

1 Q. **Have you reviewed the pre-filed testimony submitted by Yakima County and the**
2 **Yakama Nation in opposition to BNSF's petitions to close two at-grade railway**
3 **crossings, located at Barnhart Road and North Stevens Road on the Yakama**
4 **Indian Reservation near Toppenish, Washington?**

5 A: Yes, I have reviewed all of the prefiled testimony submitted to the WUTC.
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7 Q: **Several of the County's witnesses testified that they presently move large slow-**
8 **moving farm equipment across the North Stevens Road and Barnhart Road**
9 **crossings. Al Pinkham testified that slow moving funeral processions presently**
10 **use the Barnhart Road Crossing. Do these facts support your opinion, expressed**
11 **in your opening testimony, that both crossings present a substantial danger.**

12 A: Yes. In fact, these are factors that actually aggravate the pre-existing danger discussed
13 in my opening testimony. It is well established, and uncontroversial, that grade-
14 crossings like the North Stevens Road and Barnhart Road crossing, without active
15 controls such as light and gate controls, are substantially more dangerous than those
16 with such active controls. This substantial safety risk, after all, is the reason why both
17 federal and state law encourage closure of passive at-grade crossings, in spite of the
18 cost and inconvenience. When slow-moving vehicles, rushing to finish harvest in a
19 limited time-frame are added to the mix, the inherent danger associated with passive at-
20 grade crossings becomes even greater risk to public safety. The same is true for slow
21 moving vehicles trying to stay together for a funeral procession. Unfortunately, in such
22 circumstances, it is only a matter of time before a grade-crossing accident happens, the
23 results of which are very often catastrophic.

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25 Q: **John Hood, a Yakima County employee, states in his prefiled testimony that**
26 **"rural farm crossings such as Barnhart Road and North Stevens are not and have**
27 **not been a danger." Do you agree?**

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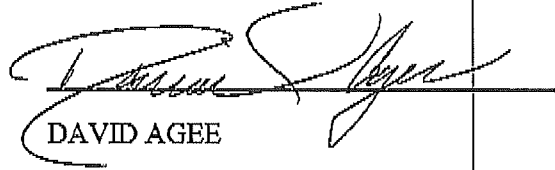
A: Not at all. Mr. Hood's only basis for his statement appears to be that he never personally was involved in a grade crossing accident in a rural setting. He was lucky. In my more than twenty years of experience with the Railroad and Operation Lifesaver, it is my experience that a substantial portion of grade crossing accidents happen at rural grade-crossing, particularly ones with passive controls, such as the North Stevens Road and Barnhart Road crossings. As set forth in detail in my opening testimony, the risk of an accident at each of these crossings is real, and unfortunately, the results extremely serious.

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DECLARATION


I, David Agee, declare under penalty of perjury under the laws of the State of Washington that the foregoing PREPARED REBUTTAL TESTIMONY OF DAVID AGEE is true and correct to the best of my knowledge and belief.

DATED this 12 day of March 2015, at TACOMA, Washington.


DAVID AGEE

DATED this 13th day of March 2015.

Montgomery Scarp, PLLC


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3 CERTIFICATE OF SERVICE

4 I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery
5 Scarp, PLLC, whose address is 1218 Third Avenue, Suite 2500, Seattle, Washington, 98101.

6 I hereby certify that the original and 3 copies of PREFILED REBUTTAL TESTIMONY OF DAVID AGEE
7 has been sent by FedEx to Steven King at WUTC and a PDF version electronically filed. I also certify that true and
8 complete copies have been sent via electronic mail to the following interested parties:

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

27 DATED this 13th day of March 2015 at Seattle, Washington.


Lisa Miller, Paralegal