

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

BNSF RAILWAY COMPANY,	)	DOCKET TR140382 and
	)	DOCKET TR140383
Petitioner,	)	
vs.	)	
	)	REBUTTAL TESTIMONY OF
YAKIMA COUNTY,	)	KENT McHENRY
	)	
Respondent.	)	
_____	)	

**1: Please state your full name and job title.**

My name is Kent L. McHenry, P.E. I am the Transportation Engineering  
Manager for Yakima County Public Services.

**2: Please provide a short summary of your rebuttal testimony.**

Testimony produced by BNSF in support of the petitions to close the Barnhart  
Road and North Stevens Road crossing ignore safety hazards that will be created by the  
proposed closings. They are effectively transferring the risk of collision from BNSF to  
the general travelling public in Yakima County.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**3: Have you reviews pre-filed testimony prepared by BNSF in support of its petitions to close the Barnhart and North Stevens Road crossings?**

Yes. I would like to respond in particular to the testimony of Gary Norris and Foster Peterson.

**4. What comments do you have in response to the testimony of Gary Norris?**

I disagree with many aspects of Mr. Norris' testimony. I will focus my rebuttal testimony on his statements about the presence of farm equipment on SR 22. Mr. Norris writes: "It can be assumed that there are already many farm vehicles using SR 22, and the closure of the two crossings would not dramatically increase the number of access points to SR 22 or the number of farm vehicles using them."<sup>1</sup>

**5. What is your response to this testimony?**

There are a number of problems with this testimony. First among them is Mr. Norris' largely unsupported assumption that "many farm vehicles" use SR 22. The only evidentiary basis for this assumption is the prefiled testimony of Terry Stephens, who testified that he sees farm equipment "on and around Highway 22 between North Meyers Road and Satus-Longhouse Road."<sup>2</sup> I am unaware of any traffic studies or other evidence about the extent to which farm equipment utilizes SR 22 in the vicinity of the crossings. The single assertion by Mr. Stephens does not provide a credible factual basis for Mr. Norris' assumption.

<sup>1</sup> Testimony of Gary Norris, at p. 9-10.

<sup>2</sup> Prefiled testimony of Terry Stephens, at p. 3.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

The record evidence shows that farmers and others who operate farm equipment in this area avoid SR 22 because it is dangerous. Statements to this effect are contained in the pre-filed testimony of Philip Sealock, Ed Boob, Allen Zecchino, Curtis Parrish and Andy Curfman.<sup>3</sup>

The record evidence also shows that the amount of farm equipment travelling on SR 22 in this area will increase if the crossings are closed. The prefilled testimony of Allen Zecchino and Curtis Parrish in particular establish in some detail the number of new trips and the types of equipment that will be diverted onto SR 22. I am unaware of any basis by which to compare the number of new trips as described in this testimony to the unknown amount of existing farm equipment travel on SR 22.

In addition to the actual number of farm implements utilizing SR-22 there is the issue of accident risk. Accident potential is a function of vehicle-miles-traveled. If the crossing were to be closed then the farm implements that are currently traveling a short distance along SR-22 will be required to travel a much greater distance, in some cases, miles further. This increases the vehicle-miles-traveled by the farm implements and will therefore increase the accident risk to both the farmers and the traveling public.

---

<sup>3</sup> See Prefiled testimony of Philip Sealock, at p. 2; Prefiled testimony of Ed Boob, at p. 2; Prefiled testimony of Allen Zecchino, at p. 4; Prefiled testimony of Curtis Parrish, at p. 4; prefilled testimony of Andy Curfman, at 2-4.

1  
2  
3 **6. Why do you disagree with Mr. Norris' assumption that closing the crossings**  
4 **will not result in a significant increase in the amount of farm equipment**  
5 **using SR 22 in the vicinity of the crossings?**

6 Absent baseline knowledge as to the amount of farm equipment presently using  
7 SR 22 in this area, there is no way to determine whether the increase in use caused by  
8 closing the crossings will or will not be significant. It is entirely possible, for example,  
9 that closing these crossings could double or triple the amount of heavy farm equipment  
10 moving along this section of SR 22.

11 Even if the increase in farm equipment travel caused by closing these crossings  
12 could be established (and it cannot), these numbers are meaningless without evaluating  
13 the corresponding qualitative impact on traffic safety. The qualitative impacts of farm  
14 equipment on SR 22 are illustrated clearly by photographs depicted as Exhibits B and D  
15 to the prefiled testimony of Andy Curfman. Exhibit B depicts a tractor travelling on SR  
16 22 in the vicinity of the crossings with a significant amount of traffic backed-up behind it.  
17 Exhibit D depicts a tractor crossing a bridge along SR 22 in the vicinity of the crossings,  
18 effectively blocking traffic in both directions. Both photographs depict the safety hazards  
19 posed by even one piece of heavy farm equipment on SR 22.  
20  
21  
22

23 **7. In your view as a traffic engineer, is there a safety risk associated with**  
24 **increasing the amount of heavy farm equipment travelling on SR 22?**

25 It is very dangerous to operate large slow moving farm equipment on high speed  
26 rural highways. The reasons are many and obvious. Exhibit A to this rebuttal testimony  
27 contains a 2009 report entitled "Agricultural Equipment on Public Roads" prepared by  
28  
29

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

the Committee on Agricultural Safety and Health Research and Extension. This report explores the safety risks posed by farm equipment on public roadways.

As detailed in the above-described report, the fatality rate resulting from vehicle accidents involving farm tractors and other self-propelled equipment is almost five times higher than where no farm equipment is involved. Research also indicates that in crashes involving farm equipment, the farm vehicle occupant was killed nearly twice as often as occupants of the other vehicle.

These concerns of the County for its citizens are not speculative. While there is no history of train-vehicle accidents at any of the railroad crossings at issue, vehicle accidents in Yakima County involving farm equipment are unfortunately not uncommon. The most recent such accident occurred this month, on March 1, 2015, and resulted in a fatality to a driver who struck a tractor. The accident occurred along the Yakima Valley Highway, which is very similar to SR 22. In fact, prior to road re-configurations, the Yakima Valley Highway was SR 97. The motor vehicle was travelling at highway speed at dusk. The motorist failed to appreciate the speed differential between it and a tractor travelling the same direction on the highway, and collided with the rear of a towed farm implement. I am attaching a newspaper article about the collision as Exhibit B. I am also attaching a photograph that was taken of the farm equipment shortly after the accident. Finally, I am enclosing a press release describing another motor vehicle accident that involved farm equipment that occurred in Yakima Count in October 2014.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Yakima County is not the only public agency that recognizes the danger posed by slow moving farm equipment on state highways. After discussing these closures with the Washington State Department of Transportation, I received the letter I have attached as Exhibit C.

**8. What comments do you have in response to the testimony of Foster Peterson?**

It is obvious that Mr. Peterson is unfamiliar with any of the crossings at issue. His testimony suggests that adjacent crossings are safer merely because they have active warning devices without any discussion of other factors that might contribute to the safety or danger of these crossings.<sup>4</sup> Nobody who has been to these crossing and observed them in operation could conclude that the adjacent crossing at South Track Road represents a safer option.

Mr. Peterson makes no effort to balance the positives and negatives in terms of safety that would flow from closing these crossings. He in fact seems to be unaware that there are any spinoff effects of closing these crossings. As a result, his opinion that rerouting traffic is “the safer option” is essentially meaningless. His statement “Farm or heavy equipment usage at grade crossings increases the probability of a derailment if there is a collision at the crossing”, assumes that if the crossings are closed then there will be a reduction of farm or heavy equipment. The facts are that the equipment will simply be relocated from crossing to another. Closing these crossings will not eliminate any usage by farm or heavy equipment.

<sup>4</sup> Testimony of Foster Peterson, at p. 3.  
REBUTTAL TESTIMONY  
OF KENT McHENRY - 6

1  
2  
3 **9. What other comments do you have in response to the testimony of Foster**  
4 **Peterson?**

5 My real objection to Mr. Peterson's testimony has to do with what he implies but  
6 does not say outright. Because he never considers anything other than the crossings at  
7 issue, Mr. Peterson is really saying that closing these crossings is safer *for BNSF*.  
8 Whether the impacts of closure create new risks for the general public of Yakima County  
9 is not his concern. Mr. Peterson's testimony reveals that this is really just an effort to  
10 transfer risk away from BNSF and onto the general travelling public in Yakima County.  
11

12 DECLARATION

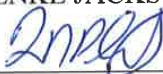
13 I, KENT McHENRY, declare under penalty of perjury under the laws of the State  
14 of Washington that the foregoing REBUTTAL TESTIMONY OF KENT McHENRY is  
15 true and correct to the best of my knowledge and belief.  
16

17 DATED THIS 12<sup>th</sup> day of March, 2015.

18  
19   
20 KENT McHENRY

21  
22 DATED THIS 12<sup>th</sup> day of March, 2015.

23 MENKE JACKSON BEYER, LLP

24   
25 QUINN N. PLANT  
26 WSBA #31339  
27 Attorneys for Yakima County  
28 807 North 39<sup>th</sup> Avenue  
29 Yakima, WA 98902  
30 (509) 575-0313  
(509) 575-0351/Fax  
qplant@mjbe.com

REBUTTAL TESTIMONY  
OF KENT McHENRY - 7

MENKE JACKSON BEYER, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Telephone (509)575-0313  
Fax (509)575-0351

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30CERTIFICATE OF SERVICE

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Menke Jackson Beyer, LLP, whose address is 807 North 39<sup>th</sup> Avenue, Yakima, Washington, 98902.

I hereby certify that the original and three copies of the foregoing have been sent by Overnight Delivery to Mr. Steven King, Executive Director and Secretary, Washington State Utilities and Transportation Commission, 1300 South Evergreen Park Drive, S.W., Olympia, Washington, 98504; and a .pdf version electronically filed ([www.utc.wa.gov/efiling](http://www.utc.wa.gov/efiling)) and emailed ([records@utc.wa.gov](mailto:records@utc.wa.gov)). I also certify that true and complete copies have been sent via electronic mail to the following interested parties:

Mr. Tom Montgomery  
Mr. Bradley Scarp  
Attorneys at Law  
Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle WA 98101

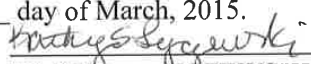
Mr. Ethan Jones  
Associate Attorney  
Confederated Tribes & Bands of the Yakama Nation  
P.O. Box 151  
Fort Road  
Toppenish WA 98948

Mr. R. Joseph Sexton  
Attorney at Law  
Galanda Broadman, PLLC  
8606 35th Avenue NE, Suite L1  
P.O. Box 15146  
Seattle WA 98115

Rayne Pearson  
Administrative Law Judge  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct.

DATED THIS 12<sup>th</sup> day of March, 2015.

  
KATHY S. LYCZEWSKI

REBUTTAL TESTIMONY  
OF KENT McHENRY - 8

**MENKE JACKSON BEYER, LLP**  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Telephone (509)575-0313  
Fax (509)575-0351