

Docket Nos. TR-140382 and TR-140383 - Vol. III

BNSF Railway Company v. Yakima County

April 28, 2015

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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY,)
)
Petitioner,)
)
vs.)
)
YAKIMA COUNTY,) (Pages 53-311)
)
Respondent.)

EVIDENTIARY HEARING, VOLUME III
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

April 28, 2015
9:30 a.m.
2403 South 18th Street
Union Gap, Washington

REPORTED BY:
PHYLLIS CRAVER LYKKEN, RPR, CCR NO. 2423

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2 DOCKETS TR-140382 and TR-140383
3 April 28, 2015
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6

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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.

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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

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 DIRECT EXAMINATION

12 BY MR. PLANT:

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

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

18 **Q. How long have you worked for Husch & Husch?**

19 A. Forty-three years.

20 **Q. Okay. I'm going to hand you your pre-filed testimony**
21 **in this matter, which has been designated Exhibit**

22 **EB-1T. Would you please review that document?**

23 A. (Witness complied). Yes.

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

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.

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 CROSS-EXAMINATION

15 BY MR. SCARP:

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

19 A. Good morning.

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

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

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

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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.

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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.

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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.

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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.

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?**

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?**

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**

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**

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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 combustible?**
 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.

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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.

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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.

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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 you,**
 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.

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?

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

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?

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.

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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?**

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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.

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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**

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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.

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?**

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?**

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**

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

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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?**

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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

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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

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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?**

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 REDIRECT EXAMINATION

19 BY MR. PLANT:

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

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

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?**

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 EXAMINATION

19 BY THE JUDGE:

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

23 A. Harvest season.

24 **Q. What months are those?**
 25

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?**

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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

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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?**

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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?**

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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**

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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

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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?

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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

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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?**

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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**

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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.

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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**

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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?**

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

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?**

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

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?**

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?**

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?

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**

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?**

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.

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?**

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

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?**

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.

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

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.**

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**

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.**

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**

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**

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 *

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.

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

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 624 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.

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?

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**

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**

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**

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.

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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, Oswald 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 Oswalds.
17 **Q. -- and Oswalds. 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.

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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**

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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?

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1 **Q. I'm sorry. We'll say you indicated that -- can you use**
2 **that crossing for your 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**

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?**

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 RE-CROSS-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**

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.

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

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**

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 Oswald, 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.

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?**

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).

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**

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.

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 --**

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.

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?**

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**

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.

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.

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,

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.

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**

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.

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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?**

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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**

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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.

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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.

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.

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?**

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**

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

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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

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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**

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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.

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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

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?**

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.

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.

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**

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?**

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?**

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

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**

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 *

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

1 **REDIRECT EXAMINATION**
 2 **BY MR. PLANT:**
 3 **Q. Mr. McHenry, I have one or two questions for you. Does**
 4 **the fact that more or less cars use a crossing make a**
 5 **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

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?**

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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**

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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?**

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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?**

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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.**

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

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**

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

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.

1 And that's where, that's where I say that you
 2 can't quantify a safety benefit because you have to
 3 look at the entire benefit of the crossing, not just
 4 the risks at the crossing. But what are the risks
 5 elsewhere throughout the system.
 6 **Q. Okay. Thank you. And then on page 10, line 3, you**
 7 **also provided some additional testimony about the**
 8 **public input with respect to --**
 9 A. Yes.
 10 **Q. -- the risks and general public. How did you receive**
 11 **that public input?**
 12 A. Again, a lot of input was from the farming community.
 13 **Q. Did you have letters or phone calls?**
 14 A. There were input, there was input to the, one of our
 15 county commissioners that was then provided to myself.
 16 **Q. Do you have any exhibits or --**
 17 A. They were --
 18 **Q. -- other testimony that reflects that input?**
 19 A. I want to say, I believe that all of those were
 20 delivered as part of the discovery.
 21 THE JUDGE: Okay. Thank you. That's all I have.
 22 MR. SCARP: I do have a couple.
 23 THE JUDGE: Okay.
 24 *
 25 *

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

1 FURTHER RE-CROSS-EXAMINATION
 2 BY MR. SCARP:
 3 **Q. Mr. McHenry, the two -- sorry. You testified that in**
 4 **Yakima County drivers have a problem stopping at stop**
 5 **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.

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:

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.

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

1 CROSS-EXAMINATION

2 BY MR. PLANT:

3 **Q. Mr. Peterson, we're here about North Stevens Road and**
4 **Barnhart Road. Can you identify the alternate**
5 **crossings for these, the alternate routes to cross the**
6 **BNSF line that motorists will be required to take if**
7 **Barnhart Road crossing is closed?**

8 A. The Barnhart to the geographically south and east would
9 be the Satus Longhouse Road, there and to the north is
10 the Indian Church Road.

11 **Q. Do you know approximately how far from Barnhart Road**
12 **these crossings are?**

13 A. I didn't measure specifically, but I believe they're
14 roughly a mile.

15 **Q. Roughly a mile. Okay. And I'll ask you the same**
16 **question with respect to, I guess the North Stevens**
17 **Road crossing. If that crossing is closed, what are**
18 **the alternate routes that motorists would be required**
19 **to utilize?**

20 A. I have to look at my cheat sheet for that, but I
21 believe it was South Track Road is to the south and
22 east and North Meyers to the north and west.

23 **Q. Do you know the approximate distances?**

24 A. Again I don't, although having listened to a few
25 minutes of testimony, I believe both of those are

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.

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,

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?**

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?**

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.
 23 *
 24 *
 25 *

EXAMINATION

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

about those collections, how many, when, and what type?

A. I couldn't give you total numbers off the top of my head, but in my career, and I would say frankly I would put together both farm or heavy equipment like road equipment, road graders, large dump trucks, water trucks, that sort of thing, in with, from my perspective, even tractor/trailer combination vehicles. I have probably worked on cases over, I mean, substantive part of my consulting career with these types of accidents is about 15 years now, I've probably worked on at least 50 of at least some sort like that.

As to exact dates, I honestly can't give them to you as I sit here, but I do know one of the more recent ones I worked on happened to be in Georgia, which it was a combine and Norfolk Southern train, that one was within the last year, I think. But again, it's a relatively common type of accident.

And really what sets it apart with heavier equipment versus smaller passenger-style vehicles is because the weights of the heavy equipment, they're much heavier, they tend to produce more, more damage and more catastrophic results, not only to the train itself, but to the risk of derailment.

THE JUDGE: Thank you. Is that it? Okay. You can step down. Thanks.

entire obligation and duty to make that determination.

So what flashing lights, frankly, allow that motorist to do is drive at a high rate of speed approaching a crossing because they're not having to be able to look as far in both directions to determine if that train is approaching. So it's a long way to say, in my opinion, active warning systems provide a good warning.

I would say the ultimately the optimal situation would be to have gates, but that lights by themselves are also very effective. And I guess I would just finally have to add that, in my experience, that gates are certainly not a failsafe measure to prevent cars from entering crossings, whether by driving through the gates or we actually see a group, a fair amount of people drive around the gates.

And so again, ultimately the, it has to come back on the motorist whether or not the warnings are observed.

Q. Okay. Thank you. And then on page 4, line 19, you talk about operators of farm and heavy equipment have to be cautious when crossing at a grade crossing and said that you've experienced a number of collisions around the country where the operator fails to do so, thus contributing to a collision. Do you have any data

Mr. Plant, do you have one final witness, Mr. Hood?

MR. PLANT: John Hood, please.

JOHN HOOD, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE JUDGE: Please just state your full name and spell your last name for the record.

THE WITNESS: John Hood, H-O-O-D.

MR. PLANT: Your Honor, Mr. Scarp has stepped out, but he and I discussed that since his pre-filed testimony was filed, Mr. Hood has changed positions at Yakima County, so I'll be asking one or two questions on direct just to get that on the record.

DIRECT EXAMINATION

BY MR. PLANT:

Q. Mr. Hood, I'm going to hand you your pre-filed testimony in this matter, which has been designated Exhibit JH-1T. Can you please review that?

A. (Witness complied).

Q. Now, in your pre-filed testimony dated February 10,

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.**

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?**

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.

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**

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.**

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,**

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**

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.

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 *

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?

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**

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.

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**

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.

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

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**

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**

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**

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?**

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**

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.

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

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.

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

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 RECROSS-EXAMINATION

22 BY MR. SEXTON:

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?**

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 *

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 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 *

CROSS-EXAMINATION

BY MR. SCARP:

Q. Good afternoon, Mr. Dick. Were you watching the testimony of Mr. Pinkham with regard to the procession, the route from the longhouse for a funeral procession to the cemetery?

A. Was I watching? Yes, I was watching.

Q. Did I show the route correctly from the longhouse across Drain Bank, down across the Barnhart crossing, up 22 past Indian Church Road, and left onto Branch Road?

A. Yes.

Q. Do you know how far that is?

A. Oh, it's, I'd say it's closer to almost three miles.

Q. Okay.

A. Because it's almost a mile from Longhouse to the intersection of Barnhart and Drain Bank.

Q. Okay. So from the longhouse, here is Satus, I know there is probably some glare, here is Satus Longhouse Road, the longhouse is here at the corner of Drain Bank. So you're saying over here to the intersection of Drain Bank and Barnhart Road is about a mile?

A. It's a little over a mile.

Q. Okay. Then the procession would come down across the railroad crossing at Barnhart, up Highway 22 past

normally include somewhere from 100 to 300 people?

A. Depending on the family.

Q. Was that your testimony?

A. I don't remember, but that's my answer, so, because not all families are the same.

Q. Right. How many cars would there likely be in a procession?

A. Like I say, it depends on the family.

Q. Would there be as few as 15?

A. Yes.

Q. As many as 30?

A. More.

Q. As many as 50?

A. Yes.

Q. Okay. Is it your testimony that the procession wants to go slowly from the longhouse to the cemetery?

A. Generally.

Q. Is that not always the case?

A. Not always.

Q. Sometimes they want to go faster?

A. Well.

Q. Go ahead.

A. I don't know how you would elaborate it. If we were on a time frame, we would have to, it depends on when we're leaving.

Indian Church, up to Branch Road, take a left and come down and the cemetery is over here?

A. Yes.

Q. How many times -- do you live up near there?

A. I do.

Q. Whereabouts from the longhouse?

A. South Satus Road.

Q. Okay. And how many times have you been in a funeral procession?

A. Just about every other one that there has been at the longhouse.

Q. How many have you been in, roughly?

A. I couldn't say.

Q. Twenty?

A. Not that many.

Q. Over how many years?

A. My lifetime.

Q. Ten? Have you been to ten processions?

A. More than that.

Q. Some where between 10 and 20?

A. You can say that, yeah.

Q. Okay. Well, I'm just trying to estimate. And how old are you?

A. Fifty-five.

Q. Is it your testimony that such processions would

Q. You mean like needed to get to the cemetery by a certain time?

A. Yes. Yes.

Q. Okay.

A. Some ceremonies are done before the sun comes up.

Q. Before the sun comes up?

A. Yes. Some are done that way.

Q. Okay. Has the route ever gone up to Indian Church Road and then across the crossing at Indian Church Road?

A. Like I say, it depends on the families.

Q. But sometimes they might go that way?

A. One or two, maybe.

Q. Okay. Have you ever gone that way?

A. Once, that I remember.

Q. Did it take much longer?

A. Well, going slow, yes.

Q. Were you already going slow?

A. Yes.

Q. Have you ever had a train come by during a funeral?

A. Not in the morning.

Q. Have you ever had a train come by during a funeral procession?

A. No.

Q. Then I guess it wouldn't be appropriate to ask what would happen, because you have never experienced it.

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.

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 *

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

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 *

CROSS-EXAMINATION

BY MR. SCARP:

Q. Good afternoon, Mr. Meninick.

A. Good afternoon.

Q. Your pre-filed testimony is about the funeral processions from the longhouse to the cemetery over off of Branch Road. Do you recall the questions and answers both with Mr. Pinkham and Mr. Dick?

A. Yes, I heard them.

Q. Is it your testimony, Mr. Meninick, that the processions traditionally want to go slowly?

A. In some cases, yes.

Q. Is that the reason why you said that it is preferable to stay off of Highway 22?

A. Yes.

Q. Have you been in processions that go from the longhouse across Drain Bank and up Barnhart Road over to Indian Church Road before crossing?

A. That is not feasible.

Q. Okay. It's not feasible, did you say?

A. Yes.

Q. Is it not feasible for a car to drive that way?

A. Yes.

Q. Why do you say that?

A. Because the road is narrow, curved, sort of a curve

MR. SCARP: Okay. Thank you, Mr. Meninick, those are all of the questions I have.

THE JUDGE: Mr. Sexton.

REDIRECT EXAMINATION

BY MR. SEXTON:

Q. I have one quick question, Mr. Meninick. Could you explain or expand a little bit upon as what you just cited as customary, and for the benefit of this matter explain why Barnhart Road crossing is important to the Nation community?

A. Yes. Long before the railroad was there, that was the original trail where the Barnhart Road crosses. But it goes on south. We have other cemeteries in the vicinity and some up higher, and the Spencer Road further south comes in and then it's an old crossing right there where my grandmother's house was on that road and it crosses right into Barnhart Road and to Satus Longhouse.

And within our belief we have to follow the pattern that our elders have used, so we've always followed that pattern because it is our belief. And there are also other cemeteries further up the Satus Creek.

So that Barnhart Road provides us that customary

thing that goes before it gets to Indian Church Road and it's not a very stable road.

Q. Are you talking about the road from Barnhart to Indian Church?

A. Yes.

Q. And you yourself, do you ever drive that?

A. Yes.

Q. Don't people drive it every day?

A. I wouldn't say every day.

Q. It's your opinion that that road from Drain Bank to Barnhart and up to Indian Church is just simply not a good road?

A. No, it's not customary to use that road. In our belief and religion, we have to have a certain route that we travel on.

Q. So did you hear Mr. Dick's testimony that he's aware of a few who choose to go the other way?

A. It's possible.

Q. All right. If you wanted to stay off of Highway 22, would you agree that staying on Barnhart would keep you off Highway 22 and you would only have to get on it for a short distance to Branch Road, instead of crossing down at Barnhart, you would be on it for a longer distance?

A. That is not customary.

belief in our way of practice and our ceremonies. But it's not only for the funerals that the Satus Longhouse is used, but for memorials, for gatherings, pow wows, and many other occasions that we have there. General council of all of the membership come together and discuss policies of the Yakama Nation. So that's what the longhouse is for and that road is very important for that purpose.

MR. SEXTON: Thank you, sir. That's all of the questions I have.

THE JUDGE: I'm good. You may step down. It's okay. You can step down. Thank you.

THE WITNESS: Okay.

THE JUDGE: Mr. Scarp, we're moving on to BNSF witnesses. Did you decide what you want to do?

MR. SCARP: I do. I think we might as well use the order and try to get Mr. Agee. I don't know if Mr. Norris will get completed, so we'll -- it doesn't matter to me.

THE JUDGE: Okay.

DAVID AGEE, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

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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**

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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.

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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

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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**

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

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.

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**

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.

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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**

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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.

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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 --

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?**

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**

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

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**

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**

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

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

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**

Rail Crossings, Exhibit GN, I think it's going to be 13.

THE JUDGE: Let me see. Yes, I have that labeled as GN-13CX.

Q. Are you familiar with that report, sir?

A. Yes, I am.

Q. Okay. Does that report use a different method of computation to compute the probability of a motor vehicle accident at these crossings?

A. I would say in talking about the crossings we're talking about, they used different data than what I used in my calculations.

Q. Can you explain what's different about the data?

A. Well, as you can tell by looking at this report there's a lot of errors in the data as it relates to the crossings in question. I think we're, the crossings that we're looking at are Stevens Road and Barnhart Road as closures.

For instance, the Stevens Road crossing only has a volume of 55 cars a day, or vehicles per day, and the Barnhart Road was estimated at about 110 with only seven trains going through there. The seven trains is an error, as it has been pretty well documented both in the county's petition and the subsequent railroad petition that there is 12 to 14 trains a day going

A. If I look at this by its face, I would concur with you of what is presented on this sheet. But what I will tell you, this information on first blush is not even intuitively believable; secondly, there is disclaimers all throughout this document that this can't be used to rate the danger at a specific crossing.

And if you, if you, if we just took something that was commonly obvious to everybody, and that would be the exposure of a crossing in terms of vehicle traffic using the crossing, if you apply those numbers to the crossings we're looking at, Barnhart and Stevens, Stevens crossing is a thousand times more dangerous than either the Meyers, Meyers or South Track Road. And the Barnhart is 800 times more dangerous than Indian Church and 130 times more dangerous than Satus Longhouse.

So, I mean, we can turn this data any way you want and create any kind of an analysis or an answer that you want if you flip the data.

Q. Okay. Let me ask you sort of that, on that same line.

Did you perform an analysis of the probability of a motor vehicle accident at Satus Longhouse Road?

A. No, I did not.

Q. Okay. How about the Indian Church Road?

A. No, I did not.

through this crossing. And the same thing with Stevens Road, 12 to 14 crossings and Stevens Road only has ten trains. So the data in this report is erroneous and not applicable to any kind of analysis that I would want to do in regards to the statistical validation of a rating of potential crash history. Or crash prediction, I should say, rather than history.

Q. I noted that your sort of probability rate is 0.1073 for Barnhart, right, and this report gives Barnhart a 0.0076. Barnhart, I should say, is ranked No. 102. So that difference, which looks to be a magnitude of a hundred, is the result of defective data upon which this report is built, essentially?

A. Correct. I'd like to also go on and explain this report that you've summarized here is using coefficient data that was generated back in the 1980s, or 1980 was the date on the report for it. So it's not even a relevant coefficient to what conditions are today. And so to apply that kind of information and expect a reasonable result today is very erroneous in the approach.

Q. Okay. But you would agree this report does sort of rank all of the adjacent crossings as having a higher probability of accidents than either the Barnhart Road or the Stevens Road crossings?

Q. So you have no, you know, you've, in terms of predicting the probability of accidents, you haven't formed any calculations to determine whether the Barnhart Road crossing is more or less safe than the adjacent crossings; is that correct?

A. I, I think it's intuitively obvious that the Indian Church and Satus Longhouse is, if you want to use in quotes, more safe because of devices that are in place to control traffic.

Q. What devices at the Indian Church Road -- at the Satus Longhouse crossing make it more safe than the Barnhart Road crossing?

A. It's got flashing beacons, the road is paved. Indian Church has gates, so all of that is, it would be more active in its presentation of the presence of the train than exists at Barnhart.

Q. Okay. Also did you perform any calculations with respect to the South Track Road crossing or the north Meyers Road crossing?

A. No, I didn't. And again, the same rationale would apply to those, is because it would be intuitive that those crossings would be safer. In fact, the U.S. Department of Transportation released a report that said they're ten times safer than crossings -- or 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.

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**

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?**

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**

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**

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**

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-**

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**

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

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

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**

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

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**

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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.

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**

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**

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.

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**

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,**

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**
 24 **normalizing constant?**
 25 A. I used the normalizing constant and the basic equation.

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.**

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**

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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.

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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.

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

1 CERTIFICATE
 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
 24
 25

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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