

To: THE CONFEDERATED TRIBES AND BANDS OF THE
YAKAMA NATION (YAKAMA NATION)

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 specified in the data request, 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 a 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.

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

GENERAL OBJECTIONS

The following responses are subject to the specific and general objections offered to these second data requests by letter dated March 13, 2015; said objections are incorporated as if fully set forth herein to the extent not set forth below.

BNSF DATA REQUEST NO. 35:

Please identify 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. For purposes of this data request, the term “identify” shall mean to state the name of the decedent, the date, the route (if available), and the approximate number of vehicles in the procession (if available).

ANSWER TO 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, or traditions; or to the extent the information sought in this data request is not in the possession, knowledge, or control of the Yakama Nation. The inquiries with respect to funerals touch on sacred services that are traditionally and culturally not subject to disclosure or public discussion.

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. Finally, BNSF has had ample opportunity to obtain the information sought from the sources of said information (i.e., members of the community that are not agents or employees of the Yakama Nation).

Notwithstanding the foregoing, witnesses with experience and recollection relevant to this data request estimate that over the past five years, funerals at the Satus Longhouse have occurred dozens of times and are attended by at least 100 to in excess of 300 people with services extending through the night. The traditional funeral procession route for these funerals between the Satus Longhouse and the cemetery crosses the Barnhart Road Crossing.

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: Al Pinkham, Roy Dick, Johnson Meninick

BNSF DATA REQUEST NO. 36:

Please identify each individual who you claim would be negatively

impacted in accessing their property as a result of the proposed closure of the North Stevens Road Crossing, as referenced at page 6:23 to 7:2 of Al Pinkham's prepared testimony.

ANSWER TO 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 based upon its knowledge, experience, and work in and around the relevant areas, 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.

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: Al Pinkham

BNSF DATA REQUEST NO. 37:

Please identify each member for which the Barnhart Road Crossing provides the "easiest access" to the Satus Longhouse, as referenced at page 3:10-11 of the prefiled testimony of Roy Dick.

ANSWER TO 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. 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. In addition, Yakama Nation witnesses with knowledge and information relevant to this data request identify the ten primary families who regularly attend services at the Satus Longhouse (Selam, Walsey, Totus, Begay, Onepenny, Meninick, Lucei, Watlamet, Barney, and Brown), their extended family members, and the additional tribal members and visitors who regularly attend the longhouse for services, periodic sacred ceremonies, and funerals, and use the Barnhart Road railroad crossing for these cultural and religious events at the longhouse, in addition to the residents near the longhouse who utilize the Barnhart Road railroad crossing, including, among others, the Zechino family, the Harris family, the Schell family, and the Brown family.

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: Roy Dick, Johnson Meninick

BNSF DATA REQUEST NO. 38:

Please produce all documents relating to the “traditional funeral route” referenced at page 3:14-16 of the prefiled testimony of Roy Dick.

ANSWER TO 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, sacred, and culturally significant matter involving the funeral services and associated religious practices of Yakama members and other Native Americans. Notwithstanding the foregoing, documents responsive to this data request are not in the possession, knowledge, or control of the Yakama Nation.

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: Roy Dick, Johnson Meninick

BNSF DATA REQUEST NO. 39:

Please identify each time alternative routes to the Satus Longhouse have flooded in the past five (5) years, as referenced at page 3:24 of the prefiled testimony of Roy Dick. For purposes of this data request, the term “identify” shall mean to state the date of any flooding, which portions of such “alternative routes” were impassible by vehicle, and the duration for which any such portions of road were impassible by vehicle.

ANSWER TO 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 witnesses with information relevant to this data request understand that the Federal Emergency Management Agency and related state emergency agencies may have information responsive to this request available through public information requests.

Furthermore, Mr. Dick recalls two instances of flooding since 1996. Mr. Dick recalls that the 1996 flooding was major and caused closures of alternative routes for access to the Satus Longhouse for approximately two weeks. Mr. Dick does not recall specifically when the second instance of flooding occurred, but he recalls that alternative routes to the Satus Longhouse were closed for approximately two days.

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: Roy Dick

BNSF DATA REQUEST NO. 40:

Please produce all documents relating to any flooding of alternative routes to the Satus Longhouse, as referenced at page 3:24 of the prefiled testimony of Roy Dick, in the past five (5) years.

ANSWER TO DATA REQUEST NO. 40:

See objections and response provided with respect to BNSF DATA REQUEST NO. 39 above. Notwithstanding the foregoing, documents responsive to this data request are not in the possession, knowledge, or control of the Yakama Nation

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: N/A

BNSF DATA REQUEST NO. 41:

Please identify each family to whom you assert the Barnhart Road Crossing is “vital,” as stated at page 4:6-9 of the prefiled testimony of Roy Dick. For purposes of this data request, the term “identify” shall mean to state each family member’s full name, present home address, present business address, present home telephone number, and present business telephone number, and factual basis for your assertion that the crossing is “vital” to that person.

ANSWER TO 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, see individuals and families identified in responses to BNSF Data Request No. 37. The factual basis for Mr. Dick’s testimony includes his knowledge and experience regarding the specific community and those individuals who use the Barnhart Road Railroad Crossing to access their communities, homes, and place of worship. Efficient access to homes, communities, and place of worship, including but not limited to traditional funerary routes, including access by emergency response vehicles, is likely of vital import to those individuals who will be negatively

impacted by the proposed closure of the Barnhart Road Crossing.

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: Roy Dick, Johnson Meninick

BNSF DATA REQUEST NO. 42:

Please identify the occupant and/or lessor of the following allotments referenced in the Yakama Nation's response to Data Request No. 34: 326, 348, 349, 352, 353, 354, 364, 365, 366, 367, 368, 369, 370, 379, 787, 789.5, 1709, 1710, 2863, T-380, T-789.5, T-1711, 722, 723, and 724.

ANSWER TO 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.

Date prepared: 4/16/15

Preparers: Joe Sexton

Witness with knowledge about this response: N/A

BNSF DATA REQUEST NO. 43:

Please identify the factual basis and all facts relied upon by Yakama Nation in making the assertion in response to Data Request 34 that “closing the N. Stevens Road and Barnhart Road railroad crossings may inhibit leaseholders’ access to their leased agricultural lands, decreasing value of those leasehold interests.”

ANSWER TO 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, the factual basis for Yakama Nation’s response to the cited data request is based on the factual information available to the Yakama Nation and its institutional knowledge of the use of the subject railroad crossings and the surrounding lands.

Date prepared: 4/14/15

Preparers: Joe Sexton

Witness with knowledge about this response: Yakama Staff

BNSF DATA REQUEST NO. 44:

Please produce all documents regarding the impact of the potential closure of the North Stevens Road Crossing and/or Barnhart Road Crossing on the value of leasehold interests referenced in Yakama

Nation's response to Data Request No. 34, including but not limited to documents constituting or relating to communications regarding any such impact.

ANSWER TO DATA REQUEST NO. 44:

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

Date prepared: 4/16/15

Preparers: Joe Sexton

Witness with knowledge about this response: N/A

BNSF DATA REQUEST NO. 45:

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

ANSWER TO DATA REQUEST NO. 45:

See documents furnished in response to BNSF's Second Data Requests to Yakima County, at Data Request No. 38 to Yakima County. Those documents constitute the documents responsive to Data Request No. 45.

Date prepared: 4/16/15

Preparers: Joe Sexton

Witness with knowledge about this response: N/A

BNSF DATA REQUEST NO. 46:

Please produce all documents regarding any meeting between the Yakama Nation, on the one part, and the County on the other part, regarding the petitions, including but not limited to calendar entries

and notes reflecting the content of any such meetings.

ANSWER TO DATA REQUEST NO. 46:

None.

Date prepared: 4/16/15

Preparers: Joe Sexton

Witness with knowledge about this response: N/A

BNSF DATA REQUEST NO. 47:

Please produce all documents constituting or relating to communications between the Yakama Nation or their representatives on the one part, and any of the individuals who provided prefiled testimony, on the other part, regarding the petitions to close the Barnhart Rd. Or Stevens Rd. Crossings, including but not limited to any draft testimony provided to such individuals.

ANSWER TO 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. Such information will not be provided. 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.

Date prepared: 4/16/15

Preparers: Joe Sexton

Witness with knowledge about this response: N/A

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DATED THIS 17th day of April, 2015



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