



1 custom, I usually communicated this type of information with WUTC staff – Kathy Hunter,  
2 Bob Johnston, Lori Halstead, or Debbie Thome – by telephone.

3 3. As to the seventh defect notice, I was partially mistaken in believing the defect  
4 was the road authority’s responsibility. BNSF is now taking responsibility for the defects  
5 identified insofar as they are located between the two tracks and will commit to promptly  
6 repair these defects.

7 4. I never saw WUTC Director David Pratt’s November 6, 2012 or December 12,  
8 2012, letters asking BNSF to address the alleged defects.

9 5. 112 mud slides occurred between Seattle and Everett from November 6, 2012  
10 to January 12, 2013. This was (by far) a record number of slides. Responding to them  
11 required an extraordinary amount of my time. That I did not see Mr. Pratt’s letters is  
12 unfortunate but does not surprise me.

13 **I. Siper Road**

14 6. I recall receiving the original notice in February 2009 and believe that I  
15 responded in writing, indicating that appropriate repairs would be completed in March 2009.  
16 I cannot locate a copy of the original notice.

17 7. I and BNSF employees working under my supervision, including Chris  
18 Conover, completed the repairs in March 2009 by replacing a number of rubber pads at the  
19 crossing.

20 8. The repairs at the Siper Road crossing eliminated warped rubber pads, making  
21 the crossing surface, in my judgment, convenient and safe for passage, and otherwise  
22 complied with BNSF’s obligations.

23 9. Siper Quarry is located adjacent to the Siper Road crossing. I believe that  
24 Siper Quarry began operations around 2008-2009. The Siper Road crossing takes a hard  
25 beating from the truck and trailer traffic from the Siper Quarry.

26 10. It does not surprise me that, even after the 2009 repairs, completed as required  
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1 by the February 19, 2009 notice, the crossing would have again shown some damage by late  
2 2012. Accordingly, I again supervised necessary repairs to the crossing on February 27, 2013.

3 11. In recognition of the unique and significant problems posed by maintaining a  
4 crossing so heavily used by the Siper Quarry, BNSF has slated the Siper Road crossing for a  
5 full rebuild and replacement, with an estimated cost in excess of \$100,000.00, on March 26-  
6 28, 2013. This rebuild and replacement was scheduled prior to BNSF's receipt of WUTC's  
7 Notice of Penalties.

8 **II. Massey Road**

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10 12. I recall receiving an original notice for the Massey Road crossing in May 2011  
11 and inspecting the crossing. Consistent with my long-standing practice, I informed WUTC  
12 staff via telephone (I believe but am not positive it was Inspector Bob Johnston) of BNSF's  
13 position that the defect was not the BNSF's legal responsibility per WAC 480-62-225. I  
14 discussed the road authority's responsibility with the WUTC, noting that the road authority  
15 should be notified about the defect and that when the road authority fails to repair such  
16 defects, the railroad surface is degraded at an accelerated rate.

17 13. A photograph taken on February 26, 2013 at the Massey Road crossing,  
18 attached hereto as Exhibit 1, demonstrates a drop off in the asphalt. The drop off is more than  
19 one foot from the outside of the rail on either side. Accordingly, it is and has been my  
20 understanding that the highway authority, not BNSF, is responsible for this defect.

21 14. I had also told WUTC staff on numerous occasions that, in my experience,  
22 vehicle traffic at various grade crossing routinely exceeded the posted speed limit, which  
23 added to the degradation of roadway surface, and that I believed that the WUTC should  
24 encourage the local authority to enforce speed limits. This observation applied to the Massey  
25 Street crossing as well.

26 15. WUTC's notice of defect offers only two options for response. I believed that  
27 neither response option was appropriate in this case because BNSF was not and is not  
responsible for the defect at the crossing at Massey Road. Given the format of the notice and

1 its response requirement, I believed that my phone call to WUTC staff was an appropriate  
2 method to communicate about the defect notice.

3 16. In spite of the fact that the problem at Massey Road remains the road  
4 authority's legal responsibility, approximately two weeks ago as a show of good faith we  
5 completed repairs to the crossing by cutting back the roadway and eliminating the roadway  
6 drop off to ensure the plane of the crossing is level with the roadway.

7 **III. Front Street**

8 17. I recall receiving defect notice for the Front Street crossing. I inspected the  
9 crossing, found a minor defect, and welded a metal band and replaced lags to correct the  
10 defect. I acknowledge that I probably neglected to notify WUTC that the defect was  
11 corrected.

12 18. I understand that WUTC says it reinspected the crossing again in November  
13 2012 and January 2013 and found the defect remained outstanding. I have confirmed that,  
14 indeed, over a year and a half since the defect was first noted and repaired, a weld had broken.  
15 We will repair this weld within six weeks. In my view this is an extraordinarily minor defect  
16 that causes noise as a vehicle travels across the crossing, and in no way affects the roadway  
17 surface. I believe that this minor defect in no way detracts from the crossing surface being  
18 convenient and safe for passage.

19 **IV. Aldergrove Road**

20 19. I supervised the replacement of the worn planks at the Aldergrove Road  
21 crossing. I believe that I did so in April 2011, but it could have been as early as January 2011.

22 20. I understand that WUTC says it reinspected the crossing again in November  
23 2012 and January 2013 (many months after the required repairs by BNSF) and found that the  
24 surface was rough and planks were broken. Until very recently, the planks at this crossing  
25 were constructed of clear pine untreated timbers. Because the area of the crossing is damp,  
26 these planks can deteriorate quickly. If WUTC staff did not inspect the crossing until more  
27

1 than a year and a half year after the repair – in November 2012 – the planks may well have  
2 deteriorated again.

3 21. Two weeks ago, we replaced every plank at this crossing with gumwood,  
4 which is much more resistant to decomposition in a damp environment.

5 **V. Madison Street**

6 22. The crossing at Madison Street has two tracks, the mainline and an industry  
7 track. The tracks are farther apart than usual – about forty feet separates them. BNSF does  
8 not operate on (or maintain) the industry track. When I received the defect notice for the  
9 Madison Street crossing, I focused only on the mainline track that BNSF operates, considered  
10 it to be single track for purposes of the Washington Administrative Code’s allocation of  
11 responsibility, and believed that the WUTC’s defect notice mistakenly allocated responsibility  
12 to fix the asphalt to BNSF.

13 23. I believe that I was half right: because the mainline is one of two tracks at  
14 Madison Street, the approach outside one foot on the field side of the track is the  
15 responsibility of the road authority, but the approach on the other side – between the tracks –  
16 is the railroad’s responsibility.

17 24. I believe that I spoke to WUTC staff about this defect notice by phone,  
18 explaining my position, (as I did with the Massey Road crossing), but I am not positive that I  
19 did.

20 25. Having discovered my partial error, I will ensure that the asphalt  
21 approaches *between* the tracks are promptly repaired.

22 **VI. S. Walnut Street**

23 26. Initially, we thought that the S. Walnut Street crossing was the responsibility  
24 of a nearby industry, but regardless of that, we removed the deteriorated plank and filled the  
25 portion removed with rock. I recall coordinating this repair with the City of Burlington. I  
26 recall this occurring in August 2011.

27 27. The vehicle traffic at this crossing is extraordinarily low, and the damage

1 found was minor.

2 28. I am unsure whether I talked to WUTC Inspector Johnston in August 2011 to  
3 advise him of the repairs.

4 29. Upon further investigation since August 2011, the S. Walnut Street crossing  
5 was determined to be BNSF's responsibility, and recently, certain defects, similar to those  
6 found in 2011, have appeared or recurred. Accordingly, on March 5, 2013, we rehabilitated  
7 the crossing by removing all of the wood and installing pavement through the approaches to  
8 the crossing on both sides. I note that the mainline crossing, which BNSF always knew to be  
9 its responsibility, was always maintained in good repair.

10 **VII. Hawley Street**

11 30. I recall receiving the initial and/or subsequent notice regarding a defect at the  
12 Hawley Street crossing, and acknowledge that I likely committed to making the repair by June  
13 1, 2011, before I actually inspected the crossing. When I did inspect the crossing in June  
14 2011, I found no broken or missing crossties or planks. I did notice some planks were worn  
15 but believed that, at that time, no planks were in need of replacement. I acknowledge that I  
16 likely did not follow up with the WUTC to notify it of my conclusions.

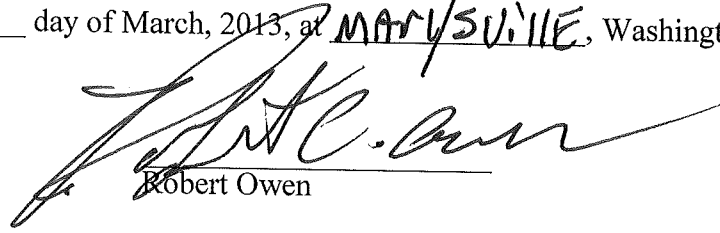
17 31. Our recent inspection found that some repairs are needed. At present, most  
18 paving companies are closed for the winter but are expected to reopen in the next few weeks.  
19 As soon as that happens, we will repave the plane of the crossing and all roadway surfaces on  
20 both crossings.

21 32. The Hawley Street crossing is in an isolated area with very little vehicle traffic.

22 33. I am committed to ensuring that communication between BNSF and the  
23 WUTC is improved, and suggest that the parties arrange for regular scheduled contact  
24 between WUTC staff and BNSF to address any future outstanding concerns.

25 34. Given the amount of time the WUTC apparently waited before reinspecting  
26 the alleged defects, the potential certainly exists for new defects to have formed.

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2 DATED this 14 day of March, 2013, at MARYSVILLE, Washington.

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