

1
2 STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

3
4 BNSF RAILWAY COMPANY,

5 Petitioner

6 v.

7
8 YAKIMA COUNTY,

9 Respondent

DOCKET TR-140382 and
DOCKET TR-140383

**YAKAMA NATION'S MOTION FOR
LEAVE TO FILE AN AMICUS
CURIAE BRIEF**

10
11 I. MOTION

12 Without waiving sovereign immunity or jurisdiction, the Confederated Tribes and
13 Bands of the Yakama Nation ("Yakama Nation") by and through its attorneys, Julio Carranza,
14 lead attorney for the Yakama Nation Office of Legal Counsel, and Ethan Jones, associate
15 attorney for the Yakama Nation Office of Legal Counsel, respectfully moves for leave to file
16 an amicus curiae brief in opposition to Burlington Northern Santa Fe Railway Company's
17 ("BNSF") petitions to close the railroad crossings at N. Stevens Rd. and Barnhart Rd. because
18 the Yakama Nation has significant interests in the proposed closures that will be impaired
19 and/or impeded by the disposition of BNSF Railway Company's petitions. Therefore, the
Yakama Nation requests that the State of Washington Utilities and Transportation Commission
grant this Motion and permit the Yakama Nation to file an amicus curiae brief in this matter.
To the extent that this Motion is not granted, the Yakama Nation reserves the right to intervene

1 as a matter of right in this dispute. In support of this Motion, the Yakama Nation submits the
2 following:

3 II. FACTUAL BACKGROUND

4 1. The Confederated Tribes and Bands of the Yakama Nation is a sovereign Indian
5 tribe pursuant to its inherent sovereignty as recognized by the United States in the Treaty with
6 the Yakamas of 1855 ("Treaty of 1855"). 12 Stat. 951.

7 2. In the Treaty of 1855, the Yakama Nation reserved the right to the exclusive use
8 and benefit of its more than 1.3 million-acre reservation, which is principally located within
9 Yakima County and Klickitat County in the State of Washington.

10 3. The lands reserved in the Treaty of 1855 include some of the most pristine
11 timberlands, rangelands, and agricultural lands in the State of Washington. The multiple rivers
12 running through the Yakama Reservation offer healthy fish runs, and pristine water that has
13 sustained the Yakama People since time immemorial.

14 4. The Yakama Nation's access, use, and enjoyment of its lands and natural
15 resources are vital to the continued vitality of its religions and its culture, which are essential to
16 the health and welfare of the Yakama People.

17 5. The Burlington Northern Santa Fe Railway Company ("BNSF") operates a
18 railroad line through the Yakama Reservation, which connects the coal mines in Montana with
19 coal exporters on the West Coast. BNSF's empty coal trains spread coal dust throughout the
railroad corridor on the Yakama Reservation.

6. On March 6, 2014, BNSF petitioned the State of Washington Utilities and
Transportation Commission ("UTC") to close highway-rail grade crossings at N. Stevens Road
and Barnhart Road on the Yakama Reservation.

7. On March 24, 2014, the Yakama Nation Tribal Council sent Mr. David Danner,
Executive Director and Secretary of UTC, a letter objecting to BNSF's petitions for closure of
the N. Stevens Road and Barnhart Road highway-rail grade crossings. The letter states that the
closures would "result in substantial impacts to the social, health and economic welfare of
tribal members."

1 8. The N. Stevens Road and Barnhart Road railroad crossings provide Yakama
2 Members with access to their homes and trust allotments, as well as the quickest route for
3 emergency first responders to access the area.

4 9. The Barnhart Road railroad crossing provides Yakama Members with access to
5 the Satus Longhouse, which serves as an important cultural venue for the Yakama People.

6 10. The Barnhart Road railroad crossing is situated along a traditional Yakama
7 Nation ceremonial and funerary procession route, which is still used to this day.

8 III. YAKAMA NATION'S POSITION STATEMENT

9 1. The Yakama Nation and Yakama People should be afforded the opportunity to
10 submit an amicus curiae brief in this administrative dispute because the Yakama Nation has
11 substantial sovereign and cultural interests that will be affected by the disposition of BNSF's
12 petitions, and that can only be properly represented by the Yakama Nation.

13 a. Yakama Nation's Sovereign Interests

14 2. First, the Yakama Nation has a substantial interest in asserting its inherent
15 sovereignty and jurisdiction over matters within the external boundaries of the Yakama
16 Reservation that affect the health, welfare, and economic stability of the Yakama Nation and its
17 Members.

18 3. As an exercise of its sovereignty, the Yakama Nation provides emergency
19 services to its Members; the provision of which will be negatively impacted by the proposed
20 railroad crossing closures. The Yakama Nation should be provided the opportunity to assert
21 this sovereign interest before this Administrative Body.

22 4. Further, the Yakama Nation is concerned that BNSF is attempting to close
23 railroad crossings to speed up its trains, and increase train traffic through the Yakama
24 Reservation. Increased train traffic, featuring 'empty' coal cars spreading coal dust throughout
25 the railroad corridor, will further negatively impact the air, land, and water in the immediate
26 vicinity of the railroad, which will damage the health of the Yakama Members living along the
27 railroad. The Yakama Nation should be given the opportunity to advocate for its sovereign
28 interest in the health and well-being of its People.

1 5. In addition, closing these crossings will injure the economic well-being of
2 Yakama Members and the Yakama Nation by limiting tribal farmers' and leaseholders
3 immediate access to their agricultural lands. The Yakama Nation should be given the
4 opportunity to assert the economic interests of its Members.

5 6. The Yakama Nation should also be afforded the opportunity to submit an
6 amicus curiae brief in this dispute in due respect for the Yakama Nation's sovereignty, and
7 sovereign authority over the lands and crossings at issue in this dispute. The United States
8 recognized the inherent sovereignty of the Yakama Nation in the Treaty of 1855, and the State
9 of Washington made an effort to honor the Yakama Nation's sovereignty by entering the
10 Centennial and Millennial Accords. To properly honor the government-to-government
11 relationship between the Yakama Nation and the State of Washington as discussed in the
12 Accords, the State of Washington should allow the Yakama Nation to be heard on this matter.

13 7. The Yakama Nation is the only properly situated party with the knowledge and
14 authority to assert the Yakama Nation's aforementioned sovereign interests.

15 b. Yakama Nation's Cultural Interests

16 8. Second, the Yakama Nation has a substantial interest in asserting its cultural
17 interests that will be affected by the disposition of this dispute.

18 9. The Yakama Nation has a longhouse in the immediate vicinity of the proposed
19 Barnhart Road closure where traditional ceremonies often take place. The Barnhart Road
20 railroad crossing is regularly used by Yakama Members as a direct route from the Longhouse
21 to nearby culturally significant sites that play an integral role in those traditional and funerary
22 ceremonies. The Yakama Nation should be afforded the opportunity to fully assert its cultural
23 interests in maintaining open access via the Barnhart Road railroad crossing.

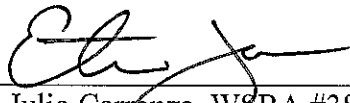
24 10. The Yakama Nation is the only properly situated party with the knowledge and
25 authority to assert the Yakama Nation's aforementioned cultural interests.

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IV. REQUEST FOR RELIEF

For the foregoing reasons, the Yakama Nation respectfully requests that this administrative body grant the Yakama Nation’s Motion for Leave to File an Amicus Curiae Brief. To the extent that this Motion is denied, the Yakama Nation reserves the right to intervene in this hearing as a matter of right.

Dated this 20th day of May, 2014.



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1 CERTIFICATE OF SERVICE

2 I, Kayonnie Badonie, declare as follows:

3 1. I am now and at all times herein mentioned a legal and permanent resident of
4 the United States and the State of Washington, over the age of eighteen years old, not a party to
5 the above titled action, and competent to testify as a witness.

6 2. I am employed with the Yakama Nation Office of Legal Counsel, P.O. Box 151,
7 401 Fort Road, Toppenish, WA 98948.

8 3. On May 20, 2014 I electronically filed and filed via USPS First Class Mail the
9 foregoing document with the State of Washington Utilities and Transportation Commission,
10 and served the documents electronically and via USPS First Class Mail upon:

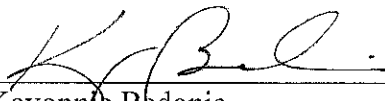
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20 The foregoing statement is made under penalty of perjury and under the laws of the
21 Yakama Nation and is true and correct.

22 Signed at Toppenish, Washington this 20th day of May, 2014.

23 
24 Kayonnie Badonie