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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
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FOR IMMEDIATE PRESS RELEASE
BY THE SWINOMISH INDIAN TRIBAL COMMUNITY
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Swinomish Tribe Welcomes Federal Appeals Court Ruling in Lawsuit Against BNSF

Fidalgo Island – The Swinomish Indian Tribal Community today welcomed a decision from the United States Court of Appeals for the Ninth Circuit in the Tribe’s lawsuit against BNSF Railway (BNSF).

In the ruling issued today, the Court of Appeals found that the Tribe’s lawsuit against BNSF is not precluded by the Interstate Commerce Commission Termination Act and that the lawsuit to enforce the Tribe’s right-of-way easement agreement with BNSF will proceed.

The tribe filed suit against BNSF in April of 2015 for violating the terms of an easement agreement allowing trains to cross its Reservation in Skagit County. The United States District Court in Seattle previously ruled that there was no dispute that BNSF had breached the easement when “BNSF neither apprised the Tribe of its cargo nor obtained the Tribes written agreement to an increase in the number of trains and the number of cars in those trains.”

In its decision today, the Court of Appeals concluded:

We hold that the Interstate Commerce Commission Termination Act does not repeal the Indian Right of Way Act and does not defeat the Tribe’s right to enforce conditions in a right-of-way easement agreement issued pursuant to the Right of Way Act. We hold further that the ICCTA does not abrogate the Treaty of Point Elliott and the Tribe’s treaty-based federal common law right to exclude and condition a third-party’s presence on, and use of, Reservation lands. Finally, we hold that the Tribe has the right to pursue injunctive relief to enforce the terms of the Easement Agreement.

Brian Cladoosby, Chairman of the Swinomish Indian Tribal Community, stated “The Tribe is very pleased with today’s decision of the Ninth Circuit Court of Appeals affirming Judge Lasnik’s rulings in our lawsuit with BNSF. We are thankful that the Court of Appeals has upheld the Tribe’s right to seek equitable enforcement of the terms of its easement agreement with BNSF, which includes limitations on the number of trains and cars that can cross our Reservation every day.”

Chairman Cladoosby continued, “The Tribe takes its agreements very seriously, and we expect them to be honored. This includes rights reserved in the Treaty of Point Elliott as well as the conditions in easements granted to third parties to cross Swinomish Tribal lands.”

Train tracks running across the northern edge of the Reservation were laid in the late 1800’s, without consent from the Swinomish or federal government. In 1991, the Tribe and BNSF signed an agreement settling a lawsuit filed by the Tribe and the United States in 1976 for nearly a century of trespass, and granting BNSF an easement but with important conditions: only one train of 25 railcars would cross the Reservation in each direction daily, and BNSF would regularly update the Tribe on the type of cargo. In return, the Tribe agreed not to “arbitrarily withhold permission” if there should be a future BNSF request to increase the number of trains or cars.

In late 2012, the Tribe learned from media reports that “unit trains” of 100 railcars or more were beginning to cross the Reservation. In April of 2015, BNSF was reportedly running six 100-car “unit trains” per week across the Reservation, more than four times as many railcars daily as permitted by the easement. The tracks are adjacent to the Tribe’s economic center, including a hotel and casino and other facilities. The intended development of this economic center was one of the primary reasons for the limitation of the number of trains and cars incorporated into the easement.

Chairman Cladoosby concluded, “We look forward to proceeding to the trial of this case to protect our rights under the BNSF easement.”

The Swinomish Indian Tribal Community is a federally recognized Indian Tribe with more than 1000 members. Swinomish is a legal successor to signatories of the 1855 Treaty of Point Elliott. Its Reservation is located 65 miles North of Seattle, Washington on Fidalgo Island.

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