimony of Dave Trautman, within a ten (10) mile radius of either the North Stevens Road Crossing or the Barnhart Road Crossing. For purposes of this data request the term "identify" shall mean to state the name of the customer, the address of the property being serviced, the parcel number of the property being serviced, the location of each point of ingress and egress for the property being serviced, and the number of deliveries made in the past five (5) years to each property being serviced.

### **ANSWER TO DATA REQUEST NO. 32:**

Objection. Petitioner seeks information from a non-party. The data request is improperly directed to respondent Yakima County. See WAC 480-07-400(c)(iii). The information sought is neither known nor maintained by Yakima County. The information is known

Docket No. TR-140382 and TR 140383  
BNSF's Second Data Requests to Yakima County  
March 27, 2015  
Page 4

only to non-party Simplot Soil Builders, which may consider the information sought to be proprietary or confidential. Yakima County has no unique access to this information. To the extent Simplot is willing to release this information, it is equally available to petitioner. Yakima County should not bear the inconvenience or expense of trying to obtain this information from a non-party on behalf of petitioner. WAC 480-07-400(3).

Date prepared: 3/23/15

Preparers: Quinn N. Plant

Witnesses with knowledge about this response: Quinn N. Plant, Kent McHenry

**BNSF DATA REQUEST NO. 33:**

Please identify all land owned, leased, or farmed by each of the following individuals or entities within a twenty (20) mile radius of either the North Stevens Road Crossing or the Barnhart Road Crossing:

- (a) Steve Bangs;
- (b) D & S Farms;
- (c) Andy Curfman;
- (d) T & K Farms;
- (e) Curtis Parrish;
- (f) SP Farms and Ranch;
- (g) Philip Sealock;
- (h) Allen Zecchino;
- (i) Zecchino Farms.

For purposes of this data request the term "identify" shall mean to state the address(es) of the property or properties, the parcel number(s) of the property or properties, the owner(s) of the property or properties, the lessee(s) of the property or properties (if any), the total size of the property or properties, and the location of each point of ingress and egress for the property or properties.

**ANSWER TO DATA REQUEST NO. 33:**

Objection. Petitioner seeks information from non-parties. The data request is improperly directed to respondent Yakima County. See WAC 480-07-400(c)(iii). The information sought is neither known nor maintained by Yakima County. The information is known only to the individual and entities identified in the data request. Yakima County has no unique access to this information. It is equally available to petitioner. Yakima County should not bear the inconvenience or expense of trying to obtain this information from non-parties on behalf of petitioner. WAC 480-07-400(3).

Date prepared: 3/23/15

Preparers: Quinn N. Plant

Docket No. TR-140382 and TR 140383  
BNSF's Second Data Requests to Yakima County  
March 27, 2015  
Page 5

Witnesses with knowledge about this response: Quinn N. Plant, Kent McHenry

**BNSF DATA REQUEST NO. 34:**

Please identify each individual or entity known to you, other than those identified in Data Request No. 31, who or which owns, leases, and/or farms land on both the north side of the BNSF right of way and the south side of the BNSF right of way, between Satus Longshore Road and N. Meyers Road. For purposes of this data request the term "identify" shall mean to state the address(es) of the property or properties, the parcel number(s) of the property or properties, the owner(s) of the property or properties, the lessee of the property or properties (if any), the total size(s) of the property or properties, and the location of each point of ingress and egress for the property or properties.

**ANSWER TO DATA REQUEST NO. 34:**

Objection. The request is vague with respect to "Satus Longshore Road." It is vague and overbroad in geographic scope. The request improperly seeks information from third parties that is equally available to petitioner. Yakima County should not bear the inconvenience or expense of trying to obtain this information from non-parties on behalf of petitioner. WAC 480-07-400(3).

Notwithstanding said objection, Yakima County has no responsive documents or information with respect to land north and south of the BNSF line under tribal ownership. Yakima County has information relating to ownership, size and address of non-tribal land within these parameters. Yakima County has no unique knowledge of how such land is used in any given year, the lessor or lessee of such land, or the location of ingress and egress points. Such information is equally available to BNSF.

Some information responsive to the request was previously produced to petitioner in the pre-filed testimony of those individuals identified in Data Request No. 33.

Please find on the enclosed CD, subfile Data Request No. 34, a parcel overlay depicting data of Yakima County responsive to this data request.

Date prepared: 3/23/15

Preparers: Quinn N. Plant, Michael Martian, Director, Yakima County GIS

Witnesses with knowledge about this response: Quinn N. Plant, Michael Martian.

**BNSF DATA REQUEST NO. 35:**

Please produce all traffic data for SR 22 and South Track Road between Satus Longshore Road and N. Meyers Road.

**ANSWER TO DATA REQUEST NO. 35:**

Docket No. TR-140382 and TR 140383  
BNSF's Second Data Requests to Yakima County  
March 27, 2015  
Page 6

Objection. The request is vague with respect to "Satus Longshore Road." The request is also vague as to the term "traffic data." The request is overbroad because Yakima County has decades' worth of traffic data, much of which is neither relevant nor likely to lead to the discovery of relevant information.

Notwithstanding said objection, the most recent set of traffic counts and speed statistics compiled by Yakima County for SR 22 and South Track Road in the vicinity of the crossings are provided on the enclosed CD, subfolder Data Request No. 35, as are additional documents pertaining to traffic on SR 22 obtained from the Washington State Department of Transportation.

Date prepared: 3/23/15  
Preparers: Quinn N. Plant; John Stanton, Engineering Technician-Traffic, Yakima County Public Services  
Witnesses with knowledge about this response: Quinn N. Plant, John Stanton

**BNSF DATA REQUEST NO. 36:**

Please produce all documents relating to visibility, site distance and/or traffic at each of the railroad crossings referenced in the prefiled testimony of Kent McHenry, including but not limited to traffic counts and all photos, videos, and diagrams reflecting such crossings.

**ANSWER TO DATA REQUEST NO. 36:**

Objection. The data request seeks information covered by the attorney work product doctrine. Such information will not be produced. The request is also vague and overbroad in terms of scope.

Notwithstanding said objection, some of this information was provided in response to Data Request No. 2 of BNSF's first Data Request to Yakima County. Additional records are provided on the enclosed CD, subfolder Data Request No. 36.

Date prepared: 3/23/15  
Preparers: Quinn N. Plant, Kent McHenry, John Stanton  
Witnesses with knowledge about this response: Quinn N. Plant, Kent McHenry, John Stanton

**BNSF DATA REQUEST NO. 37:**

Please produce all documents constituting or relating to communications between the County, on the one part, and any other person, on the other part, in the past three (3) years, regarding the petitions, the North Stevens Road Crossing, the Barnhart Road

Docket No. TR-140382 and TR 140383  
BNSF's Second Data Requests to Yakima County  
March 27, 2015  
Page 7

Crossing, and/or the railroad crossings adjacent to the North Stevens Road Crossing and/or the Barnhart Road Crossing.

**ANSWER TO DATA REQUEST NO. 37:**

Objection to the extent the request seeks records covered by the attorney-client privilege.

Notwithstanding said objection, petitioners have been copied on most correspondence between the County and the WUTC and such records will not be re-produced. All correspondence between the County and WUTC that petitioners were not copied on is provided on the enclosed CD, subfolder entitled Data Request No. 37.

Additional responsive records are provided on the enclosed CD, subfolder entitled Data Request No. 37, as well as in response to Data Request Nos. 38 and 40.

Date prepared: 3/23/15

Preparers: Quinn N. Plant

Witnesses with knowledge about this response: Quinn N. Plant, Kevin Bouchey, John Stanton

**BNSF DATA REQUEST NO. 38:**

Please produce all documents constituting or relating to communications between the County, on the one part, and the Yakama Nation, on the other part, in the past three (3) years, regarding the petitions, the North Stevens Road Crossing, the Barnhart Road Crossing, and/or the railroad crossings adjacent to the North Stevens Road Crossing and/or the Barnhart Road Crossing.

**ANSWER TO DATA REQUEST NO. 38:**

Please see enclosed CD, subfolder Data Request No. 38.

Date prepared: 3/23/15

Preparers: Quinn N. Plant, Kenneth W. Harper

Witnesses with knowledge about this response: Quinn N. Plant, Kenneth W. Harper

**BNSF DATA REQUEST NO. 39:**

Please produce all documents relating to any meeting involving the County or its representatives on the one part, and the Yakima Nation or its representatives on the other part, regarding the Barnhart Rd. or Stevens Rd. crossings and/or petitions for closure of the crossing(s), including but not limited to calendar entries and notes reflecting the content of any such meetings.

**ANSWER TO DATA REQUEST NO. 39:**

None.

Date prepared: 3/23/15

Preparers: Quinn N. Plant

Witnesses with knowledge about this response: Quinn N. Plant, Kent McHenry

**BNSF DATA REQUEST NO. 40:**

Please produce all documents constituting or relating to communications between the County or its representatives on the one part, and any of the individuals who provided prefiled testimony, on the other part, regarding the Barnhart Rd. or Stevens Rd. crossings and/or petitions for closure of the crossing(s), including but not limited to any draft testimony provided to such individuals.

**ANSWER TO DATA REQUEST NO. 40:**

Objection. The data request seeks information covered by the attorney work product doctrine. Such information will not be produced.


Without waiving said objection, please see enclosed CD, subfolder Data Request No. 40.

Date prepared: 3/23/15

Preparers: Quinn N. Plant

Witnesses with knowledge about this response: Quinn N. Plant, Kent McHenry

DATED THIS 27<sup>th</sup> day of March, 2015.

  
\_\_\_\_\_  
KENNETH W. HARPER  
WSBA #25578  
Menke Jackson Beyer, LLP  
Attorneys for Yakima County

Montgomery Scarp, PLLC



Docket No. TR-140382 and TR 140383  
BNSF's Second Data Requests to Yakima County  
March 27, 2015  
Page 9

Exhibit No. \_\_\_\_\_ KM \_\_\_\_\_

---

Bradley Scarp, WSBA No. 21453  
Attorney for BNSF Railway Company

Certificate of Service

I hereby certify that I have this day served this document upon all parties of record in this proceeding, via Electronic Mail and U.S. Mail.

Dated this 3<sup>rd</sup> day of March, 2015.

---

Lisa Miller, Paralegal

Docket No. TR-140382 and TR 140383  
BNSF's Second Data Requests to Yakima County  
March 27, 2015  
Page 10

CERTIFICATE OF SERVICE

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Menke Jackson Beyer, LLP, whose address is 807 North 39<sup>th</sup> Avenue, Yakima, Washington, 98902.

I hereby certify that true and complete copies have been sent via U.S. Mail, First Class (With CD), and electronic mail (No CD) to the following interested parties:

Mr. Bradley Scarp  
Attorney at Law  
Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle WA 98101

Mr. Ethan Jones  
Associate Attorney  
Confederated Tribes & Bands of the Yakama Nation  
P.O. Box 151  
Fort Road  
Toppenish WA 98948

Mr. R. Joseph Sexton  
Attorney at Law  
Galanda Broadman, PLLC  
8606 35th Avenue NE, Suite L1  
P.O. Box 15146  
Seattle WA 98115

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct.

DATED THIS 27<sup>th</sup> day of March, 2015.

  
KATHY S. LYCZEWSKI