



0531

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

WASHINGTON STATE DEPARTMENT OF  
TRANSPORTATION, by L. Scott Lockwood, Assistant  
Attorney General, 7141 Cleanwater, P.O. Box 40113,  
Tumwater, Washington 98501.

S&B, LLC; WESTERN VALLEY FARMS, by Gary  
T. Jones, Attorney at Law, Jones & Smith, 415 Pine  
Street, P.O. Box 1245, Mt. Vernon, Washington 98273.

COMMISSION STAFF, by Jonathan Thompson,  
Assistant Attorney General, 1400 S. Evergreen Park  
Drive, S.E., P.O. Box 40128, Olympia, Washington  
98504-0128.

0532

1

2

---

INDEX OF EXAMINATION

---

3

4

WITNESS:

PAGE:

5

FOSTER PETERSON

6

Direct Examination by Mr. Scarp

538

7

Cross-Examination by Mr. Rogerson

541

8

Cross-Examination by Mr. Thompson

589

9

Redirect Examination by Mr. Scarp

620

10

Recross-Examination by Mr. Rogerson

636

11

Recross-Examination by Mr. Thompson

640

12

Redirect Examination by Mr. Scarp

643

13

MEGAN McINTYRE

14

Direct Examination by Mr. Scarp

648

15

Cross-Examination by Mr. Rogerson

653

16

Cross-Examination by Mr. Thompson

670

17

Redirect Examination by Mr. Scarp

675

18

Examination by Judge Torem

679

19

Redirect Examination by Mr. Scarp

684

20

STUART GORDON

21

Direct Examination by Mr. Scarp

686

22

Cross-Examination by Mr. Rogerson

688

23

Examination by Judge Torem

703

24

Recross-Examination by Mr. Rogerson

705

25

Cross-Examination by Mr. Thompson

707

0533

1	Redirect Examination by Mr. Scarp	716
2	GARY NORRIS	
3	Direct Examination by Mr. Lockwood	724
4	Cross-Examination by Mr. Jones	727
5	Examination by Judge Torem	767
6	Cross-Examination by Mr. Thompson	772
7	Redirect Examination by Mr. Lockwood	798
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

0534

1

2

---

INDEX OF EXHIBITS

---

3

4	EXHIBIT:	MARKED:	OFFERED:	ADMITTED:
5	150	536	536	536
6	5 and 6	--	539	539
7	92 and 93	535	539	540
8	128 through 135	--	540	541
9	13	--	560	561
10	101	--	561	562
11	102	--	561	636
12	103	--	561	569
13	94	620	620	620
14	4 (3-A, 3-B, 3-C)	--	651	653
15	2 and 3	--	652	653
16	1	--	687	688
17	95	716	716	718
18	108	--	723	724
19	11 and 12	--	726	726
20	14 and 15	--	726	726
21	105 and 106	--	807	809
22	126	--	807	809

23

24

25

0535

1           JUDGE TOREM: We'll be on the record. It's  
2 a little after 9:15 on Tuesday morning, January 8th.  
3 All the attorneys that were here yesterday are again  
4 present, except for Mr. Burke, on behalf of the Fire  
5 District. He does not have any witnesses today and  
6 had already informed us that he would be absenting  
7 himself if he didn't have a direct connection with  
8 the fire district to represent. So he will be back  
9 tomorrow.

10           Before we went on the record today, we spent  
11 about 15 minutes going over some housekeeping issues.  
12 Let me briefly run through those and see what else we  
13 need to formalize.

14           I was provided copies of Exhibits 128  
15 through 135 by the Railway, and those will be offered  
16 later on the record. I was also informed that one of  
17 the witnesses today, Mr. Foster Peterson, had filed  
18 revised rebuttal testimony, as well as a timetable.  
19 Those were marked as Exhibits 92 and 93, because I  
20 had not yet received them in hard copy format. I'm  
21 presuming I got it in electronic copy and just failed  
22 to get a hard copy into my exhibit binder. And we  
23 didn't discuss those at the pre-hearing conference on  
24 December 20th. So those will be marked a little out  
25 of sequence as 92 and 93.

0536

1           Also, this morning I was provided a copy of  
2 the approved driving route to see the neighborhood  
3 here, and that's been marked as Exhibit 150. Did you  
4 want to offer that at this time, Mr. Thompson?

5           MR. THOMPSON: Yes.

6           JUDGE TOREM: Any objections to admitting  
7 Exhibit 150 as an indication of the route that I will  
8 be driving sometime before the end of the week?

9           MR. ROGERSON: No objection.

10          JUDGE TOREM: All right. So that's been  
11 offered and it will now be admitted to the record.  
12 Also we discussed -- we're getting closer on a date  
13 for examining Albert Liou and Mr. Zeinz, as well.  
14 That will be in Seattle, either the afternoon of  
15 Wednesday, January 30th, or sometime during the day  
16 on January 31st, on Thursday, that week.

17          And it appears that we're going to perhaps  
18 add another witness, albeit telephonically, of Mr.  
19 Smith. Mr. Jones, you informed me this morning that  
20 Mr. Smith had a death in the family and is attending  
21 a funeral service on Wednesday afternoon, at which  
22 point he is scheduled to testify. And I agree with  
23 Mr. Scarp that it's probably best not to ask him to  
24 come in out of sequence when he's got those sort of  
25 things on his mind, so we'll defer the adoption of

0537

1 his testimony and the cross-examination until a later  
2 date, and that will hopefully take place on the 30th  
3 or 31st of January, if he's available. You'll let me  
4 know that later.

5           Also, we moved one of your witnesses, Dr.  
6 Winkes, to 9:00 in the morning tomorrow to  
7 accommodate a conflict that came up in her schedule  
8 for Wednesday afternoon. And the only other  
9 observation I think we had was that the County's  
10 witnesses now, with two less city and farm witnesses  
11 in the afternoon, are more probable to be fitted in  
12 on Wednesday afternoon, so it's probable we can wrap  
13 things up around five o'clock tomorrow.

14           Okay. Any other housekeeping items that I  
15 failed to mention on the record? All right, then.  
16 We're ready, I think, for Foster Peterson to take the  
17 witness stand. His exhibits include revised  
18 pre-filed direct testimony, which is marked as  
19 Exhibit 5, and his CV, which was marked as Exhibit 6,  
20 and then the ones we just mentioned, 92 and 93.

21           Sir, if you'll stand and raise your right  
22 hand?

23 Whereupon,

24                               FOSTER JOSEPH PETERSON,  
25 having been first duly sworn, was called as a witness



0538

1 herein and was examined and testified as follows:

2 JUDGE TOREM: All right. Thank you.

3 THE WITNESS: Thank you.

4 JUDGE TOREM: Mr. Scarp.

5 MR. SCARP: Thank you, Your Honor.

6

7 D I R E C T E X A M I N A T I O N

8 BY MR. SCARP:

9 Q. Good morning. Mr. Peterson, would you state  
10 your name and give your business address for the  
11 record, please?

12 A. It's Foster Joseph Peterson, 3605 Sandy  
13 Plains Road, Suite 240, in Marietta, Georgia.

14 Q. And would you state your employer and  
15 occupation?

16 A. My primary employment is as a partner in  
17 Full Service Railroad Consulting, primarily -- or in  
18 the broadest sense, as a railroad consultant. And  
19 I'm also employed part-time by the Tennessee Valley  
20 Railroad Museum and its railroad subsidiaries as a  
21 manager of training, rules and safety, and a  
22 supervisor of locomotive engineers.

23 Q. Okay. And did you cause to be prepared and  
24 file in this matter a pre-filed -- a revised  
25 pre-filed testimony, which has been pre-marked as

0539

1 Exhibit 5?

2 A. I did.

3 Q. And did you provide a curriculum vitae, or a  
4 CV, which has been pre-marked as Exhibit 6?

5 A. I did.

6 Q. And are the responses that you gave in your  
7 revised pre-filed testimony, are those accurate and  
8 -- if I were to ask you those questions here today,  
9 would you provide the same responses?

10 A. I would.

11 Q. All right. And is the information contained  
12 in your CV in Exhibit 6, is that accurate?

13 A. Yes, it is.

14 Q. All right. Now, you also prepared a  
15 pre-filed rebuttal testimony, which has been now  
16 marked as Exhibit 92. If I were to ask you the  
17 questions set forth in that document, would your  
18 answers be the same?

19 A. They would.

20 MR. SCARP: All right. Your Honor, we would  
21 move to admit Exhibits 5, 6, 92, and the attached  
22 exhibit to 92, which is Exhibit 93, the BNSF  
23 timetable.

24 MR. ROGERSON: No objection.

25 JUDGE TOREM: All right. There are no

0540

1 objections, so those four exhibits are admitted.

2 MR. SCARP: Thank you, Your Honor.

3 JUDGE TOREM: All right. Cross-examination  
4 is listed to be Mr. Rogerson, on behalf of the City,  
5 and Commission Staff has also reserved -- I believe  
6 it's an hour of time for cross-exam, so we have an  
7 hour and fifteen minutes anticipated by Mr. Rogerson  
8 and an hour for Commission Staff. We'll see how long  
9 it goes, Mr. Peterson, and we may take a break in  
10 between.

11 MR. ROGERSON: Thank you, Your Honor.

12 MR. SCARP: Your Honor, can I move at this  
13 time to admit Exhibits 128 through 135, which I think  
14 the parties have all now seen and agreed to?

15 MR. ROGERSON: For the record, with the  
16 official exhibit with the proper identification, we  
17 have no objection to BNSF's motion.

18 JUDGE TOREM: My understanding, those are  
19 the data requests you got back from the Fire  
20 District?

21 MR. SCARP: Correct.

22 JUDGE TOREM: And --

23 MR. SCARP: They have the various incident  
24 reports attached with them. And my apologies. I had  
25 forgotten to do so before starting.

0541

1           JUDGE TOREM:  And I think, rather than  
2 re-detail them, I'll reference any readers of the  
3 record back to yesterday when these first came up in  
4 our initial part of the day session, and Ms. Endres  
5 listed off which of the data requests were separate  
6 exhibits that you were interested in.  There were  
7 those 128 through 135, I think a total of eight of  
8 them and corresponding supporting exhibits as answers  
9 to them, and you used those yesterday with Captain  
10 Rabel in the cross-examination process.

11           So are there any objections to those data  
12 request exhibits?  All right.  Then 128 through 135,  
13 so we don't forget, are now admitted.

14           MR. SCARP:  Thank you, Your Honor.

15           MR. FALLQUIST:  Your Honor, could I be  
16 excused for just a moment?

17

18           C R O S S - E X A M I N A T I O N

19 BY MR. ROGERSON:

20           Q.  Good morning, Mr. Peterson.

21           A.  Good morning.

22           Q.  You've submitted revised pre-filed testimony  
23 and rebuttal pre-filed testimony regarding an  
24 evaluation of safety issues involving the Hickox  
25 railroad crossing; is that correct?

0542

1 A. That is correct.

2 Q. Furthermore, your opinion includes an  
3 evaluation or assessment of the Stackpole Road  
4 crossing; is that right?

5 A. That's one of the three crossings at issue,  
6 yes.

7 Q. And in addition, the third crossing would  
8 include the crossing that's located within the city  
9 of Mt. Vernon on Blackburn Road; is that right?

10 A. That's correct.

11 Q. Okay. And just to be able to get an idea of  
12 the scope of your testimony or your opinion that was  
13 filed, were there any other crossings that you looked  
14 at?

15 A. Not in regards to this matter, no.

16 Q. Okay. And were there any crossings that you  
17 evaluated as a basis of your opinion that was filed  
18 in your revised pre-filed testimony?

19 A. I'm sorry. Could you repeat that?

20 Q. Were there any other crossings that you  
21 evaluated within Skagit County that was a part or  
22 factored into the basis of your opinion that was your  
23 filed revised testimony that was adopted and admitted  
24 today?

25 A. Not as relates to this matter, no.

0543

1 Q. Okay. So you're focusing on the three  
2 crossings?

3 A. Correct.

4 Q. Okay. And in addition to that, you have  
5 reviewed the traffic study that was produced by the  
6 Washington State Department of Transportation's  
7 consultant, Mr. Norris; is that right?

8 A. I didn't recall the name Mr. Norris, but I  
9 believe I was provided with a traffic impact analysis  
10 study, yes.

11 MR. ROGERSON: Okay. Permission to approach  
12 the witness, Your Honor?

13 JUDGE TOREM: Certainly.

14 Q. To save a binder, I have two exhibits in  
15 here. One is an exhibit pre-marked number 13, which  
16 I'm showing you. Is that -- is that the study you  
17 reviewed?

18 A. Yes, it is.

19 Q. Okay. And for the record, does the study --  
20 was that authored by Garry Struthers and Associates?

21 A. That's what it would indicate, yes.

22 Q. Aside from the study that you reviewed by  
23 the Washington State Department of Transportation,  
24 did you have occasion to visit the sites physically?

25 A. I had --

0544

1 Q. Sorry, the Hickox crossing. Let's take them  
2 one at a time. The Hickox crossing site?

3 A. I visited the Hickox crossing between my  
4 pre-filed testimony and the pre-filed rebuttal  
5 testimony.

6 Q. Okay. And did you have occasion to visit  
7 the other two sites, Stackpole and Blackburn?

8 A. I did, and again, between the time of the  
9 pre-filed testimony and the pre-filed rebuttal  
10 testimony.

11 Q. Is there any other place you looked at?

12 A. I've looked at other areas in Mt. Vernon,  
13 but not related to this matter.

14 Q. Okay. So it's not related to the basis of  
15 your opinion here today?

16 A. That's correct.

17 Q. Okay. And how often did you visit these  
18 sites?

19 A. Given that I visited them again on this trip  
20 and prior to today's testimony, I've been to them  
21 twice.

22 Q. Is there any other data that you've looked  
23 at in evaluating these three crossings to form the  
24 basis of your opinion?

25 A. I did review the documents that were

0545

1 entitled Commission Staff Cross-Examination Exhibits  
2 that were provided to me last week, I believe, which  
3 have some data related to Skagit County and two of  
4 the crossings. I believe, other than that, that was  
5 probably it.

6 Q. And are you referring to -- I'm going to  
7 hand you Exhibit Number 102. Was that part of the  
8 data that you have reviewed?

9 A. Yes, it was.

10 Q. Okay. And you reviewed this after you had  
11 filed your pre-filed testimony?

12 A. Yes, actually after both the pre-filed and  
13 the pre-filed rebuttal.

14 Q. So it's fair to say that the opinion that  
15 you have filed with the Commission did not include  
16 the information that's provided in Exhibit 102?

17 A. That's correct.

18 Q. Okay. I'm handing you what's been marked  
19 Exhibit Number 103. Is this an additional  
20 cross-examination exhibit, which you reviewed prior  
21 to today's testimony?

22 A. Yes, it is.

23 Q. And is this exhibit something that you had  
24 occasion to review and evaluate prior to filing your  
25 opinion and your rebuttal opinion with the



0546

1 Commission?

2 A. I did not review this exhibit prior to the  
3 pre-filed testimony.

4 Q. So it's fair to say that this was not a part  
5 of the basis of your opinion when you filed with the  
6 Commission?

7 A. Correct.

8 Q. Okay. Did you talk to any officials, any  
9 people with particular knowledge regarding the  
10 crossing before forming your opinion that you have  
11 filed with the Commission?

12 A. Officials of whom?

13 Q. Let me rephrase. Have you -- did you have  
14 an occasion to speak with any people with particular  
15 knowledge of the crossing or the operations of the  
16 railroad before forming your opinion involving the  
17 safety of the Hickox, the Stackpole, and the  
18 Blackburn crossings?

19 A. Yes.

20 Q. Okay. And would that be Burlington Northern  
21 employees?

22 A. I would say Burlington Northern employees  
23 and the Burlington Northern attorneys.

24 Q. Okay. Aside from the attorneys, what  
25 Burlington Northern officials did you interview

0547

1 before forming your opinion?

2 A. I recall specifically speaking at some point  
3 to a Michael Hart from BNSF. I believe the other  
4 questions I had, for people such as Mrs. McIntyre, I  
5 directed it through the attorney, so Michael Hart is  
6 the one that I recall specifically.

7 Q. And can you describe to me what Michael Hart  
8 does for the railroad?

9 A. My understanding is he's a claim agent or in  
10 the claims department.

11 Q. And what information did he provide for you?

12 A. We talked in general about the grade  
13 crossings, really not only in Washington, but the  
14 ones in this area, given that's part of his what I  
15 call territory or area that he covers.

16 Q. And Ms. McIntyre, did you have an ability --  
17 or did you have occasion to review her pre-filed  
18 testimony?

19 A. I did not see that, no.

20 Q. And what does Ms. McIntyre do?

21 A. I forget her title. Off the top of my head,  
22 I can't remember.

23 Q. Did you speak with Paul Curl or Robert  
24 Johnston from the Utilities and Transportation Staff  
25 before developing your opinion?

0548

1 A. No.

2 Q. Did you speak with anyone from the Utilities  
3 and Transportation Commission before developing your  
4 opinion?

5 A. I did not.

6 Q. Did you speak with Mr. Tom Zeinz?

7 A. No.

8 Q. Did you speak with any official from the  
9 Fire District Number Three, which is the fire  
10 district that services that area?

11 A. I did not.

12 Q. Did you speak with anyone from the City of  
13 Mt. Vernon's public works department?

14 A. I did not.

15 Q. Did you speak with anyone from the City of  
16 Mt. Vernon?

17 A. No.

18 Q. As a basis of your opinion, did you  
19 interview anyone from the county's department of  
20 emergency management? That would be Skagit County.

21 A. I apologize. I did not.

22 Q. Did you have occasion to speak with anyone  
23 from the county's public works department?

24 A. No.

25 Q. As a basis of your opinion, did you speak

0549

1 with anyone who represents Diking District Number  
2 Three?

3 A. No.

4 Q. As a basis of your opinion, did you speak  
5 with any official from the Army Corps of Engineers?

6 A. No.

7 Q. Did you speak with any official for the  
8 Federal Emergency Management Agency?

9 A. I did not.

10 Q. Were you able or did you interview any of  
11 the local residents that reside near the Hickox  
12 crossing?

13 A. I did not.

14 Q. So it's fair to say that before forming your  
15 opinion, you did not interview any of the residents  
16 regarding how they use that crossing?

17 A. Given that I did not speak to them, that  
18 would be correct.

19 Q. Did you employ any program or model for  
20 developing your opinion?

21 A. Not in this case, no.

22 Q. Okay. Did you look at any hazard index or  
23 accident prediction formula before forming your  
24 opinion?

25 A. I don't believe before -- I did not before

0550

1 providing the initial testimony, no.

2 Q. So it's fair to say the basis of your  
3 testimony that was filed before the Commission does  
4 not include a hazard index or accident prediction  
5 formula; is that right?

6 A. That's correct.

7 Q. Now, Mr. Peterson, you visited Stackpole  
8 crossing after you filed your original pre-filed  
9 testimony and before you filed your rebuttal  
10 testimony; is that right?

11 A. That's correct.

12 Q. And you reviewed at the same time frame the  
13 other two crossings, Hickox, Blackburn; correct?

14 A. During the same inspection of the sites;  
15 that's correct.

16 Q. Did you go anywhere else in the county to  
17 look?

18 A. Yes.

19 Q. And where did you go?

20 A. I was actively engaged on that same day in  
21 also looking at crossings in the city of Mt. Vernon  
22 related to a separate matter.

23 Q. Oh, okay. Let's narrow it to the basis of  
24 your opinion here today. Did you go any other  
25 locations?

0551

1           A.    Not any other rail highway grade crossings,  
2 no.

3           Q.    Okay.  So did you go to any other locations  
4 apart from grade crossings in forming your opinion?

5           A.    Well, as part of my visit and inspection, I  
6 visited the roads, roadways and the surrounding areas  
7 of the railroad right-of-way and the railroad grade  
8 crossings.

9           Q.    Where did you go?

10          A.    Really, I went from a northern position as  
11 north as the city of Mt. Vernon.  I would really say  
12 starting from the Montgomery Street, Kincaid Street  
13 area, working south to Section, then to the northern  
14 end of the crossing -- I'm sorry, northern end of the  
15 BNSF siding, then down to Blackburn, Hickox and  
16 Stackpole.  Roadway-wise really would have covered on  
17 the east side the various approaches to Mt. Vernon  
18 from Interstate 5 and the access roads, if you will,  
19 from the exit that's just south of Mt. Vernon, where  
20 you may get to the roads that can either go to Hickox  
21 or towards Stackpole or back north towards Mt.  
22 Vernon, crossed all the crossings at Blackburn, at  
23 Hickox and at Stackpole.  And then, on the west side  
24 of the railroad, really from a southerly position, as  
25 far south as Stackpole, would have worked back along

0552

1 Dike Road, back north towards Mt. Vernon, and also  
2 then in the Britt Road area.

3 Q. Now, does your pre-filed testimony include  
4 any evaluation or opinion regarding those roads?

5 A. Not specifically, no.

6 Q. Does your pre-filed testimony include any  
7 conclusion or opinion on any impacts on the effects  
8 of diverted traffic?

9 A. Impacts of what?

10 Q. Diverted traffic.

11 A. No.

12 Q. You had previously referred to in your  
13 testimony I think what you identified as the Railroad  
14 Highway Grade Crossing Handbook, and I think the  
15 author of that is the U.S. Department of  
16 Transportation. And you refer to that as a treatise  
17 or an authoritative reference. Do you still agree  
18 with that statement?

19 JUDGE TOREM: Do you have a page reference,  
20 Mr. Rogerson?

21 MR. ROGERSON: I do. That would be page  
22 three, lines 10 through 13.

23 THE WITNESS: Well, therein lies my  
24 confusion. I don't use the word treatise or  
25 authoritative reference at all.

0553

1 Q. Sure.

2 A. I say that the FRA, which is the Federal  
3 Railroad Administration, and the FHWA, the Federal  
4 Highway Administration, offer advice on the  
5 identification alternatives for grade crossings and  
6 go on from that.

7 Q. And you used those materials as part of the  
8 basis of your opinion, the criteria applicable; is  
9 that fair to say?

10 A. Yes, and it really -- both the older 1986  
11 version and the new revised August 2007 version are  
12 materials that are part of my, really, my normal body  
13 of work.

14 Q. And that's -- fair to say that's a part of  
15 the normal body of work for anybody in your industry?

16 A. No, I would say it relates to people who  
17 deal with rail highway grade crossing.

18 Q. Okay.

19 A. There are many people at the railroad who  
20 don't deal with grade crossings at all.

21 Q. Okay. Let me define it this way. People  
22 who want to evaluate the safety of a grade crossing  
23 will commonly use materials by the Federal Railroad  
24 Administration, which you've referred to, to assist  
25 them in forming their conclusions on safety issues?



0554

1           A.    That is a reference manual that is certainly  
2 used in the industry.

3           Q.    Is that common?

4           A.    It's relatively common reference material,  
5 yeah.

6           Q.    I want to hand you the exhibit pre-marked  
7 101. Can you identify that for the Tribunal?

8           A.    This is the revised second edition in August  
9 2007 of the Railroad Highway Grade Crossing Handbook.

10          Q.    Can you -- I've pre-marked it, so we can  
11 avoid having to flip through pages -- page 78 of that  
12 handbook?

13          A.    Okay.

14          Q.    Okay. Can you get to the last paragraph?

15          A.    Okay.

16          Q.    I want to read this out loud. The last  
17 paragraph, according to the Railroad Highway Grade  
18 Crossing Handbook, states: Whenever a crossing is  
19 closed, it's important to consider whether the  
20 diversion of highway traffic may be sufficient to  
21 change the type or level of traffic control needed at  
22 other crossings. The surrounding street systems  
23 should be examined to assess the effects of diverted  
24 traffic.

25                    Would you agree with the Railroad Highway

0555

1 Grade Crossing Handbook, that that should be factored  
2 into anyone's opinion on safety issues on potential  
3 closer of at-grade crossings?

4 A. The relationship or the interrelationship of  
5 the railroad and the grade crossing to the  
6 surrounding roadways is part of the overall equation,  
7 if you will, or overall analysis of the closure,  
8 sure.

9 Q. Do you know what type of vehicles currently  
10 use the Hickox crossing and would likely be diverted?

11 A. I'll start by saying that the roadway  
12 analysis part of it is not specifically my area of  
13 expertise. I'm an expert in train operations, in  
14 particular.

15 That being said, both from materials I've  
16 read and seeing the area, I guess I would be aware  
17 that, in addition to normal passenger motor vehicle  
18 traffic, that there is some heavier motor vehicle,  
19 truck, maybe farm, heavy equipment type traffic that  
20 uses I would say not only Hickox, but the Stackpole  
21 Roads, and then the surrounding roads on either -- on  
22 both the east and west side of the BNSF tracks.

23 Q. Factoring in the diverted traffic, vehicles  
24 diverted to adjoining streets, would you agree or  
25 disagree that vehicles would have -- that some

0556

1 vehicles may have greater problems than others in  
2 terms of safety analysis?

3 A. Problems with respect to what?

4 Q. Safety. I can give you an example. Would  
5 you find that a three-axle truck carrying farm  
6 equipment on a country road or a county road could  
7 have greater safety implications than a passenger --  
8 a normal passenger vehicle?

9 A. Are you talking safety at the grade crossing  
10 itself or on the roadway?

11 Q. On the roadway.

12 A. I find it hard to answer that question in  
13 general, because is it safety with respect to  
14 physically operating on the road or with other  
15 traffic? I mean, I don't understand what the basis  
16 for the hypothetical is.

17 Q. Let me rephrase, or let me ask you this  
18 question. Is the type or nature of a vehicle a  
19 consideration to an effect of diverted traffic?

20 A. I need you to ask that one more time.

21 Q. One of the standards put forth as criteria  
22 by the Railroad Highway Grade Crossing Handbook,  
23 which I read you, is the surrounding street systems  
24 should be examined to assess effects of diverted  
25 traffic.

0557

1           Would you agree that there may be -- that  
2     there would be a distinction between vehicles --  
3     size, use, nature -- in assessing the effects of  
4     diverted traffic when conducting that analysis?

5           A.    From a physical standpoint, that logically  
6     makes sense.

7           Q.    Exhibit 13 is within the same binder.  I was  
8     trying to save binders.  It's the exhibit prior to  
9     that one, which you have previously identified as the  
10    Washington State Department of Transportation's road  
11    study.  Could you please flip to page 17, which I  
12    pre-tabbed for you?

13          A.    Okay.

14          Q.    And there is a heading under that study  
15    called trucks, and under the heading trucks, the  
16    study states, The daily volume of trucks on Hickox  
17    Road is approximately 50, with a 50 percent eastbound  
18    and 43 percent westbound orientation.  The p.m. peak  
19    hour averages approximately two two-axle six-tire and  
20    one three-axle trucks in each direction.  Land use  
21    within the study area is reliant on truck access to  
22    serve the various agricultural needs allowed under  
23    current zoning.

24                Was that data, which you previously  
25    testified that you reviewed prior to your opinion, a

0558

1 factor in your consideration of the public safety  
2 implications of closure of the Hickox railroad  
3 crossing?

4 MR. SCARP: Sorry, what page was that?

5 MR. ROGERSON: I'm sorry. Page 17.

6 MR. SCARP: Thank you.

7 THE WITNESS: Ultimately, it does factor in  
8 or did factor into my consideration. Again, even  
9 though the roadway specific part of the analysis is  
10 not my area of expertise, my ultimate inspection of  
11 the area, to me, indicates that the Stackpole Road  
12 crossing is similar to Hickox in terms of being able  
13 to handle that similar type of traffic.

14 Q. Where's the nearest school in relation to  
15 the Hickox crossing?

16 A. The nearest school that I'm aware of, just  
17 from having been in the area, is -- I believe it's in  
18 the -- I believe at least is the city of Mt. Vernon  
19 up -- I'm really not familiar with all the street  
20 names, but it would be in the city, so it's north of  
21 the Hickox crossing.

22 Q. Is it your opinion that traffic likely to be  
23 diverted in the event of closure of Hickox would  
24 necessarily travel in front of the nearest school?

25 A. From a purely physical standpoint, I imagine

0559

1 that some could, but I don't -- from having examined  
2 the area, I don't believe it's necessary that it  
3 travel by the school, by any means.

4 Q. Okay. Reasonably foreseeable?

5 A. Yeah, I would foresee that some traffic  
6 would travel by it, but, again, I didn't make any  
7 type of analysis to be able to say what percentage or  
8 what increase there would be.

9 Q. So it's fair to say that your evaluation  
10 before forming your opinion didn't involve an  
11 analysis of traffic trips diverted in front of the  
12 school?

13 A. As I've already testified, my expertise is  
14 not in the roadway analysis portion, so that's  
15 correct.

16 Q. Okay. If you could flip to page 48 of the  
17 same exhibit?

18 A. Okay.

19 Q. These are under the findings of the traffic  
20 analysis. And the last bullet -- I mean, the last  
21 bullet point, okay, states, In 2006, Hickox Road has  
22 approximately 50 heavy vehicle trips per day, and six  
23 heavy vehicles during the p.m. peak period. In 2026,  
24 Hickox Road is estimated to serve approximately 80  
25 heavy vehicle trips per day and eight heavy vehicles

0560

1 during the p.m. peak period.

2 In forming your opinion that you have filed  
3 with the Commission, did you review this data?

4 A. I read through that, yes.

5 Q. Okay. And did you factor that specific  
6 finding in your evaluation?

7 A. To the extent that I reviewed the report,  
8 yes.

9 Q. Did you make any evaluations on the effects  
10 of the existing heavy vehicle trips and the  
11 forecasted vehicle trips that would be diverted from  
12 Hickox Road?

13 A. I didn't make any independent analysis  
14 beyond my review of the report.

15 Q. Make any conclusions of what would happen in  
16 the event those are diverted?

17 A. Conclusions with respect to --

18 Q. Public safety?

19 A. Not specifically, beyond as I've already  
20 testified, that the -- there are certainly other  
21 routes that those vehicles may travel.

22 MR. ROGERSON: At this time, before I  
23 forget, as well, I would move to admit Exhibit 13,  
24 which is actually the Washington State Department of  
25 Transportation's exhibit, which is the traffic study

0561

1 produced -- at least authored, I believe, by Gary  
2 Norris.

3 JUDGE TOREM: Mr. Lockwood?

4 MR. LOCKWOOD: No objection, Your Honor.

5 JUDGE TOREM: It's your exhibit. I didn't  
6 expect so. Any of the other parties have any  
7 objections or concerns with the traffic study being  
8 admitted at this time? All right. Exhibit 13 will  
9 be admitted at this time.

10 While we're doing that sort of issue, Mr.  
11 Rogerson, you've also marked the FRA handbook, which  
12 is Exhibit 101. You've mentioned at least the  
13 accident prediction reports, which are Exhibit 102,  
14 and the summary of accident information for Skagit  
15 County, which is 103. Do you want to dispense with  
16 the formalities on those, as well?

17 MR. ROGERSON: I would love to admit all of  
18 the previous exhibits identified.

19 JUDGE TOREM: 101, 102, and 103.

20 MR. SCARP: Well, Your Honor, we do object  
21 to 101. He hasn't examined Mr. Peterson on that.  
22 I'm sorry, 102.

23 JUDGE TOREM: Right. 101, he's at least  
24 mentioned specifically the paragraph on page 78 and  
25 79. So at this time, any objections to 101?



0562

1 MR. THOMPSON: None.

2 JUDGE TOREM: Mr. Scarp, any objections?

3 MR. SCARP: No.

4 JUDGE TOREM: So 101 will be admitted. As I  
5 indicated, they just mentioned 102 and 103, but there  
6 has been no cross-examination on that yet. So  
7 they're offered, but not yet admitted.

8 Q. Mr. Peterson, did you review any accident  
9 data regarding the history or number of accidents  
10 located at the three crossings you formed your  
11 opinion -- in forming your opinion?

12 A. To be clear, are you saying prior to --

13 Q. That's correct. Prior to your filing of  
14 your pre-filed -- your revised pre-filed testimony?

15 A. I believe ultimately I looked at some of  
16 that data after the filing of the testimony.

17 Q. Exhibit 13 that's now been admitted into  
18 evidence, on page 21, would you flip to that briefly,  
19 quickly?

20 A. Okay.

21 Q. And there's a table on that page, and below  
22 that table the author of the study stated, As shown  
23 in Table 2.6, there have been a total of two reported  
24 vehicle-train accidents at the Burlington Northern  
25 Santa Fe Hickox Road railroad crossing since 1975.

0563

1 Two accidents in a 31-year period (.06 accidents per  
2 year) is less than the average accident rate at  
3 railway crossings of .1 accidents per year.

4 Would you agree or disagree with that  
5 statement that was authored by Mr. Norris?

6 MR. SCARP: Your Honor, I would only object  
7 that this exceeds the scope of this witness'  
8 expertise. I think, as he's testified repeatedly, he  
9 reviewed the study, but that's the extent of his  
10 independent analysis. So we're going on with an  
11 expert here who's not the expert, but who will be  
12 here this afternoon.

13 MR. ROGERSON: Your Honor, the City is  
14 entitled to cross-examine an expert witness in terms  
15 of their scope and limited knowledge regarding the  
16 ultimate issue, which is public safety, and if the  
17 City is able to, with its cross-exam, illustrate that  
18 data which they had reviewed and did not rely on  
19 limits their scope of opinion, we're entitled to do  
20 that under cross-examination.

21 JUDGE TOREM: I agree with that statement,  
22 but I think, again, as I noted yesterday, some of the  
23 spirit of some of these objections is to keep the  
24 cross-examination questions for the appropriate  
25 witnesses.

0564

1                   So I'll overrule the objection, but I have  
2 some similar concerns and haven't voiced them myself  
3 yet as to where Mr. Norris' time could be better  
4 spent on some of these questions about the roadways,  
5 apparently. And with Mr. Peterson, he comes out and  
6 looks at railroad crossings, and I think his initial  
7 testimony said he usually gets involved after an  
8 accident at a crossing.

9                   So if I'm correct, Mr. Peterson, your  
10 expertise is what happens at the crossings  
11 themselves, not necessarily in the surrounding area?

12                   THE WITNESS: That's correct. And not only  
13 that, but really the interrelation of the train  
14 operation and the vehicle and the accident causation,  
15 if you will. And very specifically, the technical  
16 aspects of train operation.

17                   MR. ROGERSON: And Your Honor, this data  
18 relates directly to accident history at the Hickox  
19 crossing.

20                   JUDGE TOREM: Right. And I'm sure that the  
21 question itself got lost in the objection and the  
22 colloquy here. Can you again direct him to which  
23 exhibit and which table it is?

24                   MR. ROGERSON: Exhibit 13, page 21. The  
25 table is 2.6, and the traffic study indicates an

0565

1 accident history in a 31-year period.

2 THE WITNESS: Okay. I'm on that.

3 JUDGE TOREM: Now, Mr. Peterson, is that  
4 within your realm of expertise? It is dealing with  
5 accident data at crossings.

6 THE WITNESS: It relates to my expertise in  
7 that it -- like you say, it does relate to crossing  
8 causation, but ultimately, I don't get into the  
9 roadway analysis of saying, given an accident  
10 history, you know, what's the propensity for  
11 accidents at that location just because it is at that  
12 location, if you will.

13 I think the original question was did I  
14 agree with the statement that two accidents in 31  
15 years, does that work out to less than the average  
16 accident rate, and from a physical standpoint, that's  
17 absolutely true.

18 MR. ROGERSON: Was there a ruling on the  
19 objection?

20 JUDGE TOREM: Yes, I overruled the  
21 objection.

22 MR. ROGERSON: Okay.

23 JUDGE TOREM: I just wanted to, again, have  
24 you focus more in on his expertise. That's all. And  
25 I think he's able to answer it, but limited to what

0566

1 he knows generally about frequency, not his area.  
2 This particular statement, Mr. Peterson, you agreed  
3 with?

4 THE WITNESS: Yes.

5 Q. The scope of your opinion relates to a  
6 safety evaluation on crossings; correct?

7 A. I'd say yes, and specifically the  
8 interrelation of the train operation and motor  
9 vehicle traffic at the crossing.

10 Q. And if you could flip to that handbook, in  
11 the table of contents, I think it's -- in my copy,  
12 it's Roman numeral III.

13 A. Okay.

14 Q. And it has an assessment of crossing safety  
15 and operation as the third, I believe, chapter.

16 A. That's correct.

17 Q. And is this assessment something that is a  
18 recognized approach for a determination on crossing  
19 safety and operation of a particular crossing?

20 A. Yes, that forms the basis of the manner in  
21 which most states perform their crossing assessment.

22 Q. And it says collection of data -- collection  
23 and maintenance of data. Did you review any accident  
24 data regarding any of the crossings, Blackburn,  
25 Stackpole, Hickox?

0567

1           A.    I do recall at some point looking, and it  
2 may have just been online with the FRA database at --  
3 I guess really all three of them.

4           Q.    The FRA database, is that the database that  
5 compiles and maintains accident data for railroad  
6 crossings in the nation?

7           A.    For any reportable railroad  
8 accident/incident at -- or for a reportable grade  
9 crossing accident, yes.

10          Q.    I want to turn to Exhibit 103. Can you  
11 identify that exhibit?

12          A.    I don't think I have that one as the exhibit  
13 that you put together.

14          Q.    It's a separate exhibit. I apologize.

15          A.    Okay.

16          Q.    Can you identify that exhibit?

17          A.    This is a document that was generated from  
18 the FRA safety Web site, because I recognize the  
19 format. It's for Skagit County, the summary by  
20 calendar year from 1998 to 2007, of records in the  
21 FRA's accident/incident database.

22                The third page -- I'm sorry, the third page,  
23 then, is -- appears to split out the total number of  
24 accidents and incidents by the railroads which  
25 operate in Skagit County, which would be BNSF and

0568

1 AMTRAK.

2 Q. But did you review this data before forming  
3 your opinion and filing it with the Commission?

4 A. Not in this specific form, no.

5 Q. Okay. But format aside, the actual numbers,  
6 are you familiar with these numbers?

7 A. Again, in very general terms, yes.

8 Q. Okay. And the Federal Railroad  
9 Administration has, on the left side, under category,  
10 is there a category listed for highway rail  
11 incidents?

12 A. Yes.

13 Q. Now, under that category, is there a  
14 category listed for highway rail incident injuries?

15 A. Yes.

16 Q. And can you tell me, according to the  
17 Federal Railroad Administration, how many have been  
18 reported over the last decade?

19 A. There was one injury reported in 2006.

20 Q. Now, is there also a category listed for  
21 highway rail incident deaths?

22 A. Yes.

23 Q. And can you tell me, according to the  
24 Federal Railway Administration, how many have been  
25 reported over the last decade?

0569

1 A. There were no deaths reported.

2 Q. And is there a category listed for train  
3 accidents caused by the human factor?

4 A. Yes.

5 Q. And how many have been reported over the  
6 last decade?

7 A. There was one train accident reported as a  
8 human factor cause in 2003, and that was the sole  
9 human factor.

10 MR. ROGERSON: At this point, I'd move to  
11 admit Exhibit 103.

12 JUDGE TOREM: Any objection?

13 MR. SCARP: None.

14 JUDGE TOREM: Seeing none, Exhibit 103 is  
15 admitted.

16 Q. Back to our handbook, which guides us along  
17 the path of assessment of crossing safety, and that  
18 table of contents, under the same chapter in the  
19 subchapter B, under formula, it states, Hazard Index  
20 and U.S. Department of Transportation Accident  
21 Prevention Model.

22 Would you agree that -- well, first, do you  
23 recognize what those are?

24 A. Yeah.

25 Q. Okay. Would you agree that those are



0570

1 commonly used in an assessment of crossing safety and  
2 operation?

3 A. Yes, that's, in general, part of the  
4 methodology that most states use to evaluate  
5 crossings.

6 Q. I'm handing you what's been marked Exhibit  
7 102.

8 A. Okay.

9 Q. Can you identify what that document is?

10 A. It's entitled Web Accident Prediction  
11 System, Accident Prediction Report for Public  
12 At-Grade Highway Rail Crossings.

13 Q. And before your pre-filed testimony was  
14 submitted, were you able -- did you review such a  
15 report?

16 A. Not before the testimony was filed, no.

17 Q. What date is indicated on the report that  
18 that was produced?

19 A. This indicates that the data contained in  
20 the report is for Skagit County, Washington, and that  
21 was prepared on December 17th of 2007.

22 Q. And are you able to ascertain how far back  
23 the data goes for this report?

24 A. It would indicate that it would be a  
25 five-year period from 2002 to 2006.

0571

1 Q. Looking at the report, it contains on the  
2 left-hand side column a category marked rankings.  
3 Are you familiar with that term and what it means?

4 A. Yes.

5 Q. And isn't it true that these reports,  
6 pursuant to a U.S. Department of Transportation  
7 accident prediction model, have rankings which  
8 reflect an evaluation of safety in terms of accident  
9 prediction?

10 A. It's subject to so many limitations in its  
11 own disclaimer that it ranks them based on certain  
12 assumptions and certain data in terms of predicted  
13 collisions per year, but in terms of safety or saying  
14 which crossings are most dangerous, it specifically  
15 says it doesn't do that. So no, I don't agree with  
16 that.

17 Q. Okay. Can you look at page 55 of the  
18 handbook?

19 A. Okay.

20 Q. Under subsection two, it says the U.S.  
21 Department of Transportation Accident Prediction  
22 Model. I'd like to read you the first sentence of  
23 that paragraph: A prediction model is intended to  
24 predict in absolute terms the likelihood of a  
25 collision occurring over a given period of time given

0572

1 conditions at the crossing.

2 Do you agree or disagree with that statement  
3 regarding the nature of such a model?

4 A. I think that that document speaks for  
5 itself. That's what it said.

6 Q. Okay. And is this such a prediction model  
7 before you, under Exhibit 102?

8 A. Yes, it predicts collisions per year, based  
9 on certain information, which is precisely what this  
10 document says, based on certain conditions.

11 Q. Looking at the report, are you able to  
12 identify -- well, before that, let me back up. In  
13 terms of ranking, can you explain to us how the  
14 rankings work in terms of numerical value? And what  
15 I mean by that is if you receive a lower ranking,  
16 does it mean it's less likely that an accident is  
17 going to occur or more likely that an accident is  
18 going to occur?

19 A. The higher the ranking, it means that there  
20 would be a higher chance of a predicted collision or  
21 a higher number of predicted collisions per year at  
22 that specific crossing.

23 Q. In the scope of this report, how many  
24 crossings did it evaluate in terms of ranking?

25 MR. SCARP: You're talking about Exhibit

0573

1 102?

2 MR. ROGERSON: That's correct.

3 THE WITNESS: Looking at it now, I believe  
4 80, eight-zero crossings.

5 Q. And that is all the crossings in Skagit  
6 County; is that right?

7 A. That's all the ones that are reported to be  
8 in Skagit County, yeah.

9 Q. What ranking did the U.S. Department of  
10 Transportation accident prediction model give to  
11 Blackburn Road crossing?

12 A. Number 17.

13 Q. And what ranking did Stackpole Road crossing  
14 receive on this report?

15 A. Fourteen.

16 Q. And what ranking did Hickox Road crossing  
17 receive on this report?

18 A. Number 49.

19 Q. Okay. So is it fair to say that the U.S.  
20 Department of Transportation's accident or prediction  
21 model indicates, based on its formula, that the  
22 Hickox Road crossing, out of 80 crossings evaluated,  
23 is a safer crossing than Blackburn and Stackpole  
24 Road?

25 A. Could you repeat that?

0574

1           Q.    Sure.  Is it fair to say, according to the  
2  U.S. Department of Transportation's accident  
3  prediction model and its rankings, that -- and based  
4  on the formula that it uses, that the Hickox Road  
5  crossing is a safer crossing, receiving a lower  
6  ranking or a higher ranking than the Stackpole Road  
7  crossing and the Blackburn Road crossing?

8           A.    No, the document specifically says it  
9  doesn't relate safety or dangerousness, if you will,  
10 of a crossing; it relates to the number of predicted  
11 collisions based on the data that's input, which is  
12 wholly unrelated to the proposed configuration of the  
13 siding.

14                    So it doesn't in my mind relate at all to  
15 what these crossings will be like after modification,  
16 for starters, but secondly, it's based on -- the  
17 formula that they use and the information that was  
18 provided, the Hickox Road crossing would have the  
19 lowest number of predicted collisions per year.

20           Q.    Well, in terms of the existing conditions,  
21 as Hickox crossing stands now, the prediction model  
22 involving likelihood of collisions occurring over a  
23 given period of time, does it indicate whether or not  
24 Hickox Road crossing is more likely or less likely to  
25 have a collision than the other two crossings,

0575

1 Stackpole and Blackburn?

2 A. Based on the way the data was analyzed and  
3 the conditions as a basis for this report, not the  
4 future conditions --

5 Q. Right.

6 A. -- Hickox would have the lowest predicted  
7 number of collisions.

8 Q. And is it your opinion that the likelihood  
9 of a collision occurring over a given period of time  
10 is not a consideration in evaluating safety issues on  
11 a crossing?

12 A. No, I think that this can be a tool or part  
13 of an analysis made overall, but, again, the big  
14 issue here is when the data doesn't relate to the --  
15 how the crossings will be configured  
16 post-construction, I think it becomes essentially  
17 meaningless.

18 Q. So it's fair to say that your opinion is not  
19 dealing with existing conditions, but the conditions  
20 that would be created by the siding project?

21 A. Yes, because that's ultimately how the  
22 operation will be related to the configuration  
23 post-change, not pre-change, or pre-construction.

24 Q. You've seen the prediction model and the  
25 rankings. As it exists today at the three crossings,

0576

1 in your opinion, what is the safest crossing?

2 A. Based on Exhibit 102?

3 Q. The prediction model, yeah. Yeah.

4 A. I really don't think I can answer that  
5 simply based on just Exhibit 102. The prediction  
6 model is a component of an analysis; it's not the end  
7 all, be all. It's just based on the data that was  
8 input, it's ranking them by predicted number of  
9 collisions.

10 Q. Okay.

11 A. But I can't tell you just based on Exhibit  
12 --

13 Q. Sure. Well, let's discuss some of the other  
14 safety elements, then. When evaluating the safety of  
15 a crossing, when you're doing your physical  
16 evaluation, is it necessary to factor in whether or  
17 not there exists traffic control safety devices?

18 A. That's certainly a component of it.

19 Q. That includes signs, which are considered  
20 passive devices; is that right?

21 A. Well, there are a certain number of signs,  
22 both at the crossing, but also along the roadway,  
23 pavement markings.

24 Q. That's another passive --

25 A. That's correct.

0577

1 Q. -- traffic control device. That includes  
2 active devices, such as gates; right?

3 A. Correct, or any active protection.

4 Q. And would you agree that these devices are  
5 -- the purpose of these devices is to provide a  
6 warning or guidance and actually, in some cases,  
7 mandatory action for a driver?

8 A. Yes, they're traffic control devices.

9 Q. And those devices are intended to identify  
10 and direct attention to the location of a crossing so  
11 drivers and pedestrians can take appropriate action;  
12 is that right?

13 A. Some of the devices are designed to factor  
14 in to the indication to a motor vehicle operator that  
15 there is a crossing ahead on the approach phase of  
16 the operation, approach sight distance. Some of the  
17 devices, particular ones at the grade crossing  
18 itself, are involved in either passively or actively  
19 telling the driver that they must yield to a train  
20 when it's present.

21 Q. Direct attention; correct?

22 A. Sure.

23 Q. Identifies there's a crossing coming; is  
24 that right?

25 A. Some of them do. Some of them identify the



0578

1 actual location of a crossing.

2 Q. Okay, okay. But the existence of such  
3 devices tend to make a crossing more safe than less  
4 safe?

5 A. In very broad terms, yes. In absence of any  
6 notification in advance or at a crossing, the  
7 crossing simply just isn't as visible.

8 Q. So that would include signage?

9 A. Correct.

10 Q. Automatic gates?

11 A. It can.

12 Q. Bells when the train approaches and an  
13 audible warning?

14 A. Actually, protection at a crossing, even in  
15 its most basic lights form, will include bells, as  
16 well.

17 Q. And flashing lights, then, too; is that  
18 right?

19 A. That's certainly a possibility.

20 Q. So other than -- moving on from traffic  
21 control devices, road configuration. Is road  
22 configuration, the physical aspects of the highway  
23 approach, is that a factor that you consider when  
24 evaluating the safety of a crossing?

25 A. Yes.

0579

1 Q. And do you look at the approach to the  
2 highway from the highway to the crossing? Is that  
3 one of the things you look at when evaluating or  
4 assessing crossing safety in operation of a  
5 particular crossing?

6 A. That's one of the factors, yes.

7 Q. And is holding capacity a relevant  
8 characteristic to evaluation of the safety of a grade  
9 crossing?

10 A. That factors in. I'd say it really more  
11 specifically goes to factoring in the type of signage  
12 that needs to be provided, especially to larger  
13 vehicles for operation on either side of the crossing  
14 when they have a holding area issue.

15 Q. And does greater holding capacity make a  
16 crossing more or less safe?

17 A. The holding capacity by itself, in my mind,  
18 doesn't relate specifically to the safety of the  
19 crossing; it relates to how traffic needs to be  
20 directed relative to that crossing.

21 Q. But if you had a crossing which you were  
22 unable to divert traffic to or from for a -- given  
23 particular width of road or length of road, would  
24 greater holding capacity be a public safety advantage  
25 or disadvantage?

0580

1           A.    I'm not sure I understand your question.  
2    You're saying in the absence of any other roadways?  
3    We're talking one railroad track and one roadway?

4           Q.    One roadway without the ability to divert  
5    for a given length of road.  Would it be of greater  
6    advantage to have a greater holding capacity on that  
7    given length or less holding capacity?

8           A.    I don't think there's a direct comparison  
9    there, because, again, the amount of holding  
10   capacity, and specifically after a motor vehicle  
11   crosses the crossing before it reaches the next  
12   roadway, is specifically related to the type of  
13   warning and type of signage that the drivers need to  
14   be given before they occupy and cross the track.

15          Q.    You look at sight distance?

16          A.    That's a component, yes.

17          Q.    And how important is sight distance as a  
18   factor in evaluating the safety of a crossing?

19          A.    For passive grade crossings, the approach  
20   sight distance or essentially the notification motor  
21   vehicle drivers get of the location of the crossing  
22   is important and the -- what we call the clearing  
23   sight distance or the distance along the track in  
24   either direction when you're 15 to 50 feet from the  
25   near rail, generally, so that the driver may

0581

1 determine whether or not a train is closely  
2 approaching or if they may, as a motor vehicle  
3 driver, use the crossing are the two critical factors  
4 in a passive crossing.

5           In an active crossing, really, the approach  
6 sight distance is the most critical, again, providing  
7 notice to a driver that there is a crossing ahead.  
8 And in the case of active protection, then providing  
9 that active warning to the driver. At active  
10 crossings, quite frankly, the other sight distances  
11 become not nearly as meaningful because the active  
12 protection itself is what is providing the motor  
13 vehicle drivers the indication of whether or not a  
14 train is closely approaching.

15       Q. But in an event where there may be a  
16 mistaken reliance on that active warning, for  
17 example, when you have a siding track on a railroad  
18 and a second track, and a vehicle or a driver  
19 mistakes the stationary vehicle -- I'll get there --  
20 for a freight train as the train in which the warning  
21 gates are down, avoids the warning gates and goes  
22 through, in that situation, is sight distance a more  
23 important factor?

24       A. As it relates to the accident causation,  
25 yes, and specifically we're into the scenario which

0582

1 I've seen all too many times, where when a parked  
2 train is relatively close to a crossing, that often  
3 that is what causes a motorist to mistake that for  
4 being a reason that the signals are operating and  
5 then ignore and violate the law and pass the signals.

6 Q. So when you have two tracks, you want to not  
7 only have active warning gates, but you want to have  
8 a pretty good sight distance, as well; is that fair  
9 to say?

10 A. Well, I can't go with pretty good, because  
11 --

12 Q. Okay. Sorry about that.

13 A. -- pretty good is a subjective term. In  
14 general, though, BNSF, along with most railroads,  
15 uses a 250 to 300-foot distance that the train will  
16 be parked clear of or back from the crossing to  
17 provide, then, the ability for someone to see, then,  
18 on the opposite track.

19 Q. It's more important to have that sight  
20 distance when you have two tracks being used, for the  
21 reasons we just stated?

22 A. Well, if there's only the single track, then  
23 it's not an issue. But for multiple tracks, again,  
24 BNSF, along with all the other railroads, does this,  
25 will leave the train at a clearance point several

0583

1 hundred feet back from the crossing.

2 Q. What are some of the factors that would  
3 decrease sight distance? For example, would a  
4 crossing angle decrease your ability to have a -- to  
5 be able to see an approaching train?

6 A. The angle of the crossing doesn't change the  
7 available sight distance. It does influence, based  
8 on the motor vehicle driver's behavior, if you will,  
9 how much they turn their head and sometimes the  
10 vehicle itself as to how -- what angle at which they  
11 can see back from the vehicle itself, that changes  
12 what can happen inside the car, if you will. The  
13 sight distance itself from any given point is -- is  
14 the same.

15 Q. Okay. But the -- I'm trying to understand  
16 that. So if you're on an angle that's not 90 degree  
17 perhaps, it's an acute angle, is it your testimony  
18 that you're not able to -- there's going to be a  
19 blind spot?

20 A. There can be, depending on the person's  
21 condition, the driver's condition, and on the vehicle  
22 itself.

23 Q. So that's a hazard? That's a potential  
24 hazard?

25 A. It goes to how -- what someone can recognize

0584

1 at the crossing.

2 Q. How about when -- whether the crossing's at  
3 a different elevation than the approaching driver?  
4 Is that a factor to consider regarding the sight  
5 distance?

6 A. It factors in somewhat, but generally, when  
7 the -- especially when the track is elevated,  
8 anything that causes the train to be even higher, now  
9 15 feet above the driver's position, it's often even  
10 higher than that, but in terms of the motor vehicle's  
11 operation on the road, the grade on each side of the  
12 road can affect how they have to physically drive  
13 over the crossing.

14 JUDGE TOREM: Mr. Rogerson, we've used up a  
15 little over an hour of the hour and a quarter you  
16 requested. I'm trying to look where all these  
17 general questions of what-ifs are going.

18 MR. ROGERSON: Sure.

19 JUDGE TOREM: Is there going to be some  
20 direct application of these what-ifs to these three  
21 crossings that are in Skagit County?

22 MR. ROGERSON: Absolutely.

23 JUDGE TOREM: Okay.

24 Q. As it currently exists, the Hickox Road  
25 crossing, isn't it true that the Hickox crossing has

0585

1 active and automatic warning gates?

2 A. Yes.

3 Q. Isn't it true the lights begin to flash  
4 automatically when the train arrives?

5 A. Well, unless it's malfunctioning, they  
6 should start to operate at least 20 seconds before  
7 the train arrived.

8 Q. Isn't it true that bell sounds begin to ring  
9 when the train approaches?

10 A. Yes.

11 Q. As it currently exists, is Hickox railroad  
12 crossing a single-track crossing?

13 A. It is a single track.

14 Q. And are you aware of any sight distance  
15 obstructions along the Hickox Road crossing?

16 A. As it currently exists, the only thing you  
17 might be able to, and I believe I saw it referenced  
18 somewhere, is if you positioned yourself just on the  
19 east side of the track inline with the single  
20 bungalow that houses the crossing system, you would  
21 restrict your view to the north and the northeast --  
22 what they call the northeast quadrant of the  
23 crossing, but that's for a very limited time and  
24 you'd have to deliberately put yourself in that  
25 position.



0586

1           The building that's being built there in the  
2 northeast quadrant is ultimately going to restrict  
3 visibility.

4       Q.   The crossing is at right angles or  
5 perpendicular to the road?

6       A.   Very close to a right angle, yeah.

7       Q.   Is there an appreciable difference in  
8 elevation at grade between the crossing and the  
9 roadway?

10      A.   There are a number of feet of difference in  
11 elevation between the railroad right-of-way and the  
12 surrounding roadway and surrounding land, yes.

13      Q.   Is it appreciable, meaning is it a safety  
14 issue, in your opinion?

15      A.   I don't think it precludes someone from  
16 operating over the crossing safely, but it's the  
17 physical characteristic of the railroad there.

18      Q.   It has crossing bucks and signage?

19      A.   Yes, it's collocated with the lights and  
20 gates.

21      Q.   Stackpole, as it currently exists, does it  
22 have automatic warning gates?

23      A.   Not in its present configuration.

24      Q.   Does it have bell sounds?

25      A.   No.

0587

1 Q. Does it have flashing lights?

2 A. Not in its current configuration.

3 Q. Blackburn crossing as it currently exists,  
4 how many tracks are located at Blackburn crossing?

5 A. Two.

6 Q. How many roadway approaches exist at the  
7 Blackburn crossing?

8 A. I have trouble figuring out exactly which  
9 roads are which there, but I'd say there's at least  
10 two large roads there, but there are I think maybe a  
11 total of maybe eight in the surrounding area,  
12 depending on how you classify them.

13 Q. How many -- actually, how many roadways  
14 intersect the Blackburn crossing? To speed things  
15 along, in the interest of judicial economy, I'm  
16 showing you an overhead view of the Blackburn  
17 crossing. If you could review that overhead and see  
18 if that refreshes your recollection of your visit to  
19 the Blackburn crossing?

20 A. Sure. These are the two primary ones that I  
21 recalled, and Blackburn would be the Old Highway 99.

22 JUDGE TOREM: So for the record, we're  
23 looking at an overhead picture, I believe shows  
24 Second Avenue and Old Highway 99 coming together at  
25 the Blackburn Road crossing. It's at least two

0588

1 roadways intersecting two tracks.

2 Q. Can you describe to me the alignment of  
3 approach for those roads?

4 A. Well, in general, Blackburn crosses the two  
5 tracks at more or less a 90-degree angle, and then  
6 the Old 99, Second Street crosses at -- crosses at an  
7 angle.

8 Q. Are there any obstructions to sight distance  
9 for vehicles approaching the crossing east of  
10 Blackburn?

11 A. At what point?

12 Q. Sure. This is not to scale. However, if  
13 you look at the south side -- sorry, the north side  
14 of Blackburn, do you see trees as you approach the  
15 crossing?

16 A. From the east?

17 Q. Approaching it from the east going to west;  
18 correct.

19 A. I believe there is somewhat of a tree line  
20 in this area.

21 Q. Okay. I think --

22 A. And then back in here.

23 Q. Correct.

24 JUDGE TOREM: So that's in what would be  
25 labeled the northeast quadrant again, you're

0589

1 gesturing to?

2 THE WITNESS: Yes, sir.

3 Q. Right. Are there buildings there?

4 A. Yes.

5 MR. ROGERSON: Nothing further, Your Honor.

6 JUDGE TOREM: All right. Thank you, Mr.  
7 Rogerson. I think maybe we'll take a five-minute  
8 break, see if Mr. Thompson can distill what questions  
9 he still wants to ask, and we'll come back on the  
10 record in five minutes.

11 (Recess taken.)

12 JUDGE TOREM: Back on the record. It's now  
13 about 10:45. I'm going to ask Mr. Thompson to do his  
14 cross-examination at this point.

15 MR. THOMPSON: Are we back on the record?

16 JUDGE TOREM: We are.

17

18 C R O S S - E X A M I N A T I O N

19 BY MR. THOMPSON:

20 Q. Good morning, Mr. Peterson. I'm John  
21 Thompson. I'm the attorney for the Commission Staff  
22 here.

23 A. Okay. Good morning.

24 Q. I want to have you take a look at a couple  
25 of spots in your testimony, both the first round and

0590

1 then your rebuttal testimony, and then I'm going to  
2 ask you to kind of explain it further to me. If you  
3 could look first, do you have your pre-filed  
4 testimony, revised testimony in front of you there?

5 A. I'm not a hundred percent sure I have the  
6 revised version. Is there an extra copy, just so I  
7 can make sure I'm -- okay.

8 JUDGE TOREM: For the record, this is  
9 Exhibit 5.

10 Q. Okay. Correct. And specifically, at line  
11 12 on that page -- oh, did I say page five?

12 A. No.

13 Q. Sorry about that.

14 A. That's all right.

15 Q. I was thinking it. If you turn to page five  
16 and then line 12, you say, Use of the alternative  
17 crossings makes all drivers much less likely to be at  
18 risk. I guess you're talking about after the  
19 proposed closure of Hickox Road crossing?

20 A. That's correct.

21 Q. Okay. And then, on your rebuttal testimony,  
22 if I could have you turn to that, specifically page  
23 seven, at line nine, when you say, Removing one whole  
24 crossing from the mix means that -- means that  
25 crossing cannot have any accidents; right?

0591

1 A. That's basically true, yeah.

2 Q. Okay. So what I want to talk to you about  
3 is what exactly the analysis is. It sounds like you  
4 were -- when you said these things, you were thinking  
5 about the relative safety of the three crossings that  
6 are at issue here, where you use the word safer or  
7 that drivers are going to be safe at the other  
8 crossings?

9 A. I would say, yes, it's talking about the  
10 fact that we're eliminating what I would characterize  
11 as the redundant crossing now from three, that is  
12 also in the middle of the siding track, where it  
13 would be blocked with regularity. So in that case,  
14 that's correct.

15 Q. Okay. Maybe the easy way to discuss this  
16 with you, I'm going to grab a dry erase in here and  
17 do some drawing on the white board over here, but I'm  
18 -- just kind of a hypothetical I want to set up and  
19 ask you about. Let's assume that we have our  
20 railroad tracks running along here and that we have  
21 one crossing in the middle and then two -- this is  
22 sort of like our Hickox crossing, and then we have a  
23 couple to either side, also grade crossings, and  
24 there's some connecting roads between the three.

25 Now, is there some way -- I mean, do you, in

0592

1 your line of work, look at any kind of numeric  
2 accident prediction?

3 A. I think, as I testified before, I don't  
4 really get into the roadway side as much, so the  
5 prediction models, such as Exhibit 102, aren't as  
6 much of a factor as -- I don't normally deal with  
7 those nearly as often as I do with the specifics of  
8 the grade crossing and how the train and motor  
9 vehicle relate in an accident causation.

10 Q. Okay. If the Commission -- well, let's  
11 assume there's a certain number of people who use the  
12 center crossing in the before scenario, before  
13 closure scenario. Isn't it generally true that if  
14 you're going to close off a crossing, then,  
15 particularly in this case, that those motorists are  
16 just going to be diverted to the alternative  
17 crossings as a means of getting across the railroad?

18 A. If they want to go to what's on the west  
19 side of the tracks, that would be correct in this  
20 case.

21 Q. Okay. And is it fair to -- I mean, in your  
22 mind, are you assigning some level of risk to each of  
23 these alternative crossings when you --

24 A. The bigger picture for me is the fact that  
25 the crossing in the middle, whether in your

0593

1 hypothetical or in the proposed changes here in Mt.  
2 Vernon, is the one that will basically bisect and go  
3 in the middle of the crossing, where the blocking  
4 scenario is far more likely than -- well, it is  
5 likely there, whereas it's not at either end. And  
6 thus, you know, what I'm really focusing on is the  
7 safety of that particular crossing.

8           Is there a risk associated with any of the  
9 grade crossings? Absolutely. On either side, they  
10 all -- you know, the characteristics of both the  
11 railroad and the roadway factor in to how the trains  
12 and motor vehicles interact there.

13       Q.   After a siding is constructed through the  
14 center crossing here, there's going to be a new  
15 hazard. Is that what you had in mind?

16       A.   There's a physical change to the crossing  
17 there, and so yes, there's an initial hazard of the  
18 crossing being blocked.

19       Q.   Okay. Of the crossing being blocked. Of a  
20 train being physically across the roadway?

21       A.   That's the primary scenario where you'll  
22 block the crossing, in that the crossing's being  
23 lengthened to somewhere in the neighborhood of 10,000  
24 usable feet to allow --

25           MR. SCARP: Do you mean siding?



0594

1           THE WITNESS: I'm sorry, the siding is being  
2 lengthened to somewhere in the neighborhood of 10,000  
3 feet, usable, to allow for the longer trains that  
4 BNSF and others are running, the ability to then meet  
5 and pass those trains or get them around each other  
6 and/or be able to put them somewhere and store them  
7 when they need to. So in my mind, that's the most  
8 common scenario.

9           The other, though, is that when a shorter  
10 train is in the siding, that you come up with a  
11 scenario of perhaps having it very close to the  
12 crossing in the middle and creating the problems we  
13 discussed earlier with someone mistaking active  
14 protection or the crossing signals at that crossing  
15 for the stationary train when, in fact, there's  
16 another train on the mainline track.

17         Q. Okay. So I think at one point in your  
18 testimony you said, you know, you would recommend  
19 closure of Hickox because there are safer alternative  
20 crossings available. Do you remember that?

21         A. Yes.

22         Q. Okay. If the Commission, you know, wants to  
23 understand what's behind that statement, is it -- I  
24 don't know if you want to look at it in numeric terms  
25 or, you know, propensity for accidents, something

0595

1 like that, but isn't it necessary or isn't it  
2 appropriate, let's say, to look at if you're a  
3 motorist who uses this crossing, now you're going to  
4 be diverted either to the north to Blackburn  
5 crossing, or south to the Stackpole crossing, you're  
6 going to confront a risk of collision at either of  
7 those crossings, as well; right?

8 A. Sure. Physically, there's some risk at any  
9 grade crossing.

10 Q. Okay. And let's assume that the risk --  
11 let's assume that the risk is close to or, you know,  
12 at least as great as the risk that would be  
13 confronted if the crossing remained open. Under that  
14 scenario, there wouldn't really be a gain in public  
15 safety from closing Hickox Road, would there?

16 A. I don't think the risks are the same when we  
17 now talk for Hickox in particular of the track  
18 configuration being different than it is now and  
19 setting up scenarios that we don't have at either  
20 end. Stackpole in particular, and my understanding  
21 from the petition is that it will receive an upgrade  
22 in the form of active protection, making it much like  
23 Hickox is currently, you know, will only have the  
24 single main track at that point. And so just on a  
25 crossing protection and track configuration level,

0596

1 that crossing I would say would have less risk than  
2 would Hickox, now being in the middle of the siding.  
3 Blackburn, in my opinion, number one, not only meets  
4 the requirements for the crossing, but it has the  
5 traffic signals interconnected with the active  
6 protection at the crossing itself, and thus provides  
7 as much with any controlled traffic intersection, the  
8 means to control motor vehicle traffic when a train  
9 is indeed going to be occupying that crossing.

10 Q. So you think that -- so it's your opinion  
11 that with improvements at Stackpole Road, putting in  
12 lights and gates there, that the motorist who is  
13 diverted to those other crossings is going to  
14 basically confront less danger at either of those  
15 crossings than at the Hickox crossing if it were to  
16 remain open?

17 A. And that assumes then, too, that there  
18 wasn't a train blocking Hickox even if it is there  
19 and open?

20 Q. Well, whatever you want to assume about the  
21 conditions after the siding's built.

22 A. Well, that's the problem I have with the  
23 hypothetical, though, because there are going to be  
24 many more times when the -- even if Hickox is left  
25 open, that it won't physically be open and usable

0597

1 because of a train being in the siding, whereas we're  
2 not going to have that situation with stationary  
3 trains at either end. So that's what makes it hard  
4 for me to compare directly.

5 Q. It sounds like there you're making some  
6 judgment about the usefulness of the road, though,  
7 because it's blocked part of the time; is that right?

8 A. Well, if we're comparing the ability to use  
9 the crossings, if the crossing isn't available, that  
10 means that -- that just makes it harder for me to  
11 compare.

12 Q. Okay. But it sounds -- in that case, you're  
13 not strictly looking at safety at the crossing;  
14 you're also looking a little bit I think at the  
15 usefulness of the road. Let's say after the siding  
16 is built, it's occupied quite a bit of the time and  
17 so, therefore, it's unavailable to people who want to  
18 drive across it; right?

19 A. I didn't analyze, nor, as I've testified, is  
20 my expertise the roadway design part of it. So I'm  
21 not looking at the usefulness of the road as I'm  
22 looking at really the interaction of the train and  
23 the motor vehicles at that crossing.

24 Q. Okay. But -- well, it sounded like you --  
25 did you look at any sort of accident prediction model

0598

1 or any kind of -- oh, do any kind of analysis to  
2 determine the relative safety of Stackpole and  
3 Blackburn to the Hickox crossing after the siding is  
4 built?

5 A. No, I didn't do any kind of modeling of the  
6 post-siding construction configuration.

7 Q. Okay. Again, in your rebuttal testimony, if  
8 you could look at page two, line 12. You said, I  
9 believe it is sufficient to close Hickox without  
10 upgrading either Stackpole or Blackburn.

11 You mentioned just a little bit ago that I  
12 guess the railroad plans to -- part of the plan is to  
13 upgrade Stackpole with lights and gates; isn't that  
14 right?

15 A. I guess I don't know for sure if it's the  
16 railroad or the railroad and the D.O.T. together, as  
17 part of the project, but my understanding is that  
18 upgraded protection at Stackpole is part of the  
19 project.

20 Q. Okay. When you said that, when you made  
21 that statement in your rebuttal testimony, had you --  
22 I gather you hadn't looked at the ranking according  
23 to predicted collisions in Exhibit 102?

24 A. That's correct.

25 Q. And now having seen that and having seen the

0599

1 -- where Stackpole stands at number 14 there in the  
2 ranking in Skagit County of crossings, does that give  
3 you any pause about whether it would be advisable to  
4 close Hickox without upgrading Stackpole?

5 A. Two parts to that. One, I don't think it's  
6 really relevant in that the project apparently  
7 includes upgrading the protection, so I don't think  
8 it directly relates. However, having seen all three  
9 crossings, and if now we really want to compare  
10 Hickox and Stackpole, Stackpole, in terms of the road  
11 configuration, the elevation change between the road  
12 and the railroad, and the available sight distances  
13 is, in my opinion, better than Hickox. There's less  
14 of a grade and all four quadrants are wide open, for  
15 want of a more technical term. And so I think that  
16 is a crossing which lends itself towards pretty easy  
17 use by the motor vehicle or motor vehicle-traveling  
18 public.

19 Q. But it is on a busy mainline, correct,  
20 Stackpole?

21 MR. SCARP: Sorry, I don't think he was  
22 finished with his answer, is all I was --

23 THE WITNESS: No, I was done.

24 MR. SCARP: I apologize.

25 Q. Stackpole crossing is on a pretty busy

0600

1 mainline track, is it not?

2 A. All three crossings are on the BNSF main  
3 track.

4 Q. Right. And at present, it only has a stop  
5 sign and crossbuck warning; right?

6 A. Correct. My understanding is that the  
7 project will upgrade to active protection.

8 Q. Okay. Page two, again, in your rebuttal  
9 testimony, line 22, again, I think you're talking  
10 about why you advise closing the Hickox crossing.  
11 You say, first and foremost, the Blackburn crossing  
12 meets all required safety standards for grade  
13 crossings.

14 Why is it that you say first and foremost?  
15 Are you saying basically if a crossing meets the  
16 standards, the state standards, that it's not  
17 appropriate to look at the relative safety if you're  
18 going to be diverting traffic -- diverting traffic to  
19 that crossing in the event of a closure?

20 A. Well, I guess I would say that, in relative  
21 terms, in my opinion, going to either Stackpole or  
22 Blackburn is safe, and part of the evidence of that  
23 in that particular opinion was the fact that even the  
24 -- Mr. Johnston, in his pre-filed testimony, clearly  
25 indicated that Blackburn meets the required safety

0601

1 standards. So that crossing, in my opinion, is safe.

2           Is it a larger crossing and different than  
3 the other two? Sure. But it has substantially  
4 upgraded and more signage and active protection to  
5 allow the motor vehicle public to deal with that.

6           Q. But the standards don't have to do with the  
7 level of protection, do they? In other words, the  
8 standards don't specify any particular level of  
9 protection at a crossing based on its  
10 characteristics?

11           A. I don't think I could ultimately agree with  
12 that, because part of the whole process that the  
13 state goes through with deciding how crossings are  
14 configured is to -- as part of the diagnostic process  
15 and both working with themselves and the railroad  
16 determine how the roadway and the railroad can  
17 essentially coexist at what is a controlled  
18 intersection.

19           And so again, Blackburn has different types  
20 of protection to account for the roadway design and  
21 the highway use that Stackpole and Hickox simply  
22 don't need.

23           Q. Right, but there are different -- you would  
24 agree that the -- among crossings that meet state  
25 standards, there are varying levels of risk?



0602

1           A.    I would say even, depending on how you want  
2 to analyze it, a risk at any given crossing will be  
3 somewhat different because each crossing is  
4 physically different.  I mean, there are different  
5 factors associated with every single crossing in the  
6 United States.

7           Q.    Right.  I want to talk a little bit about  
8 your statement about how you think that the traffic  
9 lights at the Blackburn crossing are actually a  
10 benefit to safety at that crossing.  Behind you is  
11 the aerial photo of that Blackburn crossing that you  
12 talked about earlier.  Could you just point out where  
13 the -- sort of what the traffic lights situation is  
14 and where the warning devices are on that aerial?

15          A.    It's a little hard for me to tell from the  
16 aerial, maybe it's because I'm so close, but in  
17 general, I think you have the cantilever structures  
18 that have the railroad crossing lights on them, and  
19 then -- I believe then, across the roadway, you have  
20 the traffic signals, or I guess the regular motor  
21 vehicle type traffic signals that would go along with  
22 it.  So we've got both standard traffic lights in  
23 advance of the tracks and then the cantilever  
24 structures with the normal railroad flashing light  
25 signals, as well.

0603

1 Q. Okay. You said on page three of your  
2 rebuttal, about line 14, you say lights and gates  
3 really become the icing on the cake when traffic  
4 signals are installed. It's very difficult to  
5 imagine a driver claiming I didn't know what that  
6 meant, because traffic signals are such a basic part  
7 of operating a motor vehicle.

8 Do you have any empirical evidence for that,  
9 for the statement that the existence of traffic  
10 lights at a crossing actually make it safer than it  
11 would otherwise be?

12 A. I'm looking for a section in the Rail  
13 Highway Grade Crossing Handbook.

14 Q. That's Exhibit 101?

15 A. Yes. I don't know that they really have  
16 data to support it in the handbook, but as an  
17 example, talking about maybe starting on page 130 or  
18 so, the use of pre-signals, where you'll often see  
19 traffic signals either collocated or located close to  
20 the normal active flashing signals on the entrance  
21 side of a grade crossing, serve to help -- it's  
22 interconnected with the railroad signals, sort of  
23 then to help make sure the people stop before  
24 entering the grade crossing.

25 Q. Okay. But that's not typically in a

0604

1 situation where there's actually a road intersection  
2 on top of the grade crossing, is it?

3 A. Pre-signals generally will function along  
4 with those. I mean, pre-signals are often located  
5 near a roadway that has traffic lights, plus the  
6 railroad kind of in the middle of it.

7 Q. I guess what I'm asking is how often do you  
8 see a roadway intersection that sits on top of an  
9 at-grade railroad crossing?

10 A. It's not as --

11 Q. Well, I'm sorry. Let me clarify that a  
12 little more. In other words, where you have a  
13 roadway intersection and then, on the same plane,  
14 there's also a set of railroad tracks running through  
15 that roadway intersection, like at Blackburn Road?

16 A. It's not nearly as common as having one road  
17 cross or intersect with the track, but it does  
18 happen, and in fact, on one of the railroads which I  
19 work for, we have that situation with a -- it's only  
20 one track, but one track going at an angle through  
21 what's otherwise a 90-degree roadway intersection.  
22 So it does happen.

23 In that case, there's flashing lights and  
24 there's traffic signals, because there's a normal  
25 function of the intersection itself, and then you

0605

1 have the additional component of having the railroad  
2 signals interconnected with the traffic signals for  
3 when a train is going to be occupying the crosswalk.

4 Q. Well, I guess I'll just cut to the chase on  
5 this. I mean, I understand your point about where  
6 drivers might be more apt to obey a railroad warning  
7 device and a regular traffic control device, but  
8 doesn't the fact that you also have an intersection  
9 on top of the crossing, doesn't that present its own  
10 set of problems from a safety standpoint? And what  
11 I'm thinking, in particular, is isn't there a  
12 potential for accidents occurring at a roadway  
13 intersection and also the potential for, you know,  
14 cars to become disabled on the tracks and to foul the  
15 tracks shortly before a train arrives without the  
16 ability to clear out of the way, out of harm's way?

17 A. That very situation happens at grade  
18 crossings where there's only one roadway involved  
19 quite frequently.

20 Q. Okay. I take your point there, but doesn't  
21 the likelihood of it occurring increase at a roadway  
22 intersection?

23 A. I guess I have trouble thinking that cars  
24 becoming disabled is dependent on the roadway design.

25 Q. My question is isn't there a greater

0606

1 likelihood of collisions between motor vehicles at an  
2 intersection, as opposed to just on a straight  
3 stretch of roadway?

4 A. I don't know what the data would say, but I  
5 would imagine, just from the physical layout of  
6 roadways, that you have more chances of that  
7 happening, certainly.

8 Q. It's a conflict point?

9 A. I guess the potential for a motor vehicle  
10 conflict would exist, yes.

11 Q. Okay. Could you take a look at what's  
12 pre-marked as Exhibit 105?

13 A. I don't know that I have that.

14 Q. Oh.

15 JUDGE TOREM: Mr. Peterson, this is a Staff  
16 data request that was made to the City, so it's the  
17 City's response, I believe, to Data Request Number  
18 Two.

19 Q. I can -- if it will work, I'll just come  
20 over and I'll show you my copy and stand over your  
21 shoulder while I --

22 A. Okay. I mean, is that the City's responses  
23 to UTC's first data requests?

24 JUDGE TOREM: That's correct. And if you  
25 direct your attention to Data Request Number Two,

0607

1 about a summary of traffic accidents at or near the  
2 Blackburn/Second Street/Old Highway 99 intersection  
3 that we're talking about, I think that's what Mr.  
4 Thompson wants to know.

5 THE WITNESS: Okay.

6 Q. Okay. This was designated ahead of time as  
7 a cross-examination exhibit for you. Did you have an  
8 opportunity to look at it?

9 A. Yes.

10 Q. Okay. And is this the -- do you examine  
11 this kind of information within your work?

12 A. Not typically, no. This police accident or  
13 the motor vehicle accident side of it is not my area.

14 Q. Okay. Were you able to look at that, at  
15 least, and see where -- among the -- well, there's a  
16 list after the -- starting on page five, that lists  
17 traffic accidents near the Blackburn crossing over a  
18 -- starting in 2004 through 2007.

19 A. I don't know that I had the whole list of  
20 those, but in general, I'm aware of what you're  
21 talking about.

22 Q. Okay. Well, maybe I'll save my questions on  
23 this for Mr. Norris, but if it could be shown that  
24 there had been a number of, you know, accidents with  
25 some regularity at the -- at the intersection of

0608

1 Blackburn and Old 99, where this grade crossing is  
2 located, would that cause you concern about the  
3 safety of that crossing?

4 A. Because it's not my area and I don't fully  
5 understand the way they report these accidents, I  
6 guess I wasn't even aware or can't say that accidents  
7 that may happen near that intersection are actually  
8 either related to the railroad or even on the  
9 railroad tracks. I mean, that's a pretty large  
10 intersection. So to the extent there's traffic  
11 hazards, I believe they're called, going on in that  
12 intersection, I don't think they necessarily relate  
13 to the safety of the crossing itself. They relate to  
14 the roadway.

15 Q. Okay. Well, to the extent that that list  
16 could be narrowed actually down to this particular  
17 intersection here, that is where the traffic  
18 traveling on Hickox and Old 99 actually meets --

19 A. You mean Blackburn and --

20 Q. Sorry, Blackburn and Old 99 actually meets,  
21 is that a concern for you about possibly fouling the  
22 tracks?

23 A. I really think that's more of a road design  
24 or roadway person or expert issue. I think I need to  
25 see an indication that whatever conflicts are

0609

1 occurring are actually occurring on the railroad  
2 track.

3 JUDGE TOREM: Mr. Peterson, would you simply  
4 agree that a collision could occur and leave a car on  
5 the tracks?

6 THE WITNESS: I certainly think it's  
7 possible.

8 MR. THOMPSON: Okay.

9 THE WITNESS: And if I could just finish,  
10 much as in the way that I've seen people get shoved  
11 into, just from behind, into regular grade crossings.  
12 I mean, you can have traffic-related incidents on a  
13 road related to a single track and single roadway  
14 grade crossing or someone pausing in traffic and  
15 those sorts of things. Those similar situations can  
16 occur on both. But yes, there's physically a  
17 possibility, because there's an intersection, of a  
18 conflict between two motor vehicles.

19 Q. Okay. And isn't it possible, too, though,  
20 you still have a possibility for gate running at the  
21 Blackburn -- this is moving on to another topic.  
22 Sorry, it wasn't a good transition. But one of the  
23 concerns I think that you raised about Hickox Road  
24 after the construction of the siding is that  
25 motorists sitting there at the closed gate would have



0610

1 his vision obscured by the train parked on the  
2 siding, would assume that that's the train that's  
3 triggering the warning devices and decide to drive  
4 around and be on their way and end up getting hit by  
5 a passing -- faster passing train on the mainline  
6 track; right? That's a concern with crossings at a  
7 siding?

8 A. That's correct.

9 Q. Okay. Doesn't that same risk exist here if,  
10 for example, a motorist sitting here at -- on  
11 Blackburn Road, having approached from the east,  
12 looks down here and sees a train sitting back say a  
13 hundred or 200 feet from the crossing on the siding  
14 here, assuming that that's the train that's  
15 triggering the warning devices, and decide to take  
16 their free right turn here onto Old 99 or South  
17 Second?

18 JUDGE TOREM: For the record, you're  
19 indicating a siding to the south of the track and  
20 street intersection and a stationary train on that  
21 siding; is that correct, Mr. Thompson?

22 MR. THOMPSON: Correct.

23 THE WITNESS: Are there exhibits showing  
24 pictures of the crossing warning configuration of  
25 Blackburn on that side from the ground level?

0611

1 Q. I think as exhibits to Mr. Johnston's  
2 testimony. I think there's a series of photos,  
3 starting at what's pre-marked as Exhibit 63, of the  
4 Blackburn crossing from the -- sort of the level of  
5 -- the street level.

6 A. Thank you. I guess I'll answer it this way.  
7 Again, it's getting beyond my expertise, into the  
8 motor vehicle expert side of things, but the issue I  
9 have is that, and this goes back to the fact that now  
10 we have the traffic signals interconnected to the  
11 railroad signals, and that is -- if I'm stopped going  
12 westbound on Blackburn in this case and I've gotten  
13 only a red light because the preemption signal from  
14 the railroad signals, and so I've got the red light  
15 and the railroad light going and railroad flashing  
16 lights going, I guess, number one, I probably  
17 wouldn't go in that situation even if I saw a train,  
18 anyway.

19 But that notwithstanding, here's where it's  
20 beyond my expertise to know what the law is, but I  
21 have a bigger concern based on where the stop sign  
22 requires you to stop back on red. I'm not sure that,  
23 given how large that intersection is, I wouldn't feel  
24 comfortable as a motorist even making a right turn on  
25 red at that location, because, to me -- again, beyond

0612

1 my expertise, but you're no longer in just a very  
2 simple two-road configuration. You've got two  
3 roadways, a large area between where this sign says  
4 you must stop on red and railroad tracks in the  
5 middle. So I don't -- to me, that's not a standard  
6 right turn on red configuration.

7 Q. Okay. But with gate running, I'm talking  
8 about people who are disregarding traffic control  
9 devices in any event; right?

10 A. Yes.

11 Q. Okay. And it is true that there's generally  
12 a -- right turns are allowed on red in Washington,  
13 unless there's an indication to the contrary?

14 MR. SCARP: I would just object, Your Honor.  
15 It's beyond this witness' expertise.

16 JUDGE TOREM: Mr. Thompson, is there a  
17 particular concession you're trying to get from this  
18 witness that we can rephrase the question to be more  
19 about the tracks and the crossing than about the  
20 traffic laws?

21 MR. THOMPSON: Well, if he's willing to  
22 concede that that's not something he considered  
23 because it's outside his expertise, I'm perfectly  
24 happy with that, too.

25 THE WITNESS: In terms of the actual

0613

1 application of the motor vehicle law and that side of  
2 it, I'm not an expert in that. I'm not an expert in  
3 that. But your question was that -- if the question  
4 is can you turn right on red there, I don't think, as  
5 a motor vehicle driver, I would make a right turn on  
6 red there, anyway.

7 JUDGE TOREM: Mr. Peterson, I think the  
8 question he's looking for is a driver desiring to  
9 make that red turn that's faced with a red light and  
10 the flashing warning signal and, to the south,  
11 several hundred feet back on the siding track, a  
12 freight car, and we already extended the hypothetical  
13 to assume the driver now believes the reason, not for  
14 the red light, but for the flashing red lights and  
15 any crossing gates in his way are caused by the  
16 stationary truck or stationary --

17 THE WITNESS: Train.

18 JUDGE TOREM: -- train on the tracks and not  
19 potentially a north or southbound 80-mile per hour  
20 AMTRAK passenger vehicle -- or train. Is it possible  
21 that this driver, that would be a lawbreaker, might  
22 disregard the gates and, despite your driving  
23 courtesies, venture into the intersection at such  
24 peril? Have we got all the hypothetical ifs in  
25 there?

0614

1           MR. THOMPSON: Yes, I think the speed of the  
2 train might have been overstated a bit, but --

3           JUDGE TOREM: By one mile an hour?

4           THE WITNESS: Is it possible that someone  
5 could make that determination and break the multiple  
6 laws? I think it is possible.

7           JUDGE TOREM: I think the question, are  
8 there fools on the highway?

9           THE WITNESS: I would certainly stipulate to  
10 that.

11          JUDGE TOREM: Okay. Your point is made, Mr.  
12 Thompson.

13          MR. THOMPSON: Very good, then.

14          Q. Moving on, then. You addressed in part of  
15 your rebuttal testimony whether you thought four-quad  
16 gates, four-quadrant gates would solve the safety  
17 concerns at Hickox arising because of the  
18 construction of the siding, and you basically say not  
19 necessarily. Can you explain why you say that?

20          A. The primary reason is that four-quadrant  
21 gates, in my opinion, and based on where I've seen  
22 them being installed in their relatively limited  
23 capacity thus far, is to help seal, if you will,  
24 higher speed corridors, where you're typically  
25 dealing with high-speed passenger trains. This is

0615

1 one of the ways, for example, that the railroad may  
2 operate trains over grade crossings at speeds higher  
3 than 79 miles an hour, is to go to the four-quadrant  
4 gates.

5           But, again, it's typically where you create  
6 something as, for example, North Carolina did with  
7 their sealed corridor for their passenger trains.  
8 You typically have the main track and a crossing  
9 coming across it and it's designed specifically to, I  
10 guess, go above and beyond in terms of protection  
11 with two-quadrant gates and keep people out in those  
12 high-speed corridors, where you're going to have a  
13 relatively fast approach of a very fast train occupy  
14 the crossing, then depart.

15           It is not, in my opinion, designed for  
16 situations where you're planning to have a siding and  
17 planning to have trains stationary for long periods  
18 of time.

19           So to me, you're talking high-speed  
20 corridor, coming down to seal the crossing for a very  
21 quick train movement, if you will, and then coming  
22 up, versus trying to now seal up a different  
23 configuration, where we're going to have not only the  
24 mix of higher-speed passenger trains and slower  
25 freight trains, but also trains either moving very

0616

1 slowly in the siding or blocking the siding for  
2 longer periods of time.

3 Q. But the purpose of the four-quadrant gate is  
4 to prevent gate running, basically, isn't it?

5 A. It's to help prevent that. They don't,  
6 necessarily, but --

7 Q. But that's generally the purpose, is that it  
8 seals off not only the lane that's directly in front  
9 of the driver, but also the oncoming lane, so it's  
10 less likely that the motorist is going to go through  
11 the gates?

12 A. Much as the Judge said, there are still  
13 fools on the road. There are some who will either --  
14 who go around gates regardless or, in the case of  
15 four-quadrant gates, can exploit the capabilities of  
16 the system, specifically the fact that the entry  
17 gates come down first, the normal gates, if you will,  
18 and then the exits go down. And in many systems with  
19 what's called vehicle presence detection, they'll  
20 only go down once vehicles have actually exited the  
21 crossing, in an attempt to allow anyone who is on the  
22 crossing to exit. I mean, someone who really wants  
23 to can exploit the system and still go around the  
24 gates in that case.

25 Q. But they can only do it as that exit gate is

0617

1 -- in the few seconds before that exit gate goes  
2 down, right, unless they just drive through and break  
3 the gate?

4 A. Which happens, as well.

5 Q. But isn't that true?

6 A. Yes, essentially working with the vehicle  
7 presence detection works with the beginning or the  
8 cycle of the gates coming down.

9 Q. So where you talk about the delay in the  
10 exit gate coming down, that would give them, what, a  
11 couple seconds opportunity? How long?

12 A. It depends on the system, I guess. I don't  
13 know what the standard number would be off the top of  
14 my head.

15 Q. But there's some clearance time, and then  
16 the exit gates come down, and so both the exit gates  
17 and the entrance gates are closed?

18 A. That's, in general, the way the system  
19 works, yes.

20 Q. Okay. Why do you say that the use of  
21 four-quadrant gates should be limited to high-speed  
22 corridors where the crossing is only occupied for a  
23 short period of time?

24 A. In my opinion, the real benefit of the  
25 four-quadrant gates, which also generally will



0618

1 include some sort of median barriers, as well, raised  
2 median barriers, which I saw in the studies, doesn't  
3 appear to be an option here because of the roadway  
4 design on Hickox, help when very high-speed, and  
5 again, usually above 80-mile-an-hour passenger trains  
6 approaching, you want to -- those help make sure, in  
7 my mind, that the crossing is sealed very quickly and  
8 remains sealed for the high-speed train to come by,  
9 and then they release like any normal crossing.

10 Q. How does it seal any more quickly than a  
11 regular two-quadrant gate? Doesn't it depend on the  
12 amount of time that you have the signals set for to  
13 -- in relation to when the train arrives at the gate?

14 A. Well, I think what helps in that case  
15 specifically is that anyone who is going to think  
16 about either going through the gates or how to defeat  
17 the gates or anything has -- you know, once the  
18 system comes down and does seal, they don't have that  
19 much time to think about it before the high-speed  
20 train then comes through and occupies the crossing  
21 and is then very quickly gone, as opposed to if the  
22 gates are down for hours because there's a train  
23 that's stuck in the siding with its crews out of time  
24 and they're having to replace the crew, you know, you  
25 have -- with all the time in the world to think about

0619

1 what to do at either, I don't think it really makes a  
2 difference.

3 Q. It seems like the only thing you could do,  
4 sitting there thinking about it, is to just actually  
5 break a gate driving through; isn't that right?  
6 That's the only way to get through a four-quadrant  
7 gate, assuming there's not a large shoulder or  
8 something?

9 A. Or start one gate up and get underneath it,  
10 which either of those things can be done if you're  
11 stationary at a two-quadrant crossing, or quite  
12 frankly, people run through the gate arms at  
13 two-quadrant crossings with pretty frequent  
14 regularity.

15 Q. Okay. Well, go back to the part where you  
16 said get under the gate. What were you talking about  
17 there?

18 A. If you had two people in the car, one person  
19 can -- those gates can be lifted up.

20 Q. Oh, okay.

21 A. And again, that's why I'm highlighting the  
22 difference between sealing it for immediate train  
23 movement versus a train sitting, in the case of a  
24 siding, potentially for many hours at one time.

25 MR. THOMPSON: Okay. I think I'm going to

0620

1 stop there. Thank you very much.

2 JUDGE TOREM: Mr. Scarp, any brief redirect?

3 MR. SCARP: I'm afraid I do, Your Honor, and  
4 I'll try to be very expeditious about it, but there  
5 were a few issues that I think need clarification.

6 As a preliminary matter, can I offer what we  
7 would like to be marked Exhibit 94, and these are --  
8 this is a data request to the WUTC from BNSF and a  
9 response dated December 7th, 2007.

10 JUDGE TOREM: Any objections to this data  
11 request, which apparently involves accident data  
12 maintained by the Commission at the Blackburn  
13 crossing since its most recent design, which we've  
14 been discussing? Any objections to this?

15 MR. ROGERSON: No objection.

16 MR. THOMPSON: No objection.

17 JUDGE TOREM: All right. 94 is marked and  
18 admitted.

19 MR. SCARP: Thank you, Your Honor.

20

21 R E D I R E C T E X A M I N A T I O N

22 BY MR. SCARP:

23 Q. Mr. Peterson, I don't want to make you any  
24 more of an expert on the Blackburn crossing than you  
25 had to become, but there are some questions I want to

0621

1 ask you, and I would like you -- do you still have  
2 Exhibit 102 in front of you?

3 A. Yes.

4 Q. And the portion of Exhibit 102 concerns what  
5 I think Mr. Rogerson was talking about, rankings,  
6 crossing rankings by predicted accidents per year?

7 A. I have that.

8 Q. You're on the same page? And I believe if I  
9 can just sort of lead you along, so we're on the same  
10 page, before I ask the question. Mt. Vernon  
11 Stackpole Road is listed at 14, Blackburn Road at 17,  
12 and misspelled Hickox Road is down there at Number  
13 49. Do you remember your testimony regarding that?

14 A. I do.

15 Q. All right. And if you look down, if you  
16 would, at Number 17, where it says Blackburn, and  
17 look across, after a series of five zeroes, it says  
18 number of collisions. Do you see that?

19 A. I do.

20 Q. Right next to that, it has a date, 1/87. If  
21 you look in that column up above that, it says, Date  
22 changed. Do you see that?

23 A. I do.

24 Q. Okay. I'd like you to look at Exhibit  
25 Number 94, which is BNSF's Data Request Number Two to

0622

1 the WUTC, which says, Please list the number of  
2 vehicle, motorcycle, bicycle, wheelchair, baby  
3 stroller, pedestrian, and all other types of  
4 accidents that have occurred at the Blackburn  
5 crossing since the Blackburn crossing's most recent  
6 design upgrade. Is that --

7 A. I don't have the 94.

8 Q. Oh, I'm so sorry. My apologies.

9 A. My eyes are good, but not that good.

10 Q. My apologies. The response is there have  
11 been none involving the railroad. And it goes on to  
12 say the City of Mt. Vernon provided a list of traffic  
13 accidents occurring at or near the intersection of  
14 Blackburn and South Second Street/Old Highway 99 in  
15 response to Staff Data Request Number Two. Note,  
16 please see Staff's response to BNSF Data Request  
17 Number 12 for an explanation of what the Staff  
18 understands to be the most recent upgrade to the  
19 Blackburn crossing, i.e., installation of traffic  
20 signals sometime after May 2003. Do you see that?

21 A. I do.

22 Q. It's your understanding that the ranking of  
23 Blackburn was in accordance with this predicted  
24 number of accidents per year based on the conditions  
25 in 1987?

0623

1           A.    That would be my understanding, that this  
2   study's based on the last change being in 1987, as  
3   opposed to 2003.

4           Q.    All right.  Would that affect your opinions  
5   with regard to how you see the predictions of  
6   accidents in the ranking if you were to factor in the  
7   traffic signals and gates and lights that were  
8   installed in 2003?

9           A.    Here again, it's not something I analyzed  
10  specifically, but I believe that, with the  
11  modification to the crossing, that would cause the  
12  predicted number of collisions to go down, so it  
13  would go down the list.  I just couldn't tell you how  
14  much.

15          Q.    All right.  And you see Stackpole there at  
16  Number 14.  Can you -- I think I heard you say  
17  something about it's got passive devices there now?

18          A.    That's correct.

19          Q.    Which means there's no active lights or  
20  gates or bells?

21          A.    Correct.  It has, if I recall correctly,  
22  crossbucks and a stop sign.

23          Q.    Right.  Now, based on the sight distance at  
24  that location, if there are active devices put in,  
25  how would you expect that to configure or compare

0624

1 with Hickox Road at Number 49?

2 A. Well, for starters, I certainly think the  
3 predicted number of collisions would go down  
4 substantially, given that it now had active  
5 protection, but as to Stackpole versus Hickox, given  
6 their configurations both with active protection, my  
7 opinion would be Stackpole would have even less  
8 predicted collisions than Hickox.

9 Q. I'd like you to -- you testified regarding  
10 Exhibit 103, and that's the Washington Skagit County  
11 summary by calendar year, a compilation by the FRA.  
12 Do you recall your testimony?

13 A. Yes.

14 Q. You were asked about the number of deaths in  
15 Skagit County at railroad crossings?

16 A. Correct.

17 Q. Do you have information that that statistic  
18 is no longer correct?

19 A. Yes.

20 Q. What is that information?

21 A. Well, specifically, there was a trespasser  
22 or pedestrian fatality in Stanwood yesterday with an  
23 AMTRAK train, but on the BNSF main track, actually at  
24 a location where there are three tracks, a main  
25 track, a siding/second main track, and an industrial

0625

1 track. And again, I don't know if the gentleman was  
2 killed or not. I think he was critical as of  
3 yesterday, but was struck by an AMTRAK train.

4 Q. All right. And you understood that to be at  
5 a crossing where there were three tracks?

6 A. That's correct.

7 JUDGE TOREM: Mr. Scarp?

8 THE WITNESS: And my understanding is with  
9 active protection.

10 JUDGE TOREM: I heard about this accident  
11 yesterday, as well, and in looking at Exhibit 102, I  
12 didn't see any Skagit County crossing that listed  
13 anything in Stanwood. And out of just curiosity, I  
14 wondered if either you or the witness could identify  
15 for me on Exhibit 102 what crossing that was, so I  
16 might have an idea what it --

17 MR. SCARP: Wrong county. My mistake. I  
18 forgot we were in -- we're so close that only the  
19 gentlemen at the front table here are smiling,  
20 knowing that Stanwood is over into Island County.  
21 That's why. So --

22 MR. JONES: Snohomish.

23 MR. SCARP: Snohomish. I'm sorry,  
24 Snohomish.

25 THE WITNESS: My apologies for being



0626

1 pejorative, too. I just knew it was 11 miles down  
2 the railroad, mile 55 versus 66 or so.

3 JUDGE TOREM: So the statistics you just  
4 referenced in 103 would not change, then?

5 MR. SCARP: My understanding. I stand  
6 corrected.

7 Q. Do you have Exhibit 105 in front of you, Mr.  
8 Peterson?

9 A. Which one was that?

10 Q. That is the City of Mt. Vernon's responses  
11 to the UTC's first data request.

12 A. Oh, yes, I do.

13 Q. All right.

14 A. Just not labeled.

15 Q. And you were asked about a -- by Mr.  
16 Thompson about a number in the back of that -- of  
17 that exhibit. It shows long lists of dates and  
18 addresses and things. Do you see all that? Do you  
19 know where those addresses are?

20 A. Not specifically, no.

21 Q. Do you know how far it is, for example, from  
22 2833 East Blackburn down to 422 East Blackburn?

23 A. No.

24 Q. Assume it to be somewhere in the  
25 neighborhood of 24 blocks, give or take?

0627

1           A.    That would seem right, but I didn't -- I  
2    don't --

3           Q.    So when you're asked to look at that list  
4    and explain how many of those are close or near to  
5    the grade crossing at Blackburn, are you able to  
6    distinguish from that list?

7           A.    I cannot, no.

8           Q.    All right.  But going back to Exhibit 94, it  
9    says there have been none at that crossing involving  
10   the railroad; is that right?

11          A.    That's correct.

12          Q.    Now, there is -- on the second page of -- or  
13   actually, the request is on the first page of Exhibit  
14   105, a summary of traffic accidents at or near the  
15   intersection of Blackburn for a three-year period  
16   ending September 30, 2007, and on the second page,  
17   there's a list, although not with dates, but over a  
18   three-year period, there appeared to have been a  
19   motor vehicle accident, a driving under the  
20   influence, and another motor vehicle accident,  
21   unknown injury.  Do you see those?

22          A.    There are a number of accidents like that,  
23   yeah.

24          Q.    All right.  Would you expect to see  
25   something like that at an intersection of that size

0628

1 over a three-year period?

2 A. Simply from a common sense standpoint, yes.

3 Q. All right. Now, I want to just back up a  
4 little bit. You were asked by Mr. Rogerson earlier  
5 in your examination here today on whether you  
6 performed any independent analysis and whether you  
7 considered or relied on certain documents.

8 I just want to get the record clear. Did  
9 you have in your possession and review the traffic  
10 study that was conducted, prepared by Mr. Norris?

11 A. That's the Exhibit 13 document?

12 Q. I believe that's correct.

13 A. Yes.

14 Q. Yes. All right. And did you feel that you  
15 had the expertise or the need to conduct some  
16 independent study and undertake some beyond what Mr.  
17 Norris had prepared?

18 A. No, really going beyond that's not my  
19 expertise.

20 Q. All right. Did you understand that trucks  
21 and the rerouting of traffic was part of the analysis  
22 that he conducted?

23 A. Yes.

24 Q. So when you're asked questions about where  
25 would those trucks go, did you have an understanding

0629

1 when you prepared your pre-filed testimony?

2 A. I would say yes, based on a review of that  
3 study.

4 Q. All right. Do you have Exhibit 101 in front  
5 of you still?

6 JUDGE TOREM: That's the FRA handbook.

7 THE WITNESS: Oh, yes, I do, then.

8 Q. I'm going to direct you to page 150.

9 A. Okay.

10 Q. You were asked questions about this document  
11 earlier, and I'd like to direct your attention to  
12 page 150, at the very bottom, the subparagraph -- or  
13 the paragraph under the letter D.

14 A. Okay.

15 Q. Would you read that, please?

16 A. Paragraph D says, An engineering study  
17 determines the crossings should be closed to  
18 vehicular and pedestrian traffic when railroad  
19 operations will occupy or block the crossing for  
20 extended periods of time on a routine basis and it is  
21 determined that it's not physically or economically  
22 feasible to construct a grade separation or shift the  
23 train operations to another location. Such locations  
24 would typically include, Roman numeral I, rail yards.

25 Q. What's number two?

0630

1           A.    Passing tracks primarily used for holding  
2   trains while waiting to meet or be passed by other  
3   trains.

4           Q.    All right.  That's really what I asked you.  
5   Is that your understanding of what the project of the  
6   Hickox siding involves?

7           A.    Yes.

8           Q.    And does that impact your opinions in this  
9   case, Mr. Peterson?

10          A.    I would say that it reinforces that, in my  
11   opinion, it makes the most sense to close Hickox,  
12   given that will now be in the middle of this siding.

13          Q.    All right.  Thank you.  I only have one  
14   question to ask you about this issue of sight  
15   distance.  I think your testimony was when you have  
16   passive devices, sight distance is more important for  
17   pedestrian or driver safety, as opposed to when there  
18   are active warning devices?

19          A.    That is correct.  The passive crossing, the  
20   motorist is having to rely on being able to look for  
21   the audible -- I'm sorry, look for the visual and  
22   hear the audible warnings that a train's required to  
23   emit.  At an active crossing, that notification, if  
24   you will, is provided by the warning signal.  So  
25   sight distance at an active crossing is really not

0631

1 very important.

2 Q. All right. And there was discussion about  
3 the change in elevation. This mainline track is at a  
4 raised level. In your experience, is that somewhat  
5 common?

6 A. It depends. I mean, my initial thought,  
7 having seen that area, is that the entire track is  
8 built on a fill, what I call fill, at least where the  
9 --

10 Q. Are you talking about the main line in  
11 question here that we're talking about down the  
12 street, Hickox?

13 A. Correct, main track is built up relative to  
14 the low lying areas are on what I call fill, and that  
15 the other areas around it appear to be largely  
16 agricultural related. It also just appears, based on  
17 the fact that there's the river on the other side of  
18 Dike Road and what appears to be a dike, I suppose,  
19 hence the name, that it almost appears to create a  
20 channeling between Dike Road and the railroad, then  
21 on over to I-5.

22 Q. All right. Have you ever seen, in your  
23 experience, when that type of raised elevation has  
24 been used for containing water?

25 A. Sure, there are fill areas that essentially

0632

1 help bound some sort of -- not necessarily body of  
2 water, but an area that would contain water, yeah.

3 Q. All right. In a -- you were asked questions  
4 -- and I'm going to move on from that. Mr. Thompson  
5 asked you questions about the relative safety of the  
6 three crossings, and I think you've answered that  
7 question with regard to the rankings.

8 As you consider the upgrades that were made  
9 to Blackburn in 2003, which are not reflected  
10 apparently in the rankings that you were asked to  
11 review before, and you consider the active  
12 signalization at Stackpole and you consider the use  
13 of the siding track for trains that would block  
14 Hickox Road or its intended use, I should say, do you  
15 have an opinion and can you just explain what that is  
16 with regard to overall safety?

17 A. In my opinion, based on the design of the  
18 siding and its intended use, which again is primarily  
19 to be able to meet and pass very long freight trains  
20 and/or store them when necessary, to me, the safest  
21 option is to close Hickox and upgrade, as my  
22 understanding is part of the petition, the protection  
23 at Stackpole to active protection, and basically the  
24 Blackburn crossing certainly as is is acceptable and  
25 Stackpole and Blackburn provide acceptable use for

0633

1 the motor vehicle public to cross over the BNSF main  
2 track.

3 Q. Thank you. Just -- if I may approach, Your  
4 Honor, and I don't want to beat this horse, but this  
5 is one of the first pages, and since it's  
6 highlighted, I'll just ask you about Exhibit 102, and  
7 that's a -- I think you referenced a preamble in your  
8 testimony, and I would ask that if you could, would  
9 you explain what it was that concerns you about the  
10 statistics? And if it helps to read that into the  
11 record, feel free.

12 A. Would you like me to read the highlighted?

13 Q. If you like.

14 A. Well, the highlighted portion reads that  
15 this computer model, which is the WBAPS model, does  
16 not rank crossings in terms of most to least  
17 dangerous. Use of the WBAPS data in this manner is  
18 incorrect and misleading.

19 It goes on two paragraphs later to say that  
20 erroneous, inaccurate, and non-current data will  
21 alter the accident prediction values, which I think  
22 I've covered on the fact that the data doesn't deal,  
23 number one, with the current configuration of  
24 Blackburn, nor does it deal with the proposed  
25 configuration.



0634

1           Finally, the other highlighted portion is it  
2 should also be noted that there are certain  
3 characteristics or factors which are not nor can be  
4 included in the WBAPS database. These include sight  
5 distance and a number of other items.

6           Q. Thank you, Mr. Peterson.

7           A. That's page two of Exhibit 102.

8           Q. I'm sorry, I did forget one thing, and that  
9 goes back to the Exhibit 101, the --

10          A. Grade Crossing Handbook.

11          Q. -- Grade Crossing Handbook. If you could  
12 turn to page 131. See the photo at the top of the  
13 page? It's figure 50, it says, Pre-signal mounted on  
14 railroad cantilever, Rawlins Road and State Route 83  
15 at Wisconsin Central, Round Lake, Illinois.

16          A. Yes.

17          Q. You were asked questions by Mr. Thompson if  
18 -- and I wanted you to offer -- have a chance to  
19 consider what the applicable source of the handbook  
20 said regarding whether pre-signals are meant for  
21 intersections involving two streets intersecting at  
22 railroad tracks. Can you describe, using that photo  
23 or anything else in that section?

24          A. Well, I think Figure 50 in particular does  
25 show an intersection in which there are two roadways

0635

1 intersecting at roughly a 90-degree angle, and then,  
2 in that particular case, the railroad track goes  
3 across one of the roads. But yes, that's an example  
4 of an intersection where you certainly have a -- I  
5 guess what I'll call a normal road intersection with  
6 the railroad track located not diagonally through the  
7 intersection as we have here, but definitely almost  
8 at the junction of those two roads.

9 Q. And is that an illustration of the  
10 pre-signals that you are referring to similar to  
11 those that are at Blackburn crossing? Talking about  
12 the placement of the pre-signals, I should say?

13 A. I would certainly say it's similar --

14 Q. All right.

15 A. -- to Blackburn. It is, because you've got  
16 both the pre-signal essentially located at or  
17 slightly ahead of the cantilever railroad signals  
18 plus what I guess I call normal traffic signals on  
19 the other side of the track and of the road signals.

20 MR. SCARP: Thank you. That's all I have.

21 JUDGE TOREM: Any limited recross within the  
22 scope of this redirect?

23 MR. ROGERSON: Yes, and it will be limited.

24 As a preliminary matter --

25 JUDGE TOREM: You want to offer Exhibit 102

0636

1 for admission at this point?

2 MR. ROGERSON: Right, we have not.

3 JUDGE TOREM: Any objections to that?

4 MR. SCARP: None, Your Honor.

5 JUDGE TOREM: Exhibit 102 is also admitted,  
6 then.

7

8 R E C R O S S - E X A M I N A T I O N

9 BY MR. ROGERSON:

10 Q. Mr. Peterson, Mr. Scarp had referred to the  
11 handbook, page 150, which you have read, Subsection  
12 D. I'd like to read for you the beginning of that,  
13 entitled Closure. Highway rail grade crossings  
14 should be considered for closure and vacated across  
15 the railroad right-of-way whenever one or more of the  
16 following apply: And then it lists D as that  
17 criteria which you just read. Is that a correct  
18 understanding?

19 A. Yes, that's one of a number of criteria that  
20 it lists.

21 Q. So it's a candidate for closure; is that  
22 right?

23 A. Yes.

24 Q. But it's not whether or not it shall be  
25 closed. There are other options; isn't that correct?

0637

1           A.    There are a number of alternatives for  
2 crossings besides simply closure, that's true.  Nor  
3 does the handbook have the authority to say what  
4 shall be done in any case.

5           Q.    But it is a treatise, if you will, that  
6 lends guidance to people on how to consider  
7 operational and safety issues; is that right?

8           A.    It's one of the tools that people who deal  
9 with rail highway grade crossings utilize, sure.

10          Q.    Can you flip to page 79 in that book?

11          A.    Okay.

12          Q.    In the last paragraph, on page 79, it states  
13 -- are you there?

14          A.    Mm-hmm.

15          Q.    Another important matter to consider in  
16 connection with crossing closures, access over the  
17 railroad by emergency vehicles, ambulance, fire  
18 trucks and police.  Crossings frequently utilized by  
19 emergency vehicles should not be closed.  On the  
20 contrary, these crossings should be candidates for  
21 grade separations and the installation of active  
22 traffic control devices.

23                    Did you consider the frequency of utilized  
24 by emergency vehicles along the crossing as a basis  
25 for your opinion for closure?

0638

1           A.    My expertise doesn't get into the area of  
2 necessarily looking at frequency or counts or  
3 anything like that, but I considered the overall  
4 layout of that area and then the location of the  
5 various emergency responders, sure.

6           Q.    Okay.  Mr. Scarp went back to Blackburn and  
7 the intersection and the changes that have been made  
8 since I believe 1987; is that right?  Do I have the  
9 date right?  Is it 1987?

10          A.    1987 and 1993.  I'm sorry, 2003.

11          Q.    And 2003.  Is it fair to state that one of  
12 the criteria that you've indicated in your pre-filed  
13 testimony is that this meets applicable safety  
14 standards or applicable safety standards, the  
15 Blackburn crossing?

16          A.    Yes.

17          Q.    What are those standards?  Where would one  
18 find those standards?

19          A.    On a state-by-state basis, in this case, for  
20 Washington, ultimately there are state regulations  
21 that deal with the crossing design.  This goes back  
22 to Mr. Johnston's testimony, who works for the state,  
23 that says they met those standards.  I can't list you  
24 the entire list for each individual state.  It's  
25 largely driven by the state.

0639

1 Q. You've had occasion to review Mr. Zeinz's  
2 testimony?

3 A. Yes.

4 Q. And his opinion regarding the alternative to  
5 closure, do those meet those standards? Quadrant  
6 gates and additional signage, I believe. Let me  
7 clarify. That would be for the Hickox Road.

8 A. Okay. You confused me, because I thought we  
9 were talking about Blackburn.

10 Q. My apologies.

11 A. Can you ask your question again, please?

12 Q. I'll rephrase. Mr. Zeinz's testimony  
13 includes a recommendation in lieu of closure to  
14 Hickox Road; is that right?

15 A. Are you speaking of the four-quadrant gates  
16 in particular?

17 Q. That would be one of the recommendations. I  
18 believe the other one was additional signage. Did  
19 the UTC's consultant tender an opinion that was in  
20 violation of the safety standards?

21 A. Are you referring to the signage?

22 Q. I'm referring to his entire recommendation  
23 on the Hickox Road, which includes quadrant gates and  
24 signage.

25 A. I didn't analyze whether that was a

0640

1 violation of any specific statute or Washington  
2 regulation. I don't believe that four-quadrant gates  
3 would be signage that isn't in accordance with the  
4 MUTCD, the Manual on Uniform Traffic Control Devices.  
5 I believe there's a process where that may be  
6 approved for use. The signage he proposes in  
7 particular is not a standard sign, but I think  
8 there's ways to deal with that, but, again, that's  
9 beyond my area of expertise.

10 Q. I'm unclear on your answer. Does Mr.  
11 Zeinz's recommendation satisfy the safety standards  
12 of the Hickox Road crossing?

13 A. To the extent that I analyzed it, I'm not  
14 aware that it doesn't.

15 MR. ROGERSON: Okay. Nothing further, Your  
16 Honor.

17 MR. THOMPSON: I just have two follow-up  
18 questions.

19

20 R E C R O S S - E X A M I N A T I O N

21 BY MR. THOMPSON:

22 Q. Looking at Exhibit Number 102 again, Mr.  
23 Scarp asked you about the -- on the line 17, where  
24 it's listing information for the Blackburn crossing?

25 A. Yes, sir.

0641

1 Q. He pointed out the date change for the type  
2 of warning device as being 1987; right?

3 A. Yes, sir.

4 Q. Does the -- do you know if this model takes  
5 into account the existence of a road intersection on  
6 top of a grade crossing?

7 A. I can't, because I haven't worked with that  
8 model myself, tell you specifically. It does say  
9 that it's based on, quote, basic data about a  
10 crossing's physical and operating characteristics,  
11 but it's dependent on how that's reported to FRA. So  
12 I think it's saying it takes the physical  
13 characteristics into account, but I don't have the  
14 expertise to tell you what level the data is reported  
15 or how much it knows about the precise geometry or  
16 anything.

17 Q. Okay. It could be just the fact that, you  
18 know, whether it has stop signs versus gates, for  
19 example?

20 A. I simply don't know enough to tell you one  
21 way or the other.

22 Q. Okay. Good enough. The second thing I  
23 wanted to ask you about was on page 131 of Exhibit  
24 101, the Grade Crossing Handbook. The Figure 50, the  
25 picture there, again, Mr. Scarp asked you about that,



0642

1 whether that was an example of a crossing where  
2 there's a highway intersection on top of the grade  
3 crossing. And just to clarify your answer, it really  
4 isn't, is it?

5 A. No. What I testified to is correct, the  
6 railroad track physically crosses one of the roads,  
7 and the other road -- and then the road intersects  
8 with the adjacent road very shortly thereafter.

9 Q. Okay. So it's --

10 A. It doesn't have like we have here, the road  
11 crossing through both at an angle.

12 Q. Right. And the purpose of a -- well, the  
13 purpose of pre-signal is to deal with the problem  
14 where motorists would be stopped at that more distant  
15 -- at the actual intersection and then queueing  
16 across the railroad crossing itself; right?

17 A. The general design of pre-signals is for  
18 that situation, yes.

19 Q. So it gives a second light behind the first  
20 light at the intersection to stop motorists at that  
21 point and to allow those that are actually stopped at  
22 the intersection itself to clear out before the train  
23 gets there; right?

24 A. Yes, they usually have the -- the signals  
25 are timed such that they allow for that escape from

0643

1 the crossing zone after the light behind it has  
2 already turned red; that's correct.

3 Q. Okay. And there really isn't a pre-signal  
4 situation here at Hickox; right?

5 A. We're really getting beyond my expertise in  
6 the actual signal and roadway design. I don't think  
7 it's the classic case where like we have here, where  
8 the railroad only crosses one of the roads, but the  
9 traffic signal placement and design is certainly very  
10 similar to the way pre-signals are laid out. But  
11 beyond that, I can't tell you much more about the  
12 actual signal design.

13 MR. THOMPSON: Okay. Thanks. That's all I  
14 have.

15 JUDGE TOREM: Mr. Thompson, did you want to  
16 offer Exhibit 105 for admission at this time?

17 MR. THOMPSON: I'm going to wait on that  
18 until Mr. Norris.

19 MR. SCARP: Your Honor, may I have brief  
20 follow-up?

21 JUDGE TOREM: Very brief. Two questions,  
22 all I'll give you.

23 MR. SCARP: All right.

24

25 R E D I R E C T E X A M I N A T I O N

0644

1 BY MR. SCARP:

2 Q. Mr. Peterson, you were asked by Mr. Rogerson  
3 about crossings that are frequently utilized by  
4 emergency vehicles, whether they should be closed.  
5 If I was to tell you that the fire district provided  
6 data responses that said there had been 12 emergency  
7 calls over a period of three years, would you  
8 consider that to be frequently utilized?

9 A. That doesn't seem like it to me, but, again,  
10 it starts to get beyond my area of expertise.

11 Q. All right. Second question is are you aware  
12 of a circumstance whereby that crossing could be  
13 closed as you've advised, but still allow certain  
14 types of emergency use?

15 A. I would say yes.

16 Q. Okay. Can you explain?

17 A. Well, I guess what would come to mind is  
18 there are certain -- not necessarily grade crossings,  
19 but areas that the railroad sometimes have where  
20 maintenance of way or the track workers can come in  
21 and out with the heavy equipment. It generally won't  
22 be a crossing per se, with the concrete and  
23 everything, but often like a wood crossing area that  
24 would have, then, gates on either side, but allow --  
25 you know, locked gates and allow for access of the

0645

1 railroad employees onto the railroad right of way  
2 when possible -- or I'm sorry, when necessary.

3 I suppose, given the fact that you still  
4 would have probably at least part of what's left of  
5 the approaches of Hickox Road if the crossing itself  
6 is removed and active protection is removed, you  
7 would have something like that, but on the chance of  
8 a flood, which I believe is a potential issue in this  
9 area, you know, have access to where the railroad, in  
10 conjunction with the local government, could open up  
11 to transport things through, as necessary. So I  
12 guess kind of a more infrequent use, much as the  
13 railroad sometimes uses their right-of-way.

14 MR. SCARP: That's all I have.

15 JUDGE TOREM: Thank you, Mr. Peterson.  
16 That's all the questions I'm going to allow them to  
17 ask you. It's now ten minutes after 12:00. You can  
18 step down.

19 THE WITNESS: Thank you.

20 JUDGE TOREM: We had thought we were going  
21 to go to 12:30 this morning, and manage to have Mr.  
22 Peterson's testimony, as well as Mr. Gordon's and Ms.  
23 McIntyre's. Now, when we originally discussed this,  
24 December 20th, Mr. Peterson was going to testify on  
25 Monday, and he was a full hour longer in anticipation

0646

1 of Mr. McDonald, and we swapped them around. So  
2 that's part of what's causing our compression of time  
3 this morning into a less favorable situation, with  
4 the public hearing tonight, than we had originally  
5 planned. So it's not necessarily that attorneys are  
6 taking longer than they had predicted; simply that  
7 this witness is being shoehorned into a somewhat  
8 smaller size slot.

9           What I propose to do is take a lunch break  
10 until 12:50. It gives you 40 minutes, double what we  
11 had yesterday, for some of us, to come back. And at  
12 12:50, you can tell me whether you want to start with  
13 Mr. Gordon, Ms. McIntyre, or Mr. Norris. I'd advise  
14 that the City and Commission cross-examining  
15 attorneys could make the recommendation as to who's  
16 most important and that if there are travel  
17 restrictions on any of those witnesses unable to stay  
18 over tonight, those be factored in, as well. And  
19 then let me know which witness we'll take at 12:50,  
20 and we'll go back on the record.

21           I'm hoping that we can focus the questions  
22 in. The foundation's been laid for the opponents'  
23 testimony for much of what we've already done, and we  
24 can probably, as you said, Mr. Thompson, cut to the  
25 chase for both your questions and the City's, the

0647

1 Farm's, and the County's questions faster, so we can  
2 compress this and still be done in reasonable time to  
3 have a dinner break for -- and still get all these  
4 witnesses in and have the public hearing start at  
5 5:30.

6 We had said this room is going to get  
7 reorganized starting at 4:00. That will go on  
8 regardless, so folks sitting in the back will be  
9 disrupted at 4:00 when they come pull those tables  
10 out from under you and start substituting chairs. So  
11 be aware of that if you're coming back this  
12 afternoon. You'll get your seat back, but you'll  
13 lose your table at 4:00. My hope is that we won't go  
14 much past 5:00, give us a half-hour break, but we're  
15 having a public hearing at 5:30. If that means we  
16 run the hearing till 5:28, bring a sandwich. We're  
17 adjourned till 12:50.

18 (Lunch recess taken.)

19 JUDGE TOREM: All right. So about five  
20 minutes to 1:00, we're back on the record. And Ms.  
21 Megan McIntyre is going to be the first witness this  
22 afternoon. She's in the witness stand. Let me swear  
23 you in, Ms. McIntyre, if you'll stand and raise your  
24 right hand?

25 Whereupon,

0648

1 MEGAN McINTYRE,  
2 having been first duly sworn, was called as a witness  
3 herein and was examined and testified as follows:

4 JUDGE TOREM: Thank you. Mr. Scarp, a few  
5 introductory questions.

6 MR. SCARP: Thank you, Your Honor.

7

8 D I R E C T E X A M I N A T I O N

9 BY MR. SCARP:

10 Q. Would you state your name, please, for the  
11 record?

12 A. Yes, I'm Megan McIntyre.

13 Q. And would you tell us your employer and your  
14 business address?

15 A. I work for BNSF Railway Company. The  
16 address is 2454 Occidental Avenue South, Suite 1-A.

17 Q. And what is your position at BNSF?

18 A. Manager, public projects.

19 Q. Ms. McIntyre, did you cause to be prepared  
20 and filed both pre-filed testimony of Megan McIntyre,  
21 which has been pre-marked as Exhibit 2, and also  
22 pre-filed rebuttal testimony of Megan McIntyre, which  
23 has been marked as Exhibit 3?

24 A. Yes.

25 JUDGE TOREM: Let me note, Mr. Scarp, that

0649

1 Exhibit 3 was revised.

2 MR. SCARP: Correct, Your Honor. I  
3 apologize if I omitted that word.

4 Q. Revised on December 14 of 2007?

5 A. Yes.

6 Q. All right. And if I were to ask you the  
7 questions set forth in those documents here today,  
8 would your answers be the same?

9 A. Yes.

10 Q. All right. And is the information set forth  
11 therein true and correct, to the best of your  
12 knowledge?

13 A. Yes, it is.

14 Q. All right. You also have in front of you  
15 copies of Exhibits 3 -- I think we've designated them  
16 MM -- oh, it's Exhibit 4.

17 JUDGE TOREM: These are Exhibit 4, but they  
18 were labeled as originally MM-3, was to be videos,  
19 and these are the photographic stills from those  
20 videos. MM-3(A) and MM-3(B) were previously  
21 admitted, and MM-3(C) remains to be. Lay a quick  
22 foundation and admit at this point.

23 Q. If you could look at the photographs, the  
24 third packet there does not show the locomotive cam.  
25 Those two are Exhibits 3(A) and 3(B), but the ones



0650

1 that show the -- yeah, that group right there that  
2 show all of the warning devices, signal bungalow, and  
3 all of that, do you see it?

4 A. Yes, I do.

5 Q. Are you familiar with the -- what's  
6 represented in those photographs?

7 A. Yes, I am.

8 Q. And can you explain briefly how you're  
9 familiar with that?

10 A. Before I was in Seattle, my current position  
11 as manager of public projects, I was in Southern  
12 California, in San Bernardino, is where our office  
13 was, and I was the manager of public projects for  
14 Southern California and Arizona. This specific  
15 crossing, I don't know exactly, may be ten miles  
16 north of where our office was, and I had been to this  
17 crossing, got out of my car, walked around, looked at  
18 it, and actually taken pictures myself of this  
19 crossing before.

20 Q. And that crossing is known as what?

21 A. Devore Road.

22 Q. The warning -- the signal warning devices  
23 that are represented in those photographs, are those  
24 -- do those accurately depict, as you recollect, the  
25 area?

0651

1           A.    Yes, there was a cantilever on the westbound  
2 lane, and then there were just the flashers and gates  
3 on the eastbound lane.  And then west and eastbound  
4 on the UP track, which was just east of the BNSF  
5 tracks, was also flashers and gates.

6           MR. SCARP:  All right.  Thank you.  Move to  
7 admit MM-3(C).

8           MR. ROGERSON:  Your Honor, I'll just raise  
9 the previous objection for the record.  This is not  
10 data relied on in forming her opinion, it's for  
11 illustrative purposes only, and does not constitute  
12 evidence under Evidence Rule 402 and should not go  
13 with the trier of fact as an evidentiary exhibit.

14           JUDGE TOREM:  Correct, and I'll just restate  
15 again that I recognize the difference between this as  
16 an illustrative exhibit and one that an expert  
17 witness may or may not have relied on.  It will be  
18 admitted, as were 3(A) and 3(B), and with the  
19 notation that I don't intend to rely on this other  
20 than for a demonstration of what types of crossing  
21 signals might be available for the railroads to use  
22 at various crossings.  So 3(C)'s admitted.

23           Let me ask very quickly, Ms. McIntyre, if  
24 this is the same crossing at which one of the prior  
25 set of photos or videos was also taken at this

0652

1 crossing, Devore, I believe it's 3(B)?

2 THE WITNESS: Yes, that is correct.

3 JUDGE TOREM: So at least for the attorneys  
4 that want to use this for illustration, 3(C) would  
5 just be still photos around and 3(B) would be still  
6 photos from an engine at which -- I think this was  
7 the one with a trailer that may have been impacted by  
8 the train coming down the track. So 3(B) and 3(C)  
9 are directly related, if that's correct. Ms.  
10 McIntyre, is it?

11 THE WITNESS: That is correct.

12 JUDGE TOREM: Mr. Scarp, any other  
13 foundational questions?

14 MR. SCARP: None, Your Honor. I'd only note  
15 for the record that in Mr. MacDonald's testimony, he  
16 discussed the phenomena, if you will, of a train that  
17 is coming down one track with cars coming around, so  
18 I'd reference that those were the ones in Ms.  
19 McIntyre's testimony regarding the types of signals.

20 JUDGE TOREM: Did you want to move admission  
21 of Exhibits 2 and 3 at this time, as well?

22 MR. SCARP: I did, Your Honor. Thank you.

23 JUDGE TOREM: Any objections?

24 MR. ROGERSON: I apologize. Are those the  
25 other photos?

0653

1           JUDGE TOREM: No, those are the pre-filed  
2 direct and the pre-filed revised rebuttal.

3           MR. ROGERSON: No objection.

4           JUDGE TOREM: All right. So 2 and 3 will  
5 also be admitted. And Exhibit 4, just to be clear,  
6 which included -- just to be confusing, 3(A), 3(B),  
7 and 3(C), is also admitted now for the limited  
8 purposes that I indicated.

9           Cross-exam. Mr. Rogerson, thank you. Mr.  
10 Rogerson, you had indicated perhaps 45 minutes for  
11 this witness initially, and Staff another 30.

12           MR. ROGERSON: And I will try to achieve  
13 within that time frame.

14

15                   C R O S S - E X A M I N A T I O N

16 BY MR. ROGERSON:

17       Q. Ms. McIntyre, you have previously submitted  
18 pre-filed testimony, revised pre-filed testimony,  
19 rebuttal testimony, and I want to try to characterize  
20 the general opinion. And that is, does that  
21 testimony reflect general concerns about vehicle  
22 drivers ignoring or evading crossing -- rail crossing  
23 warning equipment?

24       A. That's one of our concerns, yes.

25       Q. What other concerns do you have?

0654

1           A.    Ignoring the signs is one, and you're saying  
2 evading, I believe.  There's also issues of  
3 pedestrians in the area, not only automobiles.

4           JUDGE TOREM:  Ms. McIntyre, can you pull  
5 that microphone a little closer?

6           THE WITNESS:  Yes.  So you were saying,  
7 sorry, evading was one and ignoring was another one,  
8 and then also the pedestrian issue is another one  
9 that I don't think you mentioned.

10          Q.    So pedestrian issue, however, would be  
11 included in the category of ignoring and evading the  
12 rail crossing warning equipment?

13          A.    Yes, that is correct.

14          Q.    And that would include passive equipment;  
15 right?

16          A.    Passive equipment?

17          Q.    Passive warning equipment?

18          A.    Are you talking about Hickox Road  
19 specifically?

20          Q.    That's correct.  My understanding is your  
21 written testimony reflects general concerns on Hickox  
22 Road involving that issue?

23          A.    Well, Hickox Road doesn't have passive  
24 warning devices; it has active warning devices.

25          Q.    Are there no signs present at Hickox Road?

0655

1 A. The advanced warning signs, yes.

2 Q. Okay. Do you have any data that you've  
3 relied on of the likelihood of drivers ignoring or  
4 evading rail crossing warning equipment?

5 A. I use my general knowledge and expertise  
6 from my position dealing with rail crossing safety to  
7 make that assumption.

8 Q. So are you aware of any accident report  
9 filed in Skagit County for emergency response  
10 equipment at Hickox crossing where such an event has,  
11 in fact, occurred?

12 A. Is your question whether there was an  
13 accident with emergency equipment?

14 Q. Correct.

15 A. I'm sorry. So you're saying emergency  
16 equipment involved in a rail-auto accident?

17 Q. Let me rephrase. Are you aware of any  
18 accident report filed in which emergency vehicles  
19 evaded or ignored rail crossing warning equipment at  
20 Hickox crossing?

21 A. I'm not aware of anything like that, no.

22 Q. Are you aware of any accident report filed  
23 in which emergency vehicles evaded or ignored warning  
24 equipment anywhere in Skagit County?

25 A. I am not aware of any. That doesn't mean

0656

1 that it hasn't happened.

2 Q. But that's not the basis of your opinion; is  
3 that right?

4 A. That's correct.

5 Q. Are you aware of any accident report filed  
6 that indicates drivers have ignored or evaded rail  
7 crossing warning equipment within Skagit County?

8 A. In Skagit County, I'm not. I'm aware of it  
9 in other locations.

10 Q. Will you agree that if either a driver or  
11 pedestrian ignored crossing warning equipment, would  
12 that be considered a human factor in causing that  
13 accident?

14 A. For the most part, yes, it would probably  
15 be, but there are also something like an automobile  
16 breaking down on the crossing, so there's other  
17 factors that could be a non-human factor, and other  
18 things like maybe weather would be an issue, if there  
19 was dense fog or something. So there's other issues,  
20 other than human factor.

21 Q. Right. But in the event of an automobile  
22 breaking down, that is not an instance in where a  
23 driver ignored or evaded the rail crossing warning  
24 equipment?

25 A. Correct.

0657

1 Q. As it currently exists, Hickox crossing has  
2 signs posted on -- or, sorry, before that crossing;  
3 is that right?

4 A. I believe so, yes.

5 Q. And did you go to the site and visit Hickox  
6 crossing?

7 A. I've been to the site a few times.

8 Q. And do you know what those signs -- what the  
9 purpose of those signs are?

10 A. The standard MUTC sign is the black and  
11 yellow sign, black circle -- a black X with a yellow  
12 background.

13 Q. Is that what they call the crossbucks?

14 A. No, the crossbucks are the white that says  
15 railroad. The advanced warning, the MUTC sign, is  
16 the yellow and black sign.

17 Q. And what's the purpose of that sign?

18 A. That is to give an advanced warning before  
19 they get right up to the crossing, for purposes of,  
20 let's say, a dense fog or maybe if there's a curve in  
21 the road, which is not the case in this crossing, but  
22 sometimes there's a curve and they don't know that  
23 there's a crossing up ahead.

24 Q. And isn't it true that the Hickox railroad  
25 crossing also has arms or gates that will come down



0658

1 before a train would utilize that crossing?

2 A. Yes.

3 Q. And in fact, those warning gates begin to  
4 function when the train is no closer than 75 feet of  
5 the crossing; is that right?

6 A. I believe it's 20 seconds before the train  
7 enters the crossing is when the -- or I'm sorry,  
8 before the gates are down?

9 Q. When they begin to function?

10 A. Well, the flashing lights, if that's what  
11 you're referring to, I don't know the exact time at  
12 this crossing, but they start when the train's  
13 approaching. Let's say it's 20 seconds. I'm not  
14 sure if that's right for this specific location.

15 Q. What triggers those gates to begin the  
16 function?

17 A. There's a motion detection, let's say 500  
18 feet or so from the crossing, maybe a thousand feet,  
19 depending on the speed. This location, because  
20 AMTRAK's such a high speed, I don't know what the  
21 number would be, but when the train enters that  
22 circuit that's on the railroad tracks, it triggers.  
23 It also has a detection of how fast the train is  
24 going to let them know when it's going to enter the  
25 crossing so that the gates can be down -- I think

0659

1 it's ten seconds before the train actually enters the  
2 crossing.

3 Q. And those gates include flashing lights; is  
4 that right?

5 A. Yes.

6 Q. And there are bell sounds on those gates?

7 A. Yes, there are.

8 Q. And when a train is approaching the Hickox  
9 crossing, will it sound its whistle?

10 A. Yes.

11 Q. You have reviewed Mr. Zeinz's pre-filed  
12 testimony submitted by the WUTC; is that right?

13 A. Yes, I have.

14 Q. And Mr. Zeinz has recommended that, in the  
15 event the siding project is completed, that quadrant  
16 gates is an adequate safety measure in lieu of  
17 closing that crossing; is that right?

18 A. Yes.

19 Q. And he's also recommended that signage be  
20 included as a part of that recommendation; is that  
21 right?

22 A. I believe I read that, yes.

23 Q. And does the MUTCD have examples of signage  
24 for multiple tracks with collision experience?

25 A. I actually don't recall if the MUTCD does

0660

1 have that in their manual.

2 JUDGE TOREM: Mr. Rogerson, are you saying  
3 with collision experience or collision avoidance?

4 MR. ROGERSON: I'm saying that there is  
5 signage that's been identified by the MUTCD, and the  
6 criteria for that signage would be a multiple track  
7 with previous collision experience.

8 JUDGE TOREM: Okay. So this would be a sign  
9 used, by your definition, only when a particular  
10 crossing of a highway by a railroad has had a  
11 previous collision?

12 MR. ROGERSON: That would be a criteria  
13 recommended by the MUTCD for a reason to provide such  
14 a sign; correct.

15 JUDGE TOREM: Okay.

16 Q. Can you look at Exhibit 101 within that  
17 binder and flip to page 84?

18 JUDGE TOREM: This is in the FRA handbook  
19 we've been --

20 MR. ROGERSON: That's correct.

21 JUDGE TOREM: Previously marked and admitted  
22 as 101.

23 MR. ROGERSON: That's correct, Your Honor.  
24 Page 84.

25 JUDGE TOREM: That has Figure 11 with

0661

1 typical crossing signs?

2 Q. Right. And in there, there's Figure 11, as  
3 the Judge has indicated, with typical crossing signs.  
4 And one such sign has been identified in there as  
5 R-15-8?

6 A. That says look both ways.

7 Q. Yeah. And if you look at the Table 35, it  
8 says, Under application or indication of need,  
9 there's three grounds for such: Multiple tracks,  
10 collision experience, or pedestrian presence.

11 Would such a sign as that be a sign that  
12 could be applicable in an event where you have a  
13 siding track completed at Hickox crossing?

14 A. It is possible for it to be. I have never  
15 seen it in my experience. And I also, at many  
16 diagnostics meetings, I tend to recommend that too  
17 many signs can sometimes be confusing, so we always  
18 try to limit the number of advanced warning or  
19 warning signs at a crossing.

20 Q. You previously testified that the presence  
21 of the danger would largely present itself if a train  
22 partially blocks the crossing; is that right?

23 A. Yes.

24 Q. And that's only on occasion, if the siding  
25 track construction is completed; correct?

0662

1 A. Yes, that's correct.

2 Q. During events when the train will completely  
3 block the crossing, how likely is it that a driver  
4 would attempt to cross the crossing?

5 A. I can't really answer that question. I  
6 think that's kind of a broad question for any driver.  
7 It is possible. I guess I can answer it that way.

8 Q. How likely would it be?

9 A. I can't really answer that question.

10 Q. How often would a train block the crossing  
11 versus partially block the crossing if the siding  
12 track was to be completed and utilized?

13 A. I believe the purpose for the siding is for  
14 these longer trains, which is why we're extending the  
15 siding, for the average train lengths, which are  
16 longer than the existing siding length. So for the  
17 majority, I would say that it would be completely  
18 blocking the crossing. However, we do have shorter  
19 trains, such as AMTRAK or some of our other work  
20 trains that we have that are shorter, that could not  
21 completely block Hickox Road.

22 Q. The Hickox crossing as it currently exists,  
23 if a driver or pedestrian was to be in danger of  
24 being struck by a train, would you agree that that  
25 driver or pedestrian would either need to ignore or

0663

1 neglect the current signs posted?

2 A. I'd say the majority of cases, yes.

3 Q. And in the majority of cases, would he have  
4 to either ignore or neglect the gate arms coming  
5 down?

6 A. In the majority of cases, yes.

7 Q. And in the majority of cases, would he  
8 either have to ignore or neglect the flashing lights  
9 attached to the gates?

10 A. Yes, in the majority of cases.

11 Q. And would he have to either ignore or  
12 neglect the bell sounds?

13 A. Yes.

14 Q. And he would have to ignore or neglect the  
15 train sound, the whistle?

16 A. Yes.

17 Q. Your own personal observations?

18 A. Yes. Another case, other than ignoring or  
19 neglecting, would just obviously be to choose not to,  
20 which you may say ignoring would be the same thing,  
21 but I've had cases where they had the flashing lights  
22 in front of them, and you never know if they either  
23 choose to run through them or they just don't see  
24 them. Those cases also didn't have gates.

25 Q. And in the event the siding project is

0664

1 completed in the location where it's currently  
2 designed, the safety equipment that's currently in  
3 place at Hickox Road, other than the bell sounds,  
4 will continue to function in the event the train is  
5 partially blocked. Is that a fair statement?

6 A. That is correct. The flashing lights and  
7 gates will continue while the train is blocking the  
8 crossing.

9 Q. So isn't it true that a driver, pedestrian,  
10 to be in danger of being struck by a train, would  
11 have to ignore or neglect all of those items,  
12 excluding the bell sounds, in the event the siding  
13 track project has been -- is constructed?

14 A. That is correct.

15 Q. You previously testified you're highly  
16 involved with the siding project. Can you explain a  
17 little bit what that means?

18 A. Well, I started my current position in July  
19 of 2007, where the siding was already designed, and  
20 then started -- already started the petition process  
21 for the closure of Hickox Road. So I was not  
22 involved with the preliminary stages, but everything  
23 since July, I have been heavily involved, yes.

24 Q. And are you aware of the cost budget for  
25 this project?

0665

1           A.    I know there's a cost budget.  I don't know  
2 the details of it, no.

3           Q.    And were you involved in considering  
4 alternatives to closure of the crossing?

5           A.    No, that process had already started before  
6 I started my position.

7           Q.    Okay.  Are you aware of the alternatives  
8 that were considered?

9           A.    I am not aware.  From what my knowledge is,  
10 closure was basically their only goal for Hickox  
11 Road.

12          Q.    When you were brought on as a manager of  
13 this project, was there any consideration of  
14 relocation?

15          A.    Relocating the crossing; is that what you're  
16 asking?

17          Q.    That's correct, the siding project?

18          A.    Relocating the siding.  So instead of Mt.  
19 Vernon, somewhere else?  Is that what you're asking?

20          Q.    That's correct.

21          A.    My understanding is that this had been  
22 heavily studied as to where this siding -- this  
23 specific siding was supposed to be extended, and they  
24 looked at the train traffic and the routes and the  
25 times that AMTRAK and the BNSF trains passed, and



0666

1 this was the most logical, made the most sense to put  
2 it at this location.

3 Q. Would you consider train scheduling and  
4 timing operational issues?

5 A. Can you rephrase the question or restate the  
6 question?

7 Q. You previously testified that this was  
8 heavily studied and part of the criteria was the  
9 effects on train scheduling; is that right?

10 A. The scheduling is already in place, yes.

11 Q. And that new location may have an effect on  
12 train scheduling; is that correct?

13 A. No, the train scheduling would be the same,  
14 but it would affect the trains all over kind of this  
15 segment of the main line.

16 Q. Okay. And how would it affect those trains?

17 A. Well, right now, since there is no -- I  
18 would have to ask what the closest -- or look at my  
19 notes what the closest other siding that's this  
20 length. I believe the one to the south is the  
21 English siding, which is north of Marysville, and I'm  
22 not sure where the nearest long siding is to the  
23 north, but it leaves something like a 20-mile gap,  
24 where if there's a train that is too long to fit into  
25 any of these smaller sidings, such as Mt. Vernon,

0667

1 they would have to wait for a longer period of time  
2 for AMTRAK to go by, and then that kind of backs up  
3 and backs up and backs up with other trains.

4 Q. Will this siding, to the best of your  
5 knowledge, be used only for trains to -- freight  
6 trains to pull into the siding to allow for AMTRAK  
7 passenger trains to surpass them?

8 A. That's the main purpose, but there's also a  
9 chance that they may store cars on it. I believe the  
10 only purpose is for passing trains, which is why  
11 they're extending it, they use shorter sidings right  
12 now for storage purposes.

13 Q. Would the siding track also be used to allow  
14 a freight train to surpass another freight train?

15 A. Yes.

16 Q. And in fact, the siding's length considers  
17 that as a distinct benefit; is that right?

18 A. Yes.

19 Q. And that's a benefit to Burlington Northern  
20 Santa Fe?

21 A. That the freight train is passing another  
22 freight train, yes, that would be a benefit to BNSF.

23 Q. You would be able to operate more  
24 efficiently, then, in that regard?

25 A. That is correct, yes.

0668

1 Q. And to the best of your knowledge, how many  
2 siding tracks exist in the state that have the length  
3 that is proposed for the siding track project?

4 A. I'd have to look at my notes for that.

5 Q. If you can look at your notes?

6 A. Okay. Looks to be 61.

7 Q. And what's the length of the siding that's  
8 proposed?

9 A. The proposed siding, I don't have that right  
10 in front of me, actually. I believe -- gosh, I don't  
11 know. I'd really have to look. I don't have it in  
12 front of me. I'll --

13 JUDGE TOREM: Mr. Rogerson, are you asking  
14 about the length of the proposed siding after  
15 extension?

16 MR. ROGERSON: That's correct.

17 JUDGE TOREM: And I think she has that in  
18 her pre-filed testimony.

19 Q. If you can refer to --

20 JUDGE TOREM: Page two, question five.

21 Q. -- page two, lines 18 through 26, I believe.

22 A. I don't think I have my pre-filed testimony.

23 JUDGE TOREM: You will shortly.

24 THE WITNESS: Okay. Was the question the  
25 length of the future siding?

0669

1 Q. What's the length if the project is  
2 completed, the extension project?

3 A. Well, the entire length, from switch point  
4 to switch point, is 12,726 feet.

5 Q. And on that line, the main line, where is  
6 the nearest siding project that would be of similar  
7 length that would be able to accommodate any size of  
8 train?

9 A. The nearest to the south is 20 miles, and  
10 the nearest to north is 12 miles.

11 Q. Ms. McIntyre, did you provide a resume or  
12 curriculum vitae with your pre-filed testimony?

13 A. Actually, I'm not sure if I did or not.

14 Q. Are you aware of any exhibits admitted into  
15 evidence or offered into evidence that includes your  
16 resume or curriculum vitae?

17 A. I am not aware of any, no.

18 Q. Are you aware of referring to any resume or  
19 curriculum vitae within your pre-filed testimony?

20 A. I don't believe that I did, no, but I'm not  
21 sure.

22 Q. Are you an engineer?

23 A. Yes, I have an engineering degree.

24 Q. Okay. And degree's in specifically general  
25 engineering?

0670

1           A.    Specifically architectural engineering,  
2    which is a division of civil engineering.

3           MR. ROGERSON:   Okay.  Nothing further at  
4    this time.

5           JUDGE TOREM:   Okay.  Commission cross.

6

7                       C R O S S - E X A M I N A T I O N

8    BY MR. THOMPSON:

9           Q.    Good afternoon, Ms. McIntyre.  I'm John  
10   Thompson.  I think we met before.

11          A.    Yes.

12          Q.    I just have a couple questions, and I hope  
13   this will only take about five or ten minutes.

14          A.    Okay.

15          Q.    On -- I guess you do have your pre-filed  
16   testimony there in front of you now?

17          A.    Yes, I do.

18          Q.    Not the rebuttal, but the first one is what  
19   I'm interested in.  At page seven, about line 11, you  
20   say, Further, if the crossing remains open and trains  
21   are parked or even split, pedestrians may be tempted  
22   to walk under, over, near and around the trains.  
23   This can have fatal consequences if the engineer  
24   can't see the trespasser.  Removing the crossing  
25   discourages people from walking under, over and

0671

1 around trains.

2           Maybe to help, I wanted to ask what you  
3 thought about the likelihood of use of this crossing  
4 currently. I'm just going to go over here and point  
5 your attention to the large overhead that shows sort  
6 of the three relevant crossings here. But do you  
7 think that the Hickox crossing is an area that's used  
8 commonly by pedestrians now?

9           A. It's probably unlikely that it has a high  
10 count of pedestrians. However, one of the visits I  
11 went there, I think mid-December, and I did see  
12 someone walking down the street.

13          Q. Okay. But isn't it right that there's about  
14 nine residences, I think, here on Hickox Road?

15          A. I'm not sure how many there are, but, yeah,  
16 that sounds about right.

17          Q. Okay. Are there any, well, stores or  
18 services or something that people would -- that you  
19 think people would walk to from those residences?

20          A. Not directly east of there. They're  
21 basically northeast, so if they wanted -- the  
22 shortest route, I guess, from the homes on Hickox to  
23 town would probably be east and then up Old 99. So  
24 if they didn't have a car or they just weren't  
25 driving, yes, that would be their route.

0672

1 Q. But you wouldn't expect a lot of pedestrian  
2 use, would you?

3 A. I would not expect that, no.

4 Q. Okay. If people aren't prone to using that  
5 route now as a pedestrian route, what would prevent  
6 them from doing so after the crossing were closed?

7 A. It doesn't ever -- I hate to say prevent  
8 them from using it. You know, they could now cross  
9 the field anywhere; they wouldn't necessarily have to  
10 use the crossing. Since there's a road there now,  
11 the likely route would be, if they're walking down  
12 the road, they would keep walking.

13 Even if it was cul-de-sac, they can still  
14 use it, but it's kind of any deterrent that we see,  
15 as in making a very obvious barricade or something  
16 like a cul-de-sac, it's absolutely possible for them  
17 to use it, but we try to use any deterrent, as in  
18 closing the crossing, to have them not walk across  
19 that route.

20 Q. Okay. But you're not planning on fencing  
21 the right-of-way, for example?

22 A. I don't think we have that in our plans, no.

23 Q. Okay. Now, I just wanted to ask you  
24 something about your rebuttal testimony, so if you  
25 have that in front of you, and if you could turn to

0673

1 page two.

2 JUDGE TOREM: Give her just a minute to get  
3 that.

4 THE WITNESS: Just a second, please. You  
5 said page two?

6 Q. Page two of your revised rebuttal. Are you  
7 there?

8 A. Yes.

9 Q. Okay. And just at the top there, there's a  
10 question, Why do you disagree that four-quadrant  
11 gates should be installed instead of closing the  
12 Hickox crossing? And you say that the exit gates  
13 lower later than the entrance gates to allow traffic  
14 to clear the tracks, and motorists may still try to  
15 beat the gates by driving through the opposite lane's  
16 exit gate if there's no oncoming traffic.

17 That's the case with two-quadrant gates,  
18 too, isn't it?

19 A. That is correct.

20 Q. Okay. So at least four-quadrant gates have  
21 the advantage of -- you know, they're eventually,  
22 after the exit gate comes down, it provides at least  
23 that additional deterrent to people trying to drive  
24 around the gate once the gate has lowered?

25 A. Yes, that is the intention of the four-quad.



0674

1 It doesn't -- I wouldn't say it stops them from doing  
2 that, but that's the intention of the -- I guess the  
3 exit gates, you would say, but there's always that  
4 small time period where they can try to sneak around  
5 it.

6 Q. Okay. Do you know what that is? You talked  
7 about the constant warning, where there's a -- the  
8 gates begin to activate. And is it 20 seconds from  
9 when the gates begin to go down before the train is  
10 at the crossing?

11 A. There's a certain amount of time, and it's  
12 when the gates are completely lowered till the train  
13 enters, and I think it's ten seconds, but I don't  
14 know if that's exactly what it is.

15 Q. Okay. So -- well, but at that point, the  
16 ten seconds, that's the point which all four gates  
17 are lowered in the four-quadrant gate?

18 A. I believe so. But, again, I'm not  
19 completely sure if that's the exact amount of time.  
20 But there is a gap between when the exit gates go  
21 down. And I think the delay between the two-quad and  
22 then the exit gates depends on how big the crossing  
23 is, if it's two or three tracks, because it takes  
24 longer for cars to get across. So I think that's how  
25 they determine how long to go down.

0675

1 Q. Okay. And would a median barrier tend to  
2 address that problem of people driving around through  
3 the exit gate before it lowers?

4 A. A median barrier would probably improve the  
5 situation. I don't think it would fix it, but yes,  
6 it could be another improvement.

7 Q. Okay. Thanks. That's all I have for you.

8 A. Okay.

9 JUDGE TOREM: Redirect?

10 MR. SCARP: Briefly, Your Honor.

11

12 R E D I R E C T E X A M I N A T I O N

13 BY MR. SCARP:

14 Q. Ms. McIntyre, Mr. Thompson asked you  
15 questions about pedestrian traffic, and I'm not going  
16 to ask you to tell us what you don't know about the  
17 numbers of people, but how do you characterize  
18 bicyclists? Is that a motorist, is that a -- how do  
19 you characterize that?

20 A. Well, really, for different situations, you  
21 could probably characterize them differently. As far  
22 as railroad crossing, we tend to lump them together  
23 more often with pedestrians, because even though they  
24 go with the flow of the car traffic, they can get off  
25 their bike and kind of duck underneath the gates if

0676

1 they need to.

2 Q. How about -- have you ever seen instances  
3 where bicyclists have tried to cross parked or  
4 stopped trains and put their bikes over or between  
5 cars?

6 A. Yes, we do have some examples of that. I  
7 work in downtown Seattle, and there's a number of  
8 crossings there that have that happen very often.

9 Q. Do you consider that dangerous?

10 A. Absolutely, yes.

11 Q. All right. I want to ask you a couple  
12 questions, follow up on what Mr. Rogerson asked you.  
13 That has to do with the questions about drivers --  
14 although he mentioned pedestrians, as well -- but  
15 drivers who ignore warning signs. Do you remember  
16 those questions that he asked you?

17 A. Yes, I do.

18 Q. Okay. In your position, in what you try to  
19 design and do, is that a problem for railroads?

20 A. Can you say the entire question one more  
21 time?

22 Q. Is that a problem for the railroads,  
23 motorists who ignore warning devices and signs?

24 A. Yes, it happens quite often everywhere on  
25 the railroad. Not just locally in Washington, but,

0677

1    yeah, everywhere.

2           Q.    That was my follow-up question.  How big of  
3    a problem is that, and I'll put it to you for the  
4    things that you try to design and the things that  
5    concern you.  How big of a problem is people who  
6    evade or ignore warning devices or signals?

7           A.    It's a really big problem.  One of the parts  
8    of my job is what I've said, rail safety.  I go to a  
9    lot of these diagnostic meetings with members of the  
10   UTC, local and state agencies, to see how we can  
11   improve crossings, and something we always consider  
12   -- first of all, we always ask if the crossing can be  
13   closed, because that's always -- we feel the safest  
14   crossing is no crossing at all.

15                Secondly, we say is everything adequate  
16   that's here, the signalization, the traffic lanes,  
17   the signage.  And we don't always think of, Well, if  
18   every car stays in the lane they're supposed to, they  
19   stop at the stop bar where they're supposed to, we  
20   always think of kind of the worst case scenario,  
21   which is, you know, what if someone is really in a  
22   big hurry and they want to go around the gates, they  
23   don't really see the train coming.  So absolutely, at  
24   every diagnostic meeting we go to, we always think  
25   about that case.

0678

1 Q. Why do you think about the worst case  
2 scenario?

3 A. Because it happens a lot. You know,  
4 whatever you can think of the worst case being, where  
5 somebody drives around the gates or goes through the  
6 gate, breaks off the gate arm, those things have  
7 happened. Those things happen, you know, every day.

8 Q. All right. Ms. McIntyre, if -- you were  
9 also asked some questions about the siding project  
10 here. And if freight trains, especially longer ones,  
11 are able to meet and pass on this siding, you were  
12 asked by Mr. Rogerson if that would benefit BNSF. Do  
13 you recall that?

14 A. Yes, I do.

15 Q. If freight trains are able to meet and pass  
16 other freight trains, as well as AMTRAK trains, does  
17 that benefit the overall efficiency of the rail  
18 service?

19 A. Yes, it does.

20 Q. And does that benefit it within the entire  
21 division?

22 A. Yes, every aspect of the railroad, whether  
23 it's up here, you know, in Mt. Vernon, is going to  
24 affect Seattle, it's going to affect Vancouver, it  
25 could affect down to Vancouver, Washington, it could

0679

1 affect Spokane, because all of these lines are kind  
2 of intertwined.

3 Q. Ms. McIntyre, if the siding benefits the  
4 rail service, who benefits if those trains run  
5 efficiently?

6 A. Well, it's not only BNSF that is positively  
7 affected by it, but obviously AMTRAK's involved, and  
8 AMTRAK is represented by the state, but it's also --  
9 that's citizens of Mt. Vernon that go to the AMTRAK  
10 station and take the train down to Seattle or up to  
11 Vancouver, so it's everyone. And AMTRAK is actually  
12 our highest priority train, because they have a set  
13 schedule, and BNSF trains kind of work around their  
14 set schedule on a daily basis.

15 Q. That's all I have. Thank you.

16 A. All right. Thank you.

17 JUDGE TOREM: Any re-cross?

18 MR. ROGERSON: No re-cross.

19 MR. THOMPSON: No.

20 THE WITNESS: Thank you.

21

22 E X A M I N A T I O N

23 BY JUDGE TOREM:

24 Q. Ms. McIntyre, one question from my  
25 perspective. There was a question about a budget

0680

1 earlier?

2 A. Yes.

3 Q. And would four-quadrant gates, to your  
4 knowledge, installed at Hickox Road, if it was left  
5 open, be within the budget of this siding extension  
6 and upgrade project?

7 A. I know the four-quad gates are fairly  
8 expensive. I know it wasn't in the original  
9 estimate, obviously, because our original estimate  
10 was considering closure of Hickox, but I actually  
11 don't think I can answer that question, whether that  
12 could fit in the budget or not.

13 Q. Are four-quadrant gates essentially twice as  
14 expensive as two-quadrant gates, or is it more than  
15 that?

16 A. It's actually more expensive because of the  
17 motion detection that's involved. There's a motion  
18 detector in between the gates to make sure nobody  
19 gets trapped before the exit gates go down. So  
20 there's additional circuitry with that. And that's  
21 kind of very above and beyond what we do on a daily  
22 basis, because four-quads are not the norm, I guess  
23 you could say. So I know it's more than double what  
24 the normal two-quad gates would be.

25 Q. And just to follow this away from the

0681

1 four-quadrant gates to the best available technology  
2 for excluding motorized vehicles, bicyclists, or in  
3 some cases, even pedestrians from the tracks, I know  
4 your answer was the best crossing is no crossing for  
5 safety.

6           Aside from closing a crossing, what's the  
7 best available technology for excluding, first, motor  
8 vehicle traffic?

9           A. Really, it's the case-to-case basis. I  
10 would never make a general statement, because every  
11 crossing is different, you know, with the alignment  
12 of the street and the amount of traffic and kind of  
13 -- we're saying sight distance. It's just -- yeah,  
14 it's just really everything's different, so I  
15 wouldn't want to make a generalization about that.

16           Q. Well, I want you to make a generalization as  
17 to the most advanced technology that the railway has  
18 used anywhere in the country on a crossing somewhat  
19 like Hickox Road. One road, two tracks, pretty clear  
20 sight distances.

21           MR. SCARP: Your Honor, may I ask a  
22 clarification? Are you talking about a grade  
23 crossing, not a separation?

24           JUDGE TOREM: Yes.

25           THE WITNESS: At a grade crossing, they



0682

1 would have -- I would say cantilever signals, which  
2 is what they have at Blackburn, which is the ones  
3 that are overhead and on the side with gates. And  
4 I'm not a signal expert, but they would have the  
5 motion detection, where they could detect the speed  
6 of the train, and then, if there was a nearby  
7 intersection, they'd have the interconnection, which  
8 actually Blackburn has, that's the most high-tech, I  
9 guess.

10           And personally, I prefer medians over  
11 four-quad gates for a number of reasons. So in my  
12 opinion, Hickox, you know, I'd really -- medians, I  
13 know it's kind of gone back and forth, because of  
14 farm equipment and some other reasons, whether those  
15 would be appropriate, but medians with two-quad  
16 gates, for a number of reasons. Maintenance of the  
17 medians is a lot easier, you can make medians varied  
18 lengths and a lot of things. But, yeah, so I would  
19 say two-quads with all the high-tech signal apparatus  
20 and the medians.

21           Q. So in my work as a military reservist, I go  
22 on and off military bases all around. And since  
23 9/11, every single one just about has improved their  
24 entry and exit gates, and they have vehicle exclusion  
25 devices that pop up out of the road and do all kinds

0683

1 of things for preventing different issues. Has the  
2 railroad ever considered that -- what I assume is  
3 very expensive technology?

4 A. That is actually brand new, and it's not, in  
5 all these manuals, it's not in there yet.

6 Q. It's not mentioned at all?

7 A. Because it's so new, and they're actually  
8 testing it out right now, I believe in Michigan. But  
9 I'm not sure, somewhere Michigan, Wisconsin, in that  
10 area, maybe even Chicago, they're testing it out at a  
11 number of crossings. It's very new. And I think  
12 this is the first area that they've had it at a rail  
13 crossing. I've seen it presented at a lot of  
14 conferences that we go to, rail crossing conferences,  
15 so --

16 Q. So that answers my question. You're aware  
17 of that technology and railways are considering --

18 A. It's new and they're looking at it. They're  
19 not sure if, in the long run, it's going to be better  
20 or worse, but they are trying out some new things  
21 like that.

22 There's another new technology where they  
23 have actual blinking lights in the roadway, in the  
24 rail crossing itself, that are kind of blinking the  
25 road, just in addition to the other flashers, so --

0684

1 Q. Those are along the roadway?

2 A. They're actually in the crossing panels,  
3 like right along the rail.

4 Q. And there are some new crosswalks that have  
5 the same technology, I think?

6 A. Exactly, yes.

7 JUDGE TOREM: Do my questions about  
8 technology raise any direct or cross?

9 MR. SCARP: It does, actually.

10

11 R E D I R E C T E X A M I N A T I O N

12 BY MR. SCARP:

13 Q. And it may be somewhat speculative, but  
14 since the issue was raised, if you had barriers that  
15 were to pop up suddenly to exclude cars in a --  
16 something where there was -- like a situation going  
17 onto a military base, can you see a potential danger  
18 created by -- well, first of all, are you aware what  
19 happens if cars get caught on those or something  
20 happens?

21 A. Well, I would guess that if a car was on top  
22 of it and if they didn't have enough warning, that it  
23 would shoot the car up in the air. So I don't -- you  
24 know, I don't know enough about the technology, but I  
25 could see -- or even a pedestrian that's walking

0685

1 across it. You know, if there's not some kind of  
2 warning that tells you it's coming out of the ground,  
3 yeah, I could see some potential --

4 Q. I'm asking you if you can see or anticipate  
5 a problem that could be created by what happens or  
6 could happen to a car when a train is approaching on  
7 the track?

8 A. Yeah, definitely. Yeah, I don't think it's  
9 been tested enough for any of us to say it's a better  
10 choice, I guess, than what we have now.

11 MR. SCARP: Thank you.

12 JUDGE TOREM: Mr. Scarp, I was frankly  
13 surprised to see that Michigan was considering such a  
14 thing for exactly that reason. Clearly, with  
15 terrorist threats, they don't care what happens to  
16 the car. I just wanted to know if that technology  
17 had been considered, and I was actually surprised  
18 that, yes, it had been somewhere. So I'm not going  
19 that far off the bend to suggest it at Hickox Road.  
20 Don't worry.

21 All right. Any other questions for Ms.  
22 McIntyre? Seeing none, Ms. McIntyre, thank you very  
23 much.

24 THE WITNESS: Thank you.

25 JUDGE TOREM: It's now a quarter to 2:00.

0686

1 Does anybody, including our court reporter, need a  
2 quick break? Next witness will be Stuart Gordon, to  
3 be about an hour. Let's just take five minutes and  
4 stay in place while we get Mr. Gordon up here.

5 (Recess taken.)

6 JUDGE TOREM: We'll be back on the record.  
7 It's now somewhere between ten and five till 2:00.  
8 We have Stuart Gordon ready to be sworn in, so I'll  
9 take care of that now.

10 Whereupon,

11 STUART GORDON,  
12 having been first duly sworn, was called as a witness  
13 herein and was examined and testified as follows:

14 JUDGE TOREM: Thank you. Mr. Scarp?

15 MR. SCARP: Thank you, Your Honor.

16

17 D I R E C T E X A M I N A T I O N

18 BY MR. SCARP:

19 Q. Mr. Gordon, will you state your name for the  
20 record, please?

21 A. My name is Stuart Gordon.

22 Q. And your employer and business address?

23 A. BNSF Railway Company, in Everett,  
24 Washington, 2900 Bond Street, 98201.

25 Q. Mr. Gordon, what is your position with BNSF?

0687

1 A. Assistant superintendent of operations.

2 Q. How long have you been with the railroad?

3 A. Been with the railroad for 40 years.

4 Q. All right. Did you cause to be prepared and

5 filed direct testimony listing your background

6 material and your testimony in this matter?

7 A. Yes, I did.

8 Q. All right. And if I were to ask you

9 questions that were set forth in the pre-filed

10 testimony of Stuart Gordon, pre-marked here as

11 Exhibit 1, would your answers be the same?

12 A. Yes.

13 Q. All right. And is the information set forth

14 therein, is that true and correct, to the best of

15 your knowledge?

16 A. Yes, it is.

17 MR. SCARP: All right. With that, Your

18 Honor, I would offer to be admitted Exhibit Number 1,

19 testimony of Mr. Gordon.

20 JUDGE TOREM: Any objections to the

21 pre-filed testimony of this witness coming in?

22 MR. ROGERSON: No objection.

23 JUDGE TOREM: Commission Staff?

24 MR. THOMPSON: No objection.

25 JUDGE TOREM: All right. Exhibit 1 is

0688

1 offered and now admitted. Cross-exam. Mr. Rogerson,  
2 you had predicted maybe 45 minutes for this witness,  
3 and Commission Staff had predicted maybe 10.

4

5 C R O S S - E X A M I N A T I O N

6 BY MR. ROGERSON:

7 Q. Good afternoon, Mr. Gordon.

8 A. Good afternoon.

9 Q. You testified in your pre-filed testimony  
10 that you're a supporter of the siding project. Can  
11 you describe to me what exactly your involvement with  
12 the project, as a Burlington Northern Santa Fe  
13 employee, is?

14 A. I was consulted on the project, being the  
15 superintendent of the area of the territory which  
16 it's to be built in, as far as being able to have the  
17 input as to what I felt I needed to be able to make a  
18 fluid operation.

19 Q. So the input that you were consulted -- the  
20 scope of your consultation regarding the siding  
21 project was operations; is that fair to say?

22 A. That's right.

23 Q. And who consulted with you on the need for  
24 the use of the project?

25 A. I was actually consulted by our engineering

0689

1 department, as well as the meetings with the  
2 Washington State Department of Transportation.

3 Q. Do you generally conduct safety analysis --

4 A. No.

5 Q. -- as part of your duties?

6 A. No, I do not.

7 Q. You're limited generally to operations?

8 A. Yes, I am.

9 Q. Is that right? However, in this matter, you  
10 formed an opinion regarding safety issues involving  
11 Hickox Road crossing; is that right?

12 A. Yes, I did.

13 Q. Okay. And in fact, do you have your  
14 pre-filed testimony with you?

15 A. Yes, I do.

16 Q. If you can refer to page three, question  
17 seven in your pre-filed testimony, you set forth five  
18 specific safety hazards, and you list them, actually,  
19 one through five, that are safety concerns regarding  
20 the Hickox railroad crossing; is that right?

21 A. That's right.

22 Q. The first one is the inherent danger in  
23 crossing two sets of tracks. Does this presently  
24 exist at the crossing?

25 A. As of today?



0690

1 Q. As of today?

2 A. No, it does not.

3 Q. Number two, you've stated that there's a  
4 potential safety hazard for trains parked blocking  
5 motorists' view of approaching trains. Does this  
6 danger presently exist at the crossing?

7 A. No, it does not.

8 Q. Number three was that there's a potential of  
9 confusing warning signals when two tracks are  
10 involved instead of one, and a train is parked on the  
11 siding. Does this danger presently exist at the  
12 crossing?

13 A. Well, the siding isn't in the crossing, so  
14 no, it doesn't.

15 Q. And there was an issue regarding pedestrian  
16 crossings, with trains potentially moving at all  
17 times. Is that an issue that currently exists at the  
18 Hickox railroad crossing?

19 A. I'd have to see how close -- I'd have to see  
20 a picture of it to see how close the crossing is to  
21 the existing siding, because at times we do switch  
22 over to that crossing, so it would present a problem,  
23 yes.

24 Q. And that problem would be presented if it's  
25 in close vicinity to where the siding exists

0691

1 currently?

2 A. That's right.

3 Q. But if the siding, as it currently exists,  
4 was not in close vicinity, that would no longer be an  
5 issue?

6 A. Well, it depends on how many cars you're  
7 handling in and out of the siding.

8 Q. Lines of sight being blocked and emergency  
9 personnel rushing to an incident and approaching too  
10 hastily, that's your fifth criteria. Is that a  
11 criteria that would presently exist at the crossing?

12 A. Yes.

13 Q. What would block lines of sight currently at  
14 Hickox railroad crossing?

15 A. It's not only visual, but I have been -- I  
16 have been a volunteer fireman and have worked on  
17 emergency vehicles, and when you're out there, you're  
18 focused on one thing, and sometimes you miss. And a  
19 crossing, even with one track, can be a danger if  
20 you're not alert and attentive.

21 Q. Now, I'm going to read your answer on  
22 question seven on your fifth element. It says,  
23 Emergency personnel rushing to an incident may  
24 approach the crossing too hastily and have trouble  
25 negotiating the line of sight around a train parked

0692

1 in the siding.

2           Currently, would emergency personnel have  
3 trouble negotiating a line of sight around a train  
4 parked in the siding? Could that potentially even  
5 happen today?

6           A. I'd have to see a picture to see where that  
7 siding's off right now, the existing siding.

8           Q. But if the existing siding --

9           MR. SCARP: Can I ask for a clarification?  
10 Are we talking about the siding where it exists today  
11 in relation to Hickox Road?

12          Q. I'll rephrase. Currently, as the Hickox  
13 Road crossing exists, the fifth criterion which  
14 you've set forth indicates that there may be trouble  
15 negotiating the line of sight around a train parked  
16 in the siding.

17           Does that relate to a current existing  
18 condition or when the siding project is completed?

19          A. Well, when I gave this testimony, it was  
20 under the assumption when the siding project was  
21 finished.

22          Q. Okay. And I guess, you know, what I'm  
23 trying to understand in the scope of your testimony  
24 is that -- is the primary need for the closure due to  
25 current conditions or is it due to the proposed

0693

1 construction of a new siding?

2 A. Well, it's all in conjunction with  
3 constructing a new siding.

4 Q. I want to refer to page five of your  
5 pre-filed testimony. At line 13, you state that the  
6 law provides for closure of grade crossings because  
7 they are unsafe. Do you have any formal legal  
8 education or training?

9 A. No, I do not.

10 Q. And are you an attorney?

11 A. No, I'm not.

12 Q. And are you aware of other laws that provide  
13 for crossings to remain open?

14 A. No, I'm not.

15 Q. Further on in your answer on page five of  
16 your pre-filed testimony, I believe it's question 16,  
17 you had stated the closure of the crossing would have  
18 a greater net benefit to the community in terms of  
19 economy and safety.

20 Mr. Gordon, do you have any degrees in  
21 economics?

22 A. No, I do not.

23 Q. Do you have any degrees related to planning?

24 A. No, I do not.

25 Q. Did you employ any economic modeling as the

0694

1 basis for that opinion?

2 A. The basis for that opinion is my years of  
3 experience as a supervisor and an operations manager  
4 and knowing that if you can increase velocity and  
5 move traffic quicker, it's going to effect the  
6 economy of the whole country, not just one  
7 individual.

8 Q. And did you employ any economic modeling as  
9 the basis for that opinion?

10 A. No, I did not.

11 Q. And are you familiar with the needs of the  
12 local community in the vicinity of the crossing?

13 A. I don't understand that.

14 Q. Are you familiar with the industry that  
15 surrounds the crossing?

16 A. I guess I actually didn't see any.

17 Q. Have you spoken with any local residents  
18 regarding the community's overall needs?

19 A. No, I have not.

20 Q. Have you spoken with any local officials  
21 regarding plans for future development in the area?

22 A. No, I have not.

23 Q. Are you aware that the City of Mt. Vernon,  
24 as a part of its planning, included a 20-year growth  
25 plan and needs analysis in the area?

0695

1 A. No, I am not.

2 Q. Did you consult with local officials  
3 regarding the need for the crossing by emergency  
4 responders as part of your net calculations?

5 A. No, I have not.

6 Q. Other than Burlington Northern Santa Fe  
7 employees, did you consult with any other people  
8 involving your opinion regarding the safety of Hickox  
9 crossing?

10 A. No, I have not.

11 Q. And did you employ any program or model in  
12 forming your opinion?

13 A. No, I have not.

14 Q. And did you look at any data in forming your  
15 opinion?

16 A. No.

17 Q. You had indicated, in terms of an  
18 operational standpoint, that Burlington Northern is  
19 expected to use the siding track when the need arises  
20 for passenger trains to pass Burlington Northern  
21 Santa Fe freight trains; is that right?

22 A. That's correct.

23 Q. Is there other circumstances where  
24 Burlington Northern would use the siding track?

25 A. The siding track would be used to increase

0696

1 velocity on the lines so that you can run not only  
2 AMTRAK, but commuter trains, as well as freight, and  
3 that's the overall need for the siding, being at that  
4 length, to be able to move them at a speed where  
5 you're not slowing other traffic down.

6 Yes, it could be used to store trains if  
7 there's a washout or mudslides along the coastlines  
8 down around the Everett area, where we have to hold  
9 back. Well, we would put full size trains in there  
10 that would fill the capacity of the siding, waiting  
11 to be able to bring them down. That also works going  
12 north into Canada, along the area between Crescent  
13 Beach. We also have a high slide area in there. We  
14 would store the trains in there until we could run  
15 them through, so --

16 Q. To the best of your knowledge, how long  
17 would such trains be stored?

18 A. They could be up to two days.

19 Q. And those would be freight trains?

20 A. Yes, they would.

21 Q. And what type of materials would be stored  
22 on those tracks?

23 A. There's a tremendous amount of empty  
24 equipment running back into Canada, going north, and  
25 there's a lot of wood products coming south. There

0697

1 are some -- SUFCA (phonetic) has some hazardous  
2 materials coming out of refineries up in the north  
3 end, but we tend to try to keep those right in the  
4 refinery when we have a closure.

5 Q. Is it potentially -- is there a potential --  
6 I'll get there. Is there a potential that those  
7 hazardous materials may be stored on the siding  
8 track?

9 A. They could be, yes.

10 Q. And that would be for two to three days?

11 A. It could be, yes.

12 Q. Are you aware of whether or not the train is  
13 located in or near a flood plain?

14 MR. SCARP: Train?

15 Q. My apologies. The siding track.

16 A. I'm not aware if that's a flood plain.

17 Q. Right now, as it exists, do trains currently  
18 block the crossing, Hickox crossing?

19 A. Well, when they're going over it, yes, they  
20 do.

21 Q. But they will not be parked or stored at the  
22 crossing for any length of time?

23 A. No, they're not right now, because it's a  
24 single main track.

25 Q. And if the proposed siding were constructed,



0698

1 how often, on a daily basis, would trains block that  
2 crossing?

3 A. Are you asking if the siding is put in?

4 Q. That's correct.

5 A. And you want -- you have to rephrase.

6 Q. Sure. Let's say that the proposed siding,  
7 as it's currently designed by Wash-DOT, is  
8 constructed. How often, on a daily basis, is it  
9 anticipated that trains would block the crossing?

10 A. It depends on the flow of traffic. It could  
11 be 20 minutes, 30 minutes; it could be several hours.

12 Q. That relates to time. How often in terms of  
13 frequency would the train block a crossing?

14 A. Well, we run -- we actually run 12 freight  
15 trains a day there, so the potential of it being  
16 blocked with passing trains, it's there. It could  
17 happen.

18 Q. And you had previously testified that the  
19 time that the train would block a crossing varies  
20 between 20 minutes upwards to a much longer length.  
21 How much -- what's the outside time you would  
22 anticipate a train blocking that crossing?

23 A. Well, that depends on where the train's  
24 going to pass it is or it's going to meet.

25 Q. If it was a freight train, would that

0699

1 generally indicate that the blockage would be longer  
2 than a passenger train?

3 A. Yes.

4 Q. How much longer?

5 A. Well, the tracks -- that would be hard to  
6 tell you, the tracks being too different for freight  
7 than they are passengers, so they're going to be  
8 slower getting there.

9 Q. Have you, in your capacity as working with  
10 Burlington Northern Santa Fe, experienced trains  
11 passing other freight trains on siding tracks?

12 A. Are you asking if I've been on a train and  
13 passed a train in a siding track?

14 Q. Do you have personal knowledge of trains in  
15 which one is parked on a siding track and a passenger  
16 freight train then passes that train?

17 A. Yes.

18 Q. Okay. And how long does that generally  
19 take?

20 A. Again, it depends on where the train is when  
21 they put you in the siding to hold you. The last  
22 place you can put a train is English, 20 miles away,  
23 or Bow. And so it depends on when you hit there as  
24 to when a passenger train is coming. There's certain  
25 criteria that we do where you have to be clear of

0700

1 that train, passenger train, at least five minutes  
2 before it leaves its last station. So therefore, its  
3 last station would be Mt. Vernon, the station here,  
4 so you'd have to be in the clear at least five  
5 minutes before he's ready to leave that station.

6 Q. Have you forecasted any times on how long it  
7 would be for the siding train to remain at where it's  
8 at for -- and to allow the freight trains to pass?

9 A. No, I haven't.

10 Q. Okay. You had previously testified that  
11 grade separation must already exist or be in place to  
12 be -- serve as an alternative to closure of the  
13 crossing. What is the basis of that opinion?

14 MR. SCARP: What number is that?

15 THE WITNESS: Are you asking about number  
16 nine on page three, I guess?

17 Q. Number ten on page four.

18 A. Well, obviously grade separation is the  
19 safest way to do it. That way, there's no inherent  
20 danger for anybody.

21 Q. And the question is -- that was presented to  
22 you, what type of scenario would you recommend an  
23 alternative to closing the crossing? And the answer  
24 is, Where an underpass or overpass already exists.  
25 And then, to finish up the question, or in the rare

0701

1 situation where a private crossing is the only  
2 possible means of access for a single landowner  
3 (where construction to another access point is  
4 impossible), who, by contract, assumes the risk of  
5 crossing the right-of-way.

6 And the question is what's the basis that,  
7 as a condition precedent to recommending an  
8 alternative to closing, that an underpass or overpass  
9 must already exist?

10 A. I don't know what you're asking. I mean --

11 JUDGE TOREM: Mr. Gordon, I think he's  
12 asking, and correct me if I'm wrong here, it's your  
13 question, Mr. Rogerson. Why do you say the only time  
14 you'd recommend something other than closing the  
15 crossing is when there's already a preexisting  
16 overpass or underpass? I think he's getting at can  
17 you build one? Can't you build one, even if there's  
18 not one in place?

19 THE WITNESS: Well, it depends on the  
20 terrain, I guess, you know. I mean, if you're asking  
21 if one can be built, I assume in that area it can,  
22 because it's raised up above, so that's a  
23 possibility, yes.

24 Q. And is relocation of a project another  
25 alternative to be explored?

0702

1           A.    It's already been explored by our  
2    engineering department and the Washington State  
3    Department of Transportation.  They worked together  
4    on this as a combined project for the state of  
5    Washington, but this was the best place to put the  
6    passing track, because part of it already exists and  
7    it does not impact any other crossings that are along  
8    the route.

9           Q.    Would it be more expensive at this point to  
10   relocate the project?

11          A.    The money has already been allocated for the  
12   project and it is set to go forth.

13          Q.    I appreciate that, but would it be more  
14   expensive at this point to relocate the project?

15          A.    Yes, it would.

16          Q.    Would it be more expensive to create grade  
17   separation?

18          A.    Yes, it would.

19          Q.    Are those factors in the consideration of  
20   closure, rather than those two alternatives?

21          A.    I'm not privileged to that information.

22                MR. ROGERSON:  That's all I have at this  
23   time.

24                JUDGE TOREM:  Mr. Thompson, before you turn  
25   on your microphone, there was a question that Mr.

0703

1 Rogerson asked, and you may want to stay there in  
2 case there's a follow-up.

3

4

E X A M I N A T I O N

5 BY JUDGE TOREM:

6 Q. As to the secondary purpose of storing cars  
7 on the track, and it may be that I've read other  
8 testimony too quickly, but Mr. Gordon, you're the  
9 first one that's clarified that this wouldn't be for  
10 long-term storage of trains, but you said,  
11 operationally, from Burlington Northern's point of  
12 view, you would only store trains here for other than  
13 meet and pass if there were washouts or something  
14 else that disrupted operations; is that correct?

15 A. That is correct. When you build a siding  
16 that long, you don't take the siding and fill it with  
17 cars so you can't use it. The ability to use that  
18 siding will be continued as a passing track, and we  
19 will use shorter sidings along the route to store our  
20 cars in. And I can say that being that I'm the  
21 operation manager at this time, and that's how I'd  
22 utilize what they've given me to work with.

23 Q. Would I be able to presume that if there was  
24 a flood threat or seasonal threat of flood in those  
25 couple of days when a washout occurred elsewhere,

0704

1 you'd try to avoid this crossing, because it could be  
2 flooded, as well?

3 MR. SCARP: Siding?

4 JUDGE TOREM: Siding, thank you.

5 THE WITNESS: Like I said, I've been in this  
6 area for 40 years as a railroad worker. That track  
7 actually works as a dike, and it's never been under  
8 water, as long as I've been here, ever. And we've  
9 always operated on it. And so I don't ever see that  
10 being a threat.

11 Q. All right. Well, I hope -- everybody else  
12 in the room probably agrees they don't want to see  
13 that. I guess the end of my line of questions on  
14 this regard is if the Commission wants to leave this  
15 track open from an operational standpoint, if there  
16 were a washout and you had to park a train here and  
17 block it for a number of days, is there any process,  
18 when a normally open crossing is going to be blocked  
19 for a day or two, that the railroad does to advise  
20 the public of a traffic revision in this case?

21 A. Yes.

22 Q. And what are those steps?

23 A. They would notify. We would have our recess  
24 -- resource protection agency, or our police  
25 department would notify the public, the police

0705

1 department and the fire department that we're going  
2 to have to block this and for how long.

3 Q. So essentially a temporary road closure,  
4 worked cooperatively with the affected community,  
5 could be put into place?

6 A. Yes.

7 JUDGE TOREM: Mr. Rogerson and colleagues,  
8 any additional questions that that brings up?

9 MR. ROGERSON: I have a couple, Your Honor.

10

11 R E C R O S S - E X A M I N A T I O N

12 BY MR. ROGERSON:

13 Q. First, are you aware of whether or not the  
14 elevated track along Hickox Road is above the current  
15 FEMA flood plain map, or flood plain levels?

16 A. No, I'm not.

17 Q. And you've previously testified that you've  
18 been employed with the railroad for 40 years. How  
19 long have you been employed as operations manager?

20 A. Thirty.

21 Q. So you were employed in 1995, is that right,  
22 as operations manager?

23 A. No, I was actually originally -- originally  
24 promoted in 1979.

25 Q. So in the year 1995, you were still



0706

1 functioning as operations manager for Burlington  
2 Northern Sante Fe?

3 A. Yes, I was.

4 Q. And are you aware of an event that occurred  
5 at that point in which Hoag Road Bridge was washed  
6 out?

7 A. I don't know where Hoag Road Bridge is.

8 MR. JONES: Bridge over the Skagit River.

9 JUDGE TOREM: Mr. Jones, I know this was  
10 your question that you passed to Mr. Rogerson.

11 MR. JONES: It's the Skagit River railroad  
12 bridge. It's at Hoag Road. That's what I recollect.

13 JUDGE TOREM: Mr. Jones, do you know if that  
14 bridge is north or south of Mt. Vernon?

15 MR. JONES: It's at the Skagit River, so it  
16 would be the line that separates Burlington from Mt.  
17 Vernon. The Hoag Road references the hill that it  
18 forms the foundation of the bridge that crosses over  
19 to Burlington.

20 JUDGE TOREM: Understood. Mr. Gordon,  
21 apparently there's a bridge just north of where we  
22 are now that crosses the river.

23 THE WITNESS: I was at that bridge, yes,  
24 when -- there was a number 13 bend up here washed  
25 out.

0707

1 JUDGE TOREM: So you are aware of that 1995  
2 incident?

3 THE WITNESS: I thought it happened in '96,  
4 but yeah.

5 JUDGE TOREM: Okay. Thank you. Mr.  
6 Thompson?

7

8 C R O S S - E X A M I N A T I O N

9 BY MR. THOMPSON:

10 Q. Yeah, I have a couple questions just to  
11 follow up on the use of the siding as -- for storage  
12 in the event of a washout or something like that. If  
13 you were to use the -- if your plan is to use the  
14 siding in that way, would that necessitate putting in  
15 a walkway along the siding track for workers to  
16 access the full length of the train?

17 A. I don't understand what you're asking.

18 Q. Well, isn't it typical for -- if there's a  
19 need at a location for railroad workers to walk along  
20 the length of the train to do whatever work it is  
21 they're doing on the train, whether it's to break the  
22 train somewhere or -- that there be a walkway  
23 provided?

24 A. We wouldn't break the train. We'd leave  
25 power and train intact right there and take the crew

0708

1 back to their home headquarters.

2 Q. So there would be no other reason why you'd  
3 need to have a walkway?

4 A. No.

5 Q. For the purpose of storing cars?

6 A. No.

7 Q. Okay. Can you tell me what the general code  
8 of operating rules is?

9 A. That's what we're governed under in our  
10 operation of trains, it's the rules that were put  
11 together and the Federal Railroad Administration  
12 holds us to.

13 Q. Okay. And does that say anything about if  
14 there is a crossing, a public road crossing, about --  
15 is there any goal with respect to blocking of the  
16 crossing? You know, does it say anything about  
17 whether the railroad seeks to avoid blocking or  
18 something like that of a public grade crossing?

19 A. I don't know the exact wording of the rule  
20 right now, but there is a rule in there about  
21 blocking crossings, yes.

22 Q. Okay. You can't speak to it with any  
23 precise --

24 A. I can't recite it.

25 Q. All right. I want to talk to you next

0709

1 about, at page three of your testimony, Mr. Rogerson  
2 was talking about where you listed the five reasons  
3 how the siding alters the grade crossing from a  
4 safety standpoint. I think you're talking there  
5 about problems that arise where there's problems  
6 inherent in crossing two sets of railroad tracks;  
7 right?

8 A. Mm-hmm.

9 Q. Don't all those same hazards exist at the  
10 Blackburn crossing north of Hickox?

11 A. I believe that there -- yeah, there is two  
12 crossings there. Yes, they do.

13 Q. Okay. Can I have you look at -- well, what  
14 was your answer? Do you say that those same hazards  
15 do --

16 A. Exist today, yeah.

17 Q. Okay. Can I have you take a look at --

18 A. Are you suggesting we close Blackburn?

19 Q. I'll ask the questions.

20 MR. JONES: Couldn't resist.

21 Q. Please take a look at -- do you know what  
22 I'm referring to when I say Exhibit 108? Do you have  
23 that in front of you?

24 A. Yeah, but I've never seen it before.

25 Q. Oh. Even though you're listed as the

0710

1 witness with knowledge of this response?

2 JUDGE TOREM: I think Mr. Gordon may not  
3 have been provided this. When we discussed Exhibit  
4 108 at the pre-hearing conference on December 20th,  
5 and I think, unless I've misplaced the sheets, I'm  
6 showing you one that you gave me for Ms. McIntyre  
7 that listed cross-exam exhibits. I didn't get a  
8 separate one for Mr. Peterson -- or no, for Mr.  
9 Gordon, so he may not have been apprised prior to  
10 today, Mr. Thompson, of any cross-exam exhibits. Mr.  
11 Scarp, did you advise him of any cross-exam exhibits?

12 MR. SCARP: Not this exhibit.

13 Q. Well, I apologize for that. Maybe I could  
14 give you a moment to refamiliarize yourself with that  
15 if you need to.

16 JUDGE TOREM: Can you describe for the  
17 record what Exhibit 108 is while he does that?

18 MR. THOMPSON: Sorry. It's a UTC Staff Data  
19 Request Number Ten.

20 JUDGE TOREM: And the question was?

21 Q. And the response from BNSF. The question  
22 was when the existing siding is used in its current  
23 configuration, does BNSF break trains at the  
24 Blackburn crossing? Is it ever necessary for a  
25 standing train to occupy that crossing for longer

0711

1 than ten minutes?

2           And the part I'm really concerned with is  
3 the third sentence there. Well, actually the fourth.  
4 Under the current configuration of the siding, does  
5 BNSF stop trains south of the Blackburn crossing. If  
6 so, how far south? And then, the only part I'm  
7 really concerned with is the last section of the  
8 answer, which is, As a general rule, BNSF stops  
9 trains south of the Blackburn crossing no closer than  
10 100 to 250 feet within the crossing. I guess  
11 probably that should be from the crossing; right?

12       A. Right.

13       Q. So would you expect that that would be the  
14 case -- is that the case now?

15       A. That's the way we operate that siding now.  
16 In fact, we try not to meet freight trains there,  
17 because it's not big enough to meet them. The only  
18 train we'd meet there would be an AMTRAK train, and  
19 we'd do what we call a saw-by, where the AMTRAK would  
20 go into the siding and the freight train would go up  
21 the main line.

22       Q. Do you expect that that would -- what I'm  
23 talking about is parking a train 100 to 250 feet from  
24 the crossing, would that occur after the siding is  
25 extended to the south, as well?

0712

1           A.    When we store cars on that siding, we leave  
2   at least 250 to 300 feet from the crossing on either  
3   side, or when a train pulls up in there, they hold  
4   back that far to clear that crossing so they don't  
5   block it or block sight.

6           Q.    So is this incorrect, then, when it says 100  
7   to 250 feet?

8           A.    Again, this depends on how they're using the  
9   siding.

10          Q.    Okay.  So in some instances, it is --

11          A.    If they have a train that will fit in that  
12   siding, he may be within 100 feet, yes.

13          Q.    Okay.  Would that be the case after the  
14   siding is extended?

15                MR. SCARP:  Would what be the case?

16          Q.    I'm sorry, that there might be an instance  
17   in which a train would be parked as close as 100  
18   feet?

19          A.    That's why we're lengthening the siding to  
20   the size it is, so that won't happen.

21          Q.    Okay.  So after the siding is extended --  
22   but certainly that's not the only reason you're  
23   extending the siding.  We've talked about the  
24   operational needs; right?

25                But my question is after the siding is

0713

1 lengthened, how far away would you expect trains to  
2 be parked, say, at the least from the Blackburn  
3 crossing?

4 A. I can't tell you that, because I don't know.  
5 I'd have to know the size of the train, whether it  
6 would fit or not. I mean, you're asking me to answer  
7 a question I can't answer.

8 Q. Okay. Fair enough. Would it be out of the  
9 question that a train would be parked as close as 100  
10 or 250 feet to Blackburn after the siding is  
11 extended?

12 A. I don't know how long a train you have that  
13 you're going to put in there. A short train would  
14 not be within 100 to 250 feet, no.

15 JUDGE TOREM: Mr. Thompson, let me see if I  
16 can give him the other data from Ms. McIntyre's  
17 questioning. Mr. Gordon, if you knew that there  
18 would be 10,135 feet, as Ms. McIntyre puts it, of  
19 practical usable track on that siding out of the  
20 12,726 foot new siding, given that circumstance, are  
21 there any trains in your operational world that would  
22 require them parking closer than 200 feet to the  
23 Blackburn crossing?

24 THE WITNESS: The way we operate today, no,  
25 there wouldn't, but saying down the road, we might



0714

1 change, it might happen. As of today, it would not  
2 happen.

3 JUDGE TOREM: The change you're referring  
4 to, would that be longer trains than ten thousand  
5 plus feet?

6 THE WITNESS: It would be longer trains than  
7 the 8,000 feet.

8 JUDGE TOREM: If you've got 10,000 usable  
9 feet, would you park an 8,000-foot train or even a  
10 9,000-foot train within 200 feet of that crossing?

11 THE WITNESS: We would try not to.

12 JUDGE TOREM: Okay. I think that drives at  
13 what Mr. Thompson's getting at.

14 MR. THOMPSON: Yes, it does. Thank you.

15 Q. Just one last question. At page four of  
16 your testimony, if you could take a quick look at  
17 that. Line seven there, it says -- the question is,  
18 Are there other benefits to closing a crossing  
19 besides safety? And you say, Yes, there are reduced  
20 street maintenance costs for the city and reduced  
21 noise levels because the trains no longer have to  
22 blast their horns approaching the area.

23 Are there any benefits for the railroad,  
24 other than safety? And specifically, I'm thinking  
25 avoided maintenance costs for the crossing?

0715

1           A.    Well, typically that's a shared issue.  
2    That's not just -- Burlington Northern doesn't pay  
3    for the whole crossing.  It's a shared issue with the  
4    City and the BNSF.  So we would also benefit with the  
5    crossing.

6           Q.    It was my understanding that typically the  
7    cost of maintaining a crossing is borne by the  
8    railroad?

9           A.    That's right.

10          Q.    So I don't understand your earlier -- was  
11   your earlier answer that the maintenance cost is  
12   shared with the City?

13          A.    It's shared -- it's a shared cost to put a  
14   crossing in.

15          Q.    Oh, I'm not talking about installation.

16          A.    Any replacement or any type of maintenance  
17   to that is then shared between both entities, also.

18          Q.    Okay.  So to the extent that the railroad is  
19   able to eliminate a grade crossing, it also  
20   eliminates a maintenance expense, as well; right?

21          A.    Yeah, because you don't have to remove the  
22   crossing to make sure that the track is in good  
23   condition there, yes.

24                MR. THOMPSON:  Okay.  That's all I have.

25   Thanks.

0716

1 JUDGE TOREM: Any redirect?

2 MR. SCARP: Very briefly, Your Honor.

3 JUDGE TOREM: You're almost out of the  
4 woods, Mr. Gordon.

5 MR. SCARP: And Your Honor, I also have what  
6 I would like to have marked and I will move for  
7 admission of Exhibit 95, which is a copy of the UTC  
8 Data Request Number Three and answer.

9

10 R E D I R E C T E X A M I N A T I O N

11 BY MR. SCARP:

12 Q. Mr. Gordon, you have -- you answered a  
13 question, I think, to Mr. -- you answered a question  
14 of Mr. Thompson's asking you with regard -- if you  
15 could look at Exhibit 108? I'm sorry, if you look at  
16 your pre-filed testimony, Number 7, on page three of  
17 your pre-filed testimony, and I believe that Mr.  
18 Thompson asked you, and you have to bear with me, I  
19 want to get it straight. And I don't know if I was  
20 confused, but I'll try.

21 I believe he asked you if all those criteria  
22 that you've listed in number seven of your pre-filed  
23 testimony are present and -- present as safety  
24 concerns at Blackburn crossing? Do you recall that  
25 question?

0717

1 A. Yes, I do.

2 Q. Now, for example, the crossing of a blocked  
3 track -- excuse me, a -- it says at the very  
4 beginning siding track creates any number of hazards.  
5 There's the inherent danger of crossing two sets.  
6 Second is trains parked in the siding to block  
7 motorists' views.

8 Are you comparing the same safety concerns  
9 that you have considered if the crossing is left open  
10 at Hickox with concerns as they are present now at  
11 Blackburn?

12 A. I guess I don't understand what you're  
13 asking.

14 Q. Yeah, it was a pretty lousy question.

15 JUDGE TOREM: Mr. Scarp, maybe it's easier  
16 to let him read through this proposed Exhibit 95.

17 Q. That was my next question. Could you take a  
18 look at the -- what I just handed you, which is  
19 Exhibit 95, and it -- I'll read the question from UTC  
20 Staff. Go ahead.

21 MR. THOMPSON: Maybe we can shorten this. I  
22 frankly didn't remember that we did a DR. I think  
23 this was my question. And I would be happy to  
24 stipulate that this is a more complete answer that  
25 Mr. Gordon gave earlier in writing to the one I asked

0718

1 him on the stand, so if you want to put that on the  
2 record, that's fine with me.

3 MR. SCARP: I think it's in the record. We  
4 would move to admit Exhibit 95, and I'll read your  
5 answer. The hazards described on page three, lines  
6 seven through 15, and page four, lines 18 through 22,  
7 do not exist to the extent they would exist at the  
8 Hickox Road crossing. And you go on. Do you see  
9 those -- the rest of that answer?

10 JUDGE TOREM: Mr. Gordon, I think they just  
11 want to see if you agree with the way the question in  
12 Exhibit 95 is answered?

13 THE WITNESS: Yes, I do.

14 Q. All right. And is that consistent with your  
15 opinions and your testimony here, what is set forth  
16 in the answer to Data Request Number Three, which is  
17 now Exhibit 95?

18 A. Yes.

19 MR. SCARP: All right. We would move to  
20 admit Exhibit 95.

21 JUDGE TOREM: Any objections to it?

22 MR. ROGERSON: No objection.

23 JUDGE TOREM: All right. Exhibit 95 is  
24 admitted.

25 Q. You were -- you've been asked a number of

0719

1 questions, Mr. Gordon, and you too have used the term  
2 stored in referring to train cars. I want to make  
3 sure I understood you. The siding extension, as it's  
4 -- the second phase of it, to go through Hickox Road,  
5 you're not anticipating that that siding would be  
6 used to just store railcars; is that correct?

7 A. That's correct.

8 Q. And that would be because it would just be a  
9 waste of that siding project?

10 A. Yes, it would.

11 Q. All right. You've got bigger things in mind  
12 for that?

13 A. Yes.

14 Q. All right. The time when you did talk about  
15 potentially that cars would be stored there, does  
16 that just mean they can't go anywhere? Is there a  
17 term of art here in stored that we're not using  
18 correctly?

19 A. They probably used staged, rather than  
20 stored, would be a better term.

21 Q. Okay. And when you talked about washouts or  
22 mudslides, those are fairly common, seasonally, at  
23 different points along the railroad right-of-way?

24 A. Yes, they are.

25 Q. Okay. And so if you can't move that train,

0720

1 it's got to sit somewhere?

2 A. Yes.

3 Q. All right. And you also mentioned that you  
4 don't anticipate -- or I'm sorry, you said something  
5 about hazardous materials or fuels coming out of the  
6 refineries. What was that all about?

7 A. Well, we have two of our trains a day that  
8 run up and down the corridor, especially going south,  
9 or loaded with the gasoline fuel and additives for  
10 gas going to different parts of the country, and we  
11 haul those out on a daily basis and they're running  
12 up and down this line. So we generally try to keep  
13 those captive and away, so that they're not stored in  
14 an area that they could cause potential danger.

15 Q. If in the event that there's some sort of  
16 weather disturbance or washout or mudslide, you don't  
17 want cars like that sitting around somewhere on the  
18 siding track; is that --

19 A. That's right.

20 Q. All right. And you said you try to keep  
21 them in the refinery?

22 A. Yes, we do.

23 Q. Okay. You don't anticipate using the siding  
24 project down here in Mt. Vernon to store gasoline  
25 cars?

0721

1 A. No, that's not our intent.

2 Q. You were also asked questions by Mr.  
3 Thompson about a walkway. If you're not planning on  
4 storing cars, would you have a reason to build a  
5 walkway for train crews?

6 A. No, I would not.

7 Q. And finally, you were asked questions about  
8 your pre-filed testimony, about whether the law  
9 provides a mechanism for closure of crossings. Is  
10 that based on your experience, 30 years as a manager?

11 A. Yes.

12 Q. Are you familiar with that process, not  
13 altogether unlike the process we're involved in here  
14 today?

15 A. Yes, I am.

16 Q. All right. And finally, is the passenger  
17 rail service, does it have any further -- you were  
18 asked a number of questions. Is there any further or  
19 local consideration regarding Mt. Vernon that is of  
20 particular relevance to this siding project?

21 A. Yes, there is. We've been approached and  
22 are talking about a commuter rail system running from  
23 Bellingham to Everett to match up with the Sounder  
24 system that runs out of Everett to Seattle and  
25 Tacoma. Right now, it's in the planning stage, but



0722

1 it looks like it's going to happen.

2 Q. Why is this siding project of importance to  
3 that?

4 A. So that we can continue to run our freight  
5 service, as well as run AMTRAK and commuter service.

6 Q. Okay. And is it the siding project is  
7 somehow interrupted or somehow -- let's just say that  
8 it's somehow -- what's the word I'm looking for? --  
9 compromised, does that affect the potential rail  
10 service that's being proposed?

11 A. Until we could get something, we could get  
12 some kind of a compromise, we come up with a better  
13 plan, it would end up holding back those projects,  
14 yes.

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

16 JUDGE TOREM: Any re-cross?

17 MR. ROGERSON: None from the City.

18 MR. THOMPSON: None.

19 JUDGE TOREM: Thank you, Mr. Gordon. You  
20 can step down. We have one remaining witness this  
21 afternoon. It's Gary Norris. I'm going to ask that  
22 he get his things ready to come up to the witness  
23 stand. We're going to take a brief break. We  
24 anticipate that the City is going to have one hour of  
25 cross-exam, and the Commission Staff an hour and a

0723

1 quarter. If we did that, that would put us, oh,  
2 right up to 5:00, by quick calculation, or beyond.  
3 So we'll see if we can get done a little bit earlier  
4 than that and have a full hour before the -- or hour  
5 or hour-plus before the public hearing tonight. So  
6 let's come back in about five minutes, we'll take a  
7 brief recess and go back on the record with Mr.  
8 Norris.

9 (Recess taken.)

10 JUDGE TOREM: All right. If I could have  
11 everyone take their seats. It's now five minutes to  
12 3:00. We want to get back on the record. I believe  
13 before we have Mr. Lockwood introduce his witness, I  
14 want to see -- Mr. Thompson, I believe you have at  
15 least two exhibits that have been previously marked.  
16 Exhibit 105 was a City of Mt. Vernon response to Data  
17 Request Number Two that you referenced with Ms.  
18 McIntyre, I believe, today, and maybe others, and  
19 then Exhibit 108 that you referenced with Mr. Gordon.  
20 It had been marked as the BNSF response to Data  
21 Request Number 10, but never quite offered. Do you  
22 want to take care of that business now?

23 MR. THOMPSON: Right. All I'll do at this  
24 point is offer Number 108.

25 JUDGE TOREM: Any objection to Exhibit 108?

0724

1 MR. ROGERSON: No objection.

2 JUDGE TOREM: All right. Then Exhibit 108  
3 is taken care of and admitted. Now ready to swear in  
4 Mr. Gary Norris.

5 Whereupon,

6 GARY NORRIS,  
7 having been first duly sworn, was called as a witness  
8 herein and was examined and testified as follows:

9 JUDGE TOREM: Mr. Lockwood.

10 MR. LOCKWOOD: Thank you, Your Honor.

11

12 D I R E C T E X A M I N A T I O N

13 BY MR. LOCKWOOD:

14 Q. Mr. Norris, will you, for the record, please  
15 state your complete name and spell it for the court  
16 reporter?

17 A. My name is Gary A. Norris. That's G-a-r-y  
18 N-o-r-r-i-s.

19 Q. And how are you employed, sir?

20 A. Pardon me?

21 Q. How are you employed?

22 A. I'm a senior engineer for Garry Struthers  
23 Associates.

24 Q. In that capacity, were you retained by the  
25 Washington State Department of Transportation to

0725

1 undertake a railroad crossing closure traffic impact  
2 study?

3 A. We were.

4 Q. Okay. Did you also prepare for filing  
5 pre-hearing testimony in this matter?

6 A. I did.

7 Q. Okay. Are the answers to the questions in  
8 that pre-filed testimony true and accurate today?

9 A. Yes, they are.

10 Q. Did you have assistance in preparing the  
11 crossing closure impact analysis?

12 A. I did.

13 Q. And who primarily assisted you with that?

14 A. Leslie Struthers.

15 Q. Okay. With your pre-filed testimony, do you  
16 also include a curriculum vitae for yourself?

17 A. I did not see one, no.

18 Q. You don't recall?

19 A. Oh, I don't -- yeah, I guess I did.

20 Q. And attaching as an exhibit your curriculum  
21 vitae?

22 A. Yeah, it's so long ago, I didn't remember,  
23 but evidently I did.

24 Q. Okay. Has anything of significance changed  
25 that you'd like to bring to the attention of this

0726

1 Tribunal about your curriculum vitae since the final  
2 was prepared and filed?

3 A. No, I don't believe.

4 Q. Did Ms. Struthers prepare a curriculum vitae  
5 that was attached as an exhibit to your testimony?

6 A. Yes, she did.

7 Q. Did you also prepare pre-filed rebuttal  
8 testimony for this hearing?

9 A. Yes, I did.

10 Q. And would the answers to the questions  
11 included in that testimony also be the same today?

12 A. Yes, they would.

13 MR. LOCKWOOD: Okay. Thank you, Your Honor.  
14 Thank you, Mr. Norris. Your Honor, yeah, at this  
15 point, I'd move to admit the exhibits. I believe  
16 they are 11, 12, we've already admitted 13, so -- and  
17 14 and 15.

18 JUDGE TOREM: Just making sure I have all of  
19 those here. You're correct. 11 is the pre-filed  
20 testimony, direct; 12 is the CV for Mr. Norris; 14 is  
21 the CV for Leslie Struthers; and 15 is the pre-filed  
22 rebuttal testimony. So those four exhibits, 11, 12,  
23 14 and 15. Are there any objections? Seeing none,  
24 those four are admitted.

25 All right. Cross-exam. Mr. Jones, are you

0727

1 going first? Go ahead, Mr. Jones.

2

3 C R O S S - E X A M I N A T I O N

4 BY MR. JONES:

5 Q. Good afternoon, Mr. Norris. You have in  
6 front of you the exhibits that have just been  
7 admitted, I believe; is that right?

8 A. Yes, I do.

9 Q. And in addition to that, you have Exhibit  
10 101, isn't that right, which is the Handbook for  
11 Railroad Crossings?

12 A. Yes, I do.

13 Q. Good. To begin, if you would reference the  
14 -- the other item that I believe you have is the  
15 traffic study that was prepared and referred to in  
16 your testimony, the traffic impact analysis?

17 A. Correct, I do. Exhibit 13?

18 Q. Yes, Number 13. And does it have a study  
19 area map in it that would be a good starting point  
20 for reference?

21 JUDGE TOREM: Mr. Norris, can you move that  
22 -- I know you have a lot of paper, but can you move  
23 that microphone so that the folks in the audience can  
24 also hear your responses? Thank you.

25 THE WITNESS: Yes, there's a study area map,

0728

1 references Figure 1.1.

2 Q. Right. In Figure 1.1, does it define the  
3 study area that you were working with as including  
4 Interstate 5 from the Conway exit through the  
5 Blackburn Road on the north?

6 A. Yes, it does.

7 Q. And does it also include the Dike Road on  
8 the west side?

9 A. Yes, it does.

10 Q. And the Cedardale Road on the east side of  
11 Interstate 5?

12 A. That is the boundary, yeah.

13 Q. Good. In terms of the traffic impact  
14 analysis, would you regard this as something that is  
15 mandated by the state Environmental Policy Act?

16 A. Yes, I would.

17 Q. Does it have any other legal purpose as far  
18 as you're aware?

19 A. Not that I'm aware of, no.

20 Q. And does the traffic impact analysis  
21 actually constitute one of -- an environmental  
22 checklist that you would prepare under the state  
23 Environmental Policy Act, this comes within what's  
24 called transportation, one of the many checklist  
25 items that is to be considered any time public action

0729

1 is to be taken; is that right?

2 A. Yes, that's correct.

3 Q. And you focused on this one particular  
4 aspect in your transportation impact analysis; is  
5 that right?

6 A. Yes.

7 Q. Are there other environmental studies that  
8 have been done concerning this railroad crossing  
9 matter that would bring to the attention of the  
10 decider, the Tribunal here, other environmental  
11 issues that may be associated with the considerations  
12 of the closing of the Hickox Road grade crossing?

13 MR. LOCKWOOD: Your Honor, I'm going to  
14 object. That's outside the scope of his direct.

15 MR. JONES: Well, I believe that I'm  
16 entitled to inquire as to whether -- and this would  
17 be my next question -- whether he referenced any  
18 other environmental documents that were prepared in  
19 connection with the traffic impact analysis.

20 JUDGE TOREM: Objection overruled. I'll  
21 allow the question. So Mr. Norris, I think he wants  
22 to know what other studies you may be aware of are  
23 required or that you referenced. Is that correct,  
24 Mr. Jones?

25 MR. JONES: That's right.



0730

1           THE WITNESS:  The only other area that I can  
2 think of right off the top of my head is the issue  
3 regarding wetlands along the side of the track, and  
4 then I think there was some -- I don't know if there  
5 was any formal studies done on that, but there was  
6 some discussion about that.

7           Q.  Did you identify wetlands as being an issue  
8 related to whether or not relocation of the project  
9 might be appropriate?

10          A.  I believe wetlands was discussed in  
11 relationship to its impact on any kind of relocation  
12 of an improvement along the corridor.

13          Q.  Is there a wetland issue in connection with  
14 this particular siding extension, as you identified  
15 or as you studied it in the traffic impact analysis?

16          A.  I don't believe there's a resulting issue.  
17 I think it was -- the situation was addressed, and  
18 I'm not privy to all that went on with that, but I  
19 don't believe it became an issue.

20          Q.  You did identify the need to fill wetlands  
21 as part of the siding project, though; is that right?

22          A.  Yes, as part of the work that would go on,  
23 there would be some wetlands work.

24          Q.  One of the things that has become apparent  
25 in this hearing is that there are many voices, many

0731

1 people who will, in fact, be impacted by the proposed  
2 closing of the Hickox Road grade crossing, and in  
3 undertaking your traffic impact analysis, I'm going  
4 to ask you how it is that you went about identifying  
5 the impact on commerce, including railroad commerce,  
6 that was within this study area that you were  
7 studying?

8 A. I don't believe the actual impact on  
9 commerce was a objective of our analysis.

10 Q. Is that the reason that you did not consult  
11 with the City of Mt. Vernon about its urban growth  
12 planning under the Growth Management Act?

13 A. Well, that was not, in fact, the case in  
14 that we did have meetings with the City of Mt. Vernon  
15 and were aware of their development plans, but their  
16 development plans basically were on the east side of  
17 I-5 and not considered directly an impact of what was  
18 happening resulting from the closure.

19 Q. There have been comments to the effect that  
20 there will be an impact on commerce from people who  
21 testified yesterday, including people who bought  
22 property to live on the brick roads and continue to  
23 work in the Seattle area and see the Hickox Road as  
24 an important part of their value of their property  
25 and the access to Interstate 5. Was that, just to

0732

1 broaden the idea of commerce here, was that an idea  
2 that you considered in framing your traffic impact  
3 analysis?

4 A. Our traffic impact analysis was based on the  
5 impact of traffic circulation in this area and how it  
6 would be impacted through the action at the railway  
7 crossing.

8 Q. Okay. Did, in connection with the  
9 considerations that would go into closing this  
10 crossing, did you consider the existence of truck  
11 traffic as distinct from other daily trips in the  
12 study area?

13 A. Yes, we did.

14 Q. And in arriving at that, did you conclude  
15 that there were at least 50 average daily trips being  
16 made by trucks over the Hickox Road crossing?

17 A. We did.

18 Q. And if there's evidence in the record, as I  
19 believe you may have seen, that seasonally there are  
20 many more than 50 trips per day, did you know of that  
21 information when you prepared your pre-filed  
22 testimony?

23 A. I'm aware that there is variations in  
24 traffic flow throughout this area, throughout the  
25 year, and we addressed that in a normalized fashion

0733

1 in the analysis to look at a average worst case  
2 scenario in the development, and that did include our  
3 relationship with truck traffic and understanding of  
4 it.

5 Q. What would be the impact that you identified  
6 concerning harvest of silage by the Boon Dairy, let's  
7 say on the Hickox Road? I'd like to just take a  
8 moment and step over to the map.

9 We've had an illustrative exhibit here that  
10 includes not all of the study area, but some of the  
11 -- this would be the Hickox Road. I'm going to ask  
12 you some questions about this location here on the  
13 Hickox Road. This would be the railroad crossing,  
14 this would be the Dike Road. Maybe -- I don't know  
15 -- can you hear me? Is that okay, as far as that  
16 goes?

17 Did you read the testimony about  
18 transporting forage grown on this side of the  
19 freeway, meaning the east side of the Cedardale Road  
20 and Interstate 5 being brought back to the Boon Farm  
21 that's on the Hickox Road west of Interstate 5 and  
22 the Hickox Road crossing?

23 A. Yes, I did.

24 Q. And in your analysis, you suggested that  
25 there are alternative routes for this kind of

0734

1 traffic. Did you have a particular alternative route  
2 in mind as an alternative to just coming over the  
3 existing grade crossing?

4 JUDGE TOREM: Mr. Norris, before you  
5 describe that alternative route, could you pull the  
6 microphone so that it amplifies your voice? My  
7 concern is that your back is now to the court  
8 reporter and she won't pick up anything that's  
9 low-toned.

10 MR. JONES: Maybe it would help if I stood  
11 over here more. I don't know if that's --

12 JUDGE TOREM: Go ahead, Mr. Norris. Which  
13 alternative routes did you consider for the forage?

14 THE WITNESS: In our modeling process, we  
15 included all of the alternative routes along the  
16 study area streamlined between I-5 and Dike Road, and  
17 more specifically alluded to the fact that the  
18 Stackpole Road was the most likely alternative to  
19 Hickox for providing access to the west side of the  
20 corridor.

21 Q. In your study, did you identify a problem  
22 area on the overpass at Hickox Road and Interstate 5  
23 for turning vehicles aiming to come west over the  
24 overpass and turn left onto the frontage road?

25 A. Actually, today, on our way to the meeting

0735

1 here, we stopped and visited that site and checked  
2 out the distances that were available there and  
3 noticed that there had been some modifications  
4 recently made to that configuration that allows more  
5 room for trucks to make that turn. There's like 50  
6 feet across there that would enable -- it's certainly  
7 within the realms of the kind of configurations  
8 they're faced with in these situations. I believe  
9 there's adequate distance to make that turn.

10 Q. Did you observe the slopes on the road  
11 surface at that location?

12 A. The super-elevation of the road, yes, I did.

13 Q. And isn't it true that as a vehicle attempts  
14 to turn left off the overpass and onto the Frontage  
15 Road, that there is a slope which could cause a  
16 tipping hazard?

17 A. Not at the speeds that we're talking about,  
18 most likely, vehicles would be making that turn, no.

19 Q. Well, isn't it true that there could be  
20 emergency vehicles also making that turn?

21 A. It's true they could be making that turn.

22 Q. Wouldn't they tend to be reasonably  
23 attempting to maximize their speed?

24 A. I believe that the professional drivers that  
25 operate these vehicles are aware of the conditions

0736

1 that they're faced with and would know about  
2 situations with the road geometry.

3 Q. In your traffic impact analysis, you did not  
4 propose any modifications to this intersection that  
5 I've just been asking you about. After looking at it  
6 today, would you propose any modifications?

7 A. No, I would not.

8 Q. Is there anything about that left turn that  
9 you would consider to be hazardous, specifically for  
10 truck traffic or farm equipment, which has been the  
11 subject of the testimony?

12 A. Just the narrowing of the road as it comes  
13 from the interchange to the north, or excuse me, to  
14 the south is the Conway Frontage Road. It narrows a  
15 little bit there. But there's a painted island that  
16 allows for vehicles to have extra room they might  
17 need to make that maneuver.

18 Q. One of the witnesses yesterday testified  
19 that his experience was that, in order to make the  
20 turn, he found that he was frequently crossing the  
21 centerline of the roadway as it's marked. Can you  
22 understand why that might occur when a lowboy trailer  
23 is being pulled by a truck, like a flatbed truck or  
24 some other truck?

25 A. Which centerline are you referring to, the

0737

1 centerline on Old Highway 99 or the centerline on  
2 Conway Frontage?

3 Q. It would actually be the centerline on the  
4 overpass before I would consider you getting to the  
5 roadway. Maybe I can point it out. This would be up  
6 in this area. What I'm referring to is the area on  
7 the roadway that I would consider to be part of the  
8 overpass, rather than -- and the descent off the  
9 overpass as compared to the actual traveled way of  
10 the Frontage Road?

11 A. Actually, I would think if a driver is  
12 passing over the centerline of Old Highway 99, as you  
13 described it, he's actually making his turning radius  
14 shorter than what he has allowed through the roadway  
15 geometry as it exists, so therefore you'd be cutting  
16 down on the radius that he has to make that turn and  
17 make it more difficult for him to make the turn. So  
18 I would think it would be more advantageous to him to  
19 stay on this side of the centerline and then make the  
20 maneuver --

21 Q. The report that we have heard, and I believe  
22 the testimony supports, is that when that turning  
23 radius is used, that there are barriers, cones and  
24 barriers that tend to be run over when that turn is  
25 made in the way that you describe. Do you



0738

1 acknowledge that or not?

2 A. If you're referring -- you know, this is why  
3 I asked you the question about the centerline,  
4 because if you're referring to the Conway Frontage  
5 Road, there is a painted island there that the truck  
6 would most likely cross into in order to make that  
7 turn.

8 As I stated, the cones have been recently  
9 reestablished in the center of that painted island,  
10 so that vehicles would no longer impact them, because  
11 I can see where cones have been sheared off from the  
12 mountings that were there previously and they've been  
13 relocated to the center of the island, so the extra  
14 distance that the vehicle has is about another ten  
15 feet to make that turn. So I think that  
16 modifications have been made there to accommodate  
17 vehicles that have been making that turn.

18 Q. I'd like to suggest that there's another  
19 hazard, and that has to do with the sight distance  
20 for the left-turning vehicle making that  
21 approximately 130-degree angle curve around to the  
22 left.

23 Do you have an assessment of the safety of  
24 the public traveling directly north on the frontage  
25 road when confronted by a truck or other large

0739

1 vehicle, possibly with a trailer, turning left across  
2 their lane of travel?

3 A. For my view, the sight distance was more  
4 than adequate from the position of the vehicle  
5 approaching from the south heading north on Old  
6 Highway 99, and in relationship to the truck, a truck  
7 would afford more sight distance than a standard  
8 passenger car vehicle by virtue of the height of the  
9 vehicle. So a truck situation would certainly be  
10 safer than a standard passenger car.

11 Q. I guess I was thinking of the risk, too,  
12 that the traffic that's traveling north, not seeing  
13 the -- or not -- the two not being able to adequately  
14 see each other in time to respond while traveling  
15 west on the overpass and then entering the lane of  
16 the northbound travelers on the Frontage Road. Is  
17 that -- am I understanding your answer to respond to  
18 that situation?

19 A. They would not be entering the northbound  
20 lane of the travelers on the Frontage Road. That's  
21 where that median island I was talking about is,  
22 between the northbound through or left movement from  
23 the Frontage Road and the left turn movement from Old  
24 Highway 99 to the Frontage Road, there's a -- as I  
25 say, ten, 15-foot-wide median there that allows this

0740

1 separation of vehicles.

2 Q. So what you're saying is any northbound  
3 traffic is going to come up to a light on the apron  
4 of the overpass and then make its own left turn,  
5 giving the northbound vehicle an opportunity to see  
6 the truck coming over the overpass. Is that your  
7 testimony?

8 A. Yes, I believe so.

9 Q. And that inter -- it's your testimony that  
10 the intersection does not require modification; is  
11 that right?

12 A. I don't believe so, no.

13 Q. One of the other recurrent themes that has  
14 come from the testimony and the filings that have  
15 been made to date regarding this railroad crossing  
16 closure is the risk that flooding would cause people  
17 on the Hickox Road and others to attempt access to  
18 the railroad grade crossing.

19 In your analysis, did you do -- have any  
20 separate consideration for -- that is, say, your  
21 traffic impact analysis report, did you have any  
22 special conditions for mitigating the risk of flood  
23 evacuation from the area that's shown on the map  
24 there?

25 A. The issue of flood evacuation was considered

0741

1 in terms of any kind of routes that had been  
2 identified by the county as being evacuation routes,  
3 and the analysis of that, and our findings was there  
4 has been no definition of any evacuation routes in  
5 this corridor.

6 The conjecture about flooding and the dike  
7 failure is really hypothetical. It depends on  
8 exactly where the dike would fail and what kind of  
9 plans would be put in place for that.

10 I think, though, in the general case, as in  
11 most emergencies that we in public works deal with,  
12 that extreme measures would be incorporated to  
13 accommodate evacuation and addressing the impacts on  
14 those that would be hit by that, so that they would  
15 be minimized, so --

16 Q. You can understand the concern of Western  
17 Valley Farms, L.L.C., that has 700 dairy cattle at  
18 the site that I pointed to on the map, attempting to  
19 evacuate those animals by going toward the flood  
20 hazard, the river, and the potentially broken levee  
21 on the Dike Road and then attempting to remove those  
22 cattle from the location that was identified there.

23 Do you have an alternative route for them to  
24 take if the railroad crossing is closed and it's  
25 necessary to evacuate 700 dairy cattle?

0742

1           A.    Well, having grown up in farm country and  
2   having driven tractors and that kind of mechanism,  
3   I'm sure that the farmers would not have any  
4   difficulty getting through their fields to get out of  
5   there with their cattle if there was a flood coming.

6           Q.    So it would be your assumption that it would  
7   be possible to drive on the fields?

8           A.    It would be, yes.

9           Q.    Okay.  Any other alternatives for removing  
10  the animals from the dairy barns that are identified  
11  there on Hickox Road?

12          A.    Well, again, that depends on where the  
13  flooding's coming from.  You've got alternate routes  
14  both to the south and to the north, depending on  
15  where the condition of the flood arises, so --

16          Q.    I wanted also to know if, in your  
17  consideration of evacuation on Hickox Road, you  
18  considered the potential for low-lying areas like  
19  this and this, and I'm referring to apparent low  
20  areas or drainage areas in the vicinity of Hickox  
21  Road that would potentially cover the Hickox Road and  
22  prevent use of that road as an evacuation route?

23                JUDGE TOREM:  For the record, Mr. Jones is  
24  pointing to the areas both north and south of Hickox  
25  Road, just to the east of where it's intersecting

0743

1 with Dike Road. Is that correct, sir?

2 MR. JONES: That's right. It's about  
3 two-thirds of the way from the grade crossing to the  
4 river. There's an apparent low spot in here, with a  
5 slough that appears to cross the Hickox Road.

6 MR. LOCKWOOD: Your Honor, I need to object.  
7 This question assumes facts that I do not believe are  
8 in evidence.

9 JUDGE TOREM: All right. Let me rephrase it  
10 for Mr. Jones, then. Mr. Norris, if you were made  
11 aware that that area of road could be underwater, how  
12 would you respond to the question about potential  
13 flood evacuation alternative routes if the Hickox  
14 crossing was closed?

15 THE WITNESS: I assume we're speaking of the  
16 -- I believe it's seven to nine homes that would be  
17 east of that location?

18 Q. Plus 700 dairy animals. And Mr. Youngsman  
19 was in here yesterday testifying he operated a  
20 business from the location on the north side of this  
21 road, where he stores equipment. A man named Allard  
22 Johnson indicated he stores a substantial amount of  
23 equipment that he has in a barn that's also on the  
24 road on the east side of this slough location.

25 A. Your hypothetical example raises so many

0744

1 questions in my mind about the legitimacy of  
2 something like that happening. I mean, the time that  
3 it would take them to round up 700 head of cattle and  
4 put them in trucks to haul out of there, I mean, if  
5 they can even circulate around, are we talking about  
6 an immediate disaster, where the dike breaks and the  
7 river comes in and floods out the whole area, or are  
8 we talking about a 40-day rain where the waters back  
9 up and --

10 Q. Well, both have been historic examples. The  
11 1951 flooding was the subject of testimony by Ric  
12 Boge, who's the surface water manager for Skagit  
13 County. Did you see his testimony and the pictures  
14 associated with it?

15 A. I did, but I don't believe it was in this  
16 area.

17 Q. Yes, the water shown in the primary  
18 photograph of the area completely covered this area  
19 with water.

20 A. I missed that. I'm sorry.

21 Q. And that water actually came from the Conway  
22 area, using his testimony as a guide, a break in the  
23 dike, a breach in the levee along the river that  
24 happened at Conway and the water actually backed in  
25 to this area to a depth that would completely cover

0745

1 --

2 JUDGE TOREM: Mr. Jones, he didn't read it,  
3 so let's wait for the testimony tomorrow.

4 MR. JONES: Okay. Well, he's offered a  
5 traffic impact analysis.

6 JUDGE TOREM: I understand. You've pointed  
7 out something he didn't consider. I understand. If  
8 you want to ask him questions about things he doesn't  
9 know, we're not going to get anywhere, and we're  
10 certainly not going to get anywhere quickly, which is  
11 also a concern this afternoon.

12 So I think Mr. Boge is going to be coming in  
13 tomorrow. If you want to ask some additional  
14 questions for this Tribunal to better understand the  
15 nature of the 1951 incident after counsel for -- I've  
16 got to get all the names right here -- Mr. Fallquist,  
17 who's finally going to get a chance to talk tomorrow,  
18 after he introduces the witness, I'll entertain that  
19 if we have time.

20 Q. Moving to another aspect of the traffic  
21 impact analysis that does relate to flooding, I'd  
22 like to ask you if you considered the possibility  
23 that the Burlington Northern Santa Fe track over the  
24 Skagit River might be out of service in a flood  
25 event?



0746

1 A. We did not specifically consider that, no.

2 Q. Mr. Stuart Gordon was just here and  
3 testified that, in the event of slides and extreme  
4 weather conditions, that the siding might be used as  
5 a place to store freight trains while service was  
6 restored in an extreme weather event. Is that  
7 something that you considered in your traffic impact  
8 analysis?

9 A. No, not specifically.

10 Q. One of the areas of concern expressed by  
11 citizens at the hearing yesterday was the potential,  
12 and this was a potential. It was mentioned in the  
13 pre-filed testimony of Patrick DeJong, the principal  
14 at the Mt. Vernon Christian School, that by closing  
15 the Hickox Road crossing, there would be a  
16 substantial diversion of traffic to Blackburn Road in  
17 front of the Christian School. Is that something  
18 that you have given any further thought to since  
19 filing your testimony?

20 A. Yes.

21 Q. And do you have an opinion as to whether  
22 traffic will be diverted to the area around the  
23 Christian School on the Blackburn Road by closing  
24 Hickox Road?

25 A. Yes.

0747

1 Q. Do you have any analysis as to the number of  
2 additional trips that will be passing by the school  
3 on the Blackburn Road?

4 A. Yes.

5 Q. How many do you project?

6 A. One.

7 Q. One trip per day or one trip per how long?

8 A. One trip in the peak hour.

9 Q. Did you take into account the testimony of  
10 John DeVlieger, who's a hauler with four trucks and a  
11 busy schedule of hauling agricultural products, as  
12 described in his pre-filed testimony?

13 A. No, not specifically.

14 Q. I believe his testimony was that about 12  
15 trips per day are currently made on the Hickox Road,  
16 and if he was unable to use the Hickox Road, I'm just  
17 hypothesizing that he might divert to the Blackburn  
18 Road, which would be the next available option  
19 closest to him. In fact, his home -- and his  
20 testimony indicates he's on a property bordering the  
21 Christian School.

22 A. Well, our analytical tools stated that's not  
23 the case, so --

24 Q. Your analytical tools would suggest that  
25 people would take a route that is longer, rather than

0748

1 shorter? Is that what they suggest?

2 A. No, actually, our tools suggest people are  
3 going to take the minimum travel time pathway.

4 Q. Okay. So if Mr. De Fleiger's house, for  
5 example, is an adjoining property on the Britt Slough  
6 Road -- I could point it out for you, just to give  
7 you a little better idea. This is De Fleiger's here,  
8 Britt Slough Road, De Fleiger's here. Here's the  
9 Christian School and Blackburn Road, actually, I  
10 guess is -- see, am I in the right place there?

11 JUDGE TOREM: For the record, Mr. Jones is  
12 looking at the area overhead map. There are some  
13 labels on it, and he's at the north end, looking at  
14 the curvy road, that's Britt Slough Road, pointing  
15 out its intersection northward to Blackburn as the  
16 predicted route for the DeVlieggers, who live on that  
17 curve.

18 Q. So the prediction that you're making is that  
19 Mr. DeVlieger and his trucks, even if they wanted to  
20 get on the interstate and go north, that they would  
21 come around the Britt Road, down the Dike Road to  
22 Stackpole, over to Stackpole, then come back here,  
23 then get on the -- no, they couldn't get on the  
24 freeway here. They'd have to come back to the  
25 Anderson Road interchange.

0749

1           Are you saying that that's what you believe  
2 they would do instead of just going down the  
3 Blackburn Road interchange to the Anderson Road?

4           A.    No, that's not the question you asked me.  
5 The result is is that most likely he's not headed  
6 north on I-5, and that the model has made assumptions  
7 about where he is bound for, and based on those  
8 assumptions, it lined out paths that he most likely  
9 would travel to get there.

10          Q.    So in your analysis, you assumed that -- or  
11 you determined, from the tools that were available to  
12 you, that if there were 12 trips per day from the  
13 DeVlieger Hauling Service, that one of those trips  
14 would be needing to use the northbound Interstate 5;  
15 is that --

16          A.    That could be a reasonable assumption, or  
17 anywhere else across Blackburn Road or to the east or  
18 to the north along Second.

19          Q.    Does your answer imply that 11 out of 12  
20 times an agricultural hauling service would be going  
21 south, rather than north, coming onto Interstate 5?

22          A.    Could you rephrase the question again,  
23 please?

24          Q.    Well, you've indicated that if Hickox Road  
25 were closed and the assumptions that I gave you about

0750

1 the four trucks making a total of 12 trips per day  
2 were the hypothetical, that one of those trips would  
3 take the route past the Christian School on the  
4 Blackburn Road in order to gain access to northbound  
5 Interstate 5?

6 A. No, I wouldn't make that assumption.

7 Q. Okay. Perhaps I misunderstood your earlier  
8 answer. I'd ask you to answer.

9 A. Well, your question was would they be taking  
10 the Britt Road to make access to I-5 north. I'm not  
11 sure I can pinpoint where that one trip was going  
12 once it came across Britt Road. It could have gone  
13 north on Second or it could have gone east on  
14 Blackburn.

15 JUDGE TOREM: But Mr. Norris, the 12 trips  
16 that he's referenced from the DeVliegers' business,  
17 you did consider those in your model?

18 THE WITNESS: Yes, we did.

19 JUDGE TOREM: So at least one of those goes  
20 north from the business to wherever?

21 THE WITNESS: Well, it's not necessarily  
22 just his 12 trips. Anybody who lives along that  
23 corridor who would be diverted from the closure of  
24 Hickox would now be headed northbound would be --  
25 there would be one additional trip.

0751

1           JUDGE TOREM:  And I think part of this  
2 discussion is you're -- that's causing the confusion  
3 is you've referenced one additional trip during the  
4 peak hour?

5           THE WITNESS:  That's correct.

6           JUDGE TOREM:  So all these trips are being  
7 assumed to take place during the same hour, which is  
8 clearly not going to be the case.  So I think you and  
9 Mr. Jones are talking a little bit at cross purposes.  
10 But I think I understand Mr. Jones's point as to his  
11 assertions of the weaknesses of the study that he's  
12 trying to point out.

13         Q.    In fact, with respect to the use of peak  
14 hour-trips as a point of analysis where schools are  
15 concerned, would there be a match in time between the  
16 -- the peak-hour trips that you're identifying and  
17 the most active time at a school?

18         A.    It depends upon the activity schedule of the  
19 school.  Many schools have after-school sports, other  
20 events that go on in the school that generate a  
21 considerable amount of traffic that impact peak  
22 hours.

23           I'd like to make one point, though, in  
24 regards to the volume here, just to give you a sense  
25 of the magnitude of what we're talking about.  If all

0752

1 of the traffic that we're talking about on Hickox  
2 Road today, which is roughly 370 daily cars, were to  
3 divert to Blackburn Road, they would not even be  
4 detectable within the percentage of accuracy of the  
5 traffic count equipment that we use. So to make a  
6 big discussion about the impact here, it's not going  
7 to be detectable.

8 JUDGE TOREM: And that's even considering  
9 that, of those 370 daily trips, a reasonable fraction  
10 of that is heavier truck and farm traffic?

11 THE WITNESS: That's correct.

12 JUDGE TOREM: So your opinion is that even  
13 if all the farm traffic currently using Hickox Road  
14 to cross the railroad all went to the north end of  
15 town to Blackburn, there wouldn't be a considerable  
16 diminishment in level of service?

17 THE WITNESS: Well, just to give you an idea  
18 of the impact of that, our 20-year forecast, where  
19 the traffic is doubling in the 20-year time frame,  
20 still does not, in general, create a significant  
21 adverse impact on all but the freeway interchanges in  
22 this area. At none of the local arterial streets is  
23 there a significant impact. They're still running at  
24 level service A and B, which is the highest you can  
25 have, and that's a doubling of the traffic.

0753

1                   So there's not a traffic operational issue  
2 with the closure of Hickox. You will not see the  
3 relative impact of that closure on the other streets.

4           Q.    Might I suggest that you consider what the  
5 impact of driving potato trucks out of a muddy field  
6 on Blackburn Road might be. If you're familiar with  
7 farm country, I could just have you look at the  
8 amount of farmland that is in the area around the  
9 west end of Blackburn Road and suggest to you that if  
10 all the traffic to prepare the soil, plant, harvest,  
11 and plant a cover crop were to go up and down  
12 Blackburn Road for that area, that it would create  
13 another type of hazard, which is just plain mud on  
14 the road.

15                   Is that something that you would even  
16 consider, or are you completely attached to these  
17 numbers about average daily trips?

18           A.    Well, obviously, the vehicles are in the  
19 fields, they're generating debris and mud and that  
20 sort of thing on the vehicle itself, and there's ways  
21 to deal with that. In fact, the farm people tend to  
22 take care of that, with cleaning the vehicles as they  
23 leave the field. So I don't think that's an unusual  
24 thing and shouldn't have a long-term impact on the  
25 streets.



0754

1 Q. Your testimony is suggestive that, because  
2 of the use of very wide equipment for planting and  
3 harvesting and also for tilling the soil, that it  
4 actually would have an impact on the ability of  
5 people to farm and make use of Blackburn Road.

6 Is that an impact that you would consider  
7 relevant to this case?

8 A. Well, I don't know what type of vehicles  
9 that you're talking about. There's a lot of  
10 different kinds of farm equipment, some that is not  
11 designed to be operated on a uniform basis on a  
12 public street system, other that is more adequate to  
13 do that. So you're talking about these big  
14 harvesting machines driving down Blackburn, I guess,  
15 in the first case, I'd question why are they over in  
16 that area, anyway, when it's basically a residential  
17 area, and --

18 Q. Well, let's take a look at what this is.  
19 Here's the Blackburn Road. Using the example again,  
20 here's an agricultural field, field, field, you know.  
21 There's a radius of a mile, essentially, around the  
22 end of Blackburn Road that is entirely devoted to  
23 agriculture and has no other use, from an economic  
24 standpoint.

25 JUDGE TOREM: And for the record, Mr. Jones,

0755

1 you've pointed to the area east of Dike Road, just  
2 south and just north of Blackburn Road, where it  
3 comes out to the agricultural area, and bordered to  
4 the east by -- I think it's Britt Slough Road there,  
5 in general.

6 Q. Right, the Britt Slough Road and out to the  
7 river. This would be the main stem of the Skagit  
8 that's shown at the top of the map. And the river  
9 comes down. It's just barely visible along the  
10 margins of this illustration. What are these people  
11 supposed to do?

12 A. Well, in the case you're referencing, I  
13 seriously doubt that those people that are using farm  
14 equipment up in those areas are driving all the way  
15 down to Hickox Road to go north on I-5.

16 Q. They still need to be able to cross the --  
17 the testimony of Mr. Morrison, for example, which was  
18 pre-filed testimony, indicates that he farms on both  
19 sides of Interstate 5 and needs to be able to move  
20 equipment from the east side, over the Hickox Road  
21 overpass, to this area in order to be able to farm  
22 the property. That was reinforced by another witness  
23 yesterday.

24 A. Well, the case that he pointed out to me was  
25 the area was immediately west of Blackburn Road. So

0756

1 I really don't see why that traffic would drive, if  
2 they're immediately west of Blackburn, why they'd  
3 drive all the way to Hickox Road to access the east  
4 side of I-5, when they could go across on Blackburn  
5 Road.

6 Q. Well, what you're saying implies that you  
7 have not read Mr. Morrison's pre-filed testimony,  
8 which is that -- and this was true of the Smith  
9 testimony, as well. Farmers rotate their crops and  
10 trade land, and so their farm operations are -- of  
11 necessity have a rotation that requires them to move  
12 their equipment and to work on both sides of  
13 Interstate 5 just to maintain their ordinary  
14 operation.

15 A. I'm not questioning their need to get to  
16 both sides of I-5. What you suggested to me, though,  
17 was that for the area that is immediately west of  
18 Blackburn Road, the Britt Slough Road, at that  
19 intersection, that those folks were going to drive  
20 all the way down to Hickox Road to get across. I'm  
21 saying it wouldn't make sense to me that they would  
22 use that route when they could go across on  
23 Blackburn, and they probably are today, anyway.

24 Q. I believe there's testimony to the contrary  
25 from Mr. Morrison, Mr. Waltner yesterday, and from

0757

1 Mr. Smith, and there may be others I'm not so  
2 familiar with, but there are -- there definitely is  
3 evidence in this case regarding the need for  
4 agricultural farm machinery and harvest equipment to  
5 have access to this area that I was just describing.

6 A. Well, I don't think they're losing that  
7 access, is what I'm saying.

8 JUDGE TOREM: Mr. Norris, what you're saying  
9 is folks already use Blackburn Road to cross the  
10 highway?

11 THE WITNESS: That's correct.

12 JUDGE TOREM: And to distinguish again,  
13 talking at cross purposes, the folks that are now  
14 using Hickox Road to cross the highway for these same  
15 purposes of farming on both sides of the interstate,  
16 where do you suppose they will go?

17 THE WITNESS: For the folks on the north  
18 end, that Mr. Jones alluded to, I assume they'd  
19 continue to use Blackburn. For those that are in the  
20 close proximity to Hickox, the option would be to use  
21 Stackpole Road.

22 JUDGE TOREM: And if they're north of Hickox  
23 Road and now use Hickox Road because they're fairly  
24 close to it, would they then, in your prediction, go  
25 the shortest route, which would be to Blackburn?

0758

1           THE WITNESS:  As they get further north on  
2  Dike Road, the closer they get to Blackburn, the  
3  likelihood would be to use Blackburn.  In our studies  
4  of travel times and such, from the Dike Road  
5  S-curves, an alternate path, and this was looked at  
6  in terms of evaluation of emergency vehicle response,  
7  was about an equal split of travel time between  
8  Blackburn and Stackpole to the Cedardale Fire  
9  Station, which is on the east side of I-5.

10           So to me, it's six in one, half dozen in  
11  another, from probably a point midway between  
12  Blackburn and Hickox on the Dike Road as which route  
13  is preferred.

14           JUDGE TOREM:  And would the vehicle's  
15  ultimate destination, whether it be north on I-5,  
16  south on I-5, or somewhere in the city, influence  
17  their decision in your model?

18           THE WITNESS:  Yes.

19           JUDGE TOREM:  Essentially the shortest  
20  possible route is the one chosen?

21           THE WITNESS:  Yes, that's correct.

22           Q.  Just to provide a little more detail here,  
23  you're suggesting Blackburn would be the route, then,  
24  for agricultural purposes, coming out the Blackburn  
25  Road, crossing Interstate 5?  Is that what you're

0759

1 suggesting?

2 A. I'm suggesting it more likely they use Old  
3 Highway 99. They do have the option of going across  
4 I-5 and using Anderson Road to come down on the east  
5 side of I-5.

6 Q. Well, you indicated that you had consulted  
7 with the City of Mt. Vernon, and their development  
8 plans call for Hickox Road and all this area north to  
9 be highly developed for commercial purposes; is that  
10 right?

11 A. Are you speaking east or west of I-5?

12 Q. I'm speaking west of I-5.

13 A. My understanding is there is development  
14 plans for that area in terms of the city's growth  
15 plan.

16 Q. So if the agricultural traffic used  
17 Blackburn Road through an obviously school and  
18 residential area, it would also be on Old 99, coming  
19 through a commercial district, for more than a mile?

20 A. I also believe that part of our discussions  
21 with the City of Mt. Vernon indicated the area east  
22 of the freeway is the main development up there,  
23 industrial basin (inaudible.)

24 JUDGE TOREM: Mr. Norris, you've got your  
25 back to the court reporter again, and what I feared

0760

1 has happened. She can't hear you.

2 THE WITNESS: Sorry. So I suggest -- I  
3 don't know. We're getting out of my areas of  
4 expertise here, so, but --

5 JUDGE TOREM: Is it reasonable what he's  
6 suggesting, that traffic on Blackburn would flow into  
7 a proposed considered development district,  
8 commercial, on Old Highway 99, going southbound for  
9 up to a mile, as Mr. Jones suggested?

10 THE WITNESS: That's possible, but I think  
11 that it's also necessary to note that any traffic  
12 between the west side of I-5 and the east side of I-5  
13 is going to face that same issue. So if we're trying  
14 to taking agricultural equipment from the west side  
15 to east side, all of it will be impacted by future  
16 development that's proposed in this area. So either  
17 way, they're going to be looking at that.

18 JUDGE TOREM: Would leaving the Hickox Road  
19 crossing open alleviate some of those other concerns  
20 we're talking about?

21 THE WITNESS: What concerns, specifically,  
22 are you referring to?

23 JUDGE TOREM: I think Mr. Jones' concerns  
24 about this traffic going through residential school  
25 and now proposed commercial areas?

0761

1           THE WITNESS:  Actually not, because there is  
2  development potential going on right now at the  
3  Hickox Road intersection with Old Highway 99.  
4  There's a development going in there right now, so  
5  bringing that farm equipment through that  
6  intersection is going to have an adverse impact on  
7  commercial development that's occurring today.

8           Q.  I thought I understood you to say that we  
9  should be looking -- or that people driving will look  
10 for the shortest point, and the distance, and I think  
11 you could probably estimate it from looking at the  
12 map there, is about 600 feet from the railroad  
13 crossing to get to Old 99, and then another 600, 800  
14 feet to get to the overpass.  That's quite a lot  
15 different than going a mile down Blackburn Road,  
16 through the school and residential, and then another  
17 mile through the commercial district.

18          A.  Yeah, but a more optimum solution would be  
19 to go down to Stackpole Road and go across that way.  
20 Then they'd have the full Frontage Road, of which the  
21 access would be to go down to Pioneer Highway and go  
22 across, or have a limited impact on the traffic, the  
23 commercial retail traffic along Old Highway 99 just  
24 north of the interchange.

25          Q.  Right.  But if you look at the picture that



0762

1 we have of the area, the study area that you've been  
2 studying, I think you'll find there are farm  
3 operators on both sides of the Interstate 5, and they  
4 are farming up into this area that we're talking  
5 about.

6           And the question is what is necessary for  
7 their continued agricultural success in using that  
8 area?

9           A. Well, my understanding, and I'm just  
10 speaking off my discussions with the City development  
11 staff, that they're looking at commercial industrial  
12 development on the east side of I-5, which would  
13 probably, in the long run, and I don't know about the  
14 specific properties you're talking about, would  
15 probably preempt farming activities.

16           I know that the area west of the tracks is  
17 assumed, in long range planning, to be agricultural.  
18 So maintaining those activities on the west side of  
19 the track, with the assumption that the activities  
20 east of the track in relationship to farming, are not  
21 going to be continuing in the future.

22           JUDGE TOREM: Mr. Jones, you have just over  
23 ten minutes left of your allotted hour. I'm not sure  
24 what other areas you wanted to get into.

25           Q. What was your assessment of Dike Road as a

0763

1 potential road for providing service to the public  
2 generated by closing the Hickox Road crossing?

3 A. The Dike Road is a 40-mile-an-hour, two-lane  
4 roadway that has some curves, where speeds are  
5 reduced to 30 miles an hour. There's widened areas  
6 on the road to accommodate, I'm sure, farm equipment  
7 on the road so vehicles can pass.

8 Q. In your recommendations, you had suggested,  
9 without any detail that I could determine, that  
10 certain intersections would be improved. Is the Dike  
11 Road included in that set of improvement  
12 recommendations?

13 A. Yes, the intersections of the Dike Road and  
14 Stackpole Road, with the anticipation of increased  
15 truck turnings, the radius recommended for approval.

16 Q. And what was the cost that you assigned to  
17 that set of mitigation plans?

18 A. I think we -- I'll have to check and see  
19 here.

20 JUDGE TOREM: Can you raise your voice just  
21 a little bit, Mr. Norris?

22 THE WITNESS: I'm talking to myself.

23 JUDGE TOREM: It all goes on the record.

24 THE WITNESS: Okay.

25 Q. I believe it's at page six and seven of your

0764

1 report. It talks about minor intersection  
2 improvements to facilitate turning in your --

3 A. It's not on that page, but seems to me we  
4 had a summary back there, but --

5 Q. I'm sorry, I probably guided you to your  
6 report, whereas your pre-filed testimony, I believe,  
7 was the page six and seven.

8 A. Okay.

9 JUDGE TOREM: Mr. Jones, are we looking at  
10 the pre-filed direct testimony or rebuttal testimony?

11 MR. JONES: I thought it was pre-filed.

12 THE WITNESS: Not finding it on that page.  
13 Rebuttal.

14 JUDGE TOREM: Mr. Jones, why don't you tell  
15 us the number he assigned, because I'm not seeing it,  
16 either.

17 Q. I could not detect that there had been a  
18 cost assigned to these improvements, and it's one of  
19 my questions, you know, is what --

20 A. Basically, what we were talking about were  
21 minor radius improvements of the intersection, so  
22 that the paved area through the turning radius would  
23 be improved to accommodate the larger vehicles, and  
24 I'm -- so probably talking about ten to \$15,000 per  
25 intersection. So it's nothing that would be very

0765

1 significant.

2 Q. Did you make a traffic impact analysis  
3 assessment about the need for turn-arounds at the  
4 points of closure for the grade crossing?

5 A. We didn't assess that in our TIA, but that's  
6 part of the design plans for the closure of the  
7 crossing that would be considered.

8 Q. One of the uses of the Hickox Road currently  
9 is as access for the milk trucks which come off of  
10 Interstate 5 and return to Interstate 5. Did you  
11 consider the impacts on trucks like milk trucks that  
12 would not be able to pass through, meaning go east to  
13 west or west to east, but would rather have to enter,  
14 and then turn around, and leave?

15 A. Yes, in fact, we did. We contacted the milk  
16 purveyors in the area and actually obtained turning  
17 radius templates from them from which we did a  
18 turning radius analysis of the turns that they were  
19 making and would have to make under this proposal.

20 Q. Did you identify the cost that would be the  
21 cost of this project to mitigate this change?

22 A. No, we did not.

23 Q. Were you shifting that cost to the  
24 landowners?

25 A. No, there was no attempt to identify who

0766

1 would pay for the cost. So it's probably part of the  
2 mitigation for the improvement.

3 Q. From reading your report, I almost get the  
4 impression that you think that there would be a  
5 transportation gain, beside the railroad, that there  
6 would be transportation gain from eliminating the  
7 grade crossing. Is that a true statement?

8 A. Yes, it is.

9 Q. What would be the transportation gain apart  
10 from the grade crossing closure?

11 A. I don't think that's what this analysis was  
12 focusing on. It was focusing on the impact of  
13 closing the crossing and the transportation issues  
14 related with that.

15 Q. Your report is to the effect that there is  
16 no adverse impact from closing the crossing, and I  
17 guess, when I listen to the testimony, see the  
18 pre-filed testimony, I see many examples of impacts,  
19 and I'm just trying to reconcile those two things,  
20 your statement and what I'm hearing, and I'm not able  
21 to do it. So I'm giving you an opportunity here.

22 A. If you're familiar with the SEPA language,  
23 SEPA doesn't deal with impacts per se. It's  
24 significant adverse impacts upon which a  
25 determination is made of whether an action needs to

0767

1 be mitigated. What I'm saying is there are not  
2 significant adverse impacts that are created by the  
3 closure of this crossing.

4

5 E X A M I N A T I O N

6 BY JUDGE TOREM:

7 Q. Mr. Norris, how do you then reconcile SEPA's  
8 threshold of no significant adverse impacts with the  
9 various folks I'm going to hear from in just a few  
10 hours that will disagree with what SEPA says is the  
11 true impact here? How do you reconcile the community  
12 that uses this intersection being overwhelmingly  
13 against it? Do you acknowledge that a number of  
14 citizens have filed, not only in this pre-filed  
15 testimony, but I'm sure you've been informed,  
16 petitions, complaints, letters, I don't know, I'm not  
17 aware of any threats yet, to the Commission showing  
18 their disagreement with what the SEPA standard might  
19 be?

20 A. Yeah, I'm aware of the testimony and the  
21 letters to that effect. As a registered professional  
22 engineer in the state of Washington, though, I'm  
23 given the mandate to look at these issues in  
24 relationship to the overall community impact and the  
25 overall community benefit. And we considered the

0768

1 impacts of that closure in light of the total  
2 community benefit and impact, not just the limited  
3 impact of people who might have to take a little  
4 longer route to get to where they want to go.

5 Q. So if I were to grant the Department of  
6 Transportation and the Railway's petition and, in my  
7 opinion, want to acknowledge the concerns expressed  
8 by the citizens, how might you suggest I phrase that  
9 language to explain to them why I'm granting the  
10 petition despite their concerns?

11 A. Well, I think the --

12 Q. And I don't want to get shot after I issue  
13 this.

14 A. No, I can appreciate that, and that, and I  
15 hope you can appreciate the situation of traffic  
16 engineers dealing with the same issue, where  
17 everybody's a traffic engineer.

18 Q. Lawyers are hated more, so just tell me how  
19 I can fix this.

20 A. I think in terms of the safety impacts that  
21 are being realized from this closure, the benefits of  
22 that. I believe that the benefits to overall  
23 emergency access in terms of responding into a  
24 situation that's a known situation and not one that  
25 they're going to have to second guess what the

0769

1 conditions might be would be a benefit to the  
2 community.

3 I think in terms of all the costs associated  
4 with this proposed action in terms of the  
5 environmental, the travel time, delay, the fuel and  
6 oil cost, the driver time, all of these costs were  
7 far outweighed by the benefits that were realized  
8 from the proposed closure and through all our  
9 analysis tools.

10 And so it just -- I can appreciate the  
11 issues, I think there's provisions for these folks to  
12 deal with the situation in a reasonable manner in  
13 light of the conditions they're faced with today, and  
14 in virtue of that, I do believe that it's a benefit  
15 to the community. And they may not realize it today,  
16 but I do believe, in the long-term, that they will.

17 Q. So in sum, essentially what lawyers like to  
18 call a multi-factor balancing test weighs out where  
19 their concerns are outweighed by all the other  
20 benefits you've just noted?

21 A. That's correct.

22 JUDGE TOREM: Mr. Jones, I was stealing  
23 three of your last five minutes. I'll be happy to  
24 give them back to you.

25 MR. JONES: I'm going to let Mr. Thompson



0770

1 take a cut at it.

2 JUDGE TOREM: Okay. Well, I'm going to take  
3 your last two minutes, then.

4 Q. Mr. Norris, you indicated you had read all  
5 the pre-filed testimony. I want to direct your  
6 attention to Esco Bell. He's been pre-marked as  
7 Exhibit 18 and he will testify tomorrow. He's the  
8 public works director here in Mt. Vernon. On page 11  
9 of his testimony, he says something that I think  
10 diametrically opposes what you've indicated about  
11 level of service staying at A and B 20 years from  
12 now.

13 I'll read to you the question on the top of  
14 page 11 of Mr. Bell's pre-filed testimony. What is  
15 the existing service level for that crossing, in  
16 reference to the Blackburn crossing? Does this  
17 incorporate trips from vested land use applications?  
18 He says, I do not know the LOS -- level of service --  
19 for the crossing. However, the roads at the crossing  
20 were modeled to be operating at LOS A under the  
21 then-current traffic flows.

22 Here's his disagreement. This LOS is  
23 expected to drop to F, as in Frank, on Blackburn Road  
24 and Old Highway 99 South with projected year 2025  
25 population growth. Did you read that testimony?

0771

1 A. I did.

2 Q. Do you agree with it?

3 A. I do not.

4 Q. And you stand by your estimation that  
5 projected traffic flows in 2025, or thereabouts,  
6 would allow that intersection to remain at a level of  
7 service A or B?

8 A. Our report shows that in 2026, with the  
9 closure, the level of service at that intersection  
10 would be level of service B; correct.

11 JUDGE TOREM: Okay. Thank you. Mr.  
12 Rogerson, I imagine you'll take that up with Mr. Bell  
13 tomorrow.

14 At this time, does anybody need a break  
15 before the Commission's cross-examination of this  
16 witness?

17 MR. ROGERSON: Your Honor, if I could  
18 suggest perhaps a break at 4:00, we have people  
19 coming in, to avoid disruption.

20 JUDGE TOREM: Let's take a ten-minute break.  
21 It is 4:00, Mr. Thompson, so I'm sorry to get you up  
22 and down there. But we are going to move the room  
23 and rearrange it. It shouldn't take too long if we  
24 all pitch in and help a little bit to move tables.  
25 Now's as good a time as any, as we've asked the crew

0772

1 to come in at 4:00. So Mr. Norris, a ten-minute  
2 breather for you. The rest of us will move some  
3 tables. We're at recess.

4 (Recess taken.)

5 JUDGE TOREM: All right. It's about ten  
6 minutes after 4:00. We've successfully rearranged  
7 the room in just ten minutes. Thank you. And Mr.  
8 Thompson, you're on.

9

10 C R O S S - E X A M I N A T I O N

11 BY MR. THOMPSON:

12 Q. Good afternoon, Mr. Norris. I'm John  
13 Thompson, Counsel for Commission Staff.

14 A. Good afternoon.

15 Q. I'm going to try to do this fast and get out  
16 of here by 4:30. Let's see. I wanted to ask you --  
17 there was a question earlier about the cost of making  
18 improvements to -- radius improvements at a couple of  
19 the intersections, and you also mentioned the  
20 possibility of building turnarounds as part of the  
21 project were the closure of the crossing to be  
22 granted. Remember that?

23 A. Yes.

24 Q. I know this probably hasn't been a cost  
25 arrived at for what a turnaround might cost, but can

0773

1 you just give kind of a guess, in round terms, for  
2 what the construction of a turnaround might cost?

3 A. Oh, I'd guess maybe in the neighborhood of  
4 30 to \$50,000, depending on right-of-way, stuff like  
5 that.

6 Q. And would there be two constructed in this  
7 case?

8 A. Yes, there would be one on either side of  
9 the track.

10 Q. Thanks. If you could look at your written  
11 testimony, not the rebuttal, but the first filing, at  
12 page 12. That's Exhibit --

13 JUDGE TOREM: Eleven.

14 Q. -- 11.

15 A. Okay.

16 Q. And you're talking there -- there's a  
17 question, have there been any fatalities at the BNSF  
18 Hickox Road railway crossing, and when. And you say  
19 that there have been two reported vehicle-train  
20 accidents since 1975. Then you mention that in 1990,  
21 there was a fatal collision. Do you know what  
22 protective devices were in place when those accidents  
23 occurred?

24 A. I believe at that point in time, it was  
25 passive, and that subsequent to the 1990, that the

0774

1 gates and flashing lights were installed.

2 Q. Okay. So at the time, it was -- Hickox Road  
3 had a similar setup to what exists at Stackpole Road  
4 today?

5 A. Right, correct.

6 Q. Okay. And I noticed that you mentioned it  
7 was under dark and cloudy conditions. I gather  
8 because you think that was contributing to the  
9 motorist not being able to see the approaching train?

10 A. Yeah, light, conditions of light are a  
11 significant aspect of accidents.

12 Q. Do you think the lights that are presently  
13 -- lights and gates installed there now probably  
14 improve the chances of a motorist realizing that  
15 there's a train?

16 A. Statistically, they've been shown to do  
17 that, yeah.

18 Q. Okay. Page 23, same exhibit, if you could  
19 turn there, please, at line 23 on that page, this  
20 seems to be one of your -- first recommendation, the  
21 bullet point there. You say, It is recommended that  
22 Hickox Road railway crossing be closed in conjunction  
23 with the Mt. Vernon siding improvement project to  
24 support improved train service on the BNSF line  
25 between Seattle and Vancouver, B.C.

0775

1           I just want to understand the basis for that  
2 recommendation. Did you -- do you understand, first  
3 of all, that what the Commission looks to in a case  
4 like this is whether the risk at a crossing outweighs  
5 the public need for the crossing? Do you understand  
6 that to be the question before the Commission in a  
7 case like this?

8           A. Yes.

9           Q. Okay. Is that -- is that the analysis you  
10 undertook? Or it sounds to me like you -- instead,  
11 that you took the project as a given, and then, under  
12 SEPA, looked at whether there were adverse impacts  
13 that needed to be mitigated?

14          A. I don't believe we took it on as a given.  
15 We looked at the impacts first and then made our  
16 recommendation based upon that in considering all the  
17 ramifications of the closure, whether or not there  
18 was a significant adverse impact to the closure or  
19 would it be a benefit to the community.

20          Q. Okay. Is there any way in your mind to do a  
21 weighing between the hazard to be avoided versus the  
22 considerations like flood evacuation and just  
23 mobility needs of the community and all those sorts  
24 of considerations? Is there a way in your mind to  
25 weigh the risk of a crossing versus the public's need

0776

1 for the crossing?

2 A. Well, in fact, we did that with the GradeDec  
3 model that we did and did the benefit cost of that  
4 and determined that, in fact, it was a benefit,  
5 significant benefit for the community.

6 Q. Okay. And I want to get to that in a little  
7 bit. You didn't do that in your initial analysis,  
8 though?

9 A. It was not included in our initial report.  
10 Subsequent, yeah.

11 Q. Or in the traffic analysis itself?

12 A. Right.

13 Q. But just in your -- I guess in preparation  
14 for your rebuttal testimony?

15 A. Right.

16 Q. Okay.

17 A. But those same considerations were employed  
18 in the evaluation before.

19 Q. If the Commission were interested in looking  
20 at whether a motorist who's presently using the  
21 Hickox Road crossing were diverted to either of the  
22 other alternative crossings, whether that motorist  
23 would face riskier or, on the other hand, safer  
24 conditions at either of those crossings, have you  
25 given any kind of opinion about that?

0777

1           A.    Well, my understanding is with the  
2 improvements to Stackpole, that would be an  
3 improvement there.  Blackburn Road crossing has  
4 undergone significant crossing improvements that  
5 would accommodate additional traffic, so I think  
6 those impacts would be a benefit to close the  
7 crossing by simply eliminating the existing crossing  
8 and the potential for accidents at that location.

9           Q.    Well, I didn't -- do you think a motorist  
10 who's presently using Hickox and who's now forced to  
11 use one of the other two crossings is going to face  
12 more or less risk as those -- particularly, I'm  
13 concerned with Blackburn.

14                  I take your point about if improvements are  
15 made at Stackpole, but with Blackburn, are you  
16 satisfied, and if so, how did you satisfy yourself  
17 that Blackburn is -- would actually be safer for  
18 motorists than the Hickox Road were it to remain open  
19 over a double crossing?

20           A.    How would it be safer for motorists to use  
21 that crossing rather than Hickox?  So you really  
22 divorce the issue of whether or not Hickox is opened  
23 or closed in the calculation and only looking at an  
24 anonymous driver, which approach they would use,  
25 would it be safer for them to use this crossing or



0778

1 this crossing; is that correct?

2 Q. Right, assuming that the crossing -- the  
3 siding was built, but Hickox remained open?

4 A. I would presume that, by virtue of the  
5 detection and the crossing protection devices, that  
6 the Blackburn Road would be a safer crossing.

7 Q. Okay. Did you do -- you did some study of  
8 accidents at intersections; am I right?

9 A. That's correct.

10 Q. In your traffic analysis?

11 A. Right.

12 Q. Did you do any of the Blackburn and Old 99  
13 crossing?

14 A. Let's see. I think only from the standpoint  
15 of rail accidents.

16 Q. Okay. Could I have you look, please, at --  
17 do you have in front of you what's been maybe --  
18 what's been marked as Exhibit 105 and 106? These  
19 were the data requests that we sent to the City  
20 asking for accident history at the Blackburn/Old 99  
21 crossing.

22 A. I don't have something that's labeled as  
23 Exhibit 105 or 106 in front of me.

24 Q. Oh, sorry. Well, it's Staff Data Request  
25 Number Two to Mt. Vernon. Did you have a chance to

0779

1 review that?

2 A. I did have a chance to review that earlier  
3 today, but I don't have it with me right now.

4 Q. Well, let's see. I'll tell you what. I'll  
5 show you my copy. We can look at it together.

6 JUDGE TOREM: While he's getting that, Mr.  
7 Norris, the Data Request Number Two is a response  
8 regarding the traffic accidents at the Blackburn/Old  
9 Highway 99 crossing, and has a series of attachments  
10 referencing various addresses where there have been  
11 motor vehicle accidents, DUIs, or other traffic  
12 infractions.

13 THE WITNESS: Okay.

14 Q. Okay. So we asked the city of Mt. Vernon  
15 for a summary of traffic accidents at or near the  
16 intersection of Blackburn and South Second/Old 99 for  
17 a three-year period ending September 30th, 2007, and  
18 they provided us with an explanation of what their  
19 terminology means, and then a list of -- including a  
20 lot of motor vehicle accidents --

21 A. Mm-hmm.

22 Q. -- over that period of time. Have you had a  
23 chance to review that or is that something --

24 A. I've not seen this particular reporting.

25 Q. Okay. Is this something that you have

0780

1 experience looking at and analyzing in your work?

2 A. Yes, yes.

3 Q. Okay. Well, do you see there's some --  
4 there obviously is a wider area involved here than  
5 the actual -- actual intersection. I'm pointing over  
6 at this aerial photograph here. The actual  
7 intersection between Blackburn Road and Old 99.  
8 However, I think it's possible, is it not, to see  
9 that, for example, where it says 100 -- the address  
10 is 100 East Blackburn Road and South Second, there's  
11 some examples of that through here, and then --

12 JUDGE TOREM: Mr. Thompson, are you  
13 representing that 100 East Blackburn and Second is  
14 the intersection itself?

15 MR. THOMPSON: Well, I'll ask the witness.

16 Q. Would that be your conclusion?

17 A. It appears that that's correct, yes. We've  
18 got -- East Blackburn and South Second would be the  
19 intersection, yeah.

20 Q. Okay. So as you can see, there's not a  
21 whole great deal of detail about what sort of  
22 accident it is, I guess, but there have been some  
23 motor vehicle accidents --

24 A. Right.

25 Q. -- at that intersection. Does that -- if

0781

1 you were doing an analysis of whether that  
2 hypothetical motorist who's diverted to -- from use  
3 of the Hickox crossing to the Blackburn crossing is  
4 going to, you know, confront a safe crossing there,  
5 does this cause you concern? I don't know if you  
6 were here when I was talking to Mr. Peterson this  
7 morning?

8 A. Yes, I was.

9 Q. Okay. And were you there when I was talking  
10 about the possibility with him of an accident  
11 occurring there on that intersection and fouling the  
12 tracks? Did you hear that?

13 A. Yeah, I did.

14 Q. Okay. And what's your response to that?

15 A. The possibility of an accident occurring?  
16 Yeah, it's possible.

17 Q. Well, doesn't it -- isn't that an unusual  
18 characteristic of a grade crossing, to have an  
19 intersection on top of a grade crossing?

20 A. It's not typical, but I've seen those  
21 around, yes.

22 Q. Okay. I mean, it's generally not a positive  
23 thing from a safety standpoint, is it?

24 A. I don't know that I'd necessarily say that,  
25 because what we try to do in traffic interactions is

0782

1 to focus the movements of one location, rather than  
2 spreading them out. And I noticed in Mr. Zeinz's  
3 testimony that he was proposing two intersections,  
4 which would multiply the opportunity for increased  
5 incidents and also create traffic circulation issues.

6 So we do try to focus the activities at one  
7 location so you can better control it. With the  
8 provision for the signals and the crossing gates, and  
9 they're tied between the traffic signals, and the  
10 railroad signals would be a benefit.

11 Q. Well, okay, I think that answered it. I  
12 also want to next direct your attention to what we  
13 have pre-marked as 106. This is just a follow-on,  
14 another data request sent to the City, and Data  
15 Request Number Three.

16 Please provide a summary of complaints  
17 received by the city attorneys blocking the crossing  
18 at Blackburn/South Second.

19 JUDGE TOREM: This is Exhibit 106; is that  
20 correct?

21 MR. THOMPSON: Correct.

22 Q. And the City responded, Attached is a list  
23 of complaints identified as traffic hazard for the  
24 location described above. All traffic hazards  
25 identified on the list above involve complaints of

0783

1 malfunctioning of the safety crossing arms, which  
2 blocked the intersection, and then there's a list of  
3 those events. Is that what -- do you see that?

4 A. Mm-hmm.

5 Q. Have you had a chance to review that?

6 A. I've not seen this before, no.

7 Q. Okay. But is this the kind of -- again, a  
8 similar sort of a report -- the type of thing that  
9 you would analyze within the scope of your --

10 A. But, again, in both of these cases, the  
11 information presented, it just identifies a report  
12 record. It does not identify anything about what the  
13 condition was, what happened, what the situation was,  
14 any of the statistics that would go along in  
15 evaluating the significance of what was going to  
16 proceed.

17 Q. Okay. But if you had been aware of that  
18 information while you were doing your traffic  
19 analysis, is that something you would have looked  
20 into further?

21 A. Yes, I would have.

22 Q. Let me ask you this. If there were a  
23 situation where there were two at-grade crossings and  
24 one of them demonstrably less safe than the other,  
25 they were alternatives for one another, would it make

0784

1 sense to close the safer one and divert traffic to  
2 the less safe one?

3 A. Under the scenario that you suggested, it  
4 would probably not be, but in the case that we're  
5 talking about, the specific case, that's not what's  
6 occurring. In fact, what's occurring that our model  
7 is showing, that there would be no increase in  
8 traffic at the Blackburn Road railway crossing as a  
9 part of the closure of Hickox Road.

10 Q. Right. And you said that the model actually  
11 showed a decrease in peak-hour traffic at Blackburn  
12 of five vehicles; is that right?

13 A. That's correct.

14 Q. How could that be?

15 A. The model looks at all of the travel time  
16 passed between an origin and destination and it  
17 assigns traffic between the locations they want to  
18 travel to based upon these travel time paths. So  
19 when you have something with an alternative, like  
20 closing Hickox Road, where those traffic volumes have  
21 to be shifted to other locations, then you have a  
22 shifting in all of the interactions between all other  
23 destinations such that the model achieves an  
24 equilibrium over it in terms of travel time.

25 So that by closing Hickox Road, it may

0785

1 create a loading of traffic at another location such  
2 that the travel time going that route increased, so  
3 that traffic that was previously using that route is  
4 now selecting another alternative route, which is  
5 faster than the one it was using before.

6 Q. I mean, don't you come at this, though, with  
7 a certain assumption that, well, you blocked the  
8 crossing and people are going to go in some  
9 percentage -- where there's two other crossings, you  
10 think, well, maybe 20 percent will go one way and 80  
11 percent will go the other, and then you find that, in  
12 fact, one of the models shows traffic at one of the  
13 alternative crossings actually decreases, doesn't  
14 that give you pause about whether the model's working  
15 correctly, or do you look into how that possibly  
16 could be explained in sort of real world terms?

17 A. Well, the first thing we have to realize, we  
18 have to go back to what I mentioned previously, that  
19 the volume of traffic that we're talking about here  
20 is 32 trips in the peak hour, which is virtually  
21 undetectable in the traffic count equipment that  
22 we're using.

23 So when you use the assumption that that  
24 traffic is being diverted to other locations to  
25 assume a magnitude jump anywhere in the system is



0786

1 rather ludicrous. So the magnitude of the difference  
2 in that is really what you look at. Basically, what  
3 the analysis is telling us is there's really no  
4 significant impact on that crossing with the closure.

5 Q. My question was -- I guess my question was  
6 how do you explain the odd result that there's  
7 actually fewer people on the model using Blackburn  
8 Road? And I think your answer was, Well, it's pretty  
9 small anyway, so it doesn't matter?

10 A. No, what I said was that, by virtue of the  
11 shift in the volume by Hickox Road, as an example,  
12 the traffic volumes are being increased in other  
13 places, which are causing decisions made by motorists  
14 where the travel time then, by virtue of that small  
15 increase in travel time, impact -- or generated by  
16 the shifting of those volumes from Hickox, those  
17 motorists are making decisions. Other places in the  
18 network are now shifting to other routes, because  
19 they become faster than the route they were using  
20 previously.

21 Q. Can you provide one example of how that  
22 might occur by pointing to the aerial behind you,  
23 maybe, or just describing it, if you can?

24 A. Well, as an example, somebody who is located  
25 east of -- let me think in my head a minute, just so

0787

1 I can make it clear. Makes sense to -- well, as an  
2 example, traffic that might be northbound on I-5 that  
3 is now -- used to go through the intersection of  
4 Hickox Road because of -- or excuse me, the Conway  
5 Frontage Road now, but because of the virtue of the  
6 increase of the traffic on Conway Frontage Road that  
7 is trying to enter Old Highway 99 has increased, so  
8 that volumes that were previously getting northbound  
9 off at Old 99 and using the Old Highway 99 to come  
10 into Mt. Vernon are now opting to go over to Anderson  
11 Road and coming in that way, as opposed to coming  
12 down onto Old 99 and going up to Blackburn, and  
13 making a right turn and going up Blackburn that way.

14 Q. Okay. Thanks for the example. I'm not sure  
15 I understand it, but I'll read the record again, try  
16 to figure it out.

17 There was some discussion, when Mr. Jones  
18 was talking to you, about particular examples of  
19 farmers or people living along Britt Road having a  
20 certain number of truck movements per day and so  
21 forth.

22 Does the model really -- does the model  
23 specifically take individual businesses and land uses  
24 into account, or is it -- it seems to me it's  
25 probably more general than that. I mean, does it

0788

1 know that, for example, there is a business at this  
2 particular address that has X amount of truck trips  
3 per day?

4 A. Well, the model's actually generated by --  
5 well, it's more of an accumulation of the land use  
6 that exists within that zone, and so it does -- it is  
7 aware of the farm -- I don't remember the name of the  
8 farm -- with that farm being there and the estimate  
9 of the trips that is generated for that. Those  
10 volumes are then loaded into the network and the  
11 model -- the highway network of the model is  
12 calibrated against existing ground counts so that you  
13 get a match between the model projections and what's  
14 actually occurring in the field, and then they're  
15 used to project alternative analysis, as in this  
16 case, where we're closing Hickox Road, and then  
17 long-term redevelopment, which we did with the 2026  
18 model, as well, so --

19 Q. I'm going to ask you to look at another  
20 cross exhibit, and that is Number 126. Do you have  
21 that? It's a series of e-mails --

22 A. Yeah, I do have it.

23 Q. -- between Mr. Schultz and an FRA, Federal  
24 Railway Administration, employee, and it also has  
25 information about the GradeDec.net model.

0789

1           A.    I don't -- I have it in my -- it wasn't  
2   numbered, so you'll have to help me with the  
3   numbering on those.

4           Q.    Well, did you -- you did look at those  
5   e-mails?

6           A.    Yes.

7           Q.    I only have a very small point, in the  
8   interest of time, about those.  You stated a  
9   conclusion in your rebuttal testimony about a cost  
10  benefit ratio.  Let's see.

11                    JUDGE TOREM:  That's Exhibit 15, what page?

12           Q.    Exhibit 15, page four, I believe.  Yes.  
13  Line 21.  He said that there was a cost benefit,  
14  overall mean benefit cost of the Hickox Road railway  
15  crossing closure of 5.4, et cetera.  And so we asked  
16  for the -- sort of the work papers on that,  
17  informally, and we got those e-mails there; isn't  
18  that right?  If you've had a chance to look at those  
19  e-mails?

20           A.    Yes, correct.

21           Q.    Now, attached to those were a couple of  
22  Excel spreadsheets, where it shows analysis that was  
23  done by an FRA employee to arrive at that  
24  five-point-something figure?

25           A.    Right.

0790

1 Q. Okay. And do these look like -- there were  
2 a couple different scenarios.

3 A. Yeah.

4 Q. All right. In the 5. -- there was a  
5 spreadsheet that I handed out to people earlier today  
6 -- actually, there are two of them. One of them just  
7 involved a scenario under which Hickox was closed,  
8 but no improvement was made to Stackpole crossing.

9 A. That's correct.

10 Q. And the other one had closure of Hickox and  
11 improvement of Stackpole?

12 A. Mm-hmm.

13 Q. And the spreadsheet that shows improvements  
14 at Stackpole was called Hickox and Blackburn XLS; is  
15 that right?

16 A. That's correct.

17 Q. Okay. And so if we go down, can you tell me  
18 what the line says where it shows the five-something?

19 A. 5.6 -- excuse me, 5.463119 benefit cost  
20 ratio.

21 Q. Right.

22 JUDGE TOREM: Mr. Thompson, I've got the  
23 spreadsheets. I have no idea which line in this  
24 microscopic text you might be looking at. Can you  
25 give me an estimate as to --

0791

1 MR. THOMPSON: Do you have the one that says  
2 --

3 JUDGE TOREM: You have two of them you  
4 handed out. One's a replacement page for 21 to 28,  
5 the other one's a replacement page for 29 to 36.

6 MR. THOMPSON: Okay. The one that we're  
7 looking at right now is the replacement page for 29  
8 to 36.

9 JUDGE TOREM: Okay.

10 MR. THOMPSON: And if you go down the  
11 left-hand column, there's a number of -- that's a  
12 column that has words in it, as opposed to numbers.

13 JUDGE TOREM: It's the column for  
14 description?

15 MR. THOMPSON: Description, correct. And  
16 there's one about, oh, ten down, maybe, and it says  
17 benefit cost -- sorry, net benefits, thousands of  
18 dollars present value, PV.

19 JUDGE TOREM: Got it.

20 Q. And that's where the number is. So in other  
21 words, I guess what's happening here is there are  
22 various kinds of social costs and benefits in terms  
23 that are come up with by assigning a dollar value to  
24 property damage and fatality accidents avoided;  
25 right?

0792

1 JUDGE TOREM: So Mr. Thompson, just so I'm  
2 clear, the number that we're supposed to be lining up  
3 with this is the 5.463119?

4 MR. THOMPSON: Correct.

5 JUDGE TOREM: So that would actually go with  
6 the benefit cost ratio line below that?

7 MR. THOMPSON: No, sorry, I misspoke.

8 Ignore the --

9 JUDGE TOREM: If I want to make any sense of  
10 what we're doing for purposes of writing an opinion,  
11 can you get me on the right line?

12 MR. THOMPSON: Sure. It is --

13 THE WITNESS: Line 13 down.

14 JUDGE TOREM: So 13, counting the word  
15 description as the first line or not counting it?

16 MR. THOMPSON: Counting it.

17 MR. SCARP: What does it say in the  
18 left-hand --

19 Q. It says, Net benefits, thousands of dollars  
20 PV.

21 A. That's line 12. Line 13 --

22 JUDGE TOREM: Okay. I'm reading across,  
23 then, under the variable name, it's CORBCR?

24 THE WITNESS: Yeah.

25 JUDGE TOREM: And the next entry, under

0793

1 mean, is the 5.463119?

2 THE WITNESS: Correct.

3 JUDGE TOREM: And is that the magic number  
4 we're referencing?

5 MR. THOMPSON: Correct.

6 JUDGE TOREM: What does it mean?

7 Q. Let me try to say what it means, and you can  
8 say if you agree with it or not. Well, I'll let you  
9 do it, because you know what you're talking about.

10 A. The GradeDec model is a model that was  
11 prepared by the Federal Railway Administration for  
12 evaluating the impact of railway crossing closure  
13 decisions. And what it does, it evaluates all of the  
14 costs associated with a railroad crossing and all of  
15 the benefits of closing a railway crossing and makes  
16 a determination of whether or not the benefit of the  
17 proposed action outweighs the cost.

18 JUDGE TOREM: So I take it a positive number  
19 means the benefits outweigh the cost?

20 THE WITNESS: Yes, and generally, for public  
21 works projects, a benefit of 1.5 is considered  
22 beneficial enough to make a public investment in the  
23 improvement. And I guess, according to the Federal  
24 Railway, they use a benefit of one, which is  
25 consistent with the federal guidelines.



0794

1           JUDGE TOREM:  So this exceeds the threshold  
2 of one or 1.5, because it's greater than five?

3           THE WITNESS:  Yeah, it's five times greater  
4 than one, so --

5           Q.  Let me ask this.  If the ratio -- the cost  
6 is assumed -- in the ratio, the cost is assumed to be  
7 one, so it's one, two, whatever the number is?

8           A.  Right.

9           Q.  Okay.  So if it's -- if the benefit cost  
10 ratio is one, that means the costs equal the  
11 benefits?

12          A.  That's correct.

13          Q.  Okay.  So this takes a lot of things into  
14 account, and I gather that there's really just a lot  
15 of default numbers that are used here, because this  
16 wasn't tailored to this particular situation so much,  
17 but just used a lot of default numbers that are in  
18 the model; is that right?

19          A.  In this particular run, there were several  
20 default values that were employed, but there was  
21 specific railway crossing data that's in the federal  
22 records regarding these crossings, plus the  
23 information on the costs of improvements at the  
24 crossings and accident predictions and those kinds of  
25 things.

0795

1 Q. Okay. So the point I wanted to get to after  
2 all this explanation was, when you go to the other  
3 spreadsheet, which replaces pages 21 through 28 --

4 JUDGE TOREM: For quickly getting there, is  
5 this the same line we're going to look at?

6 MR. THOMPSON: We're going to look at the  
7 same line.

8 JUDGE TOREM: So the number here in this  
9 corresponding spot, 13 lines down, is less than one,  
10 or 0.7928805?

11 Q. Correct. And so this is the result if  
12 Hickox were closed, but Stackpole were not improved  
13 with lights and gates; is that right?

14 A. That's correct.

15 Q. Okay. So is there any kind of -- well,  
16 comparing the two, is it fair to say that the benefit  
17 derives in large part from putting lights and gates  
18 at Stackpole?

19 A. And the closure of Hickox.

20 Q. Well, if you just closed Hickox, then the  
21 benefits, in terms of avoided accidents, property  
22 value, deaths, et cetera, would actually be less than  
23 the cost of what? I presume just putting -- just  
24 blocking off the road?

25 A. Well, the point of the matter, though, is

0796

1 that with the closure of Hickox, you're diverting  
2 traffic to Stackpole, and that's where you're  
3 realizing your benefit. If you just left Hickox open  
4 and did the flashing gates and lights at Stackpole,  
5 you're not going to receive that benefit.

6 JUDGE TOREM: I think Mr. Thompson's asking  
7 you, on this replacement for pages 21 to 28  
8 spreadsheet, it's labeled Hickox Closure. My  
9 understanding, from Mr. Thompson's question, is  
10 that's just closing the crossing at Hickox Road with  
11 no improvements anywhere else.

12 THE WITNESS: That's correct.

13 JUDGE TOREM: And so his proposition, which  
14 seems logical to me, is that if you do that, a number  
15 less than one occurs in the mean cost benefit box,  
16 which, as you've just said, means the costs outweigh  
17 the benefits of just closing the road, with no other  
18 action?

19 THE WITNESS: But his presumption was, as I  
20 was reading into his statement, was that by putting  
21 gates and lights at Stackpole, that would achieve the  
22 same kind of benefit that we're realizing with the  
23 closure and the improvements at Stackpole. I'm  
24 saying no, that's not the case, because you're  
25 getting traffic diversion from the Hickox Road that's

0797

1 all going -- or not all of it, but going to  
2 Stackpole, and so by virtue of that, you're getting  
3 these increased benefits by directing that traffic  
4 there and providing this increased safety at the  
5 crossing.

6 JUDGE TOREM: So how do you again explain  
7 the difference? I see from the e-mail traffic that  
8 it's unfortunately misnamed Hickox and Blackburn when  
9 we're getting the plus five benefit?

10 THE WITNESS: Right, that's correct.

11 JUDGE TOREM: But it's supposed to be Hickox  
12 and Stackpole?

13 THE WITNESS: Right, that's correct.

14 JUDGE TOREM: When you do a closing and an  
15 improvement, suddenly it's five times the costs are  
16 outweighed by benefits?

17 THE WITNESS: Right.

18 JUDGE TOREM: But if you just close Hickox,  
19 the costs are outweighing the benefits, because  
20 you're .79?

21 THE WITNESS: That's because you're  
22 increasing the traffic volumes and the exposure and  
23 the accident potential at Stackpole that's not being  
24 mitigated by any kind of an improvement.

25 Q. I'll take that explanation. Did anybody run

0798

1 a GradeDec.net analysis of the cost benefit of  
2 putting in -- putting in, let's say, four-quadrant  
3 gates or any other kind of protective equipment at  
4 Hickox Road, leaving it open, and either, you know,  
5 improving Stackpole or not improving Stackpole?

6 A. I don't recollect that was done, no.

7 Q. Were these the only analyses that were run  
8 in the GradeDec.net model?

9 A. No.

10 Q. Were there any done prior to your rebuttal  
11 testimony, other than these two?

12 A. No.

13 MR. THOMPSON: Okay. That's going to be my  
14 last question. Thank you.

15 JUDGE TOREM: Any redirect, Mr. Lockwood?

16 MR. LOCKWOOD: Yeah, I find myself in the  
17 unenviable position of deciding whether you guys get  
18 to eat dinner.

19

20 R E D I R E C T E X A M I N A T I O N

21 BY MR. LOCKWOOD:

22 Q. Mr. Norris, recognizing that there's  
23 apparently a significant difference in your  
24 conclusions with respect to the volume of traffic  
25 predictions on Blackburn and that of Esco Bell, can

0799

1 you describe your methodology and what you relied on  
2 in reaching your conclusion?

3 A. Well, we relied on the City's traffic  
4 assignment map model that was used in the development  
5 of their comprehensive plan to come up with our  
6 traffic forecast for both the 2006, with and without  
7 the closure, and the 2026 forecast of traffic volumes  
8 with and without the closure.

9 Q. So is it your understanding that you would  
10 use the same data that the City used?

11 A. It would be my understanding, if he was  
12 using a forecasting model to determine the 2025  
13 volumes, that we would be using the same tool.

14 Q. Any idea why there might be a discrepancy?

15 A. Might be a discrepancy on -- I don't know  
16 when his data was produced, if it was a subsequent  
17 development proposal that he was knowledgeable of  
18 that changed the forecast or if there are different  
19 assumptions in his analysis in regards to other  
20 improvements in the area that may impact that which  
21 were not known to us at the time that we did it. I'm  
22 not sure who did his analysis of that and where it  
23 came from and what the qualifications of that person  
24 to do that, so it could be a number of things.

25 Q. Okay. There has clearly been a lot of

0800

1 testimony, a lot of comments submitted that makes it  
2 clear that there are local people in this community  
3 that are concerned that they will experience impacts  
4 that are of greater impact on them than that which  
5 your engineering model predicted. Is that an unusual  
6 occurrence, in your experience?

7 A. No.

8 Q. Can you describe the modeling tool that you  
9 used in this case that you relied on in your  
10 prediction that might give us some competence that  
11 there is science involved here and that gives you  
12 competence that your predictions are actually the  
13 predictions most likely to be experienced in terms of  
14 traffic distribution associated with the closure of  
15 Hickox Road crossing?

16 A. The most significant thing about the degree  
17 of competence is the -- I guess is the magnitude for  
18 possible error in the discussion. There's so much  
19 capacity available in the system out there that is  
20 not being used today, and although we're projecting  
21 significant growth in traffic over the next 20 years,  
22 a doubling of the traffic volumes in the area based  
23 upon City of Mt. Vernon's growth projection plans for  
24 this area that were incorporated into their model,  
25 and still we have relatively high levels of service

0801

1 at the analysis intersections.

2 Q. When you refer to the model, are you  
3 literally talking about a computer program that  
4 crunches data?

5 A. I am.

6 Q. And what information is available to that  
7 computer model?

8 A. The population and employment growth  
9 projections for the City of Mt. Vernon and Skagit  
10 County that are based upon the state's overall  
11 projections for the state, that are then broken down  
12 into the local area, the comprehensive plan for the  
13 City of Mt. Vernon that recognizes the development  
14 potential along the I-5 corridor and the need for  
15 additional improvements to support that growth, our  
16 own traffic counts that we did out there and the  
17 studies that we've done along the corridor, our  
18 extensive knowledge of working in these situations  
19 and doing these kinds of analysis, having prepared  
20 over a thousand traffic impact studies and  
21 transportation planning efforts, and the fact that  
22 the magnitude of the volumes that we're talking about  
23 don't fall within the error of the traffic count  
24 equipment that we're using to analyze them. So it's  
25 just inconceivable to me that there's anything



0802

1 detectible here that's going to be a significant  
2 issue.

3 Q. Does the computer model have a name?

4 A. It's the City of Mt. Vernon comprehensive  
5 plan traffic assignment model.

6 Q. Is this the modeling that is standardly used  
7 by civil engineers in predicting traffic impacts?

8 A. That's correct.

9 Q. Finally, you indicated to Mr. Thompson that  
10 there were some additional GradeDec analysis runs  
11 made. Can you explain why that was done and, you  
12 know, what -- to what results?

13 A. Well, we -- after our conversation with Mr.  
14 Thompson, we pursued a much more definitive  
15 evaluation of the benefit cost with actual conditions  
16 for the crossing, and spent most of one afternoon  
17 working with the federal rail people to work through  
18 the model and plug in values that were more  
19 appropriate to the action that we were doing, which  
20 involved cost of improvements and volumes associated  
21 with crossing, those kinds of things.

22 Q. Can you tell us what assumptions differed in  
23 the most recent analysis than that which are assumed  
24 in the spreadsheets that have been admitted?

25 A. Well, one of the things that's most notable

0803

1 is the cost of the improvement to Stackpole Road was  
2 significantly lower than what was anticipated by the  
3 rail office for improving that crossing, so that cost  
4 was changed. We changed the values associated with  
5 fuel and oil consumption to be more consistent with  
6 what is realized now.

7 Q. What were the original assumptions and what  
8 did you change those to with respect to fuel, if you  
9 can remember?

10 A. I don't remember what the original ones, but  
11 the new ones were in the neighborhood of \$3.10, I  
12 think, a gallon for gas. We changed the percentage  
13 of trucks that were identified in the model to  
14 reflect more consistent with the values that we had  
15 realized from our ground counts.

16 JUDGE TOREM: Would that be higher or lower,  
17 these changes?

18 THE WITNESS: That would be higher. That's  
19 the things that are hitting me the most.

20 Q. And as a result, is it fair to say that  
21 these changes were input because, upon reflection or  
22 closer review, you thought that some of the  
23 assumptions were not as good as they could have been?

24 A. That's correct.

25 Q. And these assumptions that you just recited

0804

1 better reflect reality, in your opinion?

2 A. That's correct.

3 Q. And how did that change the ultimate  
4 conclusion of cost benefit?

5 A. Using the GradeDec's assessment of traffic  
6 split between the two crossings, which was not  
7 related to -- anything to travel time or anything  
8 like that, resulted in the benefit cost of 1.79, and  
9 when we modified it to reflect our assessment of  
10 traffic volume changes relative to Blackburn as we  
11 predicted in our model, that -- it went to 1.75.

12 Q. Still positive, but not quite so  
13 dramatically as the initial indication?

14 A. That's correct.

15 MR. LOCKWOOD: Okay. Thank you, Your Honor.  
16 If I can have just a second?

17 MR. THOMPSON: Your Honor, I think I'd like  
18 to make a records requisition for the spreadsheet  
19 involved in that analysis that was just described and  
20 any supporting work papers. I can also go about it  
21 informally with the Department of Transportation, as  
22 we've done up to this point, so if you don't want to  
23 clutter the record with it, but --

24 JUDGE TOREM: Hold that thought.

25 Q. Yeah, Mr. Norris, did you communicate at all

0805

1 with Mr. Bell with respect to the traffic analysis?

2 A. Yes, in fact, we had a personal meeting with  
3 Mr. Bell in his office, and I believe we may have had  
4 a conversation at some other point in time.

5 Q. Did he indicate any concern with respect to  
6 how thorough it was in any of the conclusions  
7 reached?

8 A. I didn't get any impression from him that he  
9 was concerned about the thoroughness of the analysis  
10 as much he was concerned about the City's desire to  
11 provide more industrial commercial property along  
12 this corridor, and their concern that the closure of  
13 Hickox would have an adverse impact on it.

14 Q. Concerns weren't addressed with respect to  
15 the methodology or the quality of the data or  
16 anything?

17 A. No.

18 MR. LOCKWOOD: Thank you. No further  
19 questions.

20 JUDGE TOREM: Mr. Thompson, in the interest  
21 of time, it's now just about 5:00, and you say you  
22 want to talk some more about these GradeDec studies.  
23 My suggestion for this --

24 MR. THOMPSON: Well, to clarify, I don't  
25 want to talk more about them, but I would like to see

0806

1 the work papers.

2 JUDGE TOREM: What I propose, if those are  
3 where you'd like to focus any re-cross questions, is  
4 that you make that informal request, have it provided  
5 sometime next week I would hope could be reasonable,  
6 and as needed, file an indication of a request to add  
7 Mr. Norris to our lists of witnesses that we'll take  
8 up again on January 30th or 31st, if there are  
9 additional questions that come out with those  
10 spreadsheets. Would that satisfy your need for  
11 cross-examination today?

12 MR. THOMPSON: Yes, it would. And I would  
13 hope that it wouldn't be necessary. We just want the  
14 opportunity to look at what was changed, so --

15 JUDGE TOREM: Mr. Jones, do you have  
16 additional re-cross questions that you wanted to ask  
17 today? If so, tell me how long it's going to take,  
18 because I do need to consider the court reporter  
19 needs a break before we start at 5:30 with the public  
20 members.

21 MR. JONES: Mr. Rogerson just left so he  
22 could talk to Esco Bell. We're trying to evaluate  
23 the situation.

24 JUDGE TOREM: And let me recommend the same  
25 to you, that after Mr. Bell testifies tomorrow, if

0807

1 there are changes or questions as to the testimony  
2 just given as to the nature of the dispute or the  
3 opportunity to disagree with the study that Mr.  
4 Norris says was given and was not taken up as to the  
5 methodology, that that be reserved for additional  
6 cross-examination at a later date at the end of the  
7 month. Is that acceptable to you?

8 MR. JONES: That sounds fine to me, and I'm  
9 sure it would be acceptable to Mr. Rogerson, inasmuch  
10 as he's investigating this right now.

11 JUDGE TOREM: I understand. So Mr. Lockwood  
12 and Mr. Norris, is that acceptable to the Department  
13 of Transportation? It would be Wednesday afternoon,  
14 the 30th of January, or sometime during the day on  
15 the following day, Thursday, the 31st?

16 THE WITNESS: Yes, I could be available that  
17 day.

18 MR. LOCKWOOD: That would be acceptable,  
19 Your Honor.

20 JUDGE TOREM: Then at this time, very  
21 quickly, are there any other housekeeping issues we  
22 need to take up before we close the evidentiary  
23 hearing for today? Mr. Thompson.

24 MR. THOMPSON: Yes, I would like to offer  
25 for admission what's pre-marked as Exhibits 105, 106,

0808

1 and 126, which I just discussed.

2 JUDGE TOREM: 105 is the data request that  
3 you took up with Mr. Peterson and other witnesses,  
4 and 126 I know you took up just now. Are there any  
5 objections to 105 or 126?

6 MR. THOMPSON: And 106.

7 JUDGE TOREM: I'm holding that separately.  
8 105 and 126, I hear no objections to --

9 MR. SCARP: Wait a minute, Your Honor. 105,  
10 no objection.

11 JUDGE TOREM: 126 were those spreadsheets we  
12 were just talking about.

13 MR. SCARP: Oh, sorry. No objection.

14 JUDGE TOREM: Now, 106, Mr. Thompson, did  
15 you use that with any witness? Maybe you just used  
16 it?

17 MR. THOMPSON: That was the --

18 JUDGE TOREM: Those were the complaints.

19 MR. THOMPSON: -- response about  
20 malfunctioning of the warning device.

21 JUDGE TOREM: So you did reference that.  
22 Any objection to 106?

23 MR. JONES: No objection, Your Honor.

24 MR. SCARP: Oh, you asked this witness --

25 JUDGE TOREM: He did actually bring it to

0809

1 him. I recall now.

2 MR. SCARP: I don't have any objection.

3 JUDGE TOREM: All right. So then 105, 106

4 and 126 have been admitted. Are there any other

5 housekeeping issues now that we need to take up

6 before a short break before the public hearing

7 tonight? Hearing none, let me remind Counsel that

8 we're back tomorrow morning at 9:00. Mr. Jones, is

9 Dr. Winkes going to be here directly at 9:00?

10 MR. JONES: I hope so. I haven't been able

11 to get a confirmation.

12 JUDGE TOREM: I expect that at 9:00 tomorrow

13 morning, Dr. Winkes will be ready, and the next

14 witness after that will be Mr. Curl, and then Mr.

15 Johnston. Then we're also going to try to get Chief

16 Hanson and Commissioner Benson in before what could

17 be an early lunch break for once, and then the

18 afternoon has gotten a little it shorter by those

19 changes. So we're hoping that around 3:00 in the

20 afternoon, the County's witnesses might be called in

21 to finish off the case for this week.

22 Any other questions or concerns before we

23 recess for tonight with the evidentiary hearing?

24 MR. SCARP: Insofar as someone can give me

25 the list that you just read off in the order that you



0810

1 did to make sure I --

2 JUDGE TOREM: I'll go over that with you  
3 when we're off the record. All right. Then we are,  
4 at 5:05, at recess. We'll reconvene at 5:30 with the  
5 public hearing. Off the record.

6 (Proceedings adjourned at 5:05 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25