

**To BNSF:**

Each data response must state the name of the person who prepared the response, and the name of any witness who is knowledgeable about and can respond to questions concerning the response.

**DEFINITIONS**

**IDENTIFY**: The term "identify" (or "identity"), when used with reference to an individual person means to state his/her full name, present home address, present business address, present home telephone number, and present business telephone number; his/her present or last known position and business affiliation; and his/her position and business affiliation at the time in question. The term "identify" (or "identity"), when used with reference to a partnership, joint venture, trust, corporation or other entity, means to state the full legal name of such entity; each and every trademark, trade name or other name under which such entity does business; the entity's street address, mailing address and telephone number; and the identity of the chief operation officer, manager, trustee or other principal representative. The term "identify" (or "identity"), when used with reference to documents, means to state specifically (1) the type of document involved (e.g., whether interoffice memorandum, etc.), together with information sufficient to enable defendants to identify the document, such as its date, the name of any addressee, the name of any signor, the title or heading of the document and its approximate number of pages; and (b) the identity of the person last known to have possession of the document, together with the present or last known location of the document.

**DOCUMENT**: The term "document" means any written, electronic, recorded or other graphic matter, however produced or reproduced. It includes all matter that relates or refers in whole or in part to the subjects referred to in any data request. If a document has been prepared in several copies, or if additional copies have been made, and the copies are not identical or have undergone alteration, each non-identical copy is a separate "document." This definition includes, but is not limited to, the following: any paper, writing chart, memo, note, letter, interoffice memo, intra-office memo, report, study, statement, map, log entry, drawing, photograph, sketch, picture, tape recording, electronic document, or record of any type or description, and any other verbal or pictorial representation of any event or idea which has transpired, whether meant for communication to others or for personal need.

**BARNHART ROAD CROSSING** is USDOT Crossing Number 104526P, Milepost 62.40, which is the subject of BNSF's petition TR-140383.

**NORTH STEVENS ROAD CROSSING** is USDOT Crossing Number 104516J, Railroad Milepost 68.40, which is the subject of BNSF's position TR-140382.

**CROSSING** Collectively, the Barnhart Road Crossing and the North Stevens Road Crossing are referred to as the "crossing" or "crossings."

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF **AND BNSF'S RESPONSES**

September 12, 2014

Page 2

**PETITIONS** BNSF's petitions in TR-140383 and TR-140382 are referred to collectively as BNSF's "petitions."

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 3

**Yakima County Data Request No. 1:** Please describe and identify the total maintenance expenditures incurred by you on the crossings for the past five years to present.

ANSWER: Objection. This Data Request is not reasonably calculated to lead to the discovery of admissible (or relevant) evidence for use at the Administrative Hearing, and is beyond the scope of the issues that will be analyzed in this proceeding. Without waiving those objections, BNSF does not have or maintain records specific to this request or relating specifically to the two at-grade crossings in question. By way of further response, BNSF believes that very little money has been spent at those two crossings in the past five years. The crossing surface at Stevens Rd. is constructed of wood and has not been replaced, and BNSF is not aware of any significant repairs in that time frame. The crossing surface at Barnhart Rd. was timber and is now concrete. Any repair work in the area of the two crossings during the time frame requested would have been performed by a BNSF tie gang working along a much larger segment of the railroad. Any work at or near the crossings in question (Stevens Rd. and Barnhart Rd.) would be incidental to the broader maintenance and replacement work performed across that and other parts of the railroad. In July-September, 2011, a tie gang came through that area of the Yakima Subdivision and would have replaced all the ties and whatever portions of the rail and ballast that needed replacing, including crossing surfaces at the locations of some grade crossings along that route. As such, there is not a specific breakout of the work done or cost of materials used at a particular location because the work done is part of a larger project that may, for example, cover 20, 40 or 60 miles.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Chad Scherwinski; Andy Vulgas, Jared Wootton, Rick Wagner

**Yakima County Data Request No. 2:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: Please see Answer and objections to Data Request No. 1 which apply equally here. Without waiving those objections, please see attached documents.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: N/A

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 4

**Yakima County Data Request No. 3:** Please describe and identify all collisions involving trains and any person or vehicle at the crossings for the past five years to present.

ANSWER: None. BNSF's review of the applicable records maintained by the Federal Railway Administration (FRA) indicate there was one collision involving a train and an automobile at the Barnhart road crossing approximately ten years ago on August 18, 2004.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: FRA Representative.

**Yakima County Data Request No. 4:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: See FRA Highway-rail Grade Crossing Accident/Incident Report (attached).

Date prepared: September 10, 2014.

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: *See* Answers to Data Request No. 3.

**Yakima County Data Request No. 5:** Please describe and identify all near-miss collisions involving trains and any person or vehicle at the crossings for the past five years to present.

ANSWER: Objection. The term "near miss collisions" is vague and contradictory. Without waiving this objection, BNSF does not have any data regarding near misses or avoidance of collisions by drivers at these crossings during the time frame requested.

Date prepared: September 10, 2014.

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Potential witnesses: WSDOT, BNSF or FRA representatives.

**Yakima County Data Request No. 6:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: None.

Date prepared: September 10, 2014.

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: N/A

**Yakima County Data Request No. 7:** Please describe and identify the total number of cars by freight commodity carried that went over the crossings for the past five years to present.

ANSWER: Objection. This Data Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request is also well beyond the scope of the WUTC's analysis of the relevant issues in this proceeding. The only potential significance this request could have is if BNSF contended that commodities contained in railcars traversing the two crossings in question somehow increased the danger presented at those crossings. However that is not the case. BNSF is not making that argument and there is no relevance to the request for freight commodities when assessing whether the Barnhart Road and Stevens Road crossings should be closed. Without waiving those objections, BNSF responds generally as follows: In 2012, BNSF and its train service employees reached a labor agreement which allowed for a change in the use of the Stampede route between Auburn and Pasco over the Yakima Subdivision. Prior to 2012, and primarily due to restrictions relating to the terms of the train service employees labor agreement, the freight service on the Stampede route was substantially different than it is now. Since 2012, the vast majority of railcars over the past two years across the Barnhart and Stevens crossings are empty cars. By far, the vast majority of those are grain cars. The remaining small percentage of cars is mixed commodities. Because of the mountain grade on the Stampede route, returning empty cars along that route is the most efficient use.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Jared Wootton; Rick Wagner

**Yakima County Data Request No. 8:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: Please see the Answer to Data Request No. 7, with objections thereto.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: N/A

**Yakima County Data Request No. 9:** Please describe and identify the number of trains per day that went over the crossings for the past five years to present and for each describe and identify the operating speeds at or near the crossings.

ANSWER: Objection. The request is overly broad. Without waiving that objection, in 2012, BNSF and its train service employees reached a labor agreement which allowed for a change in the use of the Stampede route between Auburn and Pasco over the Yakima Subdivision. See the Answer to the previous Data Request for further explanation. As of

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 6

September 8, 2013, both crossings have an average of 10 through trains daily plus four locals on weekdays and two locals Saturday and Sunday. The maximum operating speed is 49 mph.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Jared Wootton; Chad Scherwinski

**Yakima County Data Request No. 10:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: Please see the excerpt from the Northwest Timetable showing track speed and excerpt from Train Count Spreadsheet attached hereto.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Chad Scherwinski, Jared Wootton; Rick Wagner

**Yakima County Data Request No. 11:** Please describe and identify the projected or estimated number of trains per day expected to travel over the crossings for the five years following the date hereof.

ANSWER: The projected number of trains is the same as at present. (*See* answer to Data Request No. 9). BNSF cannot predict changes in customer demand for rail service which, in turn, can affect freight volume. But there are no anticipated changes from the present use of the Yakima Subdivision at this time. By way of further answer, closure of the Stevens Rd. and Barnhart Rd. crossings would mean no trains would travel over those two "crossings" because the crossings would no longer exist.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Chad Scherwinski; Rick Wagner

**Yakima County Data Request No. 12:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: None

Date prepared: September 10, 2014.

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: *See* Answer to Data Request No. 11.

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 7

**Yakima County Data Request No. 13:** Please describe and identify the projected or estimated changes in commodities expected to travel over the crossings for the next five years following the date hereof.

ANSWER: None. See answers to Data Requests No. 9 and 11.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Chad Scherwinski; Jared Wootton; Rick Wagner

**Yakima County Data Request No. 14:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: None.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: None

**Yakima County Data Request No. 15:** Describe all facts relating to your contention contained in Section 5, paragraph 1, of the petitions herein that closure of the crossings will improve public safety by reducing the potential for train-vehicle crossing accidents.

ANSWER: All railroad grade crossings (intersections of a road with a railroad at the same level) are inherently dangerous and the policy of the law is strongly against such crossings. The Washington "legislature finds that grade crossing, rail trespass, and other safety issues continue to present a public safety problem."<sup>1</sup> Washington law states the legislature's preference for overcrossings and undercrossings where practicable, and prohibits the construction of a grade crossing without prior Washington Utilities and Transportation Commission approval.<sup>2</sup> See also response to Data Requests Nos. 3 and 5 and Yakima County's petitions to close the subject crossings and related correspondence produced in response to Data Request No. 25. BNSF also expects to retain and identify an expert witness to address the factors specific to the crossings at the Stevens Rd. and Barnhart Rd. crossings.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: WUTC Staff; various witnesses, expert witness(es)

---

<sup>1</sup> See "Findings" of RCW 81.53.271.

<sup>2</sup> RCW 81.53.020.

**Yakima County Data Request No. 16:** Are you aware of the existence of any document prepared by you or any other person concerning the contention referenced in the preceding Data Request? If so, identify:

- a) The name and address of each person making the document;
- b) The date of the document; and
- c) The name and last known address of the person now in possession of the document.

## ANSWER:

1. RCW 81.53.020
2. RCW 81.53.271
3. Case Law:
  - a. *Reines v. Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 195 WN.146, 150, 80 P.2d 406, 407 (1938);
  - b. *Department of Transportation v. Snohomish County*, 35 WN.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949);
  - c. *Hewitt v. Spokane, Portland & Seattle Railway Company.*, 66 WN.2d 285, 402 P.2d 334;
  - d. *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 WN.2d 95, 104 P.2d 764.
4. a) Letter from Yakima County Board of Commissioners Chairman, Michael Leita to WUTC Executive Director and Secretary David Danner
  - b) March 20, 2013
  - c) David Danner, WUTC, P.O. Box 47250, Olympia, WA 98504-7250
5. a) Letter from Yakama Nation Tribal Council Chairman Harry Smiskin to WUTC Executive Director and Secretary David Danner
  - b) February 25, 2013
  - c) David Danner, WUTC, P.O. Box 47250, Olympia, WA 98504-7250
6. BNSF Petitions TR-140382 and TR 140383
7. Excerpts from UTC Orders in previous crossing closure cases.
  - a. "The underlying principle for this law is the accepted theory that all grade crossings are inherently dangerous." *BNSF Railway Company v. Snohomish County*, Docket TR 090121, Order 03 (October 21, 2009) ¶39.
  - b. "Further, the Commission has previously explained that the absence of evidence of accidents at a given crossing neither demonstrates that it is more safe or less dangerous than other similar crossings nor provides any predictive values as to future accidents." *Id.* ¶43; *Burlington Northern and Santa Fe Railway Company v. City of Sprague*, Docket TR-010684, Fourth Supplemental Order (January 10, 2003), ¶¶40-41.
  - c. "The Federal Railroad Administration (FRA) recommends 'the first alternative that should always be considered for a highway-rail at-grade crossing is elimination.'" *BNSF Railway Company v. City of Mount Vernon*, Docket TR 070696, Order 06, ¶18.
  - d. "Washington Courts have deemed at-grade crossings to be inherently dangerous." *City of Kennewick v. Port of Benton, Tri-City & Olympia Railroad*



Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 9

*Company, BNSF Railway Company, and Union Pacific Railroad, Docket TR-130499, Order 02 , ¶47*

- d. "Even if public convenience were sufficient to demonstrate public need, we find that it does not outweigh the hazards of an at-grade crossing." *Id.* ¶67.
8. U.S. DOT Federal Highway Administration Railroad-Highway Grade Crossing Handbook - excerpt
  9. UTC October 2008 publication "About Railroad Crossing Closures"
  10. County's petitions to close subject crossings produced in response to Data Request No. 25.

This answer may be supplemented as additional information responsive to this Data Request becomes known.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: See above named persons and persons referenced in the documents identified.

**Yakima County Data Request No. 17:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: Objection. Copies of cited cases are in the possession of or are easily available to the requesting party in Westlaw or other legal research sources. Without waiving that objection, please see documents attached.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: WUTC Staff; Rick Wagner; FRA representatives; also, see above named persons and persons referenced in the documents identified in answer to Data Request No. 16.

**Yakima County Data Request No. 18:** Identify the name, job title, current address and telephone number of each person who participated in the preparation of these answers, and indicate the specific response or information each contributed, excluding counsel.

ANSWER:

Richard Wagner, Manager of Public Projects  
BNSF Railway Company  
2454 Occidental Ave S, #2-D  
Seattle, WA 98134  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 10

Mr. Wagner has knowledge of the crossing(s) closure petition, and he assisted in providing information for many of the responses to the Data Requests from Yakima County.

Andy Vulgas, Roadmaster  
BNSF Railway Company  
602 West 3<sup>rd</sup> – Operations Building  
Ellensburg, WA 98926  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Mr. Vulgas is a Roadmaster for BNSF who has knowledge of the two crossings in question, and he provided information to assist with responses to Data Requests Nos. 1 and 2.

Jared Wootton, Director Locomotive Utilization  
BNSF Railway Company  
2600 Lou Menk Drive  
Fort Worth, TX 76131-2830  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Mr. Wootton is a Director of Locomotive Utilization for BNSF and provided information provided information to assist in responding to Data Requests including Nos. 1, 7, 10, 13.

Chad Scherwinski, Division Engineer  
BNSF Railway Company  
2454 Occidental Ave. S., #1-A  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Mr. Scherwinski is a Division Engineer for BNSF and provided information to assist in responding to Data Requests including Nos. 1, 2, 10, 11, 13.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Rick Wagner; Andy Vulgas; Jared Wootton; Chad Scherwinski

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 11

**Yakima County Data Request No. 19:** Identify all expert witnesses you expect or intend to call at hearing and, as to each such expert:

- a) State the exact subject matter upon which each expert witness is expected to testify;
- b) State the source and substance of the facts and opinions to which the expert is expected to testify;
- c) State a summary of the grounds for each opinion of the expert;
- d) Identify all documents, books, manuscripts, authoritative sources and other written data relied upon by the expert for his or her opinions;
- e) Set forth in detail the qualifications and backgrounds of each expert and provide a resume or CV showing the expert's background, qualifications and experience;
- f) List any other cases, whether unfiled, filed, pending, or completed in which the person has testified as an expert at trial/hearing or by deposition or has provided any affidavit, sworn declaration or report within the preceding ten (10) years.

ANSWER: Experts have not yet been identified. BNSF anticipates that it may call a traffic expert and a safety expert. However, any reports or opinions generated by those experts cannot occur until BNSF receives responses to its Data Requests sent to Yakima County and to the Yakama Nation on July 24, 2014. Details will be supplemented.

Date prepared: September 10, 2014  
Preparers: BNSF attorneys and staff  
Witness with knowledge about this response: N/A

**Yakima County Data Request No. 20:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: See response to Data Request No. 19. None at this time. This response will be supplemented.

Date prepared: September 10, 2014  
Preparers: BNSF attorneys and staff  
Witness with knowledge about this response: N/A

**Yakima County Data Request No. 21:** Produce a copy of all reports relating to your petitions prepared by any expert identified above.

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 12

ANSWER: No reports exist at this time. Any reports will be produced at such time as they are generated. Please see answers to Data Requests Nos. 19-20.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: N/A

**Yakima County Data Request No. 22:** Identify all persons known to you, your employees, agents or attorneys having knowledge of facts related to your allegations in your petitions, and for each person state:

- a) The name of each person;
- b) The last known address for each person;
- c) The last known telephone number for each person;
- d) The name and address of each person's current employer;
- e) A brief summary of the facts known to each person.

ANSWER: Objection. This request is vague, overly broad and unduly burdensome as it does not specify which "facts" relating to which "allegations," if any, in the petition are being referenced. The request also seeks some information protected by attorney client privilege and the work product doctrine. Without waiving those objections, the following persons have knowledge relating to factual information in the petitions:

Richard Wagner, Manager of Public Projects  
BNSF Railway Company  
2454 Occidental Ave S., #2-D  
Seattle, WA 98134  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Mr. Wagner has knowledge of facts relating to BNSF's petitions for crossing closure as set forth in BNSF's responses to Data Requests Nos. 7, 8, 9, 11, 12, 13, 25, and 30 and information related to the matters addressed therein.

Chad Scherwinski, Division Engineer  
BNSF Railway Company  
2454 Occidental Ave. S., #1-A  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF **AND BNSF'S RESPONSES**

September 12, 2014

Page 13

Mr. Scherwinski has knowledge of facts relating to BNSF's petitions for crossing closure as set forth in BNSF's responses to Data Requests Nos. 1, 2, 9, 10, and 11 regarding maintenance, railroad operations, and information related to the matters addressed therein.

Any and all employees of Yakima County with knowledge of the facts related to the County's petitions to close the crossings filed in October, 2012.

Yakima County  
128 North Second Street, Fourth Floor Courthouse  
Yakima, WA 98901

Kathy Hunter, Deputy Assistant Director, Transportation Safety, WUTC  
1300 S. Evergreen Park Drive, SW  
PO Box 47250  
Olympia, WA 98504-7250  
(360) 664-1257

Ms. Hunter has knowledge of facts related to the County's petitions to close these crossings filed in October, 2012.

Frona Woods – Assistant Attorney General, WUTC  
1300 S. Evergreen Park Drive, SW  
PO Box 47250  
Olympia, WA 98504-7250  
(360) 664-1225

Ms. Woods has knowledge of facts related to the County's petitions to close the crossings filed in October, 2012.

This answer may be supplemented as additional witnesses with responsive information, if any, are identified.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: All witnesses listed in this Answer to Data Request No. 22.

**Yakima County Data Request No. 23:** Identify whether there are any statements, written or recorded, known to you, your employees, agents, or attorneys relating to your allegations in your petitions. If the answer is yes, identify the following information with respect to the person giving the statement and the person taking the statement (exclude any party statements made to counsel):

- a) Their name;
- b) Their current residence address;

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES

September 12, 2014

Page 14

- c) Their current business address; and
- d) Their telephone number.

ANSWER: Objection. This request is vague as to the term "allegations," and the request calls for information and documents protected by the attorney – client privilege and work product doctrine. Without waiving those objections, see response to Data Request No. 16 and all documents referenced therein.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: *See answer to Data Request No. 16.*

**Yakima County Data Request No. 24:** Produce a copy of all statements identified in or relating to the preceding Data Request answer.

ANSWER: See response to Data Request No. 17.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: *See answer to Data Request No. 17.*

**Yakima County Data Request No. 25:** Produce a copy of all documents pertaining to, approving, supporting, analyzing, criticizing, or reviewing the decisions to petition for closure of the crossings, including any of the following in your possession relating to the foregoing: minutes, graphs, charts, maps, photographs, reports, schematics, notes, objections, e-mails, letters, or other correspondence.

ANSWER: Objection. This request is overly broad and unduly burdensome with regard to "all documents pertaining to... closure of the crossings." In addition, this request seeks documents that may be protected by attorney - client privilege and the work product doctrine. Without waiving these objections, please see documents attached hereto.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: All persons identified or listed in these answers or in the attached documents, including County employees, email correspondents, and public records custodians

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF **AND BNSF'S RESPONSES**

September 12, 2014

Page 15

**Yakima County Data Request No. 26:** Please identify all witnesses (expert and lay) you intend to call at the hearing.

ANSWER: BNSF anticipates that it may call witnesses from the following entities: BNSF Railway Company, Yakima County, Yakama Nation, WSDOT, FRA and private individuals who reside in the area of the crossings. At this time discovery is only beginning and BNSF does not know the identities of these witnesses. See also answers to Data Requests Nos. 19, 22 and 28. BNSF also reserves the right to call additional witnesses to authenticate documents and records for use at the public hearing.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: N/A

**Yakima County Data Request No. 27:** Please state the substance of the witnesses' testimony (expert and lay) you intend to present in this matter.

ANSWER: Not yet determined. See also answers to Data Requests Nos. 19 (a-c), 22 (a)(e) and No. 26.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: N/A

**Yakima County Data Request No. 28:** Please identify the person or persons involved in the decision to petition for closure of the crossings.

ANSWER: Objection. This request seeks information that may be protected by attorney client privilege. Without waiving this objection, in addition to BNSF's counsel, the following people were involved in the decision to petition for closure of the crossings:

Richard Wagner, Manager Public Projects  
BNSF Railway Company  
2454 Occidental Ave S., #2-D  
Seattle, WA 98134  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Docket No. TR-140382 and TR-140383

Yakima County's First Data Requests to BNSF **AND BNSF'S RESPONSES**

September 12, 2014

Page 16

John Shurson, Assistant Director Public Projects

BNSF Railway Company  
740 Carnegie Drive  
San Bernardino, CA 92408  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Lyn Hartley, Director Public Projects

BNSF Railway Company  
2600 Lou Menk Drive, OOB-3  
Fort Worth, TX 76131-2800  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

Douglas Perry, Assistant Director Public Projects

BNSF Railway Company  
80 44<sup>th</sup> Ave. N.W.  
Minneapolis, MN 55421  
C/O Montgomery Scarp, PLLC  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
(206) 625-1801

See also response to Data Request No. 22. The decision to petition for closure occurred after discussions with the County, BNSF and WUTC staff.

Date prepared: September 10, 2014

Preparers: BNSF attorneys and staff

Witness with knowledge about this response: Rick Wagner, John Shurson, Lyn Hartley, Douglas Perry

**Yakima County Data Request No. 29:** Please provide documentation of any communications within your organization related to the decision to petition for closure of the crossings.



Docket No. TR-140382 and TR-140383  
Yakima County's First Data Requests to BNSF  
September 12, 2014  
Page 17

ANSWER: Objection. Some communications related to the decision to petition for closure of the crossings are protected by the attorney client privilege doctrine. Without waiving this objection, please see documents produced in response to Data Request No. 25.

Date prepared: September 10, 2014  
Preparers: BNSF attorneys and staff  
Witness with knowledge about this response: *See* answer to Data Request No. 25.

**Yakima County Data Request No. 30:** Is the compensation of any person within your organization based on the success of the petition for closure of the crossings?

ANSWER: No.

Date prepared: September 10, 2014  
Preparers: BNSF attorneys and staff  
Witness with knowledge about this response: Rick Wagner

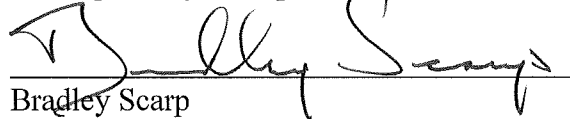
**Yakima County Data Request No. 31:** Produce a copy of all documents identified in or relating to the preceding Data Request answer.

ANSWER: None.

Date prepared: September 10, 2014  
Preparers: BNSF attorneys and staff  
Witness with knowledge about this response: N/A

DATED THIS 12<sup>th</sup> day of September 2014.

Montgomery Scarp, PLLC



Bradley Scarp  
WSBA # 21453  
1218 Third Avenue, Suite 2500  
Seattle, WA 98101  
Telephone: (206) 625-1801  
Facsimile: (206) 625-1807  
[brad@montgomeryscarp.com](mailto:brad@montgomeryscarp.com)

Docket No. TR-140382 and TR-140383

~~Yakima County's First Data Requests to BNSF~~ **AND BNSF'S RESPONSES**

September 12, 2014

Page 18

**CERTIFICATE OF SERVICE**

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

I hereby certify that *Yakima County's First Data Requests to BNSF AND BNSF'S RESPONSES* have been sent by VIA electronic mail and U.S. MAIL to the following parties:

Kenneth W. Harper  
Menke Jackson Beyer, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902

Ethan Jones  
Confederated Tribes and Bands of the Yakima Nation  
P.O. Box 151  
401 Fort Road  
Toppenish, WA 98948

Pat Oshie  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
P.O. Box 40128  
Olympia, WA 985014-0128

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

DATED this 12<sup>th</sup> day of September 2014 at Seattle, Washington.



\_\_\_\_\_  
Lisa Miller, Paralegal