

SPOKANE COUNTY
HAMILTON ST
BRIDGE SITE
SIT 6.3

WITHERSPOON, KELLEY, DAVENPORT & TOOLE
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

1100 U.S. BANK BUILDING
422 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0300
Telephone: (509) 624-5265
Telecopier: (509) 458-2728

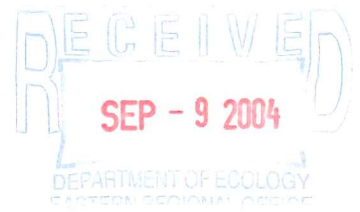
COEUR D'ALENE OFFICE
THE SPOKESMAN REVIEW BUILDING
608 NORTHWEST BOULEVARD, SUITE 401
COEUR D'ALENE, IDAHO 83814-2146
(208) 667-4000

ROBERT L. MAGNUSON
NED M. BARNES
WILLIAM D. SYMMES**
ROBERT H. LAMP
K. THOMAS CONNOLLY
THOMAS D. COCHRAN
DUANE M. SWINTON
JOSEPH H. WESSMAN
JEFFREY L. SUPINGER*
DONALD J. LUKES+‡
LESLIE R. WEATHERHEAD*‡
MICHAEL D. CURRIN
BRIAN T. REKOFKE*
EDWARD J. ANSON**
R. MAX ETTER, JR.*
STANLEY R. SCHULTZ
MICHAEL F. NIENSTEDT*
JOHN M. RILEY III
DENNIS M. DAVIS**
F.J. DILLANTY, JR.
DANIEL E. FINNEY
MARY R. GIANNINI*‡
TIMOTHY M. LAWLOR
CLAUDE F. BAILEY
WILLIAM M. SYMMES*
ROBERT S. MAGNUSON
MARK A. ELLINGSEN*
STANLEY M. SCHWARTZ*
DAVID M. KNUTSON
JODY M. McCORMICK
SHELLEY N. RIPLEY
JOEL P. HAZEL*
CHRISTOPHER G. VARALLO*
KIMBERLY A. KAMEL*
RYAN M. BEAUDOIN*
LARA L. HEMINGWAY
RICHARD A. REPP*
ROBERT J. CALDWELL*
BENJAMIN S. COLEMAN
STACY A. BJORDAHL
D. TOBY McLAUGHLIN
RYAN K. JENSEN
J. ROBERT HOSKINSON, JR. **
TRACY N. LeROY->
STEVEN O. ANDERSON

OF COUNSEL
Wm. A. Davenport
John E. Heath, Jr.
Allan H. Toole
Karl K. Kroegel

*Also admitted in Idaho
+Also admitted in New York
** Also admitted in California
++Admitted in Idaho only
‡Also admitted in Oregon
-Also admitted in Montana
>> Admitted in Illinois only

September 9, 2004



Dr. Teresita Bala
Department of Ecology
Toxic Cleanup Program
4601 North Monroe
Spokane, WA 99205-1295

VIA HAND DELIVERY

Re: *Hamilton Street Bridge Cleanup Site; Spokane River Properties, Limited*

Dear Dr. Bala:

Enclosed please find a conformed copy of the original recorded Restrictive Covenant in the above referenced matter.

Sincerely yours,

WITHERSPOON, KELLEY, DAVENPORT
& TOOLE, P.S.

By *Jennifer Tolliver*
Jennifer Tolliver, Legal Assistant to
Stanley R. Schultz

Jt
Enclosure

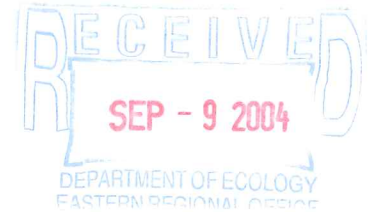
WHEN RECORDED, RETURN TO:

WITHERSPOON, KELLEY, DAVENPORT & TOOLE P.S.
Attn: Stanley R. Schultz
422 West Riverside, Suite 1100
Spokane, Washington 99201

COPY
ORIGINAL FILED OR RECORDED

SEP - 9 2004

COUNTY AUDITOR
SPOKANE COUNTY WA



Document Title: Restrictive Covenant

Grantor: Washington State Department of Ecology

Grantee: Spokane River Properties, Limited

Legal Description: Ptn of SE 1/4 Sec 17, Tshp 25N, Range 43 EWM;
and Ptn of Tracts A and B, Block 19 DENNIS AND
BRADLEY'S ADDITION.

**Assessor's Property
Tax Parcel/Account No.:** 17534.0575; 17534.0554(formerly 0541, 0542)
17534.0006; 17534.0506; 71534.0516

RESTRICTIVE COVENANT

The property that is the subject of this Restrictive Covenant is the subject of a remedial action under Chapter 70.105D.RCW. The work that will be done to clean up the property and conduct long-term operation and maintenance, hereafter the "Cleanup Action", is described in Consent Decree No. 02205445-0 and in attachments to the Consent Decree and in documents referenced in the Consent Decree. This Restrictive Covenant is required by the Washington State Department of Ecology (Ecology) under Ecology's rule WAC 173-340-440 because the Cleanup Action on the Site will result in residual soil and ground water concentrations of Total Petroleum Hydrocarbons (TPH), Polycyclic Aromatic Hydrocarbons (PAHs), Carbazole, Cyanide, Arsenic, Barium, Lead, and Selenium which exceed Method A or Method B residential cleanup levels.

The undersigned, Spokane River Properties, Limited, is the fee owner of real property, hereafter "the Property", in Spokane County, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and incorporated herein by reference.

Spokane River Properties, Limited, makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property, hereafter "Owner".

Section 1. No groundwater may be taken for domestic, commercial, industrial, or any other purposes from the Property unless the groundwater removal is part of monitoring activities associated with an Ecology approved compliance monitoring plan. No production well will be installed within the Property.

Section 2. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil or ground water that was contained as part of the Cleanup Action, or create a new exposure pathway, is prohibited without prior

written approval by the Department of Ecology. In the case of an emergency, Ecology shall be contacted within 48 hours of the incident.

Specifically, excavation of soils to depths greater than two (2) feet on the Property is prohibited, unless approved in writing by Ecology. All contaminated soils and/or ground water to be generated must be treated or disposed of according to state, federal, and local regulations. Workers conducting the approved excavations must use appropriate personal protective equipment as required by the Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA). Excavations up to 2 feet are allowed without approval by Ecology

Section 3. Any activity on the Property that may interfere with the integrity of the Cleanup Action and continued protection of human health and the environment is prohibited, *unless approved by Ecology*. Examples of activities that are prohibited include:

- a. Activities that would disturb the cap or cover of the contaminated soils. Examples of such activities include but are not limited to the following: drilling; driving or boring to install pilings; placement of objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability; piercing the surface with a rod, spike, or similar item; and bulldozing or earthwork.
- b. Activities that would disturb or overload the stormwater system.
- c. Excessive application of water for purposes such as irrigation, washing/rinse down pad, etc. Lawn irrigation at agronomic rates is not considered excessive application of water and is allowed.
- d. Use or storage of chemicals (e.g., solvents, detergents or other surfactants, etc.) that would result in the mobilization of contaminants in soils or ground water contained on Site.

Maintenance or construction activities at the Property that are required in the Cleanup Action are allowed.

Section 4. No activity is allowed that may change the hydrogeologic conditions and that would cause the movement of contaminated ground water to areas outside the impacted soil area.

Section 5. Any construction of buildings or other improvements must address and mitigate, as necessary, potential vapor build-up due to the contamination left on Site. OSHA and WISHA requirements on potential vapor build up must be adhered to.

Section 6. The Owner of the Property must provide access and allow authorized persons to conduct ground water monitoring and cover monitoring as required in the Cleanup Action.

Section 7. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner unless the third party buyer agrees to the terms of the Restrictive Covenant.

Section 8. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all *ground* lessees of the restrictions herein on the use of the Property.

Section 9. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. If Ecology, after public notice and comment approves the proposed change, the restrictive covenant shall be amended to reflect the change.

Section 10. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action; to take samples, to inspect Cleanup Actions conducted at the Property, and to inspect records that are related to the Cleanup Action.

Section 11. Per WAC 173-340-440(12), if the condition(s) requiring an institutional control no longer exist on the Property, the Owner may submit a request to Ecology that the Restrictive Covenant or other restrictions be eliminated. The Restrictive Covenant or other restrictions shall be removed, if Ecology, after public notice and opportunity for comment, concurs.

SPOKANE RIVER PROPERTIES, LIMITED

By: Richard E. Brown

Its: Partner

9-7-2004

[DATE SIGNED]

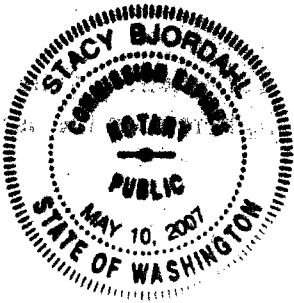
STATE OF WASHINGTON)

COUNTY OF SpoKane)

SS.

On this day, Richard E. Brown, personally appeared before me, known to me to be the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

GIVEN UNDER MY HAND and official seal this 7th day of August, 2001.



Stacy Bjordahl

Notary Public

My commission Expires: 5-10-2007

Title Order No. 94930

EXHIBIT A

That portion of the Southeast Quarter of Section 17, Township 25 North, Range 43 East of the Willamette Meridian, and that portion of Tracts A, B, and Block 19 of DENNIS AND BRADLEY'S ADDITION, as per plat recorded in Volume "A" of Plats, pages 160 and 161, records of Spokane County, and including portion of the river bed of the Spokane River, all described as follows;

BEGINNING at the Southeast corner of Lot 19, of said Block 19;
Thence Southerly along the East line of said Tract B, to the Northerly right of way line of the Northern Pacific Railroad;
Thence Westerly along said right of way line to an intersection with the Southerly right of way line of the Chicago, Milwaukee, and Puget Sound Railway Company, as conveyed by Deed recorded September 21, 1911 in Volume 283 of Deeds, page 360, records of Spokane County;
Thence along said right of way line to a point radial to and Southwesterly of the Southeast corner of that certain property described in Deed recorded November 23, 1909 under Spokane County Auditor's File No. 260838;
Thence Northeasterly to the said Southeasterly corner;
Thence Northwesterly along the East line of said Deed, 42.00 feet to the Southerly right of way line of Superior Street;
Thence Northeasterly along said right of way to the Easterly line of Tract A as deeded and recorded in Document Number 8112280121, records of Spokane County;
Thence Southeasterly, Easterly and Northeasterly along said line to an intersection with the Southwesterly line of that certain property as shown on Record of Survey recorded in Spokane County Auditor's File No. 8108240202, extended Northwesterly;
Thence Southeasterly from said intersection and said extended line and along said Southwesterly line to the Southerly most corner of Lot 9, said Block 19;
Thence Southerly and Southwesterly along the East line of said Block 19 to the Point of Beginning;

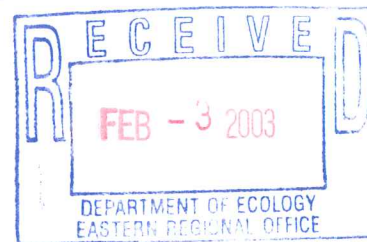
EXCEPT that portion deed to the State of Washington for piers and footings of the James Keele Bridge, recorded in Spokane County Auditor's File No. 8206090066, records of Spokane County;

Situate in the City of Spokane, County of Spokane, State of Washington.

Craig S. Trueblood
craig@prestongates.com

January 30, 2003

Ms. Colleen G. Warren
Assistant Attorney General
Office of the Attorney General
1125 Washington St. SE
P.O. Box 40100
Olympia 98504-0100



Re: Hamilton Street Bridge Site – Institutional Controls

Dear Colleen:

As indicated in my December 20, 2002 letter, BNSF has now executed and recorded a Restrictive Covenant pursuant to Section VI.E. of the Consent Decree for the above site. A copy of the document, with BNSF's signature and the Spokane County Auditor's date-recorded stamp, is enclosed for your records. By copy of this letter and the enclosure, BNSF is notifying Ecology that this portion of the work has been successfully completed. This Covenant will be included in the Institutional Controls Plan required by the Consent Decree.

Please let me know if you or Ecology have any questions.

Very truly yours,

PRESTON GATES & ELLIS LLP

Craig S. Trueblood

cc: Teresita Bala, Ecology - ERO
Bruce Sheppard, BNSF
Russell J. Light, BNSF
Jerry K. Boyd, counsel to Avista
Craig Schwyn, Landau

K:\16065\00054\CSTCST_L20CC

COPY
ORIGINAL FILED OR RECORDED

JAN 29 2003

COUNTY AUDITOR
SPOKANE COUNTY WA

COPY

WHEN RECORDER RETURN TO:

Craig S. Trueblood
Preston|Gates|Ellis, LLP
925 Fourth Ave., Suite 2900
Seattle, WA 98104-1158

RESTRICTIVE COVENANT

Reference No. of Related Documents:

Grantor: The Burlington Northern and Santa Fe Railway Company
P.O. Box 961039
2500 Lou Menke Drive, 3rd Floor
Fort Worth, TX 96131-2828

Grantee: Washington Department of Ecology
4601 North Monroe, Suite 202
Spokane, WA 99205-1295

Abbreviated Legal Description: A portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
all in Section 17, Township 25 North, Range 43 East, W.M, County of Spokane, State of
Washington, described more fully in Attachment A

Assessor's Property Tax Parcel Account Number(s): 35173.1510

RESTRICTIVE COVENANT

The property that is the subject of this Restrictive Covenant has been the subject of remedial action under Chapter 70.105D RCW. The work will be done to clean up the property and conduct long-term operation and maintenance (hereafter the "Cleanup Action") is described in the Consent Decree ("Decree") entered in State of Washington, Department of Ecology v. Avista Corporation and The Burlington Northern and Santa Fe Railway Company, Spokane County Superior Court Cause No. 02205445-0, and in attachments to the Decree and in documents referenced in the Decree. This Restrictive Covenant is required by the Department of Ecology under WAC 173-340-440 because the Cleanup Action on the Site will result in residual soil and ground water concentrations of Total Petroleum Hydrocarbons (TPH), Polycyclic Aromatic Hydrocarbons (PAH), Carbazole, Cyanide, Arsenic, Barium, Lead, and Selenium which exceed Method A or Method B residential cleanup levels.

The undersigned, The Burlington Northern Railroad and Santa Fe Railway Company ("BNSF"), is the fee owner of real property (hereafter "the Property") in the County of Spokane, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and incorporated herein by reference.

BNSF makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1 No groundwater may be taken for domestic, commercial, industrial, or any other purposes from the Property unless the ground water removal is part of monitoring activities associated with an Ecology-approved compliance monitoring plan. No production well will be installed within the Property.

Section 2 The Site shall not be used for residential purposes.

Section 3 Any activity on the Property that results in the release or exposure to the environment of the contaminated soil or groundwater that was contained as part of the Cleanup Action, or that creates a new exposure pathway, is prohibited without prior written approval by the Department of Ecology.

- a. Excavation of contaminated soil is prohibited, unless approved by Ecology, for the following exceptions:

- i. Excavation performed to repair, maintain, service or remove underground utility components, conduits, installations or channels.
 - ii. Drilling, driving, or boring to install pilings for allowable and approved construction.
- b. All contaminated soil and/or ground water to be generated from approved excavation activities must be treated or disposed of according to all state, federal and local regulations.
 - c. Workers conducting approved excavations must use appropriate personal protective equipment as required by the Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA).

Section 4 The Owner of the Property shall adhere to the requirements of the Decree and the Cleanup Action Plan (CAP) issued by the Department of Ecology for the Property. Any activity on the Property that may interfere with the integrity of the Cleanup Action and continued protection of human health and the environment is prohibited. Examples of activities that are prohibited include:

- a. Activities that would disturb the cap or cover of the contaminated soils, such as drilling, digging, placing any objects or using any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, or bulldozing or earthwork.
- b. Activities that would disturb or overload the stormwater system.
- c. Excessive applications of water for purposes such as irrigation, washing/rinse down pad, etc.
- d. Use or storage of chemicals (e.g., solvents, detergents or other surfactants, etc.) that result in the mobilization of contaminants in soils or ground water contained on Site.

This restriction recognizes that maintenance or construction activities at the Property conducted in accordance with the CAP requirements shall not constitute activities that interfere with the Cleanup Action.

Section 5 No activity is allowed that may change the hydrogeologic conditions and cause the movement of contaminated ground water to areas outside the impacted soil area.

Section 6 Any construction over the Site (i.e., buildings and concrete surfaces, pavement, etc.) must address and mitigate, as necessary, potential vapor build-up due to contamination left on Site.

Section 7 The Owner of the Property must give thirty (30) day advance written notice to the Department of Ecology of any conveyance of any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Cleanup Action on the Property.

Section 8 The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions herein on the use of the Property.

Section 9 The Owner must notify and obtain approval from the Department of Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. The Department of Ecology may approve an inconsistent use only after public notice and comment.

Section 10 The Owner shall allow authorized representatives of the Department of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Cleanup Action; to take samples, to inspect Cleanup Actions conducted at the Property, and to inspect records that are related to the Cleanup Action.

Section 11 The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if the Department of Ecology, after public notice and comment, consents in writing.

THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

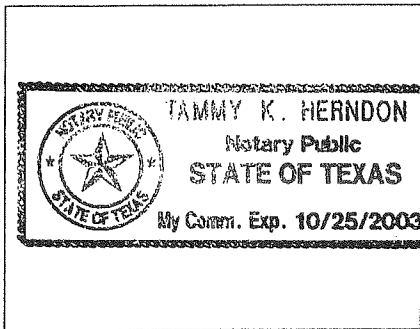
David P. Schneider
David P. Schneider

Dated: 1-21-03

STATE OF Texas)
) ss.
COUNTY OF Tarrant)

I certify that I know or have satisfactory evidence that David P. Schneider is the person who appeared before me, and said person acknowledged that ~~he~~she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Gen. Director Real Estate of The Burlington Northern and Santa Fe Railway Company, a Delaware corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1-21-03



(Use this space for notarial stamp/seal)

Tammy K. Herndon
Notary Public
Print Name Tammy K. Herndon
My commission expires 10-25-03

ATTACHMENT A

That portion of the SW¼ SE¼ SE¼ and the SE¼ SW ¼ SE¼, all in Section 17, Township 25 North, Range 43 East, W.M, County of Spokane, State of Washington, described as follows: Beginning at a point in the south production of the west line of Erie Street distant 60 feet northerly, measured at right angles, from the center line of the most northerly track as constructed on July 15, 1968; thence westerly in a straight line 230 feet to a point distant 40 feet northerly, measured at right angles from said center line; thence westerly parallel with said center line to a point distant 500 feet west, measured at right angles, from said produced street line; thence north parallel with said produced street line to a point distant 200 feet northerly, measured at right angles, from the center line of the main track of The Burlington Northern and Santa Fe's Railway Company's main line as originally constructed; thence easterly parallel with said original center line to said produced street line; thence south along said produced street line to the point of beginning.