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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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BNSF RAILWAY COMPANY,)

5

Petitioner,)

6

vs.) DOCKET TR-140382 and

7

YAKIMA COUNTY,) (Pages 53-311)

8

Respondent.)

9

10

11

EVIDENTIARY HEARING, VOLUME III

12

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

13

14

April 28, 2015

15

9:30 a.m.

16

2403 South 18th Street

17

Union Gap, Washington

18

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REPORTED BY:

25

PHYLLIS CRAVER LYKKEN, RPR, CCR NO. 2423

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I N D E X

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BNSF RAILWAY CO. vs. YAKIMA COUNTY

DOCKETS TR-140382 and TR-140383

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April 28, 2015

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0059

1 BE IT REMEMBERED that on Tuesday, April 28,
2 2015, at 9:30 a.m., at 2403 South 18th Street,
3 Union Gap, Washington, the Evidentiary Hearing re
4 BNSF RAILWAY CO. vs. YAKIMA COUNTY was taken
5 before Phyllis Craver Lykken, Certified Court
6 Reporter. The following proceedings took place:

7

8 THE JUDGE: Good morning. Today is Tuesday,
9 April 28, 2015, at approximately 9:32 a.m. We're here
10 today for an evidentiary hearing in Consolidated
11 Dockets TR-140382 and TR-140383 related to petitions
12 filed by Burlington Northern Santa Fe Railroad to close
13 highway rail grade crossings at North Stevens Road and
14 Barnhart Road respectively.

15 We took care of several housekeeping matters off
16 the record this morning and the parties have stipulated
17 to the admission of all of the pre-filed testimony and
18 each of the exhibits that were filed in connection with
19 the testimony as well as the cross exhibits.

20 And this morning's proceedings are going to have
21 Yakima County's witnesses testify first, followed by
22 Yakama Nation's witnesses, and then finally BNSF
23 witnesses, with the understanding that one of those
24 witnesses for BNSF may be taken out of order due to
25 availability constraints.

0060

1 And just for the record, we're at Yakima County
2 Resource Center and we will also be here this evening
3 for a public comment hearing that's scheduled to begin
4 at 6:00 p.m.

5 So let's just start by taking short appearances
6 for the record. Just please state your name and who
7 you represent.

8 MR. SCARP: Bradley Scarp, S-C-A-R-P, representing
9 BNSF Railway Company.

10 MR. CHAIT: Michael Chait, C-H-A-I-T, also
11 representing BNSF Railway Company.

12 MR. WAGNER: Richard Wagner, Manager of Public
13 Projects for BNSF Railway Northwest Division.

14 MR. PLANT: Quinn Plant representing Yakima
15 County.

16 MR. HARPER: Ken Harper also for Yakima County.

17 MR. SEXTON: Joe Sexton representing the
18 Confederated Tribes and Bands of the Yakama Nation.

19 THE JUDGE: Okay. Thank you. If you're ready to
20 call your first witness for cross exam, you may do so.

21 MR. PLANT: Mr. Boob.

22 THE JUDGE: If you can take a seat up here at the
23 witness stand. First if you stand and raise your right
24 hand I'll swear you in.

25

0061

1 ED BOOB, being first duly sworn to tell
2 the truth, the whole truth, and
3 nothing but the truth, testified
4 as follows:

5

6 THE JUDGE: Please take a seat. If you could
7 start by stating and spelling your last name for the
8 court reporter.

9 THE WITNESS: My last name is Boob, B-O-O-B.

10 THE JUDGE: Go ahead when you're ready.

11

12 DIRECT EXAMINATION

13 BY MR. PLANT:

14 Q. Mr. Boob, would you please state your occupation for
15 the record.

16 A. Field consultant for a fertilizer company. Occupation
17 is a field consultant for Husch & Husch Fertilizer
18 Company.

19 Q. How long have you worked for Husch & Husch?

20 A. Forty-three years.

21 Q. Okay. I'm going to hand you your pre-filed testimony
22 in this matter, which has been designated Exhibit
23 EB-1T. Would you please review that document?

24 A. (Witness complied). Yes.

25 Q. Mr. Boob, is this your testimony in this matter?

0062

1 A. Yes.

2 Q. Thank you. I know on the table, did you bring anything
3 with you today?

4 A. I just brought some maps that, fields that we take care
5 of on the north side of Stevens Road and Barnhart Road,
6 just a couple maps. We cover a lot of area in both
7 areas of farmers down there. We, farmers we cover is
8 TK Farms, which has a lot of ground in both areas,
9 Steve Banks, we, I consult with them on a lot of
10 fertilizers and chemicals in their area, and Zecchino
11 Farms also.

12 MR. PLANT: Okay. Nothing further for Mr. Boob.

13 THE JUDGE: Okay. Thank you.

14

15 CROSS-EXAMINATION

16 BY MR. SCARP:

17 Q. Can I see what you've got, if it looks like other
18 exhibits we have? By the way, good morning, Mr. Boob.

19 I'm Bradley Scarp.

20 A. Good morning.

21 Q. Okay. Maybe I'll have a couple of questions about
22 those. Those help you reference the different places
23 that you deliver by looking, by using those?

24 A. Yeah. When I send an applicator out, you know, we can,
25 I can Google and do the maps and, or yeah, so they know

0063

1 exactly which field they're going to.

2 Q. GPS and then go right to it?

3 A. Well, they look at the roads. They GPS also, but
4 that's just a minor amount of fields that I do in that
5 area on both sides of Stevens and Barnhart Road. We
6 cover a tremendous amount of ground on both sides of
7 those roads.

8 Q. Okay. You say you cover a tremendous amount of ground,
9 amount of territory?

10 A. Uh-huh.

11 Q. And how far, how far and wide does H & H distribute the
12 pesticides and fertilizers for farm use?

13 A. Well, we distribute the fertilizer to have the right
14 amount for these fields to raise the crops for them,
15 and a lot of times it's chemicals too where we're
16 spraying chemicals on different fields. There is also
17 circles, I call them pivots, that we have tanks that we
18 fill also that aren't even on this.

19 Q. Let me rephrase my question. How big of an area,
20 geographically, does your company provide fertilizers
21 and pesticides?

22 A. Just on the north side or all over?

23 Q. Period. Out of your -- I'm sorry, you're based in
24 Harrah?

25 A. Harrah.

0064

1 Q. And where is that in relation to the Barnhart Road
2 crossing?

3 A. Oh, it's probably 20 miles.

4 Q. Okay. So you go at least 20 miles. How much farther
5 do you go, if at all, for other customers?

6 A. Well, we just go as far as Benton City.

7 Q. Okay. All right.

8 A. Then to the other way we go to up by the Firing Center,
9 if you want a geographical.

10 Q. Okay. I would have to do the math to get to Benton
11 City, but it's an hour plus, so what are you talking
12 about, 70 miles, 80?

13 A. Sixty-five. Roughly.

14 Q. Okay. All right. Do your trucks go that far?

15 A. Yes.

16 Q. How about your other equipment, how far do you send,
17 like, RoGators and TerraGators?

18 A. RoGators, we'll send them at distances that far;
19 TerraGators, once in a great while.

20 Q. RoGators get trailered?

21 A. Yes. But they're wide, they're still a wide machine.
22 We have to have wide load stands on those.

23 Q. Do you ever run those from your shop in Harrah to, out
24 to a farm, the Ro --

25 A. TerraGators you do, but you don't haul those, you have

0065

1 to road those. They're a big unit.

2 Q. All right. So you serve farm businesses, agri-
3 businesses throughout Yakima County and also into
4 Benton County?

5 A. Yes, sir.

6 Q. Do some of those businesses pick up pesticides or
7 fertilizers from your company or do you always deliver?

8 A. No, some, some pick it up, but I would say the majority
9 of it we deliver them.

10 Q. Okay. And so when you deliver, you're talking about on
11 the farm, your --

12 A. Yes, sir. Uh-huh.

13 Q. Okay. Now, are any of the witnesses here, are they
14 your customers, Mr. Curfman?

15 A. He's here.

16 Q. Is he your customer?

17 A. Yes, sir.

18 Q. Mr. Parrish, Curtis Parrish?

19 A. He's a customer.

20 Q. Mr. Zecchino?

21 A. He's a customer.

22 Q. Mr. Trautman?

23 A. He's a competitor.

24 Q. That's right. Okay.

25 A. But he's a good friend.

0066

1 Q. How many drivers does Husch & Husch have?

2 A. If you look at the time clock, there is a heck of a lot
3 of people.

4 Q. Approximately.

5 A. The TerraGators we have two guys that's designated, two
6 for our big TerraGators, two drivers there all the
7 time, and for our RoGator we have a designated person
8 for that all the time. Then we have, I would say -- I
9 would have to -- there is a guy, Alvin, David, another
10 David, I would say five or six also.

11 Q. Truck drivers?

12 A. Truck drivers also besides the applicators.

13 Q. Are they all commercially licensed?

14 A. Yes, sir.

15 Q. What training do the Husch & Husch drivers receive in
16 crossing railroad tracks?

17 A. Well, abide by the signs. You know, if it says stop,
18 stop. I cross those crossings all the time for
19 43 years. I grew up in the area. When the sign says
20 stop, you better stop and look both ways.

21 Q. Is that pretty much the extent of the training?

22 A. Abide by the laws in crossing.

23 Q. Okay.

24 A. If you have a driver's license you have to abide by the
25 laws.

0067

1 Q. What customers specifically does your company deliver
2 to that requires you to use North Stevens Road
3 crossing?

4 A. All of the above growers that you've just spoke.

5 Q. And your --

6 A. Probably not Zecchinos on North Stevens because they're
7 on Barnhart, but I have, I have SP Farms, TK Farms,
8 Steven Bangs, those are all North Stevens.

9 Q. Okay. Now, when you're delivering to those farms and
10 those customers that you just described, your trucks
11 are coming from about 20 miles away; is that correct?

12 A. Yes, sir.

13 Q. So if they're going to use the North Stevens crossing,
14 they have to go past what, the south track crossing to
15 get to?

16 A. They come down Highway 22 --

17 Q. Right.

18 A. -- and turn north on North Stevens.

19 Q. Okay. So in order to get there from Harrah, which of
20 the adjacent crossings, was it Meyers that you had to
21 go by?

22 A. Yes.

23 Q. So you could use the Meyers Road crossing coming from
24 Harrah to get to those places you mentioned?

25 A. You could.

0068

1 Q. Can you just explain for the benefit of those of us who
2 don't know very much, what is a TerraGator?

3 A. It's a, it's a big applicator that applies fertilizer
4 and chemicals. And they're big balloon tires like --
5 what's those, you know, like at the fairs when they
6 have those people jumping the cars, those big tires
7 like that is what's on these TerraGators.

8 Q. Approximately how long or how big are they?

9 A. Oh, I would say they're a good, they're over ten feet
10 wide, and we have to have the wide load signs on them,
11 and lights.

12 Q. Do you need pilot cars for those?

13 A. No. Huh-uh.

14 Q. So you put wide load signs and specific lights on the
15 rear?

16 A. Lights and beacons on the roof, too.

17 Q. Okay. What do those top out max speed, about 40?

18 A. I don't know if they'll do 40. I have been in the old
19 ones that do about 42 miles an hour. The newer ones I
20 don't think they exceed 40 miles an hour.

21 Q. Okay. That would be a maximum at any point?

22 A. Yeah.

23 Q. All right. And the RoGators, you put those on a
24 trailer and drive them to farms?

25 A. It's the trailer with the semi pulling them.

0069

1 Q. Okay.

2 A. And that has a wide load sign with flashing lights on
3 that also.

4 Q. All right. How often do you deliver pesticides,
5 fertilizer to those farms around North Stevens that you
6 described?

7 A. Oh.

8 Q. Roughly. I'm asking for an approximation, not any
9 precision.

10 A. March, April, May, June, July.

11 Q. Okay. So you do, what, once a month?

12 A. Oh.

13 Q. I mean, how often are you going to send fertilizer to
14 the same one?

15 A. Not to the same, you know.

16 Q. It depends on the crop when they need the fertilizer
17 and pesticides?

18 A. Yes, sir. You know, in a busy time like this last
19 month, it's almost every day.

20 Q. Okay. So the RoGator -- excuse me, the TerraGator that
21 you just described that's ten feet wide, got those big
22 balloon tires, you drive, your drivers drive those on
23 county roads now?

24 A. Uh-huh.

25 Q. That's a yes?

0070

1 A. Yes.

2 Q. Okay. It's common with the signs and flashing lights?

3 A. Yes.

4 Q. Do it every day?

5 A. Most of the time. We're starting to slack off right

6 now.

7 Q. Okay. All right. And do those drive all of the way

8 down from your place in Harrah, those TerraGators, all

9 of the way down to North Stevens?

10 A. Yes. They drive down there and sometimes when we have

11 a lot of work to do in the area, we'll just leave them

12 at the grower's farm and we'll nurse with a big semi,

13 we call it nurse, it's hauling the product to that

14 applicator with fertilizer, water, whatever they need.

15 Q. That saves you fuel cost running it back and forth?

16 A. Wear and tear. Those tires are \$8,000 a tire and the

17 roads eat them up pretty fast.

18 Q. All right. Okay. Have you ever learned of a grade

19 crossing accident involving one, a piece of equipment

20 like you have, TerraGator, RoGator with a freight

21 train?

22 A. I've been with Husch for 43 years and I've never seen

23 an accident with one of our equipment with a freight

24 train.

25 Q. No. No. I wasn't asking -- I'm glad about that, but

0071

1 have you ever heard of an incident involving either a
2 TerraGator or a RoGator and a train?

3 A. Not that I know of. I've never heard of an incident
4 with one.

5 Q. Okay. They're pretty slow going across crossings,
6 aren't they?

7 A. Oh no, you can get with it. You can go just as fast as
8 a car across them.

9 Q. They accelerate like a car?

10 A. They're big diesel motors and you can, yeah.

11 Q. Okay. So how much in the way of pesticides do your
12 trucks carry? What's the capacity for those trucks to
13 deliver chemicals of any kind of?

14 A. Just, well, there's a difference between chemicals and
15 fertilizer. Do you want chemicals?

16 Q. Well, you tell me. I'm asking for the capacity of your
17 trucks that are going across those crossings.

18 A. Oh. The big trucks, our container trucks, it depends
19 on what truck you're using. You know, probably
20 20,000 pounds in our truck that we're nursing the
21 TerraGator with.

22 Q. Okay. So you're putting the, whatever it is, the
23 fertilizer into?

24 A. The TerraGator.

25 Q. The TerraGator on-site nursing it, as you call it?

0072

1 A. Yes.

2 Q. So those trucks carry a maximum of 20,000 pounds?

3 A. Well, they can carry more than that, but legally we can
4 only carry a certain amount, so we don't exceed the
5 weight limit.

6 Q. Okay. Have you ever --

7 A. Go ahead.

8 Q. What would be the outcome of a collision between a
9 train and one of those trucks, what would happen?

10 A. It would be a real mess, you know, no matter what they
11 hit.

12 Q. Would there be a chemical discharge if that truck got
13 hit by a train?

14 A. We don't haul chemicals. We haul chemicals separate.
15 They're not pre-mixed.

16 Q. What about -- I'm sorry, go ahead.

17 A. What I'm telling you is fertilizer, there would be a
18 discharge of fertilizer.

19 Q. What about the pesticides?

20 A. Those are hauled in a separate, a smaller truck, and we
21 mix those -- we can't haul mixed chemicals down the
22 road. We mix those out in the field, pesticides,
23 insecticides, and herbicides, those are mixed out in
24 the field.

25 Q. So those different chemicals that you mix out in the

0073

1 fields, you haul them all in one truck, though?

2 A. Yeah, in a smaller, a one-ton, a cage truck.

3 Q. Oh. Okay. Have you ever had one of those accidents,
4 ever discharge those chemicals into a field?

5 A. In a field?

6 Q. Yeah. I mean a truck rollover, get in an accident,
7 anything like that?

8 A. We've had some close calls, but I never have had any
9 problems.

10 Q. I'm glad of that, too.

11 A. Yeah.

12 Q. Are those fertilizers combustibile?

13 A. Some are. No, excuse me. We used to have ammonia
14 nitrates and we can't handle those anymore.

15 Q. Why not?

16 A. Thanks to our bombing in Oklahoma.

17 Q. Oh. Right. Is the Zecchino Farm the only farm that
18 you serve up around the Barnhart crossing area?

19 A. TK Farms is huge out there.

20 Q. TK Farms, Mr. Curfman?

21 A. Uh-huh.

22 Q. Okay. Those are the only two?

23 A. On Barnhart?

24 Q. Yeah.

25 A. Those are the main ones that I serve out there.

0074

1 Q. So when you go to farms that are in the area of the
2 Barnhart crossing, your trucks have to go past Indian
3 Church crossing; is that correct?

4 A. Usually we go past that, because if you take, go to the
5 north road on Indian Church, that turn there on
6 Schuster Road is too difficult to get around with a big
7 semi.

8 Q. With a big semi. Otherwise you could go farther up
9 Indian Church and come back down if you want?

10 A. No.

11 Q. You can't?

12 A. If I'm coming down Highway 22?

13 Q. Yeah. And you went across the crossing at Indian
14 Church, you could continue up Indian Church and come
15 down into those farms, couldn't you?

16 A. I don't see -- we're on the wrong page here because I'm
17 coming down Highway 22 and turn north on Indian Church
18 Road, Shaker Church, that real tight turn that's too
19 tight.

20 Q. I understand that.

21 A. You go north, I would be way out of my way going
22 further north.

23 Q. Isn't that circle, doesn't that road circle back around
24 to the longhouse?

25 A. Huh-uh.

0075

1 Q. Are you sure?

2 A. I can't turn right there with a big semi.

3 Q. I appreciate your saying that again, Mr. Boob.

4 A. That road will circle around if we could make that
5 turn.

6 Q. Right.

7 A. But we can't make that turn.

8 Q. You could also go down to the Satus Longhouse Road and
9 cross there, couldn't you?

10 A. Which?

11 Q. You would also go past Barnhart down to the Status
12 Longhouse?

13 A. Or you could go down to the Satus Longhouse Road and
14 then it would be, it would be a, it would be
15 inconvenient for us to go that far and then come back.

16 Q. But you're starting about 20 miles away, right?

17 A. It depends if we left the buggy down there or not.

18 Q. But if it's coming from your business, it's 20 miles
19 away to start?

20 A. Uh-huh.

21 MR. SCARP: Those are all of the questions I have.

22 Thank you.

23 THE JUDGE: Thank you. If you would hold on one
24 second. Do you have anything for him, Mr. Quinn.

25 MR. PLANT: I have a few follow-up questions.

0076

1

REDIRECT EXAMINATION

2

BY MR. PLANT:

3

Q. Did you mention that the drivers of your TerraGators

4

and RoGators have commercial drivers licenses?

5

A. Yes.

6

Q. And so is it also true you don't know the extent of

7

sort of the training and testing requirements they

8

undertook to get those drivers licenses?

9

A. I know they have to go through some extensive driving

10

training to get their CDL license.

11

Q. That, sure, that could include training about railroad

12

crossings?

13

A. I imagine it does. I've never had a CDL.

14

Q. Okay. Are there reasons why your equipment would not

15

use the Meyer Road crossing?

16

A. Well, if I go down to -- why would -- because Stevens

17

Road is real convenient. We just turn there and we go

18

right into the fields, a lot of fields right there.

19

Q. And you testified you have no knowledge of one of your,

20

I guess one of your vehicles having a collision with a

21

train; is that correct?

22

A. I have never seen one with our vehicles in a collision

23

with a train.

24

MR. PLANT: Okay. That's all that I have.

25

Thanks.

0077

1 THE JUDGE: Anything further for this witness?

2 You may step down.

3 Go ahead with your witness.

4 MR. PLANT: Andy Curfman.

5

6 ANDY CURFMAN, being first duly sworn to tell
7 the truth, the whole truth,
8 and nothing but the truth,
9 testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. PLANT:

13 Q. Mr. Curfman, where do you live?

14 A. I live on State Route 223, 1731 State Route 223,
15 Toppenish, Washington.

16 Q. Is this near the North Stevens Road and Barnhart Road
17 crossings?

18 A. Within a six mile radius of both crossings.

19 Q. Can you state your occupation.

20 A. I'm a farm manager for T & K Farms.

21 Q. I'm going to hand you your pre-filed testimony in this
22 matter, AC-1T, along with AC-2 to AC-5. Could you
23 please review that document?

24 A. Yes, that's my document.

25 Q. Is this your testimony in this case?

0078

1 A. Yes, it is.

2 Q. I see you also brought a document here today. Can I
3 ask you what that is?

4 A. This is a map of a layout on the Yakima County map of
5 our farming operation of the fields we farm.

6 Q. Okay. Is this a copy of a map that you made or you
7 have independently at your home or office?

8 A. We have it in our office for our references of our
9 fields and crops and rotations. The colors are
10 specific to different crops. They're not updated
11 yearly, though.

12 MR. PLANT: Okay. Nothing further at this time
13 for Mr. Curfman. Thank you.

14

15 CROSS-EXAMINATION

16 BY MR. SCARP:

17 Q. Good morning, Mr. Curfman.

18 A. Good morning.

19 Q. How many years have you been managing T & K Farms?

20 A. I have been on the farm for over 25 years.

21 Q. Is that how long you've been managing it?

22 A. Probably managing position probably the past 15-plus
23 years.

24 Q. Okay. Is T & K farms about 5,000 acres in Yakima
25 County?

0079

1 A. Correct.

2 Q. Are you one of the largest farm businesses in the
3 county?

4 A. Probably in the top 20.

5 Q. Okay. Do you receive the most federal farm subsidies
6 of any farms in the county?

7 A. It depends on what's available at the time.

8 Q. Are you right up there in the top few?

9 A. Probably not.

10 Q. Can I see the map you have there?

11 A. Yes.

12 Q. Would it be all right -- do you have one copy?

13 A. There's multiple copies.

14 Q. Can I have one so I can ask you some questions about
15 it?

16 A. Thank you. Also more copies.

17 MR. SCARP: One for the Court, if you want to
18 reference it.

19 THE JUDGE: Thank you.

20 Q. How much of your 5,000 acres are dedicated to silage
21 crops?

22 A. Probably around 3,000 acres a year plus or minus. It
23 depends on the market year.

24 Q. What are silage crops?

25 A. It's a dairy feed, it's corn that we chop very close to

0080

1 the ground, take the whole plant product, chop into
2 about a three-quarter inch of cut item, process it
3 running it through a rolling gears, per se, to smash
4 it, to crack all of the kernels, and then it goes into
5 a silage pit, usually on-site of a dairy, and then they
6 let it set for up to two years in a silo to feed the
7 dairy cows. The best source of energy and very, very
8 good source of feed for the dairy industry. Everybody
9 in the Valley uses a large amount of silage.

10 Q. Okay. Now, your operation, your center of operations
11 is on State Route 223?

12 A. Yes. Make note there is a pink square on 223. That's
13 actually our headquarters.

14 Q. Okay. And what am I looking at in terms of what you
15 farm? I see there is a whole key there, it just gives
16 by different crops. Those are all places that you are?

17 A. On the key on the right-hand side it lists the crops
18 that we have raised in the past.

19 THE JUDGE: I'm sorry, could you point me to where
20 your headquarters is?

21 A. Right in the center of the map there's a little pink
22 square. That represents an 80-acre block and that's
23 where our shop is located.

24 THE JUDGE: Thank you.

25 A. That's on 1621 State Route 223.

0081

1 Q. Am I correct, Mr. Curfman, all of the shaded areas are
2 places that you farm?

3 A. Correct. There has probably been some updates. There
4 may be more or less, I would say probably more than
5 what's on this. This is an older map. We don't make
6 the map.

7 Q. Okay. That's a good approximation?

8 A. Yeah.

9 Q. State Route 223, when it comes down and meets
10 Highway 22, which is designated by the red line --

11 A. Correct.

12 Q. -- it crosses Highway 22. And what does that road
13 become on the other side, I'll call it the south side?

14 A. Chambers Road.

15 Q. Chambers Road?

16 A. It's a gravel road.

17 Q. I'm sorry?

18 A. It's a gravel road, county gravel road.

19 Q. Does your equipment come down Highway 223, cross State
20 Route 22, and then utilize Chambers Road to get to
21 fields on the south side of 22?

22 A. It depends on where the equipment is located before
23 transportation.

24 Q. When you say "transportation," are you talking about
25 hauling it?

0082

1 A. Most of our equipment we do not haul. We have a
2 shorter radius and it takes too much time to load,
3 strap. If we load our tractors, it, we have to have
4 pilot cars front and back. It takes more manpower,
5 more vehicles on the road. A semi pulling off per se
6 from our shop will not be at speed by the time it hits
7 the railroad tracks if there's traffic involved hauling
8 a large load. Once again, we can only haul up to legal
9 limits, but we have to follow the DOT standards,
10 certain amount of feed, flags, cars front and back,
11 pilot cars front and back, so we don't haul all of our
12 equipment, we drive it.

13 Q. My question was do your farm vehicles come down 223,
14 cross State Route 22, and then utilize -- I'm sorry --

15 A. Chambers Road.

16 Q. Chambers?

17 A. We will do that, but sometimes -- it depends on where
18 we're going on the farm. A lot of times we will leave
19 our farm heading north taking back roads and go up and
20 we will cross other crossings to be out of traffic
21 sight. 223 is a state highway, so if we're going
22 north, we don't touch 223 unless we have to. We'll go
23 back to the farm. Our roads in the farm are wide
24 enough and big enough around our fields that we do a
25 lot of transporting there to go north.

0083

1 But if we go from the north to the south, then
2 we'll come down the Stevens Road crossing, convenience,
3 less traffic on the road, less exposure to us on state
4 highways.

5 Q. So is it accurate to say that throughout all of those
6 areas surrounding that are shaded in and around the
7 pink center of operations that you use farm access
8 roads to go from field to field?

9 A. Correct.

10 Q. Okay. And similarly if you cross State Route 22 and
11 use Chambers Road, you can access all of the fields
12 down there?

13 A. Not all of the fields due to some of the equipment's
14 wider than the county barriers on their canal crossings
15 and we can't get through the crossings so we have to do
16 alternate routes.

17 Q. Okay. Where are those that you can't get through?

18 A. On Chambers Road there are two crossings, one is
19 Slayton Road and one on Harris Road. So some machinery
20 cannot go through there, we have to go around and find
21 an alternative route.

22 Q. How many pieces of equipment can't go through there?

23 A. Oh, several. Anything over 19 feet will not fit
24 through.

25 Q. And that wouldn't be trailered, you would be driving

0084

1 that?

2 A. We'd be driving. That's why we take back roads,
3 because the cost of trailering these items. As we've
4 talked with the Department of Transportation, some of
5 them have hitches, you can put them on a trailer, but
6 the hitch will stick out farther than oncoming traffic
7 from the machinery opposite.

8 Q. Do you use pilot cars for transporting machinery?

9 A. Yes. Unless we're on the back roads. If we're on
10 gravel field roads, we don't use a pilot, but if we go
11 on major roads, we will pilot.

12 Q. You referenced at page 2 of your pre-filed testimony a
13 motor vehicle incident approximately four years ago.

14 Do you recall that?

15 A. Yes, I do.

16 Q. Were you involved?

17 A. I was not involved myself, no.

18 Q. Okay. How did you hear about it?

19 A. I was on the farm when the machinery happened -- the
20 accident happened.

21 Q. Okay. Is that the one incident that your company has
22 had that involved a collision in the 25 years you've
23 been there?

24 A. There has been more incidences over different areas,
25 different scenarios.

0085

1 Q. Incidences you didn't put here?

2 A. Yes.

3 Q. Why didn't you put them in?

4 A. Well, a truck in a different area that gets rear-ended
5 by a car at a stop sign isn't pertinent to this case.

6 Q. So this is the only one you deemed pertinent?

7 A. This is the most current one that I had at the time.

8 Q. Okay. In that incident you were moving a tractor and
9 disc ripper back to your maintenance facility, which is
10 shown by the pink area?

11 A. Right.

12 Q. And so you were on 223 very close to your shop right
13 there?

14 A. We were pulling into the shop.

15 Q. Okay.

16 A. Heading eastbound.

17 Q. Right. And there was a driver of the tractor?

18 A. Yep.

19 Q. And there was a pilot car, both in front and behind?

20 A. Correct.

21 Q. So they had lights flashing and lights on?

22 A. Yes.

23 Q. And a vehicle, a private vehicle --

24 A. Yes.

25 Q. -- pulled around them to pass?

0086

1 A. Drove around the pilot car to the left-hand lane, came
2 back in, saw the tractor pulling across traffic in the
3 left-hand lane to turn, the car then slowed down, come
4 in behind on the right hand to pass on the shoulder of
5 the right hand, the implement through the length and
6 the pivoting of the tires the back end swings out. He
7 hits the back -- actually, it was a lady, hits the back
8 of the disc.

9 Q. So this car had to go around the pilot car and cut
10 between the pilot car and the tractor?

11 A. Correct.

12 Q. Huh. Now, I notice down here -- were the police
13 called?

14 A. No.

15 Q. So no one was injured?

16 A. Nobody was injured. If we would have stopped on the
17 road we would have blocked major traffic. We continued
18 to pull into the property, she brought her vehicle in
19 onto the property and we did estimates on it, worked
20 with the person, and so it didn't go on insurance. If
21 you turn everything into insurance, you'll lose your
22 coverage of insurance. We negotiated with her, got her
23 car fixed, there was no bodily injury, no need for a
24 police report to be involved.

25 Q. Why did T & K Farms pay for the damage if she drove

0087

1 around the pilot car?

2 A. The damage wasn't extensive enough to warrant the fact
3 of calling a police officer out, there was no bodily
4 injury, we worked with her. As a farm machinery, we
5 are always liable no matter what.

6 Q. Why do you say that?

7 A. Through past experience of listening to neighbors and
8 talking with the DOT, talking with state patrolmen
9 about what happens, they always find the farming
10 industry at fault because, one, we're going slow, this
11 road is a 60-mile-an-hour road. And everybody wants to
12 put the blame on the farmer. And you have three years
13 to come back on that claim. She could have come back
14 with a neck injury three years later and sued us for
15 it. Then we would have paid through our insurance and
16 it would have went up. Easier to work with the
17 individual, take care of the damages, take care of the
18 problem and fix the vehicle than running it through the
19 insurance and taking a chance of getting the insurance
20 deducted.

21 Q. So you thought there might be a reason to find that
22 your driver was at fault?

23 A. My driver was not at fault.

24 Q. But you paid the woman that ran into your tractor based
25 on a concern that your driver would be found at fault?

0088

1 A. It's easier to work with your neighbors than fight your
2 neighbors.

3 Q. I'm --

4 A. And with traffic the way it is, yeah, I could have held
5 everybody up, I could have left that piece of machinery
6 on the road for about two hours for them to come out
7 there and do their investigation, but it would have
8 stopped total traffic on that road because we were
9 totally blocking the road at that time.

10 Q. I appreciate it, and I'm sure all of the drivers do as
11 well, but I think you said you pulled in off the road
12 into your shop and the woman driving the car did the
13 same.

14 A. If I would have dialed 911 I would have let it set
15 right there.

16 Q. Well, at the time that you all moved into your area
17 there, you weren't blocking traffic anymore, correct?

18 A. I happened to be in the yard at the shop and so as a
19 fire department -- been on the fire department over
20 13 years, no longer on for the safety aspect of the
21 highway, and everybody around, as this was probably
22 happening around 5:30, 6:00 at night, high traffic,
23 sun's going down, that road is an east/west road, which
24 way does the sun set, east and west, the sun is in your
25 eyes on a frayed windshield. I was not going to put

0089

1 anybody at jeopardy to sit there on the road waiting
2 for the police department, fire department to show up.

3 Q. Mr. Curfman, I appreciate that. Let's shortcut this
4 and stick to the question. At the time that your
5 driver pulled the equipment off the road and you
6 stopped and the driver of the vehicle stopped, you are
7 no longer out there blocking traffic, correct?

8 A. The vehicles stop on the road until I got there.

9 Q. All right. Let me try one more time. You testified
10 earlier, I'm just trying to get back to that point,
11 that your vehicle that was, had the disc ripper, the
12 tractor, you pulled off Highway 23, you were no longer
13 in the street, and the woman driving the vehicle did
14 the same; is that correct?

15 A. Yes.

16 Q. Okay. Now --

17 A. And I honestly can't remember if there was a police
18 report involved or not. There could have been. She
19 may have called. I do not know. I can't recall that.

20 Q. Okay. At that point you're not blocking traffic, it's
21 not a concern, at that point you decided to negotiate
22 to pay her so that she didn't bring a claim against
23 your driver; is that correct?

24 A. No.

25 Q. No?

0090

1 A. A claim against my driver, no.

2 Q. Against you, against, well, your driver is driving,
3 against the farm. Is that what happened?

4 A. What's this got to do with anything?

5 Q. This is your pre-filed testimony. I'm just trying to
6 finish this part.

7 MR. PLANT: I'll object. This is getting
8 argumentative.

9 THE JUDGE: I agree it's not completely relevant.
10 If you can wrap it up.

11 Q. Happy to move on.

12 How many of your vehicles require pilot trucks or
13 signage on the highway?

14 A. It depends on the load that's on the vehicle at the
15 time. We have to follow state highway rules. How many
16 vehicles do I have? A very large number of vehicles.
17 We have over 30 semis, we have over 20 tractors, we've
18 got RoGators, we've got TerraGators, we've got discs,
19 we've got rippers, you name it, we've got it, probably
20 more than we need. Been there a long time in the
21 farming world. We have a lot of old equipment we may
22 not use for ten years.

23 Weather conditions show up, we've got to change
24 the way we work a piece of ground, we'll go to the back
25 lot, pull an old piece of machinery we know works under

0091

1 the weather conditions or crop conditions. As it
2 changes daily with the crops we raise, everything is
3 done differently.

4 Q. Can I have you give me an estimate of how many vehicles
5 you have that require some type of signage or pilots or
6 signage?

7 A. Seventy-five to a hundred.

8 Q. All of these vehicles at some point in time use state
9 highways and county roads; is that correct?

10 A. Some do not have to, unless we physically go straight
11 across them, we would. Some of them we will not drive
12 down the state highways.

13 Q. Doesn't the vast majority of your vehicles right now
14 have to use state highways or county roads at some
15 point?

16 A. Probably 90 percent.

17 Q. Thank you. How far is it from your farming center on
18 State Route 223 to Barnhart Road crossing?

19 A. Roughly six to seven miles.

20 Q. Do a lot of your farm vehicles drive that right now,
21 that using 223 to State Route 22?

22 A. Pickups, small trucks will use the state highway.

23 Q. None of your --

24 A. Tractors, we try to keep them, tractors being a field
25 tractor, not a truck tractor, a semi tractor, field

0092

1 tractors anywhere from six feet wide to ten and a half
2 foot wide.

3 Q. Do those use the state route?

4 A. Whenever possible we do not use the state route
5 highways. We try to go to the county roads due to less
6 traffic. People that are normally on the county roads
7 are farm workers, people working on farms, they
8 understand machinery, equipment. State route people
9 driving on state highways don't pay attention to their
10 surroundings.

11 Q. Could you just go faster? I read your pre-filed
12 testimony. The question was only do those vehicles,
13 those farm vehicles currently use state, the state
14 routes?

15 A. Only when they have to.

16 Q. But they do.

17 A. Only when they have to, yes they do when they have to.
18 We try to avoid that.

19 Q. Thank you. I'm sorry, that was about seven miles from
20 your --

21 A. Roughly, yeah.

22 Q. And you have to, when you go down to, from, from State
23 Route 223, what's the nearest crossing that you have to
24 go across the railroad tracks that you have to pass
25 before you get to Barnhart?

0093

1 A. To the Barnhart intersection, we won't use one.

2 Q. What -- let me try the question again. You might not
3 have understood it. What is the rail crossing that
4 your drivers would have to go past before they get to
5 the Barnhart crossing?

6 A. The other option would be using Indian Church Road.

7 Q. Okay. Indian Church Road, that has lights and gates at
8 that crossing?

9 A. Yes. The downfall is access in that crossing.

10 Q. This question was whether there is lights and gates.

11 A. No.

12 Q. Thank you.

13 A. There is no gates, there is just lights.

14 Q. Oh. Okay.

15 A. In case you're unaware of that. Thank you, Mr.
16 Curfman.

17 THE JUDGE: Did you have anything further?

18

19 REDIRECT EXAMINATION

20 BY MR. PLANT:

21 Q. Mr. Curfman, I'd like you to finish your answer. What
22 was the downside of using the Indian Church crossing?

23 A. The Indian Church Road crossing to come from our
24 farming area, which you can see on the map here is all
25 around that, going north, you cannot physically make

0094

1 the corner through the Y shape of the road to turn back
2 and head south on Indian Church Road to access that
3 crossing which is lit.

4 Q. So using Indian Church Road is not practicable?

5 A. We do not use Indian Church Road because we cannot make
6 the corner into the Barnhart Road crossing. You
7 physically cannot make the corners.

8 Q. Sure. I heard your testimony that in terms of
9 accessing your property towards the Barnhart Road side,
10 that whenever possible your farm equipment, heavy farm
11 equipment, tractors, and whatnot do not use state
12 highways; is that correct?

13 A. We try to avoid it in all aspects because of the amount
14 of traffic flow, so.

15 MR. PLANT: Okay. That's all I have. Thank you.

16 THE JUDGE: I have a couple questions for you.

17 THE WITNESS: Yes.

18

19 EXAMINATION

20 BY THE JUDGE:

21 Q. Can you estimate how many times that you move heavy
22 equipment over the north Stevens Road crossing on
23 either a daily or weekly basis?

24 A. Harvest season.

25 Q. What months are those?

0095

1 A. August, September, and October.

2 Q. Okay.

3 A. There will be as many as 70 times we cross the Stevens
4 Road crossing.

5 Q. Per day or per week?

6 A. Depends on where we're going with our product we sell
7 which routes we take and what crops are in there for
8 it.

9 Q. Could you just give me an estimate?

10 A. Probably, probably per week, if you stretched it out.

11 Q. Seventy times per week?

12 A. Yeah.

13 Q. How about the same question with respect to the
14 Barnhart Road crossing?

15 A. Probably not quite as often. It depends on the
16 markets. A couple years ago we were probably close to
17 that same number. Due to that we haven't sold product
18 this last year down there we didn't use it much last
19 year, but in three years we may use it even more. We
20 farm approximately 1,600 acres in the area of that
21 Barnhart crossing that could very easily turn and go
22 south with semis down towards the Satus area for
23 dairies down in that area.

24 Q. Again, you're talking about the August through October
25 time frame?

0096

1 A. Yes.

2 Q. Can you give me an estimate of last year how many times
3 per week you think you crossed?

4 A. Probably in the 50 range. Yeah.

5 THE JUDGE: Thank you. Mr. Plant?

6

7 FURTHER REDIRECT EXAMINATION

8 BY MR. PLANT:

9 Q. In terms of those crossings, I guess that would be 70
10 times per week during the harvest?

11 A. Right.

12 Q. But you would also be using the crossings on a regular
13 basis sort of starting in April or May for sort of
14 planting and --

15 A. We use them from, progresses more towards harvest, but
16 we've got irrigators that use the crossings constantly
17 to save the trip of going around. They can go across
18 the crossing, it takes them two minutes to get from one
19 field to the other in a vehicle, car, pickup, versus
20 driving to other sources to cross the highway, which,
21 there again, more traffic on the roads, more chances of
22 accidents.

23 Q. Your example you just used was an irrigator?

24 A. An irrigator.

25 Q. Is that a large piece of farm equipment?

0097

1 A. No. It's a standard pickup but two guys ride in it and
2 they carry their supplies to set tubes and change water
3 on a daily basis seven days a week.

4 Q. The 70 trips per week during harvest, what types of
5 equipment are we talking about?

6 A. That is strictly harvesting machineries or semi
7 trailers, semis and trucks, not including the daily use
8 we're using it every day for general maintenance of the
9 farm.

10 Q. Okay. And if the North Stevens Road crossing was
11 closed, these sort of 70 trips approximately of heavy
12 farm equipment, how would they be diverted?

13 A. Due to the bridges again on county roads, the large
14 equipment would have to go to Meyers Road, which the
15 concern there for us in Meyers Road is, I believe in
16 the county to expand Meyers Road to bring Highway 97
17 traffic diverted south of Toppenish going across Meyers
18 Road, intersecting the freeway at Zillah, therefore
19 we're going to put all of these large equipment that
20 move slow, they don't move 40 miles an hour.

21 My tractors, I have some older tractors that do
22 not top out over 18 miles an hour. When you have flag
23 cars involved and traffic, you move over to the side of
24 the road to let traffic by, so what may take you two
25 minutes in a car may take you ten minutes in a tractor

0098

1 to work with traffic to get around. But with the
2 expansion of Meyers Road, we're going to put a lot more
3 traffic out there and the chance of a lot more
4 liability to the farm and to the public.

5 Q. And from Meyers Road do they travel back on State Route
6 22?

7 A. The travel from Meyers Road heading south to State
8 Route 22 and drive approximately two miles to Stevens
9 Road to go north back to the other side of the railroad
10 tracks, approximately a four-and-a-half-mile round trip
11 could take us up to 30 minutes with one tractor and two
12 pilot cars; where now we can go out there with one
13 pilot car, stop traffic if there is traffic on a
14 smaller road, go straight across the tracks one mile,
15 continue on and go across the highway and no problem to
16 get to Chambers Road.

17 MR. PLANT: No further questions.

18 THE JUDGE: Thank you, nothing.

19 MR. SCARP: I do.

20 THE JUDGE: Go ahead.

21

22 RE-CROSS-EXAMINATION

23 BY MR. SCARP:

24 Q. You said semi trailers. That's the predominant what
25 you call the farm vehicle that you're using?

0099

1 A. To haul, that's what hauls the crop that is harvested
2 in the field. That does not do any harvesting itself.

3 Q. Right. Sure. What are the tractors pulling those,
4 Peterbilts, what?

5 A. Kenworth.

6 Q. Kenworth, Peterbilts?

7 A. Yeah.

8 Q. Those are on the highway all the time, aren't they?

9 A. Ours probably not. We're in the field more than the
10 highway. It is a highway vehicle, but we load in the
11 field. But they're licensed for state use, but we
12 cross these crossings with those vehicles and if those
13 vehicles have to maneuver around the crossings no
14 longer there, the one on Barnhart, if that crossing was
15 not there we would have to traffic approximately ten
16 miles to get around to the same point to the other side
17 of the crossing because we can't make the turns on
18 county roads the way the structure of the roads
19 preexisting are to turn a 40-foot semi on the road.
20 It's not physically possible.

21 Q. Do your, now, I want to make sure that what you told
22 the commission here, that it's accurate. You said that
23 there is up to 70 trips a week that would go across the
24 North Stevens crossing at harvest time per week. Did I
25 understand that correctly?

0100

1 A. It could be. If you, we may have 300 loads in one day
2 go across there.

3 Q. You said 70 average per week, right?

4 A. An estimated number, correct.

5 Q. Okay. Now, of those, what would you say are these semi
6 trucks that normally drive on the highway to deliver
7 this, 60 a week 65?

8 A. It could be. But if we have to change our routes, it
9 changes all of our dynamics.

10 Q. I didn't ask about changing. Hold on. One question at
11 a time if we can. We can ask to follow up. So you've
12 got, of that 70 crossings at North Stevens, 65 of those
13 are semi trucks that deliver that product somewhere
14 distant, correct?

15 MR. PLANT: He did not say that.

16 A. You just said 60 now you were saying 65.

17 Q. Sixty is fine.

18 A. Pick the number you want. I don't sit there and count
19 my trucks on the road. I'm sorry.

20 Q. The point is this, these are semi trucks, the tractors
21 of which are built by Peterbilt or Kenworth and they
22 drive on highways all the time, don't they?

23 A. Technically, I guess you could say yes.

24 Q. Technically would you say that there are Peterbilt and
25 Kenworth trucks driving semi trailers all day long and

0101

1 all night long on that highway?

2 A. Most days, I would -- I haven't looked. I'd assume.

3 Q. You would assume so?

4 A. What's your point?

5 Q. My point is that 60 of the 70 trips across North

6 Stevens are by trucks that are going to drive on the

7 highway regardless; isn't that correct?

8 A. If we did not cross the Stevens Road crossing.

9 Q. Was that correct?

10 A. I guess it was correct.

11 Q. Okay. Thank you.

12 A. I would like to add to that.

13 Q. He will ask you to follow up.

14 MR. SCARP: Those are all of the questions I have.

15 Thank you.

16 THE JUDGE: Thank you.

17

18 FURTHER REDIRECT EXAMINATION

19 BY MR. PLANT:

20 Q. Sure. Mr. Curfman, did you have something you would

21 like to add to that?

22 A. I would like to, yes. If we did not use the crossing

23 at North Stevens Road, we would turn and go south with

24 a truck weighing up to 105,500 pounds maximum legal

25 highway weight, we would enter State Route 22 with

0102

1 traffic on a two-lane highway driving at 60 miles an
2 hour with no stop signs, no caution lights, nothing,
3 and enter that traffic going south crossing the
4 northern road, so crossing now we're putting trucks on
5 the road entering traffic.

6 To give an example what we're capable of doing,
7 our harvest equipment we can load the truck with 20-ton
8 approximate in less than four minutes. If I had the
9 truck fleet, I would have a lot more on the road. But
10 we can load a semi in 20 minutes out of the field and
11 put a semi on the road every four minutes if I have it
12 available to me. That's per machine and I run four
13 machines. Put that on the state highway off a stop
14 sign on a dead stop with a licensed Peterbilt truck.
15 How fast does it take for him to get up to 60 miles an
16 hour on public roads?

17 Q. The final question, Mr. Curfman, I know we're talking
18 estimates 70 a week during harvest, some 60 or so of
19 which is semis, the other ten would be sort of large,
20 slow-moving tractors and whatnot?

21 A. Right.

22 Q. Including the tractor that goes 18 miles an hour?

23 A. Right.

24 THE JUDGE: Can I ask a couple of clarifying
25 questions?

0103

1 THE WITNESS: Yes.

2

3 CONTINUED EXAMINATION

4 BY THE JUDGE:

5 Q. You're saying if you're leaving the place on the map

6 where your headquarters building was?

7 A. Correct.

8 Q. And you would take 223 to 22 if you can't use the

9 Barnhart crossing?

10 A. I would have to, yes.

11 Q. As it is now, how did you get to the Barnhart crossing

12 from your headquarters?

13 A. We'll stay off any state highways and we'll use all

14 back roads.

15 Q. Which back roads do use specifically?

16 A. Connie Road, Blue Heron, Meyers, and Annahat,

17 A-N-N-A-H-A-T. We will use Track Road, we try stay off

18 of it because it's so narrow and there is a lot of

19 high-speed vehicles running Track Road that run

20 parallel with 223.

21 THE JUDGE: Thank you. Anything further for

22 this witness? You may step down. I think this would

23 be a good time to take a brief recess.

24 (A SHORT RECESS WAS HAD.)

25 THE JUDGE: We'll be back on the record after a

0104

1 brief recess, and Mr. Plant, if you would like to call
2 your next witness.

3 MR. PLANT: Mr. Curtis Parrish, please.

4

5 CURTIS PARRISH, being first duly sworn to tell
6 the truth, the whole truth,
7 and nothing but the truth,
8 testified as follows:

9

10 THE JUDGE: If you could state and spell your last
11 name.

12 THE WITNESS: It's Curtis Parrish, P-A-R-R-I-S-H.

13 THE JUDGE: Thank you.

14

15 DIRECT EXAMINATION

16 BY MR. PLANT:

17 Q. Mr. Parrish, thank you for being available today.

18 Would you please state your occupation for the record.

19 A. Farmer.

20 Q. Okay. I'm going to hand you your pre-file testimony in
21 this matter, which has been designated Exhibit CP-1T
22 along with the exhibits to that testimony, CP-2 to
23 CP-3. Please take a look at this.

24 A. Yeah, that's.

25 Q. Is that your testimony in this matter?

0105

1 A. It is.

2 Q. Okay. Exhibit CP-2 there, just, that is a sort of an
3 aerial photograph of land around the North Stevens Road
4 crossing with some of the property that you farm
5 highlighted in red; is that correct?

6 A. That's correct.

7 Q. Okay. I'm also going to hand you what's been
8 designated as an Exhibit No. DA-6. It's the first
9 cross exhibit to David Agee's pre-filed direct
10 testimony. Now, is that also an aerial photograph of
11 the real property surrounding the North Stevens Road
12 crossing?

13 A. Yes.

14 Q. And are those the same parcels that are identified in
15 CP-2, are they sort of shaded in green on that exhibit?

16 A. Yes, they are.

17 Q. Okay. And is the current route that your farm
18 equipment uses to travel between those parcels during
19 farming operations depicted in red?

20 A. That's correct.

21 Q. Okay. And if the North Stevens Road crossing is
22 closed, you'll be required to use alternate routes to
23 move farm equipment between those parcels?

24 A. That's correct.

25 Q. Are those alternate routes depicted in, I guess that's

0106

1 a kind of a light blue?

2 A. Yes, sir.

3 MR. PLANT: Okay. That's all I have. Thank you.

4

5 CROSS-EXAMINATION

6 BY MR. CHAIT:

7 Q. Good morning, Mr. Parrish. Thanks for being with us

8 this morning?

9 A. Thank you.

10 Q. You are with SP Farms and Ranch; is that correct?

11 A. That's correct.

12 Q. And SP Farms and Ranch, about how many acres are shown

13 in Exhibit CP-2 that you referenced?

14 A. Well, there is, collectively there is actually more

15 there in one block, but it's roughly two 80-acre

16 parcels. But that's not that whole shaded area, that's

17 only a portion of it.

18 Q. I'm not sure I'm following you.

19 A. We farm two 80-acre parcels all interconnected there.

20 This only shows a portion of that 160 acres because

21 it's the only portion that's actually impacted by that

22 division of the railroad crossing.

23 Q. Okay. So you farm an additional 80 acres elsewhere

24 that is not impacted?

25 A. Not by this crossing, no.

0107

1 Q. And which crossing do those use?

2 A. It would be North Stevens Road, but on the south side
3 of the highway.

4 Q. So they don't need to cross over to the north side?

5 A. Can, yes. It depends on what situation we're
6 discussing.

7 Q. Okay. You farm -- sorry, not you, SP Farms farms other
8 acreage in the general Toppenish area?

9 A. Yes, that's correct.

10 Q. And where is that located?

11 A. For the most part mostly around the perimeter of
12 Toppenish, the city limits, that would be the majority
13 of it. There's some of it that's further to the west
14 of Toppenish, some that's a little to the east of
15 Toppenish, but for the most part within a few miles of
16 the city limits.

17 Q. But fairly spread out from one field to the next?

18 A. Not really. A lot of it is very contiguous.

19 Q. Okay. You have to move equipment on the roads?

20 A. Occasionally. The majority of it is in, in field,
21 similar to what Mr. Curfman said. We move it from this
22 field to that one by using a roadway that's already on
23 our property.

24 Q. Okay. Now, the land in CP-2, just to get this straight
25 in my head, it's designated as Parcel 32003, that I

0108

1 looked up and it's owned by something called Nomu
2 Financial. Do you know what that is?

3 A. Yes.

4 Q. What is that?

5 A. That's a company that's owned by my late father's
6 trust, but farmed by SP Farms and Ranch.

7 Q. Are you an officer or anything in Nomu Financial?

8 A. I'm the manager.

9 Q. You're the manager?

10 A. It's a limited liability company.

11 Q. Does S & P Farms and Ranch have an operation center
12 where they keep their vehicles, offices, that type of
13 thing?

14 A. We have a central office that is in the city of
15 Toppenish, just office purposes, that's payroll,
16 accounts payable, that sort of thing. There is rarely
17 equipment there. The main shop where we do our main
18 repairs is on North Track Road, it would be 10255 North
19 Track Road. We also have a couple of satellite shops
20 where we do repairs and store equipment as well.

21 Q. Okay. So now, when you're bringing equipment to the
22 fields over by North Stevens Road, are you bringing
23 that equipment from North Track Road?

24 A. Occasionally.

25 Q. Well, where is it coming from if not North Track Road?

0109

1 That's what I'm getting at.

2 A. It could be coming from another location on Curlew
3 Road.

4 Q. On?

5 A. Curlew.

6 Q. Curlew?

7 A. Curlew.

8 Q. That's your other fields?

9 A. It's another satellite shop area that we have.

10 Q. Okay. You said the main one is on North Track Road.

11 That's what I'm trying to get at. Is it fairly typical
12 to move equipment from North Track Road over to the
13 North Stevens fields?

14 A. Again, occasionally. It depends on where the equipment
15 is when we need it for that particular site.

16 Q. Okay. How do you move equipment from North Track Road
17 over to Stevens, if you were going to do that?

18 A. North Track Road and probably stay on Track Road to
19 South Track Road.

20 Q. Sure.

21 A. And then cross over.

22 Q. Sure. Okay. So you move equipment on South Track Road
23 every now and then?

24 A. Yeah. We try to avoid it if we can go through the
25 fields and avoid county roads that are narrow like

0110

1 that, that's helpful.

2 Q. You don't own a lot of property contiguous to this
3 32003 property because we saw that Mr. Curfman does.

4 A. I don't know how much of it he owns.

5 Q. Sorry, farms.

6 A. He farms, that would be more correct. What you said is
7 true.

8 Q. Okay. So you do have to bring equipment over on South
9 Track currently?

10 A. Uh-huh.

11 Q. Okay. Alternatively you could take it on 22?

12 A. You could. It's not nearly as safe. It's just a lot
13 more traffic there. A lot faster traffic.

14 Q. Do you store equipment in the fields overnight?

15 A. Yes.

16 Q. Okay. Is that pretty common?

17 A. Depends on the time of year.

18 Q. So you described in your testimony that you use a
19 number of large vehicles for field preparation and
20 harvest, those are kind of the two times you use them,
21 if you can just break it up like that. Does that make
22 sense to you?

23 A. Yes.

24 Q. Okay. And you mentioned this year, you might have
25 corn?

0111

1 A. Yes.

2 Q. So for corn, disc rippers, rollers, those are used at
3 the same time for plant preparation; is that right?

4 A. Yes.

5 Q. And then you said you contracted out sprayers. And is
6 that the testimony we heard earlier this morning from
7 Mr. Boob?

8 A. Yes, Mr. Boob does work for us.

9 Q. Okay. So he brought his sprayers over and did your
10 land?

11 A. For the most part, we, we do a little bit of spraying
12 ourselves, weed control sort of thing, but for the
13 major stuff, yes.

14 Q. Okay. And then the harvesting equipment, combines,
15 cornstalk beaters, that's all at the same time, right,
16 those things operate together at harvest; is that
17 right?

18 A. Yes.

19 Q. Okay. Now, with respect to transporting those machines
20 that we just talked about that you use on the roads, do
21 you, do they require guide cars, pilot cars?

22 A. Yes.

23 Q. And you always use pilot cars?

24 A. Not always. Again, if it's a short trip, just for
25 example, if I was going from one side of the railroad

0112

1 crossing to the other, to our other part of parcel, we
2 wouldn't use pilot cars. It's a, it's a county gravel
3 road. If there were no traffic, you could be across
4 that crossing in a matter of a few minutes without
5 needing any help.

6 Q. Okay. But it's still required by law, isn't it?

7 A. I'm sure it is.

8 Q. So you just disregard the law?

9 A. By the time you go get the people and go get the
10 equipment and everything to do it, it's already done.

11 Q. Okay. Any of the equipment you use over 20 feet wide?

12 A. Yes.

13 Q. Sixteen feet wide?

14 A. Some.

15 Q. Twenty feet wide?

16 A. Some. Not all of ours, but there are pieces that are,
17 yes.

18 Q. I'm asking about yours. Any of yours over 20 feet
19 wide?

20 A. Yes.

21 Q. With respect to the over 20 feet wide, how do you move
22 those?

23 A. A lot of times they're broken down.

24 Q. Okay. So it's not actually 20 feet wide going across
25 the highway?

0113

1 A. Rarely down the highway, that's correct.

2 Q. Or down a road?

3 A. Yes. Well, again, private road, yes.

4 Q. Okay. Because you would need to get a, file a route,
5 get a permit, talk to the county, talk to the railroad.

6 I mean, there's a lot of regulation you need to deal
7 with to move a 20-foot wide machine, isn't there?

8 A. Well, and to reiterate what Mr. Curfman said earlier,
9 you're impeded just by areas on county roads where the
10 abutments on the side of the road are only 19 feet
11 wide.

12 Q. So you move it on state routes that are wide enough?

13 A. Not usually, no.

14 Q. Or you break it down into small pieces?

15 A. Exactly. Which is very expensive, time consuming.

16 Q. Do you file your routes with county when you're moving
17 large equipment?

18 A. No.

19 Q. Why not?

20 A. It's not necessary. Hasn't been required.

21 Q. Okay. So I'm going to focus on just these two parcels
22 for a second. Go back to these two parcels on your
23 exhibit. I want you to just focus on them when we're
24 talking about this. I think you mentioned last year it
25 was wheat that you farmed on these two?

0114

1 A. (Shaking head).

2 Q. No?

3 A. No, it was corn.

4 Q. Corn. Sorry. My apologies. How many days last year
5 were you using the heavy field equipment that you
6 mentioned earlier in your testimony here, the disc
7 rippers and rollers that you use at the same time, how
8 many days for these two fields?

9 A. I honestly can't say. I don't know. Probably eight to
10 ten consecutively.

11 Q. Eight to ten. Okay. And you kept them there
12 overnight?

13 A. No.

14 Q. Nope. Move it to a different field?

15 A. Usually I move them to a safer location.

16 Q. What safer location would that be?

17 A. The one on Curlew Road.

18 Q. How do you get to Curlew Road?

19 A. Across the North Stevens Road, down to Parton Road.

20 Q. Okay. Then for harvest, you mentioned you were using
21 the combines, corn carts, and cornstalk beaters. How
22 many days for these two parcels would you have used
23 those?

24 A. Probably a good ten days.

25 Q. Okay. So you're talking about 18 trips annually across

0115

1 the North Stevens with those heavy machines?

2 A. No, it would be more than that because you go, you're
3 going back and forth, you're working ground on each
4 side of the crossing. The field is separated into two
5 parcels, but it originally was a parcel this shape
6 (indicating). The railroad goes through it at a
7 diagonal. So we own both sides of the road. So you
8 work with a tractor over here and then use the same
9 piece of equipment and use it back over here.

10 Then if Mr. Boob's outfit comes in and fertilizes,
11 we would go back to where he has already fertilized
12 with that same piece of equipment, and when we finish
13 there, then we go back over here again. You go back
14 and forth a number of times. It's not just a one-time
15 application.

16 Q. How many times a day?

17 A. In a day?

18 Q. Yeah.

19 A. Oh, maybe once or twice.

20 Q. So you're talking about eight days, ten days, once or
21 twice a day. So 36 times a year max?

22 A. That's as good a guess as any. I don't know.

23 Q. Okay. Again, to move that equipment around, how many
24 miles extra would it be?

25 A. Oh, you mean to go to the Meyers Road?

0116

1 Q. Yeah, Meyers Road.

2 A. I don't know what that is, a couple miles.

3 Q. Yeah. Couple miles?

4 A. Something like that.

5 Q. Thirty-six times a year. Okay. Meyer Road has gates

6 and lights, right?

7 A. Gates, yeah, I guess it does.

8 Q. Okay. So in these, you're moving the slow-moving

9 vehicles, these 18 to 36 vehicles, who is driving those

10 vehicles?

11 A. Employees.

12 Q. Okay. So SK employees -- I'm sorry, SP employees are

13 driving them?

14 A. Yes. Uh-huh.

15 Q. Are they year-round employees, seasonal employees?

16 A. A few seasonal, the majority are, I want to say year-

17 round, but they're probably nine to ten months out of

18 every year.

19 Q. What's the split of those, in terms of the people who

20 are operating the vehicles, is it mostly seasonal,

21 mostly eight to ten?

22 A. Mostly the year-rounds.

23 Q. Do they have CDLs?

24 A. Some.

25 Q. Okay. Do you know how many?

0117

1 A. I honestly can't say off the top of my head.

2 Q. Do you independently provide any training with respect
3 to operation of heavy farm vehicles?

4 A. Yeah. All of our tractor operators are trained in how
5 they're supposed to utilize the vehicle.

6 Q. Okay. Does that include training about how to cross at
7 a railroad crossing?

8 A. Railroad crossing, I would assume if you have a
9 driver's license you know how to cross a railroad
10 crossing.

11 Q. I won't assume that, because I've seen too many people
12 die. I mean, we represent the railroad. Unfortunately
13 we see people die. So I don't assume that. But I
14 understand your sentiment.

15 You've seen trains crossing near the North Stevens
16 Road.

17 A. Have I?

18 Q. Have you seen trains crossing near the North Stevens
19 Road?

20 A. Yes. Yes, I have.

21 Q. About how long are those trains, in your estimation?

22 A. I don't know. Recently, I think that the car count is
23 somewhere in that 120, 140 range.

24 Q. Any idea how heavy that is?

25 A. Depends on whether they're loaded or empty.

0118

1 Q. Sure. Sure. Any idea how long it takes one of those
2 guys to stop, even empty?

3 A. Takes a long time.

4 Q. Yeah. A mile, something like that?

5 A. Or more.

6 Q. All right. So I'm just trying to get my head around a
7 little bit, I'm sorry, I'm going to go into a little
8 bit of a different area here.

9 Going back to your exhibit, and I know we had Mr.
10 Curfman's testimony earlier that he uses this crossing,
11 are there anyone else use this crossing besides you and
12 Mr. Curfman?

13 A. Uh-huh.

14 Q. And your employees?

15 A. Yes.

16 Q. Are there any other farms that require the use of this
17 crossing that you know of?

18 A. I would say Philip Sealock, extensively.

19 Q. Philip Sealock?

20 A. Yes.

21 Q. Okay.

22 A. Steve Bangs is another one.

23 Q. Okay.

24 A. I would assume that Oswalts do as well. I've never
25 asked them, but because we have a single location

0119

1 there, it's not the majority of our operation. So I
2 don't spend a lot of time just standing down there
3 watching to see who goes across the crossing.

4 Q. You think you know two people use it and you think
5 maybe another three more, right?

6 A. Yeah, and individuals, I mean residents, that sort of
7 thing.

8 Q. Sure.

9 MR. CHAIT: I think that's all I have for you at
10 this time. I appreciate it.

11 THE WITNESS: Thank you.

12

13 REDIRECT EXAMINATION

14 BY MR. PLANT:

15 Q. Mr. Parrish, just to sort of follow up here, we talked
16 a little bit about the sort of number of trips back and
17 forth between, I guess the portions of that parcel on
18 the north, north of the railroad track and south of the
19 railroad track, and you mentioned that there are a
20 couple of times, maybe eight to ten consecutive days in
21 the sort of spring planting season and then maybe a
22 similar amount of days during the harvest season that
23 you could cross the road one to two times per day. Are
24 there times where there will be multiple tractors sort
25 of working in tandem?

0120

1 A. Most certainly.

2 Q. Okay. And would some of those crossings involve maybe
3 sort of, I guess during harvest in particular, where
4 you have sort of balers and tractors and swathers?

5 A. It's not uncommon, yeah.

6 Q. During harvest would you also have, I guess, semis that
7 are going to be there to export the product off the
8 site?

9 A. Absolutely.

10 Q. Okay. And now, let's look sort of right at the semis
11 because there has been a fair amount of talk about
12 semis here. So during harvest season a large amount
13 of, a significant number of semis are used to haul
14 trailers and export product off the site; is that
15 correct?

16 A. That's correct.

17 Q. So if the North Stevens Road crossing is closed, those
18 semis will then go onto State Route 22 or South Track
19 Road; is that correct?

20 A. If that crossing is closed, they could not get to South
21 Track Road using that crossing, so they would all have
22 to go to State Route 22.

23 Q. Okay. Now we're using the term semis. Are these sort
24 of modern -- I guess let's talk about your trucks. Are
25 these sort of modern state-of-the-art semi trucks?

0121

1 A. Sorry. We don't have many modern state-of-the-art
2 trucks on our farm. I won't speak for Mr. Curfman.

3 Q. What kind of trucks do you have?

4 A. The same as what was discussed earlier, white
5 Freightliners, Peterbilts, Kenworths, but they're older
6 model.

7 Q. So they would be entering State Route 22 at North
8 Stevens Road?

9 A. Yes, that would be correct.

10 Q. And then they would be traveling either I guess towards
11 Meyers Road, or conversely, they would be traveling
12 sort of southeast to cross down there?

13 A. Yes. If you, if you turned in that direction, it would
14 actually take you to the intersection where State Route
15 223 is where Mr. Curfman's operation is.

16 Q. How long -- I guess the speed limit on State Route 22
17 is 60 miles an hour, 55. How long does it take a semi
18 to reach that speed, one of your semis, I guess?

19 A. There is a different. Easily two or three miles. I
20 mean, it's not something you obtain very quickly when
21 they're loaded.

22 Q. They would not remotely reach sort of a safe operating
23 speed before they were required to slow down?

24 A. It's not a zero to 60 in ten seconds things, no, it's
25 not.

0122

1 Q. You would be putting a semi truck sort of on that road,
2 on State Route 22, that sort of never reached the speed
3 limit before having to cross over and come back to
4 essentially almost where it started?

5 A. I'd say that's correct, yes.

6 Q. Okay. All right. You mentioned that you have a base
7 of operations on North Track Road?

8 A. That's correct.

9 Q. Now, can you get from North Track Road over and come
10 down Meyers Road that way?

11 A. No. Repeat that. I'm not sure how you meant that. I,
12 you lost me.

13 Q. To get, I guess from, I may have said the wrong word,
14 to get from the North Track Road facility, can you
15 access Meyers Road and come down that way, or?

16 A. Yeah, you can. I can get that way by going to Union
17 Gap, too. It's just not convenient.

18 MR. PLANT: Okay. I have got no further
19 questions.

20

21 RE CROSS-EXAMINATION

22 BY MR. CHAIT:

23 Q. I think it might be useful to actually just put up one
24 of our exhibits and kind of look at this on a bigger
25 scale, maybe.

0123

1 So this is, this is North Stevens Road. This is
2 Exhibit KM-26CX, which is admitted with Mr. McHenry's
3 testimony. I think it might be easier for us to kind
4 of see here. I think we're talking about these two
5 parcels are yours here, 32003?

6 A. Yes. There is a bit of glare there. Yeah, that's
7 correct.

8 Q. All right. Now, you're talking about a semi turning
9 down here onto State Route 22?

10 A. Uh-huh.

11 Q. Now, where does the semi go once it's loaded with
12 product?

13 A. It varies.

14 Q. It goes up Meyers Road up to I-82?

15 A. No. Seldom. It would usually go the other direction.

16 Q. It usually goes down here. Doesn't ever go up to I-82?

17 A. No. We don't use I-82 very much.

18 Q. Okay. You use State Route 22?

19 A. From that location, yes.

20 Q. Yeah. And so using your semis, you still have to, you
21 know, even with North Stevens there, you would still
22 have to come down and get on State Route 22 to get
23 where you're going if you're coming from this field,
24 wouldn't you?

25 A. If that's the way you're going. That may not be the

0124

1 direction you're going.

2 Q. Let's say you're going this way, then, and you come
3 onto South Track. You have to go across, don't you?
4 Don't you eventually have to make a turn and
5 accelerate?

6 A. No.

7 Q. You don't ever have to go anywhere where you have to
8 accelerate, you can just cruise along at ten miles per
9 hour with your semi?

10 A. Number one, I'm trying to figure out what you're
11 assuming we're harvesting. Because the crops all go to
12 a different location. It could be the crop's only
13 being hauled a mile or two and that is the final
14 destination. So there is no absolute answer to your
15 question.

16 Q. What I'm getting at is you always have to accelerate,
17 don't you, you always have to get on a road and get
18 going up to speed, don't you?

19 A. Not always, no.

20 Q. Okay. Then you're going to be going slower than the
21 speed limit, aren't you?

22 A. Occasionally.

23 Q. What's the speed limit on South Track?

24 A. Fifty.

25 Q. It's 50. How long does it take you to get to speed on

0125

1 South Track if you're going that way currently?

2 A. Probably a mile, mile and a half.

3 Q. So it takes you half of what it takes to get to 50 than
4 to 60, because you just said two to three miles to get
5 to 60, one to one and a half to get to 50. I'm having
6 a little trouble understanding.

7 A. Well, it's a little bit of a different deal. County
8 roads are a lot more narrow than the state highway.
9 You don't take off and accelerate even as quickly
10 there. You take off as quickly as you can on the state
11 route, you've got a nice shoulder, you can get over to
12 the side and be on the fog line where people can see
13 around you, they could see around the semi. You don't
14 have that luxury on a county road.

15 Q. You would rather be on State Route 22?

16 A. (Laughing).

17 Q. A serious question.

18 A. Anytime you're driving a truck you want to be on a
19 bigger, safer highway, I'll agree with that.

20 Q. Okay.

21 A. But that's not what you do with farm product. It's not
22 that simple.

23 Q. Well, it seems pretty simple. You have two choices of
24 roads here, one has a 50 and one has 60 and you've got
25 to accelerate. You're telling me the 50 is safer.

0126

1 A. The one that's 50 has maybe 5 to 10 percent the traffic
2 and you're pulling out with 100,000 pounds out into
3 that traffic. You're not slowing up nearly as many
4 people, you're not in other trucks' ways. The other
5 semis that are going down State Route 22 are hauling
6 loads of cattle, reefers, whatever they are, and
7 they're going 60 miles an hour.

8 Q. So you --

9 A. That's who you're pulling out in front of.

10 Q. You take a right on South Track, coming down, we can't
11 see this because this map ends here, but you come down
12 and you catch State Route 22, a stop sign, you have to
13 go down Harris or go to State Route 22, right?

14 A. Can't go down Harris.

15 Q. Can't go down Harris?

16 A. Bridge. It's got a load restriction.

17 Q. Basically you tee into State Route 22, you either have
18 to go left up Highway 223, which also has a 60-mile-an-
19 hour?

20 A. Uh-huh.

21 Q. Or you go left from a stop onto State Route 22. So
22 you're doing the same thing, aren't you?

23 A. If you're going that direction, yes. You're assuming
24 we're all going the same direction.

25 Q. You told me that's where you normally go. I mean, we

0127

1 can do the same exercise with going north, but I think
2 we're going to come to the same result.

3 Let me ask you about your fleet, too. So you
4 complained about your old fleet. Is your fleet
5 roadworthy?

6 A. Yeah.

7 Q. Have you had it inspected under DOT protocol?

8 A. Yes.

9 Q. Pass those inspections?

10 A. Yes.

11 MR. CHAIT: Okay. I think that is all I have for
12 you. I appreciate your time.

13

14 FURTHER REDIRECT EXAMINATION

15 BY MR. PLANT:

16 Q. Just one point, Mr. Parrish. One of the points you
17 were making is that of course during harvest you are
18 taking semi trucks that are hauling product offsite to
19 their destination; that's correct, right?

20 A. That's correct.

21 Q. But if the North Stevens Road crossing is closed, you
22 will have an additional number of trips of semis that
23 are using South Track Road and State Route 22 to move
24 between these parcels that would not be on either South
25 Track Road or State Route 22 but for the closing of the

0128

1 North Stevens Road crossing?

2 A. That's correct.

3 Q. Thank you.

4 THE JUDGE: I just have one question.

5

6 EXAMINATION

7 BY THE JUDGE:

8 Q. In your pre-filed testimony on page 2 you were asked
9 about the impact of the closing of both crossings, over
10 Stevens and Barnhart Road, but you only answered with
11 respect to North Stevens Road. Do you use the Barnhart
12 Road crossing currently?

13 A. No. Originally that question was asked of me because
14 at one time we used to farm a lot of property in that
15 area and utilized it. We no longer have any farm
16 ground there that we're utilizing it, so it's just my
17 past experience.

18 THE JUDGE: Okay. Thank you.

19 MR. CHAIT: That's all.

20 THE JUDGE: Okay. You may step down.

21 THE WITNESS: Thank you.

22 MR. PLANT: Allen Zecchino, please.

23 *

24 *

25 *

0129

1 ALLEN ZECCHINO, being first duly sworn to
2 tell the truth, the whole
3 truth, and nothing but the
4 truth, testified as follows:

5

6 THE JUDGE: Please state and spell your last name
7 for the record.

8 THE WITNESS: Zecchino, Z-E-C-C-H-I-N-O.

9

10 DIRECT EXAMINATION

11 BY MR. PLANT:

12 Q. Mr. Zecchino, would you please state your occupation.

13 A. Farmer.

14 Q. Okay. I'm going to hand you your pre-filed testimony
15 in this matter, which has been designated Exhibit
16 AZ-12, along with Exhibit Nos. AZ-2 to AZ-4. Would you
17 please review this document.

18 A. Okay.

19 Q. I understand that Exhibit AZ-2, you might want to take
20 a look at it there, depicts the route that your farm
21 equipment will be required to take to access the
22 property you farm south of State Route 22 at Barnhart
23 Road if the Barnhart Road crossing is closed; is that
24 correct?

25 A. Yes. There is more there.

0130

1 Q. That's generally correct?

2 A. Yep.

3 Q. Okay. I'm also going to hand you what has been
4 designated Exhibit DA-7 and just ask if you would agree
5 that Exhibit DA-7 is the same as Exhibit AZ-2.

6 A. Yes, they're the same.

7 MR. PLANT: Thank you very much. Nothing further
8 at this time.

9 THE JUDGE: Okay.

10

11 CROSS-EXAMINATION

12 BY MR. CHAIT:

13 Q. Hi, Mr. Zecchino.

14 A. Hello.

15 Q. Thanks for joining us this morning. I appreciate your
16 time.

17 So your testimony, Zecchino Farms, that's owned by
18 you and your family; is that right?

19 A. That's correct, yes.

20 Q. And your operations cover approximately 621 acres in
21 Yakima County; is that still current?

22 A. It's actually quite a bit more than that.

23 Q. Okay. How much?

24 A. The 221 is what's affected by the Barnhart crossing,
25 and then we farm about 1,700 total.

0131

1 Q. 1,700 total?

2 A. Yes.

3 Q. Okay. Let me throw up the other map just so we can
4 kind of all be on the same page about this. Now, so
5 the parcels that were highlighted, I believe, are these
6 three here; is that correct?

7 A. There is a glare. Can I go up there?

8 Q. Yeah. Absolutely.

9 A. There is quite a few more.

10 Q. Show me. We put clear cellophane. You can draw on
11 there, mark it, it might be easier for everyone.

12 A. I'm trying to figure out where we're at here. That's
13 where we're currently farming. Sometimes we'll farm
14 this ground.

15 Q. You can put your initials there so we can keep it
16 straight in case we put anything else up here.

17 A. (Witness complied).

18 Q. Any other areas you farm in this vicinity shown on this
19 map?

20 A. I'm sure there are, but now I've got to find them. We
21 farm these and farm these (indicating).

22 Q. Why don't you just color those in, too, so we can kind
23 of keep track of it.

24 A. (Witness complied).

25 Q. Does this represent your 1,600 acres or are we still

0132

1 missing stuff?

2 A. No, you're still missing stuff.

3 Q. Okay. But nothing else on this map?

4 A. Probably. From here, this is actually our home place
5 here.

6 Q. Okay.

7 A. I've got to be careful not to get on the curtains here.
8 I think that's it.

9 Q. If you could put your initials in each of those so we
10 can keep those straight.

11 A. Okay.

12 Q. Let me, your operations building you said is this one
13 out on Satus Longhouse, right?

14 A. Yes, that's correct.

15 Q. Okay. And do you own these plots or do you just farm
16 them and lease them from the Nation?

17 A. Where the home place is is the only thing we own.

18 Q. That would be 22001 parcel right here?

19 A. Well, yeah. Actually, I wasn't thinking of that one,
20 but we do own that one, you're correct, and where the
21 home place is.

22 Q. Over here?

23 A. Yes.

24 Q. Those two. Then the other you lease from the Yakama
25 Nation?

0133

1 A. Yakama Nation.

2 Q. Do you farm up by the North Stevens crossing or only
3 down here by Barnhart?

4 A. Only by Barnhart.

5 Q. So the closing of North Stevens won't affect you?

6 A. No.

7 Q. Okay. Now, let me look at this map a little bit for a
8 second. There appears to be another private crossing
9 right about here that tees into your land. Are you
10 familiar with that private crossing?

11 A. Yes.

12 Q. Do you use that private crossing?

13 A. Only with pickups.

14 Q. Okay.

15 A. We've tried to use it even with a semi truck we have
16 belly dumps, and it's made so poorly it comes like
17 that. So are you familiar with the belly dump semi?

18 Q. No, please, if you would.

19 A. They haul grain and you open the chute and it drops
20 out. And they're lower to the ground than traditional
21 ones. So at 40-foot, if you come over that with one,
22 you'll ruin your trailer. We've actually tried it in a
23 muddy year to get around and we actually hauled gravel
24 in there, but it still wouldn't work.

25 Q. Once you're across that private crossing, do you have

0134

1 access to all of these fields, if you were to go across
2 that private crossing?

3 A. Depending on the crops that are there, you do, I mean,
4 with a pickup truck, yes.

5 Q. So you could actually come out to this other driveway
6 that tees into Barnhart over here?

7 A. With a tractor or a pickup.

8 Q. Let's talk about a pickup for a second. I'm trying to
9 see what connects right now.

10 A. You can go with a pickup truck all along the side there
11 of the railroad right-of-way basically, is what it is.

12 Q. You can get a pickup across here, come out of your
13 field and go down about a hundred yards, I think it
14 was, go across and go into your fields there?

15 A. Yes.

16 Q. What about a tractor?

17 A. Depending on the time of year and the crop, if we're
18 irrigating, during irrigation season, never because
19 that's a swampy soggy ground and the equipment is too
20 heavy and it will actually look dry, you'll be
21 irrigating over here and the ground will look like
22 there's nothing here, and pretty soon you're in a
23 four-foot swamp. It's swampy, soggy ground, we call
24 it.

25 Q. You farm some land also around and you use Satus

0135

1 Longhouse a fair amount?

2 A. Yes, we use that one.

3 Q. And you come around and get, it hooks up in -- I'm

4 blanking on the name of the road it hooks up to.

5 A. Schuster.

6 Q. Schuster. Use that a bit?

7 A. Yes.

8 Q. Any problems using those roads?

9 A. No, no problems out of the ordinary.

10 Q. Do you know, the private crossing, do you know who owns

11 the private crossing?

12 A. I don't. But I know there was a tribal member that had

13 a house the other side of it and I'm assuming that's

14 why it's there. But he no longer lives there. He's

15 deceased. We have an employee that lives in a house

16 down there that uses that crossing.

17 Q. Do you know who the tribal member is?

18 A. I believe his name was L.G. Washines.

19 Q. So do you have any right to use that, do you know?

20 A. Well, I use it. I don't know if I have a right to it.

21 Q. Fair enough.

22 Okay. So let me switch gears a little bit and

23 let's talk about what type of equipment you're using.

24 I think you testified in your pre-file testimony that

25 you store all of your equipment at your maintenance

0136

1 facility there on Satus.

2 A. Yes.

3 Q. And so you don't ever leave equipment on the fields?

4 A. Well, I can't say never. But, I mean, we try
5 everything we can. If it gets dark or something, we're
6 in the field late, sometimes we don't have a choice.
7 But we do everything we can to avoid leaving equipment
8 in the field.

9 Q. Okay. And who is driving that equipment?

10 A. I drive a fair bit of equipment and then I have an
11 uncle that works for us also and then a couple other
12 employees.

13 Q. Are those permanent employees, seasonal employees?

14 A. We consider them permanent, but it's nine or ten months
15 a year, but yeah, usually permanent.

16 Q. Do those employees have CDLs?

17 A. None of our employees have a CDL, that's correct.

18 Q. And you don't have a CDL?

19 A. No.

20 Q. Any other training that your employees get on using the
21 machinery?

22 A. No. I guess not.

23 Q. Okay. You give them any type of instructions about
24 crossing railroad tracks?

25 A. No, never.

0137

1 Q. Okay. Now, a lot of your pre-file testimony focused on
2 I think what you called direct financial implications
3 to Zecchino Farms; is that right?

4 A. Yes.

5 Q. Now, looking at that, you really do kind of have a
6 monopoly of the land there right around the crossing.
7 Are there any other farms that use that crossing or is
8 that pretty much for all intents and purposes your
9 private crossing?

10 A. Yeah, you know, Oswalt does. I don't know why he's not
11 here. And of course Andy Curfman uses it. You're
12 talking about Barnhart, right?

13 Q. Yeah.

14 A. Okay.

15 Q. You use it, Mr. Curfman --

16 A. And Oswalts.

17 Q. -- and Oswalts. So three farms use that currently?

18 A. Yes.

19 Q. Okay. So going back to the financial implications, I
20 mean, you list three things: additional labor costs,
21 additional fuel costs, and increased wear and tear.
22 We're talking, what, an extra two miles per trip; is
23 that about right?

24 A. Boy, I have never checked it. It seems like it's more
25 than that, but you could be right.

0138

1 Q. Okay. It's about, it's about two miles additional that
2 I calculated using Google Maps.

3 A. Sure, that's fine.

4 Q. Plus or minus.

5 A. But the additional expense wouldn't be the mileage.

6 The first thing that comes to mind is the truck tractor
7 implement tires. I think Ed Boob said on his thing was
8 10,000. Is that right? 8 or 10,000. They're not made
9 to drive on highways, so the more you do that, I mean,
10 it tears them up because they're a soft compound for
11 obviously driving in the dirt.

12 And the other thing is the flag cars and stuff
13 that we require to go down the highway.

14 Q. Aren't those same flag cars required on the county
15 roads?

16 A. You guys would have to answer that. I don't know.

17 Q. Okay. I mean, do you think it's legal to drive without
18 a pilot car on the county road with an oversized
19 vehicle?

20 A. Do I think it's legal? I don't know if it's legal or
21 not. Do I do it? Yes.

22 Q. Okay. Would it change your mind about this if you, if
23 you found out that was not legal?

24 MR. PLANT: Objection. This is argumentative.

25 Q. What I'm getting at is, you know, one of the reasons

0139

1 you're giving is that you don't want to use pilot cars.

2 My contention is you have to use pilot cars anyway.

3 Does that change your mind if you did have to use pilot

4 cars? Would that change your analysis as to, you know?

5 A. Just the pilot car issue alone? No, it wouldn't. The

6 safety issue of driving down the highway, we avoid that

7 highway, and I'm lucky because I don't farm like Andy

8 and them where they have to use it at times. I almost

9 never have to use that thing and we avoid it like the

10 plague.

11 Q. Because you have your own private crossing,

12 essentially.

13 MR. CHAIT: I think that's actually, that's all I

14 have for you right now. Thank you. I appreciate your

15 time.

16

17 REDIRECT EXAMINATION

18 BY MR. PLANT:

19 Q. If I could, I'm going to point to the map here. I want

20 to be clear on the record. We talked about a private

21 crossing.

22 A. Sure.

23 Q. That crossing not available for anything beyond pickup

24 trucks; is that correct?

25 A. Are you saying can we use it or is it possible?

0140

1 Q. I'm sorry. We'll say you indicated that -- can you use
2 that crossing for you routine farming operations? Does
3 it work for your tractors?

4 A. Well, technically a tractor could cross it. Would we
5 ever use it to do that? No.

6 Q. You're not aware of having any sort of legal right to
7 use that crossing?

8 A. No. In fact, there is a sign there that says, I
9 believe it's still there, that says it's a private
10 crossing.

11 Q. We've looked at all of this, I guess we've highlighted
12 some property in addition to what's on your exhibit
13 here. So how many acres are we looking at for just
14 south of Barnhart Road here?

15 A. Right there that's 221 acres.

16 Q. Every piece of farm equipment that farms on this 220 --
17 how many?

18 A. 21, 221.

19 Q. -- (continuing) 221 acres right now starts each and
20 every day at your maintenance facility; is that right?

21 A. Yes.

22 Q. It ends each and every day at your maintenance
23 facility, right?

24 A. Yes.

25 Q. You testified you didn't like to leave anything in the

0141

1 field; is that correct?

2 A. That's correct.

3 Q. What's the reason for that?

4 A. Well, if you go down the highway there's a, we call it
5 a meth house that tends to destroy equipment that's
6 left out. And then up the way there is a bad bunch of
7 characters, too.

8 Q. Right now each and every day every piece of farming
9 equipment you have that farms this 221 acres comes down
10 Drain Bank Road; is that correct?

11 A. Yes.

12 Q. Describe Drain Bank Road to me.

13 A. That's a good road. It's wide. I don't know why it's
14 so wide.

15 Q. Paved?

16 A. No. Gravel.

17 Q. Who uses Drain Bank Road?

18 A. It's not very well traveled. There's a few houses on
19 that road, but other than, you know, a few tribal
20 members and farm employees, farmers.

21 Q. Sparsely traveled gravel county road?

22 A. That's correct.

23 Q. And then you can basically terminate right here and
24 cross Barnhart Road and you're almost right there at
25 your property; is that correct?

0142

1 A. That's correct.

2 Q. Okay. So if Barnhart Road is closed, every single
3 piece of your farm equipment has to go all of the way
4 down Satus Longhouse Road; is that correct?

5 A. That's correct.

6 Q. Then they have to backtrack up State Route 22 for a
7 distance of one to two miles?

8 A. That's correct.

9 Q. Okay.

10 A. Then on that highway, what hasn't been mentioned, I
11 think there is two or three bridges that would be from
12 that point to the land, and they're, you know, the
13 width isn't very wide. So you have to make sure if you
14 have a piece of equipment if there is oncoming traffic
15 that you either get ahead of that oncoming traffic or
16 you wait for it, because you can't fit two vehicles, or
17 not farm vehicles, anyway, on that. Even if we take
18 off the 20-foot implement, those tractors have duals,
19 so they're still ten-foot wide. I mean, you might
20 squeak by a car there, but I don't think you could.
21 Because the bridge railing is there.

22 Q. In those circumstances you would be entirely
23 obstructing both directions of State Route 22; is
24 that --

25 A. On the bridge crossings, yeah.

0143

1 MR. CHAIT: I know we're not subject to the normal
2 rules of evidence. If we could have the witness
3 testify rather than counsel.

4 MR. PLANT: Sure. That's all I have.

5 THE JUDGE: Anything?

6

7 REXCROSS-EXAMINATION

8 BY MR. CHAIT:

9 Q. Just briefly, you know, you said every day you're
10 moving this equipment, heavy equipment. How many days
11 of the year are you moving heavy, slow-moving
12 equipment?

13 A. How many days? I guess I never thought about it. I
14 mean, in a year, I'm trying to think. It's busy in the
15 fall and the spring, of course, so, I don't know, maybe
16 20. Maybe.

17 MR. CHAIT: Thank you.

18 THE JUDGE: I have a question.

19

20 EXAMINATION

21 BY THE JUDGE:

22 Q. In your pre-filed testimony on page 3 you talk about
23 the driver's visibility being significantly impaired
24 during dawn and dusk hours because of the orientation
25 of the highway. So can you explain to me what you

0144

1 meant by that?

2 A. The sun's rising or setting, and when we would, if we
3 would have to move farm equipment there, we'd be moving
4 it during dusk and dawn hours, which are the worst
5 visibility times on that highway. It's a tough one
6 during dawn and dusk, depending on which way you're
7 traveling when you're traveling towards the sun. So
8 either way it's going to affect the person driving the
9 equipment or the oncoming traffic.

10 Q. And what, you testified today, is that normally you
11 wouldn't use the highway --

12 A. We would --

13 Q. -- during those hours?

14 A. With Barnhart open, we would never use that highway.

15 THE JUDGE: All right. Thank you.

16 MR. PLANT: Thank you.

17 THE JUDGE: You can step down.

18 MR. PLANT: Mr. Trautman.

19

20 DAVID TRAUTMAN, being first duly sworn to tell
21 the truth, the whole truth,
22 and nothing but the truth,
23 testified as follows:

24

25 THE JUDGE: Please take a seat and please state

0145

1 your full name and spell your last name for the record.

2 THE WITNESS: David Trautman, T-R-A-U-T-M-A-N.

3 THE JUDGE: Thank you. Go ahead.

4

5 DIRECT EXAMINATION

6 BY MR. PLANT:

7 Q. Mr. Trautman, can you please state your occupation for
8 the record.

9 A. Crop advisor for Simplot Grower Solutions.

10 Q. How long have you worked for Simplot Grower Solutions?

11 A. Since 1979.

12 Q. Okay. I'm going to hand you what's your pre-filed
13 testimony of David Trautman, Exhibit No. DT-1T. Could
14 you take a moment and look at that document? Is that
15 your testimony in this matter?

16 A. Yes. Yes.

17 Q. Thank you, sir.

18 MR. PLANT: I have no further questions at this
19 time.

20

21 CROSS-EXAMINATION

22 BY MR. CHAIT:

23 Q. Hi, Mr. Trautman. Thank you for joining us. I
24 appreciate your time.

25 So I think we've just talked about your position a

0146

1 little bit. Is Simplot Grower Solutions generally in
2 the business of liquid and solid fertilizers, other
3 chemicals, pesticides, that type of thing?

4 A. Correct.

5 Q. Do anything else?

6 A. Fumigate in the fall.

7 Q. Okay. Subsidiary of J.R. Simplot; is that right?

8 A. Correct, from Boise, Idaho.

9 Q. Okay. And just for those who don't know, what's J.R.
10 Simplot? What's J.R. Simplot Company?

11 A. It's a family-owned entity with land, livestock,
12 fertilizer, cattle, mining.

13 Q. Its website says it's one of the largest privately held
14 food and agri businesses in the nation; is that not
15 right?

16 A. No. That's correct.

17 Q. So you generally serve agri businesses in and around
18 Yakima County; is that correct?

19 A. Customers, that have testified.

20 Q. Okay. Outside of Yakima County as well, or just in
21 Yakima?

22 A. We have people that go down to Benton County.

23 Q. Okay. And do some of these businesses come pick up
24 fertilizer, pesticides from your facility or is this
25 all delivery?

0147

1 A. Both.

2 Q. So you said some of the witnesses today are your
3 customers. Who are your customers of the witnesses
4 we've heard here today?

5 A. Well, I've done work with Allen, Andy Curfman at times,
6 Curtis Parrish, Dean and Craig Oswalt, which have a lot
7 of land, our customers, Philip Sealock. I mean, I'm
8 all over. I run from Prosser to White Swan.

9 Q. Okay. Okay. One of your customers put you in touch to
10 be here today?

11 A. Actually, my job as a crop advisor is to make timely
12 deliveries to the applicators that are applying things
13 on their fields, and we do, use both of those crossings
14 in those instances to be efficient and --

15 Q. I appreciate that. That's not the question I'm asking,
16 though. Did one of your customers ask you to be here?

17 A. No.

18 Q. Okay. Where is Simplot Grower Solutions located?

19 A. We have a store in the Valley, Moxee, and it's actually
20 Whitstran.

21 Q. About 30 miles --

22 A. About 30 miles east of Prosser.

23 Q. Thirty miles if you take 22 straight up for about
24 30 miles, that's about it?

25 A. Yep.

0148

1 Q. I think I know where that is.

2 How many, how many drivers does Simplot have at
3 that location?

4 A. I think we have about 20 right now.

5 Q. All CDLs?

6 A. All CDLs, all hazmat, all trained.

7 Q. That's a good point. The product you're carrying is
8 probably DOT hazmat, so they --

9 A. We have to be DOT hazmat certified.

10 Q. And with those hazmat materials do you take special
11 precautions at train tracks?

12 A. I believe so, yes.

13 Q. What are those special precautions?

14 A. To be careful and safe around them. We don't want
15 accidents.

16 Q. I'm not trying to trick you, I just, do you have to
17 stop at all?

18 A. Uh-huh.

19 Q. Regardless of whether there is a stop sign anytime you
20 cross the track, right?

21 A. It depends on what they're hauling.

22 Q. But if it's a hazmat?

23 A. Hazmat, yes.

24 Q. And any crossing you stop, right?

25 A. (Nodding head).

0149

1 Q. And that's because it's considered exceptionally
2 dangerous, any rail hazmat collision would be
3 catastrophic, right?

4 A. Could be.

5 Q. Okay. So I want to break this down. So there is two
6 crossings at issue here. They kind have been mushed up
7 a little bit, so I want to make sure we're getting each
8 of them separately.

9 What customers does Simplot serve that requires it
10 to use, let's start with North Stevens, North Stevens
11 Road?

12 A. Well, this would be Oswalt is in that area, Philip
13 Sealock is in that area. That would probably be about
14 it. I don't do much with Curtis or Andy this year. I
15 have in the past, but business is business.

16 Q. Okay. Sure. So you come in, you're coming from about
17 30 miles southeast, you come on the 22 or the 82?

18 A. We do both.

19 Q. Okay. So you either come in --

20 A. We're either coming up 22 or up I-82 and coming across
21 223. 222.

22 Q. Okay. Let me -- I apologize to everyone. From what
23 you can tell, I'm a very visual person so I like to be
24 able to see this. It helps me to understand.

25 So you're coming down, you've got North Stevens

0150

1 here, and you're serving, you said, these parcels here.

2 And I'm sorry, where are the Oswalts.

3 A. Oswalts would be south of 22, Philip would be
4 northeast.

5 Q. Down here?

6 A. Oswalts would be, Philip would be up --

7 Q. Okay. Why would -- I'm having trouble figuring out why
8 you would just go off South 22?

9 A. It depends on our applicators, which we nurse a lot of
10 TerraGators, like Ed was talking about, we have custom
11 guys that are self-employed but they do a lot of our
12 spreading or spraying, so if we're hauling product and
13 we're going to fill a field for Philip at 9:00 and
14 Oswalts after that one and back to Philip, so I mean,
15 depending on the applicator, our truck will follow the
16 applicator over those crossings, because those are the
17 safest routes for him.

18 Q. Okay. I mean, how many times last year do you think
19 you used the North Stevens crossing, Simplot Soil
20 Builders, under five?

21 A. I would probably say 25 to 30.

22 Q. And that was all, 25 to 30 different times you used
23 North Stevens?

24 A. Yeah, or more.

25 Q. Okay. And that was all for whom? Was that all for --

0151

1 A. It's for various customers.

2 Q. Okay. Now, let's say you're coming along here from
3 your headquarters on 22, not a big deal to go across
4 either at 223 or at Harris and go across South Track,
5 is it?

6 A. We won't take a truck across Harris.

7 Q. You won't take a truck across Harris?

8 A. At the bridge. We try not to.

9 Q. Fair enough. Let's go down one, then. So you're
10 coming 22, you can just take 223 and pop right onto
11 South Track, right?

12 A. Yes, we can.

13 Q. About the same distance?

14 A. Yes.

15 Q. Okay.

16 A. And that's, that could be, I guess where I'm getting at
17 is if we're doing something for Philip, we'll actually
18 go up Connie Road because he's in the Annahat/Blue
19 Heron area, that truck and applicator will do a field
20 for Philip and then we'll come back down to South Track
21 and cross to Stevens to go across and do a field or two
22 for Oswalts in the same truck, same time frame.

23 Q. About how long would it take you instead to just go
24 around to Meyers?

25 A. In a truck, ten minutes, maybe.

0152

1 Q. Okay. Ten minutes. Twenty-five times a year?

2 A. Like I said, we're following the applicator.

3 Q. Okay. So you take these vehicles on State Route 22
4 regularly?

5 A. Uh-huh.

6 Q. Correct?

7 A. Correct.

8 Q. You take them on I-82 regularly, correct?

9 A. They're all licensed DOT-certified vehicles.

10 Q. Sure. So we're talking about servicing two customers
11 at Barnhart -- or Stevens. Sorry. Let's move to
12 Barnhart. How many customers do you serve that you use
13 the Barnhart crossing?

14 A. Just probably Allen Zecchino down there and some of
15 Oswalts in that area, too.

16 Q. I'm sorry, where is Oswalts on the Barnhart map here,
17 if you would? This is the Barnhart crossing right
18 here.

19 A. Oswalts. Oswalts would farm, they're on Indian Church
20 and right in these corners.

21 Q. Okay.

22 A. So basically the closest down here would be Allen.

23 Q. Okay. And you take State Route 22 anyway to get to his
24 southern properties?

25 A. Correct.

0153

1 Q. And then you could just go back to Satus to get to his
2 northern properties?

3 A. Which we do.

4 Q. Do you do that?

5 A. Yes.

6 Q. So when are you using Barnhart?

7 A. Basically if we're following an applicator that's going
8 down the gravel road, because the applicator -- I mean,
9 the applicator can go one way and our trucks can go
10 another way.

11 Q. Okay.

12 A. Sometimes the TerraGator operator's following the truck
13 to the next field.

14 Q. So you don't actually have to go that way, you just
15 follow them?

16 A. It's a convenience -- not really a convenience, it's a
17 time and efficiency issue for the applicator so we can
18 get the job done for our customers in a timely fashion.

19 Q. But your trucks go much faster than that?

20 A. Oh yeah.

21 Q. So you could meet them around, they go over Barnhart,
22 you could meet them around and probably beat them?

23 A. Yeah, we can.

24 Q. Okay. I think we touched on this a little bit, but
25 you're DOT hazmat-certified drivers, correct?

0154

1 A. As far as I know most of them are, yes.

2 Q. You've got the special hazmat training to deal with
3 chemicals and combustibles, special placards on the
4 trucks identifying the combustibles?

5 A. Uh-huh.

6 Q. That's a yes?

7 A. Yes.

8 Q. In that -- have you taken that training yourself?

9 A. Nope.

10 Q. You have not. Do you drive a hazmat?

11 A. Nope.

12 Q. Okay. And have any of Simplot's vehicles been in a
13 train accident?

14 A. Not that I'm aware of.

15 Q. Okay. Any ideas what would happen if one of those
16 hazmat vehicles were struck by an operating train?

17 A. Probably be a mess. Depending on if they were empty or
18 had product, either way.

19 Q. Yeah. Probably death?

20 A. (Nodding head).

21 Q. Is that a yes?

22 A. Could be. Until it happens, how do you know.

23 Q. We don't want to.

24 MR. CHAIT: All right. That's all I have for this
25 time. Thank you.

0155

1 REDIRECT EXAMINATION

2 BY MR. PLANT:

3 Q. Real quickly, Mr. Trautman, so you were discussing how
4 oftentimes at these locations there are applicators
5 operated by independent contractors and your vehicles
6 are following the operators; is that correct?

7 A. Uh-huh.

8 Q. Can you describe the applicators for me?

9 A. People or the machines?

10 Q. The machines.

11 A. Three-wheel TerraGators, just like Ed from Husch has.

12 Q. Three-wheeled TerraGators, the big tires?

13 A. Big tires.

14 Q. Operating speeds, what are the operating speeds of
15 these vehicles?

16 A. I think the maximum speed on those are 35 miles an
17 hour.

18 Q. One of the comments I just heard Mr. Chait mention was
19 that, particularly with respect to the Barnhart, was
20 that you don't need to follow the applicator across the
21 Barnhart Road crossing, your truck can travel down
22 State Route 22, come around and meet it. Of course,
23 that's not the case if Barnhart was closed, right?

24 A. That's correct.

25 Q. If Barnhart was closed, that applicator would have to

0156

1 also travel down State Route 22?

2 A. Correct.

3 Q. These would result in additional travel of your trucks
4 on State Route 22; is that correct? The closure of
5 these crossings would mean additional travel?

6 MR. CHAIT: Again, who is testifying here? This
7 is leading.

8 Q. Would the closing of these crossings result in
9 additional travel?

10 A. It would cost us additional travel because we try to
11 travel the shortest distance also.

12 Q. Sure. Sure.

13 MR. PLANT: That's all. That's all I have. Thank
14 you.

15 MR. CHAIT: Thank you.

16 THE LAW JUDGE: I have a couple questions.

17

18 EXAMINATION

19 BY THE JUDGE:

20 Q. What size are the trucks that you're using, what are
21 their weights?

22 A. Loaded?

23 Q. Yes.

24 A. I think we're around 90,000, if the truck and trailer
25 are both loaded.

0157

1 Q. Okay. And so you talked about crossing the North
2 Stevens crossing 25 to 30 times per year for various
3 customers. About how many times per year do you use
4 the Barnhart Road crossing?

5 A. Maybe ten.

6 Q. Ten. Okay.

7 THE JUDGE: Thank you. You may step down.

8 It's a couple minutes before noon so this would be
9 a good time to break for lunch and we'll come back
10 right at 1:00. Okay?

11 (A LUNCH BREAK WAS HELD FROM 11:59 A.M.
12 UNTIL 1:00 P.M.)

13 THE JUDGE: It's about 1:00 p.m., we're back on
14 the record, and Mr. Plant, if you would like to call
15 your next witness.

16 MR. PLANT: Kent McHenry, please.

17

18 KENT MCHENRY, being first duly sworn to
19 tell the truth, the whole
20 truth, and nothing but the
21 truth, testified as follows:

22

23 THE JUDGE: If you could state your name and spell
24 your last name for the record.

25 THE WITNESS: Certainly. Kent McHenry,

0158

1 M-C-H-E-N-R-Y.

2

3 DIRECT EXAMINATION

4 BY MR. PLANT:

5 Q. Mr. McHenry, will you please state your occupation for
6 the record.

7 A. I'm the transportation engineering manager for Yakima
8 County.

9 Q. I'm going to hand you your pre-filed testimony, which
10 has been designated Exhibit KM-1T with exhibits thereto
11 designated as KM-2 through KM-6. Could you review
12 those documents?

13 A. Yes.

14 Q. I'm also going to give you your rebuttal testimony,
15 which is designated KM-7T with exhibits thereto
16 designated KM-8 through KM-10. Will you review that,
17 please?

18 A. Certainly. Yes.

19 Q. Okay. Do those documents reflect your testimony in
20 this matter?

21 A. They do.

22 Q. Okay. I'm going to give you what is an undesignated
23 cross-examination exhibit for Mr. Gary Norris. This is
24 the 2014 Annual Web Accident Prediction System Report
25 generated by the Federal Railroad Administration. Can

0159

1 you take a look at that report, please?

2 A. (Witness complied).

3 Q. Is that something that you're familiar with?

4 A. I am.

5 Q. Is that document publicly available, to your knowledge?

6 A. It is.

7 Q. How did you obtain that report?

8 A. I went to the FRA website and there is a spot where you

9 can actually input the information as to what state,

10 what county, what railroad you want to look at, and you

11 can download any of the information by any of those

12 descriptors.

13 Q. Is that report generally relied upon by persons in the

14 traffic engineering?

15 MR. SCARP: Your Honor. May I interrupt and ask

16 what is the basis of new testimony by Mr. McHenry on

17 exhibits that weren't designated for him?

18 THE JUDGE: Mr. Plant.

19 MR. PLANT: I'm not asking any substantive

20 questions. I'm laying the foundation to have the

21 exhibit admitted in the event Mr. Norris --

22 THE JUDGE: We've already stipulated to the

23 admission of all of the exhibits.

24 MR. PLANT: Okay. Then I have no further

25 questions.

0160

1 THE JUDGE: Thank you.

2

3 CROSS-EXAMINATION

4 BY MR. SCARP:

5 Q. Good afternoon, Mr. McHenry.

6 A. Good afternoon.

7 Q. I'm going to ask you some questions about the Barnhart
8 Road crossing. Are you familiar with it?

9 A. I am.

10 Q. In your pre-filed testimony you stated that Barnhart
11 has an unposted speed limit, meaning that basic speed
12 law applies. Do you remember that?

13 A. Correct.

14 Q. And in the Yakima County, the basic speed law that you
15 referenced means speed limit on Barnhart Road is
16 50 miles an hour.

17 A. That's the basic speed law for the state of Washington.

18 Q. Fifty miles an hour?

19 A. Being a maximum 50 miles an hour or safe and
20 reasonable.

21 Q. Okay. Barnhart is a dirt road?

22 A. Gravel road, yes.

23 Q. Have you ever measured the angle of the incline up to
24 the grade, railroad grade crossing surface?

25 A. No.

0161

1 Q. Are there crossbucks on both sides of that crossing?

2 A. I'm unsure if there's a crossbuck on both sides. I'm
3 certain there is a crossbuck on one side.

4 Q. Okay. In your pre-filed testimony you state that the
5 track is level to the east and west of the crossing.

6 Do you recall that?

7 A. Yes.

8 Q. Are you talking about both the approaches?

9 A. Are you specifically talking about the railroad
10 approaches or the roadway approaches.

11 Q. I'm talking about the roadway approaches.

12 A. I was specifically talking about the railroad
13 approaches.

14 Q. Oh. That's what I wondered. Because wouldn't you
15 expect the railroad approaches to be level?

16 A. Railroads can have grades.

17 Q. Do you know what the grade is right there?

18 A. I do not know what the grade is right there.

19 Q. You also stated in your pre-filed testimony there are
20 no trees, hills, buildings, or other structures that
21 limit visibility in either direction. Are you talking
22 about either direction of the railroad track?

23 A. I am.

24 Q. Okay. Are there, in fact, trees and bushes that limit
25 visibility at Barnhart crossing?

0162

1 A. Not within the sight distances for the crossing. When
2 you take a look at the rail Grade Crossing Handbook for
3 distances out there there were no obstructions within
4 that area.

5 Q. I'm not talking about obstructions that would be
6 referenced in the Grade Crossing Handbook, I'm talking
7 about at that crossing. Are there trees and bushes
8 that obstruct or limit visibility?

9 A. No.

10 Q. Mr. McHenry, I'm going to show you a couple of photos
11 in KMCX22, Barnhart Road photos. Have you had a chance
12 to look at those? They're cross-exam exhibits.

13 A. Yes.

14 Q. Okay. The last one I'll show you first. Are you
15 familiar with the last page of CX22? Do you see those
16 trees and bushes?

17 A. Yes.

18 Q. Okay. Do you know how far down the track you can see
19 at that point?

20 A. I, I don't have any way of identifying how far that is
21 down the tracks.

22 Q. Okay. Do you know which side of the track that photo
23 is taken from?

24 A. Not right offhand.

25 Q. All right. Here's another photo. Do you see those

0163

1 trees and do they obscure visibility looking down the
2 track toward an oncoming train?

3 A. I would believe that a train could be seen over the top
4 of those bushes.

5 Q. Okay. Let's, just for the -- how about this, and then
6 I'll show them to Your Honor. How about that taken
7 from the crossing approach? Does that limit the
8 visibility of, because of the trees and bushes, of your
9 ability to see down the tracks at an approaching train?

10 A. At that particular location.

11 Q. Okay. Can you tell how far that is as you're
12 approaching the tracks?

13 A. I can neither tell how far it is back from the tracks
14 nor how far down the road it is from the tracks.

15 THE JUDGE: Which exhibit number is that?

16 MR. SCARP: This is KMPX22, and it's a number of
17 photos of Barnhart Road crossing.

18 Q. I don't want to go through a lot of photos, but would
19 you agree with me generally that there are bushes and
20 trees that obstruct visibility as you approach the
21 Barnhart crossing in a vehicle?

22 A. No. I would say that there are trees and bushes that
23 may obscure your visibility. I don't know for sure
24 that one would and what parts of a train would be
25 visible.

0164

1 Q. Okay.

2 THE JUDGE: Can I just clarify? I have those
3 marked as Exhibit KM32CX. That's what's on the final
4 exhibit list I sent to the parties.

5 MR. SCARP: I think you're correct and I'm not. I
6 stand corrected. 32.

7 THE JUDGE: 32. I wanted to clarify for the
8 record, what you were referring to.

9 MR. SCARP: We'll have to find out the next ones
10 as well.

11 THE JUDGE: I have the list here with the
12 descriptions so we can just make corrections as we need
13 to.

14 MR. SCARP: I'll try get that figured out before
15 we go farther with exhibits.

16 THE JUDGE: Okay.

17 Q. (By Mr. Scarp) The Satus Longhouse Road crossing is
18 the next crossing down which direction from Barnhart?

19 A. Satus Longhouse would be south and east.

20 Q. Okay. And how far?

21 A. A mile-ish.

22 Q. Okay. And is it your testimony here that the crossing
23 at Barnhart is safer, in your opinion, than the
24 crossing at Satus Longhouse?

25 A. Yes.

0165

1 Q. The approaches to Barnhart crossing, as you approach
2 the crossing is elevated, isn't it?

3 A. You're talking about the roadway approach or the track
4 approach?

5 Q. Yes. I think the track is pretty level in either
6 direction, but the roadway approach is, you have to go
7 up a grade. There is an incline to reach the crossing,
8 correct?

9 A. Yes.

10 Q. Okay. And the road itself is dirt and gravel?

11 A. Gravel.

12 Q. Okay. Now, at the Satus Longhouse Road crossing the
13 roadway is wider, correct?

14 A. Yes.

15 Q. And it's paved?

16 A. Yes.

17 Q. Have you looked at any analysis of how many vehicles
18 use the Satus Longhouse crossing compared to Barnhart?

19 A. Yes. There are more vehicles using the Satus Longhouse
20 crossing.

21 Q. By a factor of what?

22 A. It depends on the time of year.

23 Q. Let's just go by annual, if you know.

24 A. We don't do annual counts on the roadways, so I don't
25 have an annual count on those.

0166

1 Q. Okay. Do we have another copy of this for the witness
2 or should I give him one of mine?

3 THE JUDGE: What are you talking about?

4 MR. SCARP: This will be KMCX18.

5 THE JUDGE: Yakima County's petition to close
6 Barnhart Road. I have that same number. I do not have
7 an extra copy of the exhibits.

8 MR. SCARP: I do.

9 Q. (By Mr. Scarp) Mr. McHenry, handing you what's been
10 admitted as KMCX18, do you recognize that document?

11 A. I do.

12 Q. And what is it?

13 A. This is a petition to the State of Washington Utilities
14 and Transportation Commission for a closure of a
15 highway rail grade crossing at Barnhart Road.

16 Q. Okay. And who is the petitioner?

17 A. The petitioner is Yakima County Roads.

18 Q. Is that your signature on the bottom of page 1 where it
19 says petitioner's information?

20 A. It is.

21 Q. And is the date that is stamped on there by the
22 Utilities and Transportation Commission October 12,
23 2012?

24 A. It is.

25 Q. Would I be correct that you signed this petition on

0167

1 behalf of the Yakima County Roads as the petitioner to
2 close Barnhart crossing?

3 A. Yes.

4 Q. Okay. Basically you were filing a petition just like
5 BNSF is filing a petition in this proceeding?

6 A. Correct.

7 Q. All right. How long have you been a licensed civil
8 engineer?

9 A. Twenty-three years.

10 Q. Did you work for the Washington State Department of
11 Transportation?

12 A. I did.

13 Q. Were you a licensed engineer at that time?

14 A. I was not.

15 Q. Oh. What was your position?

16 A. I was a project engineer for them.

17 Q. I'm sorry?

18 A. I was a project engineer for them. I was an Engineer 2
19 in their system of engineers.

20 Q. Okay. When did you become a licensed engineer?

21 A. 1991.

22 Q. At the time that you filed this petition with the
23 Utilities and Transportation Commission to close
24 Barnhart Road, you had been a licensed engineer then
25 about, what, 21 years?

0168

1 A. Yes.

2 Q. All right. At page -- can you turn to page 3 of
3 Exhibit CX18?

4 A. Yes.

5 Q. It states that the average daily traffic at the
6 crossing in 2012 was 95. Do you see that?

7 A. Yes.

8 Q. And it states that the number of commercial vehicles
9 presently using that, about 7.9 percent of that?

10 A. Yes.

11 Q. And the number of school buses that use that crossing
12 is zero?

13 A. Yes.

14 Q. Was that information that you obtained independently or
15 reviewed prior to filing this petition with the UTC?

16 A. Obtained independently.

17 Q. And did you consider farm vehicles to be commercial
18 vehicles?

19 A. No.

20 Q. Oh. What did you consider to be commercial vehicles?

21 A. When we do traffic counts, we can do vehicle
22 classifications. So anything over six axles, which we
23 can keep track of, we classify as a commercial vehicle.
24 Farm vehicles don't fall into any standard vehicle
25 classification pattern for axles that we can count with

0169

1 our counters, so I cannot accurately count the number
2 of farm vehicles that use it. However, I can keep
3 track of how many multi-axle vehicles can use it.

4 Q. Is that by using a rubber piece across the roadway?

5 A. Rubber tube across the roadway, yes.

6 Q. Is that a single rubber tube that you use?

7 A. It's double.

8 Q. Is it correct, Mr. McHenry, that there are still no
9 school buses that use the Barnhart Road crossing?

10 A. I cannot give you information today on that. I don't
11 have that information.

12 Q. Do you have any information to suggest that they
13 started using it?

14 A. I have no information either way.

15 Q. All right. On the next page, if you could, this would
16 be page 5, I'm sorry, it asks for a description of the
17 closure. At paragraph 1 it says, Describe in detail
18 the reasons for closing the crossing. It says, Yakima
19 County Roads will close Barnhart Road and construct a
20 gravel hammerhead. Just briefly, what's a gravel
21 hammerhead?

22 A. A hammerhead is a type of turnaround that is required
23 at all terminations of public roadways, either a
24 hammerhead or cul-de-sac to allow vehicles to turn
25 around and return in the direction from which they

0170

1 came.

2 Q. All right. Because if the crossing is closed, any
3 vehicle that goes to there would need to turn around?

4 A. Correct.

5 Q. However, at Highway 22, there is a very short distance
6 between the edge of the highway and the railroad
7 tracks, correct?

8 A. Depending on location.

9 Q. At, right, at Barnhart Road.

10 A. Yes.

11 Q. So you would close so people couldn't turn off there,
12 you would just end that so they couldn't turn off the
13 road, right?

14 A. No, sir. There is access to farms, so we would allow
15 it to come up to the edge of the tracks and construct a
16 hammerhead at the adjacent track so that if any
17 adjacent farm owner, property owner needed to get in
18 there, they could.

19 Q. Well, if a farm owner was on Highway 22 and Barnhart
20 Road was closed, he wouldn't be able to go through;
21 isn't that the whole idea?

22 A. Wouldn't be able to go across the track, but they could
23 still access their property or properties if they have
24 a strip of property in between.

25 Q. Are you aware of any property between the highway and

0171

1 the railroad tracks at Barnhart Road?

2 A. There may be some traveled property between.

3 Q. Okay. That was something that the Yakima County Road
4 Authority was going to construct, correct?

5 A. Correct.

6 Q. What was the approximate cost of that?

7 A. The cost estimate was included. I haven't looked at
8 it, I haven't reviewed it for awhile.

9 Q. Do you have an estimate?

10 A. Not right offhand.

11 Q. Okay. Who was it that decided that the Yakima County
12 Road Authority would construct the gravel hammerhead?

13 A. That was discussions between myself and the county
14 engineer.

15 Q. Moving down page 5 of Exhibit CX-18, the third
16 paragraph says, How far is the nearest alternate access
17 across the tracks from the proposed -- from the
18 crossing proposed for closure. What did you put in
19 there?

20 A. One mile.

21 Q. And the next is paragraph 4, says, Describe the
22 alternate access route, including distance and driving
23 time. What did you put there?

24 A. Cars can continue to travel west on Barnhart one mile,
25 two-minute travel time.

0172

1 Q. Okay. Is that to Indian Church Road?

2 A. Yes.

3 Q. And Indian Church Road that has gates and active signal
4 devices, warning devices?

5 A. Active warning devices.

6 Q. Is that gates and lights at that crossing?

7 A. It is.

8 Q. Now, at the time, at the time that you signed this
9 petition for closure of Barnhart Road in October of
10 2012, did you understand that -- did you do that based
11 on your engineering and your training and your capacity
12 as a transportation engineering manager for Yakima
13 County?

14 A. I did it with the best understanding at the time.

15 Q. Okay. Did you think that everything in the petition
16 that you put in there was accurate at the time you
17 signed it?

18 A. At the time I signed it.

19 Q. Okay. Mr. McHenry, I'll switch gears and go to KMCX19,
20 if you can, and hand you a copy of that. Do you
21 recognize CX-19?

22 A. I do.

23 Q. And what is that?

24 A. That's a petition for the State of Washington Utilities
25 and Transportation Commission for the petition of

0173

1 closure for a highway rail grade crossing over Stevens
2 Road.

3 Q. That's the same petition that we're here for for the
4 other crossing, the petition now submitted by BNSF,
5 correct?

6 A. Correct.

7 Q. And the date that this was submitted is October 12,
8 2012?

9 A. The date received by the State of Washington Utilities
10 and Transportation Commission was October 12, 2012.

11 Q. Again, the petitioner is Yakima County Roads?

12 A. Correct.

13 Q. And you are the signator for that Yakima County Roads,
14 correct?

15 A. I am.

16 Q. Okay. If you could turn to page 3, down in the Section
17 4 where it says Crossing traffic, it says Average daily
18 traffic over the tracks. What did you put in?

19 A. Forty-six.

20 Q. Okay. And it, right below that it says Trucks,
21 commercial vehicles, are what percent of the daily
22 traffic? What did you put in there?

23 A. Zero.

24 Q. And the number of school buses each day over that
25 crossing?

0174

1 A. Zero.

2 Q. All right. Do you know if there are any school buses
3 that use the North Stevens crossing now?

4 A. I'm unaware of any changes.

5 Q. Okay. What are the nearest crossings, alternate
6 crossings to North Stevens Road in each direction?

7 A. You would have South Track and North Meyers.

8 Q. Which direction is South Track?

9 A. To the south and east.

10 Q. Okay. Going back towards Barnhart?

11 A. Correct.

12 Q. Okay. South Track Road, have there been improvements
13 made to that roadway since you filed this petition in
14 2012? I'm sorry, let me ask a better question.

15 Have there been improvements made to that at-grade
16 crossing since you filed this petition in 2012?

17 A. I am unaware of any.

18 Q. Okay. Are you aware of any funding through the
19 Utilities and Transportation Commission in 2013 for
20 upgrades for LED lights?

21 A. Yes, there was, there was an improvement put in.

22 Q. Who sought those funds?

23 A. Yakima County was approached by the State of Washington
24 Utilities and Transportation Commission for the
25 installation of those.

0175

1 Q. Okay. And what was the county's position about
2 increasing the -- would you call that an upgrade in
3 safety features for that crossing?

4 A. Yes.

5 Q. And did you concur with the Utilities and
6 Transportation Commission's recommendations of what to
7 do there?

8 A. We reached an agreement. The blinking, the rapid
9 blinking lights is an additional expense to Yakima
10 County and we agreed to have them installed if the
11 State of Washington Utilities and Transportation
12 Commission would provide one replacement sign for that
13 so we would have one on hand.

14 Q. Okay. And did the Utilities and Transportation
15 Commission agree to that and the funding?

16 A. They did.

17 Q. You've, at page 4 of Exhibit CX-19, it asked for the
18 average daily train traffic freight. Do you see that?

19 A. Yes.

20 Q. What did you put?

21 A. Twelve.

22 Q. And the authorized freight train speed?

23 A. Forty-nine.

24 Q. Forty-nine miles per hour?

25 A. Forty-nine miles per hour.

0176

1 Q. And where did you get that information?

2 A. I got that from the Burlington Northern Santa Fe.

3 Q. Okay. Do you know if that's still accurate?

4 A. I am -- I do not know if it's still accurate.

5 Q. All right. On the following page 5, up at the first
6 section it says Yakima County Road will close North
7 Stevens Road and construct a gravel hammerhead. Do you
8 see that?

9 A. Yes.

10 Q. Was that anticipated that you would construct one
11 gravel hammerhead or two?

12 A. Two.

13 Q. Is there a reason that it wouldn't say two?

14 A. No particular reason.

15 Q. How far is the grade crossing itself, the tracks, at
16 North Stevens from the South Track Road?

17 A. I don't have a -- don't have a guess at a distance.

18 Q. None?

19 A. No.

20 Q. Okay. Down at No. 2 it asks, Describe the area
21 currently served by the crossing, including the
22 approximate number of homes or businesses that might be
23 affected by the closure. What did you put there?

24 A. None.

25 Q. Is that the same answer you put with regard to Exhibit

0177

1 CX-18 with Barnhart?

2 A. I will have to look.

3 Q. Okay.

4 A. Page 5, item 2. I responded none.

5 Q. And that was for Barnhart Road, there would be the
6 approximate number of homes or businesses that might be
7 affected you had none?

8 A. Correct.

9 Q. Now, I'm sorry, back to North Stevens, and I apologize
10 for bouncing back and forth. No. 3 it asks, How far to
11 the nearest alternate access across the tracks from the
12 proposed crossing proposed for closure, which would be
13 North Stevens. And what did you put in as an answer?

14 A. One mile.

15 Q. And which crossing were you referring to?

16 A. It would be to North Meyers.

17 Q. Okay. And North Meyers is, has active warning devices,
18 gates and lights?

19 A. Gates, gates, lights, bells.

20 Q. Gates, lights, what?

21 A. Bells.

22 Q. Bells. No. 4 of Exhibit CX-19 says, Cars can continue
23 -- I'm sorry. It described the alternate access
24 including distance and driving time. And what did you
25 put?

0178

1 A. Cars can continue to travel west on SR-22 one mile,
2 two minutes travel time.

3 Q. Okay. With regard to the -- what are ADTs?

4 A. Average daily traffic.

5 Q. Is that something that public at-grade crossings are
6 required to be performed on a regular basis?

7 A. No.

8 Q. There is not a requirement to provide that information
9 to any federal agencies?

10 A. There is not.

11 Q. Okay. Did you think everything in the petition that
12 has been marked here as CX-19 was accurate when you
13 signed it in 2012?

14 A. At the time I signed it.

15 Q. Correct. Do you think that there is information that
16 we've just read from that you think is not accurate?

17 A. Today, yes.

18 Q. Did you perform a thorough diligence before you
19 prepared Exhibits CX-18 and CX-19 before filing them
20 with the UTC?

21 A. I, I was what I thought was diligent. It turned out
22 not to be.

23 Q. Do you think the traffic counts -- where did you get
24 those?

25 A. Traffic counts are traffic counts that Yakima County

0179

1 collects annually throughout the area.

2 Q. Okay. So the traffic counts were counts that came from
3 your department. You believe those to be accurate?

4 A. At the time that they were taken, yes.

5 Q. Did the county make a mistake?

6 A. Counts change from year to year. We only do counts
7 every three years, so as you come back and do counts
8 you'll find that they can vary widely from day of the
9 year, day of the week.

10 Q. Oh. Do you think the speed limit changed?

11 A. Speed limit had not changed.

12 Q. Do you think the train speed limit changed?

13 A. I do not know.

14 Q. Okay. Where did you get the information about the
15 number of houses that would be or are not impacted in
16 the area?

17 A. A general view of an aerial photograph.

18 Q. Did you go there yourself?

19 A. I did not interview anyone.

20 Q. Did you not interview anyone?

21 A. No.

22 Q. Did you go to the area yourself?

23 A. Yes.

24 Q. So you could look around and see if there were houses,
25 right?

0180

1 A. Yes.

2 Q. And was it your understanding that the residents of
3 those houses could use Drain Bank to Barnhart Road down
4 to Indian Church crossing?

5 A. That route is available, yes.

6 Q. And similarly they could use Drain Bank and go up to
7 Satus Longhouse Road?

8 A. Yes.

9 Q. That was your understanding at the time?

10 A. At the time.

11 Q. Are those alternate access routes still available?

12 A. For some individuals.

13 Q. Are there any people in those houses right there that
14 can't use those routes?

15 A. I don't know for sure. They, as far as I know, they,
16 not all of them have been interviewed. They may have
17 reasons not to be able to use the other routes.

18 Q. They may, but you don't know?

19 A. I do not know.

20 Q. At the time that you signed Exhibit CX-19, did you use
21 all of the training, experience, and information you
22 had gained in 21 years as a licensed engineer before
23 signing this and submitting it?

24 A. Yes.

25 Q. Is it your testimony, Mr. McHenry, that the crossing at

0181

1 Indian Church Road is less safe than at Barnhart Road?

2 A. Yes.

3 Q. And at Indian Church Road, remind me, are there gates
4 and lights, active warning devices?

5 A. There is not.

6 Q. Okay.

7 A. I'm sorry, Indian Church, yes. So at Indian Church,
8 yes, there is active creative protection.

9 Q. There is what protection?

10 A. Active creative protection at Indian Church.

11 Q. There's active warning signals of gates -- with gates
12 and flashing red lights?

13 A. Yes.

14 Q. Okay. Is it your testimony that that crossing is less
15 safe than Barnhart Road?

16 A. Yes.

17 Q. And Barnhart Road doesn't have any gates or lights,
18 right?

19 A. Correct.

20 MR. SCARP: Okay. I don't have any further
21 questions. Thank you.

22 THE JUDGE: Mr. Plant?

23 *

24 *

25 *

0182

1

REDIRECT EXAMINATION

2

BY MR. PLANT:

3

Q. Mr. McHenry, I have one or two questions for you. Does

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the fact that more or less cars use a crossing make a

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crossing more or less dangerous?

6

A. There is a lot of factors that go into whether a

7

crossing is safe or not. Certainly the geometry of the

8

roadway that approaches the crossing makes a

9

difference. So if there is curves or either horizontal

10

or vertical that can limit sight distance will have an

11

impact on safety. There is also the type of vehicles

12

that use the crossing and how visible the crossing

13

itself -- is itself.

14

So in general, you can say that if you have

15

increased traffic, you would increase the risk, the

16

probability is higher with higher traffic.

17

Q. You also testified that in your view Indian Church Road

18

crossing was a more dangerous crossing than the

19

Barnhart Road crossing. What are some of the factors

20

that lead to you that conclusion?

21

A. Some of the things I just talked about. So the, a

22

horizontal alignment, as you come into it there's

23

curves that limits your visibility of the crossing to

24

know that it's up ahead of you, you can run up on it

25

without necessarily knowing that it's there. There is

0183

1 also more brush and trees in the way of that to be able
2 to see if a train is coming. So visibility of the
3 crossing makes this a more dangerous crossing to the
4 motoring public because they, an unfamiliar motorist
5 may not know that it's there.

6 Q. Okay. And there were a lot of questions about a
7 petition filed by Yakima County in 2012. Did Yakima --
8 what ultimately happened with those petitions?

9 A. Ultimately Yakima County withdrew the request for the
10 petitions. They withdraw this based on the public
11 input phase of the petition process.

12 Once we got in touch with, farmers got in touch
13 with Yakima County, it would seem that Yakima County
14 overlooked the farmers as a major user of these
15 crossings, and when they brought that to our attention,
16 we then went out and looked at how much farm equipment
17 was on it, because I cannot identify it through our
18 traffic counting methods. We found that there is a
19 great deal of use by the farmers.

20 They also then pointed out to us that if this was
21 closed, the alternate routes that they would have to
22 use and the major route would be State Route 22.

23 Now, as we look at then the use of slow-moving
24 vehicles on a high-speed rural highway, it is a, high-
25 speed rural highways have been recognized as the most

0184

1 dangerous highways in the nation. They have more
2 fatalities and accidents than any other classification
3 of roadways.

4 So the introduction of slow-moving vehicles onto
5 this roadway would pose an increased risk to both the
6 operators of the farm equipment and to the general
7 public which then would be using State Route 22. Many
8 of these drivers on State Route 22 would probably not
9 be exposed to any other slow-moving vehicles if not but
10 for these closings.

11 So when we looked at all of the newly discovered
12 impacts of the crossing being used by farmers, the
13 increased slow-moving vehicles on State Route 22, and
14 the exposed risk to the motoring public, Yakima County
15 decided that it was in its best interest to withdraw
16 the petitions.

17 MR. PLANT: Thank you. No further questions.

18 THE JUDGE: Do you have anything further?

19 MR. SCARP: I do. Just briefly.

20

21 RE-CROSS-EXAMINATION

22 BY MR. SCARP:

23 Q. Did I understand your testimony correctly that a
24 motorist might not realize that there was a railroad
25 crossing at Indian Church Road because of visibility?

0185

1 A. An unfamiliar driver, yes.

2 Q. Isn't that what gates across the roadway and flashing
3 red lights are designed for?

4 A. If they can be seen from around the corner. In this
5 case they cannot.

6 Q. From around what corner?

7 A. There is a corner as you, as approach. So you've got
8 trees and brush and, as you've approaching. So you
9 have visibility from it.

10 Q. I'm going to ask you to take a look at KMCX-31. These
11 are photos of Indian Church Road. Is that an accurate
12 depiction of Indian Church Road crossing?

13 A. In one direction, yes.

14 Q. Okay. Can you see the crossing?

15 A. Yes.

16 Q. All right. I mean is there --

17 A. You can certainly see the curve sign in the picture
18 there as you cross over the tracks going the other
19 direction.

20 Q. All right. Is there any reason that a car right on the
21 other side of that couldn't see that?

22 A. As they're coming around from the other direction, yes.

23 Q. You think they couldn't see the crossing?

24 A. (Nodding head).

25 Q. Have you had any trouble with people running into

0186

1 gates?

2 A. Yes.

3 Q. How many have you replaced?

4 A. On the Yakima County line that we lease out, gates
5 being hit was a fairly common occurrence.

6 Q. At Indian Church Road?

7 A. That's not the county line. So it would be the White
8 Swan line in this general vicinity.

9 Q. As you sit here, Mr. McHenry, are you aware of any
10 times that a gate has been broken because a driver
11 couldn't see it as they approached it?

12 A. I'm unaware.

13 Q. Okay. So if I understand correctly, those big gates
14 and lights and bells there, you're talking about a
15 curve sign, how far would you estimate that to be from
16 the crossing down to where that curve sign is?

17 A. I'm unable to estimate based on the photograph.

18 Q. Do you think -- do you think it's far enough that a
19 driver coming around there couldn't see lights and
20 gates, lights flashing and gates down?

21 A. I think it's a potential that they can come around the
22 corner at a high rate of speed and not know that it's
23 there.

24 Q. And that's the basis of you're saying that you think
25 that crossing is less safe than Barnhart Road?

0187

1 A. Yes.

2 Q. Okay. You got a lot of political pressure from the
3 Yakama Nation initially after your petition to close,
4 didn't you?

5 A. I didn't get any political pressure.

6 Q. Didn't they send you letters?

7 A. They didn't send me any letters.

8 Q. They sent them to your department, to Mr. Hood?

9 A. I, I'm not aware.

10 Q. You're not aware of that. Is that your testimony here?

11 A. I don't recall any letters from the Nation
12 specifically.

13 Q. Okay. And so your testimony here is that you were told
14 at the time that this was a farm safety issue and
15 that's the reason you withdraw the petition; is that
16 your testimony?

17 A. Yes.

18 MR. SCARP: Thank you. I have nothing further.

19

20 FURTHER REDIRECT EXAMINATION

21 BY MR. PLANT:

22 Q. Just to clarify, did you independently determine this
23 was a farm safety issue?

24 A. Yes.

25 Q. So you agree that there is a farm safety issue here?

0188

1 A. Yes, there is.

2 MR. PLANT: Okay. Thank you I have no questions.

3 THE JUDGE: I have a few questions for you.

4

5 EXAMINATION

6 BY THE JUDGE:

7 Q. With respect to page 4 of your testimony, line 6, where
8 you talk about the Satus Longhouse Road crossing and
9 you stated that at a distance of approximately 465 feet
10 visibility is compromised by trees and brush and that
11 at a closer distance it's compromised by an abandoned
12 building.

13 A. Yes.

14 Q. Is there a stop sign at that crossing?

15 A. Yes. Yakima County has installed stop signs on all of
16 the crossings. We actually did that about ten years
17 ago.

18 Q. Okay. So if someone is stopped at that stop sign and
19 looking both directions, is visibility compromised in
20 either direction at that point?

21 A. No.

22 Q. Okay. And then on page 4, line 17, with respect to the
23 adjacent South Track Road crossing, you stated that the
24 road is generally viewed by the traveling public in the
25 areas as unsafe due to a prevalence of speeding.

0189

1 A. Yes.

2 Q. Do you have any data that either supports the view of
3 the traveling public or that supports the prevalence of
4 speeding in that area?

5 A. Yes. We've got traffic counts on the roadway that
6 actually have recorded speeders in excess of a hundred
7 miles an hour.

8 Q. What time period was that from?

9 A. That was a, in a one 24-hour time period and I don't
10 recall the date of the count.

11 Q. Do you know about how many speeders there were in that
12 24-hour time period?

13 A. In excess of 50. I don't recall, but there were
14 several over a hundred miles an hour.

15 Q. Okay. And then --

16 MR. PLANT: It's in his testimony.

17 THE JUDGE: On page 8, right?

18 MR. PLANT: Yes.

19 Q. Okay. Then on page 4, line 21, regarding the adjacent
20 South Track Road crossing, you stated in your view the
21 presence of safety features at that crossing doesn't
22 mitigate to any great extent the safety concerns
23 presented by the crossing. What are the safety
24 features at South Track Road?

25 A. South Track Road has the rapid flashing lights that

0190

1 we've just installed. There are lights and gates.

2 Q. There are lights and gates at South Track Road?

3 A. Yes.

4 Q. Okay. And then on page 4, line 24, you're talking
5 about the adjacent Meyers crossing.

6 A. Yes.

7 Q. Pointing out what you believe are safety hazards at
8 that crossing?

9 A. Uh-huh. Yes.

10 Q. And noting that it crosses multiple sets of tracks, is
11 located in an urban high traffic environment?

12 A. Yes.

13 Q. Then you went on to state that the, that crossing has
14 shoulder-mounted lights and gates. So is it your
15 testimony then that the presence of lights and gates
16 does not mitigate those safety hazards?

17 A. There is other mit -- other impacts there. That
18 particular location is a fairly congested area. You've
19 got South Track Road, Annahat Road that comes in within
20 a hundred feet or thereabouts of the intersection with
21 South Track Road, it is also a connection to I-82. So
22 it has a high volume of traffic and a lot of turning
23 movements because of the, all of the roads that come
24 into it right at that location.

25 So from some of the side roads, the lights aren't

0191

1 visible. So one could come around there and if you
2 don't stop at the stop sign, which we have a problem
3 with in this county, come to the tracks at an acute
4 angle and may not know it's there. So there's probably
5 other safety things that could be done at that location
6 to warn the motorists of the crossing.

7 Q. Okay. So the chart on page 8 --

8 A. Yes.

9 Q. -- that encompasses a 24-hour period?

10 A. Yes.

11 Q. Okay. And on line 5 of page 8 your testimony says that
12 vehicles commonly travel on South Track Road in speeds
13 in excess of 60 miles per hour.

14 A. Yes.

15 Q. But according to the chart it shows 264 vehicles, which
16 is 28 and a half percent, traveling at 60 miles per
17 hour or higher and 662 vehicles, which is 71 and a half
18 percent, traveling at less than 60 miles per hour,
19 correct?

20 A. I have not done the math on that, but clearly there's a
21 large number of vehicles in excess of 60.

22 Q. But the majority of the vehicles travel less than
23 60 miles per hour, correct?

24 A. Yes.

25 Q. Okay. On page 8, line 28, you testified you're unaware

0192

1 of any evidence that crossing the crossings and
2 diverting traffic elsewhere will result in any
3 quantifiable safety benefit.

4 A. Yes.

5 Q. But two of the adjacent crossings that you described
6 are equipped with lights and gates, Indian Church Road
7 and Meyers Road. So isn't it true that a crossing gate
8 that lowers when a train is approaching preventing
9 vehicles from crossing the tracks is safer than one
10 equipped with a stop sign, generally speaking?

11 A. Generally speaking. You need to look at all of the
12 specifics about it. And the other part of that
13 statement is looking at the other safety risks that
14 happen from the increase in travel time, the increase
15 of slow-moving vehicles on State Route 22, the slow-
16 moving vehicles on State Route 22 is a fairly
17 significant item.

18 If you look in the AASHTO Green Book on designing
19 speeds, it specifically says that if you've got a speed
20 differential of greater than 15 miles an hour, that
21 that is a severe risk. So clearly when we have farm
22 equipment of many different types, they're moving at
23 substantially less than 15 mile an hour, so we're
24 introducing new vehicles that are a high risk to the
25 motoring public.

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FURTHER RE-CROSS-EXAMINATION

2

BY MR. SCARP:

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Q. Mr. McHenry, the two -- sorry. You testified that in

4

Yakima County drivers have a problem stopping at stop

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signs?

6

A. Yes.

7

Q. Is that an epidemic?

8

A. It is a challenge that Yakima County is struggling to

9

deal with from an engineer and law enforcement

10

standpoint.

11

Q. And it has been going on for quite some time?

12

A. It has been increasing.

13

Q. Is it like a disregard for safety or stop, do you know?

14

A. We don't know specifically.

15

Q. Is it your testimony that stop signs are just not

16

necessarily effective?

17

A. The overall cause of the disregard for stop signs is

18

something we've not been able to identify specifically.

19

Don't know if it's for a specific reason, don't know

20

if, if it's something that -- what causes it. So it's

21

difficult for us to be able to determine why it's

22

happening and how effective they are.

23

Q. What are the signs at North Stevens railroad crossing

24

that require a driver to stop?

25

A. There are two signs there that require drivers to stop.

0195

1 Q. Are there?

2 A. There are crossbucks.

3 Q. Does that require a driver to stop?

4 A. Require to stop for a train.

5 Q. Does a crossbuck require a driver to stop?

6 A. No.

7 Q. What signs as a driver approaches North Stevens

8 crossing require a driver to stop?

9 A. Stop sign.

10 Q. And do you have difficulty with drivers obeying them in

11 Yakima County, did I get that right?

12 A. We do.

13 Q. And those are the only signs that are there at North

14 Stevens crossing that require a driver to stop?

15 A. Yes.

16 Q. And is the same true at Barnhart, all you have are two

17 stops signs, one on either side that require drivers to

18 stop?

19 A. Yes, sir.

20 Q. Is the Utilities and Transportation Commission

21 ultimately the agency that determines the adequacy of

22 the safety warning devices at crossings?

23 A. It is my understanding of the system that the

24 Washington Utilities and Transportation Commission acts

25 on petitions at crossings, so they will act upon the

0196

1 petition, not necessarily make the determination of
2 which is the safest.

3 Q. Okay. You testified, if I understood you correctly,
4 that by closing these two crossings that have only stop
5 signs and crossbucks, that it would shift traffic onto
6 less safe crossings; is that right?

7 A. Yes.

8 Q. Three of the four alternate crossings in question have
9 lights and gates; is that correct?

10 A. Yes.

11 Q. And the other one is Satus Longhouse Road crossing, and
12 I believe you testified that from a stop there is no
13 impairment to visibility; is that right?

14 A. Correct.

15 MR. SCARP: That's all of the questions I have.

16 MR. PLANT: Nothing.

17 THE JUDGE: Okay. You may step down.

18 Mr. Peterson is here?

19 MR. SCARP: We do have Mr. Peterson here. We
20 appreciate the county's indulgence to allow him to get
21 going today.

22 FOSTER PETERSON, being first duly sworn to tell
23 the truth, the whole truth,
24 and nothing but the truth,
25 testified as follows:

0197

1 THE JUDGE: Please state your first and last name
2 for the record and spell your last name for the court
3 reporter.

4 THE WITNESS: Foster Peterson, P-E-T-E-R-S-O-N.

5 THE JUDGE: Thank you.

6

7 DIRECT EXAMINATION

8 BY MR. SCARP:

9 Q. Mr. Peterson, can you tell me what's been previously
10 marked as FP-1T, do you recognize that?

11 A. Yes, sir. It was my pre-filed testimony in this
12 matter.

13 Q. All right. What is it that you do?

14 A. The short answer is I'm both a railroad consultant and
15 railroad operating manager for several short line
16 railroads. So basically I spend all of my time in the
17 railroad industry.

18 Q. Have you had an opportunity sitting there briefly to
19 see if the five pages plus the certificate of service
20 is in fact your pre-filed testimony in this matter?

21 A. It is.

22 Q. And would it be the same if we were to ask you
23 questions and have you read the answers?

24 A. It would.

25 MR. SCARP: Okay. Thank you.

CROSS-EXAMINATION

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BY MR. PLANT:

Q. Mr. Peterson, we're here about North Stevens Road and Barnhart Road. Can you identify the alternate crossings for these, the alternate routes to cross the BNSF line that motorists will be required to take if Barnhart Road crossing is closed?

A. The Barnhart to the geographically south and east would be the Satus Longhouse Road, there and to the north is the Indian Church Road.

Q. Do you know approximately how far from Barnhart Road these crossings are?

A. I didn't measure specifically, but I believe they're roughly a mile.

Q. Roughly a mile. Okay. And I'll ask you the same question with respect to, I guess the North Stevens Road crossing. If that crossing is closed, what are the alternate routes that motorists would be required to utilize?

A. I have to look at my cheat sheet for that, but I believe it was South Track Road is to the south and east and North Meyers to the north and west.

Q. Do you know the approximate distances?

A. Again I don't, although having listened to a few minutes of testimony, I believe both of those are

0199

1 roughly a mile.

2 Q. Roughly a mile. Okay. Are you familiar with the
3 alternate crossings?

4 A. Well, in terms of I've visited them to familiarize
5 them -- I'm sorry, familiarize myself with them, yes.

6 Q. Can you describe the North Meyers Road crossing?

7 A. That one I don't recall much, other than saw lights and
8 gates, active warnings devices that were available at
9 that crossing, and that it was, I believe that one is
10 the relatively straight approach one. Beyond that, I
11 didn't memorialize anything else.

12 Q. Are you testifying it's your understanding that the
13 North Meyers Road crosses the BNSF line at sort of a
14 90-degree angle?

15 A. I don't think the crossing itself is at a 90-degree
16 angle. I mean, almost all of the crossings that cross
17 the BNSF line here, due to the fact that most of the
18 roads run north/south and the railroad runs northwest
19 to southeast cross at an angle. I'll talk about the
20 approach itself. The roadway itself is fairly straight
21 itself leading up to the approach.

22 Q. How many sets of tracks does the Meyers Road crossing
23 cross?

24 A. Honestly, I didn't memorialize it. I'll be glad to
25 look at a picture to see for sure. But I don't recall

0200

1 that.

2 Q. You don't recall. Okay. So it could be multiple sets
3 of tracks. That's fine. You're not required to know
4 the answer.

5 A. Okay. North Meyers I don't have a strong recollection.
6 Honestly I'm more familiar with the ones closer to
7 Barnhart from my inspection.

8 Q. Sure. Okay. Well, are you familiar with the South
9 Track Road, the crossing of South Track Road?

10 A. Yes, from having driven over it.

11 Q. Okay. And I guess sort of what's your description of
12 the approach on South Track Road to that crossing?

13 MR. SCARP: For the record, I'd say this is way
14 outside the scope of his pre-filed testimony.

15 MR. PLANT: Sure.

16 Q. So you testified that on page 3, I guess, that
17 rerouting the traffic is the safer option; is that sort
18 of the sum and substance of your testimony?

19 A. Ultimately, yes.

20 Q. I'm just, I guess, trying to get at how you reached
21 that opinion by sort of understanding your analysis of
22 the alternate crossings. Did you, have you reviewed
23 the traffic counts for, I guess, North Stevens Road?

24 A. I have seen them. That wasn't part of my direct
25 testimony, so I didn't memorialize them.

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1 Q. They didn't inform your analysis?

2 A. Not particularly, no.

3 Q. I guess what are the factors that informed your
4 analysis?

5 A. Certainly the overall configuration of the available
6 alternate crossings, and specifically, I think as I
7 discussed in my testimony, that three of the four did
8 have active grade crossing warning systems with lights,
9 gates, and bells, as opposed to the North Stevens and
10 Barnhart crossings, which were clearly not, crossbuck
11 and stop sign crossings.

12 I would say the condition of the roadways
13 themselves, having seen it on the aerial photographs
14 and in person of the Stevens and Barnhart, in my
15 opinion, the roadways are either smaller or in the case
16 of North Stevens it appeared to be a dirt and gravel
17 combination rather than a paved roadway.

18 And I would say also in particular the Stevens
19 Road -- I'm sorry, the Barnhart Road crossing, of all
20 of the crossings basically from North Meyers to Satus
21 Longhouse, in my opinion, had the least amount of
22 visibility down the track, especially on the approach
23 to the crossing; whereas, again, my opinion really all
24 of the other ones had better visibility.

25 And the, I would compare then Satus Longhouse,

0202

1 which also, I think as the testimony indicated and I
2 saw, has a crossbuck and stop sign warning at the
3 crossing as opposed to an active warning system, that
4 it was actually, my opinion, more open in terms of
5 visibility, the roadway was I would, again, I wasn't
6 asked to quantify it, but I would say it was a little
7 bit wider and the approaches are most more level, which
8 from a heavier equipment perspective, in my experience,
9 makes it an overall easier crossing to use for that
10 type of equipment.

11 Q. So did you do any analysis as to the sort of adverse
12 impacts of closing these crossings?

13 A. I would say in terms of, I mean, maybe if I can ask for
14 clarification, adverse impacts in terms of?

15 Q. Public safety. And if you didn't, that's fine.

16 A. Well, the way I would characterize it is I did not,
17 given that I was primarily focused on the benefits of
18 public safety to closing these crossings in particular
19 compared to the alternate routes.

20 Q. Your focus was the crossings themselves; is that
21 correct?

22 A. I would say the crossings themselves and then the
23 relative interaction of trains and motor vehicles of
24 varying types at grade crossings.

25 Q. At grade crossings?

0203

1 A. Correct.

2 Q. So you wouldn't have looked at, you know, the knock-on
3 effects of crossing those crossings on adjacent county
4 infrastructure; is that correct?

5 A. Correct. I wasn't asked to, either.

6 Q. So you don't have an opinion on what, I guess, a
7 negative safety aspects might be of closing these
8 crossings?

9 A. I really don't as I, again, wasn't asked to study it
10 and I didn't.

11 Q. Sure. Okay.

12 MR. PLANT: That's all that I have. Thank you.

13

14 REDIRECT EXAMINATION

15 BY MR. SCARP:

16 Q. Are you a traffic expert, Mr. Peterson?

17 A. No.

18 Q. You were asked about the adverse impacts of closing
19 these crossings with regard to public safety. Do you
20 consider public safety to be an adverse impact of a
21 crossing closure?

22 A. If by that we mean making the crossing safer by
23 removing it and therefore increasing the public safety
24 because of that, then no.

25 Q. Is that what your testimony is all about?

0204

1 A. Yes. And in particular the way that train versus motor
2 vehicle interactions affect safety at crossings.

3 MR. SCARP: That's all of the questions I had.

4 THE JUDGE: Mr. Sexton, do you have anything?

5

6 CROSS-EXAMINATION

7 BY MR. SEXTON:

8 Q. Mr. Peterson, I noticed -- I have one quick question.

9 You referenced that a cheat sheet at the beginning of
10 the testimony and pulled something out. For the
11 record, would you mind describing what you have written
12 on your cheat sheet?

13 A. I have a hard time remembering the North Meyers Road
14 crossing, so I had written North Meyers, North Stevens,
15 South Track, basically the order of the crossings so I
16 wouldn't forget North Meyers.

17 Q. And I recall we were talking about North Meyers Road at
18 the time. So is it essentially a map kind of giving
19 you an orientation of these crossings or an indication
20 of which crossings were where?

21 A. Yes, which one was in which order.

22 MR. SEXTON: Okay. That's all I have.

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EXAMINATION

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BY THE JUDGE:

Q. Quickly, you testified that three of the four alternate crossings have active warning devices, including Meyers Road and Indian Church, they have gates and lights, but South Track has lights only, not gates; is that correct?

A. Honestly, I didn't think it was lights only, but the recent testimony I heard seemed to indicate there were gates. But I thought it was the LED flashing lights.

Q. It is. There are no gates at South Track Road, is my understanding. Do you believe that flashing lights only are as effective as flashing lights combined with gates?

A. The way I can answer you as a railroader is that for motorists who honestly are paying attention, that either is an effective warning. In terms of will motorists ignore the warnings at times and cause train and motor vehicle collisions, they do.

What, in my opinion, as, again, as a railroader, is that the active warning systems, whether it's lights and gates or just lights, are giving a motorist more information as to whether or not the train is actually approaching; whereas at a passive crossing with crossbucks and/or a stop sign, the motorist has the

0206

1 entire obligation and duty to make that determination.

2 So what flashing lights, frankly, allow that
3 motorist to do is drive at a high rate of speed
4 approaching a crossing because they're not having to be
5 able to look as far in both directions to determine if
6 that train is approaching. So it's a long way to say,
7 in my opinion, active warning systems provide a good
8 warning.

9 I would say the ultimately the optimal situation
10 would be to have gates, but that lights by themselves
11 are also very effective. And I guess I would just
12 finally have to add that, in my experience, that gates
13 are certainly not a failsafe measure to prevent cars
14 from entering crossings, whether by driving through the
15 gates or we actually see a group, a fair amount of
16 people drive around the gates.

17 And so again, ultimately the, it has to come back
18 on the motorist whether or not the warnings are
19 observed.

20 Q. Okay. Thank you. And then on page 4, line 19, you
21 talk about operators of farm and heavy equipment have
22 to be cautious when crossing at a grade crossing and
23 said that you've experienced a number of collisions
24 around the country where the operator fails to do so,
25 thus contributing to a collision. Do you have any data

0207

1 about those collections, how many, when, and what type?

2 A. I couldn't give you total numbers off the top of my
3 head, but in my career, and I would say frankly I would
4 put together both farm or heavy equipment like road
5 equipment, road graders, large dump trucks, water
6 trucks, that sort of thing, in with, from my
7 perspective, even tractor/trailer combination vehicles.

8 I have probably worked on cases over, I mean,
9 substantive part of my consulting career with these
10 types of accidents is about 15 years now, I've probably
11 worked on at least 50 of at least some sort like that.

12 As to exact dates, I honestly can't give them to
13 you as I sit here, but I do know one of the more recent
14 ones I worked on happened to be in Georgia, which it
15 was a combine and Norfolk Southern train, that one was
16 within the last year, I think. But again, it's a
17 relatively common type of accident.

18 And really what sets it apart with heavier
19 equipment versus smaller passenger-style vehicles is
20 because the weights of the heavy equipment, they're
21 much heavier, they tend to produce more, more damage
22 and more catastrophic results, not only to the train
23 itself, but to the risk of derailment.

24 THE JUDGE: Thank you. Is that it? Okay. You
25 can step down. Thanks.

0208

1 Mr. Plant, do you have one final witness, Mr.
2 Hood?

3 MR. PLANT: John Hood, please.

4

5 JOHN HOOD, being first duly sworn to tell the
6 truth, the whole truth, and
7 nothing but the truth, testified
8 as follows:

9

10 THE JUDGE: Please just state your full name and
11 spell your last name for the record.

12 THE WITNESS: John Hood, H-O-O-D.

13 MR. PLANT: Your Honor, Mr. Scarp has stepped out,
14 but he and I discussed that since his pre-filed
15 testimony was filed, Mr. Hood has changed positions at
16 Yakima County, so I'll be asking one or two questions
17 on direct just to get that on the record.

18

19 DIRECT EXAMINATION

20 BY MR. PLANT:

21 Q. Mr. Hood, I'm going to hand you your pre-filed
22 testimony in this matter, which has been designated
23 Exhibit JH-1T. Can you please review that?

24 A. (Witness complied).

25 Q. Now, in your pre-filed testimony dated February 10,

0209

1 2015, you identified yourself as senior engineering
2 technician at Yakima County; is that correct?

3 A. That's correct.

4 Q. And has that changed?

5 A. Yes.

6 Q. What is your new position?

7 A. Road maintenance supervisor for the Sunnyside shop.

8 Q. And what, what are the responsibilities generally of
9 this position?

10 A. I have people working underneath me that go out and
11 maintain the roads, grading, replacing signs,
12 maintenance.

13 MR. PLANT: Okay. No further questions. Thank
14 you.

15

16 CROSS-EXAMINATION

17 BY MR. CHAIT:

18 Q. Thanks for being here with us, Mr. Hood.

19 Just a couple of quick questions about your job.

20 Are you still employed by the county in your role?

21 A. Yes.

22 Q. And was this just a change in direction or was there
23 any cause for your movement of positions?

24 A. I applied for it.

25 Q. Good.

0210

1 A. And I was a qualified candidate.

2 Q. Good. Okay. You've worked for BNSF in the past, I
3 think, Burlington Northern?

4 A. Burlington Northern for ten years.

5 Q. Okay. Would you agree BNSF is very concerned with
6 safety?

7 A. Always. It's also with Yakima County or any other
8 workplace.

9 Q. Sure. We'll get to that.

10 You work, in your work with BNSF in the railroads
11 you described in your pre-filed testimony, did you have
12 any other formal training in railroad design or was it
13 operations?

14 A. Operations.

15 Q. Okay. You described being in an accident when you were
16 a locomotive engineer. In any of your other roles with
17 the other, with the railroad, have you had the
18 misfortune of having to be involved with an accident in
19 any other capacity?

20 A. No. I was not at the controls.

21 Q. Well, I guess what I'm getting at is you also did some,
22 some level of operations work. Did you ever, were you
23 ever involved in any way in any type of accident,
24 investigating it --

25 A. Yes.

0211

1 Q. And tell me about that, if you would.

2 A. Usually fatalities and derailments.

3 Q. Many of them?

4 A. Enough.

5 Q. Where was that?

6 A. Wapato, Parker, Prosser, and downtown Sunnyside.

7 Q. Okay. How were you involved in those?

8 A. I was the operations manager and I would get called if
9 there was a derailment or a fatality and I had to go
10 out and ascertain the facts, condition of the track,
11 conditions of weather, speed, train length, weight, all
12 of the other factors when I investigated them.

13 Q. Okay. So you understand how catastrophic a train
14 accident can be?

15 A. Any accident is catastrophic.

16 Q. But you understand how catastrophic a train accident
17 is. You saw people die, correct?

18 A. Car accidents and fatalities are catastrophic.

19 Q. I agree. I'm asking about train accidents.

20 A. Yes.

21 Q. Now, when you were involved in an accident when you
22 were driving a train you were going four miles an hour;
23 is that correct?

24 A. That's correct.

25 Q. With what type of vehicle?

0212

1 A. GP9.

2 Q. A --

3 A. Locomotive with a GP9, tractor trailer, a loaded
4 tractor trailer with lumber --

5 Q. Okay. Going four miles an hour. What happened to that
6 tractor trailer?

7 A. We flipped it over on its side parallel to the trackage
8 on Highway 97. The tractor didn't overturn.

9 Q. Any idea what would have happened if you were going 49
10 miles an hour?

11 A. More damage than what happened.

12 Q. Probable death?

13 MR. PLANT: Foundation, speculation.

14 THE JUDGE: Did you want to rephrase the question
15 or move on?

16 MR. SCARP: I can move on.

17 Q. I mean, if you know?

18 A. Obviously speed would increase more damage. I mean, it
19 doesn't take an engineer to figure that out. I mean, a
20 hazard is a hazard.

21 Q. Okay. Now, can you tell me where that accident
22 happened again?

23 A. Branch Road and Highway 97. I should say the railroad
24 tracks and Highway 97 at the corner of Branch Road.

25 Q. Right. From what I can see, that's three of those

0213

1 sides are covered in farmland and then there's a small
2 development with maybe five houses; is that right?

3 A. There is some houses on the frontage to the north.

4 Q. Right.

5 A. And there is a house on the corner to the southeast of
6 Highway 97. But visibility for both the train and the
7 truck was excellent.

8 Q. But it's farmland around there, not urban, right?

9 A. I guess you could call a vet clinic commercial. The
10 rest of it is residential and farmland.

11 Q. Farms on three sides of that intersection, isn't it?

12 I'm not trying to be difficult.

13 A. Yes. Yes.

14 Q. If we could move along. Thanks. Never been yourself
15 involved in an accident in an urban area?

16 A. No.

17 Q. Have you done any research or reviewed any statistics
18 on grade crossings at rural crossings?

19 A. No.

20 Q. Okay. Are you familiar with the terms active and
21 passive crossings, railroad crossings?

22 A. Explain.

23 Q. Pardon?

24 A. Explain.

25 Q. I'm asking if you're familiar with those terms.

0214

1 A. No.

2 Q. Okay. An active crossing is a, an actively controlled
3 crossing is one with gates and lights.

4 A. Okay.

5 Q. A passive one was --

6 A. My terminology it was gates and lights and bells.

7 Q. Okay. Fair enough.

8 A. Adequate warning device.

9 Q. Okay. Just briefly, because I think we've had plenty
10 of testimony on this, but your testimony said that the
11 closing of North Stevens would result in no net safety
12 gain and you described the visibility at North Stevens
13 as excellent with no building, trees, or other
14 structures obscuring visibility in either crossings and
15 state that it has crossbucks, warning signs, and stop
16 signs to warn the public.

17 A. I'm sorry, which question is that? Which line is that?

18 THE JUDGE: Are you on page 3, question 6?

19 Q. Yes. Page 3, question 6.

20 A. Yes, that's what I said.

21 Q. Okay. Does that change based upon the time of year?

22 A. I think you could change at any time considering
23 weather, seasonal traffic, farming.

24 Q. I'm talking about physical barriers, trees, brush,
25 bushes. You made the statement. When are you basing

0215

1 that on?

2 A. When I operated the trains in that area, we're tall
3 enough to see over the brush because Burlington
4 Northern at the time did a really good job keeping the
5 brush back, so did the Central Washington Company.

6 Q. That's for the train. We're not seeing the cars
7 because the trains can't stop fast enough, right?
8 We're worried about the cars seeing the trains.

9 A. If they're stopped, they should be able to see.

10 Q. Okay. So I'm asking about the conditions on North
11 Stevens Road. When was the last time you were at North
12 Stevens Road?

13 A. I don't recall.

14 Q. Within the last year?

15 A. Yes.

16 Q. Okay.

17 A. With my new position I also patrol roads, and this
18 happens to be in my area.

19 Q. Okay.

20 A. For grading and having my patrolmen replace signs,
21 object markers, stop signs, anything that would cause a
22 hazard.

23 Q. Okay. I'm asking just a simple question. I'm not
24 trying to be tricky. The conditions of the growth
25 there, the trees, the physical structures, the brush,

0216

1 did that change at North Stevens depending on the time
2 of year?

3 A. It could, yes.

4 Q. Okay. But you don't know specifically?

5 A. No.

6 Q. Okay. You made the exact same testimony, again,
7 question 6, with respect to Barnhart. I'll ask the
8 same question. Does it change based upon the time of
9 year?

10 A. It could, yes.

11 Q. And when was the last time you were at Barnhart?

12 A. I don't recall. Within the last year.

13 Q. And do you still believe that the visibility at
14 Barnhart Road is excellent, with no buildings, trees,
15 or other structures obscuring visibility?

16 A. That is, my statement is what it is, yes.

17 Q. I'm not asking about your statement, sir, I'm asking is
18 that your opinion here today?

19 A. I'm sticking to my pre-filed testimony.

20 Q. I'm asking you, sir, is that your testimony here today?

21 A. I don't get to have an opinion. I'm, when I've gone
22 over it, it is good, and I've been there, it's good.

23 Q. So is your testimony today --

24 MR. PLANT: Objection. He's arguing.

25 THE JUDGE: Just move on, please.

0217

1 Q. Just one last question. So you said that you don't
2 refer to it as active and passive warnings. But you
3 are familiar with lights and gates and you are familiar
4 with -- which I call active, you are familiar with
5 crossbucks and stop signs, which I refer to as passive.
6 You would agree with me generally that gates and lights
7 are safer than crossbucks and stop signs, right?

8 A. It is a warning device. It is to warn the people, it's
9 to warn the public. I can't say the conditions would
10 change with speed, an impaired driver, or anything. It
11 is definitely a step in the right direction.

12 Q. Is a warning device something shouting, flashing
13 lights, do you agree with me?

14 A. So is a stop sign.

15 Q. What's that?

16 A. So is a red stop sign.

17 MR. SCARP: Fair enough. That's all I have.

18 THE JUDGE: Mr. Plant?

19 MR. PLANT: Nothing further.

20 THE JUDGE: That's it. You can step down. Thank
21 you.

22 Mr. Sexton, are you ready to begin?

23 MR. SEXTON: Yes, Your Honor. Mr. Pinkham,
24 please.

25

*

0218

1 ALVIN PINKHAM, being first duly sworn to
2 tell the truth, the whole
3 truth, and nothing but the
4 truth, testified as follows:

5

6 THE JUDGE: If you could state your first and last
7 name and spell your last name for the court reporter.

8 THE WITNESS: Okay. My name is Alvin Pinkham,
9 P-I-N-K-H-A-M.

10

11 DIRECT EXAMINATION

12 BY MR. SEXTON:

13 Q. Good afternoon, Mr. Pinkham. Can you please tell me
14 what you do for a living?

15 A. I am an engineering planner for the Yakama Nation.

16 Q. I'm going to hand you a copy of your pre-filed
17 testimony that's been admitted into evidence marked
18 AAP-1T, along with the exhibits to your pre-filed
19 testimony, which are AAP-2 through 8. And I'm also
20 going to hand you a copy of your pre-filed rebuttal
21 testimony. It's been admitted into evidence marked
22 AAP-9T, along with the one exhibit to that rebuttal
23 testimony, AAP-10.

24 Would you mind taking a couple minutes and looking
25 over, or however long you need, looking over your

0219

1 testimony and making sure it's the same as the
2 testimony you signed?

3 A. Yes, it seems to be in order.

4 Q. Thank you. Do you accept this testimony as your
5 testimony here today before the Utilities and
6 Transportation Commission?

7 A. Yes, I do.

8 MR. SEXTON: Thank you. That's all of the
9 questions I have right now, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MR. SCARP:

13 Q. Good afternoon, Mr. Pinkham. Are you aware there are
14 two separate petitions in this proceeding for closures
15 of rail grade crossings?

16 A. For Barnhart and for Stevens Road, yes.

17 Q. Right. Am I correct that your interest lies primarily
18 with the Barnhart Road crossing?

19 A. Primarily, but both, yes, both are concerns.

20 Q. And what concern do you have with regard to the
21 planning for the Yakama Nation with regard to North
22 Stevens?

23 A. Very little. It is a county road.

24 Q. Is it any type of traditional tribal use?

25 A. Traditional. You mean cultural?

0220

1 Q. Cultural.

2 A. As far as I know, no.

3 Q. Okay. Are you aware of tribal members that use the
4 crossing at North Stevens Road on a regular basis?

5 A. I have no knowledge of that.

6 Q. Okay. Do you have any experience with railroad
7 engineering specifically?

8 A. Not specifically, no.

9 Q. Have you ever studied railroad safety?

10 A. Not particularly, no.

11 Q. Would you agree with the general statement that a
12 freight train moving 49 miles an hour cannot stop
13 quickly?

14 A. I would agree with that statement, yes.

15 Q. Would you have any reason to dispute that it would take
16 a hundred-car freight train traveling 50 miles an hour
17 more than a mile to stop?

18 A. I have no knowledge.

19 Q. Okay. Are you familiar with the terms active and
20 passive warning devices at railroad grade crossings?

21 A. Just what I heard in the last testimony, yes, I am now.

22 Q. Prior to what you've heard in testimony this afternoon,
23 were you aware of the difference in terminology of
24 active or passive?

25 A. No, no, I was not.

0221

1 Q. And as you've listened here this afternoon, you've
2 become familiar with what are described as passive
3 warning devices as, for example, crossbucks, stop
4 signs?

5 A. Right.

6 Q. Or a line on the road, because they're passive, they
7 just sit there?

8 A. Right.

9 Q. Active warning devices, you now understand, are
10 flashing lights, gates that are activated, come down,
11 bells that ring, to name a few?

12 A. Right.

13 Q. Okay. Have you ever given any thought before sitting
14 here listening to those distinctions about the
15 difference or benefits between passive warning devices
16 and active warning devices at railroad grade crossings?

17 A. I guess the active ones, I would say they do provide
18 more attention to the drivers and stuff and do benefit
19 the traffic.

20 Q. As an engineering planner, do you believe that it's
21 illegal to cross a railroad grade crossing when there
22 are active controls that have been activated?

23 A. To the best of my knowledge, yes, it's illegal.

24 Q. Okay. Do you have any sort of statistical information
25 and understanding of the relative safety of crossings

0222

1 that have active warning devices versus passive?

2 A. No, I have never looked into that.

3 Q. All right. I want to ask you about your testimony that
4 people in the Yakama Nation still need to use the
5 Barnhart crossing. That's your testimony?

6 A. I, it was not directly my testimony. I don't think --
7 I believe what I testified is it was the shortest
8 distance from the longhouse to the local cemetery.

9 Q. Okay. Is that important that it's the shortest
10 distance?

11 A. I found out it is, yes.

12 Q. And when did you find that out?

13 A. When I heard the other testimony of the people that use
14 the longhouse, and that is their traditional route, is
15 what I've heard.

16 Q. But you don't have any independent knowledge of that,
17 just what people have told you?

18 A. Like I said before, with Stevens Road and Barnhart
19 Road, those are county roads and really not any part,
20 you know, I haven't studied them for any reasons yet.

21 Q. Okay. How much, how far is it from the longhouse to
22 the cemetery that's on the other side of Indian Church
23 Road, the other side of State Route 22?

24 A. I haven't, I don't think I have measured that. For the
25 shortest route, I would estimate it's probably just

0223

1 around two miles. I don't know.

2 Q. What's name of that cemetery?

3 A. Satus Point Cemetery.

4 Q. Satus Point?

5 A. Yes.

6 Q. Is that up on a hill?

7 A. Yes.

8 Q. And is it, is it just northwest, northwest of the
9 Indian Church crossing?

10 A. Yes, it is.

11 Q. And let me -- can you see this okay?

12 A. Got some glare from the lights.

13 Q. It does, doesn't it. You're not the first person who
14 said so.

15 A. I have an exhibit here that I can see.

16 Q. The Satus Longhouse is up here, isn't it, right at the
17 intersection of Drain Bank Road and Satus Longhouse
18 Road?

19 A. Yes.

20 Q. And so one way to get to the cemetery -- and let me
21 move out of the way -- we've got Barnhart Road here and
22 we've got Indian Church here, right, at the crossing?

23 A. Yes.

24 Q. Then is the cemetery up here?

25 A. I believe so. I can't really tell looking at that.

0224

1 Q. Okay. Here's the Indian Church Road, here's Barnhart,
2 here's Satus Longhouse as they all cross State Route
3 22.

4 A. There is a Branch Road that turns off.

5 Q. Right here, maybe? That says Branch Road.

6 A. Yeah. Okay.

7 Q. So a procession would come from the longhouse along
8 Drain Bank Road, down across the crossing at Barnhart,
9 then up Highway 22, right up there, and then come down
10 Branch Road and go to the cemetery; would that be
11 right?

12 A. That's the way I understand it now, yes.

13 Q. Okay. And you said roughly two miles. Everybody has
14 said it's a mile or so, so we'll go with that.

15 A. Okay.

16 Q. Do you know, is there a preference for not using State
17 Route 22?

18 A. As far as having processions, you mean?

19 Q. Yeah. Is there any preference for wanting to go more
20 slowly, perhaps?

21 A. I don't know. I don't participate with the Satus
22 Longhouse and I really don't have any knowledge of how
23 they do things.

24 Q. Okay. You would agree, however, that the crossing
25 here, if you come along from the longhouse along Drain

0225

1 Bank and down across at Barnhart Road, you have just
2 stop signs and crossbucks for your warning devices?

3 A. Yes.

4 Q. If you were to continue up Barnhart Road and come over
5 here to Indian Church Road, you would have lights and
6 gates, right?

7 A. Yes.

8 Q. Do you know how much longer it is to go from here
9 instead of going across 22 to go up here and across?

10 A. In my exhibit I did cite different distances for
11 alternative routes. I don't remember them offhand, but
12 it is longer than taking Drain Bank to Barnhart down to
13 22.

14 Q. Do you have it written down there?

15 A. Yes, I do. Actually, what I based it on was to the
16 intersection of Indian Church Road and 22.

17 Q. Right.

18 A. Right.

19 Q. Right. And that's, I'll point out again, that's the
20 crossing with lights and gates right there?

21 A. Right. That would be about three-tenths of a mile
22 longer.

23 Q. So if you came all of the way across Drain Bank and
24 continued on Barnhart up to Indian Church and crossed
25 where there's lights and gates, it would be about

0226

1 three-tenths of a mile longer than if you crossed at
2 Barnhart?

3 A. Right.

4 Q. Okay. And do you know how far the entire trip -- I
5 might have asked you this -- do you know how far the
6 entire trip from the longhouse to the cemetery is?

7 A. I didn't measure to the cemetery.

8 Q. Okay. Do you think it would be safer for a funeral
9 procession to cross a railroad crossing where there's
10 lights and gates as opposed to where there is not?

11 A. I would assume so, yes.

12 Q. I wanted to ask you just a couple questions about
13 emergency services. I apologize, Mr. Pinkham. Mr.
14 Pinkham, I am going to refer you to what I hope is
15 correctly AP-3. Oh, you've got a copy?

16 A. Yes.

17 Q. Maybe take a look at this one. It's colored, in case I
18 make some reference to something that's in color. This
19 is something that you prepared?

20 A. Yes, it is.

21 Q. And what did you use to determine the distances that
22 you have written in here?

23 A. Google Earth.

24 Q. Okay. And there you show the cemetery way up in the
25 top left corner that we were referring to earlier?

0227

1 A. Correct.

2 Q. The blue line, there is a red line from the Satus
3 Longhouse across Drain Bank, and then there's a blue
4 line that goes up Barnhart and a lighter blue line that
5 turns down to Indian Church Road. Do you see that?

6 A. Yes, I do.

7 Q. Is that pretty much what I was just discussing about
8 the funeral route that would be alternative to crossing
9 at Barnhart?

10 A. Did you discuss that with me earlier? You were talking
11 about Barnhart Road, not the Schuster Road, right?

12 Q. Right. Not Schuster. I'm sorry. I'm just trying to,
13 because I was drawing it with the back of my pen on the
14 larger one, but basically, I see that you've drawn a
15 very similar one here and I was trying to describe the
16 color.

17 A. Okay. Right. I gotcha now. It's a lighter blue.

18 Q. In these distances down here, there is not, there is
19 not anything about -- this is all about emergency
20 vehicles, there is nothing about the funeral procession
21 route?

22 A. That's correct.

23 Q. What I want to know is, you say there are three houses,
24 three homesites that are served by the crossing at
25 Barnhart that emergency responders would provide

0228

1 services to?

2 A. Yes. There's three houses that have access closest to
3 that crossing.

4 Q. Do you know who lives in those?

5 A. No, I don't.

6 Q. Do you know how long they have lived there, how old
7 they are?

8 A. No, I don't.

9 Q. Now, would, if there was an ambulance, for example, or
10 a police car that, where would it come from, typically,
11 to respond to a call? Would it come from Toppenish?

12 A. Toppenish or Granger.

13 Q. And if so, would an emergency vehicle of that type have
14 to cross past Indian Church Road to get down to
15 Barnhart?

16 A. If it was coming down Indian Church Road and went to
17 SR-22, are you saying?

18 Q. If it came, if an emergency responder came from
19 Toppenish --

20 A. Okay.

21 Q. -- police car, ambulance, would they have to go past
22 the Indian Church crossing where it crosses the
23 railroad in order to get down to Barnhart?

24 A. It would be the easiest route, yes.

25 Q. If it was coming from Granger, I notice you have an

0229

1 arrow pointing at the top of the page that says Granger
2 and an arrow.

3 A. Right.

4 Q. Is there a road that goes that direction to Granger?

5 A. Yes, it is. That's the Indian Church Road.

6 Q. And so a vehicle coming from Granger would come down
7 Indian Church and wouldn't have to cross the railroad
8 tracks?

9 A. I, if the driver's driving that ambulance, whatever,
10 he'd have to cross the tracks and go to 22 to those
11 three houses.

12 Q. You wouldn't just take a left before you got to the
13 tracks and come down Barnhart?

14 A. That would be a longer route.

15 Q. By how much?

16 A. Well, like I said before, I don't know.

17 Q. If you did that, Mr. Pinkham, wouldn't you run the risk
18 of maybe having a train come by that you had to wait
19 for?

20 A. That's possible.

21 Q. Okay. If that was the case, I mean, given that
22 possibility, wouldn't it make more sense to stay on the
23 north side of the tracks and just use Barnhart Road
24 down to those homes?

25 A. In that case, yes.

0230

1 MR. SCARP: Okay. Those are all of the questions
2 I have. Thank you.

3 MR. SEXTON: Thank you, Your Honor.

4

5 REDIRECT EXAMINATION

6 BY MR. SEXTON:

7 Q. Mr. Pinkham, can you for the record tell us how long
8 you've worked on the Yakama Reservation?

9 A. With the tribe I've worked for approximately five
10 years, and before that I was a federal employee for the
11 Bureau of Indian Affairs Yakima Agency, I was a
12 supervisory civil engineering technician for the BIA.

13 Q. That was for how long?

14 A. Thirty-two years. So it's been about 37 years.

15 Q. So the testimony you offered here was based on, that
16 was based on your experience dealing with these roads
17 over the past 32 years?

18 A. Yes, it is.

19 Q. Okay. And in your assessment of the impacts that the
20 proposed closures would have on the areas of your job
21 and what you're responsible for with respect to the
22 Yakama Nation, did you consider more than the relative
23 benefits of active versus passive controls on a railway
24 crossing?

25 A. No, I didn't.

0231

1 Q. You did not consider. Did you consider more than other
2 factors, in other words?

3 A. Yes.

4 Q. What other factors did you consider?

5 A. Well, the closure of Barnhart Road would, it doesn't
6 make, I don't think makes the crossings any safer
7 because it just moves traffic to the other crossings,
8 and plus it also puts more, I mean, I heard this
9 mentioned and it's mentioned in my testimony, that even
10 farm vehicles will have to start using these other
11 higher-speed roads.

12 Q. Okay. So, in other words, is it fair to say that you
13 looked at kind of the big picture and, according to
14 your testimony and your response to Mr. Scarp, you're
15 not an expert on railway safety per se?

16 A. Right.

17 Q. But you are an expert in terms of this road system in
18 this area in general; is that a fair statement?

19 A. That's a fair statement, yes.

20 Q. Okay. And then with respect to your testimony that you
21 were just asked about on emergency vehicles and
22 response time, do emergency vehicles generally, when
23 they're responding to these residences or any sort of
24 emergency that occurs commercially or on the farms
25 here, in your experience, do they come from Toppenish

0232

1 generally or from Granger?

2 A. From Toppenish.

3 Q. Okay. So they would generally take State Route 22; is
4 that a fair statement?

5 A. That's fair.

6 Q. And then your testimony focused on one specific aspect
7 of the closure and how that closure at Barnhart Road
8 would impact the route that emergency vehicles would
9 have to take. Can you elaborate on that impact?

10 A. When I first looked at this, I looked at those three
11 homes that were closest to that Barnhart Road access.
12 They're the ones that would get impacted the most as
13 far as response times. The other alternative routes
14 are longer and, you know, I think of a fire; if one of
15 those houses is on fire, you know, it may take the fire
16 truck a minute longer to get there, and a minute is
17 very much, a big concern. If it was my house, I would
18 be against this for sure.

19 Q. Were you also concerned with the turn that an emergency
20 vehicle would have to make?

21 A. If it was coming from Toppenish, yes. I mean, that
22 Barnhart turnoff of the Indian Church Hill is something
23 very difficult to navigate for a fire truck.

24 Q. Can you explain why?

25 A. I think in one of those exhibits it shows that there is

0233

1 a Y intersection with, between Barnhart and Indian
2 Church, and then it showed that there is certain
3 radiuses involved there that certain vehicles would
4 have to deal with and it shows that a passenger car
5 itself going north on Indian Church turning to Barnhart
6 would be rather difficult because it's a 20-foot
7 radius, where a car would need a 25. That's a standard
8 sedan size. Anything bigger than that, like a school
9 bus or a fire truck, would have a very difficult time
10 making that turn.

11 Q. Thank you, Mr. Pinkham. Just for the record I note you
12 were pointing to an exhibit during your testimony. And
13 that's your third exhibit to your pre-filed direct
14 testimony which was marked AAP-4, correct?

15 A. That's correct.

16 MR. SEXTON: That's all of the questions I have.
17 Thank you, Your Honor.

18 THE JUDGE: Thank you. Anything else?

19 MR. SCARP: I do.

20

21 RE-CROSS-EXAMINATION

22 BY MR. SCARP:

23 Q. What's the fire district that serves that area?

24 A. I believe it's Fire District 5.

25 Q. Do you know where Fire District 5's Station 16 is?

0234

1 A. I don't know the station numbers, no.

2 Q. Is there one right south of highway State Route 22 on
3 Satus Longhouse Road?

4 A. Satus? I believe there is, yes.

5 Q. Is Station 11 -- I'm sorry, District 5, Station 11,
6 does that come from Granger?

7 A. I do not know Station 11.

8 Q. Let me just, this is just, if it will help, this is Mr.
9 -- GN-9 for the court's record. Can I offer the
10 witness, just a map? GN-9. Mr. Pinkham, is that,
11 where that dot is down there, Satus Longhouse?

12 A. Right.

13 Q. That's what, just below, just below the Satus Longhouse
14 crossing right down about here?

15 A. Yeah.

16 Q. That's where the fire district is?

17 A. Yes.

18 Q. So to get to these houses here, I could come straight
19 up Satus Longhouse, take a left, and come here, right?

20 A. Well, at the time of this testimony, that fire station
21 was inoperative, did not have anybody operating it.

22 Q. Do they now?

23 A. I have no idea.

24 Q. Okay. It's still a --

25 A. Fire station.

1 Q. -- fire station. They could have someone there and
2 you're not sure?

3 A. I believe they work off of volunteers and they had
4 nobody available, so.

5 Q. Okay. In any event, you do not have any idea how long
6 it would take to get from there up Satus Longhouse
7 across Drain Bank and down into these homes?

8 A. That would be the quickest.

9 MR. SCARP: Thank you. Those are all of the
10 questions I have.

11 THE JUDGE: Okay. Anything else?

12 MR. SEXTON: I don't have anything else, thank
13 you.

14 THE JUDGE: Okay. You can step down.

15 Let's take a five-minute break. Go off the
16 record.

17 (A SHORT RECESS WAS HAD.)

18 THE JUDGE: Back on the record following a brief
19 recess, and Mr. Sexton, if you would like to call your
20 next witness.

21 MR. SEXTON: Yes, thank you. Mr. Roy Dick,
22 please.

23 *

24 *

25 *

0236

1 ROY DICK, being first duly sworn to tell
2 the truth, the whole truth, and
3 nothing but the truth, testified
4 as follows:

5

6 THE JUDGE: Go ahead and state your first and last
7 name, spelling your last name for the record.

8 THE WITNESS: Roy Dick, D-I-C-K, last name.

9

10 DIRECT EXAMINATION

11 BY MR. SEXTON:

12 Q. Good afternoon, Mr. Dick. I'm going to hand you
13 testimony that is your pre-filed testimony filed in
14 this matter. It's been entered into evidence as
15 Exhibit No. RD-1T. Can you please take a few moments
16 and look through that?

17 A. (Witness complied).

18 Q. Do you accept this testimony as your testimony here
19 today?

20 A. Yes.

21 MR. SEXTON: Thank you. That's all I have for
22 this witness at this time, Your Honor.

23 THE JUDGE: Thank you.

24 *

25 *

0237

CROSS-EXAMINATION

1

2 BY MR. SCARP:

3 Q. Good afternoon, Mr. Dick. Were you watching the
4 testimony of Mr. Pinkham with regard to the procession,
5 the route from the longhouse for a funeral procession
6 to the cemetery?

7 A. Was I watching? Yes, I was watching.

8 Q. Did I show the route correctly from the longhouse
9 across Drain Bank, down across the Barnhart crossing,
10 up 22 past Indian Church Road, and left onto Branch
11 Road?

12 A. Yes.

13 Q. Do you know how far that is?

14 A. Oh, it's, I'd say it's closer to almost three miles.

15 Q. Okay.

16 A. Because it's almost a mile from Longhouse to the
17 intersection of Barnhart and Drain Bank.

18 Q. Okay. So from the longhouse, here is Satus, I know
19 there is probably some glare, here is Satus Longhouse
20 Road, the longhouse is here at the corner of Drain
21 Bank. So you're saying over here to the intersection
22 of Drain Bank and Barnhart Road is about a mile?

23 A. It's a little over a mile.

24 Q. Okay. Then the procession would come down across the
25 railroad crossing at Barnhart, up Highway 22 past

0238

1 Indian Church, up to Branch Road, take a left and come
2 down and the cemetery is over here?

3 A. Yes.

4 Q. How many times -- do you live up near there?

5 A. I do.

6 Q. Whereabouts from the longhouse?

7 A. South Satus Road.

8 Q. Okay. And how many times have you been in a funeral
9 procession?

10 A. Just about every other one that there has been at the
11 longhouse.

12 Q. How many have you been in, roughly?

13 A. I couldn't say.

14 Q. Twenty?

15 A. Not that many.

16 Q. Over how many years?

17 A. My lifetime.

18 Q. Ten? Have you been to ten processions?

19 A. More than that.

20 Q. Some where between 10 and 20?

21 A. You can say that, yeah.

22 Q. Okay. Well, I'm just trying to estimate. And how old
23 are you?

24 A. Fifty-five.

25 Q. Is it your testimony that such processions would

0239

1 normally include somewhere from 100 to 300 people?

2 A. Depending on the family.

3 Q. Was that your testimony?

4 A. I don't remember, but that's my answer, so, because not
5 all families are the same.

6 Q. Right. How many cars would there likely be in a
7 procession?

8 A. Like I say, it depends on the family.

9 Q. Would there be as few as 15?

10 A. Yes.

11 Q. As many as 30?

12 A. More.

13 Q. As many as 50?

14 A. Yes.

15 Q. Okay. Is it your testimony that the procession wants
16 to go slowly from the longhouse to the cemetery?

17 A. Generally.

18 Q. Is that not always the case?

19 A. Not always.

20 Q. Sometimes they want to go faster?

21 A. Well.

22 Q. Go ahead.

23 A. I don't know how you would elaborate it. If we were on
24 a time frame, we would have to, it depends on when
25 we're leaving.

0240

1 Q. You mean like needed to get to the cemetery by a
2 certain time?

3 A. Yes. Yes.

4 Q. Okay.

5 A. Some ceremonies are done before the sun comes up.

6 Q. Before the sun comes up?

7 A. Yes. Some are done that way.

8 Q. Okay. Has the route ever gone up to Indian Church Road
9 and then across the crossing at Indian Church Road?

10 A. Like I say, it depends on the families.

11 Q. But sometimes they might go that way?

12 A. One or two, maybe.

13 Q. Okay. Have you ever gone that way?

14 A. Once, that I remember.

15 Q. Did it take much longer?

16 A. Well, going slow, yes.

17 Q. Were you already going slow?

18 A. Yes.

19 Q. Have you ever had a train come by during a funeral?

20 A. Not in the morning.

21 Q. Have you ever had a train come by during a funeral
22 procession?

23 A. No.

24 Q. Then I guess it wouldn't be appropriate to ask what
25 would happen, because you have never experienced it.

0241

1 A. Have never experienced that.

2 Q. Has anybody ever set a plan for what happens if the
3 train comes?

4 A. Not that I know of.

5 Q. Okay. I want to ask you something different, Mr. Dick.

6 There was a question about a flood. Do you remember
7 that in your testimony?

8 A. Which one are you talking about?

9 Q. How about 1996?

10 A. I vaguely remember.

11 Q. You said that it lasted for two weeks.

12 A. Yes, it did.

13 Q. Was the longhouse flooded?

14 A. It came into it, yes.

15 Q. What do you mean when you say that?

16 A. Well, the water came right up to the building and it
17 did come in the main entrance.

18 Q. Were you able to get down Satus Longhouse Road to State
19 Route 22?

20 A. Through Barnhart Road, yes.

21 Q. Through Barnhart, not through Satus Longhouse?

22 A. No, because that was blocked.

23 Q. Isn't Barnhart lower as it approaches the railroad
24 crossing?

25 A. It's further away from the creek.

0242

1 Q. Were you able to get across Indian Church?

2 A. I never had to. Because there is no water around

3 Indian Church Road.

4 Q. And is that the last time there was a flood like that?

5 A. Well, yeah, the last severe one there was one in 2007.

6 That was over the waterway -- over the roadway, I mean,

7 Satus Longhouse Road.

8 Q. Did it close the road?

9 A. For about two days.

10 Q. Can you take from the longhouse in the event of an

11 emergency like a flood, can you take this road around

12 to Schuster and come over to Indian Church -- sorry, I

13 think it's up a little higher. Is that a way you can

14 go?

15 A. If I wanted to, probably. I don't, though.

16 Q. Okay. But you could get over there in case there was a

17 flood that --

18 A. There is no water by Indian Church Road.

19 Q. Fair enough.

20 MR. SCARP: Those are all of the questions I have.

21 Thank you.

22 MR. SEXTON: I have no redirect, Your Honor.

23 THE JUDGE: Okay. Thank you.

24 *

25 *

0243

1

EXAMINATION

2

BY THE JUDGE:

3

Q. I did have one question for you. So on page 4 of your

4

testimony, you talk about families living within the

5

area that depend on access over the Barnhart Road

6

railroad crossing to access SR-22. Do you have any

7

more data or information about how many families live

8

in a location that necessitates using the Barnhart Road

9

crossing?

10

A. I believe there is one, two, three, four, five, there

11

is six houses on Drain Bank Road and then there's one

12

that lives right next to the railroad station -- road,

13

the railroad, itself. I don't know who those people

14

are. They're an elderly couple.

15

THE JUDGE: Okay. Thank you. You may step down.

16

And if you would like to call your next witness.

17

MR. SEXTON: Yes, Your Honor. Mr. Johnson

18

Meninick, please.

19

20

JOHNSON MENINICK, being first duly sworn to tell

21

the truth, the whole truth,

22

and nothing but the truth,

23

testified as follows:

24

25

THE JUDGE: If you could state your full name and

0244

1 spell your last name for the record. Go ahead and have
2 a seat.

3 THE WITNESS: Johnson Meninick. Spelling my last
4 name, M-E-N-I-N-I-C-K.

5

6 DIRECT EXAMINATION

7 BY MR. SEXTON:

8 Q. Good afternoon, Mr. Meninick. Can you please tell us
9 what you do for a living?

10 A. At the present time I am the cultural resource manager
11 of the Yakama Nation for 30 years as of March this
12 year.

13 Q. Okay. Thank you, sir. And in this case you filed
14 written testimony, pre-filed testimony of Johnson
15 Meninick that's been admitted into evidence marked
16 JM-1T. I'm going to hand you a copy of that testimony,
17 and if you could take your time to look through it, I'd
18 appreciate it.

19 A. Yes.

20 Q. Do you accept this as your testimony here today, sir?

21 A. Yes.

22 MR. SEXTON: Thank you. That's all of the
23 questions I have at this time, Your Honor.

24 THE JUDGE: Thank you.

25

*

0245

1 CROSS-EXAMINATION

2 BY MR. SCARP:

3 Q. Good afternoon, Mr. Meninick.

4 A. Good afternoon.

5 Q. Your pre-filed testimony is about the funeral
6 processions from the longhouse to the cemetery over off
7 of Branch Road. Do you recall the questions and
8 answers both with Mr. Pinkham and Mr. Dick?

9 A. Yes, I heard them.

10 Q. Is it your testimony, Mr. Meninick, that the
11 processions traditionally want to go slowly?

12 A. In some cases, yes.

13 Q. Is that the reason why you said that it is preferable
14 to stay off of Highway 22?

15 A. Yes.

16 Q. Have you been in processions that go from the longhouse
17 across Drain Bank and up Barnhart Road over to Indian
18 Church Road before crossing?

19 A. That is not feasible.

20 Q. Okay. It's not feasible, did you say?

21 A. Yes.

22 Q. Is it not feasible for a car to drive that way?

23 A. Yes.

24 Q. Why do you say that?

25 A. Because the road is narrow, curved, sort of a curve

0246

1 thing that goes before it gets to Indian Church Road
2 and it's not a very stable road.

3 Q. Are you talking about the road from Barnhart to Indian
4 Church?

5 A. Yes.

6 Q. And you yourself, do you ever drive that?

7 A. Yes.

8 Q. Don't people drive it every day?

9 A. I wouldn't say every day.

10 Q. It's your opinion that that road from Drain Bank to
11 Barnhart and up to Indian Church is just simply not a
12 good road?

13 A. No, it's not customary to use that road. In our belief
14 and religion, we have to have a certain route that we
15 travel on.

16 Q. So did you hear Mr. Dick's testimony that he's aware of
17 a few who choose to go the other way?

18 A. It's possible.

19 Q. All right. If you wanted to stay off of Highway 22,
20 would you agree that staying on Barnhart would keep you
21 off Highway 22 and you would only have to get on it for
22 a short distance to Branch Road, instead of crossing
23 down at Barnhart, you would be on it for a longer
24 distance?

25 A. That is not customary.

0247

1 MR. SCARP: Okay. Thank you, Mr. Meninick, those
2 are all of the questions I have.

3 THE JUDGE: Mr. Sexton.
4

5 REDIRECT EXAMINATION

6 BY MR. SEXTON:

7 Q. I have one quick question, Mr. Meninick. Could you
8 explain or expand a little bit upon as what you just
9 cited as customary, and for the benefit of this matter
10 explain why Barnhart Road crossing is important to the
11 Nation community?

12 A. Yes. Long before the railroad was there, that was the
13 original trail where the Barnhart Road crosses. But it
14 goes on south. We have other cemeteries in the
15 vicinity and some up higher, and the Spencer Road
16 further south comes in and then it's an old crossing
17 right there where my grandmother's house was on that
18 road and it crosses right into Barnhart Road and to
19 Satus Longhouse.

20 And within our belief we have to follow the
21 pattern that our elders have used, so we've always
22 followed that pattern because it is our belief. And
23 there are also other cemeteries further up the Satus
24 Creek.

25 So that Barnhart Road provides us that customary

0248

1 belief in our way of practice and our ceremonies. But
2 it's not only for the funerals that the Satus Longhouse
3 is used, but for memorials, for gatherings, pow wows,
4 and many other occasions that we have there. General
5 council of all of the membership come together and
6 discuss policies of the Yakama Nation. So that's what
7 the longhouse is for and that road is very important
8 for that purpose.

9 MR. SEXTON: Thank you, sir. That's all of the
10 questions I have.

11 THE JUDGE: I'm good. You may step down. It's
12 okay. You can step down. Thank you.

13 THE WITNESS: Okay.

14 THE JUDGE: Mr. Scarp, we're moving on to BNSF
15 witnesses. Did you decide what you want to do?

16 MR. SCARP: I do. I think we might as well use
17 the order and try to get Mr. Agee. I don't know if Mr.
18 Norris will get completed, so we'll -- it doesn't
19 matter to me.

20 THE JUDGE: Okay.

21

22 DAVID AGEE, being first duly sworn to tell the
23 truth, the whole truth, and
24 nothing but the truth, testified
25 as follows:

0249

1 THE JUDGE: Go ahead and have a seat and state
2 your name, spelling your last name for the record.

3 THE WITNESS: David Agee, last name spelled
4 A-G-E-E.

5

6 DIRECT EXAMINATION

7 BY MR. SCARP:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. What is your position with BNSF?

11 A. Manager of field safety.

12 Q. Have you been out with an injury for awhile?

13 A. Surgery, yes.

14 Q. Okay. You're back on your feet but you're not working
15 today until you're healed completely and then you'll be
16 back at work?

17 A. Yep.

18 Q. Are you going to go to a new job when you come back?

19 A. I am indeed, yes.

20 Q. Okay. Where?

21 A. Probably going to be in Arizona.

22 Q. Okay. For the time being, you're still who you are. I
23 have in front of me your pre-filed testimony, DA-1T,
24 and your pre-filed rebuttal testimony, DA-5T. Can you
25 just look through those and make sure the pages are

0250

1 correct that the information appears as you submitted
2 it?

3 A. I see no changes really obvious.

4 Q. Are those your signatures on each of those?

5 A. Yes.

6 Q. Okay. And is that your testimony as if we were to ask
7 you those questions and you were to give it here today?

8 A. Yes.

9 MR. SCARP: Thank you.

10

11 CROSS-EXAMINATION

12 BY MR. PLANT:

13 Q. Mr. Agee, I just a few questions for you here. I
14 understand your testimony today is that North Stevens
15 Road and the Barnhart Road crossing should be closed
16 because they present a safety threat to the traveling
17 public; is that correct?

18 A. Yes, sir.

19 Q. I was looking at your pre-filed testimony. I just had
20 a question. On page 4 you said all railroads
21 considered, we lose two people a day at highway rail
22 grade crossings. That's at lines 1 and 2.

23 A. On page 4?

24 Q. Yeah.

25 A. I'm looking at the wrong one.

0251

1 Q. I understand that you were involved with, is it
2 Operation Lifesaver?

3 A. Yes.

4 Q. Is that what it's called?

5 A. Yes.

6 Q. I looked at the Operation Lifesaver website and it
7 shows that there were 231, I guess, train-automobile
8 collision fatalities in 2013. So I was hoping you
9 could explain your testimony on page 4 that there is
10 two people a day and how that relates to the
11 information on the OLI website that says 231
12 facilities.

13 A. There's two numbers. Certainly the number was on the
14 average of two a day in vehicles and two a day
15 trespassing, typically is what the numbers were. So
16 that number you're looking at probably is just two,
17 just a number of people in motor vehicles that you're
18 talking about there. That varies from year to year.

19 Everything from grade separations to better
20 education to improved safety devices, just us a whole
21 myriad of things changes that number over time. And
22 two a day is what the, what it was in -- and currently
23 hopefully it's come down further than that, and the
24 fact that we've tried to consolidate many crossings has
25 also played a significant role in reducing those

0252

1 numbers.

2 Q. Are you saying this information of 231 that's on the
3 OLI website, that's inaccurate?

4 A. No. I haven't looked at that number. I don't know.
5 You would have to ask Operation Lifesaver.

6 Q. All right. Where did you get your two-a-day number
7 from?

8 A. That's what Operation Lifesaver has used over many
9 years since I have been involved in the program that it
10 was typically two a day trespassing and two a day in
11 vehicles at highway grade crossings.

12 Q. Okay. I understand the OLI data is taken directly from
13 the Federal Railway Administration. So if in fact your
14 two-a-day figure differs from the data obtained by OLI
15 from the Federal Railway Administration, which would
16 you suspect is more accurate?

17 MR. SCARP: I would say this is a hypothetical and
18 there is no facts before this witness.

19 MR. PLANT: Sure. That's fair.

20 Q. Did you, in reviewing this opinion, did you review any
21 sort of traffic counts at North Stevens Road or
22 Barnhart Road?

23 A. No. My focus is on safety of crossings, is what I'm
24 focusing on.

25 Q. Sure. So you would have looked at types of active or

0253

1 passing warning devices at these crossings?

2 A. Yes, I'm familiar with those things.

3 Q. Did you review, I guess, the alternate crossings? In
4 other words, if Barnhart Road is closed, traffic would
5 be diverted to alternate crossings?

6 A. Yes.

7 Q. What are those alternate crossings?

8 A. Well, it would be Church Road and Longhouse.

9 Q. Okay. Did you have, I guess did you sort of make a
10 determination as to how many cars would be diverted or
11 what proportion of traffic that would have used
12 Barnhart Road would be diverted to the Satus Longhouse
13 Road?

14 A. No. My, again, my focus is on the safety of the
15 crossings themselves, not the diversion of traffic.

16 Q. Okay. So do you have an opinion on the increased risk
17 of motor vehicle accidents that would be caused by
18 closing these crossings and diverting traffic to
19 adjacent crossings?

20 A. Say that one more time. I'm sorry.

21 Q. Do you have an opinion about the increased risk of
22 motor vehicle accidents that would be caused by closing
23 these crossings?

24 A. I have an opinion on the decreased risk. I think it
25 would decrease the risk by diverting vehicles to a

0254

1 crossing that has active warning devices because the
2 public would then have more senses to perceive a train
3 approaching.

4 Q. Have you analyzed whether the fact that cars would be
5 diverted to other crossings could cause an increase in
6 automobile accidents?

7 A. No. I have not analyzed that, no.

8 Q. So you have no opinion how that risk relates to the
9 safety benefit of closing the crossings?

10 A. I have an opinion on the fact that if a motorist is
11 diverted to an active device crossing with gates,
12 lights, and bells, they're better equipped to negotiate
13 a train approaching and it would be far safer.

14 Q. Fair. So your opinion relates to a probability of an
15 accident at crossing?

16 A. Of the potential accident at crossing.

17 Q. The potential probability. The probability of a
18 potential accident at crossing.

19 MR. PLANT: Okay. That's all of the questions
20 that I have.

21 THE JUDGE: Mr. Sexton.

22

23 CROSS-EXAMINATION

24 BY MR. SEXTON:

25 Q. Yeah, I just have one, sir. In your analysis, did you

0255

1 come across any information regarding accidents at
2 these two particular crossings?

3 A. No. I found nothing with the cursory look that I had
4 in my --

5 Q. In fact, there has been no accidents you're aware of at
6 the Barnhart Road crossing; is that correct?

7 A. I'm not aware of any. But again, that wasn't the focus
8 of my efforts.

9 Q. Sure. The same question with respect to the crossing
10 at North Stevens Road, would your answer be the same?

11 A. Same.

12 MR. SEXTON: That's all of the questions I have.
13 Thank you, Your Honor.

14 MR. SCARP: I just have one.

15

16 REDIRECT EXAMINATION

17 BY MR. SCARP:

18 Q. Mr. Agee, how long have you been, actually, how long
19 have you been in Operation Lifesaver?

20 A. Since roughly 1997.

21 Q. Okay. During that time are you aware of grade crossing
22 accidents and fatalities that have occurred at
23 crossings where there were no previous accidents?

24 A. Yes.

25 MR. SCARP: Okay. That's all I have.

0256

1 THE JUDGE: I have a question.

2

3 EXAMINATION

4 BY THE JUDGE:

5 Q. On page 4, beginning at line 13, when you're talking
6 about an incident involving high school students that
7 were almost hit by a train.

8 A. Yes.

9 Q. So it appears from your testimony that the high school
10 students were trespassers; is that correct?

11 A. That's correct.

12 Q. They were on foot?

13 A. On foot, yes.

14 Q. Not in a vehicle?

15 A. Yes.

16 Q. So they were walking over the tracks at a crossing?

17 A. No, they weren't. I can explain that, if you'd like.

18 Q. Okay.

19 A. This was a situation, and this was the primary impetus
20 for me getting involved in Operation Lifesaver, as a
21 matter of fact. Coming out of Phoenix, Arizona, on a
22 train we had a high school on the north side of the
23 tracks, train tracks, Grand Avenue, and fast food
24 places. So at lunchtime the kids would come and cut
25 the fence and go get fast food.

0257

1 We were doing approximately 35 miles per hour,
2 straight stretch of track, see 15 kids on the highway.
3 I see, I recall immediately one young man running to
4 beat the train across the tracks, and as often happens,
5 in my experience, the other kids sort of follow the
6 leader and run to beat the train across the tracks.

7 If any of these kids would have tripped they would
8 not have had time to get up. We placed the train into
9 emergency immediately. And I remember distinctly
10 seeing three young kids out of the periphery of my eye
11 running towards the train, and at one point I'm looking
12 down and I'm thinking, I can't even see these three
13 kids. I'm confident at that point that three had died.

14 The train comes to a stop about, oh, at least
15 three-quarters of a mile further up the tracks at that
16 point, and of course we go back and the trauma is
17 tremendous because you're expecting to see body parts.
18 And certainly from police training things I've done
19 I've seen pictures they show, it's something a human
20 really should not be seeing. So that's what this
21 involves here.

22 Q. So what you're saying is they weren't even at a
23 crossing?

24 A. No, there was no crossing, that's correct.

25 Q. That incident is not really relevant to a case

0258

1 involving crossings?

2 A. Understood.

3 Q. Okay. And then on page 7, line 22, you testified the
4 public often disregards safety warning devices. Do you
5 have any information or statistics about probable
6 causes of accidents that illustrates the public's
7 disregard for safety warning devices?

8 A. I couldn't point to any specifically at this point.
9 Certainly in my working with U.S. DOTs, FRA, other
10 agencies, and personal experience, we see that
11 happening out there where there is a disregard. And we
12 often see it when under the Operation Lifesaver
13 umbrella at times we'll put police on our trains and
14 let them get a firsthand view of what's happening and
15 we've seen cars queue up at a crossing and immediately
16 when the first vehicle takes off the other cars run the
17 red light and take off behind them. So we've seen
18 these types of things happening, at least I've seen
19 these type of things happen.

20 Q. It's more anecdotal evidence, then?

21 A. No, firsthand.

22 THE JUDGE: Okay. Thank you. That's all I have.

23 Anything?

24 You can step down.

25 Whenever you're ready to call your next witness.

0259

1 Are you going ahead with Mr. Norris?

2 MR. SCARP: Mr. Norris, yes.

3

4 GARY NORRIS, being first duly sworn to tell
5 the truth, the whole truth,
6 and nothing but the truth,
7 testified as follows:

8

9 THE WITNESS: Thank you. Do you mind if I turn
10 the table more towards you?

11 THE JUDGE: That's fine.

12

13 DIRECT EXAMINATION

14 BY MR. CHAIT:

15 Q. Good afternoon, Mr. Norris. Could you please state
16 your name and spell your name for the record.

17 A. Name is Gary A. Norris, N-O-R-R-I-S.

18 Q. What is your position?

19 A. My position is senior engineer project manager with DN
20 Traffic Consultants.

21 Q. Okay. I'm going to hand you pre-filed testimony
22 labeled GN-1T and rebuttal testimony labeled GN-11T and
23 ask you if you could take a look at that, please.

24 A. (Witness complied).

25 Q. Is that your testimony in this matter as if I were

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1 asking it to you and you were answering today?

2 A. Yes, Your Honor, it is.

3 MR. CHAIT: That's all I have.

4

5 CROSS-EXAMINATION

6 BY MR. PLANT:

7 Q. Mr. Norris, were you here this morning and able to hear
8 some of the, I guess, cross-examination testimony of
9 some of the witnesses for the county?

10 A. Yes, I was.

11 Q. Are you familiar generally with some of the farm
12 equipment that was discussed, such as RoGators,
13 TerraGators, disc rippers?

14 A. Generally speaking.

15 Q. Are you sort of generally familiar with the size of
16 this equipment?

17 A. Yes.

18 Q. Sort of generally familiar with the speed at which this
19 type of equipment travels?

20 A. As it was discussed this morning, yes.

21 Q. Okay. Thank you.

22 I'm looking at your pre-filed testimony and I have
23 a question about something you say on page 3 at lines 5
24 through 7. You have the statement that, in fact, a
25 Washington statute states that -- and I'm quoting --

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1 All railroads and extension of railroads hereafter
2 constructed shall cross the existing railroads and
3 highways by passing either over or under the same...

4 And you describe that statute as meaning that no new
5 at-grade crossings may be added by Washington law. I'm
6 curious if you're aware what language you omitted from
7 that statute in that ellipsis.

8 A. I believe the law goes on to talk about as is
9 practicable from the standpoint of railroad grade
10 crossings, but that in general, the -- in general, the
11 law talks about the practicality of creating grade
12 separation on crossings and no new at-grade crossings
13 are to be provided and that really the essence of that
14 is that if you can't provide an at-grade, or a grade-
15 separated crossing, that you really need to look at
16 closure of the crossing as a first course of action,
17 unless there is other prevailing elements that dictate
18 that the crossing should remain open.

19 Q. So all of that, what you just said, is in this statute,
20 RCW 81.53.020?

21 A. In general speaking, yes.

22 Q. That's your interpretation of the statute?

23 A. Uh-huh.

24 Q. In fact, the words that are omitted are when
25 practicable; is that correct?

0262

1 A. That's what I stated, yes.

2 Q. Yeah. So your statement that no new at-grade crossings
3 are to be added is inaccurate; wouldn't you agree?

4 A. No, I do not agree.

5 Q. Okay. On that same page, at line 18 through 19, you
6 talk about the Railway-Highway Grade Crossing Handbook
7 and how it talks about that decisions to close at-grade
8 railway crossings are to be based on the balance of
9 necessity, convenience, and safety. Aside from safety,
10 are there operational -- is there an operational
11 necessity to close the Barnhart Road crossing?

12 A. Operational necessity to close the Barnhart crossing.
13 Well, I think based on the testimony we heard from the
14 county's traffic engineer and also from the county's
15 maintenance supervisor, I think they pointed out pretty
16 specifically that the county's unable to control either
17 the speed of traffic on their highways or the response
18 to traffic control devices that are placed out there to
19 protect them. That was documented in the speed study
20 where we have people going close to a hundred miles an
21 hour on county and state roads and it's also documented
22 in the comments they made about the problem with
23 maintaining and enforcing stop signs.

24 So on those lines alone, the focus of an engineer
25 is to eliminate hazards as they exist. If we can't do

0263

1 it with operational means and techniques, then we have
2 to do physical improvements to eliminate those hazards.

3 And we've spent billions of dollars over the last
4 many years eliminating unsafe road conditions to
5 promote public safety. And that's all tied into our
6 program of zero fatalities on our state highways in the
7 next 20 years.

8 So based upon that assessment, that there is an
9 operational need to close that crossing because the
10 county cannot enforce traffic speeds that are safe and
11 they can't enforce traffic control devices that provide
12 safety for the public.

13 Q. So Mr. Norris, you're sort of inferring an operational
14 need on behalf of the county; is that correct?

15 A. I guess I don't understand that question.

16 Q. You're imputing an operational need to the county; is
17 that correct? That's what -- I'm just trying to
18 paraphrase your long explanation.

19 A. I believe the county has a responsibility to provide a
20 safe road network, yes.

21 Q. So has Burlington Northern Santa Fe Railroad identified
22 any operational need to close these crossings other
23 than safety?

24 A. I'm not aware of any, no.

25 Q. Okay. Thank you. Are there any sort of, has

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1 Burlington Northern Santa Fe identified any sort of
2 convenience, reasons of convenience why they should
3 close these crossings, why these crossings should be
4 closed?

5 A. Not to me, no.

6 Q. So when we talk about a necessity of balance,
7 convenience, and safety, we're really just talking
8 about safety here; is that correct?

9 A. I believe we're talking about safety, yes.

10 Q. On page 7 of your testimony, at line 3, you say that on
11 State Route 22, near the crossings, the existing
12 traffic volume is estimated at 1,600 vehicles per day.
13 Is that your understanding?

14 A. That was, as stated in my original document, that was
15 obtained from the Washington State Department of
16 Transportation Annual Traffic Report for this section
17 of SR-22.

18 Q. Now, what section in particular?

19 A. The section from, I believe, SR-223 down to, I'm not
20 sure about the southern termini of it, but I think it's
21 down around Satus Longhouse.

22 Q. So this would represent the existing traffic volumes
23 around the Barnhart Road crossing?

24 A. That's correct.

25 Q. Are you aware if the traffic volumes in the vicinity of

0265

1 the North Stevens Road crossing are higher?

2 A. Are you referring to South Track volumes? Are you
3 talking about on SR-22?

4 Q. I'm referring to -- thank you for the clarification.
5 I'm referring to the traffic volumes on SR-22 in the
6 vicinity of North Stevens Road.

7 A. As I said, this was the volume that was represented in
8 the Washington State Department of Transportation
9 Annual Traffic Report for this section of roadway.

10 Q. Okay. I'm going to give you what's, I believe, an
11 unnumbered exhibit, Exhibit No. GN --

12 THE JUDGE: Can you describe it?

13 MR. PLANT: It is a vehicle count, traffic count.
14 It was the Motion to Supplement the Cross- Examination
15 Exhibits. I don't believe it's yet been identified
16 with a number.

17 THE JUDGE: It came from you?

18 MR. PLANT: Yes.

19 UNIDENTIFIED SPEAKER: Is it 14?

20 MR. PLANT: GN-14?

21 THE JUDGE: The metro count? That's GN-14CX.

22 Q. (By Mr. Plant) All right. 14. I'll give these to
23 you, sir. Have you reviewed those?

24 A. Yes, I have.

25 Q. Do those records indicate to you that the traffic

0266

1 volume on State Route 22 near North Stevens Road is
2 closer to 6,000 vehicles per day?

3 A. This one by north -- west of North Stevens, so yes.
4 6,158.

5 Q. Then do they also indicate that the number of vehicles
6 per day on State Route 22 in the vicinity of Chambers
7 Road is just under 6,000 vehicles per day?

8 A. I'm not seeing Chambers Road referenced here. I don't
9 see Chambers Road in this information.

10 Q. Okay. I believe that's the Washington State -- okay.
11 We'll stick with 6,100 for North Stevens Road. So you
12 would agree that that's -- you would agree that those
13 records reflect a daily traffic volume in excess of
14 6,000 vehicles a day in the vicinity of North Stevens
15 Road?

16 A. I will recognize that this particular day that this
17 particular count was taken between the hours of 12:06
18 and -- on Thursday, March 20th, and at 11:18 on
19 Wednesday March 19th that the volume on that roadway
20 was 6,158.

21 There is a lot of statistical validation that goes
22 into traffic counts before they're published. I don't
23 know if that kind of statistical analysis has been
24 applied to these counts to validate the accuracy of
25 these numbers. I know Wash DOT does a significant

0267

1 amount of statistical validation of the numbers to
2 provide correct data. So I cannot say that about this
3 information.

4 Q. Okay. So you acknowledge that these do reflect traffic
5 counts, with all your caveats, in March of 2014?

6 A. Again, I said that this does not have any statistical
7 validation with it to assure the accuracy of this
8 number here. So I cannot comment on the accuracy of
9 this number. It's a data sheet with a bunch of numbers
10 on it. Whether it's accurate or not, I can't tell you
11 that.

12 Q. Sure. So you don't have any insight into how much of
13 the traffic, either the 1,600 vehicles per day near
14 Barnhart Road or the 6,100 vehicles a day near North
15 Stevens Road, what portion or percentage of that
16 comprises semi trucks as opposed to passenger vehicles?

17 A. No, I don't.

18 Q. Or maybe heavy farm equipment as opposed to passenger
19 vehicles?

20 A. No, I don't.

21 Q. Okay. All right. Are you familiar with any of the
22 people who do farming operations in the vicinity of the
23 Barnhart Road or North Stevens Road crossing?

24 A. I'm not sure I understand the term familiar. If you're
25 talking about knowing them personally, no, I do not

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1 know them personally. I have only known about them and
2 their stories through the information that's been
3 provided.

4 Q. So you've not sort of met anyone personally who farms
5 in the vicinity of these crossings?

6 A. No, I have not.

7 Q. Have you therefore, have you not asked anyone who farms
8 in the vicinity of these crossings whether they use
9 State Route 22 to transport farm equipment?

10 A. I have not asked anybody person --

11 Q. No empirical data about that whatsoever?

12 A. Not any specifically observed data, no.

13 Q. Okay. I want to ask you about something on page 8 of
14 your testimony here, this paragraph kind of between
15 line 13 and 19, it looks like you've done -- have you
16 personally done some calculations to determine the sort
17 of probability of an accident at these crossings?

18 A. I have.

19 Q. Okay. And so these numbers represent your analysis?

20 A. These numbers represent my calculations.

21 Q. Your calculations?

22 A. Of the data that I had regarding these crossings and
23 the volumes and conditions.

24 Q. Okay. I'm going to give you this report. This is the
25 Accident Prediction Report for Public at Grade Highway

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1 Rail Crossings, Exhibit GN, I think it's going to be
2 13.

3 THE JUDGE: Let me see. Yes, I have that labeled
4 as GN-13CX.

5 Q. Are you familiar with that report, sir?

6 A. Yes, I am.

7 Q. Okay. Does that report use a different method of
8 computation to compute the probability of a motor
9 vehicle accident at these crossings?

10 A. I would say in talking about the crossings we're
11 talking about, they used different data than what I
12 used in my calculations.

13 Q. Can you explain what's different about the data?

14 A. Well, as you can tell by looking at this report there's
15 a lot of errors in the data as it relates to the
16 crossings in question. I think we're, the crossings
17 that we're looking at are Stevens Road and Barnhart
18 Road as closures.

19 For instance, the Stevens Road crossing only has a
20 volume of 55 cars a day, or vehicles per day, and the
21 Barnhart Road was estimated at about 110 with only
22 seven trains going through there. The seven trains is
23 an error, as it has been pretty well documented both in
24 the county's petition and the subsequent railroad
25 petition that there is 12 to 14 trains a day going

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1 through this crossing. And the same thing with Stevens
2 Road, 12 to 14 crossings and Stevens Road only has ten
3 trains. So the data in this report is erroneous and
4 not applicable to any kind of analysis that I would
5 want to do in regards to the statistical validation of
6 a rating of potential crash history. Or crash
7 prediction, I should say, rather than history.

8 Q. I noted that your sort of probability rate is 0.1073
9 for Barnhart, right, and this report gives Barnhart a
10 0.0076. Barnhart, I should say, is ranked No. 102. So
11 that difference, which looks to be a magnitude of a
12 hundred, is the result of defective data upon which
13 this report is built, essentially?

14 A. Correct. I'd like to also go on and explain this
15 report that you've summarized here is using coefficient
16 data that was generated back in the 1980s, or 1980 was
17 the date on the report for it. So it's not even a
18 relevant coefficient to what conditions are today. And
19 so to apply that kind of information and expect a
20 reasonable result today is very erroneous in the
21 approach.

22 Q. Okay. But you would agree this report does sort of
23 rank all of the adjacent crossings as having a higher
24 probability of accidents than either the Barnhart Road
25 or the Stevens Road crossings?

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1 A. If I look at this by its face, I would concur with you
2 of what is presented on this sheet. But what I will
3 tell you, this information on first blush is not even
4 intuitively believable; secondly, there is disclaimers
5 all throughout this document that this can't be used to
6 rate the danger at a specific crossing.

7 And if you, if you, if we just took something that
8 was commonly obvious to everybody, and that would be
9 the exposure of a crossing in terms of vehicle traffic
10 using the crossing, if you apply those numbers to the
11 crossings we're looking at, Barnhart and Stevens,
12 Stevens crossing is a thousand times more dangerous
13 than either the Meyers, Meyers or South Track Road.
14 And the Barnhart is 800 times more dangerous than
15 Indian Church and 130 times more dangerous than Satus
16 Longhouse.

17 So, I mean, we can turn this data any way you want
18 and create any kind of an analysis or an answer that
19 you want if you flip the data.

20 Q. Okay. Let me ask you sort of that, on that same line.
21 Did you perform an analysis of the probability of a
22 motor vehicle accident at Satus Longhouse Road?

23 A. No, I did not.

24 Q. Okay. How about the Indian Church Road?

25 A. No, I did not.

0272

1 Q. So you have no, you know, you've, in terms of
2 predicting the probability of accidents, you haven't
3 formed any calculations to determine whether the
4 Barnhart Road crossing is more or less safe than the
5 adjacent crossings; is that correct?

6 A. I, I think it's intuitively obvious that the Indian
7 Church and Satus Longhouse is, if you want to use in
8 quotes, more safe because of devices that are in place
9 to control traffic.

10 Q. What devices at the Indian Church Road -- at the Satus
11 Longhouse crossing make it more safe than the Barnhart
12 Road crossing?

13 A. It's got flashing beacons, the road is paved. Indian
14 Church has gates, so all of that is, it would be more
15 active in its presentation of the presence of the train
16 than exists at Barnhart.

17 Q. Okay. Also did you perform any calculations with
18 respect to the South Track Road crossing or the north
19 Meyers Road crossing?

20 A. No, I didn't. And again, the same rationale would
21 apply to those, is because it would be intuitive that
22 those crossings would be safer. In fact, the U.S.
23 Department of Transportation released a report that
24 said they're ten times safer than crossings -- or
25 crossings with active devices are ten times safer than

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1 those without. So, I mean.

2 Q. That's sort of a general statement, correct?

3 A. That's a general statement, but that's a pretty
4 overwhelming difference between an active versus a
5 passive. I mean, I guess the first, the first point of
6 evaluation for a scientist is to look at the
7 rationality of what's being presented and the realistic
8 interpretation of the data. I mean, we get the extreme
9 things, I mean, we normally throw those extreme points
10 out and we look at what's rational.

11 Q. So on that same page, during the course of your review
12 you mentioned that you reviewed the history of motor
13 vehicle accidents in the vicinity of the crossings and
14 that the data does not show in the last three years any
15 recorded accidents with farm tractors or farm
16 equipment.

17 A. That's correct.

18 Q. Is this indicative of the probability of future
19 accidents?

20 A. Not necessarily, no.

21 Q. Okay. On that same page at lines 9 and 10 you note the
22 most common types of accidents in this area along State
23 Route 22 include vehicles entering from driveways or
24 intersecting streets. Do you see that testimony?

25 A. Uh-huh. I do.

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1 Q. Okay. Well, if the Barnhart Road or North Stevens Road
2 crossing were closed and farm equipment and other
3 vehicles were diverted onto State Route 22 and South
4 Track Road, would they also enter South Track Road and
5 State Route 22 from intersecting streets?

6 A. I think there's something like 33 intersecting
7 driveways that exist along SR-22 where farm equipment
8 is currently entering SR-22.

9 Q. Do you have any data to back up that statement right
10 there?

11 A. Yes. I believe it was presented in my testimony where
12 I identified the various crossings along that corridor.

13 Q. Not your statement that there are 30 access points,
14 your statement that there are 30 access points at which
15 farm equipment is currently accessing State Route 22.

16 A. I believe you can get that from a Google aerial view to
17 see the driveways going directly into the fields. So
18 who else is going into the fields, I guess, other than
19 farm equipment, farm access?

20 Q. Okay. So your testimony is that one can assume that
21 there is farm equipment that is accessing State Route
22 22 by virtue of the existence of these access points?

23 A. Is your question accessing SR-22 or your question farm
24 traffic on SR-22?

25 Q. Entering and exiting State Route 22.

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1 A. Well, we've had testimony all today that farm equipment
2 crosses or accesses SR-22, so I don't think I'm stating
3 anything that hasn't already been stated previously.

4 Q. Well, you did state, correct me if I'm wrong, but you
5 did say that there are something like 30 access points
6 onto State Route 22 from adjacent farm property, and
7 you indicated this farm equipment was using these
8 access points to access State Route 22. Did you say
9 that?

10 A. I did.

11 Q. And did you also say that you don't have any empirical
12 data for that, but that that's an assumption you're
13 making?

14 A. Again, I'm trying to discern what we're talking about,
15 whether this traffic is on SR-22 or is it crossing
16 SR-22 or is it accessing 22. Do you have a
17 determination there with that question?

18 Q. I'm trying to find out if you have any data to support
19 your statement that farm equipment is using these 30
20 access points to access State Route 22 from adjacent
21 properties.

22 A. I have the testimony, I believe, it was one of the
23 first gentlemen that testified today that had pictures
24 of his farm equipment on SR-22. We had comments, I
25 believe, from others today that testified about

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1 crossing SR-22 at different locations. We had comments
2 from, I think, Mr. Zecchino that testified about his
3 acreage being on the south side of SR-22 and he had to
4 cross SR-22 to get access it. So I guess that's, that
5 would be my supporting documentation to that
6 supposition that farm equipment is using SR-22.

7 Q. So the fact that there is farm equipment on State Route
8 22 from time to time is what you're citing as empirical
9 data that they're using these local access points to
10 access State Route 22?

11 A. I think Mr. Zecchino confirmed that in terms of his
12 access to his field on the south side of SR-22.

13 Q. I believe he testified that he used Barnhart Road to
14 access the fields on the south side of his road.

15 A. That's an access off of SR-22 into the farm property
16 from Barnhart Road he's crossing SR-22, so he is
17 accessing 22.

18 Q. Okay. Now, you sort of conclude in here that the
19 reassignment of, if the Barnhart Road and North Stevens
20 roadways are, crossings are closed, the reassignment of
21 vehicles to adjacent roadways would not affect the
22 capacity of the surrounding roadway network. What type
23 of, I guess, computations and analysis did you perform
24 to arrive at this conclusion?

25 A. Forty years of experience as a traffic engineer.

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1 Q. But what are the sort of, what volumes of traffic did
2 you sort of determine would be diverted and which
3 crossings would they be diverted to?

4 A. Well, the traffic at the Barnhart Road crossing and the
5 Stevens Road crossing would have to be diverted to
6 adjacent crossings. So I assumed all of that traffic,
7 and there may be other routes that the farmers choose
8 to use that would be a direct correlation between what
9 the traffic was on the closed crossings that would be
10 assigned or diverted to these adjacent crossings.

11 Q. Did you reach any opinion as to, you know, the
12 proportion of the diverted vehicles that would go to,
13 you know, for example, with respect to Barnhart, Satus
14 Longhouse as opposed to Indian Church?

15 A. Excuse me, I didn't quite...

16 Q. I mean, in making this determination that the capacity
17 of the surrounding roadway network would not be
18 affected, with respect to the Barnhart crossing, did
19 you determine what proportion of diverted vehicles
20 would go to Satus Longhouse?

21 A. No, I didn't, because we were unable to get testimony
22 about who was using what roads and what routes they
23 were taking in order to be able to make that kind of an
24 assessment.

25 Q. Do you have any idea what proportion of the diverted

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1 vehicles comprise heavy farm equipment?

2 A. Based on the testimony of Mr. -- I believe it was
3 Zecchino today, I'm not sure if that was the right
4 person, but he indicated -- no, it was the -- I can't
5 remember. I think it was one of the first people, Mr.
6 Parrish, maybe, had mentioned that 60 of his 70 farm
7 vehicles were semi tractor or tractor trailer rigs
8 which are highway vehicles with which, and that was, he
9 was saying that would leave about 85 percent of it was
10 highway. So 15 percent of them would be actual field
11 farm equipment.

12 Q. Okay. Well, would your analysis as to the impact on
13 the surrounding roadway network, I mean, would your
14 analysis differ if we're talking about a high
15 proportion of farm equipment as opposed to semi trucks
16 as opposed to passenger vehicles?

17 A. On the surrounding network?

18 Q. Uh-huh.

19 A. You're not talking about the state highways, you're
20 talking about the county roads there? No, it would
21 not.

22 Q. Okay. It would not?

23 A. No, it would not.

24 Q. Okay. I kind of want to go back to this sort of, it's
25 repeated on page 9 of your testimony at 23 through 24

0279

1 where you say, It can be argued that State Route 22 is
2 already being used extensively for farm equipment
3 access. I mean, at the time you did this pre-filed
4 testimony of course you hadn't heard the county's
5 witnesses testify. So I'm kind of curious what the
6 data was that you used to support that statement.

7 A. I believe we used the number of access points to the
8 fields along the corridor as well as the pictures of
9 farm equipment on SR-22.

10 Q. Okay. So did you, I guess, speak to the owners or
11 users of any of these parcels of property that have
12 access points?

13 A. I don't believe we did.

14 Q. Okay. So this is just an assumption?

15 A. Correct.

16 Q. Okay. You don't know if in fact any of those parcels
17 are using these access points to access State Route 22?

18 A. Yeah, I do know those parcels are using those accesses
19 for SR-22 because you can see their pads are well worn
20 pads.

21 Q. Okay. On page 12, you talk about the county's issuance
22 of a Determination of Non-Significance. I think it's
23 actually at line 20, you say a Declaration of
24 Non-Significance. Do you mean Determination of
25 Non-Significance?

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1 A. Determination of Non-Significance, yes.

2 Q. Are you familiar with the state Environmental Policy
3 Act?

4 A. Yes, I am.

5 Q. Are you familiar with the term threshold determination?

6 A. Directional?

7 Q. Threshold determination.

8 A. Threshold determination?

9 Q. Yeah.

10 A. Is that what you said, threshold?

11 Q. Yeah.

12 A. Yes.

13 Q. Are you familiar or do you agree that a Determination
14 of Non-Significance is a threshold determination under
15 SEPA?

16 A. Yes. I would also like to say, though, that there was,
17 through that process, extensive opportunity for
18 community comment and review and analysis, and I read
19 the comments that were submitted as part of that
20 process and I also read, and I checked out the county
21 commissioners' response and issuance of this retraction
22 of the petition without any kind of conversation or
23 analysis or discussion of the issues that were involved
24 in the issuance of that determination.

25 Q. How do you know that there were no internal county

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1 discussions or conversations about the decision?

2 A. There was no mention in the county commissioner minutes
3 or records of any conversations that went on regarding
4 that, this issue.

5 Q. Just going back to sort of the subject at hand, so you
6 understand that an environmental checklist is prepared
7 leading to a threshold determination?

8 A. That's correct.

9 Q. And the purpose of this process is to study whether a
10 proposed land-use action will have probable
11 environmental consequences?

12 A. That's correct.

13 Q. Okay. Did you review the SEPA threshold SEPA checklist
14 that was prepared?

15 A. I did.

16 Q. You did. Okay. When you say that the DNS determined
17 there were not significant adverse impacts, aren't you
18 missing the word environmental? Isn't that the purpose
19 of a threshold determination to determine whether there
20 are adverse environmental impacts?

21 A. Significant adverse environmental.

22 Q. Environmental impacts, isn't that the --

23 A. Yes. Yes.

24 Q. Is the probability of a motor vehicle accident at least
25 in part a function of miles traveled; the more miles

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1 traveled the higher probability of a motor vehicle
2 accident?

3 A. No.

4 Q. Did you analyze at all the increased risk of collisions
5 along State Route 22 caused by diverting passenger
6 vehicles and farm equipment onto State Route 22?

7 A. No.

8 Q. Okay. Did you analyze the increased risk of collisions
9 along South Track Road caused by diverting passenger
10 vehicles and farm equipment onto South Track Road?

11 A. No, I did not. The diverted traffic volumes were not
12 significant to warrant that kind of analysis or
13 consideration.

14 Q. You agree that all of the crossings, all of the
15 crossings and the adjacent crossings are more than a
16 mile apart?

17 A. I believe the, the, from Stevens Road, the Meyers Road
18 crossing is 1.4 miles, the South Track crossing is
19 1.1 miles; from Barnhart, the Satus Longhouse is 1.97
20 miles and the Indian Church is 1.4 miles from Barnhart.

21 Q. Okay. Is there any history of train vehicle collisions
22 at Barnhart Road and North Stevens Road?

23 A. Not that I'm aware of and not that was recorded in the
24 Federal Railroad Collision Database.

25 Q. Sure. On page 13 of your pre-filed testimony you

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1 mentioned you don't believe any of the residents,
2 farmers, or users of the crossing would suggest that it
3 would be acceptable of a member of their family or
4 friends to be involved with a collision with a train.

5 Do you see that testimony?

6 A. Yes.

7 Q. Do you believe they would suggest it to be acceptable
8 to have a collision involving farm equipment on State
9 Route 22 or South Track Road?

10 A. I don't suggest that they would want any of their
11 members of their family subject to a failed crash.

12 Q. Of any kind?

13 A. Of any kind.

14 Q. Okay. Finally, on your rebuttal testimony, on page 4,
15 line 18, 19, I think you're speaking about the
16 increased traffic on State Route 22, and you say it's
17 the equivalent of adding a drop of water to a five-
18 gallon bucket. Is that your testimony?

19 A. Yes, it is.

20 Q. Do you know how many drops of water are in a gallon?
21 Serious question.

22 A. No, I don't.

23 Q. Well, you can Google it and the Google answer I came up
24 with is about 3,800 drops of water in a gallon. That
25 would put us at about 19,000 drops of water in a five-

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1 gallon bucket. So I'd just like you to explain the
2 calculations you made leading up to this statement.

3 A. The basis of my statement is the accuracy of the count
4 data that is being used here in this analysis and the
5 magnitude of the volumes that we're talking about on
6 the roads and the fact that this, as we pointed out
7 here, there is no statistical validation of this count
8 data. But there is a certain amount of errors that are
9 associated with conducting traffic counts and the
10 volumes that we're talking about are being diverted are
11 not significant enough to warrant the differences that
12 would be observed in the normal count process. And
13 that's even more so the case.

14 Q. So are you taking the position that no vehicles will be
15 diverted?

16 A. I believe I already answered that question. The
17 traffic was being diverted. So I don't understand your
18 question.

19 Q. Okay. Well, I know that have you some questions about
20 the validity of the traffic data, but it looks like we
21 have a range on State Route 22 between 6,000 and 1,600.
22 Would you agree with that?

23 A. I believe that you presented data that said 6,300, was
24 it, or something like that, and what the State of
25 Washington had for that section was 1,600. So I will

0285

1 admit that.

2 Q. So if any, if any vehicles are diverted onto State
3 Route 22 or South Track Road as a result of the closing
4 of these crossings, I think your analogy would be
5 grossly inaccurate; is that fair to say?

6 A. It's not fair to say. No.

7 MR. PLANT: Okay. I have no further questions.

8 THE JUDGE: Mr. Sexton.

9 MR. SEXTON: I just have a couple, sir.

10

11 CROSS-EXAMINATION

12 BY MR. SEXTON:

13 Q. On page 2 of your pre-filed testimony, at the bottom, I
14 believe line 27, you indicate that you've considered
15 potential impacts to access for community facilities
16 including Yakama Nation tribal activities and
17 farmlands. Could you please describe your
18 consideration of Yakama Nation tribal activities?

19 A. I believe the item in the discussion was that, much
20 like we've heard today has been the nature of funeral
21 processions and the routes that have been a customary
22 route for the processions to use, and I believe in Mr.
23 Pinkham's testimony he stated that the difference in
24 the distance using Barnhart Road versus using Indian
25 Church Road was 0.3 miles. The amount of time that

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1 we're talking about in that regard is really negligible
2 at 25, 30 miles an hour. So it just isn't a
3 significant impact in terms of actual travel time.

4 Q. I appreciate that. That comprehensive response. I
5 guess my follow-up to that is does that comprise the
6 entirety of your consideration of Yakama Nation tribal
7 activities?

8 A. That was the issue that was presented in the written
9 comments provided to the county in regards to the
10 tribal activities that we were addressing, yes.

11 Q. So that's a yes?

12 A. Yes.

13 MR. SEXTON: Thank you, sir. That's all of the
14 questions I have.

15 MR. CHAIT: A little bit of redirect.

16

17 REDIRECT EXAMINATION

18 BY MR. CHAIT:

19 Q. Mr. Plant criticized you for taking into account the
20 safety that the law is balancing with necessity. I
21 mean, is safety an important consideration in that
22 analysis?

23 A. In my thinking, the safety is the most important
24 element of our analysis is to make sure that our
25 highway system is safe for those who are using it. And

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1 that includes eliminating hazards where the traveling
2 public is having trouble adjusting to the requirements
3 of the roadway, to eliminate those hazards so that they
4 don't have to deal with them.

5 Q. Now, I also wanted to go back just because I wasn't
6 clear on something. When we were talking about this
7 new data produced on Friday about the 6,000 vehicles,
8 which is a cross-examination Exhibit 14, I believe,
9 GN-14CX, you stated that validation is important. You
10 had no idea if this was validated data. Why is that
11 important?

12 A. Well, there is a lot of potential errors in collecting
13 field data in terms of the viability of the count
14 equipment, the duration of the intervals, and the
15 stability of the count equipment while it's in place.
16 Plus comparing that data, you know, you don't know
17 exactly what's going on in the surrounding neighborhood
18 that would impact those volumes at that point in time.

19 So in terms of getting a rational response and
20 comprehensive understanding of what the traffic volumes
21 are on that corridor, there is a series of statistical
22 evaluation analyses that goes into that process to make
23 sure those numbers accurately represent what the
24 conditions are.

25 Q. Thank you. Now, as Mr. Plant correctly points out, you

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1 didn't talk to any of these farmers before today. But
2 you did listen to their testimony today about their own
3 use of State Route 22, did you not?

4 A. I did.

5 Q. And you did visit the facilities -- sorry, the various
6 crossings before your testimony, did you not?

7 A. I did.

8 Q. And you did see those 33 entrances to State Route 22 in
9 that stretch, did you not?

10 A. I did.

11 Q. And you saw that there were deep ruts, I think is the
12 word you used, or they were well worn from what you
13 perceived. Why was that significant to you?

14 A. It just confirmed that the usage of these access points
15 was a common and frequent occurrence, just because of
16 the condition of the access points.

17 Q. Okay. I wanted to just clarify -- because there were a
18 couple of things that I think may have been unclear
19 about who testified to what -- that the Satus Longhouse
20 crossing, the furthest crossing to the southeast, that
21 does not have gates and lights, correct?

22 A. That is correct.

23 Q. Okay. And the 60, 70 figure you were referring to
24 where only ten of those vehicles that were using the
25 crossing as opposed to the other 60 were heavy farm

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1 vehicles in a week, that was Mr. Curfman this morning.

2 Does that refresh your recollection?

3 A. I think that's correct. Yes.

4 Q. Okay. You know, I want to just go back to the FRA data

5 a little bit. That's GN-CX13. I want to kind of, you

6 said a number of different criticisms of that and I

7 want to just make sure that I'm understanding what

8 those are.

9 The disclaimers you briefly referenced, can you

10 tell me what those actually say? And I mean, feel free

11 to look.

12 A. In general, the disclaimers are actually telling the

13 user of this data to be very careful.

14 Q. Sorry. Where are you reading, sir?

15 A. I'm not reading anything. I'm stating off the top of

16 my head my recollection and my understanding of this

17 data and my application and use of this data is that

18 these disclaimers, if you go right into the second

19 paragraph of the using data produced by WBAPS Web

20 Accident Prediction System, which is the Federal

21 Railroad Administration's accident prediction.

22 Q. You're on the first page, the front page of this

23 document?

24 A. Right.

25 Q. Is that correct?

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1 A. Well, it's actually, it's the follow-up page to the
2 Yakima cover.

3 Q. Yes.

4 A. The second paragraph says, The computer model which
5 provides the user an analytical tool which combined
6 with other site-specific information can assist in
7 determining where scarce highway rail grade crossing
8 resources can best be described -- or directed. This
9 computer model does not rank crossings in terms of most
10 to least dangerous. Use of WBAPS data in this manner
11 is incorrect and misleading.

12 So in my interpretation of this data, as an agency
13 official or as a traffic engineer reviewing it, this is
14 sort of a look at what a macroscopic model if you took
15 all of the crash data in the country and applied it to
16 these conditions, which ones would have crashes similar
17 to the conditions that are included in the model, would
18 have these prediction factors. And as we say, it's all
19 dependent upon, one, entering accurate data into the
20 model, which I already pointed out to you on a couple
21 different cases in terms of train volumes and vehicular
22 traffic, the numbers that are in this are not correct.
23 And so to use it in a fashion to try to point out that
24 the crossings that we're looking at closing have a poor
25 ranking is absurd.

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1 Q. Okay. Just so we're clear, I mean, it says this
2 computer model does not rank crossings in terms of most
3 to least dangerous. Use of WBAPS data in this manner
4 is incorrect and misleading. So you as a traffic
5 engineer wouldn't rely on this to rank danger, correct?

6 A. I would not, no.

7 Q. Okay. You also mentioned the methodology and you had
8 an issue with the methodology. Can you tell us a
9 little bit more about what you mean by that?

10 A. The methodology used to create this model was based
11 upon for every analytical mathematical model. In order
12 to make the data that's collected relevant to a
13 specific whatever you're trying to predict,
14 coefficients are developed for each of these different
15 variables. For instance, if you have the variable of
16 crossing gates, what kind of a coefficient or number
17 does that need to be multiplied by to bring the overall
18 data in line with what you would expect from the
19 historical data that you have? And like I said, this,
20 these coefficients were developed in 1980, so they're
21 not even relevant to the data that we have today. So
22 to try to apply this rationale to our discussion today
23 is inappropriate.

24 Q. Okay. And you also mentioned there is some inaccurate
25 information, I think you said some incorrect listings

0292

1 of number of trains, the type of gates. Anything else
2 that I'm missing there?

3 A. Well, the number of trains is erroneous and also the
4 traffic volumes that are listed are out of date. So
5 this obviously hasn't been, this data has not been kept
6 up as it relates to the Yakima Valley, Yakima County
7 crossings.

8 Q. And then you've testified that you have personally
9 viewed each of these crossings and that, you know, I
10 think you said the observation defies common sense.
11 How long have you been a traffic engineer involved in
12 railroad crossing issues?

13 A. Since 19 -- well, actually, I was a City of Renton
14 traffic engineer from 1980 to 1990 and we had several
15 railway crossings in town that we had to deal with, and
16 then in a formal basis, doing assessments of railway
17 crossing closure studies, I've been doing that since
18 about 1995.

19 Q. Okay. And what can you tell from your own personal
20 observations as it pertains to the safety of any
21 particular railway crossing?

22 A. In terms of the ones we're proposing to close here
23 versus...

24 Q. Sure.

25 A. Yeah. Well, the addition of the active crossing

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1 control at the adjacent crossings certainly warrants
2 strong consideration. I think the ones that we've got
3 do not have that kind of control, the ones we're
4 proposing to close do not offer that kind of control.

5 Again, I go back to the comments that were made by
6 the county themselves of when you've got vehicles going
7 a hundred miles an hour on the adjacent streets that
8 are going to use these crossings, and then that
9 compounded with the fact that disregarding of the
10 traffic control devices, I think it is incumbent on the
11 county to procure other methods to eliminate that
12 hazard so the motoring public doesn't have to deal with
13 it, and closures seems like the reasonable application.

14 Q. Okay. And then you mentioned kind of volume adjusting
15 this data as well in coming up with, you know, wildly
16 different statistics about safety, something like
17 1,100 percent safer or 800 percent safer or 130 percent
18 safer. I mean, can you just explain a little bit about
19 what you did there and is that accurate data or is that
20 just more of, more of the same?

21 A. I guess my point with entering that discussion into the
22 conversation was the fact of how you could turn this
23 data around with something that would be intuitive
24 being the amount of exposure that was at that crossing.
25 If you compared the amount of exposure in terms of

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1 traffic volumes at Meyers and South Track to Stevens,
2 in terms of the volumes of crossing those, those
3 crossings, that if you use that, the relative value of
4 the volumes on those crossings, you would get a much
5 different factor than what shows in this listing of
6 accident prediction.

7 And so I guess the point of that was to show how
8 you could take this data and turn it around to say what
9 you want to say. I think the point in this discussion
10 was why that is not necessarily such an accurate way to
11 look at that, as there's coefficients that we've
12 discussed previously that have their own issues about
13 legitimacy of data that's 35 years old.

14 So comparing the crossings with gates with
15 crossings with no gates is not maybe necessarily a
16 direct correlation, but taking that same date and
17 turning it around and using it for, as an exposure in
18 terms of the amount of actual volumes, you can see what
19 a different answer you get in applying this data.

20 So I, all in all, I'm just trying to point out
21 about how questionable the use of this data in any kind
22 of assessment of trying to determine whether a crossing
23 should be closed or not.

24 MR. CHAIT: That's all I have for you. Thank you.

25 THE JUDGE: Anything else?

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1 MR. PLANT: No, Your Honor.

2 MR. SEXTON: I just have one follow-up, Mr.

3 Norris.

4

5 RE-CROSS-EXAMINATION

6 BY MR. SEXTON:

7 Q. I may have misheard, but at some point during your
8 redirect I believe you had mentioned that you're an
9 agency official. Is that, did I not hear that
10 correctly?

11 A. My history includes about 20 years of public agency
12 official as a transportation planner for the City of
13 Seattle, city traffic engineer for the City of Renton,
14 a long-range planning engineer for the City of
15 Bellevue, interim public works director for the City of
16 Edgewood. So I have a long experience in public works
17 in use of this kind of information.

18 Q. So are you presently an agency official?

19 A. No, I'm not.

20 Q. Okay. And the only other question I had, I'm trying to
21 wrap my head around, it's your testimony here today, I
22 believe, that traffic diverted because of the closures
23 of these two proposed railroad crossings onto State
24 Route 22 is negligible; is that correct?

25 A. That's correct.

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1 Q. But that same negligible amount of traffic utilizing
2 those crossings is dangerous, in your opinion,
3 statistically?

4 A. I don't think we've said anything about danger
5 necessarily. What we've said is that these, the
6 potential for a crash at these locations is not worth
7 allowing these crossings to remain open because the
8 benefit or the public necessity for circulation does
9 not overwhelm or override the potential for an incident
10 occurring at these crossings.

11 And I think in light of our statewide policy to
12 eliminate at-grade crossings and eliminate traffic
13 fatalities on our state highways, this is a pretty easy
14 decision to make, in my mind, to eliminate another area
15 of risk that is unnecessary.

16 Q. You would concede, sir, that diverting some of this
17 traffic onto State Route 22 could in fact lead to a
18 fatal accident?

19 A. I won't concede that, no.

20 Q. You think it's impossible?

21 A. No. I didn't say that.

22 Q. I asked you if it was possible, and you said you
23 wouldn't concede it.

24 A. No. You said would it lead to a fatal crash and I said
25 no, I wouldn't concede to it.

0297

1 Q. It's a yes or no question.

2 A. The answer is no.

3 Q. Did you hear my question? Did you hear my question,
4 sir?

5 MR. CHAIT: Argumentative.

6 MR. SEXTON: I'm asking him a question and he's
7 not answering it.

8 A. I don't know. I thought I answered it twice.

9 THE JUDGE: Rephrase it one more time.

10 Q. Is it possible, Mr. Norris, that some of this
11 negligible traffic that would be diverted onto State
12 Route 22 could at some point in the future cause a
13 fatality on State Route 22.

14 MR. CHAIT: I don't think possibility is a
15 reasonable standard here.

16 Q. I'm asking a question.

17 A. Well, I guess my response to that situation is that if
18 Yakima County is unable to come to grips with the
19 excessive speeding on this corridor, then I would say
20 yes, it's possible.

21 MR. SEXTON: That's all I have.

22

23 RE-CROSS-EXAMINATION

24 BY MR. PLANT:

25 Q. Can I clarify? When you say this corridor, are you

0298

1 referring to State Route 22?

2 A. I believe that's what the question was.

3 Q. And you understood that to be a county highway?

4 A. It's a state highway.

5 Q. Okay. So why did you reference Yakima County

6 controlling the speed on State Route 22?

7 A. Do they not enforce speed out there?

8 Q. They do enforce speed.

9 A. Don't they enforce speeds that are over a hundred miles
10 an hour, would a county police officer?

11 Q. You've mentioned a hundred miles an hour three times
12 now in your testimony. Is there anywhere in the record
13 anyone talks about anyone traveling a hundred miles an
14 hour other than South Track Road today?

15 A. I believe that was in your presentation of the speed
16 data on --

17 Q. What road was that about?

18 A. South Track, I believe.

19 Q. Is there a crossing on South Track Road?

20 MR. CHAIT: Let him finish his answer.

21 A. Yeah, there is a crossing on South Track Road.

22 Q. Okay. Thank you.

23 A. So if we go to -- if we go to -- let's go to, you want
24 to talk about SR-22. You also presented in that same
25 document speed statistics on SR-22.

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1 MR. SEXTON: Your Honor, I don't believe there's a
2 question.

3 THE JUDGE: Actually, we need to wrap this up. I
4 have questions for you and then we need to end this.

5 A. I want to say those numbers down there indicate speeds
6 up to 95 miles an hour. So if you want to argue about
7 five miles an hour, we can have that conversation.

8

9

EXAMINATION

10 BY THE JUDGE:

11 Q. So the first question I have for you is this: Would
12 you agree RCW 81.53.010 does not prohibit at-grade
13 crossings, it merely says if practicable a railroad
14 track shall be constructed over or under a roadway and
15 that at-grade crossings must first obtain the
16 commission's approval; is that correct?

17 A. That's correct.

18 Q. Okay. And page 3, line 14 of your testimony, you say
19 that as a result of the changes in vehicular and train
20 operating characteristics at-grade railway crossings
21 have become unsafe. So do you believe that no new at-
22 grade crossings should be approved?

23 A. That's my opinion, that no new at-grade crossings
24 should be approved, yes.

25 Q. Okay. And are you aware that on at least three

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1 separate occasions since 2010 BNSF has agreed to open
2 new crossings on its lines?

3 A. I'm not aware of that, no.

4 Q. Okay. And do you believe that all at-grade crossings
5 are unsafe?

6 A. In traffic engineering we don't always use the term
7 safe, because it's not necessarily quantifiable. But,
8 so I --

9 Q. It's a yes or no question.

10 A. My preference is to eliminate at-grade railroad
11 crossings, yes.

12 Q. So your answer is yes. Have you reviewed statistical
13 data about grade crossing accidents to determine how
14 many have occurred over a period of time?

15 A. Yes.

16 Q. What did the data show?

17 A. It depends on the location.

18 Q. For the state of Washington.

19 A. I don't know. I don't have anything off the top of my
20 head, but I believe that there were in the target zero
21 information it's a priority level four for vehicle-
22 train collisions and there were eight train fatalities
23 between 2006 and 2008.

24 Q. Are you aware that commission records show 188 crossing
25 accidents in 1984, 93 in 1994, 44 in 2004, and 28 in

0301

1 2014?

2 A. I know that the rates --

3 Q. Were you aware of that or not?

4 A. Not those specific numbers no.

5 Q. So given these statistics which shows a decline in the
6 number of crossing accidents, does it appear that the
7 crossings are becoming safer over time?

8 A. I think the efforts --

9 Q. It's a yes or no question, Mr. Norris.

10 A. Yes.

11 Q. And are you aware of improved crossing equipment,
12 enhanced technology, and upgraded practices that have
13 added to at-grade crossing safety?

14 A. Yes.

15 Q. Do you believe these improvements have made grade
16 crossings safer over time?

17 A. Yes.

18 Q. And on page 3, beginning at line 18, you testified that
19 you believe to close at-grade railways crossings are
20 based on the balance of necessity, convenience, and
21 safety, and that crossings that are redundant, have low
22 crossing volumes, are not emergency routes, and private
23 crossings that are no longer needed are good candidates
24 for closure.

25 My questions are the Grade Crossing Handbook,

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1 pages 150 to page 152, do they list a number of factors
2 to look at in considering whether to close or otherwise
3 eliminate an at-grade crossing?

4 A. Yes.

5 Q. Do those include classic tracks, vehicle traffic,
6 mileage to nearby crossings, the railroad's likelihood
7 to block the crossing, type of roadway, et cetera?

8 A. Yes. Yes.

9 Q. And given those factors, is the decision to close an
10 at-grade crossing much more complex than necessity,
11 convenience, safety, redundancy, traffic volume,
12 emergency vehicle traffic, and private access?

13 A. I believe all of those fit into those categories.

14 Q. That was a yes or no question. Is it more complex than
15 just those, given the additional factors?

16 A. I would say no.

17 Q. Okay. And on page 8 of your testimony, line 2, you
18 talk about a review of the collision history for SR-22
19 for Meyers Road, and the footnote says the information
20 came from the DOT Standard Collision History Detail
21 Report. Do you have a hard copy of that report?

22 A. Which -- what note are you pointing to?

23 Q. It's Footnote 7, which is on page 8 of your testimony.

24 A. Footnote -- okay. Where is the comment in the line?

25 Q. It's lines 9 and -- I'm sorry, begins at line 14.

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1 A. Are you referring to line 7 or line 8, the most common
2 type of accident involved hitting animals?

3 Q. You first referenced a review of the State of
4 Washington Collision History --

5 A. Yes.

6 Q. -- for SR-22.

7 A. Right.

8 Q. Then you talk about that history detail report.

9 A. Yes.

10 Q. Do you have that report? Can you make it available?

11 A. Yes. We can make that available.

12 Q. So I would like a copy of that.

13 A. Okay.

14 Q. And page 8, line 14, you're describing the DOT accident
15 prediction model which you testified about quite a bit.

16 A. Right.

17 Q. Did you use the accident predictor formula in Section
18 3.B.2 of the Railroad --

19 A. Yes.

20 Q. Did you combine three independent calculations to
21 produce the collision prediction value, those being the
22 basic formula, the use of actual collision history over
23 a determined number of years, and an equation adding a
24 normalizing constant?

25 A. I used the normalizing constant and the basic equation.

0304

1 Q. Okay. And can you provide some documentation that
2 shows how you calculated?

3 A. Yep. Uh-huh.

4 Q. Okay. You can consider those questions No. 1 and 2 for
5 those two items.

6 And then line 18 on page 8 you talk about the
7 number -- or the impact of a train-vehicle collision is
8 catastrophic generally resulting in fatalities. Have
9 you reviewed statistical data about grade crossing
10 accidents to determine the rate of fatalities?

11 A. No, I have not.

12 Q. Are you aware that commission records show 102 crossing
13 accidents in the past five years with 14 of those
14 resulting in a fatality?

15 A. No, not.

16 Q. So do you believe that a 14 percent fatality rate means
17 that collisions generally result in a fatality? Yes or
18 no.

19 A. Well, with those statistics, no.

20 Q. And then line 23 on page 8 also you are describing
21 Exhibits GN-7 and GN-8, which are communications about
22 citizen comments and examples of citizen comments
23 regarding the proposed closures. Are those documents
24 that were originally gathered in response to the
25 petitions filed in 2012 by the county?

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1 A. Which lines are you on now?

2 Q. Line 23.

3 A. 23.

4 Q. You talk about citizen comments regarding the proposed
5 closures. Were those comments in these dockets or in
6 the dockets filed in 2012 by the county?

7 A. We had both the ones that were responded to in 2012,
8 2013, plus the updated ones.

9 Q. So GN-7 would be from the 2012 filing; is that correct?

10 Or they both would. It looks like they both would.

11 A. I think the initial comments were pretty limited to
12 like four, five.

13 Q. I'm just asking you which dockets they're associated
14 with.

15 A. I couldn't tell you right off the top of my head.

16 Q. It looks like to me like they're from the 2012 dockets.

17 Do you know whether those comments are part of the
18 formal records in these dockets?

19 A. Yes.

20 Q. You believe they are?

21 A. Yes, I do.

22 Q. And on page 11, line 8, you testified that according to
23 Yakima County Public Services Department there have
24 been no documented uses of either the North Stevens
25 Road or Barnhart Road railway crossings for emergency

0306

1 fire or medical response during the last five years.

2 So how, when, and from whom did you get this

3 information?

4 A. That was based upon our research that was done back in
5 September, October of 2014, and it was in conversations
6 with the lead officers at these services.

7 Q. And do you know if the county keeps track of its
8 emergency fire and medical response routes traveled for
9 all calls?

10 A. They were able to comment whether or not they would use
11 these crossings, so I assume they do, yeah.

12 Q. And do you have anything, any document that
13 substantiates these conversations or this information
14 that you received?

15 A. Yes, I do.

16 Q. And can you produce that?

17 A. Yes.

18 Q. Okay. So that would be evidentiary request No. 3.
19 Does that include police emergency responses that may
20 have used the two crossings?

21 A. I believe so, yes.

22 Q. And did you check with the Yakima County Sheriff about
23 the two crossings?

24 A. Yeah, I believe it was all, all of the emergency
25 services.

0307

1 Q. And the tribal police as well?

2 A. I don't think we did the tribal police, no.

3 Q. Okay. On page 11, line 24, you say --

4 A. The page numbers are cut off on my document here, so
5 I'm not sure which one you're on.

6 Q. Okay. I'll just read to you what your testimony was.

7 You said none of the these distances -- and you're
8 talking about the City of Toppenish Fire department and
9 the crossings nearest to North Stevens Road and
10 Barnhart Road and the distances between those and the
11 nearest crossings -- you said none of these distances
12 are significant enough to impact emergency vehicle
13 response time given the rural nature of the area. So
14 is your assessment based on any discussion or documents
15 provided by the actual emergency responders in that
16 area?

17 A. It's based upon discussions with the emergency
18 responders, it's based on the location of the emergency
19 services, and it's based upon the location of homes and
20 businesses in the area.

21 Q. So are those discussions captured in that other
22 document that you referenced?

23 A. Yes, they are.

24 Q. Okay. And could you describe what you mean by given
25 the rural nature of the area?

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1 A. It is not densely populated, there is not a lot of
2 homes around that would be impacted by, or that
3 emergency access would need to serve. It's just a
4 limited number of homes.

5 Q. Then on page 12, beginning at line 12, this is in
6 response to I believe you inquired of the Toppenish
7 School District and the Granger School District about
8 whether or not they use the crossings for school buses,
9 and you testified Toppenish School District responded
10 they do not currently use either crossing, Granger
11 School District responded they occasionally use the
12 Barnhart Road crossing but expressed no concern about
13 the closer. Did you inquire about the Yakama Nation to
14 inquire about usage for school children?

15 A. All of these conversations with school districts were
16 in emails to the county in regards to the original
17 petition.

18 Q. Did you contact?

19 A. It's in the record.

20 Q. Did you contact?

21 A. I did not contact them. It's in the record already.

22 Q. Did you contact the Yakama Nation tribal -- I'm asking
23 because it's not in the record.

24 A. I did not contact them. There is a comment regarding
25 the Yakama saying they did not respond.

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1 Q. So did you contact -- you attempted to contact them but
2 they did not respond, it's not that you didn't contact
3 them?

4 A. No. We did not attempt to contact them. In the record
5 it's stated that they were contacted but they did not
6 respond.

7 Q. By the county?

8 A. Yes.

9 Q. Okay. And then on page 12, beginning at line 19, this
10 again is about the SEPA, which you discussed a little
11 bit in your cross-examination testimony. So would you
12 agree that there are considerations other than the
13 environment that could be adversely impacted by closure
14 of the crossings?

15 A. Well, in my assessment, the environment includes all of
16 those issues, so there is nothing other than the
17 environment.

18 Q. And you stated that the SEPA process includes
19 consideration of public comments. Can you explain how
20 and where in the process public comments were
21 solicited?

22 A. The SEPA process advertised the proposed action and the
23 public has the opportunity to respond to the proposed
24 action, and it was in that regard that the comments
25 were received from some of the farmers in the area and

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1 other users.

2 THE JUDGE: Thank you. That's all I have.

3 So I think we've reached a good stopping point for
4 today. Anything else before we go off the record?

5 Okay. Today's portion of the evidentiary hearing
6 is concluded at 4:58 p.m. We'll be off the record
7 until the public comment hearing at 6:00 p.m.

8 (HEARING ADJOURNED AT 4:58 P.M.)

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1 C E R T I F I C A T E

2 STATE OF WASHINGTON)

) ss.

3 COUNTY OF YAKIMA)

4

5 This is to certify that I, Phyllis Craver Lykken,
6 Certified Court Reporter in and for the State of
7 Washington, residing at Yakima, reported the within and
8 foregoing hearing; said hearing being taken before me on
9 the date herein set forth; that the witnesses were first
10 by the administrative law judge duly sworn; that said
11 proceedings was taken by me in shorthand and thereafter
12 under my supervision transcribed, and that same is a
13 full, true and correct record of the testimony of said
14 witness, including all questions, answers and objections,
15 if any, of counsel.

16 I further certify that I am not a relative or
17 employee or attorney or counsel of any of the parties,
18 nor am I financially interested in the outcome of the
19 cause.

20 IN WITNESS WHEREOF I have set my hand this
21 8th day of May, 2015.

22

23 PHYLLIS CRAVER LYKKEN, RPR,

CCR NO. 2423

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