

# Skykomish Update



**Karl Dieter Benz - Councilmember - Position # 1**

## **BNSF Railway Gets Steamed Up As Pizza and Sodas Fail to Placate Audience Members**



BNSF Railway's soil contamination tap dance came to an abrupt end during its June 9th Community Centre presentation.



*Scene of the Crime*

BNSF has been promoting what they hoped all would believe are scientific studies prior to finalizing site cleanup plans and gaining court sanctioned ratification.

'Science' melted like ice cream on a hot summer day as questions from the audience made it clear, ten years of scientific mumbo jumbo by BNSF paid consultants could not stand up to even a few simple questions.

BNSF representatives quickly lost patience and tempers as it became clear free pizza and sodas were not enough to lull everyone to sleep while they drive property values into the ground.

BNSF presented four potential cleanup plans that would disrupt the town anywhere from 5 to 30 years.

Even their most ambitious plan fails to actually clean up the contamination and therefore includes implementation of 'Institutional Controls' . . . code words for restrictive covenants on property owner deeds which will last in perpetuity (forever).

These covenants will restrict owners' use of their property and will be recorded onto property legal descriptions with the county assessor, to serve as constructive notice to all future purchasers that the property remains polluted and use is restricted.

BNSF, always careful to downplay this issue, became increasingly agitated as questions focused on how these covenants could dramatically lower already suffering property values on the north side of town.

The railway was also forced to admit under terse questioning, that since the original contamination source would not be successfully cleaned up, it was entirely possible the affected area could be re-

contaminated following its 30 year clean-up effort.

Washington State Department of Ecology (DOE), charged with environmental protection, sat docile and meek as it ran for cover behind its responsibility to protect fish instead of humans.

DOE stated it would not even consider plans from qualified private contractors that could remove all contamination in 120 days, instead of 30 years, even at half the cost of other plans, because such plans do not fit DOE's existing paradigm.

Most audience members sat silently, content to enjoy BNSF pizza and sodas as their property values evaporated before them.



*Our Town Stands at a Major Crossroads*

Our future, destiny and financial health depend upon the will of our politicians and community leaders to choose the right track.

# Let's Negotiate Not Capitulate

BNSF Railway is one of the largest, wealthiest, most privileged corporations in America . . . second only to the United States Government in land ownership.



## Corporate Welfare?

BNSF is not 'down and out', in need of a handout, but fully capable of rectifying the wrong they have caused to our town, it's citizens and property owners through environmentally irresponsible locomotive fueling operations.

## A Positive Start is Now Being Derailed

Town council held a public hearing before a standing room only crowd in order to gauge public sentiment. Citizens overwhelmingly approved retaining aggressive representation to help ensure our legal rights are protected.

Town council subsequently retained the Riddell-Williams law firm. BNSF and DOE immediately took notice and became more responsive, but BNSF is once again attempting to short circuit our political and legal processes by dangling a carrot in front of a group of citizens, local government officials and business leaders. See Mr. Henry Sladek's letter (enclosed).

## The Carrot

Our community has long understood the desirability of a municipal sewage system

to replace aging and inadequate individual septic systems.

BNSF has targeted this need and offered to partner with us to build it. This sounds absolutely terrific when taken at face value.



The well intentioned group has been talking up the plan without explaining the implications or downside to partnering with BNSF at this critical time.

## This Group Advocates:

- 1) That the town and individual property owners keep silent while BNSF receives uncontested approval for a "minimum" contamination cleanup effort that will leave the town and individual property owners financially devastated.
- 2) In exchange, BNSF will partner with the town to build the sewage system. This partnership does not include BNSF paying for the system. The town will be responsible for securing funding to cover design, construction and operating costs.
- 3) The group says those opposing their plan are trying to 'get the last pound of flesh' from BNSF.
- 4) They state opposition to their plan will cause BNSF to 'miss-allocate' resources to a "more perfect" cleanup that it could instead allocate to building the sewage system.
- 5) They say 'any discussions or negotiations with BNSF could become seriously compromised should any "surprise" dissenting official positions materialize'.

*Translation: Councilmember Benz needs to keep his mouth closed while BNSF has its*

*way with our town..*

6) 'Negotiations with BNSF should be through the mayor's office and "select" council representatives'. *Translation: With Benz out of the way, BNSF can easily 'railroad us'.*

## The Other Side of the Story

The group's position recommending acceptance of BNSF's minimum cleanup plan did not come about following long, difficult, exhaustive negotiations with the BNSF, but is being promoted without any negotiations whatsoever having taken place.

Their negotiating strategy is no strategy at all, but total and complete capitulation.

Negotiations involve placing your positions, needs and desires on the table. The other side does the same. You then 'negotiate', working to reach compromise where neither party gets everything they want, but both parties obtain those elements that are most essential.

By capitulating in advance of negotiating, you have nothing left with which to bargain should you decide to negotiate in the future. You are a 'done deal' before even sitting at the negotiating table.

The belief that BNSF will take us under their wing and 'do the right thing' once we have given them 'the farm' is naive.

BNSF's responsibility remains solely to it's stockholders. Performing the absolute lowest cost clean-up without regard for consequences to our town or its future, is the name of their game. To believe otherwise will prove foolish, unfortunate and costly.

# The Clock is Ticking!

## *The Facts:*

1) The group has its facts turned completely upside-down. We, not the BNSF, are the aggrieved party. Asking the perpetrator to justly compensate our town and property owners for damages suffered at their hand is not a crime.

2) This group's naïve strategy impairs legal counsel's ability to properly and aggressively represent town and property owner interests. While we now continue to spend hard-earned taxpayer money on legal services, we have effectively cut our attorneys' legs off at the knees.

3) Our town presently has the expertise and resources to successfully challenge BNSF attempts to do a cleanup on the cheap, leaving us holding the bag. Lack of effective strategy, courage and commitment separates us from success.

4) The Town of Skykomish could at anytime have partnered with King County Public Health to seek funding, design and construction assistance for a municipal sewage system.

King County is extremely supportive of this project and willing to commit necessary resources to effectively partner with us. We do not require any hand-holding from BNSF to make this project a reality.

5) BNSF has not actually pledged financial assistance to this project. Their role has merely been to bring parties together for meetings and provide initial soil sampling.

Giving away millions of dollars in property values and tax revenues in perpetuity seems a steep price to pay for their minor role as facilitator.

6) Design, construction and operating costs for a sewage system are not yet understood. It will be some time before this project could get off the ground, let alone become an operational reality. It is possible such a system will prove too expensive for our small community to build or operate.

7) The notion that to oppose this group's position is an attempt to get 'the last pound of flesh' from the BNSF' is disingenuous. There have been no negotiations. We have yet to get the first ounce of BNSF flesh, let alone the last pound.

8) The belief that to oppose this group's plan will cause BNSF to 'miss-allocate' resources to a 'more perfect' cleanup that it could instead allocate to building the sewage system is without merit.

First, it should not be our problem how much BNSF must spend to clean up their mess and justly compensate us for damages. Second, BNSF has pledged no funds to this or any other project. There simply are no funds to allocate or miss-allocate. BNSF is playing a 'shell game' and we are the 'marks' being bamboozled.

9) The group's position that 'this matter could become seriously compromised should any "surprise" dissenting official positions materialize', is totally self-serving. The last thing this group wants is for property owners to wake up and realize just how eager they are to hand over millions of your dollars to one of the nation's largest, wealthiest corporations in exchange for a tap dance, sandwiches, pizza, sodas and an opportunity

to feel like 'big shots' for a few nanoseconds in cosmic history.

BNSF understands there are councilmembers opposed to giving your town away without receiving just compensation. It is no accident they want to deal exclusively through the mayor and 'select council representatives' instead of the process provided for under our Washington State Constitution.

## *Its Almost Midnight*



BNSF will soon submit cleanup plans to the DOE which will then schedule a public comment period.

DOE says our comments will be carefully reviewed and can substantially affect their decision. I believe it's more realistic to assume 11th hour comments by ordinary citizens will have an uphill battle overcoming BNSF resources or DOE's bureaucratic lethargy.

Once BNSF's DOE approved plan receives court ratification, the battle will be over. We have very little time left to get this train back on the track.

Tell your mayor and "select" councilmembers it's time to begin representing your interests with the same enthusiasm they have been representing BNSF's.

*Let's Work Together to Build a Better Skykomish!*



## Contact Me

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## Fire District Lease & Contract Shows Signs of Life

The town's contract and building lease with Fire District 50 expired in December 2002.

Town council repeatedly requested meetings with District 50 officials but none were forthcoming.

The mayor handled communications with the District while councilmembers remained perplexed as to why District representatives never responded . . . at least up until the last council meeting when newly seated

councilmember Darrell Joselyn and this author started talking at the council table.

It immediately became apparent council and District 50 positions were extremely close and that miscommunication had failed to properly convey this these many months.

Council believed the district contract and lease should be separated and the district charged a market rate lease to end what appeared to be 'gifting', which is illegal under

Washington State Law. The town remains willing to pay an increased service fee to offset the higher costs of the new lease.

The district also wants a 3% cost of living increase as part of it's new contract. I doubt council will take issue with such a reasonable request.

It appears all parties may now quickly move to reach an agreement and put this tired old dog to bed.



## New Water Rate Ordinance Enacted

Town council unanimously passed new water rate ordinance # 331 which took effect retroactively June 1, 2003.

Minimum monthly rates increased from \$22 to \$28.50, but now include 7000 gallons of usage. Usage over 7000 gallons will be billed at 4.071 mils per gallon, the same per gallon rate as for the first 7000 gallons.

After examining data and listening to water department customers, council decided a rate system that helped level billing peaks and valleys was wanted and needed.

Councilmember Anne Sekor worked with citizens and council to draft this workable solution. Council agreed the new ordinance would automatically sunset (expire) in 90 days so it could review consequences, in-

tended or otherwise, and further tweak it if necessary, based upon the learning curve of summer lawn watering patterns.

Latest meter readings indicate five times more water is being pumped at the wellhead as is being delivered at the retail level. This clearly demonstrates massive leaks are present in water mains and much work remains to be done.

Written by MR. HENRY SLADEK

Wastewater Treatment System June 13, 2003

I thought it might be useful to outline my thoughts and perspective on the ongoing discussions that we're having with King County, Health Dept, BNSF and the system designers/consultants regarding the possibility of a system for the Town. I also want to tie this into the overall BNSF/DOE cleanup plan that is currently under discussion. I also want to emphasize that the following is simply my opinion on the matter; this in no way reflects any official thinking *or* viewpoint from my position as a Planning Commission member. I'm speaking here strictly as a citizen and business person in the community.

In summary, I see the overall settlement with BNSF as a fairly simple two-pronged, yet inter-related approach: 1) First and *foremost*, we need a reasonable and thorough clean-up of the contaminated area which meets both the technical and legal requirements as defined. These requirements and standards are fairly well defined through existing regulations and the implementing agencies. Clean up beyond that level is really subject to debate and negotiation surrounding personal viewpoints. Reasonable people will differ as to what "should" be the ultimate level of clean-up. 2) Beyond the community's required environmental clean-up, we have the opportunity to work with BNSF in negotiating some other settlement amounts to be used *for* other community purposes. For lack of any alternative ideas (*to date*) about what would benefit the community, the idea of a community wastewater treatment system seems to be a reasonably attractive objective. It's needed primarily to relieve the ongoing environmental damage that's done by the existing out-of-date and inadequate on-site septic systems in the area; it has the additional benefit of providing critical town infrastructure will allow the town to grow and prosper in a controlled and sustainable manner.

My personal opinion is that the minimum required level of clean-up is what we should strive for; anything beyond that would consume resources that could presumably be used for other purposes to benefit the community and its future sustainability. I want to be clear that there is no contemplated trade-off between what the railroad does to comply with environmental clean-up requirements and other "community help" that the railroad may be participating in, in an effort to help it's cause. The distinction that I'd like to draw is that there is likely some substantial *room for* negotiation and judgment between what BNSF is technically & legally required to do on the clean-up versus what the town/community might otherwise "push" the railroad to do in the way of getting the last "pound of flesh". In essence, I'd suggest that what BNSF ~ alternatively provide *for* the overall community in the way of infrastructure improvements would greatly help the area much more than any last incremental benefit derived by a more "perfect" clean-up. It's assumed that any reasonable interpretation (and supported by the town's legal/technical representation) of what is required under the existing laws/regs will suffice to ensure an adequate clean-up. To ultimately push *for* a more thorough, yet marginally better (but more expensive) clean-up, does in fact become a trade-off, in my opinion. The trade off is between what the railroad could otherwise provide in the way of other community help & support. Stated somewhat differently, I'd just reiterate that it's preferable to agree to some "reasonable" clean-up standard rather than to try to use the process to further "punish" the aggrieving party (BNSF). Certainly I'm not suggesting some compromised, inadequate level of clean-up, but one that's reasonable and which allows some of these otherwise miss-allocated resources to be put to better use. These additional resources could be directed to actually revitalize some of the community's commercial and outdoor recreational potential. That has been the thinking behind the discussions to date about the possible help and support for a town/community wastewater treatment system.

My purpose for bring up this discussion is because at the few community/DOE meetings I've attended so far, there does seem to be a contingent of people who will argue for the "perfect", most thorough clean-up possible, regardless of the cost. I do not mean to dismiss or denigrate that viewpoint; I do, however, want to clearly state my view that under this approach there will most likely be "real" tradeoffs in the way of other cooperation and support from the railroad. To me that's just basic common (and business) sense. So, in summary, although cost is truly no object in getting to the reasonable level of clean-up, going beyond that will result in a trade-off in the way of other "community benefits".

I also would hope the town is sensitive to this very real dynamic in its negotiations (through the mayor's office, select Council representatives, and its attorney) with the BNSF. Again, this is not intended to limit the town's interest, but rather to re-emphasize the inter-related nature of the overall/comprehensive solution that can be achieved through the process. I also need to reiterate that any discussions/negotiations with BNSF on this matter could become seriously compromised should any "surprise" dissenting official positions materialize. This essentially assumes that the railroad and community are working together in "good faith" toward a comprehensive and mutually satisfactory resolution.

I'd welcome any other views, feedback or opinions regarding this matter. Again, my intent is merely to put my views and rationale in writing for others to view critically. I can be reached at [hws@hvacrcontractor.com](mailto:hws@hvacrcontractor.com) or phone 425-216-1601.

Henry Sladek