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1 PROCEEDINGS

2 JUDGE TOREM: Good morning, we're on the  
3 record, it's a little bit after 9:00 in the morning on  
4 Wednesday, and it is January the 9th, 2008. Mr. Burke  
5 is back with us because he has witnesses today, and all  
6 the other counsel are present.

7 Yesterday before the public hearing started I  
8 think we settled up and said we would have our next  
9 session on Thursday, January 31st, at 9:00 in the  
10 morning in Seattle at I think it's the Department of  
11 Transportation's conference room, it's the Goldsmith  
12 Building?

13 MR. SCHULTZ: That is correct, Your Honor.

14 JUDGE TOREM: So that's where we will be  
15 reconvening after today's session. What we're trying to  
16 do today is get through the Commission's witnesses, the  
17 City's witnesses, and the Western Valley Farms  
18 witnesses.

19 We have rescheduled Mr. Smith, who is  
20 attending a funeral this afternoon, to appear with  
21 Mr. Liou, the hydrologist from the City, and Mr. Zeinz,  
22 the Commission's other witness about the redesign at  
23 Hickox Road that's recommended, so those three witnesses  
24 for certain are going to be on Thursday, January 31st.  
25 Mr. Smith will probably be allowed to be by telephone

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1 unless we hear a request otherwise so he doesn't have to  
2 make the trip down to Seattle.

3           As for Mr. Norris, yesterday there was some  
4 question at the end of the day as to additional data  
5 requisitions or requests that would be going on  
6 regarding his grade deck findings and spreadsheets. If  
7 that merits any further recross-examination on those  
8 topics, Mr. Thompson, you will let me know prior to  
9 January 31st and notify the State Department of  
10 Transportation so they can make Mr. Norris available.  
11 And, Mr. Jones, you may have had some additional  
12 questions as well. I think we'll wait to see how Esco  
13 Bell's testimony goes today, and if there are further  
14 questions that come up based on the apparent  
15 disagreement over the future levels of service, then  
16 we'll see if those need to be taken up with Mr. Norris  
17 again at the end of the month. But when Mr. Bell  
18 testifies today, we can address that afterward and  
19 determine. I know Mr. Rogerson spoke with him  
20 yesterday, and when we call him we can look to that.

21           MR. ROGERSON: Your Honor, as a point,  
22 Mr. Esco Bell serves in the capacity of the public works  
23 director, and in that official capacity he looks at the  
24 plan documents that have been incorporated by the City  
25 Council as to what levels of service would be, and I

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1 think what's at issue here is a discrepancy between the  
2 forecasted level of service in two areas. I have tried  
3 and I may be able to present today the traffic engineer  
4 who presented the study that justifies those  
5 conclusions, his name is Victor Sellman, however he is  
6 not a witness on the witness list, and this is  
7 unanticipated issues that the City has.

8 JUDGE TOREM: Well, let me say just that if  
9 there is a motion to supplement the record with an  
10 additional witness, it would be subject to objection,  
11 but also the issue was raised as to conflicting  
12 witnesses we have available. If there is a better  
13 witness, maybe we'll make the case for that. It may be  
14 that rather than call him with direct testimony that has  
15 to be cross-examined on the spot that if you want to  
16 present him, we would require a prefilled testimony to be  
17 filed and then call him for cross-examination according  
18 to the rest of the plan on January 31st. That would be  
19 how I would anticipate out of fairness to everyone else  
20 here. That lack of preparation of the traffic engineer  
21 cross-exam could be a little difficult given how busy  
22 folks have been the last two days.

23 MR. ROGERSON: And my point is to bring this  
24 out now to prevent unfair surprise, and this is  
25 information I just received today, so.

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1                   JUDGE TOREM: All right, and I understand the  
2 changing nature of things as the process goes on, so why  
3 don't you when we get to the lunch break today speak a  
4 little bit with the opposition, tell them a little bit  
5 more off the record as to what you're anticipating, and  
6 then we'll have Mr. Bell after lunch, and you can  
7 determine if that's necessary to supplement the City's  
8 case. If that's what you want to do and make a motion  
9 at that time, then I would hear your proposed dates for  
10 filing a written prefiled testimony for that new witness  
11 and then hear from the opposition as to whether they  
12 object to that proposed schedule under the terms I have  
13 indicated.

14                   Mr. Jones.

15                   MR. JONES: Thank you, Your Honor, in a  
16 conference on a call this morning just checking in with  
17 Mr. DeJong, one of our witnesses, I learned that with  
18 respect to this Blackburn Road issue that Mount Vernon  
19 Christian School is being required to spend about  
20 \$250,000 on road improvements which were ordered by the  
21 City of Mount Vernon and which narrow the roadway. I  
22 think this is extremely pertinent to Mr. Norris's --

23                   JUDGE TOREM: Well, let me say again when he  
24 testifies, because he can't testify now and put that in  
25 the record, let's have Mr. DeJong supplement his

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1 testimony. And as you have seen the pattern, when you  
2 ask is there anything else you would like to add, that  
3 would be the perfect time for him to tell the tribunal  
4 and create a record with his personal knowledge of this  
5 about the new information.

6           And again, if he has new information today  
7 and there are additional exhibits, that as you have seen  
8 over the last few days is allowed as well, so if there's  
9 something he can bring and if you can get it in advance  
10 over the lunch break for the railway and Department of  
11 Transportation attorneys to look at in preparation for  
12 cross, that would be more than gentlemanly and scholarly  
13 to do it that way. So if we are going to have his  
14 testimony this afternoon, he can simply tell me the  
15 changes that have occurred since he filed it. Clearly  
16 the world doesn't stand still simply because someone  
17 filed their testimony.

18           Anything else preliminary we need to take  
19 care of today?

20           MR. SCARP: I believe there is.

21           JUDGE TOREM: You settled the case?

22           MR. SCARP: We have conferred, well, it's a  
23 big step towards it, I don't think we're going to have  
24 the need to cross-examine the mayor, Bud Norris, and so  
25 I believe Mr. Rogerson has notified him of that. We'll



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1 stipulate to admit his prefiled testimony.

2 JUDGE TOREM: All right, so this is Mayor Bud  
3 Norris, he is scheduled in the group of witnesses at  
4 12:30, so we'll scratch him from the list. At the  
5 appropriate time this afternoon, why don't we just have  
6 a proffering stipulation of his testimony, and his  
7 exhibits will be made part of the record at that time.  
8 All right, thank you, that streamlines things a little  
9 bit for this afternoon. It may require then that the  
10 County and Western Valley Farms witnesses be here a  
11 little bit earlier than the 3:00 that was projected, and  
12 you may tell those folks to be here about 2:00 or 2:30.  
13 We can have you contact them over the lunch hour when we  
14 see what the reality of this morning's schedule might  
15 be.

16 All right, I know Dr. Winkes is here and is  
17 ready to testify, so I'm going to ask her to come up and  
18 be sworn in at this time.

19 (Witness L. SLOANE WINKES, M.D. was sworn.)

20 JUDGE TOREM: Mr. Jones.

21

22 Whereupon,

23 L. SLOANE WINKES, M.D.,

24 having been first duly sworn, was called as a witness  
25 herein and was examined and testified as follows:

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

2   BY MR. JONES:

3           Q.     Good morning, Dr. Winkes, could you state  
4   your name and your address for the record, please.

5           A.     My name is L. Sloane Winkes, and I live at  
6   18431 Dike Road.

7           Q.     Could you spell your last name, please?

8           A.     W-I-N-K-E-S.

9           Q.     And you are the person who signed the  
10   declaration submitted as prefiled testimony November  
11   5th, 2007; is that right?

12          A.     Yes.

13          Q.     And you have had an opportunity to review  
14   that testimony this morning, and have you determined  
15   whether or not there have been any changes in the  
16   circumstances that would affect your answers of November  
17   5th?

18          A.     I did review it this morning, and there are  
19   no changes.

20                   MR. JONES:  At this time I would offer the  
21   prefiled testimony of Dr. Sloane Winkes and request  
22   cross-examination.

23                   JUDGE TOREM:  Mr. Jones, are you also  
24   offering in addition to Exhibit 75, her testimony, a  
25   copy of the letter she sent from May 28th, which is

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1 labeled Exhibit 76?

2 MR. JONES: Your Honor, that raises a  
3 question about the proceeding and the record generally.  
4 I believe that was submitted as part of the  
5 environmental review record, and my understanding was  
6 that those letters had been included in the record  
7 independently. If that's the case, I guess we wouldn't  
8 offer it a second time and would stand on that earlier  
9 submission as a part of the record.

10 JUDGE TOREM: You're correct, the public  
11 comments that came in are marked. The letter itself was  
12 not subject to cross-examination previously. I know it  
13 states many of the same concerns she has in her prefiled  
14 testimony, so in some way they are complimentary or  
15 perhaps cumulative. But for all of the comment letters  
16 that came in in April and May of this year, those are  
17 already marked, I believe they're Exhibit 200, comments  
18 that came in last night I think are 202 or something of  
19 that nature, and from Monday is 201, so there are  
20 various items. The only question would be as to if you  
21 desire it to be available for cross-examination, it may  
22 be given more weight by me or eventually the  
23 Commissioners or a review in court because it was  
24 evidence submitted under oath and subject to  
25 cross-examination today versus a public comment letter

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1 that's not subject to cross. I think that's the only  
2 distinction that could possibly be drawn from submitting  
3 it a second time.

4 MR. JONES: Thank you. It is attached to the  
5 materials that we have submitted, and so if it needs a  
6 separate identification, I would move its admission as a  
7 separate.

8 JUDGE TOREM: It's been so marked, so I will  
9 indicate you're offering Exhibits 75 and 76 at this  
10 time, are there any objections?

11 All right, seeing none, those will both be  
12 admitted.

13 And let me see, for cross-examination of  
14 Dr. Winkes the railway has estimated for all of your  
15 witnesses they might have a grand total of two hours, so  
16 I don't know, it won't be that long for you, ma'am, let  
17 me see what Mr. Scarp has for you this morning.

18 MR. SCARP: I will try not to use the whole  
19 two hours.

20

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

22 BY MR. SCARP:

23 Q. Good morning, Dr. Winkes.

24 A. Good morning.

25 Q. My name is Bradley Scarp, and I represent

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1 BNSF Railway.

2 Am I correct that you live in a home between  
3 Stackpole and Hickox Roads?

4 A. Correct.

5 Q. And that's on Dike Road?

6 A. Yes.

7 Q. And you have been there about three years?

8 A. Yes.

9 Q. So for the record to make sure, that's south  
10 of Hickox, correct?

11 A. Correct.

12 Q. All right. Do you own your own home or rent?

13 A. We own.

14 Q. And are you or your husband farmers?

15 A. No, we're both family physicians.

16 Q. Okay. Is your home in a floodplain?

17 A. Yes.

18 Q. And when you moved there, did you know you  
19 were moving into a floodplain?

20 A. Yes.

21 Q. And is it pretty much all farming all around  
22 you?

23 A. Yes.

24 Q. Now how far is it from your home to Skagit  
25 Valley Hospital?

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1 A. It takes us about 10 minutes.

2 Q. Okay.

3 A. Going the speed limit.

4 Q. And do you ever go above the speed limit?

5 A. Not intentionally. If I have, to be  
6 truthful, if I have a delivery that's imminent, I will  
7 probably go about 5 miles over in order to get there in  
8 time.

9 Q. And are there other doctors at those  
10 facilities that live out near you?

11 A. Not in our immediate area, no.

12 Q. Are there doctors that live farther away than  
13 you?

14 A. Yes.

15 Q. Are there doctors that live closer in towards  
16 the hospital than you?

17 A. Yes.

18 Q. All right. Is there any reason that you have  
19 chosen not to live closer to the hospital?

20 A. Yes, in that my husband is from the Conway  
21 area, and we really love that region of the valley sort  
22 of south of Mount Vernon. In addition, when we bought  
23 our home, I was at that time working in Marysville, so  
24 we needed somewhere where I could be within 30 minutes  
25 of that hospital. So at the time of the home purchase,

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1 that was part of our decisionmaking, and so living  
2 closer to Skagit Valley Hospital would have put me  
3 farther away from the hospital in Arlington, so it  
4 wouldn't have made sense at that time.

5 Q. To get down to Conway, you just go straight  
6 down Dike Road south?

7 A. Yes.

8 Q. Now the MapQuest that we ran from the address  
9 that you indicated showed that by taking an alternate  
10 route it increases the distance by .3 miles, have you  
11 ever measured that distance?

12 A. Not by mileage, just by the timing.

13 Q. Okay. And it's your testimony that it adds 5  
14 minutes if you go a different route?

15 A. Correct.

16 Q. Okay. Now the alternatives would include  
17 Stackpole Road, which would then require you to take the  
18 Conway frontage road?

19 A. Correct.

20 Q. Okay. And the other way you would go would  
21 be down Dike Road and take Britt Road?

22 A. Britt Road to Blackburn, correct.

23 Q. Do you ever keep going up Dike Road and then  
24 turn?

25 A. That would be less efficient just because

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1 that would take us all the way into downtown Mount  
2 Vernon.

3 Q. All right. And if I understood from your  
4 testimony, one of your concerns is that there's more  
5 traffic delays on those routes?

6 A. On Britt slough there would be more traffic  
7 delay. In addition it is a windier road so maybe less  
8 safe. On Stackpole likely not more traffic delay, but  
9 our concern with Stackpole is the stop sign at the  
10 railroad crossing rather than a gate, which could be  
11 less safe when we're in a hurry.

12 Q. Whenever you have taken Britt, do you ever  
13 take that route to the hospital at night?

14 A. I have never had to take Britt because I can  
15 always use Hickox.

16 Q. All right. Now with regard to the three  
17 years that you have been in that location, have you ever  
18 driven down Hickox Road to have the train gates come  
19 down and stop you?

20 A. Certainly.

21 Q. And have you had to stop and wait for a  
22 train?

23 A. Yes.

24 Q. Okay. And how much time does that add to  
25 your trip?



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1           A.     Depends on the train, anywhere from a minute  
2 to 5 minutes.

3           Q.     Have you ever had to turn around and go back  
4 the other way?

5           A.     No, most of the time I can wait.

6           Q.     You understand that the purpose of the siding  
7 track is so that long freight trains can pull over there  
8 and let other trains go in an either direction pass?

9           A.     Yes.

10          Q.     And is it your understanding that if that  
11 crossing at Hickox Road is not closed that there would  
12 still be trains that might park there waiting for other  
13 trains for longer times?

14          A.     Yes.

15          Q.     Okay. And do you estimate in that  
16 circumstance that you would then turn around and go use  
17 an alternate route?

18          A.     Yes. If we can see from our turn up Dike  
19 onto Hickox that there's a train stopped at the gate  
20 rather than just a gate down waiting for a train to go  
21 by, then we could certainly go the alternate route if we  
22 needed to.

23          Q.     All right. But I think you indicated that  
24 you have driven down Hickox only to have the gates come  
25 down in front of you; did I understand you correctly?

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1           A.     Yes, if a train had not quite gotten there  
2 yet, certainly the gates would come down.

3           Q.     And you said in your prefiled testimony  
4 something about being blocked 50 times a year, and I'm  
5 specifically referring to page 3 of your prefiled  
6 testimony, the last sentence, that phrase, in addition  
7 to being blocked 50 times a year, what did you mean by  
8 that?

9           A.     I believe that's referring to the 50 or so  
10 deliveries that between my husband and I we attend each  
11 year.

12          Q.     All right, so what you're talking about is  
13 you're trying to calculate how many times you would be  
14 blocked at Hickox if the crossing was closed?

15          A.     Correct, if the crossing's closed, we're  
16 always going to be blocked from using the road, but I  
17 think the 50 times a year reference is that in those  
18 instances when we need to get to the hospital the  
19 fastest, which is usually for either a very sick patient  
20 or an imminent delivery, that would be the most critical  
21 times that we would be blocked from getting there the  
22 fastest and safest way.

23          Q.     A lot of times, those 50 times a year, I  
24 assume you get those calls on a cell phone from other  
25 locations, not just home?

0872

1           A.     I'm mostly getting paged, and most of the  
2 time I'm home or at the office. But most of the calls  
3 for delivery come from home.

4           Q.     All right. And your office is on the east  
5 side of the tracks as well?

6           A.     No, my office is over by the hospital by  
7 Mount Vernon Hill, so that's much closer. But most of  
8 my patients go into labor nights and weekends, so I tend  
9 to be home.

10          Q.     All right. Now I understand that you, from  
11 your testimony, that you don't like to use the Stackpole  
12 crossing because you feel it's less safe?

13          A.     Yes, because of the stop sign rather than the  
14 gate.

15          Q.     Do you think there's not sufficient sight  
16 distance down the tracks or just because it doesn't have  
17 gates?

18          A.     I think there's probably sufficient sight,  
19 but my concern is with the gate and if you're in a hurry  
20 as far as potentially having a different judgment of how  
21 quickly a train is coming.

22          Q.     All right. And that raises an interesting  
23 point, you wouldn't engage in any kind of reckless  
24 driving to beat the train, would you?

25          A.     No.

0873

1 Q. Are you familiar with that phenomena?

2 A. Yes.

3 Q. And as a doctor, are you aware of the dangers  
4 and injuries that could be caused by that?

5 A. Certainly.

6 Q. Now if there were lights and gates at  
7 Stackpole Crossing, would that make you feel safer going  
8 across there?

9 A. Yes.

10 MR. SCARP: That's all I have, Doctor, thank  
11 you very much.

12 THE WITNESS: Thank you.

13 JUDGE TOREM: Mr. Jones, any redirect?

14 MR. JONES: Nothing from us, no.

15 JUDGE TOREM: Any other questions for this  
16 witness?

17 All right, well, thank you, Dr. Winkes, I  
18 appreciate your time this morning.

19 All right, I believe our next scheduled  
20 witness is Commission Staff Paul Curl and then  
21 Mr. Robert Johnston this morning.

22 (Witness PAUL CURL was sworn.)

23 JUDGE TOREM: Thank you.

24

25

0874

1 Whereupon,

2 PAUL CURL,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q. Mr. Curl, could you please state your name  
9 and spell your last name for the record.

10 A. My name is Paul Curl, C-U-R-L.

11 Q. And by whom are you employed?

12 A. I am employed by the Washington Utilities and  
13 Transportation Commission.

14 Q. And did you prepare and cause to be filed in  
15 this docket the prefiled direct testimony that is  
16 premarked as Exhibit 49?

17 A. Yes.

18 Q. And is the information contained in that  
19 testimony true and correct to the best of your  
20 knowledge?

21 A. Yes.

22 Q. And if I were to ask you the questions set  
23 out in the Q&A of your testimony today, would your  
24 answers be the same?

25 A. Yes.

0875

1 MR. THOMPSON: Your Honor, I would offer  
2 Exhibit 49 for admission in the record and if there's no  
3 objection tender the witness for cross-examination.

4 JUDGE TOREM: Any objections to admission of  
5 Exhibit 49?

6 MR. SCARP: Not at this time, Your Honor.

7 JUDGE TOREM: Hearing none, that's admitted.

8

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

10 BY MR. SCARP:

11 Q. Good morning, Mr. Curl.

12 A. Good morning.

13 Q. Do you have your prefiled testimony in front  
14 of you?

15 A. Yes, I do.

16 Q. Could you pull it out, I'm just going to ask  
17 you about a couple of specific comments, and if you  
18 don't mind I was reviewing that in preparation and I saw  
19 on page 1 your official retirement in 2002.

20 A. That's correct.

21 Q. All right, well, I guess I never knew that or  
22 paid attention before, welcome back.

23 A. Thank you.

24 Q. All right, on page 2 of that prefiled  
25 testimony, and I'm looking down in the last paragraph

0876

1    which you indicate that you will explain why Staff  
2    believes that BNSF has a responsibility to put in place  
3    reasonable measures to reduce the danger that its  
4    addition of a second set of tracks at Hickox Road would  
5    create, and my question is from that it would indicate  
6    that you recognize a danger created by the addition of  
7    the siding track that will go across or extend across  
8    Hickox Road; is that correct?

9           A.     That is correct.

10          Q.     Okay.  And obviously you have been here for  
11    all the testimony, you recognize that the siding track  
12    is designed in large part for longer freight trains to  
13    be able to pull aside for other rail traffic to meet and  
14    pass as they call it?

15          A.     Yes.

16          Q.     What are the dangers that you're referring to  
17    that are created by the extension of the siding track  
18    across Hickox?

19          A.     First of all, any time you have two tracks in  
20    a crossing, that adds danger.  It takes longer for a  
21    vehicle to traverse a crossing.  In this particular  
22    instance we're talking about a siding track where trains  
23    may be parked close to the crossing, which would block  
24    the view of motorists.  We have all heard about there  
25    are people out there who do reckless things and may

0877

1 assume that the automatic signals are engaged by the  
2 parked train, attempt to drive around those gates, and  
3 be hit by a train that's actually operating on the main  
4 line track.

5 Q. Is the siding project itself a Washington  
6 State Department of Transportation funded project?

7 A. Yes, it is.

8 Q. Now I want to move ahead a page to page 3,  
9 and at the very top of that page your testimony says  
10 that your testimony will explain why Staff believes that  
11 the safety gains that BNSF and WSDOT advance in support  
12 of closing Hickox Road may be illusory given the  
13 questionable safety of the alternative crossings to  
14 which the current users of the Hickox Road Crossing  
15 would be diverted; is that an accurate recitation?

16 A. That's what my testimony says, yes.

17 Q. Okay. You were here yesterday for the  
18 testimony of Mr. Gary Norris?

19 A. I was.

20 Q. Okay. Are you contending that the  
21 calculations and computations performed by Mr. Norris  
22 create an illusory conclusion regarding safety gains?

23 A. I'm not sure which analysis you're talking  
24 about, the original traffic study or the GradeDec.Net  
25 calculations.



0878

1 Q. Both.

2 A. Well, I did have access to the traffic impact  
3 analysis study. I read it in detail.

4 Q. Okay.

5 A. I'm not a traffic engineer.

6 Q. All right.

7 A. I thought it was difficult to follow. From  
8 Mr. Schultz's testimony it was my understanding that one  
9 of the primary reasons for retaining Mr. Norris was to  
10 evaluate the relative safety of the alternative  
11 crossings.

12 Q. All right.

13 A. I went through every line of the study and  
14 could not find any of that analysis. And you understand  
15 that my testimony was written in November, I have  
16 obviously learned a lot, heard a lot since that time,  
17 but at the time based on the direct testimony that had  
18 been filed by BNSF witnesses as well as DOT, nobody had  
19 made any sort of analysis about the relative safety of  
20 Stackpole or Blackburn. That's the basis of my  
21 testimony.

22 Q. Okay. And have you learned more about that  
23 as you have gone through the hearing process and  
24 listened to all the witnesses?

25 A. Yes.

0879

1 Q. Okay. And is it still your opinion that you  
2 think that it may be that the safety gains may be  
3 illusory?

4 A. I'm much more comfortable now with Stackpole.  
5 When BNSF filed the petition, there was a statement in  
6 there that BNSF intended to install automatic lights and  
7 gates at Stackpole. However, when the direct testimony  
8 came in, nobody said that in their testimony, which made  
9 me think that, well, maybe they aren't committed to  
10 installing those signals.

11 Q. All right.

12 A. So I was concerned. Some of the witnesses,  
13 Mr. Peterson for instance, suggested that there would be  
14 a net safety gain even without installing automatic  
15 signals at Stackpole, and I just don't agree with that.

16 Q. Okay.

17 A. So but that's the basis.

18 At Blackburn, Blackburn is tough because  
19 it --

20 Q. I've got a couple questions for you about  
21 Blackburn, and we'll get down there, and maybe I can  
22 direct you back to those; would that be fair?

23 A. Yes, sir.

24 Q. Okay. And I will finish up with Stackpole,  
25 and you have heard BNSF witnesses under oath indicate

0880

1 that they fully support upgrading the signalization at  
2 Stackpole as may be required, but I think you have also  
3 heard the BNSF witnesses say that they don't make those  
4 determinations independently but they support it?

5 A. That's true, and I'm not sure procedurally  
6 how we're going to figure out what sort of signals, what  
7 the engineering will be, because normally that's done by  
8 a diagnostic team, which would include Commission Staff,  
9 the road authority, in this case that would be the  
10 County, and UTC Staff. I'm not sure how that's going to  
11 be get done, but I did hear a commitment that whatever  
12 the appropriate level of protection at Stackpole will  
13 be, BNSF is committed to following through on that.

14 Q. All right. And I have to ask this just for  
15 the record, but you're not an expert on flood fighting  
16 or evacuations from the floodplain?

17 A. I know more about it now than I ever did  
18 before, but no, I'm not an expert.

19 Q. And you reference those as concerns that sort  
20 of exist independently as things that you on behalf of  
21 the Commission Staff would want to be properly  
22 addressed?

23 A. Yes.

24 Q. Okay. And you have also heard suggestions  
25 and testimony regarding the possibility of a gate that

0881

1 could be used for, a locked gate that could be used for  
2 emergency purposes as one possible solution to that?

3 A. I have heard you talk about it.

4 Q. Okay.

5 A. I haven't -- and I know you asked that  
6 question of some of the BNSF witnesses. I haven't had  
7 an opportunity to discuss that with the City, the dike  
8 district, or any of those folks, so I'm not -- I can't  
9 speak on their behalf, but it appears at least on the  
10 surface that that would at least address some of their  
11 concerns.

12 Q. All right, fair enough.

13 Now with regard to Blackburn, you're familiar  
14 with the, sorry, I've got to get the right word, the  
15 inspection of that crossing by Mr. Johnston of Staff?

16 A. Yes.

17 Q. And can you just explain before we get there,  
18 what is his capacity or function in relation to yours?

19 A. Mr. Johnston is a transportation specialist.  
20 His primary duty is railroad safety. Actually beyond  
21 that he's a hazardous materials specialist, so he  
22 inspects, you've driven around Mount Vernon, you see a  
23 lot of tank cars and black with placards on them, he  
24 inspects those to make sure that they're safe. That's  
25 actually work he does on behalf of the Federal Railroad

0882

1 Administration. He's a State employee, so he also works  
2 for us, and in that capacity because he's out and about  
3 we ask him to inspect public crossings across the state  
4 to ensure that they meet State standards.

5 Q. All right. And in that regard, you're aware  
6 that the Blackburn signalization and warning devices at  
7 the crossing at Blackburn were upgraded in 2003?

8 A. I don't know exactly when the work was done.  
9 I do know that we issued an order in May of 2003  
10 authorizing the installation of traffic signals and  
11 interconnection of those traffic signals with the  
12 existing railroad signals.

13 Q. All right. And knowing what you know about  
14 the process, the work didn't get done before the order  
15 was issued?

16 A. That's correct.

17 Q. Okay.

18 A. Well, I don't know that for a fact, some  
19 local officials are very --

20 Q. Very efficient?

21 A. They get ahead of the game, and then oops, I  
22 should have filed the petition.

23 Q. All right.

24 A. But I assume that it did not get done until  
25 after May of 2003.

0883

1 Q. That's a reasonable assumption that sometime  
2 after May of 2003 those upgrades that you indicated were  
3 put in place?

4 A. That's correct.

5 Q. All right. Now are you aware that in  
6 Mr. Johnston's testimony, prefiled testimony in this  
7 matter, that he found there were no defects at the  
8 Blackburn Crossing?

9 A. Yes.

10 Q. And you are then presumably aware that his  
11 inspection found that the Blackburn Crossing met  
12 Washington State standards?

13 A. Yes.

14 Q. Are you aware of any railroad related  
15 accidents at the Blackburn Crossing since those upgrades  
16 in 2003?

17 A. Not since the upgrades.

18 Q. I want to ask you a couple of questions,  
19 you're familiar with the opinion of Tom Zeinz regarding  
20 the use of 4-quadrant gates?

21 A. Yes.

22 Q. Has the Staff adopted the opinions of  
23 Mr. Zeinz regarding the prospective use of 4-quadrant  
24 gates at the Hickox Road Crossing if it was to remain  
25 open or unclosed?

0884

1           A.     No.

2                     MR. SCARP   All right, those are all the  
3 questions I have, thank you.

4                     JUDGE TOREM:   Any other cross-exam for this  
5 witness?

6                     Mr. Jones.

7

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

9     BY MR. JONES:

10           Q.     I have a question, Mr. Curl, I believe in the  
11 testimony of Jeffrey Schultz on Monday there was a  
12 mention of Sounder or one of the transit type users of  
13 rail having expressed an interest in the corridor  
14 between Bellingham and Everett; is that something that's  
15 come to your attention as a Utilities and Transportation  
16 Commission Staff person?

17           A.     I believe that was the testimony of  
18 Mr. Gordon yesterday, not Mr. Schultz, and I'm not aware  
19 of -- Staff -- I am not aware. I can't say that nobody  
20 on our staff is aware of that proposal or idea or  
21 whatever it is.

22                     MR. JONES:   Okay.

23

24

25

1                                    E X A M I N A T I O N

2    BY JUDGE TOREM:

3            Q.    Mr. Curl, we started out today talking about  
4    this belief you have that the railway has a  
5    responsibility to put in place reasonable measures to  
6    reduce the danger of adding a second track at Hickox  
7    Road.    If the crossing is closed, is there any need for  
8    additional safety features other than putting in the  
9    turnarounds at that track site?

10          A.    If you were to decide that the public safety  
11    outweighed the public need to keep the crossing open and  
12    ordered that the crossing be closed, we no longer would  
13    have any jurisdiction.    It would no longer be a public  
14    crossing, and there would be no need on behalf of the  
15    railroad to install any sort of safety devices at that  
16    former crossing location.

17          Q.    And if that were my decision, what mitigation  
18    would you recommend, if any, at surrounding crossings?

19          A.    You're talking about Hickox being closed?

20          Q.    (Nodding head.)

21          A.    Obviously I have said this morning that I  
22    believe the Stackpole Crossing needs to be signalized,  
23    installation of automatic lights and gates.    I have  
24    concerns about the relative safety of Blackburn, but in  
25    all honesty the road authority, in this case the City of



0886

1 Mount Vernon, and BNSF have done a lot at a, I'm going  
2 to use a real technical term we use on Staff, an ugly  
3 crossing to make it as safe as reasonably possible.

4           Mr. Zeinz had suggested that maybe the track,  
5 the existing siding track since it won't be used to park  
6 trains could be removed from the crossing. I actually  
7 believe that's a minimal improvement in safety at  
8 Blackburn. I don't believe that the Commission even has  
9 the authority to order the railroad to remove the track  
10 at that location. So I think Blackburn's a reasonably  
11 safe crossing.

12           I am concerned about not sort of the  
13 traditional grade crossing accident where involving a  
14 train and a car, I'm more concerned about motor vehicle  
15 accidents happening at the intersection of Blackburn and  
16 South Second Street. There are traffic lights there,  
17 there are railroad signals, there are turn lanes for  
18 instance on some of the approaches, but the traffic  
19 signals are simply red, yellow, and green. There's not  
20 a turn arrow for instance, so when motorists are making  
21 left-hand turns, they have to stop to yield to oncoming  
22 traffic. And I have been out there and observed  
23 motorists making that left-hand turn, and they stop on  
24 top of the tracks waiting for the oncoming traffic to  
25 clear, and I think there's a potential for a motor

0887

1 vehicle accident there which would foul the tracks  
2 potentially. Obviously depends on when the next train  
3 is going to arrive whether that's a problem and the City  
4 of Mount Vernon Police Department could clear the tracks  
5 in time or contact the railroad dispatcher and ask them  
6 to stop the train or whatever. So there are traffic  
7 improvements that could be made there, adding the turn  
8 light for instance. No matter what happens in this  
9 hearing, I'm going to contact the City of Mount Vernon  
10 Traffic Department and talk to them about making those  
11 sorts of improvements, but any major changes to  
12 Blackburn I don't recommend.

13 Q. Now if as Mr. Scarp had suggested at one  
14 point Hickox could be closed to general traffic but  
15 remain open only in case of emergencies with a locked  
16 gate, would the Commission retain any jurisdiction of  
17 that, or would it become a private crossing in your  
18 view?

19 A. Well, Mr. Scarp described it as a private  
20 crossing. You only have two choices under the statute,  
21 it's public or it's private. I believe it's more  
22 private than public even though it would be owned by a  
23 public entity. So the Commission would retain no  
24 jurisdiction if it were determined that it was a private  
25 crossing.

0888

1 Q. And does the Commission have the jurisdiction  
2 when a crossing is transitioned from public to private  
3 to set the safety criteria in which the construction is  
4 done for say the hammerhead turnarounds or the gates  
5 themselves? I'm trying to figure out exactly when the  
6 Commission loses its jurisdiction and what criteria you  
7 would if you could impose in such a conversion if that  
8 were to occur?

9 A. I'm not an attorney, but I believe that you  
10 have a lot of latitude in our order to --

11 Q. So I'm led to believe.

12 A. -- to order such improvements that could or  
13 should be made. I think we will have an opportunity on  
14 brief to advise you on what we would recommend be done  
15 in the event that you decide ultimately that the  
16 crossing should be closed. Until the Commission order  
17 becomes final I mean through judicial review, it's still  
18 under our jurisdiction and we still retain the -- we --  
19 I'm sorry, the Commission retains the authority to order  
20 whatever mitigation would be necessary to render it as  
21 safe as we can make it.

22 Q. So what I'm asking though, Mr. Curl, is  
23 because I recognize those briefs will be coming in if  
24 there is any preview you can give me and the rest of the  
25 counsel here as to what the Commission Staff having

0889

1 listened to all the testimony so far might be thinking  
2 of. If you want to reserve it, I understand that, I'm  
3 just trying to formulate my thoughts on the options  
4 available as to leaving it as it is today, leaving it  
5 open with improvements as needed, leaving it open and  
6 still requiring improvements at Stackpole simply because  
7 of the other tracks. There's a wide variety as you say  
8 of options available to me, and I'm looking at  
9 particularly this issue of if it's closed fully or into  
10 a converted private crossing of some sort, what safety  
11 concerns would you have that might be created by a  
12 private crossing as one of the options?

13 A. I guess I would like to say that Mr. Zeinz  
14 has suggested that if the crossing remain open that  
15 4-quadrant gates would be the only reasonable  
16 alternative. After listening to the testimony  
17 particularly of Mr. MacDonald and Ms. McIntyre, I have  
18 come to believe that we could make that crossing  
19 reasonably safe with 2-quadrant gates, median barriers  
20 of some reasonable length that would still allow room  
21 for a turnaround maybe further away from the crossing  
22 than traditionally happens. Generally those turnarounds  
23 are very close to the crossing. You could put a median  
24 barrier in, move the turnaround back. So to that  
25 extent, Staff has, without consulting Mr. Zeinz, I

0890

1 believe we could make the crossing safe with 2-quadrant  
2 gates.

3           If the crossing were closed, first of all I  
4 guess I would like to preface this by saying this was a  
5 close call for Staff. Generally it's fairly clear one  
6 way or another, but BNSF and DOT have come out with a  
7 pretty compelling case about the public safety requires  
8 that this crossing be closed. On the other hand, the  
9 respondents and interveners have put on a pretty  
10 compelling case about why it should stay open. I quite  
11 frankly don't envy you, because it is a close call. And  
12 once all of the testimony is in and the  
13 cross-examination is complete and we have had the  
14 opportunity to review the transcript, Staff will get  
15 together and try to put together a brief which  
16 summarizes a firm recommendation.

17           If the crossing is closed, certainly I think  
18 there should be at least on the west side of the track a  
19 turnaround. I'm a little less concerned about the east  
20 side just because it's fairly close to Old Highway 99.  
21 Someone going up there could see that the crossing there  
22 no longer exists, there would be barriers of some kind,  
23 and are less likely to go up that road and then find out  
24 that -- I don't think you have actually taken your tour  
25 yet, but you will find that Hickox Road is very narrow,

0891

1 it's elevated, there is no place to turn around, you  
2 would end up backing out essentially or backing up to  
3 the Boon Farm or something to turn around, so  
4 turnarounds at least on the west side would be very  
5 important.

6 Q. Now if the crossing was left open as you just  
7 suggested with the 2-quadrant gates, a median barrier,  
8 and appropriate turnarounds at Hickox, given the fact  
9 that the operations from the railway would block the  
10 crossing for longer periods of time, would the  
11 Commission also be recommending in your opinion today  
12 the upgrades of Stackpole Road because of potential  
13 diversions of traffic to that unimproved crossing?

14 A. Yes.

15 Q. So the Commission's suggestion today, and  
16 this may be refined once we hear from Mr. Zeinz and  
17 briefing, might be we could leave it open, but we need  
18 to not only improve things at Hickox to accommodate the  
19 new situation with the second set of tracks, but also  
20 further south improve Stackpole because of potential  
21 traffic diversions due to railway operations at this new  
22 extended siding 2-track crossing?

23 A. That represents current Staff thinking, yes.

24 JUDGE TOREM: And it continues to evolve I  
25 understand, but I just wanted to get there today so I

0892

1 know where you're coming from, and this may give --  
2 additional cross-exam may be necessary, I'm not sure.  
3 That's all the questions I have though, do my questions  
4 raise additional cross or a need for redirect?

5 MR. JONES: I've got some.

6 JUDGE TOREM: Mr. Jones.

7

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

9 BY MR. JONES:

10 Q. Mr. Curl, we have heard testimony of safety  
11 gains that come from closing the crossing, is it your  
12 understanding that if the crossing is closed that the  
13 ramps leading to the track would be removed and that  
14 there would be a complete impossibility of someone  
15 driving a vehicle up to and over the tracks?

16 A. I'm sorry, sir, I'm not sure I followed all  
17 of that, could you restate the question.

18 Q. Well, what would a closed crossing look like,  
19 how would the road be changed on the west and the east  
20 side of the crossing to make it closed?

21 JUDGE TOREM: Mr. Jones, are you suggesting  
22 closed all together or closed and converted to a private  
23 crossing?

24 MR. JONES: I wanted to contrast or compare  
25 private crossing with closed.

0893

1 JUDGE TOREM: So you're talking full closure?

2 MR. JONES: Yes.

3 A. If it were fully closed, generally what I  
4 have seen are jersey barriers are installed I'm going to  
5 say within 20 feet of the outside track on each side of  
6 the road. The crossing surface that currently exists  
7 would be removed. There would be signage that we I'm  
8 sure could agree on with BNSF and the City of Mount  
9 Vernon and Skagit County. And I say both the County and  
10 the City because my understanding is the east side of  
11 the crossing belongs to the City and the west side  
12 belongs to the County, so we would work that out with  
13 the road authorities. But generally it's jersey  
14 barriers, some kind of very sturdy barricade to not  
15 allow motor vehicles to cross it.

16 BY MR. JONES:

17 Q. Could you now compare what you just described  
18 to the private crossing setting, what would you expect  
19 to be in place if a private crossing were ordered?

20 A. If it were converted to a private crossing,  
21 first of all that would then become a contract issue  
22 between BNSF Railway and the City of Mount Vernon to  
23 determine what that might look like. The Commission  
24 would no longer have any jurisdiction. It's not that we  
25 couldn't provide advice. But I have seen those sorts of



0894

1 emergency only crossings where in fact the crossing  
2 signals remain in place, they're still there, and they  
3 operate so that emergency vehicles are protected. Other  
4 cases the signals are removed, there's a locking gate of  
5 some sort placed on each side of the crossing, possibly  
6 only one side, depends on what the parties really agree  
7 is the most appropriate. Certainly I don't think you  
8 want emergency personnel opening two gates, you know,  
9 that just delays things more. So that's what it might  
10 look like, and the gate could be anything from a farm  
11 gate or a single bar or something like that. The  
12 crossing surface would remain in place in that case, and  
13 generally those cases the responsibility for maintaining  
14 that crossing surface would -- under a public crossing,  
15 BNSF Railway is responsible for maintaining that  
16 crossing surface, that would then be the responsibility  
17 of the City.

18 JUDGE TOREM: Mr. Rogerson, go ahead.

19

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

21 BY MR. ROGERSON:

22 Q. I do have a question or two regarding the  
23 circumstance where the crossing is privatized but it  
24 still is able to be used pursuant to a contract but it's  
25 secure. In your experience, how are these gates

0895

1 secured, can you describe to me how these gates are  
2 locked or protected from being open?

3 A. I have seen everything from a key with a  
4 master lock on it to an electronic device like a garage  
5 door opener which would be available to the City, the  
6 County, the Dike District, those sort of actually an  
7 electronic device where you pull up to the crossing,  
8 push the button, and it opens, so I have seen the whole  
9 gamut.

10 Q. And I guess my next question is, excuse me  
11 for the form, but what is to prevent GP or John Doe  
12 public citizen from vandalizing the locking gates or  
13 attempting to open those gates on their own accord?

14 A. Of course I see vandalism all over the state  
15 unfortunately, and yes, there's a possibility that that  
16 could happen.

17 Q. And can you kind of give me a degree of how  
18 common such an occasion is, vandalism for private gates  
19 and people availing themselves of it?

20 A. Are you speaking about Hickox specifically  
21 or --

22 Q. Well, I think at this point it's general  
23 because it's a hypothetical.

24 A. Generally it's fairly common, particularly in  
25 urban areas where there are more pedestrians, teenagers,

0896

1 that sort of thing, that vandalism is sort of common.  
2 In rural areas where there are much fewer pedestrians,  
3 that sort of thing, the vandalism is much less.

4 Q. And would the other safety mechanisms be  
5 removed in the event of privatization?

6 A. I have heard Mr. Scarp say that at least  
7 conceptually they would anticipate that in this case the  
8 gates and lights would be removed. However, I have been  
9 involved in other cases where conversations with John  
10 Lee, who actually filed this petition and is a colleague  
11 of Ms. McIntyre, when we were talking about a similar  
12 instance and he said, well, BNSF would never remove  
13 those gates, once they're in place and it's going to  
14 remain open for emergency purposes, we're not going to  
15 pull those out, we'll work, in a private crossing we'll  
16 work out with the road authority who's responsible for  
17 the maintenance costs on those signals.

18

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

20 BY MR. FALLQUIST:

21 Q. In the event that there is a full closure and  
22 there is jersey barriers without any signals at the  
23 crossing or if there was a gate in place without any  
24 signals, could you foresee that that situation would  
25 create a public safety risk for motorists who might not

0897

1 see the barriers or the gate in the dark or in the fog?

2 A. Yes. Any time you have a private crossing,  
3 they're not under our jurisdiction.

4 Q. Right.

5 A. But certainly there are accidents that  
6 happen.

7 Q. Are you aware of accidents where people have  
8 -- accidents that have occurred at formally closed  
9 crossings where motorists are unaware of that?

10 A. Yes. It's harder to go around a jersey  
11 barrier --

12 Q. Right.

13 A. -- than it is a fence, but yes.

14 Q. So there is a public safety risk attendant to  
15 closure of a crossing?

16 A. I think initially. Certainly this is a road  
17 where most of the traffic is local, it's not going to  
18 take people long to figure out that that crossing is no  
19 longer available.

20 Q. But it is within the realm of possibility?

21 A. I think there's a relatively low risk of that  
22 happening, yes.

23

24

25

0898

1                                    E X A M I N A T I O N

2    BY JUDGE TOREM:

3            Q.    Do you think it's a comparable risk to the  
4    leaving it open and having a train parked there and the  
5    same result?

6            A.    No.

7            Q.    Higher risk to run into a parked train or  
8    lower risk?

9            A.    I have seen it all, and people run into  
10   parked trains believe it or not.

11                    JUDGE TOREM:   I think we have had testimony  
12   to that effect already.

13                    All right, any other questions?

14                    Mr. Scarp.

15

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

17    BY MR. SCARP:

18            Q.    Mr. Curl, were you talking about vandalism  
19    generally in your experience to railroad warning  
20    devices, facilities, fences, just in general when you  
21    distinguished urban and rural areas?

22            A.    Yes.

23                    MR. SCARP:   Okay, thank you.

24                    JUDGE TOREM:   Any redirect?

25                    MR. THOMPSON:   Just a couple of questions.

0899

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

2 BY MR. THOMPSON:

3 Q. Mr. Curl, when Mr. Scarp was asking you some  
4 questions he asked you if you were aware of any railroad  
5 related accidents at Blackburn having occurred since the  
6 installation of the new configuration there. How did  
7 you interpret railroad related when you answered that?

8 A. I interpreted that to either be an accident  
9 involving a motor vehicle, a pedestrian, a bicyclist and  
10 a train or the train equipment. We consider it an  
11 accident if a car ran into the mast that holds up the  
12 signal, that would be a railroad related accident, so  
13 that's how I interpreted that question.

14 Q. And have you seen any evidence of motor  
15 vehicle accidents other than railroad related accidents  
16 at that Blackburn crossing?

17 A. Yes, we issued a data request to the City of  
18 Mount Vernon, they provided a list of accidents which  
19 had -- motor vehicle accidents which had occurred at or  
20 in the vicinity of the intersection of Blackburn and  
21 South Second Street or Old Highway 99, that  
22 intersection. The City of Mount Vernon did respond with  
23 a list. Unfortunately the way we phrased the question  
24 in the vicinity of, we got a whole laundry list of motor  
25 vehicle accidents that had happened anywhere near

0900

1 Blackburn and Old 99, that sort of thing. I think  
2 actually for the three year period that we asked for  
3 there were maybe five or six actual motor vehicle  
4 collisions at the intersection of South Second Street  
5 and Blackburn.

6 Q. When Judge Torem was asking you about whether  
7 Staff would still recommend making improvements to the  
8 Stackpole Crossing in the event that Hickox were to  
9 remain open with some sort of protective devices, you  
10 said I think that one reason to do that would be because  
11 of diversion of traffic from Hickox. Is there any other  
12 reason why you would recommend putting in lights and  
13 gates at Stackpole?

14 A. Well, when I first came up here, which would  
15 have been the fall of 2006, and looked at the corridor,  
16 and when I'm referring to the corridor I'm really  
17 talking about the crossing starting at Fir Island Road  
18 in the south all the way up to Kincaid Street, I was  
19 surprised to find two public crossings at Peter Johnson  
20 Road and Stackpole which did not have the -- which had  
21 passive protection, did not have automatic lights and  
22 gates. And I was surprised because this is a high speed  
23 passenger rail corridor, and I think the Grade Crossing  
24 Handbook has been introduced as an exhibit here and a  
25 very high priority for signaling crossings at any

0901

1 track where high speed passenger trains run, so I was  
2 surprised. So I guess even -- I see this as an  
3 opportunity to signalize a crossing that even if traffic  
4 weren't diverted there should be signalized also, and  
5 they're on my to-do list is the Peter Johnson Road to  
6 look at signalizing that in some fashion.

7 MR. THOMPSON: Thank you, that's all the  
8 redirect I had.

9 JUDGE TOREM: Any other recross?

10 All right, seeing none, thank you, Mr. Curl.

11 Does anybody need a break before we take  
12 Mr. Johnston as our next witness?

13 MR. JONES: Excuse me, Your Honor.

14

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

16 BY MR. JONES:

17 Q. A question by Mr. Fallquist drives me to want  
18 to inquire of Mr. Curl whether there might in addition  
19 to the risk of motorists and his answer that it was  
20 local, did you consider in making that answer the  
21 proximity to Exit 224 of Interstate 5, which I think  
22 currently mentions Hickox Road or at least it is known  
23 as the Hickox Road overpass?

24 JUDGE TOREM: So what's the question again,  
25 did he consider?



0902

1 Q. Yeah, would the answer of Mr. Curl be changed  
2 about the likelihood of traffic being local, does that  
3 answer take account of the fact that this crossing is  
4 within a quarter mile of the Interstate 5 Hickox Road  
5 overpass?

6 JUDGE TOREM: Okay, I understand now, so his  
7 answer in regard to local traffic, understanding quickly  
8 that it would be closed in that situation, is the answer  
9 still the same despite the proximity to Exit 224?

10 A. I understand that there is proximity to Exit  
11 224, and in fact I think most people call it the Hickox  
12 interchange, but it's not a direct shot. As you come  
13 off the on-ramp/off-ramp, you actually have to go down  
14 Old 99 a little ways and then turn left on Hickox. I  
15 would be more concerned if it were a straight shot off  
16 the interchange right onto Hickox Road, that's not the  
17 case. I think it's maybe unlikely probably not a good  
18 word, but less likely that someone who is not local  
19 would assume that they could go down Hickox Road.

20 Q. And you would say that in spite of the fact  
21 of our pride in our Tulip festival and invitation to the  
22 world at large to come to Mount Vernon and visit our  
23 farm fields?

24 A. I love the tulip festival every year, so yes,  
25 despite that.

0903

1                                    E X A M I N A T I O N

2        BY JUDGE TOREM:

3            Q.        So you have never just ventured down Hickox  
4        Road on one of those flower visits?

5            A.        If I did, I don't recall doing so.

6                    JUDGE TOREM:    Okay, I think that point's been  
7        made, anything else?

8                    Thank you, Mr. Curl.

9                    THE WITNESS:    Thank you.

10                   JUDGE TOREM:    I will ask you again, does  
11        anybody need a break before we take Mr. Johnston, or can  
12        we take our break after him?

13                   MR. SCARP:        One second, Your Honor.

14                   I am willing to go forward, I don't  
15        anticipate a long cross, but I don't know about --

16                   JUDGE TOREM:        Let me ask Mr. Johnston to come  
17        to the witness stand.

18                   (Witness ROBERT JOHNSTON was sworn.)

19                   JUDGE TOREM:        Mr. Thompson, I believe we have  
20        Exhibits 52 through 66 that could be offered at this  
21        time once the foundation is laid, 52 being the prefilled  
22        direct testimony and 53 through 66 being various  
23        photographs of the Stackpole, Hickox Road, Blackburn  
24        Road crossing areas.

25                   MR. THOMPSON:     That's correct.

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1 JUDGE TOREM: Your witness.

2 MR. THOMPSON: Thank you.

3

4 Whereupon,

5 ROBERT JOHNSTON,

6 having been first duly sworn, was called as a witness

7 herein and was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q. Mr. Johnston, could you please state your  
12 name and spell your last name for the record.

13 A. My name is Robert Johnston, last name is  
14 J-O-H-N-S-T-O-N.

15 Q. And by whom are you employed?

16 A. By the Washington Utilities and  
17 Transportation Commission.

18 Q. And did you prepare and cause to be filed in  
19 this docket the written testimony and exhibits numbered  
20 52 through 66?

21 A. That's correct.

22 Q. And is the information contained in those  
23 exhibits true and correct to the best of your knowledge?

24 A. Yes.

25 Q. And if I were to ask you the questions set

0905

1 out in your prefiled testimony today, would your answers  
2 be the same?

3 A. Yes, they would.

4 MR. THOMPSON: Okay, at this time I would  
5 offer those Exhibits 52 through 66.

6 JUDGE TOREM: You're offering not only  
7 Mr. Johnston's testimony, but also the photographs he  
8 took.

9

10 E X A M I N A T I O N

11 BY JUDGE TOREM:

12 Q. One point of clarification on Exhibit 66,  
13 which is the, or maybe 65, is the aerial photograph of  
14 the Blackburn Road Crossing. I wanted to inquire, it's  
15 either 65 or 66, is that the one that's been blown up  
16 and we were referring to in use yesterday, Mr. Johnston?  
17 That's just over your right shoulder. It's your  
18 exhibits that were previously labeled as RJ-14 or RJ-15,  
19 and I think it's RJ-15, Exhibit 66, that looks most like  
20 that one.

21 A. That is correct.

22 Q. But it has some additional labels for  
23 purposes of culling out highlights on the map, is that  
24 accurate as to describe for the record the overhead shot  
25 that's been blown up we have been referring to?

0906

1 A. Yes.

2 Q. And the other larger item behind you that  
3 shows a more regional view, is that a photograph you  
4 took, or is that something perhaps we're seeing for the  
5 first time here in this hearing?

6 A. I did not take the picture, I also did not  
7 take the other overhead picture.

8 Q. You're not that tall?

9 A. I don't have an airplane either.

10 JUDGE TOREM: All right.

11 MR. THOMPSON: Your Honor, I think it is  
12 essentially the same as Exhibit 65, again with the  
13 difference that there are labels, labels have been put  
14 on the exhibit to which we have been referring.

15 JUDGE TOREM: Okay, I just wanted to make  
16 that clear for the record, these other pictures we have  
17 been referring to as illustrations, so generally if  
18 someone reviewing this on appeal or some other challenge  
19 later on would know what these demonstrative exhibits  
20 might have consisted of, because I don't know if they  
21 will go up with the rest of the record.

22 So are there any objections then to the  
23 admission of 52 through 66?

24 MR. SCARP: I don't have any, Your Honor.

25 MR. ROGERSON: No objections.

0907

1                   JUDGE TOREM: All right, no objections, then  
2 we're ready for cross-examination, all of those will be  
3 admitted.

4                   MR. SCARP: I understood you to say those  
5 were demonstrative and they weren't showing some sort of  
6 accident from a satellite camera.

7                   JUDGE TOREM: I believe that is correct, and  
8 whether those will be offered into evidence later  
9 remains to be seen, so you might want to bring your  
10 magnifying glass before that occurs.

11

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

13 BY MR. SCARP:

14           Q.     Good morning, Mr. Johnston, I'm Bradley  
15 Scarp, and I represent BNSF Railway.

16                   I want to get right to it because we have had  
17 a lot of this stuff before and a number of witnesses  
18 still to come today, but I wanted to ask you in relation  
19 to your prefiled testimony and confirm a few things. Is  
20 the first time that you inspected the Blackburn  
21 Crossing, was that in October of this past year?

22           A.     I believe so.

23           Q.     Okay. And I think you indicated that was a  
24 routine inspection that you conducted as well as with  
25 regard to the Hickox and Stackpole Crossings?

0908

1 A. Yes.

2 Q. Okay, so you kind of looked at that whole  
3 corridor down there?

4 A. Yes, I looked at the whole corridor from  
5 Blaine to Seattle.

6 Q. Okay, well done.

7 And as part of preparation for your prefiled  
8 testimony, did you review anything with regard to the  
9 petition that occurred or the upgrades sometime  
10 approximately in 2003?

11 A. I don't recall having done so.

12 Q. All right.

13 In your testimony you indicated, well, you  
14 were aware that the crossing signalization and warning  
15 devices were upgraded in 2003 or thereabouts?

16 A. Not really.

17 Q. Okay.

18 A. When I go out and do an inspection, I simply  
19 go up to the crossing and look and see what's there.

20 Q. All right.

21 A. And compare it with the inventory sheet that  
22 I have.

23 Q. Okay, fair enough. So you're not aware of  
24 whether the conditions there have changed more recently  
25 or longer ago, you just go out there and inspect as it

0909

1 sits today?

2 A. Correct.

3 Q. Okay.

4 In your prefiled testimony, page 7, you  
5 indicated that you didn't find any defects at any of the  
6 three crossings, and in other words each crossing met  
7 State standards; is that an accurate conclusion?

8 A. Yes, it is.

9 Q. All right. I just want to make sure, well, I  
10 think your testimony is already clear so I don't have  
11 any more questions about what's happened with regard to  
12 those changes.

13 I do have a separate question for you though,  
14 Mr. Johnston, and I think your background as alluded to  
15 by Mr. Curl and also in your prefiled testimony, you  
16 have been involved, employed in the rail safety section  
17 as a Transportation Specialist IV, and part of your  
18 specialty is with regard to inspection of hazardous  
19 materials, tanker cars, things like that?

20 A. Yes.

21 Q. You were present yesterday for the testimony  
22 of Mr. Stu Gordon?

23 A. Yes, I was.

24 Q. And do you recall Mr. Gordon's testimony  
25 about the fuel tankers that run down to down south and



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1 from the refineries?

2 A. Yes.

3 Q. Is that consistent with your understanding of  
4 what the railroad or do you have an understanding or  
5 experience with that, the practice of keeping tanker  
6 cars in refineries if there's some sort of a problem or  
7 emergency on the right of way?

8 A. I don't know if there's an official policy,  
9 but I have dealt with the refineries, talked to  
10 representatives there, visited them, and they're pretty  
11 safety conscious, and if they had a program where if  
12 they knew the rail line's closed for a couple days, they  
13 would most likely hold their cars within their own fence  
14 line for security purposes.

15 MR. SCARP: That's all I have, thank you,  
16 Mr. Johnston.

17 JUDGE TOREM: Additional questions for  
18 Mr. Johnston?

19

20 E X A M I N A T I O N

21 BY JUDGE TOREM:

22 Q. Mr. Johnston, are you aware of circumstances  
23 where hazardous materials or cars of that nature are  
24 stored on sidings?

25 A. Yes, they're stored on sidings quite often

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1 and in rail yards also. The majority of the cars that  
2 are stored just locally up in Burlington, as an example  
3 the Burlington yard, if you went in there today you  
4 would probably find anywhere from 30 to 100 tank cars,  
5 the majority of them would be empty.

6 Q. Is access to that yard controlled in any way?

7 A. No, not really. I can go into it any other  
8 time and there's no fencing, so trespassers can walk  
9 into it, you could drive into it also.

10 Q. So it's no less approachable than the siding  
11 we're talking about here at Hickox Road?

12 A. In fact, the Burlington yard would be  
13 probably much easier to get into than the siding that  
14 we're talking about.

15 Q. When you see cars that are not empty but are  
16 stored on sidings, other than the obvious concerns of  
17 potential leakage of that material, are there any other  
18 concerns as an inspector you would have about those  
19 situations?

20 A. Not really.

21 Q. And are there any regulations that the  
22 Commission enforces as to the limitation on time, if  
23 any, that hazardous material cars full might be stored  
24 on a publicly accessible siding? And I say that knowing  
25 that the public may have to trespass to get onto that

0912

1 siding, but accessible nonetheless.

2 MR. SCARP: Thank you.

3 JUDGE TOREM: You're welcome.

4 A. As a general rule I believe that the FRA,  
5 Federal Railway Administration, has a rule which  
6 precludes just storing loaded tank cars without  
7 forwarding. It's I believe they call it the 48 hour  
8 rule. That it's used to keep companies from simply  
9 filling up the tank cars when they don't have a place to  
10 ship them and use them as storage in waiting for an  
11 order to come in say. So usually what I see is loaded  
12 tank cars when I find them are usually only there  
13 transitionally. As an example locally they will come in  
14 from the refineries out by Anacortes, and they will be  
15 brought in, and usually they will be parked in the yard  
16 and 12 hours later they will usually be gone, sent into  
17 transportation.

18 BY JUDGE TOREM:

19 Q. So as you described earlier, the refinery  
20 wishing to keep the cars within its own fence line,  
21 would this 48 hour rule also apply to storage tracks  
22 within their own fence line, or are those only what I  
23 will call public right-of-way tracks, whether a rail  
24 yard or somewhere else?

25 A. I would think that it would only apply out on

0913

1 the regular rail. In the yard, or not the yard, but  
2 within the refinery area I don't think there would be  
3 any restriction at all.

4 JUDGE TOREM: Okay, does that raise any  
5 additional questions?

6 Thank you, Mr. Johnston.

7 We're on schedule to take a break now until  
8 10:30. When we come back, we will have Chief Harman and  
9 then Commissioner Benson, and that's all the witnesses  
10 we have scheduled for this morning. If it stays at the  
11 pace we're going, we'll probably be done by 11:00 this  
12 morning, so if there are any other witnesses that could  
13 be added to the morning docket to take the congestion  
14 off and we can get them here by 11:00, talk amongst  
15 yourselves in the next 10 minutes and we'll see what we  
16 can do.

17 MR. FALLQUIST: I know that Mr. Boge would  
18 prefer to do it sooner than later.

19 JUDGE TOREM: Talk to counsel on the break  
20 and arm wrestle or something and sort this out. We're  
21 at recess for 10 minutes.

22 (Recess taken.)

23 JUDGE TOREM: We're back on the record, it's  
24 now 10:35, Chief Glenn Harman is our next witness, I'm  
25 going to ask that he stand and raise his right hand.

0914

1 (Witness GLENN HARMAN was sworn.)

2 JUDGE TOREM: Mr. Burke.

3

4 Whereupon,

5 GLENN HARMAN,

6 having been first duly sworn, was called as a witness

7 herein and was examined and testified as follows:

8

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

10 BY MR. BURKE:

11 Q. Chief, even though you just did it, for the  
12 purposes of our record would you state your full name  
13 and spell your last name.

14 A. Glenn Harman, G-L-E-N-N, H-A-R-M-A-N.

15 Q. And what is your connection with the Skagit  
16 County Fire District Number 3?

17 A. I am the Skagit County Fire District 3  
18 District Chief.

19 Q. How long have you had that position, sir?

20 A. I started the 1st of January as District  
21 Chief, I was the chief of station 2 for the last 17  
22 years.

23 Q. Okay. Have you had an opportunity to review  
24 the written testimony of a former Chief David Skrinde?

25 A. Yes, I have.

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1 Q. Okay. And have you had an opportunity in  
2 particular to review the questions and answers in  
3 Mr. Skrinde's testimony that begin at page 6 and  
4 continue through the end of the declaration?

5 A. Yes.

6 Q. And would you adopt and ratify Mr. Skrinde's  
7 answers to those questions?

8 A. Yes, I would.

9 Q. And with respect to the pages 1 through 5 of  
10 Mr. Skrinde's testimony, which were his background and  
11 qualifications in the fire service, would you please  
12 tell us just briefly and generally what your background  
13 and experience in the fire service is?

14 A. My background is I joined the department in  
15 1970. I was 16 years old. I attended classes at Mount  
16 Vernon Fire for 6 months when it was Washington State  
17 Fire Service Training, became a NFPA level 1 instructor.  
18 After that the department made me a training officer, a  
19 lieutenant, so I trained members of the department under  
20 Washington State Fire Service training at that time.  
21 And then I went to Bates Fire in Tacoma and attended  
22 down at Bates for 2 years and was on the Lakewood Fire  
23 Department as a resident volunteer and responded with  
24 the City of Tacoma and had training at the City of  
25 Tacoma fire boat, fire ship, and training out at Seatac

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1 with the crash trucks, and then training up at the com  
2 center of Seattle Fire. And then back to Mount Vernon.  
3 My dad was a contractor, and he needed me to come back  
4 and help him, so I went back on the Fire District 3  
5 Cedardale department, and I have been there since, so  
6 I'm about 34 years in the department at this point.

7 MR. BURKE: At this time, Your Honor, I would  
8 offer the written testimony of Mr. Skrinde, which is  
9 Exhibit 85, as modified by the testimony of Mr. Harman  
10 and also the attachment to that written testimony, which  
11 is Exhibit 86.

12 JUDGE TOREM: All right, so my understanding,  
13 we talked a little bit about this at the recess, was  
14 that the first 5 pages of Chief Skrinde's testimony --

15 MR. BURKE: Are not relevant and are not  
16 being offered other than that they're already there.

17 JUDGE TOREM: All right, so those just won't  
18 be reviewed for the purposes of the record because Chief  
19 Skrinde obviously wasn't able to testify?

20 MR. BURKE: Correct.

21 JUDGE TOREM: All right, any objections then  
22 to pages I think it's 6 through 16 of Exhibit 85 as well  
23 as the attachment Exhibit A which is labeled as Exhibit  
24 86 for our purposes, any objections to those?

25 MR. SCARP: I've got to review the attachment

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1 here one second, Your Honor, but there's no objection to  
2 the --

3 JUDGE TOREM: The testimony then, Exhibit 85,  
4 is admitted.

5 MR. SCARP: There's no objection.

6 JUDGE TOREM: All right, and Exhibit 86 is  
7 also admitted, the response time summary.

8 MR. BURKE: With your permission, Your Honor,  
9 I will give the chief a copy of the testimony for his  
10 reference.

11 JUDGE TOREM: Thank you.

12 My indications are that, Mr. Scarp, you asked  
13 for potentially 30 minutes, I'm sure it might be less,  
14 cross-exam for the chief.

15 MR. SCARP: Thank you, Your Honor.

16

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

18 BY MR. SCARP:

19 Q. Good morning, Chief Harman, I'm Bradley  
20 Scarp, and I represent BNSF Railway Company.

21 A. Good morning.

22 Q. I will endeavor to do this in substantially  
23 less than 30 minutes because I know you have things to  
24 do.

25 Are there any changes just for the record



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1 that you would make to the prefiled testimony of Chief  
2 Skrinde that's been adopted?

3 A. No.

4 Q. All right. And your background is a little  
5 bit different, but your opinions and your approach to  
6 the emergency response issues is the same as he adopts?

7 A. Yes.

8 Q. All right. Now do you agree that the first  
9 responder on an emergency scene is very important?

10 A. Yes.

11 Q. And can you characterize for us how  
12 important, if you will, just in your own words, I  
13 realize that we've got Chief Skrinde's, but how do you  
14 describe it?

15 A. If it's a medical response, CPR in progress  
16 or of that nature, it's important that someone get on  
17 scene as quick as possible, do an assessment,  
18 communicate with Med 2 or whatever medic unit is  
19 responding. Fire response is critical for someone to  
20 get on scene and do a sizeup so that they are able to  
21 call for additional apparatus, tender strike team, of  
22 that nature.

23 Q. All right, tell me you said, you used the  
24 term Med 2, tell us what that is?

25 A. Med 2 is our countywide, Skagit Countywide

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1 ambulance service.

2 Q. All right. And is there a Med 1?

3 A. Med 1, Med 2, Med 3, 4, 5, two of them are  
4 BLS and the first three are ALS.

5 Q. Can you distinguish BLS and ALS?

6 A. Basic life support and the other one is a  
7 crew of two paramedics, and they perform different tasks  
8 than what the BLS unit does, and they can administer  
9 shots and different things that need to be done by  
10 communication with medical control at ER Skagit.

11 Q. Okay. Chief Harman, we asked for copies of  
12 the documentation or the reports of emergency responses  
13 to what has been characterized as the area that would be  
14 affected by closure of Hickox Road Crossing.

15 A. Yes.

16 Q. And can you describe, if you will, what your  
17 understanding is of that area?

18 A. As far as the documentation that we provided  
19 to you?

20 Q. Yeah, in response to our inquiry for  
21 responses in that area.

22 A. You inquired the number of responses that we  
23 had to that area from '05 to date, the seriousness of  
24 what the calls were out there.

25 Q. And my question is more about what is that

0920

1 area, what are the boundaries of that area, if you will?

2 A. The boundaries as far as --

3 Q. Well, let me put it this way, would the  
4 response -- the responses that you sent to us were all  
5 for a particular area, were they all west of the  
6 railroad tracks?

7 A. Yes.

8 Q. Were they all north of Stackpole Road?

9 A. Some were north, some were south.

10 Q. Okay. And how far south of Stackpole Road  
11 did some of those responses come from?

12 A. On the ones that we gave you, one, and it was  
13 parcel -- I believe it was the fifth parcel south from  
14 Hickox.

15 Q. So was that south of Stackpole?

16 A. North of Stackpole.

17 Q. Okay. Were there any of them south of  
18 Stackpole?

19 A. South of Stackpole, I don't know that we gave  
20 that documentation because those calls were before '05  
21 down in there.

22 Q. Okay. So what we got were 12 emergency  
23 responses that were all responding to some alarm or some  
24 911 call that was west of the railroad tracks, north of  
25 Stackpole, and south of the city limits; is that

0921

1 accurate?

2 A. Correct, and I believe there were 13 that  
3 were sent in.

4 Q. All right, I stand corrected.

5 And we discussed this a little bit with your  
6 expert on Monday, and were you here for his testimony?

7 A. Yes, I was.

8 Q. Okay, Mr. Rabel?

9 A. Mr. Rabel, yes.

10 Q. All right. Now I want to make sure because  
11 we're going to move on, the 13 responses constitute all  
12 of the calls to Rural Fire District 3 for that area for  
13 a three year period, correct?

14 A. That is correct for what we sent. I know  
15 there was other calls out there, but they were  
16 insignificant calls, so we did not submit those.

17 Q. They were insignificant?

18 A. False alarms, possible fire in a building,  
19 things like that, yeah.

20 Q. Okay. So if we take a look at that, that's  
21 just about an average of four responses or slightly  
22 above four per year for that area?

23 A. That's correct.

24 Q. Okay. Now some of those emergency calls were  
25 mutual response calls; is that the right term?

0922

1           A.     They were a mutual response call to Med 2.  
2     It's a dispatching error. Med 2 was dispatched only,  
3     then they realized that in the response plan that we  
4     need to be dispatched as well, so that goes in the  
5     incident reporting as a mutual aid specifically to  
6     medical.

7           Q.     Where does Med 2 dispatch from?

8           A.     They are dispatched either out of the  
9     residence next to the hospital, Skagit in Mount Vernon,  
10    or they come from Mclean Road Fire Station, and if  
11    they're unavailable they'll send one out of Sedro  
12    Woolley, if they're unavailable they will send one out  
13    of Anacortes, if they're unavailable they will send us  
14    one from Stanwood Camano.

15          Q.     Thank you. All right, now does the Rural  
16    Fire District 3 have any type of a mutual response  
17    agreement or understanding with the City of Mount  
18    Vernon?

19          A.     We have a mutual aid agreement County, we  
20    also have a mutual aid agreement specifically with the  
21    City of Mount Vernon. We are second engine dispatch on  
22    structure fire, and they also will be dispatched to  
23    mutual aid us on fire response, medical response, if  
24    they're available.

25          Q.     Okay.

0923

1           A.     They're a busy department with limited  
2 personnel, and they run a lot of calls a year, so if  
3 they have a unit available, they will respond.

4           Q.     A lot more people getting injured out in  
5 Mount Vernon inside the city than out there where you  
6 are?

7           A.     It's a lot of area to cover as far as motor  
8 vehicle accidents, insignificant calls. Someone will  
9 call in a false alarm, that constitutes cost of a lot of  
10 personnel and apparatus on the road to respond to those  
11 type of calls, but, you know, there's no -- you have to  
12 go.

13          Q.     Okay.

14          A.     Regardless.

15          Q.     Let me see if I can summarize and get that  
16 right. What I thought I heard you say primarily is you  
17 guys are a second response for structural fire, meaning  
18 if something big is burning or expected to or  
19 potentially, then they get you guys for added manpower,  
20 hose power?

21          A.     We are in the south zone, the City of  
22 Burlington responds into the north zone.

23          Q.     Okay.

24          A.     So if -- they will bring us into the north  
25 zone if necessary, or they will bring us into Station 1

0924

1 if necessary, or they will cancel some help.

2 Q. All right. And then in exchange, does Mount  
3 Vernon respond, especially for medical emergencies, down  
4 in the area, and I'm talking about the very southernmost  
5 or I guess I would call it the southwesternmost part of  
6 the city and into the rural area where you are where  
7 they sort of intermingle out there in the Britt Road,  
8 Dike Road area?

9 A. We don't have that as a response plan for  
10 medical. If we're unavailable, they are toned out next  
11 to cover that area for us.

12 Q. Okay. And sometimes do both of you respond?

13 A. We do.

14 Q. Okay. And you know the area I'm talking  
15 about out there around the Britt Slough and Dike Road,  
16 that corner?

17 A. Yes, sir.

18 Q. There's sort of a strange configuration right  
19 there like some politicians got ahold of some property  
20 there or something and put it inside the city, I don't  
21 mean to be disrespectful, but isn't that kind of an odd  
22 configuration there?

23 A. That was previously owned by the City of  
24 Mount Vernon, and I believe that they had sold that  
25 since, but they still retain that inside the city as

0925

1 part of their urban growth boundaries.

2 Q. All right.

3 So Mr. Rabel talked about response times --  
4 and by the way I want to clarify with regard to Chief  
5 Skrinde's testimony, and I'm at page 9, which is now  
6 your testimony. Well, I thought it was page 9, I'm  
7 sorry, it's page 8, it says, in 2005 the fire district  
8 responded to 12 service calls in the area affected. Is  
9 it your understanding that that means from 2005 through  
10 2007, because we didn't receive 12 responses for 2005?

11 A. It is a combination, we sent a combination  
12 between 2005 and not -- by the time you received that,  
13 it was halfway through 2007, so since then we have had  
14 more responses into that area, but that's correct.

15 Q. Meaning that the 12 responses are for the  
16 three year period, not for 2005?

17 A. Yeah, because we didn't -- we didn't submit  
18 insignificant calls.

19

20 E X A M I N A T I O N

21 BY JUDGE TOREM:

22 Q. Chief, I think what he was trying to get at  
23 is page 8 of the testimony refers to those 12 service  
24 calls.

25 A. Mm-hm.



0926

1 Q. That is just the significant service calls?

2 A. Yes.

3 Q. And so those 12 though include 2005, 2006,  
4 and as much of 2007 --

5 A. Yes.

6 Q. -- as had elapsed?

7 A. Yes.

8 Q. So these are the same service calls  
9 referenced here that were provided in the data request  
10 that were discussed --

11 A. Yes.

12 Q. -- with Mr. Rabel on Monday?

13 A. Yes.

14

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

16 BY MR. SCARP:

17 Q. All right, and just for the record then in  
18 order for the testimony to be accurate, it should say  
19 during 2005, 2006, and 2007 the fire district responded  
20 to 12 service calls?

21 A. Yes.

22 Q. Okay. And that's okay about making mistakes,  
23 because I made one yesterday and said that Stanwood was  
24 in Skagit County, quickly drew looks of mild derision.

25 So of those 12 or 13 I think you said

0927

1 earlier, we have 8 of them that Mr. Rabel discussed as  
2 not involving a mutual response from Mount Vernon; is  
3 that your understanding?

4 A. Yes.

5 Q. All right. So over that 3 year period, of  
6 those 8 we're talking about significant responses into  
7 the area that would be affected by closure of Hickox  
8 Road Crossing?

9 A. Yes.

10 Q. All right.

11 Now I want to ask you to take out what was  
12 previously marked, and I still don't have the right  
13 number --

14 JUDGE TOREM: The map would be Exhibit 26.

15 Q. Oh, I'm sorry, Exhibit 26, if you could take  
16 a look at that or just have it available there, and have  
17 you seen that map before, Chief Harman?

18 A. Yes.

19 Q. And is it something you're familiar with and  
20 those boundaries?

21 JUDGE TOREM: For the record, Chief, you're  
22 looking at the flood evacuation quadrant map, and I  
23 think prior to your testimony beginning Mr. Scarp and I  
24 confirmed this was part of a submission from the City of  
25 Mount Vernon's witness Glenn Brautaset.

0928

1 THE WITNESS: Brautaset, yes.

2 JUDGE TOREM: All right, so we're all looking  
3 at this map that's not yet been offered but has been  
4 marked for Mr. Brautaset or however it's pronounced.

5 THE WITNESS: Brautaset.

6 JUDGE TOREM: Brautaset, I will get it right.  
7 I imagine in the transcript it gets spelled the same no  
8 matter how I say it, but Mr. Brautaset's testimony which  
9 will be later this afternoon, so Exhibit 26 is in front  
10 of you.

11 MR. SCARP: And we would move to admit  
12 Exhibit 26, Your Honor, for this witness because it's  
13 merely for purposes of being able to identify boundaries  
14 in certain areas within the so-called affected area.

15 JUDGE TOREM: And this was the map you were  
16 referring to also with the strange perhaps jurymandered  
17 boundaries to the southeast, so yes, any objection to  
18 the admission of this exhibit at this time?

19 All right, seeing none, then Exhibit 26 can  
20 come in at this time.

21 BY MR. SCARP:

22 Q. If you would, Chief Harman, looking at the  
23 area, and I think you can fairly readily identify the  
24 boundaries of the City of Mount Vernon by the purple  
25 line, but I'm looking right north of Blackburn Road up

0929

1 the street just in the green area, it says Fire Station  
2 1, do you see that?

3 A. Yes.

4 Q. That's a Mount Vernon fire station, City of  
5 Mount Vernon?

6 A. Yes.

7 Q. And is that station -- how many trucks and  
8 how many emergency response vehicles do they have?

9 A. They man one engine per shift out of that  
10 station. They keep four or five other pieces of  
11 apparatus there. They have -- sometimes they will move  
12 different apparatus in there at different times for  
13 unknown reasons. So to answer your question, the  
14 response vehicle is a fire engine with two personnel on  
15 board.

16 Q. All right. And how about emergency medical  
17 treatment, what do they respond with?

18 A. They will respond with that engine, and they  
19 are both paramedics.

20 Q. Okay.

21 A. That man the engine.

22 Q. All right.

23 A. As far as I know to this point. They were  
24 trying to update their personnel and have paramedics on  
25 shift instead of just EMT's, so.

0930

1 Q. Okay.

2 A. They are in progress on that.

3 Q. All right. In any event, they're going to be  
4 trained professionals, whether EMT's or paramedics?

5 A. Correct.

6 Q. And are they staffed 24 hours a day?

7 A. They are.

8 Q. Is that two shifts now or do they work three,  
9 do you know?

10 A. They are working -- they're on 24, off 48.

11 Q. Okay, thank you. Now what I was asking about  
12 earlier and the purpose of this, the use of this  
13 particular map, is going down to the kind of the middle  
14 of the green section on Exhibit 26, see where it says  
15 Old Town evacuation quadrant?

16 A. Uh-huh.

17 Q. And that's the area that I was talking about  
18 way down where Dike Road almost to where it meets or  
19 close to where it meets Britt Road, that's part of the  
20 Mount Vernon proper or the Mount Vernon city?

21 A. There's a portion in there that belongs to  
22 the City, and that's occupied by Christianson or used to  
23 be Christianson Seed, but it's occupied by a seed  
24 company.

25 Q. Okay.

0931

1                   JUDGE TOREM: Now for clarification,  
2 Mr. Scarp, you're referring to on the map itself, not  
3 the legend with the Old Town evacuation quadrant, and  
4 this is that same southward stretch of the city limits  
5 we were just questioning how it was drawn originally?

6                   MR. SCARP: Yes.

7 BY MR. SCARP:

8           Q.       And I'm not talking for evacuation purposes,  
9 I'm trying to ascertain the boundary of the City of  
10 Mount Vernon as you understand it and which would  
11 include response by City of Mount Vernon emergency  
12 response or fire department?

13           A.       It would, yes.

14           Q.       And that's right on -- including right along  
15 Dike Road just north of where Dike Road intersects with  
16 Britt Road, is that also included?

17           A.       No.

18           Q.       Well, as I look, do you see the boundary that  
19 extends over right to Dike Road?

20           A.       Uh-huh.

21           Q.       Okay. And so does it fall short of Dike  
22 Road?

23           A.       No, in that area for response purposes there  
24 is no -- that is open ground.

25           Q.       Okay.

0932

1           A.     That is an open ground parcel.  There's one  
2     business on that closer to Dike Street, which is a Mount  
3     Vernon response area, but we cover that for them under  
4     our mutual aid agreement, or city agreement for fire  
5     response and aid.

6           Q.     Okay.  Chief Harman, that area that's up  
7     along Dike Road to the northwest of that little quadrant  
8     we were talking about, is that the farthest point for  
9     your vehicles to reach from the Cedardale Station?

10          A.     Actually we go all the way up onto the dike  
11     and then to the edge of the river.

12          Q.     Okay.  And is that the very farthest place  
13     that you have to reach with your vehicles responding to  
14     an alarm?

15          A.     Yes.

16          Q.     Okay.

17          A.     Yes and no.

18          Q.     All right.

19          A.     Because of our mutual aid agreement with the  
20     City of Mount Vernon, we would go up as far or past  
21     Station 1 at the city.

22          Q.     Okay, as first responders, is that the  
23     farthest that you would go?

24          A.     As first responders in our area, we would go  
25     up to the river.  As first responders into the mutual

0933

1 aid area if Mount Vernon Fire is unavailable, we're  
2 first responders up into past Kincaid Street.

3 Q. All the way into Mount Vernon?

4 A. Yes.

5 Q. All right. And if you were going up into  
6 Kincaid Street, you would go down to Old Highway 99 and  
7 straight up there and across the crossing at Blackburn  
8 and wouldn't go out west of the tracks before that --

9 A. No.

10 Q. All right. You would agree with me that the  
11 Mount Vernon Station 1 is substantially closer to you to  
12 that area in the Britt slough, would you?

13 A. I would, yes.

14 Q. Now there's places along the Britt Road where  
15 it, just before it joins Blackburn Road, are you  
16 familiar with that location and intersection?

17 A. Yes.

18 Q. And there is a number of houses right along  
19 there, it's fairly dense compared to the rest of the  
20 so-called affected area?

21 A. Yes.

22 Q. And that area from Cedardale is actually  
23 quicker to reach, isn't it, by going down Highway 99 and  
24 across Blackburn?

25 A. It is.



0934

1 Q. Okay. Chief Harman, I want to ask you a  
2 couple questions about the response time from the Conway  
3 station. Before I do that, Chief, and I apologize, I  
4 need to ask you to clarify something for me for the  
5 record if you would. If Cedardale responders are  
6 responding to an alarm inside the city, I think you  
7 indicated as far up as Kincaid, to take that route you  
8 would go up Highway 99 and through the Blackburn  
9 Crossing and into Mount Vernon, correct?

10 A. That's correct.

11 Q. Okay. Now with regard to the Conway station,  
12 I just want you to assume that if the Hickox Road  
13 Crossing was closed and for some reason you could not  
14 get through, whether it's blocked, closed, or whatever  
15 happens, that does not change the response time from an  
16 emergency fire truck or other emergency responder from  
17 the Conway station, does it?

18 A. If the station is manned, it does not. If  
19 the firefighters have to come from home, they live on  
20 the other side of the freeway on Conway Hill. If  
21 they're responding, which has happened quite a bit, and  
22 there's a train crossing, they have to wait, then get to  
23 their station, wait for their crew, and then they can  
24 respond. We prefer not to send the engine out without  
25 at least four people on board. If it's a medical

0935

1 response, we will send it with one or two personnel to  
2 get up into the area from Station 1 in a timely manner.

3 Q. Get moving and get a first responder on the  
4 scene?

5 A. Yes.

6 Q. And for clarification purposes, when you say  
7 that some of the volunteer firefighters that man or that  
8 are on call, if you will, is that the right term?

9 A. They all have a pager, they're on call if  
10 they're available, they're volunteers, they respond.

11 Q. All right. And when you say up on the Conway  
12 Hill, you're talking about east of Conway across the  
13 tracks and across I-5?

14 A. Yes.

15 Q. Okay. And what you're talking about trains  
16 would be trains that are down south of the area we're  
17 talking about that would be coming across and one way or  
18 the other potentially blocking a crossing and keeping  
19 them, delaying them from getting to the station?

20 A. Yeah, they switch there at Conway Feed.  
21 Conway Feed has a siding, so they will have a day crew  
22 sometimes, railroad has a day crew down there and they  
23 will switch out, they'll do it at night. You know, we  
24 have a train that comes through approximately every two  
25 to three hours down through that area, so the arms and

0936

1 signals are on down there quite a bit, so we depend on  
2 Station 2 to cover them and make that run if they're  
3 unable to get to their station.

4 Q. And when you say Station 2, you're referring  
5 to --

6 A. Cedardale.

7 Q. Now when they respond from Conway into what  
8 we have referred to as the affected area, they just come  
9 straight up Dike Road, they're already west of the  
10 tracks?

11 A. They will if -- depending on what time of the  
12 year. During farming season it's marginal, because I  
13 like them to run up the Dike Road, but it's not a --  
14 it's not quite a county standard wide road, and there's  
15 a lot of farm machinery that run on that road, and so I  
16 try to get them to run up Mount Vernon Conway Road and  
17 use Stackpole, Hickox, or Blackburn to get out in that  
18 area.

19 Q. Okay.

20 A. Because it's less hazard. Certain times of  
21 the year, yes, they will get out of Station 1 and get up  
22 the Dike Road safely, but our new fire engines, they  
23 take up a lot of road, so.

24 Q. And so what you're saying is -- well, let me  
25 ask you this. How far is the Conway Station from what

0937

1 you call the frontage road, I hear it referred to as Old  
2 99, the Conway frontage road?

3 A. It's just across the tracks, and you turn  
4 left after you go across the tracks about 500 feet.

5 Q. And then you come straight up that frontage  
6 road, and actually you can probably do a lot more speed?

7 A. Our speed limit out there is 50 miles an  
8 hour. The speed limit going up Dike Road is 35 county  
9 posted speed limit, but the engine, you know, they will  
10 do the best they can to, you know, they can exceed that  
11 to 5 to 10, but I don't like it, but.

12 Q. All right.

13 A. You know, I like them to stay within the  
14 rules of the law, so.

15 Q. The young guys probably push that a little?

16 A. I am working on that, they can push it, yes.

17 Q. So if I understood, sometimes the truck will  
18 come up using northbound on the Conway frontage road,  
19 and they might take a left on Stackpole, go across, and  
20 go out that way?

21 A. They may depending on what parcel we're  
22 responding to.

23 Q. Okay. With regard to Cedardale, if you had a  
24 response down toward Stackpole or even south of that,  
25 would you come down across the freeway across I guess

0938

1 it's called East Hickox and take a left onto the  
2 frontage road?

3 A. We would.

4 Q. And has that happened a number of times?

5 A. It happens occasional, yes.

6 Q. Okay. And then you could either go out  
7 Stackpole to the west or keep going south down the  
8 frontage road?

9 A. Yes.

10 Q. Okay. So your vehicles are able to navigate  
11 that intersection?

12 A. That intersection for us is a dangerous spot,  
13 and the engineer is told to use due caution in that  
14 area, and the road turns the wrong way, so the engine  
15 will get a weight shift right there.

16 Q. Do you instruct your firefighters to be  
17 cautious at that turn?

18 A. We do, yes.

19 Q. Okay. Have you had any problems?

20 A. Not as to date, no.

21 Q. All right. Now coming down from Cedardale  
22 station and assuming that you want to go out into the  
23 area that we have discussed that's north of Stackpole  
24 all the way up to the city line, have there ever been  
25 times when you have seen the railroad warning devices,

0939

1 or do you have an understanding of times when those  
2 warning devices have been activated?

3 A. We have, yes.

4 Q. And has that happened on any number of  
5 occasions?

6 A. It has at the Hickox and Blackburn and  
7 Stackpole.

8 Q. Okay.

9 A. There is no -- there's only a stop sign at  
10 the Stackpole, so the engine has to stop there anyway.

11 Q. All right. And do your firefighters, are  
12 they able to see that and make an adjustment and go to  
13 an alternate route if they see that the Hickox Crossing  
14 devices are activated?

15 A. Protocol is if they approach the -- if they  
16 have made the turn, they approach, the arms and lights  
17 flashing, is that they are to stop and radio  
18 communication to Battalion 3 or the other responding  
19 units or responding units out at Station 1 that they are  
20 being held up by a train, and communication is made to  
21 the dispatch center. We may have Engine 111 dispatched  
22 out of Mount Vernon, or we have an engine coming up from  
23 Station 1. So we try to cover that, because that is a  
24 delay for our response time, so.

25 MR. SCARP: One second, Your Honor, if I may.

0940

1                   Those are all the questions I have, Chief  
2 Harman, thank you.

3

4                   E X A M I N A T I O N

5 BY JUDGE TOREM:

6           Q.     Chief, if Hickox Road is closed, what would  
7 be the primary response route for the Cedardale Fire  
8 Station to get to that point in the northwest part of  
9 the Old Town evacuation quadrant just west of the water  
10 treatment plant?

11          A.     We would go up Old 99, west on Blackburn,  
12 north on Britt, west on Dike Street, south on Dike Road  
13 with Station 2 apparatus, and we would come up either  
14 Dike Road from Station 1, or they would come up and have  
15 to cross at Stackpole.

16          Q.     Is it your experience on any calls in that  
17 area, perhaps under your mutual aid agreement with the  
18 City, that the City's response from Fire Station 1 gets  
19 there first?

20          A.     They will get there first if they're  
21 available.

22          Q.     So even though it's in your primary area of  
23 responsibility by political boundaries, they get there  
24 first?

25          A.     They will get there first if they're

0941

1 available, yes.

2 Q. Now if the crossing is left open with any  
3 improvements of signalization that might be required and  
4 railway operations, as I think you have heard sitting  
5 here some of the time on Monday, may include longer  
6 trains pulling into a second track siding and cause much  
7 longer delays potentially at Hickox Road, would that be  
8 visible to your drivers of the engines responding from  
9 Cedardale coming down East Hickox Road before they got  
10 to the frontage road and could turn north or south  
11 accordingly?

12 A. They would be able to see that, yes.

13 Q. And right now if they see the gates flashing,  
14 is their protocol to continue up to the gates and wait?

15 A. No, they will divert and go to the shortest  
16 route. Response time is critical, so we will take an  
17 alternative route if something is blocking our way.

18 Q. So there's no calculus of, hey, the arms just  
19 came down, it might just be the Amtrak, this will be  
20 quick?

21 A. If that engine encounters that and they have  
22 already committed, protocol is they stop and wait, call  
23 for other units.

24 Q. I understand that if they're already  
25 committed, but if there's a decision point --



0942

1           A.     If they're not committed, then they can  
2 divert to the closest route to that parcel, yes.

3           Q.     I guess what I'm questioning is, do they have  
4 a danger of overthinking it, of saying let me see what  
5 kind of train is coming if they have visibility and  
6 determine whether the delay route with the gates down  
7 might still be faster for them?

8           A.     It could be, yes.

9           Q.     So there is some discretion in the driver?

10          A.     There's some discretion there.  If they are  
11 able to see that it's an Amtrak when they make the  
12 approach, they could go up to that area and wait and  
13 then proceed, yes.

14          Q.     Now what is your thought about a locked gate  
15 and a private crossing as one of the potential solutions  
16 to this?

17          A.     A locked gate would be fine.  If we had a  
18 significant structure fire in the area, we would need to  
19 leave that open for the duration of the incident,  
20 because we would have probably on a major structure fire  
21 we would have a med unit respond, a rehab unit from  
22 Mount Vernon, we would have a tender strike team, and  
23 probably an engine response from or a ladder probably  
24 from the City of Mount Vernon.  So our major fire  
25 hydrant that we use that's a 2,000 gallon a minute

0943

1 hydrant is at that intersection of Old 99 and Hickox.

2 Q. How often do you make use of that particular  
3 hydrant?

4 A. We have not used that particular hydrant.  
5 It's fairly new when they did the LID, when the City of  
6 Mount Vernon did the LID, so that's a new hydrant, but  
7 we have used the other hydrants up the line that are  
8 2,000 gallon hydrants for tender strike team fill up or  
9 fire lay but not particularly out into the area that  
10 you're questioning.

11 Q. So as to the private crossing situation,  
12 would it be reasonable to assume that through emergency  
13 communication systems someone would be opening the gate  
14 and then broadcast that as a potential alternate route  
15 for folks to take in getting to a major incident?

16 A. Yeah.

17 Q. And that when it's still closed, that would  
18 be broadcast as well?

19 A. It could be set up that way, yes.

20 Q. So in optimum communications, which may not  
21 occur in an emergency situation, folks would be told, we  
22 have a locked gate, it's not yet open, and then traffic  
23 would be diverted, emergency traffic, appropriately when  
24 it was?

25 A. Yes.

0944

1 Q. Now if the gate is actually not there and the  
2 closure that's been petitioned for is granted, would  
3 that require any reconsideration or rewrites of your  
4 mutual aid agreements?

5 A. It would, and it would also -- we would have  
6 to figure out how we could service that area to the  
7 level of service that the tax payors are receiving out  
8 in that area at this point. To always have to go around  
9 that crossing to another route will increase our  
10 response time 2 to 4 minutes, which is critical in  
11 cardiac arrest or major structure fire. So yes, we  
12 would have to figure out an alternative way to improve  
13 our response time.

14 Q. And on the response time if I understood from  
15 the various testimonies filed, there was a dispatch  
16 portion of that time, a mobilization portion, and I  
17 believe also then the drive time?

18 A. Yes.

19 Q. So dispatch is not something that can be  
20 affected from what I have read; is that correct?

21 A. Dispatch is immediate. The phone call comes  
22 in, dispatch puts the person on hold after they have  
23 received the vital information, tones the department  
24 out, gets back on the phone with the reporting party,  
25 then updates us, but that puts us in motion.

0945

1 Q. All right, so for your purposes, however long  
2 it takes the phone call to come in is out of your  
3 control?

4 A. Yes.

5 Q. So you mentioned a sleeper program that I  
6 think affects the mobilization portion of that time?

7 A. Yes.

8 Q. And then the drive time is what you would be  
9 responding to if this route was closed?

10 A. Yes, so that would be a program within the  
11 station where we would have 2 to 3 first responders  
12 respond out of the station immediately when the tone  
13 came in.

14 Q. So these 2 to 4 minutes that you might lose  
15 in drive time due to closure, how many of those can be  
16 made up through that sleeper program?

17 A. We believe that we can still give the same  
18 level of service that we're giving right now out in that  
19 area.

20 Q. Is the decrease in mobilization time the  
21 same, 2 to 4 minutes then?

22 A. No.

23 Q. Or what would the range be?

24 A. The 2 to 4 minutes is cut off because they're  
25 at the station, they're not responding from home to the

0946

1 station, so that would fix the response time by having  
2 someone in the station. So it's the time from when the  
3 tone goes out, the volunteer gets to the station, gets  
4 his apparatus, waits for a crew, and gets on the road.

5 Q. Is that usually 2 to 4 minutes?

6 A. It is.

7 Q. And I don't want this to sound like it's just  
8 horse trading time, but in the end if it's closed and  
9 you lose 2 to 4 minutes of drive time and you can make  
10 it up by adding 2 to 4 minutes, instead of adding it on  
11 the drive you subtract it on the mobilization, the net  
12 result for the community you serve is the same exact  
13 response time if I understand you correctly?

14 A. It is.

15 Q. So you have a way to mitigate this, but there  
16 are personal costs by who has to sleep there and costs  
17 of funding to build the bunk program and make it work?

18 A. Yes.

19 JUDGE TOREM: Okay, that's what I needed to  
20 understand.

21 Does that raise any additional cross?

22 MR. SCARP: I had a question, and now I've  
23 forgotten it.

24 JUDGE TOREM: I was trying to ask all your  
25 questions.

0947

1                   MR. SCARP:  You did that.  Oh, I know, I'm  
2  sorry.

3

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

5  BY MR. SCARP:

6           Q.     Chief Harman, two things about the fire  
7  hydrants.  There's a fire hydrant located at the  
8  intersection of Dike Road and Hickox; is that correct?

9           A.     Yes.

10          Q.     What's the capacity of that hydrant?

11          A.     Those hydrants are, and this is an estimate  
12  test that Skagit PUD did for us when they installed the  
13  hydrants, and they're 500 to 800 gallons a minute  
14  depending.

15          Q.     Okay.

16          A.     We have 8 hydrants on that line, and we have  
17  8 hydrants on the T off of that line that runs on Britt  
18  Road, and it's all on the same line, so there's some  
19  issues of taking water off the same line down in there,  
20  so.

21          Q.     Whether you would get the same capacity if  
22  you were trying to hit two at the same time for example?

23          A.     They say that they can do that.  We have to  
24  have a call out person from the PUD come down and adjust  
25  the pumps and supply more pressure onto the line, which

0948

1 creates problems for them because a lot of the residents  
2 there don't have pressure releasing valves that go to  
3 their homes, and so if we have an incident with an  
4 engine and a hammer on the hydrant or a hammer on the  
5 engine will create issues for residents, then that falls  
6 back on PUD, and they're not very happy about that, so.

7 Q. My last question is in response to the  
8 Judge's question about access through an otherwise  
9 locked gate to get to that I think you said 2,000  
10 gallons a minute main that's up at Highway 99 and  
11 Hickox, if something like that were required, could you  
12 have a person if there were going to be vehicles  
13 accessing that in an emergency situation serve as a flag  
14 man at the railroad crossing?

15 A. I honestly can't answer that question,  
16 because our protocol for dealing with the railroad and  
17 the railroad tracks, and the railroad has been very good  
18 to us in Fire District 3, worked with us for a long time  
19 on different issues, and protocol is to have someone  
20 from the railroad serve in that capacity. In a long  
21 duration time, we have a protocol for stopping the  
22 train, which means flares on the tracks, emergency  
23 vehicle with its lights flashing at an intersection area  
24 while dispatch is trying to get ahold of the railroad to  
25 work with us on those kind of issues. So that would be

0949

1 a safety issue for me for running my tender strike team  
2 and my engines back and forth across a locked gated area  
3 where -- well, you know what I mean.

4 MR. SCARP: I understand, thank you, I don't  
5 have anything further.

6

7 E X A M I N A T I O N

8 BY JUDGE TOREM:

9 Q. Can local law enforcement or do they already  
10 play a role in that sort of contingency?

11 A. Law enforcement, I can't answer that  
12 question, because it is railroad property, so the  
13 railroad has to give us ultimate permission to do that.  
14 We're trying -- we try to notify the engine by flare and  
15 light so that they know that there's a problem on the  
16 track, but the ultimate responsibility and authority  
17 comes from Burlington Northern Santa Fe.

18 Q. I guess I was asking this not as though there  
19 would be a problem on the track at Hickox, but a gate to  
20 what the engineer would normally expect to be a private  
21 crossing now being as you suggested open for a longer  
22 duration and for traffic control. Because depending on  
23 what happens, there could or could not be signalization  
24 at this track left in place. It may be, we have heard  
25 testimony you would never take it out, but it may end up



0950

1 being removed in the future, and a private crossing now  
2 would be opened, an uncontrolled public crossing in  
3 effect, and I would wonder about the traffic control on  
4 the approaches. That certainly I wouldn't think  
5 involves the railroad, it would have to be some  
6 cooperative venture, because that's not their property.

7 A. It would be -- oh, I understand what you're  
8 saying, okay, I misunderstood what you said.

9 Q. And it may be that Mr. Scarp and I are asking  
10 different questions.

11 A. I thought that traffic control as far as the  
12 trains were concerned so we could put apparatus back and  
13 forth across there. You're talking about closing the  
14 road off, when the gates are open, that would fall under  
15 Skagit County Sheriff.

16 Q. I just presume you can't stop a speeding  
17 freight train.

18 A. Well, they need to know, you know, if we're  
19 crossing in a tender strike team, the tenders run back  
20 and forth. The engineer of the train needs to know that  
21 we're doing this.

22 Q. Correct.

23 A. So it's a huge communications issue there.

24 Q. My thought was the other folks that might  
25 follow your strike teams and say, wow, Hickox is open.

0951

1           A.     That would fall under the Skagit County  
2 Sheriff's Department and Skagit County Public Works.

3           Q.     And I wonder if they would be best to serve  
4 as the flagmen or women at that, but again that's not  
5 for me to sort out.

6           A.     You know, their response time to open that  
7 for us and control that right of way, you know, I see  
8 some issues coming down the road on that. Because, you  
9 know, the Sheriff's Department is busy, Mount Vernon PD  
10 is busy, we're trying to do our thing, so yeah, I would  
11 have some questions about that.

12          Q.     Well, I'm presuming that in a major incident  
13 like this, they would be busy cooperatively with you.  
14 Depends how much is going on, I understand.

15          A.     Yes.

16                 JUDGE TOREM: Okay, does that raise  
17 additional cross-exam questions at all?

18                 Do we have redirect?

19                 MR. BURKE: Very brief.

20

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

22 BY MR. BURKE:

23          Q.     Chief, you mentioned that in the answers and  
24 data requests the department had factored out what you  
25 deemed insignificant calls. Do you remember what the

0952

1 number of insignificant calls were?

2 A. I don't. I can't give you the number of  
3 those, but I know that there are quite a few numbers of  
4 false alarms out in there, reports of brush fire along  
5 the dike and people burning, things like that. So I can  
6 get that information for you, but right off the top of  
7 my head I can't tell you the number on those.

8 Q. Would it have been more than 8?

9 A. It will, yes.

10 Q. More than 20 just from your estimate?

11 A. Less than 20.

12 Q. Okay. There was some testimony earlier about  
13 tank cars being parked on sidings. If there was a full  
14 tank car parked on a siding at the Hickox Road that was  
15 leaking, would that be your department to respond?

16 A. That would, we would be the first responders  
17 on that.

18 Q. Has the department had experience with  
19 leaking cars in the past on sidings?

20 A. We have.

21 Q. Would it be to the advantage or disadvantage  
22 of the department if the Hickox Road access was closed  
23 to the siding?

24 A. So can I answer that in a two part?

25 Q. Of course.

0953

1           A.     Okay.  It really makes no difference whether  
2  the crossing is closed with tank cars, okay.  The tank  
3  cars run up and down the tracks every day anyway, so we  
4  could have an incident.  If the train cars were sitting  
5  on the siding out there loaded and it was day after day  
6  after day and they had some issue with leaks, protocol  
7  on LPG is to evaluate a half a mile in all directions,  
8  which closes down businesses and removes people from  
9  their homes and all of that.  But that's protocol,  
10 that's part of hazardous material response, and we go by  
11 the charts and the hazardous material response protocol.  
12 That's our first response responsibility, okay.  And  
13 then if we determine that it's not a significant leak,  
14 people can come back into their businesses.  But it does  
15 shut down the businesses, and sometimes it will shut the  
16 businesses down for 4 to 6 hours.

17                 In the protocol, railroad has to be notified,  
18 Department of Emergency Management comes, and they  
19 represent the Skagit County Fire Districts, and so if  
20 it's a significant leak, then we are on staff at that  
21 point, so we get paid for hazardous material response,  
22 paid by the shipper or the owner of the product.  So it  
23 gets into a huge amount of issues, but the first  
24 responders are going to ask the businesses to evacuate,  
25 so it's a costly situation when you go to something like

0954

1 that. But I can say that we have had some incidents out  
2 there, the railroad's been very cooperative.

3

4

E X A M I N A T I O N

5 BY JUDGE TOREM:

6 Q. Chief, how do you get to the cars on the  
7 siding that are not accessed by road?

8 A. We have to walk.

9 Q. So as you said, it doesn't matter if the  
10 siding is extended north and south of Hickox, once you  
11 get to the intersection with the tracks, you're walking?

12 A. We're walking, yeah. And, you know, we  
13 don't, don't misunderstand me, we don't just walk right  
14 up to that tank car, you know, we use due caution and  
15 care and binoculars and see what we're dealing with.

16 Q. I have no questions about your operations, I  
17 just want to know about the access.

18 A. Yeah, we're on foot regardless, we're on  
19 foot, yes.

20 MR. BURKE: That's all the questions I had.

21 JUDGE TOREM: Any other recross?

22 Mr. Jones.

23 You're getting up, Mr. Jones, what have you  
24 got?

25 MR. JONES: I wanted the witness look at this

0955

1 drawing.

2

3

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

4 BY MR. JONES:

5 Q. As I understood your testimony, you said that  
6 you felt that there was a -- let me bring it around.

7 JUDGE TOREM: For the record, this is the  
8 large overhead which we thought was Exhibit 65 or some  
9 reasonable representation of that.

10 Q. Did I understand you to say that fire  
11 apparatus, particularly engines turning left on this  
12 down off the ramp at Hickox Road, I believe it's known  
13 as Exit 224, that that poses a hazard because of the  
14 road configuration?

15 A. Yes.

16 Q. If you were allowed to offer a suggestion as  
17 far as how to mitigate the hazard that you identified  
18 there, what steps would be appropriate to make it more  
19 practical for a fire apparatus to come around that  
20 corner?

21 JUDGE TOREM: Mr. Jones, I'm going to stop  
22 and object to the question myself, so you know what my  
23 ruling is going to be on my objection.

24 MR. JONES: Right.

25 JUDGE TOREM: And the reason I don't think

0956

1 this is relevant, sometimes the trucks are going to turn  
2 there whether that's closed or not, that's already been  
3 established, and I'm not certain that mitigation at that  
4 intersection is the responsibility and jurisdiction of  
5 this tribunal, that's a city or county road issue to  
6 take up. It's noted for the record that there may be  
7 more trips caused there, but I'm not certain that that's  
8 part of the scope of things. And although the Chief may  
9 have some recommendations to mitigate that intersection,  
10 I would like to see that as an appendix to any brief if  
11 his attorney thinks that that's what the fire department  
12 wants in the case of a closure or a private crossing, I  
13 will get it then, thank you.

14 Any other cross or direct for this witness?

15 Mr. Rogerson.

16 MR. ROGERSON: Just a brief line of  
17 questions, Your Honor.

18

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

20 BY MR. ROGERSON:

21 Q. Chief, you testified that you have served in  
22 a firefighting capacity for over 30 years, is all that  
23 locally?

24 A. No, it's not.

25 Q. Okay. How long have you served in the area?

0957

1           A.     In the area I have been in the department for  
2 29 years.

3           Q.     Okay.  And other than Fire District Number 3,  
4 have other emergency responders used that Hickox  
5 Crossing?

6           A.     Yes.

7           Q.     And can you identify to us what other  
8 responders have used it?

9           A.     Mount Vernon Fire, Mclean Road Fire  
10 Department, Big Lake Fire Department, Mclean Road Fire  
11 Department, Med 2, Med 3, Med 4, and Med 5.

12          Q.     And the testimony that was given today  
13 regarding the responses and the use of that crossing,  
14 those are only related to the fire district, is it not?

15          A.     Yes.

16          Q.     You had mentioned previously Skagit County  
17 PUD owning some fire hydrants over here, and then there  
18 was testimony regarding the fire hydrant on Hickox Road  
19 on the east side of the crossing over here; who owns  
20 that?

21          A.     Skagit PUD.

22          Q.     And does Skagit PUD own the water utility in  
23 the area?

24          A.     They do.

25          Q.     And does that include within the city of



0958

1 Mount Vernon?

2 A. They do.

3 Q. And do you have an agreement with Skagit PUD  
4 to use their water for firefighting operations?

5 A. We have an agreement with Skagit PUD for  
6 hydrant maintenance only. We do not have an agreement  
7 with them to use the water. So if they deem that we're  
8 not allowed to use that water, then we have to find an  
9 alternative source of water.

10 Q. Currently they allow you to use the water?

11 A. They currently allow us to use it, yes.

12 Q. So you have permission?

13 A. We have permission, yes.

14 Q. That would include permission to use PUD  
15 water within the city?

16 A. It would.

17 MR. ROGERSON: Thanks, nothing further.

18 MR. SCARP: I guess that does raise a  
19 question for me.

20

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

22 BY MR. SCARP:

23 Q. Chief Harman, counsel for the City asked you  
24 about other responders, would those that you listed, Big  
25 Lake and some of those, would they be backup responders

0959

1 to you in a large event?

2 A. They would, yes.

3 MR. SCARP: Thank you.

4 JUDGE TOREM: Anything else?

5 Thank you, Chief.

6 THE WITNESS: Thank you.

7 JUDGE TOREM: It's now 11:40, what I want to  
8 do is make sure we can take Commissioner Benson, who is  
9 here I believe, and Mr. Burke then can handle his last  
10 witness and maybe not have to come back after lunch  
11 would be my understanding. And you only have 10 minutes  
12 of cross for him, and I promise I won't stretch it out  
13 to 30.

14 (Witness VICTOR BENSON was sworn.)

15 JUDGE TOREM: Please have a seat.

16 Mr. Burke.

17

18 Whereupon,

19 VICTOR L. BENSON,  
20 having been first duly sworn, was called as a witness  
21 herein and was examined and testified as follows:

22

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

24 BY MR. BURKE:

25 Q. Commissioner, would you state your name and

0960

1 spell it for our record, please.

2 A. Vic Benson, V-I-C, B-E-N-S-O-N.

3 Q. And what is your connection with Skagit  
4 County Fire District Number 3?

5 A. I'm the Fire Commissioner for District 3.

6 Q. Commissioner, in November of 2007 you  
7 prepared some written testimony that was submitted here  
8 as Exhibit 87, I will show you a copy of that at this  
9 time. Do you recognize that, sir?

10 A. Yes.

11 Q. Was that prepared by you, signed by you  
12 rather?

13 A. Yes.

14 Q. And are the answers true and correct?

15 A. Yes.

16 Q. Would you make any changes to those answers  
17 as we sit here today?

18 A. No.

19 MR. BURKE: I would offer 87 at this time.

20 JUDGE TOREM: Any objections?

21 MR. SCARP: No objections.

22 JUDGE TOREM: 87 is admitted.

23 Mr. Scarp.

24 MR. SCARP: Thank you.

25

0961

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

2 BY MR. SCARP:

3 Q. Good morning, Chief Benson, I'm Bradley  
4 Scarp, and I represent BNSF Railway Company.

5 A. Good morning.

6 Q. I'm looking at page 4 of your prefiled  
7 testimony, and the focus of your testimony regards the  
8 current status of the Conway Fire Station; is that a  
9 fair characterization?

10 A. Yes.

11 Q. And then you address the needs to upgrade  
12 that and potentially even to move that station up toward  
13 is it called Conway Hill?

14 A. Conway Hill.

15 Q. Okay. Now I note in the final paragraph of  
16 page 4 that relocating is one of the long range  
17 priorities that your department has and that it is, and  
18 I quote, depending upon financial resources available to  
19 purchase property and construct the facility. Did I  
20 read that correctly?

21 A. Yes.

22 Q. Is it accurate to say, Commissioner Benson,  
23 that the financial resources are not currently  
24 available?

25 A. Right.

0962

1 Q. Okay. And we have already heard the  
2 testimony of Chief Harman regarding the estimates for  
3 upgrading I think to a sleeper facility, and would that  
4 include property purchase potentially?

5 A. For the Cedardale, the one that we have at --  
6 the one that we have already checked on is -- no, it's  
7 at Cedardale. Conway has to be moved, and we would like  
8 to have sleepers there too, but right now we're focusing  
9 on the current and which is going to be upgrading  
10 Cedardale.

11 MR. SCARP: All right, that's all I have,  
12 thank you.

13

14 E X A M I N A T I O N

15 BY JUDGE TOREM:

16 Q. Commissioner, in the relocation of Conway, is  
17 it currently on the west side or the east side of the  
18 railroad tracks?

19 A. It's currently the station is on the west  
20 side in the floodplain.

21 Q. And if I read your testimony correctly then,  
22 you're saying moving it east of the tracks, which was  
23 the desired location?

24 A. Right.

25 Q. Would be compounding the response time

0963

1 problem if Hickox was closed and you moved east of the  
2 tracks.

3 A. Right.

4 Q. Is that correct?

5 A. Right.

6 Q. So I have two questions I jotted down. Are  
7 there any alternate locations being considered for  
8 relocation now on the west side of the tracks?

9 A. No.

10 Q. And why is that?

11 A. Well, the flat --

12 Q. Are those all on the floodplain?

13 A. Sure. I mean when that flood comes, it's not  
14 a good spot.

15 Q. So it's the flood that's driving you on the  
16 other side of the tracks?

17 A. That's the big reason, yeah.

18 Q. And so having to stay out of the floodplain,  
19 it would be my understanding then you would want to  
20 maintain as many ways into the floodplain as possible  
21 for your other responses?

22 A. Right.

23 Q. But not have the fire station there?

24 A. Right.

25 Q. And I think Mr. Scarp's questions answered

0964

1 this, you're not already committed to a site on the east  
2 side of the tracks due to finances?

3 A. We're looking into property now.

4 Q. But nothing has been signed or offered --

5 A. Nothing is signed. In fact, I've got a --  
6 the County has got a spot up there that we're looking  
7 at, and we have talked to individuals, but nothing has  
8 been signed yet.

9 JUDGE TOREM: Those are all the questions I  
10 had, are there any other cross-examination questions for  
11 this witness?

12 Any redirect?

13 MR. BURKE: Just a couple of questions, Your  
14 Honor.

15

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

17 BY MR. BURKE:

18 Q. Commissioner, did proximity to the Hickox  
19 railroad crossing play any determination in the present  
20 location of Conway Station?

21 A. Say that again.

22 Q. Where Conway is now, when that was sited  
23 there, was the proximity to Hickox Crossing or Hickox  
24 Road and the railroad any kind of a factor in that  
25 decision?

0965

1           A.     Oh, goodness, I don't know, Conway has been  
2 there a long time.

3           Q.     Okay.

4           A.     No, I don't think so.

5           Q.     Okay. Now with respect to the cost of the  
6 sleeper program at Cedardale, have you any estimate of  
7 the costs that would be involved in that?

8           A.     Yes, we do have a quote from TCA  
9 Architecture, and the quote came in \$280 a square foot,  
10 and the cost of what we would need they estimated it at  
11 \$565,040.

12          Q.     Commissioner, was that information included  
13 in your requested data response that was given to the  
14 Department of Transportation as an exhibit, I believe it  
15 was 16?

16          A.     You know, I'm not sure if that was in there  
17 or not.

18          Q.     Commissioner, showing you what I believe to  
19 be a true copy of Exhibit 16 and the request for data  
20 responses, does that look familiar?

21          A.     Sure, that's it.

22          Q.     Is that what you relied on in your --

23          A.     Yeah.

24                 MR. BURKE: I would ask that we mark and  
25 admit response to data request number 16 as a redirect



0966

1 exhibit, and I have copies for all.

2 JUDGE TOREM: All right, so this is on the  
3 sheets I got that were marked as Exhibits 133 and 134  
4 for different data requests, you're asking that the data  
5 request to number 16, which is attached as well, explain  
6 in detail the basis of the district's estimate it would  
7 incur in excess of \$600,000 for these improvements,  
8 that's the one?

9 MR. BURKE: Yes, I don't believe that this  
10 was included.

11 JUDGE TOREM: It wasn't, so I will mark that  
12 as an exhibit, I'm just trying to dig for a number, I  
13 think we'll mark that as Exhibit 138, and again this is  
14 the DOT's Data Request Number 16 and the Fire District's  
15 response, and I have been handed a separate copy by  
16 Mr. Burke, so we'll mark that as Exhibit 138. And once  
17 he finishes handing that to everybody, it looks like  
18 it's a cover sheet and 3 additional pages, take a look  
19 and let me know if you have any objections.

20 Any objections to this exhibit?

21 MR. SCARP: Just one moment.

22 Your Honor, may I voir dire?

23 JUDGE TOREM: Certainly.

24

25

0967

1 V O I R D I R E E X A M I N A T I O N

2 BY MR. SCARP:

3 Q. Commissioner, I am looking at what's just  
4 been handed to me, and I apologize, Your Honor, what  
5 number?

6 JUDGE TOREM: 138.

7 Q. 138, and it appears to be an E-mail, a copy  
8 of an E-mail from Brian Harris, and it's dated December  
9 26, 2007.

10 A. Mm-hm.

11 Q. That's a yes?

12 A. Yes.

13 Q. All right. And I don't see a date on my copy  
14 of your prefiled testimony, do you know does yours have  
15 a date on it?

16 November 5, 2007, is what's indicated by  
17 Mr. Burke.

18 A. Right.

19 Q. So this is approximately a month and a half  
20 or a little more after your prefiled testimony?

21 A. Yes.

22 Q. All right. So you weren't relying on this at  
23 the time you prepared your prefiled testimony?

24 A. No, no, it came pretty close to our estimate  
25 though.

0968

1                   MR. SCARP: Well, Your Honor, I guess I would  
2 object on that basis.

3                   JUDGE TOREM: Okay.

4                   MR. SCARP: I haven't had really an  
5 opportunity to --

6                   JUDGE TOREM: I understand. Just before I  
7 rule on your objection I want to see, the witness had  
8 indicated they had an estimate. And I want to know if  
9 it was a guesstimate or whether there was some  
10 discussion before you actually saw this document.

11

12                                   E X A M I N A T I O N

13 BY JUDGE TOREM:

14           Q.     Commissioner Benson, apparently the \$600,000  
15 figure that's being disputed, did it come to your  
16 attention for the first time via this written estimate  
17 that was E-mailed in late December a month after or more  
18 than a month after the submission of the testimony?

19           A.     Yes, we talked about it quite a bit.

20           Q.     When did the talk about this with TCA begin?

21           A.     You know, I couldn't really tell you the  
22 dates.

23           Q.     Was it before you filed your testimony in  
24 November?

25           A.     It would have been before.

0969

1 Q. And did you have that number financial  
2 discussion with them before you filed your testimony,  
3 where did the number come from?

4 A. Yeah, well, we've been talking mediation for  
5 a year and a half, and so that is the one thing from the  
6 very start was that we knew that if that was going to  
7 get shut down, we needed something, and so we been --  
8 and I think the \$280 a square foot is pretty, you know,  
9 I mean even here even in their bid they say it's not a  
10 accurate, I mean a for sure, but it's not too hard to  
11 get kind of a basic for a square foot on a building like  
12 that.

13 JUDGE TOREM: So, Mr. Scarp, on the basis of  
14 the original objection that he didn't have this ahead of  
15 time, I understand the timing issues and I will give it  
16 appropriate weight if I admit it, but it appears to me  
17 that these discussions, he did have the basis to form an  
18 opinion and can offer the number in testimony, I don't  
19 think that's your objection, but just is Exhibit 138  
20 useful at all I guess.

21 MR. SCARP: Your Honor, I'm already  
22 anticipating your ruling, and I just have a couple  
23 follow-up questions.

24 JUDGE TOREM: Go ahead.

25 MR. SCARP: Go ahead and rule on my

0970

1 objection.

2 JUDGE TOREM: I was going to sustain it,  
3 because it's not necessary, we have other testimony to  
4 get the same number.

5 MR. SCARP: I was wrong.

6 JUDGE TOREM: I'm a psycher, what can I say.  
7 All right, any other questions for this  
8 witness?

9 MR. SCARP: None, Your Honor.

10 JUDGE TOREM: So the ruling then in  
11 sustaining the objection is that Exhibit 138 was offered  
12 but will not be admitted. And again, the reasoning  
13 behind that is there's independent testimony and we  
14 don't need this, it becomes confusing as to the exact  
15 estimate, the ball park in the testimony will do.

16 Thank you, sir.

17 We have 5 minutes to 12:00, we're supposed to  
18 start up again at 12:30, I think I will be optimistic  
19 about the afternoon and move that back to 12:45, is that  
20 agreeable to all, or am I being too optimistic?

21 MR. ROGERSON: No objection.

22 JUDGE TOREM: All right, anything else we  
23 need to take care of before we do break until 12:45?

24 MR. SCARP: No, Your Honor. When we're off I  
25 would just like to know how we're lined up.

0971

1 JUDGE TOREM: All right, we will be off the  
2 record and I will go over the schedule when we're off  
3 the record.

4 (Luncheon recess taken at 11:55 a.m.)

5

6 A F T E R N O O N S E S S I O N

7 (12:50 p.m.)

8 JUDGE TOREM: We're back on the record, it's  
9 now 10 minutes to 1:00, and almost everybody's back. We  
10 have our first witness for the afternoon, Mr. Esco Bell.

11 (Witness ESCO BELL was sworn.)

12 JUDGE TOREM: Mr. Rogerson is going to review  
13 with you I believe Exhibits 18 which are your prefiled  
14 testimony, 19 which is your resume', 20 which are some  
15 photographs of the Hickox Road Crossing, 21 which are  
16 photographs of the Stackpole Road Crossing, and 22  
17 photographs of the Second Street and Blackburn Road  
18 Crossing. Those are the five exhibits relevant to this  
19 witness if folks want to get them in front.

20 Mr. Rogerson, your witness.

21 MR. ROGERSON: Thank you, Your Honor.

22

23 Whereupon,

24 EDWARD ESCO BELL,

25 having been first duly sworn, was called as a witness

0972

1 herein and was examined and testified as follows:

2

3

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

4 BY MR. ROGERSON:

5 Q. Good afternoon, Mr. Bell.

6 A. Good afternoon.

7 Q. Can you please state and spell your name for  
8 the record.

9 A. Edward Esco Bell, I go by my middle name,  
10 E-S-C-O, and my last name is Bell, B-E-L-L.

11 Q. And what is your occupation?

12 A. I'm the Public Works Director City of Mount  
13 Vernon.

14 Q. And how long have you been so employed?

15 A. Three years.

16 Q. And in that capacity, did you cause to be  
17 produced and filed direct prefiled testimony dated  
18 November 5th, 2007, filed at the Washington State  
19 Utilities and Transportation Commission?

20 A. Yes, I did.

21 Q. And did you have the occasion on November 5th  
22 to sign the declaration under penalty of perjury that  
23 everything in that prefiled testimony was true and  
24 correct?

25 A. Yes.

0973

1 Q. And have you reviewed that prefiled testimony  
2 since that time?

3 A. Yes.

4 Q. And if I were to ask you today, would those  
5 answers remain the same answers as they are included in  
6 this prefiled testimony?

7 A. Yes.

8 MR. ROGERSON: At this point, the City would  
9 move Exhibits 18 through 22 into evidence.

10 JUDGE TOREM: Any objection to the admission  
11 of Exhibits 18, 19, 20, 21, and 22?

12 MR. SCARP: No objection.

13 JUDGE TOREM: Seeing none, those are  
14 admitted.

15 MR. ROGERSON: And, Your Honor, for maybe a  
16 preliminary matter, the City would also move to include  
17 the testimony of Mayor Norris.

18 JUDGE TOREM: All right, while we're doing  
19 some housekeeping, there's come to my understanding that  
20 Mayor Bud Norris has been waived cross-examination, his  
21 Exhibit is 28, it's just his prefiled testimony, a total  
22 of 8 pages, do the parties all stipulate to the  
23 admissibility of Mayor Norris's testimony?

24 MR. SCARP: Yes, Your Honor.

25 JUDGE TOREM: All right, then that will be



0974

1 admitted as well, I will consider that, I have already  
2 read it of course, as part of the evidence in this case,  
3 but there won't be any cross-examination of that  
4 witness.

5 MR. ROGERSON: Thank you, Your Honor.

6 JUDGE TOREM: At this time though we're ready  
7 for cross-examination of Mr. Esco Bell, and the railway  
8 is the only listed cross-examiner, Mr. Scarp.

9 MR. SCARP: Thank you, Your Honor, one  
10 moment.

11 JUDGE TOREM: Were there any other  
12 cross-examination exhibits you wanted to provide to this  
13 witness?

14 MR. SCARP: There will be. Your Honor, we  
15 have premarked a letter from Mr. Bell.

16 Do you have a copy?

17 THE WITNESS: Yes, I do.

18 MR. SCARP: It was premarked as Exhibit 139,  
19 Your Honor, and I believe it's referenced in Mr. Bell's  
20 prefiled testimony.

21 JUDGE TOREM: So this is a letter from  
22 Mr. Bell to Mr. Schultz dated June 30th, 2006, and the  
23 exhibit marked as 139 consists of 1 page, and it's  
24 stamped received at the DOT rail office July the 7th,  
25 2006, and it references a meeting between Mr. Schultz

0975

1 and Ms. Jana Hanson in June or May of 2006; does that  
2 adequately describe the exhibit for the record?

3 MR. SCARP: I think so, Your Honor, except I  
4 would say it references a meeting with Jana Hanson and  
5 me.

6 JUDGE TOREM: And Mr. Bell, thank you. Okay,  
7 that's been marked, I imagine after you have used it you  
8 will move it for admission, or do you want to do that  
9 now?

10 MR. SCARP: We'll move for its admission,  
11 Your Honor.

12 JUDGE TOREM: Any objection?

13 MR. ROGERSON: No objection.

14 JUDGE TOREM: All right, Exhibit 139 is  
15 admitted.

16

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

18 BY MR. SCARP:

19 Q. Good afternoon, Mr. Bell, my name is Bradley  
20 Scarp, and I represent BNSF Railway, and I'm going to  
21 just ask you a few questions pertaining to your prefiled  
22 testimony and the exhibits that have gone along that  
23 have been admitted. Mr. Bell, do you have your prefiled  
24 testimony right there handy?

25 A. I have the copy that I printed, yes, off of

0976

1 my E-mail.

2 Q. All right.

3 A. I don't think I have the signed original, I  
4 just have what I -- yes.

5 Q. That's all right, if there's any discrepancy  
6 between what I read and what you have, we'll probably  
7 figure it out. I would like you to turn to page 9, oh,  
8 I'm sorry, I take that back, page 10, sorry, page 11.  
9 We're getting through it fast though, aren't we.

10 JUDGE TOREM: The level of service question  
11 is on page 11, you're correct.

12 Q. Mr. Bell, the question at the top of page 11  
13 says, what is the existing service level for that  
14 crossing, and if you follow the secondary question is,  
15 does this incorporate trips from vested land use  
16 applications, and your answer is, I do not know the  
17 level of service for the crossing. Is that your  
18 testimony?

19 A. Yes.

20 Q. Is that still accurate?

21 A. Yes.

22 Q. Okay. Have you been advised of the traffic  
23 impact study done by Mr. Gary Norris?

24 A. I'm aware of it, yeah.

25 Q. Okay. And are you aware of the level of

0977

1 service that he provides with regard to the Blackburn  
2 Crossing currently?

3 A. I'm not aware of the crossing.

4 Q. Intersection.

5 A. Yeah, yeah.

6 Q. Intersection, I stand corrected.

7 A. Yeah, the intersection I'm not -- maybe the  
8 -- I believe he analyzed Blackburn Road as level of  
9 service B.

10 Q. Okay. Are you sure that he doesn't give that  
11 A currently with the dropping to B on the projections  
12 for 2025?

13 A. That sounds correct.

14 Q. Okay. You wouldn't disagree with that?

15 A. No.

16 Q. All right. Now with that said, you  
17 understand that the level that he projects for 2025 is  
18 level B based on the data that he used in his model?

19 A. Yes, he must be assuming all the projected  
20 improvements that we would plan to do are in place to  
21 have that level B service.

22 Q. Okay.

23 A. If we did not construct improvements that  
24 aren't funded yet that we plan for, then it wouldn't be  
25 at that level of service.

0978

1 Q. When did you --

2 A. At least according to traffic models.

3 Q. When did you become aware, Mr. Bell, of the  
4 level of service rating that Mr. Norris assessed for the  
5 projections for 2025, was that back in approximately May  
6 or June of 2006?

7 A. I read his draft report some time ago, so I  
8 must have read it at that time.

9 Q. Okay.

10 A. But when I wrote my prefiled testimony, I was  
11 not referring to his work, I was just looking at our  
12 transportation comp plan and working from that for my  
13 answers.

14 Q. All right, well, let's go if we can to what's  
15 been admitted --

16 A. Which -- oh, okay.

17 Q. Go ahead.

18 A. I mean my comment in here says it goes to F,  
19 that assumes that we don't have any improvements done,  
20 that's using the existing transportation grid and just  
21 putting on growth over the next 20 years.

22 Q. All right.

23 What I would like to ask you about is Exhibit  
24 139, Mr. Bell, and it appears to be a letter written  
25 from you to Mr. Schultz at State Department of

0979

1 Transportation, and its subject of the draft Hickox Road  
2 report, and as His Honor indicated dated June 30, 2006,  
3 and it indicates in the first paragraph that you thank  
4 him for meeting with Ms. Jana Hanson and yourself last  
5 month to discuss the proposed closure of the rail  
6 crossing at Hickox Road in South Mount Vernon, and it  
7 indicates that you have reviewed the draft report  
8 provided at the meeting; is that accurate?

9 A. Yes.

10 Q. So does that refresh your memory that you got  
11 that sometime in probably May or --

12 A. Oh, yeah, I reviewed it at that time.

13 Q. All right. Now the next --

14 A. I just haven't reread it since then.

15 Q. Okay.

16 A. Okay.

17 Q. Now the next sentence says, and I quote:

18 The technical methods used in the report  
19 appear to be thorough in analyzing  
20 traffic impacts based upon current usage  
21 and planning documents.

22 Do you see that?

23 A. Yes.

24 Q. All right. And does that accurately state  
25 what your response was to your review of the draft

0980

1 report at that time?

2 A. Yes.

3 Q. Okay. Now you go on to say that the report  
4 does not adequately assess the importance of the rail  
5 crossing to the City. Do you see that?

6 A. Yes.

7 Q. All right. Now after that you go on to  
8 discuss a number of reasons regarding buildable lands,  
9 I-5 interchange and access to proposed development  
10 lands. Is it fair to say, Mr. Bell, that those reasons  
11 that you have stated there do not contradict the traffic  
12 impact analysis performed by Mr. Norris?

13 A. Yes, I just mean what I said there, that I  
14 don't believe that the traffic modeling measures the  
15 value of that to the City, the value of that crossing.

16 Q. Okay. And so what you're saying is there's  
17 other reasons here for the importance of this closure or  
18 non-closure if you will to the City?

19 A. Yes.

20 Q. Okay. Now in the subsequent approximately  
21 year and a half since this letter to Department of  
22 Transportation, you have not at least prior to your  
23 written prefiled testimony indicated to Mr. Schultz that  
24 you took issue with Mr. Norris' traffic impact analysis;  
25 is that right?

0981

1 A. That's correct.

2 Q. Okay.

3 A. And I'm a licensed engineer, I'm not a  
4 specialist or an expert in transportation, but I never  
5 did see that there was necessarily a flaw in the  
6 modeling.

7 Q. Okay.

8 A. I just, you know, the -- I mean nonetheless  
9 the importance of the crossing are involved with  
10 transportation, linking up with an existing interchange  
11 on the freeway and future things that are going to be  
12 needed by the City involving transportation.

13 Q. All right, and I think we'll get to some of  
14 those with Ms. Hanson.

15 A. Okay.

16 Q. I'm just trying to distinguish, and I think  
17 we have covered that, the distinction between the  
18 traffic impact analysis and the broader development  
19 issues, is that fair?

20 A. Okay.

21 MR. SCARP: Your Honor, that's all I have.

22 JUDGE TOREM: Believe it or not, I don't have  
23 any questions, you asked them.

24 Redirect?

25 MR. ROGERSON: Thank you, Your Honor.



0982

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

2 BY MR. ROGERSON:

3 Q. Mr. Bell, Mr. Scarp refers to a letter of  
4 June 30th that you had sent to Mr. Jeffrey Schultz, and  
5 he had quoted to you in your second paragraph regarding  
6 a draft traffic analysis of traffic impacts. At that  
7 time, were you aware of any discrepancy between the  
8 analysis and the City's comprehensive plan that  
9 predicted that the level of service was expected to drop  
10 to F on Blackburn Road and Old Highway 99 south?

11 A. No. Again, the analysis that -- would have  
12 to assume, in order for it to be that high in the future  
13 has to assume that we do improvements that are scheduled  
14 and not funded.

15 Q. And at the time you wrote this letter, were  
16 you aware that the author of that analysis had predicted  
17 that Blackburn Road and Old Highway 99 south was  
18 projected to drop to a level of service B rather than  
19 our comprehensive plan that said level of service F,  
20 were you aware of that discrepancy?

21 A. Well, I read it, I just can't -- yeah, I mean  
22 I read the report at that time.

23 Q. But can you -- did it stand out to you that  
24 there was a big discrepancy between the report and our  
25 comprehensive plan at that time?

0983

1           A.     No, that didn't stand out to me.  But again,  
2  it can't -- I mean it will go to F without improvements  
3  regardless of whether rail crossing is closed or not,  
4  and any incremental -- so if we don't have a chain of  
5  improvements that are certainly not funded right now,  
6  that road will go to F.

7           Q.     And the basis for your conclusion it will go  
8  to F is what?  What is the basis for your conclusion it  
9  will go to F?

10          A.     It's the analysis, the modeling that was done  
11  for our transportation comp plan in 2005.

12          Q.     And was that comprehensive plan adopted by  
13  the City Council?

14          A.     Yes, it was.

15          Q.     And you spoke about capital improvements, how  
16  many of the City's capital improvements are listed as  
17  funded, fully funded?

18          A.     Well, right now we have one in play that's  
19  fully funded that we're working on now.  The rest are  
20  all in the process of being funded and are far from  
21  that.

22                   MR. ROGERSON:  Nothing further.

23                   JUDGE TOREM:  Any recross?

24                   Any other questions for Mr. Bell?

25                   Thank you, sir.

0984

1 THE WITNESS: Thank you.

2 JUDGE TOREM: Next witness in order would be  
3 Mr. Glenn Brautaset, and for this witness Mr. Brautaset  
4 has four premarked exhibits, they are Exhibit 23 which  
5 is his prefiled direct testimony, Exhibit 24 his  
6 resume', for some reason there's no Exhibit 25, probably  
7 my error in numbering something somewhere, Exhibit 26  
8 which has already been admitted is the flood evacuation  
9 map that we referred to with Chief Harman and was  
10 admitted at that time, and Exhibit 27, a second map  
11 about flood flight elements. So there are three left to  
12 offer, Mr. Rogerson, 23, 24, and 27.

13 MR. ROGERSON: Thank you, Your Honor.

14 JUDGE TOREM: And again, I don't know what  
15 happened to 25, probably my fault.

16 (Witness GLENN BRAUTASET was sworn.)

17 JUDGE TOREM: Thank you.

18 Mr. Rogerson, your witness.

19 MR. ROGERSON: Thank you, Your Honor.

20

21 Whereupon,

22 GLENN BRAUTASET,  
23 having been first duly sworn, was called as a witness  
24 herein and was examined and testified as follows:

25

0985

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

2   BY MR. ROGERSON:

3           Q.     Good afternoon, Mr. Brautaset, would you  
4   please state and spell your name for the record.

5           A.     Sure, my name is Glenn Brautaset, first name  
6   is G-L-E-N-N, last name is B-R-A-U-T-A-S-E-T.

7           Q.     And what is your occupation?

8           A.     I'm the Assistant Fire Chief and Fire  
9   Marshall for the City of Mount Vernon.

10          Q.     And how long have you been so employed?

11          A.     Approximately six years.

12          Q.     And did you cause to be produced prefilled  
13   testimony in which you signed on November 5th, 2007, a  
14   declaration under penalty of perjury that was filed with  
15   the Washington State Utilities and Transportation  
16   Commission?

17          A.     Yes.

18          Q.     And have you had an opportunity to review  
19   since then this prefilled testimony?

20          A.     Yes.

21          Q.     And after you have now reviewed it, are the  
22   answers remain the same answers that you had declared  
23   previously?

24          A.     Yes.

25                   MR. ROGERSON:  At this point I would move to

0986

1 offer Exhibits 23, 24, and 27 into the record, 26 being  
2 previously admitted.

3 JUDGE TOREM: Any objection to the prefiled  
4 testimony and the resume', which are 23 and 24?

5 MR. SCARP: No objection.

6 JUDGE TOREM: And any objection to 27, which  
7 is referenced in the prefiled testimony as GB-3, the  
8 flood fight elements map?

9 MR. SCARP: No objections, Your Honor.

10 JUDGE TOREM: All right, Exhibit 27 for our  
11 purposes is admitted as well.

12 MR. ROGERSON: If it please the Court, I will  
13 offer Chief Brautaset for cross-examination.

14 JUDGE TOREM: It will probably please  
15 Mr. Scarp more.

16 MR. SCARP: Thank you. There's a downside to  
17 being halfway efficient, and that's moving too fast, but  
18 I will try to keep it up.

19 THE WITNESS: I will take that under  
20 advisement.

21

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

23 BY MR. SCARP:

24 Q. Mr. Brautaset, do you have your prefiled  
25 testimony right there handy?

0987

1 A. Yes, sir.

2 Q. And I apologize, I'm Bradley Scarp, and I  
3 represent BNSF Railway Company.

4 Can you turn to page 6. Mr. Brautaset,  
5 you're aware of the proposal for closing the Hickox Road  
6 rail crossing for at least for public purposes, are you  
7 not?

8 A. Yes, sir.

9 Q. All right. And your concerns as outlined  
10 here especially on page 6 and what follows in your  
11 prefiled testimony regard the ability to use that  
12 corridor as an alternate route for flood fighting and  
13 even potential evacuation purposes?

14 A. Yes, sir.

15 Q. All right. As I review your testimony at  
16 page 6, and I will read it, with regard to flood  
17 fighting, if that's the proper term, the question is:

18 Do these efforts require routing the  
19 personnel, materials, equipment, and  
20 supplies across the railroad tracks  
21 running through Mount Vernon?

22 And your answer is:

23 Yes, two areas in particular, Kincaid  
24 and Blackburn, are used as primary  
25 predesignated routes for incoming sand.

0988

1                   Is that your testimony here today?

2           A.     That's correct.

3           Q.     All right.  On page 7 you have indicated  
4 that, and I will just ask the question that in response  
5 to the question:

6                   Does Hickox Crossing play a role, and if  
7                   so, what is that role?

8                   Your answer is:

9                   It does, the crossing is an alternate  
10                   route for dump trucks and potentially  
11                   evacuees as well.

12                   Did I state that properly?

13          A.     That's correct.

14          Q.     All right.  Is it your understanding that  
15 Hickox Road is at a, and I'm talking about west of the  
16 railroad tracks, is at a lower elevation than either for  
17 example Blackburn Road or Stackpole Road, if you know?

18          A.     Actually I don't know.

19          Q.     Okay.  Is it accurate to say or is it fair to  
20 say, Mr. Brautaset, that all of the east/west roads are  
21 potential as alternate routes for flood fighting and  
22 evacuation in that area?

23          A.     In a general statement, that's correct.  
24 Obviously some differ with the degree of importance.

25          Q.     Based on their size, based on just in terms

0989

1 -- well, first of all, let me -- I will strike that  
2 question if I can.

3 Hickox is not a designated evacuation route,  
4 is it?

5 A. Not formally, it's not in writing per se.

6 Q. Are there designated evacuation routes that  
7 are written down in a plan for emergency response, if  
8 that's the right term?

9 A. Off the top of my head I believe the answer  
10 is no. The evacuation component is somewhat dynamic  
11 depending on where a breach in a levee may occur. For  
12 example, you wouldn't need to evacuate the downtown  
13 quadrant if the flood occurred here in the north end  
14 right beside Burlington, so it's entirely dynamic.

15 Q. All right.

16 Are you aware of whether Blackburn Road is  
17 designated as an evacuation route?

18 A. When you asked me the question earlier, what  
19 was going through my mind was something written, and  
20 there is a visual, we have the evacuation quadrant map  
21 that actually identifies several points of ingress and  
22 egress throughout the city. And so as far as text is  
23 concerned, I don't recall anything formally in writing  
24 that says, if you have a breach here, go this way, but  
25 we do have the flood evacuation quadrant map.



0990

1 Q. Okay, and maybe perhaps if you were looking  
2 at that, would that indicate to you that Blackburn is a  
3 designated route?

4 A. Yes.

5 Q. And you have never seen that type of  
6 designation for Hickox?

7 A. No, it's actually on, Hickox is actually  
8 identified there as well.

9 Q. Really? And what are you looking at?

10 JUDGE TOREM: He's referring to Exhibit 26,  
11 which is the one you used earlier with Chief Harman, the  
12 flood evacuation quadrant map.

13 MR. SCARP: Okay.

14

15 E X A M I N A T I O N

16 BY JUDGE TOREM:

17 Q. Chief, when you make that statement, are you  
18 just referring to the yellow arrows that are labeled in  
19 the legend potential evacuation routes?

20 A. That's right.

21 Q. So there's one up at Blackburn crossing the  
22 railway and one on Hickox Road as well, both heading  
23 eastward?

24 A. That's correct.

25

0991

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

2 BY MR. SCARP:

3 Q. And, Mr. Brautaset, I noticed there's arrows  
4 pointing all different directions throughout this map,  
5 especially up in the center of the city, is this map --  
6 I notice there's not an arrow on Stackpole Road, is that  
7 because it's not within the City of Mount Vernon?

8 A. Predominantly, yeah.

9 Q. And do you know if Stackpole Road is a higher  
10 elevation than Hickox Road? If I already asked you  
11 that, I apologize.

12 A. Actually not on Stackpole, but the answer is  
13 no, I don't know the elevation of Stackpole.

14 Q. All right. There's been a fair amount of  
15 testimony, and there will probably be some more here  
16 this afternoon, about the importance of evacuation  
17 including of livestock in the area. For purposes of  
18 flood fighting or evacuation, if this crossing was  
19 closed and there was a way to access that crossing for  
20 those purposes, both evacuation and flood fighting at  
21 that crossing, would that satisfy your concerns?

22 A. If it's based on the testimony that was given  
23 earlier today, I have some concern with that.

24 Q. And what's that concern?

25 A. If I may kind of use an analogy for this, I

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1 think all of us are familiar with a nightclub or an  
2 assembly area, and those rooms by code have a  
3 requirement on egress for the amount of occupants it  
4 serves. A microcosm or macrocosm in this situation,  
5 that's what Hickox and Blackburn and all these egress  
6 routes are similar to, they're exit points. Just like  
7 in a building, we don't allow the building owner to lock  
8 the exits. The exits are clear and unobstructed, and  
9 we're working on a presumption that they do work and  
10 that they are always available for ingress and egress.

11           Ironically we had a situation just earlier  
12 where we all heard a noise out in the hallway, we all  
13 looked, that's our primary ingress and egress into this  
14 room, that's what we all use. There's a presumption  
15 that we look at the other exits and we know that they're  
16 actually made available and we can use them at any time.

17           Having a gate there or a barrier poses a  
18 delay, and it creates a little bit more extra chaos  
19 during an emergency. People aren't exactly thinking  
20 straight when they're being evacuated, and it almost  
21 creates this false pretense whether it actually is  
22 available or not. The gate is just one issue. If the  
23 gate is there, it brings up the next question, well,  
24 it's my understanding that this is a staging area for  
25 trains that are in transit, so the gate is just one

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1 barrier, it doesn't address how we're going to get by  
2 the train if there's something that's actually in  
3 staging.

4 Q. I appreciate that last comment,  
5 Mr. Brautaset. Are you aware that whether this crossing  
6 is closed or not that there may very well be a train  
7 there at any particular time and for longer periods of  
8 time because it's a siding track than trains are  
9 currently there?

10 A. That possibility does exist.

11 Q. Right. And so that's irrespective of whether  
12 the crossing is open or closed, would you agree?

13 A. That's correct.

14 Q. That poses a separate problem regarding a  
15 train and whether the train would have to be broken in  
16 an emergency of such a magnitude as flood fighting or  
17 evacuation; would you agree with that?

18 A. I would agree it adds another layer of  
19 difficulty.

20 Q. Right, and one that doesn't address whether  
21 the crossing is open or closed?

22 A. Yes.

23 Q. Okay. Now I would like to go back to your  
24 analogy about the access to the building. I think  
25 you're, if I understood you correctly, you're talking

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1 about fire codes for one?

2 A. Mm-hm.

3 Q. That's a yes?

4 A. Mm-hm.

5 Q. Now you typically don't have a lot of warning  
6 about a fire, do you?

7 A. No.

8 Q. You wouldn't expect a flood fighting  
9 operation to occur suddenly without some advance notice  
10 to the people involved?

11 A. Correct.

12 Q. All right. So you would anticipate that  
13 someone whose job it was in the diking district or your  
14 department or rural fire district, anybody involved in  
15 that sort of process, would be able to handle the part  
16 about accessing a locked gate?

17 A. Well, I would like to back up a little bit.  
18 There's always an element of risk of a levee breaching,  
19 and that is emergent, I mean that is analogous with the  
20 fire, you're going to have to move a high quantity of  
21 people very quickly. Under normal conditions, if you  
22 can call it such, the last few flood events in the city  
23 have been something that's been forecasted, but that  
24 emergency situation is always present.

25 Q. Right. In an emergency situation such as

0995

1 you're describing, the same sort of problem could occur  
2 if there was simply a train on the crossing there for a  
3 long period of time?

4 A. That is correct.

5 Q. All right. And your department pays very  
6 close attention to flood watch and possible evacuation  
7 and flood fighting?

8 A. Yes.

9 MR. SCARP That's all I have.

10 JUDGE TOREM: Any other cross-exam for this  
11 witness?

12 Mr. Jones, you have a question.

13

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

15 BY MR. JONES:

16 Q. I wanted to ask Mr. Brautaset about the  
17 cooperation between Skagit County Diking District Number  
18 3 and the City Fire Department, if you could just  
19 describe the roles and responsibilities of those two.

20 A. Sure. The roles are obviously a little bit  
21 different, I mean they're a dike district, we're a fire  
22 department. But in the event of an emergency or a  
23 flood, it really forces us all to work together with a  
24 common goal of actually trying to protect the public and  
25 try to manage the incident that's unfolding. With

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1 regards to a flood, the fire department is essentially  
2 the commanding body for the City of Mount Vernon with  
3 regard to flood fight operation. The dike district has  
4 essentially informally said, Mount Vernon, can you take  
5 care of the problem within your own jurisdiction. Dike  
6 District 3 is a pretty large area, and we just  
7 concentrate on the city limit area.

8 Q. So with respect to the area outside the city  
9 limits starting more or less at the water treatment  
10 plant, as you go south along the river from there on all  
11 the way to the county line is the response or unassisted  
12 responsibility of Dike District Number 3; is that right?

13 A. Essentially.

14 MR. SCARP: Your Honor, I think we're past  
15 the scope of cross here.

16 JUDGE TOREM: Yeah, we are past the scope of  
17 any cross for this witness, I think he has explained the  
18 relationship.

19 MR. JONES: That's fine.

20 JUDGE TOREM: Mr. Rogerson, do you have any  
21 redirect?

22 MR. ROGERSON: I do.

23 JUDGE TOREM: Can you during your redirect  
24 make relevant through this witness the map described at  
25 pages 14 and 15 of his testimony. It's Exhibit 27 I

0997

1 think, it has the multicolored flood fight significant  
2 elements.

3 MR. ROGERSON: Sure.

4 JUDGE TOREM: I know in the prefiled  
5 testimony it represents it being an accurate  
6 representation of various locations, but I would like to  
7 know what these different colors and branches might  
8 refer to, and particularly why the yellow branch 1  
9 reference has arrows pointing toward our area of  
10 Blackburn and Hickox Road but not quite getting to  
11 Hickox. I'm trying to see if there's any significance I  
12 should take from that, so help me out.

13 MR. ROGERSON: Your Honor, is this the map?

14 JUDGE TOREM: That's the one.

15 MR. ROGERSON: Okay.

16 JUDGE TOREM: And again for the record,  
17 that's Exhibit 27.

18

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

20 BY MR. ROGERSON:

21 Q. Mr. Brautaset, Mr. Scarp had talked about  
22 conditions that would or could be emergent when Hickox  
23 Road and the crossing may be needed to potentially  
24 evacuate, and your prefiled testimony refers to a couple  
25 different terms, a flood fight and a flood evacuation.



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1 Can you explain to the tribunal those terms and the  
2 differences between those terms?

3 A. Sure. I guess in layman's terms right off  
4 the bat a flood fight is an offensive procedure, an  
5 evacuation is defensive. You're making a prudent choice  
6 and trying to hold the river back on a flood fight, and  
7 obviously during an evacuation it's you're transitioning  
8 to something that's defensive where you're trying to get  
9 people out and away. I've got to preface though that  
10 you can be doing those both at the same time, it's not  
11 one or the other, so.

12 Q. Do you use the same criteria when deciding on  
13 either initiating a flood fight or a flood evacuation,  
14 and if not, what is the criteria?

15 A. I'm sorry, can you ask the question again.

16 Q. There comes to be decision points you have to  
17 make in any emergency, and one of those is a flood  
18 fight.

19 A. Sure.

20 Q. And then the other one is a flood evacuation.

21 A. Sure, right.

22 Q. What's the criteria of the two, and is there  
23 a difference?

24 A. Sure. There is quite a bit that gets taken  
25 into that consideration. On flood fight generally we

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1 know there's rain, generally the next thing we have to  
2 take into consideration the extent of the storm using  
3 our contacts with the National Weather Service. We have  
4 all probably heard the term banana express or tropical  
5 express, and that bearing is relative to are we going to  
6 have significant snow melt with the rain and which is  
7 going to increase the river levels. And we take all  
8 that into consideration, and early on the Army Corps of  
9 Engineers and the National Weather Service have certain  
10 predictive models that they use and hydrological graphs,  
11 and we try to make the best decision that we can based  
12 on that and whether we're going to go into a flood fight  
13 operation or whether we have to take into consideration  
14 evacuation.

15 Q. And is the criteria different from when you  
16 make a decision to evacuate?

17 A. It can be, because it can be emergent. As I  
18 discussed earlier, you can have a levee breach and not  
19 have a flood event. I mean you may never go over the  
20 top of the existing levees, however maybe they have been  
21 saturated for several months and there's a weak point,  
22 similar to what happened in I believe I think it was  
23 Nevada just recently that experienced something like  
24 that, where it just breaks eminently, so.

25 Q. And is the criteria as predictable when you

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1 make a decision to evacuate or fight a flood, can you  
2 predict a levee break with any accuracy?

3 A. With any accuracy, not really. Those things  
4 are always in the back of your mind, particularly when  
5 you get the predictive services that come in from the  
6 National Weather Service. Those things as an incident  
7 commander you have to be cognizant of right away, and  
8 that can happen at any time. We have had times where we  
9 have almost gone into complete evacuation mode.

10 Q. And weather conditions, in your experience  
11 how reliable have those -- well, let me rephrase.

12 In your experience, have weather conditions  
13 and forecasts changed?

14 A. Yes.

15 Q. And do those changes occur rapidly?

16 A. (Nodding head.)

17 JUDGE TOREM: We'll take judicial notice that  
18 nature does what it's going to do, I understand.

19 Q. Is that part of the criteria that perhaps may  
20 develop into a flood evacuation decision?

21 A. Yes.

22 If I may add?

23 Q. Certainly.

24 A. In the event of the 2006 flood, such a  
25 situation occurred, Army Corps of Engineers information

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1 and statistics were for whatever reason not accurate,  
2 and the early prediction model showed that we were going  
3 to go beyond a 100 year flood level in the City of Mount  
4 Vernon, over top by a foot, and so the decision was  
5 whether we go ahead and begin evacuations with that  
6 realization. But as time progressed, the modeling  
7 became a little bit more realistic, and we flagged the  
8 National Weather Service, and the Corps realized that  
9 there was some discrepancies in their modeling, and  
10 luckily it came in lower, so we didn't have to execute  
11 the evacuation order for downtown.

12 Q. And by the same token, could the converse  
13 happen?

14 A. As far as going up, the river levels going  
15 up, yeah, absolutely. I mean one of the things that's I  
16 believe addressed in the flood manual is that a lot of  
17 those things are very subjective, there's nothing very  
18 concrete that says what's going to happen here in Mount  
19 Vernon.

20 Q. And can you describe as best as you can in  
21 your experience how rapidly things develop in a flood  
22 situation?

23 A. Well, the best way to describe it as an  
24 incident commander is it's extremely dynamic, and the  
25 analogy ebbs and flows is probably not. But it's

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1 dynamic, we're making decisions pretty rapidly, and a  
2 lot of the decisions are hinged upon those predictions,  
3 but it doesn't take into consideration a dam failure, it  
4 doesn't take into consideration a breach somewhere else  
5 on the river. I can remember in '06 another variable,  
6 as we call them, is a log dam that forms, if there's  
7 debris in the river and the log dam forms behind a  
8 bridge. For example, the Burlington Northern Bridge  
9 here on the north part of Mount Vernon, you can kind of  
10 visualize all this debris blocking up behind the bridge  
11 component. That collects all that water, believe it or  
12 not. You would think that it goes under, but it  
13 actually dams back the water until it reaches a breaking  
14 point, and then everything releases in a rapid flow, and  
15 that again poses yet another situation for us to deal  
16 with. So again, we might not be in a flood event,  
17 however if that anomaly does occur, it creates an  
18 emergent situation for us.

19 Q. Mr. Brautaset, you talked about ebb and flow  
20 and I will use that term as a good segue, have you  
21 modeled different water flow scenarios in the event of  
22 levee failures in your jurisdiction of the City of Mount  
23 Vernon and north of the City of Mount Vernon?

24 A. I created what's kind of been dubbed the  
25 matrix for the City, it's the flood manual. It was

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1 based on historical events, and we were struggling to  
2 find some type of degree of predictability, and the  
3 matrix takes into account those variables and anomalies  
4 that can occur.

5 MR. SCARP: Your Honor, if I may, I think  
6 we're back to his direct testimony, and I don't know if  
7 he's addressing the concerns that you had, but I believe  
8 he's gone well past my cross.

9 MR. ROGERSON: Your Honor, if I may have some  
10 leeway, I think the next question will directly  
11 introduce the exhibit.

12 JUDGE TOREM: All right, can we hold that  
13 objection and see if it still holds after the next  
14 question?

15 MR. SCARP: Sure.

16 BY MR. ROGERSON:

17 Q. Mr. Brautaset, I'm not talking about  
18 modeling, I'm talking about mapping, and I'm talking  
19 about levee failures and water flows.

20 A. Sure.

21 Q. Exhibit 27, can you describe what that  
22 exhibit is?

23 A. Sure, this is essentially a what I consider  
24 early on flood contingency plan I believe is what we  
25 originally dubbed it. It was first created by a former

1004

1 engineer with the City named Fred Buckenmeyer, and the  
2 responsibility for flood management was transitioned to  
3 the fire department, and we took this and essentially  
4 created the other document that's the flood quadrant  
5 evacuation.

6 JUDGE TOREM: For the record, that's Exhibit  
7 26.

8 A. The different colors on the map basically  
9 illustrate different things that can occur when we have  
10 a levee breach or a flood. For example, up on branch 4  
11 of this older map, which we now call the riverside basin  
12 evacuation quadrant, is we established a contingency  
13 plan, the water would actually stay on the west side of  
14 the railroad tracks and predominantly on the east side  
15 of Interstate 5, and it creates a bottle effect, a  
16 bottleneck effect, and the water comes out essentially  
17 at that little pinch point on the south side, and this  
18 was kind of our starting map, if you will.

19 Q. Branch 1 is identified in the color of  
20 orange, can you explain what branch 1 identifies and how  
21 it's significant on this map?

22 A. I think again it was kind of an early  
23 geographical reference point that illustrates if we had  
24 a flood in that branch where the water is going to flow,  
25 and it just addresses a nice aerial photo of what we

1005

1 predict the water would end up doing.

2 Q. And how far north does the orange, where is  
3 the northern boundary of that orange branch line?

4 A. It's in the proximity of Cameron Way and  
5 Freeway Drive.

6 Q. And below that, does that include the  
7 downtown Mount Vernon?

8 A. Yes.

9 Q. And those arrows at the southern border of  
10 the orange color, what does that signify?

11 A. It's essentially, I wouldn't say infinity,  
12 but it means it goes on and on southward.

13 Q. What's it?

14 A. The flood, the flood waters. If there was a  
15 breach, that -- it just demonstrates flood water.

16 Q. And that's traveling north to south?

17 A. Right.

18 Q. And north starting north of downtown through  
19 downtown through south Mount Vernon and beyond?

20 A. Right.

21 MR. ROGERSON: Your Honor, if you have any  
22 more questions regarding Exhibit 27, I'm done.

23 JUDGE TOREM: Thank you.

24

25



1                                    E X A M I N A T I O N

2    BY JUDGE TOREM:

3            Q.    Mr. Brautaset, my understanding then after  
4    this questioning was that these different colors, would  
5    it be too glib to say these are different pools that  
6    would form?

7            A.    Essentially, yeah.

8            Q.    So this takes into account various high  
9    points or naturally occurring secondary dikes due to the  
10   buildup of the railway or the buildup for the highway at  
11   different elevations, and the water would I take it try  
12   to find any underpasses that it could or culverts but  
13   for the most part would pool subject to flow limitations  
14   of those underpasses or culverts in the colored areas  
15   according to where a dike might break?

16          A.    Correct. In addition too, it was kind of our  
17   contingency, we have contingency plans that are in the  
18   flood manual that essentially tell us what we're  
19   supposed to do in those areas if we get a breach or  
20   flooding in that area, it sets into effect a whole  
21   nother strategy of flood fighting.

22          Q.    Now am I correct that this map stops to the  
23   south where it does simply because this is a city plan,  
24   not a countywide plan?

25          A.    That's correct. In fact, when the map was

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1 initially created it didn't -- the City didn't even --  
2 it didn't include what we call South Mount Vernon, which  
3 south of Blackburn, it was -- this was created many  
4 years ago.

5 Q. All right. So this map doesn't tell me more  
6 than extending branch 1 farther south what would occur  
7 in a flood event or a dike breakage along Dike Road and  
8 Britt Road and the slough there, but you have indicated  
9 that water would go on south?

10 A. Right.

11 Q. So the water if it started in the boxes  
12 labeled 25 or 36 could be presumed to flow into this  
13 entire yellow area as well as point south?

14 A. I believe it was 25 and 30 or --

15 Q. 25 and 36, where the river crosses through.

16 A. Right, right, it would be -- it was expected  
17 the water would just continue down into 30, 31, 25, and  
18 26 and just flow indefinitely down into those areas.

19 Q. Including to that area of Hickox Road  
20 bordering the boxes labeled 31 and 6?

21 A. Correct.

22 JUDGE TOREM: So I just needed to find out  
23 what this meant, and I think the colors now are clear to  
24 me.

25 Does that raise any additional cross-exam

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1 questions?

2 MR. SCARP: Actually it does, just a few,  
3 Your Honor.

4

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

6 BY MR. SCARP:

7 Q. Mr. Brautaset, I'm looking down here and I  
8 had to put my glasses on, it says the date of this is  
9 January 19 of '05; do you see that tiny print down  
10 there?

11 A. That's correct.

12 Q. Okay. That's your understanding when this  
13 was created?

14 A. No, that most likely encompasses the  
15 revision, the revision of the map.

16 Q. The revision of this map?

17 A. That's correct.

18 Q. The one that we've got in our hands was  
19 revised in January of 2005?

20 A. That is my speculation, because at that point  
21 -- we had this map -- this map has been around for many,  
22 many years, and '95 was just a situation where we were  
23 adding to it and revising it. Subsequent to that, we  
24 created the other map, so.

25 Q. Any reason to think that this one wasn't

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1 revised on the date that it says there, January 19 of  
2 2005?

3 A. No, like I said, I think that was revised,  
4 that just shows the last revision.

5 Q. Thank you.

6 Mr. Brautaset, you have described what at  
7 least from my assessment is a very complicated and  
8 comprehensive strategy for both flood fighting and  
9 preparation and evacuation contingencies; is that how  
10 you view this?

11 A. It's complicated.

12 Q. And would you agree that during the flood  
13 season when the river is more likely at its higher  
14 elevations or particular storm systems that might  
15 increase that and the conditions that do give you the  
16 most concern that your concentration on these issues  
17 elevates accordingly to the threat?

18 A. Sure.

19 Q. And is there constant communication between  
20 your department members and other diking district and  
21 other authorities?

22 A. Yes.

23 Q. Law enforcement?

24 A. Yes.

25 Q. Okay. Now decisions regarding evacuation or

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1 such may come in somewhat of a with some urgency  
2 depending on some of the contingencies that you have  
3 discussed?

4 A. Correct.

5 Q. All right. Such decisions aren't made  
6 lightly without consideration of all the plans and the  
7 things that you have in place to deal with those safely  
8 and efficiently?

9 And let me, maybe I can say it better,  
10 there's some better minds all trained on the same issues  
11 and then communication on those?

12 A. My answer to that would be not likely.

13 If I may add?

14 Q. Sure.

15 A. I think I started out earlier on that the  
16 evacuation situation is not written in text, it's a  
17 dynamic issue. There is maps, and essentially it's kind  
18 of anecdotal. Many of us know the routes and what we  
19 would do, and those are the places where we would tell  
20 people to go. But obviously the situation depending on  
21 where the breach is or the -- that sets where we create  
22 those evacuations, so.

23 Q. And understanding that --

24 JUDGE TOREM: Mr. Scarp.

25 MR. SCARP: Go ahead.

1011

1 JUDGE TOREM: I was going to just interject.

2

3 E X A M I N A T I O N

4 BY JUDGE TOREM:

5 Q. Do you have contingency plans that you  
6 exercise for breakages along different parts of the  
7 river?

8 A. Yes.

9 Q. And you have other agencies that you exercise  
10 these plans with, right?

11 A. With regard to the City of Mount Vernon, this  
12 is where it's a little bit complicated, the City of  
13 Mount Vernon is, since we have our own incident  
14 management team in the dike district, they have  
15 essentially given us reign, if you will, to perform  
16 those functions within our own jurisdiction, and so  
17 we're a little bit outside of the purview of the County  
18 telling us what to do and how to do our plan. Our plan  
19 is pertinent to the City of Mount Vernon. It's --

20 Q. Well, let me just ask, do you do any joint  
21 exercises with the County in these neighboring areas  
22 where the citizens don't care which zip code or  
23 government they're in? Please don't tell me the  
24 bureaucracy gets in the way of the general safety. I  
25 know, that's the truth, but you have to tell me that.

1012

1           A.     Well, there's two questions there. With  
2 regard to the first one, yes, we work with other  
3 jurisdictions. But as far as pulling off of a drill, a  
4 flood drill for the City of Mount Vernon, we don't. We  
5 have table-top discussions on it amongst our city  
6 incident management team. And yes, we do invite other  
7 players to come and see. However, the situation within  
8 the City is a little bit different than the situation is  
9 with the dike district to the south of us and the fire  
10 district, and so we're concentrating on our element.  
11 And obviously the Army Corps of Engineers comes in and  
12 works with us, but in order to pull off a drill to this  
13 magnitude is pretty difficult just because of the  
14 complexity of it and the cost.

15           Q.     I can appreciate the complexity and the cost  
16 of a large scale multiagency drill. Let's go back then  
17 to just what the original thrust of Mr. Scarp's question  
18 was, within the City there are a number of different  
19 minds focused on this either in flood season or in  
20 preparation for it; is that correct?

21           A.     That's correct.

22           Q.     And amongst those minds in the City in the  
23 same jurisdiction, is there general agreement on what to  
24 do in the case of various emergencies?

25           A.     In general that's correct.

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1 JUDGE TOREM: Okay, that was my interjection,  
2 I don't know where that leads you.

3

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

5 BY MR. SCARP:

6 Q. It leads me to the communication,  
7 Mr. Brautaset, that is required in order for those  
8 people to be on the same page for purposes of emergency  
9 including flood fighting and evacuation. And my  
10 question is simply, at a time when a potential flood or  
11 flooding is deemed imminent or reasonably imminent, I  
12 don't know what terms you use, are those good ones, I  
13 mean do you understand what I mean by them?

14 A. Yes, I understand.

15 Q. All right. And everybody is watching that  
16 water get right up there to the top and increasing sand  
17 bags and riprap are being laid down, my question to you  
18 is, with that sort of capacity involved, do you think  
19 it's reasonable that if there was someone that needed to  
20 have that gate open and Hickox Road crossing accessible  
21 that that would be an integral part of such an exercise?  
22 If that was the way that that crossing was available,  
23 would you make that an important part of the exercise?

24 A. I think I have previous testimony that it's  
25 an extremely complex activity and there's a lot of



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1 things to keep in mind. What you're proposing adds yet  
2 another complexity.

3

4

E X A M I N A T I O N

5 BY JUDGE TOREM:

6 Q. Mr. Brautaset, would that be on a checklist  
7 somewhere if the flooding was in this particular zone 1  
8 on your map to make sure the Hickox Road crossing if it  
9 had been closed and converted to a private crossing was  
10 open as an evacuation route?

11 A. Yes, the answer is it could. I'm just  
12 concerned about the adding complexities. It's hard to  
13 illustrate unless you have actually been the incident  
14 commander and you have close to 2,000, 3,000 responders  
15 that are assisting you in such an event, it adds yet  
16 another complexity on top of how are you going to feed  
17 your responders, how are you going to get dump trucks in  
18 and out of the area.

19 Q. Are you modeling your current incident  
20 command system on FEMA's new national incident command  
21 system?

22 A. Very much so.

23 Q. I'm more than familiar with its complexities,  
24 but that means that someone at the top has to hand off  
25 responsibility to a number of people below; is that

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1 correct?

2 A. That's correct, and that's how we do manage  
3 it is through the incident management team, and there  
4 are -- that's what the flood manual does, it actually  
5 has a lot of those elements written in, the most  
6 significant things. However, I can also attest to that  
7 with that large of a system and that complex of an  
8 incident, do we achieve 100% in all those areas, no, we  
9 don't.

10 Q. Okay, well, I'm willing to acknowledge that  
11 it's possible someone could forget if the reality  
12 presented itself to open a gate to get out there or have  
13 an accident themselves on the way, I recognize not  
14 everything works as planned. But if the reality was  
15 that that was a private crossing, would that be an  
16 important item to achieve in a southern part of the city  
17 or southern part of the county evacuation route?

18 A. Yes.

19 Q. And I can imagine an incident commander would  
20 be making sure not only to say open the gate but is the  
21 gate open at regular intervals until that's checked off  
22 somewhere on an incident command board that that  
23 evacuation route is now green as opposed to red?

24 A. That's a lot of detail. To answer your  
25 question, yes. However, I think you have to take into

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1 consideration all the other things that are going on  
2 that need to take priority and take precedence and the  
3 decisions that are being made, and so it's that adds  
4 just yet another component.

5 Q. And again, I recognize the desire to keep  
6 complexity to a minimum, but this whole question set  
7 assumes a private crossing, so your complexity is  
8 already there, how you manage it is what's going to  
9 depend on the lives and the livestock of the citizens  
10 that live there if there's a private crossing. I'm  
11 convinced that an incident commander would consider if  
12 there was a trigger as Mr. Rogerson said that the flood  
13 evacuation decision had been made, that would move very  
14 quickly to the top of an incident commander's list.

15 A. Sure.

16 Q. So I think complex or not, that gate would be  
17 a serious question until it was confirmed open; tell me  
18 I'm wrong or not.

19 A. First and foremost, I'm not going to tell you  
20 that you're wrong, so.

21 Q. Everybody has been waiting for the  
22 opportunity, so I have given it to you.

23 A. I'm not going there.

24 I would like to believe, obviously I'm  
25 looking into the future and forecasting when you ask

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1 that question, and I would like to believe that yeah,  
2 that's going to be taken into consideration, but -- and  
3 I'm hoping that it would.

4 JUDGE TOREM: Okay, I can accept that.

5 Any other redirect?

6 Mr. Jones, you have another follow up?

7

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

9 BY MR. JONES:

10 Q. Mr. Brautaset, I believe I understood your  
11 earlier testimony to be, and I'm certainly paraphrasing  
12 here, if you train everyone not to use Hickox Road and  
13 then suddenly you open it up and say it's an evacuation  
14 route, some people will be confused; is that a fair  
15 summary?

16 A. That's correct.

17 Q. And it could be a lot of the people who need  
18 to understand; is that right?

19 A. Correct.

20 Q. All right.

21 A. I think I used the word false pretense, and  
22 yeah.

23 JUDGE TOREM: Anything further?

24 Mr. Fallquist, you look like you have one.

25 MR. FALLQUIST: Well, I guess just one quick

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1 question, Your Honor, thank you.

2

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

4 BY MR. FALLQUIST:

5 Q. Outside of the city limits in the vicinity of  
6 Hickox Road to the west, is it, and correct me if I'm  
7 wrong, but isn't it the case that Diking and Drainage  
8 District Number 3 is primarily responsible for the flood  
9 fight in that area?

10 A. Yes, to the -- directly west of Hickox Road.

11 Q. In the area that we're at issue?

12 A. That's correct.

13 Q. Okay.

14 A. But predominantly during a flood fight our  
15 first and foremost challenge is to create this levee  
16 from what we call the west side bridge down to the  
17 wastewater treatment plant, and that's really the area  
18 that the dike district is really kind of giving us  
19 authority to work on, that's what we're focusing all our  
20 attention to between the west side of the bridge and the  
21 wastewater treatment plant. That's not to say that we  
22 wouldn't help out Dike District 3 if something breaches  
23 south or north of that, we're there to help them out  
24 just as they're helping us out.

25 Q. And in any emergency situation, I mean even

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1 if the incident command center hadn't been activated,  
2 Diking and Drainage District Number 3 still works  
3 independently of whatever the City may be doing up north  
4 within the city limits?

5 A. That's correct, yeah, they run their own  
6 common post.

7 Q. Right. So that's maybe where there's the  
8 potential for confusion?

9 A. That's just one of the elements.

10 Q. One of the elements, yeah.

11 A. I mean there's a county element, Skagit  
12 County emergency operation element. In fact, Skagit  
13 County is just in the process of redrafting how they  
14 manage this.

15 Q. Right.

16 A. Because there has been a lot of problems  
17 experienced with it. And but essentially yes, Dike  
18 District 3 has its own command post, and they're up  
19 there running their own infrastructure to the south of  
20 us.

21 MR. FALLQUIST: Thank you.

22 MR. SCARP: Your Honor, in follow up I do  
23 have a question.

24

25

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

2 BY MR. SCARP:

3 Q. Mr. Brautaset, in the question or actually  
4 statement posed to you by Mr. Jones, it referred to  
5 confusion that people along Hickox Road west of the  
6 tracks might have knowing that the crossing was closed  
7 for all purposes and then suddenly opened for flood  
8 fighting or evacuation purposes and would that cause  
9 confusion for them; do you remember you responded yes to  
10 that?

11 A. Mm-hm.

12 Q. All right. As a commander of an operation,  
13 do you think it would be part of a prudent plan to  
14 advise people in advance that this was going to be  
15 utilized as either evacuation such for livestock or  
16 flood fighting for trucks coming in, that people would  
17 know that in advance before the gate was actually opened  
18 and the work being done?

19 A. Sounds like a very easy question, but the  
20 dissemination of information during emergency is you  
21 have to be careful of when you present it. Because if  
22 you come out and say something prematurely and it  
23 doesn't happen, it doesn't exist, it creates even more  
24 confusion. Of course we're going to when the timing is  
25 right, we will say here are the evacuation routes we

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1 have determined, there will be an evacuation from  
2 downtown Mount Vernon, these are the evacuation routes  
3 that we recommend to be used, X, Y, Z. It has been  
4 proven that we don't disseminate that information early  
5 on by saying, well, if there's going to be an  
6 evacuation, these are some areas that you can go,  
7 because then people start using them. And in this  
8 particular case, that gate or whatever is going to be  
9 used may not be open at that time, so it has to be done  
10 extremely timely. We have had a big challenge with the  
11 timing of dissemination to the press with regard to the  
12 flood fight. I won't bore you with the details, but it  
13 has been a significant issue in the past.

14 JUDGE TOREM: Any other questions for this  
15 witness?

16 All right, thank you, Mr. Brautaset.

17 I propose that, it's now 2:00, that we call  
18 Ms. Jana Hanson who has been waiting for a while to  
19 testify and then take a brief break after her testimony.

20 (Witness JANA HANSON was sworn.)

21 JUDGE TOREM: Mr. Rogerson.

22 MR. ROGERSON: Thank you, Your Honor.

23

24

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1 Whereupon,

2 JANA HANSON,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

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

7 BY MR. ROGERSON:

8 Q. Good afternoon, Ms. Hanson.

9 A. Good afternoon.

10 Q. Can you please state your name and spell your  
11 full name for the record.

12 A. Jana Hanson, J-A-N-A, H-A-N-S-O-N.

13 Q. And what is your current occupation?

14 A. I am Community and Economic Development  
15 Director for the City of Mount Vernon.

16 Q. And how long have you been so employed?

17 A. A little over five years, four years.

18 Q. Were you employed in a similar capacity in  
19 any other jurisdictions?

20 A. Yes.

21 Q. And what were those?

22 A. City of Renton I held a similar position.

23 Q. Any other jurisdictions?

24 A. I worked for the town of La Conner as the  
25 Town Administrator and -- mostly for the City of Renton.

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1 Q. Did you cause to be produced and filed with  
2 this Commission prefiled direct testimony which you had  
3 signed under the penalty of perjury that it is true and  
4 correct on November 2nd, 2007?

5 A. Yes, I did.

6 Q. And did you have an opportunity since then to  
7 review the answers to the questions contained within it?

8 A. Yes, I have.

9 Q. And do you or do you not -- well, let me  
10 rephrase.

11 Do the answers remain the same as they did on  
12 November 2nd, 2007?

13 A. Yes, they do.

14 Q. Would you make any changes to these answers?

15 A. No, I would not.

16 MR. ROGERSON: At this point the City would  
17 move to admit Exhibits 31 through 34, which would be the  
18 prefiled direct testimony of Jana Hanson, her curriculum  
19 vitae, the City of Mount Vernon's 2005 Buildable Lands  
20 Analysis, and Exhibit Number 34 which is the City of  
21 Mount Vernon's Commercial and Industrial Lands Needs  
22 Analysis.

23 JUDGE TOREM: Any objection to admission of  
24 Exhibits 31 through 34 for this witness?

25 MR. SCARP: Your Honor, we do have an

1 objection, and I would refer back to your order  
2 regarding the compliance with the City's Growth  
3 Management Act as being beyond the purview of this  
4 tribunal, and I believe that part of your ruling was  
5 there is information regarding development that would  
6 impact the analysis that is before you regarding public  
7 use. And my objection is that to the extent that this  
8 testimony and the attached documents fall into the prior  
9 category of compliance with growth management, we  
10 object.

11 MR. ROGERSON: If I may respond, Your Honor,  
12 in Order 3 you had indicated that potential future needs  
13 will be allowed and be given the accorded weight by the  
14 trier of fact, which is this tribunal, and that you will  
15 review and consider potential and all relevant evidence  
16 and then assign the appropriate weight to each item and  
17 each witness. The exhibits herein are directly relevant  
18 to the City's analysis, which has been adopted by its  
19 legislative branch, the City Council, who has the  
20 authority to plan for a 20 year growth period of what  
21 its commercial needs and potential future needs will be,  
22 which is relevant to the issue of public use and  
23 necessity.

24 JUDGE TOREM: Mr. Scarp, as to your  
25 objection, does it go to all of these exhibits or just

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1 portions or how they would be used? I mean right now  
2 your objection stands as a blanket to 31, 32, 33, and  
3 34.

4 MR. SCARP: And that's the way I would prefer  
5 to leave it, because I haven't assessed point by point  
6 because it's not for one entirely clear to me where that  
7 demarcation would be, and I'm sure there's a Solomonic  
8 decision in there somewhere on how to deal with that.

9 JUDGE TOREM: And I think that Solomonic  
10 decision would have served us all better in a motion to  
11 strike, even though I hate prehearing motions as much as  
12 you probably do, that would have given us the time  
13 consideration to go through this and determine the  
14 relevancy step by step. And I know I purposely when I  
15 set out my prehearing date deadlines did not give you  
16 dates for a motion to strike in this case I think  
17 because it would have seemed like an invitation to file  
18 them. So by past experience I just thought counsel know  
19 when they need to file a motion, don't tell me. No one  
20 did in this case, so now I'm left with an objection to  
21 the entirety of testimony, some of which I think is  
22 clearly relevant.

23 MR. SCARP: Well, I guess I'm framing my  
24 objection based on your ruling that the certain relevant  
25 evidence would be considered and given its accorded

1 weight. I can't separate out without a much more  
2 comprehensive analysis, and I'm not sure what that would  
3 serve. It's fairly, well, it seems to me thoroughly  
4 intertwined. So again I'm recognizing that there  
5 probably are things that fall within -- that there are  
6 things that fall within your ruling that the witness is  
7 competent to talk about. I don't know how else to  
8 structure my objection.

9 JUDGE TOREM: I can appreciate that. I don't  
10 know how else to handle it then but to overrule it at  
11 this point but to reassure the State Department of  
12 Transportation and Burlington Northern that my ruling in  
13 Order 3 and I think in the prehearing conference orders  
14 as to setting the appropriate topics and limitations for  
15 this case mean what they say. And I would rather err on  
16 the side of some of this coming in in the way it is  
17 today and being able to sort through it later, but I  
18 also don't want you to think in your posthearing brief  
19 you need to pay undue attention to drawing these  
20 distinctions. I hope you will leave that to me.

21 My feeling on Ms. Hanson's testimony and what  
22 she brings today is to tell me where the City is going  
23 in the next 20 years, but what's relevant to me are the  
24 issues of public use and convenience of this property  
25 today at the time the petition was filed. The 800 acres

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1 of buildable lands that are referenced in here, it's  
2 nice for me to know, but whether it complies with the  
3 Growth Management Act or whether it throws the City's  
4 plans in another direction is not the jurisdiction of  
5 this Commission as I have stated before.

6           So I'm not moving from that previous  
7 decision, and I don't think that the Commissioners would  
8 on appeal either, they're not land use bodies. And  
9 although I indicated some question of cooperation before  
10 between the County and the City and flood fighting,  
11 clearly the Utilities and Transportation Commission does  
12 not get into regional land use planning, that's a  
13 bureaucratic nightmare that we all don't want.

14           So with that in mind, the objection is  
15 overruled, Exhibits 31 through 34 are admitted. What  
16 weight they will be given will depend a little bit on  
17 the cross-examination that occurs now and any redirect  
18 that Mr. Rogerson makes subsequent to those questions.

19           MR. ROGERSON: And I would just for the  
20 record that Order 3 to my understanding, I don't have  
21 the order in front of me --

22           JUDGE TOREM: I really thought you were  
23 actually reading from it.

24           MR. ROGERSON: I read a quote from it but I  
25 don't have the actually order so I have to qualify it,

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1 but in order to, according from my notes, potential  
2 future needs will be allowed and given weight, and Your  
3 Honor has just stated previously that you will only look  
4 at current, and that is not consistent with Order Number  
5 3 according to my understanding.

6 JUDGE TOREM: Mr. Rogerson, the distinction  
7 I'm drawing is the public need for the crossing is one  
8 thing. The City's need for future growth are another.  
9 Those latter concerns will be given less weight given  
10 the scope of my decision than the public needs for the  
11 crossing, which are not just, if I overstated that a  
12 moment ago, just what they need at the date the petition  
13 was filed but the ongoing need for that crossing but in  
14 the present tense, which is not just today, but it's  
15 certainly not well beyond tomorrow. Is that vague  
16 enough?

17 MR. ROGERSON: I think regardless an offer of  
18 proof would have been the City's motion if it was  
19 granted, so probably have the same evidence to preserve  
20 for appeal, so.

21 JUDGE TOREM: It's admitted now, and again if  
22 I don't give it the weight the City thinks I should and  
23 the decision doesn't result --

24 MR. ROGERSON: It will be well briefed in the  
25 City's posthearing briefing.

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1 JUDGE TOREM: All right, cross-exam at this  
2 time, Mr. Scarp.

3 MR. SCARP: Thank you, Your Honor.

4

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

6 BY MR. SCARP:

7 Q. Good afternoon, Ms. Hanson, thank you for  
8 being so patient.

9 A. Good afternoon.

10 Q. My review of your prefiled testimony, and I  
11 will probably oversimplify this, concerns the proposed  
12 development, commercial and industrial, in the southern  
13 part of the current City of Mount Vernon?

14 A. Correct.

15 Q. Is there any residential development planned  
16 down there that you're aware of?

17 A. No, not to my knowledge. I don't believe the  
18 County plans have residential designations in that area.

19 Q. All right. Now none of the development that  
20 you have discussed or is proposed is west of the  
21 railroad tracks in the area that's being discussed here;  
22 is that correct?

23 A. If you're referring to potential land needs  
24 that are referred to in the study that the City had  
25 contracted with Eric Toby to complete, that -- we



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1 haven't identified specific locations for that  
2 additional acreage, so it's not inconceivable that that  
3 could also be west of the railroad tracks, but the City  
4 has not made a decision as to where it would be  
5 appropriate to expand its urban growth area.

6 Q. And when I say west of the railroad tracks,  
7 I'm also talking about south of Blackburn Road.

8 A. Mm-hm.

9 Q. And are you telling me that as you sit here  
10 today you're not certain of whether your plans include  
11 development west of the railroad tracks and south of  
12 Blackburn Road?

13 A. Our current comprehensive plan does not, but  
14 we have had requests, as has the County, for UGA  
15 expansions within that area. And again it will be an  
16 issue that the City Council will give us direction,  
17 staff, as to which way they would like to see the city  
18 grow if that is their decision to include additional  
19 acreage for commercial and industrial purposes.

20 Q. There's nothing on the table right now --

21 A. There is not.

22 Q. -- for that area?

23 A. No.

24 Q. All right. So that's speculative at best  
25 right now?

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1 A. Yes.

2 Q. All right. All the area that I just  
3 described down there is part of a floodplain, isn't it?

4 A. Yes, it is. All of the area where the city  
5 is currently has its development within the city limits  
6 is also within the floodplain.

7 Q. All right, but it's all east of the railroad  
8 tracks?

9 A. Yes.

10 Q. Okay.

11 A. Well, if I can correct that, south of  
12 Blackburn the city limits are west of the railroad  
13 tracks.

14 Q. Okay, and that's what I was talking about,  
15 because anything above Blackburn is not in the area that  
16 we have been talking about as affected by the closing of  
17 Hickox Road.

18 A. But there are properties south of Blackburn  
19 west of the railroad tracks that are within city limits.

20 Q. Right, just where the Christian School and  
21 that --

22 A. And further south than that actually.

23 Q. I want to ask you a question, right next to  
24 the Hickox Road, the small section between Old Highway  
25 99 and the railroad crossing; are you familiar with

1032

1 that?

2 A. Mm-hm.

3 Q. There's a new structure being developed  
4 there.

5 A. I'm sorry, did you say south of Hickox or --

6 Q. I'm sorry, no, it would actually be north of  
7 Hickox.

8 A. Mm-hm.

9 Q. Just west of the railroad tracks between the  
10 tracks and Old Highway 99; are you familiar with that  
11 development?

12 A. There is development, land development, land  
13 subdivision, as well as new construction, building  
14 construction, occurring in that area.

15 Q. Do you know what that construction is?

16 A. I'm not sure which one you're speaking of, we  
17 have a few developments that are going on within that  
18 area. There is a land subdivision of I believe 6 lots  
19 that is occurring west of Old 99 between Old 99 and the  
20 railroad tracks directly north of Hickox. No building  
21 activity is occurring on that site yet, it's still going  
22 through the land development stages.

23 Q. Now let's make sure that we're clear. If I  
24 am turning westbound from Old 99 toward the railroad  
25 tracks and I'm headed westbound, on my right-hand side

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1 there's new foundation and structure being constructed  
2 right there.

3 A. There are, yes, actually I stand corrected,  
4 there is building construction that is occurring on one  
5 of the lots, yes.

6 Q. Okay. Do you know if the railroad was  
7 notified as an adjacent land owner of that project?

8 A. No, they were not notified of that project,  
9 but we did have discussions with them following the  
10 approval of that subdivision, the preliminary  
11 subdivision.

12 Q. You mean after the construction began?

13 A. Actually during the construction activity,  
14 and it was the construction of utilities and not  
15 foundations.

16 Q. Okay.

17 A. That was on the property owner's property.

18 Q. Was that a concern by the railroad that they  
19 were on the right of way and --

20 A. They expressed --

21 MR. ROGERSON: I'm going to object to the  
22 relevance of what this has to do with potential future  
23 needs of public use and necessity.

24 JUDGE TOREM: Mr. Scarp, is there a  
25 connection we want to make here or just a question --

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1                   MR. SCARP: I'm only trying to define that  
2 this is the area, and I will move on, Your Honor

3                   JUDGE TOREM: All right, so I will sustain  
4 the objection, I think she's agreed that the foundations  
5 are between Old Highway 99, the tracks, and north of  
6 Hickox.

7                   MR. SCARP: All right.

8           A.       And if I can just correct the record, I  
9 believe that the construction activity that you may be  
10 referring to is utility construction to serve those  
11 lots.

12 BY MR. SCARP:

13       Q.       Okay, now see if we can use this map over  
14 here. Is the area right here, and I'm referencing --  
15 and I have forgotten the exhibit.

16                   MR. JONES: 66.

17       Q.       66. Ms. Hanson, I'm pointing to the  
18 intersection of the railway and Hickox Road, and this  
19 lot right in here which my finger is on, that's the  
20 point we're talking about.

21       A.       Right.

22       Q.       Okay. Now immediately south of Hickox and  
23 between the railroad tracks and the what would now be  
24 called the Conway frontage road, is that parcel of land,  
25 do you know what that parcel of land is right there?

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1           A.     That parcel of land is not within the city  
2 limits.

3           Q.     Right.

4           A.     And your question is what it is?

5           Q.     Yeah, do you know for example who maintains  
6 it, owns it?

7           A.     No, I do not.

8           Q.     Okay. Do you know is that under some sort of  
9 conservancy, agricultural conservancy?

10          A.     I do not know.

11                   JUDGE TOREM: Let me note that this was  
12 Exhibit 65 actually. 66 was the Blackburn Road aerial  
13 photo.

14                   MR. SCARP: Thank you.

15                   MR. JONES: Sorry about that.

16                   MR. SCARP: No worries.

17 BY MR. SCARP:

18          Q.     So whatever development that you're talking  
19 about in this vicinity right here is --

20                   JUDGE TOREM: And again right here is the  
21 intersection.

22          Q.     Right here is in the area of Hickox Road,  
23 there's currently this lot that used to be agricultural  
24 that we have talked about is being developed north of  
25 Hickox Road up to where there's existing industrial and

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1 commercial properties, so that looks to be, oh, the  
2 distance of a city block or so?

3 A. I'm not sure what the exact acreage is there.

4 Q. Okay. And then south of that, the City  
5 doesn't own it and you're not sure who, but it appears  
6 to be farmland or other undeveloped property?

7 A. I believe the designation through the County  
8 is agricultural.

9 Q. Okay. So as far as you know, there's not  
10 going to be any development right there?

11 A. The City, it is not within the City limits,  
12 so we have no development activities that we would be  
13 reviewing or approving into that area.

14 Q. All right. So what you're talking about for  
15 the southern part is really pretty much what's targeted  
16 is over here on the east side of I-5 as far as the  
17 commercial and industrial development; is that accurate?

18 A. I'm not sure what your question is asking.

19 Q. Well, when you're talking about plans for  
20 further commercial and industrial development in that  
21 southern quadrant, if you will, you're talking  
22 essentially about property that is on the east side of  
23 Interstate 5?

24 A. If you're referring to the testimony, we had  
25 development occurring both east and west of I-5 north of

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1 Hickox that is in progress. My testimony also discusses  
2 the buildable lands study that we had done and the  
3 commercial needs assessment, and those areas where the  
4 City would choose to expand its urban growth area have  
5 not been determined, but this would be a consideration  
6 south of Hickox due to its location to existing  
7 commercial and industrial development and existing  
8 infrastructure as well as its location off of I-5.

9 Q. So you would be talking about that property  
10 which you're not aware of whether it's in some sort of  
11 conservancy or trust, agricultural trust?

12 A. We have not taken those steps to investigate  
13 those properties, no.

14 Q. Okay. Have you heard from a Mrs. Sunquist?

15 A. Yes.

16 Q. Have you received any correspondence from her  
17 about that proposed use?

18 A. Actually, Mrs. Sunquist has submitted  
19 applications to both the County and the City for  
20 inclusion within our urban growth area.

21 Q. And has she mentioned anything about  
22 preserving agricultural property?

23 A. I don't recall that, no.

24 Q. All right.

25 A. And those applications or requests came in I



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1 believe under the 2005 application process to the  
2 County, so it's been some time since I have reviewed any  
3 of those application requests.

4 Q. I believe your testimony, Ms. Hanson, is that  
5 if the crossing at Hickox Road is closed, it will make  
6 it difficult to attract industrial and commercial  
7 development?

8 A. If the City chooses to expand its urban  
9 growth area south of Hickox or west of that area, then  
10 yes, it would.

11 Q. Okay. But you're not -- at present that  
12 determination hasn't been made?

13 A. That is correct.

14 Q. All right. Now you're aware of the siding  
15 project here and the likelihood of long freight trains  
16 being across that siding for extended periods of time  
17 regardless of whether this crossing is open or closed,  
18 are you?

19 A. I am familiar of the railroad and the freight  
20 trains that use it, but I'm not familiar with the  
21 frequency and the timings of closure specifically.

22 Q. And what I'm talking about is the extension  
23 of the siding project through Hickox Road and south of  
24 that.

25 A. Yes, I am.

1039

1 Q. You're familiar with that?

2 A. Yes.

3 Q. And you're familiar with its intended purpose  
4 is that long freight trains will be there to allow other  
5 trains to meet and pass?

6 A. Yes, I am.

7 Q. Okay. And if there's extended periods of  
8 time when that crossing wouldn't be open and people who  
9 might otherwise use Hickox knew that, is that something  
10 you would factor in that would inhibit the development  
11 or make it harder to attract development?

12 A. That would be considered as far as I would  
13 imagine through any type of transportation  
14 infrastructure improvements that might be extended, that  
15 would be considered, yes.

16 Q. You haven't done so though?

17 A. We have not.

18 Q. All right. Are you involved in any  
19 discussions regarding commuter rail service through  
20 Mount Vernon?

21 A. I have not been.

22 Q. Have you had any discussions, any information  
23 in that regard?

24 A. Other members of our -- of the City staff  
25 have, but I have not per se.

1040

1 Q. And when you say the City staff, who are you  
2 referring to?

3 A. I believe the mayor's office as well as  
4 public works, but I'm not certain of that.

5 Q. Do you think good commuter rail service would  
6 be important to development here?

7 A. Yes.

8 Q. Do you know if the proposed or the siding  
9 track extension is necessary or important to the  
10 commuter rail service to be provided?

11 A. I am not familiar with the specifics of that.

12 MR. SCARP: Okay, that's all I have, thank  
13 you.

14 JUDGE TOREM: Any additional cross?

15 Any redirect?

16 MR. ROGERSON: Very briefly, Your Honor.

17

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

19 BY MR. ROGERSON:

20 Q. Ms. Hanson, Mr. Scarp had mentioned the  
21 floodplain surrounding the jurisdictional boundaries of  
22 our urban growth area, can you describe for the tribunal  
23 the City's jurisdictional boundaries in its entirety and  
24 where floodplains exist?

25 A. I'm sorry, can you say that again.

1041

1 Q. The jurisdictional boundaries in its entirety  
2 of the city and where floodplains reside outside those  
3 boundaries?

4 A. Do we have a map of the city?

5 JUDGE TOREM: May I suggest Exhibit 26.

6 Q. I'm handing you what's been marked Exhibit  
7 26, which is -- the purpose is a flood evacuation  
8 quadrant map, but it shows the majority of the  
9 jurisdictional boundaries of the city, and that is under  
10 the table legend kind of a purple dotted color.

11 A. The city -- the floodplain exists essentially  
12 throughout South Mount Vernon as well as the downtown  
13 area, where we are right now, throughout College Way,  
14 Riverside, and I can't tell you how far east exactly but  
15 just west of I believe 18th off of College, north of  
16 College, and so essentially most of the city is within  
17 the 100 year floodplain or a large portion of the city,  
18 yes.

19 Q. Now according to the analysis that the City  
20 has conducted in terms of floodplain and expansion, do  
21 we have an adequate amount of commercial acreage within  
22 the city's urban growth area?

23 A. We do not.

24 Q. And how many acres does that analysis suggest  
25 is needed?

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1           A.     The analysis that we have had done indicates  
2     809 gross acres of commercial and industrial land to  
3     balance the residential growth we expect within the next  
4     20 years.

5           Q.     And to allocate those 800 acres to expand the  
6     city's urban growth area, what directions are likely the  
7     City will pursue and why?

8           A.     The recommendations that are stated in the  
9     analysis indicate that the city is short of large  
10    parcels of land that could support significant  
11    commercial and industrial development, so within the 10,  
12    15 acre and above range.  It also talks about location  
13    of that acreage best suited along the Interstate where  
14    that has both the visibility and the land mass as well,  
15    so as opposed to up in the hill where most of the  
16    residential is located.

17          Q.     And the hill area is located what  
18    jurisdictional boundary of the city, what direction?

19          A.     West.

20          Q.     Okay and --

21          A.     Excuse me, east.

22          Q.     If the city was to grow north, where would it  
23    incorporate its --

24          A.     We would not be able to grow north.

25          Q.     Why is that?

1043

1 A. The river.

2 Q. What's beyond the river?

3 A. The city of Burlington.

4 Q. And if we were to use the river as a natural

5 boundary and went west, is there an area within that

6 jurisdictional boundary that is not included in the

7 city's urban growth area?

8 A. Yes, the Riverbend area, which is west of

9 College and I-5.

10 Q. And is that a floodplain?

11 A. Yes, it is.

12 Q. And is that generally considered

13 agricultural?

14 A. Yes, it is.

15 MR. ROGERSON: Nothing further.

16 JUDGE TOREM: Any recross?

17

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

19 BY MR. SCARP:

20 Q. Ms. Hanson, you indicated that the entire

21 city is in the 100 year floodplain.

22 MR. ROGERSON: You know, I'm going to object,

23 that a mischaracterization of her testimony.

24 MR. SCARP: Oh, I'm sorry.

25 JUDGE TOREM: She said a large portion.

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1 MR. SCARP: Large portion, I stand corrected.

2 BY MR. SCARP:

3 Q. The area between the -- that is south of  
4 Blackburn and Britt Road and west of the railroad  
5 tracks, would it surprise you if you heard testimony  
6 that said if there is a problem of a flooding incident  
7 it would fill up like a bathtub?

8 A. I have heard that in several areas of the  
9 city actually, including one of our most developed  
10 commercial areas, the Riverbend area of College and  
11 Riverside, but I have heard that that area, yes, would  
12 fill up. I have not heard it stated as like a bathtub,  
13 but it would be inundated if there was a breach or a  
14 significant amount of flood event.

15 MR. SCARP: That's all I have, Your Honor.

16 MR. ROGERSON: Just one follow up.

17

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

19 BY MR. ROGERSON:

20 Q. Are there regulations in place to allow for  
21 growth in floodplains?

22 A. Yes, there are.

23 Q. Commercial growth?

24 A. Yes.

25 MR. ROGERSON: Nothing further.

1045

1                                    E X A M I N A T I O N

2    BY JUDGE TOREM:

3            Q.     So, Ms. Hanson, if I understand the conundrum  
4    the City finds itself in is that growth is mandated, a  
5    floodplain has been created by nature, and if you're  
6    going to expand it's most likely going to be in areas  
7    subject to future inundation at some point?

8            A.     That is correct.

9            Q.     And as my colleagues at SEPA have told me,  
10    has the City considered the no action alternative?

11                                    Apparently not.

12                                    JUDGE TOREM:    Okay, any further questions?

13                                    MR. ROGERSON:    One follow up.

14

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

16    BY MR. ROGERSON:

17            Q.     Did the City consider a -- did the City  
18    conduct a buildable lands inventory?

19            A.     Yes, we did.

20            Q.     And what is that?

21            A.     The buildable lands inventory was a very  
22    extensive analysis of every parcel of land within the  
23    city limits and our urban growth area, and it determined  
24    what those parcels, what their capability would be for  
25    future development.    So it indicated existing



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1 development, if there were critical areas or  
2 infrastructure, and then what potential for development  
3 could be.

4 Q. And was that used in our needs analysis?

5 A. Yes, it was.

6 JUDGE TOREM: Any follow ups to the buildable  
7 needs analysis?

8 MR. SCARP: No, I think I've got no  
9 questions.

10 JUDGE TOREM: Thanks, Ms. Hanson, I  
11 appreciate your patience this afternoon.

12 It's now a little after 2:30, we'll take a  
13 break until 2:45, and I think we're actually a little  
14 bit ahead of schedule, so this is good, 2:45 we'll be  
15 back on the record.

16 (Recess taken.)

17 JUDGE TOREM: All right, we're back on the  
18 record, it's a little after 2:45. Mr. Mark Watkinson is  
19 going to be sworn in in just a moment. Mr. Fallquist, I  
20 understand he will be introducing Exhibits 35 which are  
21 prefiled direct testimony, Exhibit 36 his resume',  
22 Exhibit 37 his job description as Emergency Management  
23 Coordinator, Exhibit 38 a graph of Skagit River recorded  
24 discharges, Exhibit 39 some Skagit River annual flood  
25 risk awareness pamphlets, and Exhibit 40 a map of Skagit

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1 County evacuation routes. I have also been advised by  
2 Ms. Endres she intends to use cross-examination Exhibits  
3 117 and 119, and so hopefully the witness has been  
4 provided those as well.

5 (Witness MARK WATKINSON was sworn.)

6 JUDGE TOREM: And as you sit down, can you  
7 state and spell your name for the record.

8 THE WITNESS: Mark Watkinson, M-A-R-K,  
9 W-A-T-K-I-N-S-O-N.

10 JUDGE TOREM: Mr. Fallquist, go ahead.

11 MR. FALLQUIST: Thank you, Your Honor.

12

13 Whereupon,

14

MARK WATKINSON,

15 having been first duly sworn, was called as a witness  
16 herein and was examined and testified as follows:

17

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

19 BY MR. FALLQUIST:

20 Q. Mr. Watkinson, you have already stated your  
21 full name, could you please, what's your occupation and  
22 position with the County?

23 A. I'm Emergency Management Coordinator.

24 Q. How long have you held that position?

25 A. Almost 18 years.

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1 Q. 18 years, okay. Did you cause to be produced  
2 and filed written direct testimony in this case on or  
3 about November 5th, 2007?

4 A. I did.

5 Q. And including the related exhibits attached  
6 thereto?

7 A. Correct, there were two public works  
8 documents that were submitted with my testimony.

9 Q. Right.

10 A. It fit with more with public or with  
11 emergency management, so.

12 Q. Okay. But those exhibits were part of your  
13 testimony?

14 A. Correct.

15 Q. Yes. And was that testimony true and correct  
16 at the time it was filed?

17 A. Yes.

18 Q. And it's true and correct today?

19 A. That's correct.

20 MR. FALLQUIST: I would like to move to offer  
21 and admit into evidence Exhibits Number 35 through 40,  
22 prefiled direct testimony of Mr. Watkinson and the  
23 exhibits.

24 JUDGE TOREM: Any objection to those at this  
25 time?

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1 MS. ENDRES: No, Your Honor.

2 JUDGE TOREM: Seeing none, Exhibits 35  
3 through 40 are admitted.

4 Cross-exam.

5

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

7 BY MS. ENDRES:

8 Q. Hello, Mr. Watkinson.

9 A. Hi.

10 Q. My name is Kelsey Endres, I'm an attorney  
11 here with BNSF Railroad, who is the petitioner in this  
12 case, I'm going to ask a few questions of you, I will  
13 try to keep this succinct so we can get you in and out  
14 of here as soon as possible.

15 I believe that you said in your prefiled  
16 testimony you are the Emergency Management Coordinator  
17 for Skagit County; is that correct?

18 A. That's correct.

19 Q. Are you familiar with the terms 10 year flood  
20 event, 25 year flood event, 50 year flood event, and so  
21 on?

22 A. I'm familiar with them, yes.

23 Q. Are those commonly understood terms in flood  
24 management in your job position?

25 A. Relatively so, yes.

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1 Q. I would like you to take a look at page 4 of  
2 your prefiled testimony, and I would like you to take a  
3 look at line 75, do you see that toward the bottom of  
4 the page?

5 A. Okay.

6 Q. And I'm just going to read this aloud for  
7 you:

8 Hickox Road would be especially  
9 important in the event that flooding has  
10 rendered other local access roads (such  
11 as Dike Road, Britt Road, or West  
12 Stackpole Road) impassable.

13 Is that an accurate reflection of what your  
14 prefiled testimony says?

15 A. Yes.

16 Q. Mr. Watkinson, do you know when the last time  
17 Hickox Road was used as an evacuation route where  
18 Stackpole Road was flooded?

19 A. I do not.

20 Q. Do you know the elevations of Hickox Road?

21 A. I do not.

22 Q. Do you know the elevations of Dike Road?

23 A. No, I do not.

24 Q. Do you know the elevations of Britt or  
25 Stackpole Road?

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1 A. No, I do not.

2 Q. Are you familiar with the Army Corps of  
3 Engineers Skagit River Flood Damage Reduction Study?

4 A. I am not familiar with the document, I know  
5 that a document was produced by the Corps.

6 Q. I would like you to take a look at Exhibit  
7 19, I put it there on the desk for you. Have you seen  
8 this document before, did your counsel provide that for  
9 you to review?

10 A. Yes.

11 JUDGE TOREM: So for the record, this is  
12 Exhibit 119?

13 MS. ENDRES: This is Exhibit 119.

14 BY MS. ENDRES:

15 Q. So you have not reviewed this study in your  
16 job position?

17 A. Not as part of my job position, no.

18 Q. Have you reviewed it before your counsel  
19 provided it to you in this?

20 A. Before it was provided?

21 Q. Correct, have you seen it before?

22 A. Maybe very briefly.

23 Q. Okay. I would like you to turn to page 1 of  
24 the study, Exhibit 19, which is actually the second page  
25 there, and at the top it reads Skagit River Flood Damage

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1 Reduction Feasibility Study. And if you could, do you  
2 see the paragraph marked (A) General, and I would like  
3 you to look about two thirds down under the sentence  
4 that starts, the purpose, and I'll read it to you:

5           The purpose of the study is to formulate  
6           and recommend a comprehensive flood  
7           hazard management plan for the Skagit  
8           River floodplain that will reduce flood  
9           damages downstream Sedro Woolley.

10           Is that an accurate representation of what  
11 that says there?

12           A.     If that's what you read, that's correct, yes.

13 I mean that's what you read, that's that sentence.

14           Q.     Do you see that there?

15           A.     Yes.

16           Q.     I would like you to turn to -- well, let me  
17 just ask a preliminary question. Are you familiar with  
18 the area affected by the closure of Hickox Road west of  
19 the railroad tracks?

20           A.     I am.

21           Q.     Is that area downstream of Sedro Woolley?

22           A.     Yes, it is.

23           Q.     I would like you to turn to page 13, if you  
24 would, I'm sorry, page 10 at the bottom, and see where  
25 it says levee breach methodology at the very top?

1053

1 A. You're on page 10?

2 Q. I am.

3 A. Okay.

4 Q. Is there a heading that says levee breach --

5 A. All right.

6 Q. Does the first sentence say:

7 A levee breach methodology was devised  
8 to determine when simulated flows would  
9 cause levees to fail and a floodplain  
10 would be formed.

11 A. It says that, yes.

12 MS. ENDRES: Your Honor, at this point I  
13 would like to offer Exhibit 119 into evidence.

14 JUDGE TOREM: Any objection to its admission?

15 All right, there's no objection, so 119 will  
16 be admitted.

17 BY MS. ENDRES:

18 Q. Mr. Watkinson, I would like you to turn to  
19 Exhibit 117, and I apologize, the text on this is very  
20 small. Do you see on the first page there at the bottom  
21 right-hand corner it says U.S. Army Engineer District  
22 Seattle, Corps of Engineers, and below that it says  
23 Skagit River Flood Damage Reduction Study?

24 A. Yes.

25 Q. Does that appear to be part of this Skagit



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1 River Flood Damage Reduction Study?

2 A. I assume so.

3 Q. And again, I apologize for the smallness of  
4 text here, but I would just kind of like to flip through  
5 these pages to make sure that you have what I have. Do  
6 you see in the bottom right-hand corner of the first  
7 page it says 10 year event?

8 A. Yes.

9 Q. And the next page appears to be a section of  
10 this first page just kind of magnified?

11 A. Yes.

12 Q. And the next page at the bottom right-hand  
13 corner says 25 year event?

14 A. Correct.

15 Q. And the page after that appears to be a  
16 section of the 25 year event magnified?

17 A. Yes.

18 Q. And the page after that at the bottom  
19 right-hand corner says 50 year event?

20 A. Correct.

21 Q. And the page after that appears to be a  
22 magnified section of the 50 year event page?

23 A. Yes.

24 Q. And then we have 75 year event, next page?

25 A. Correct, yes.

1055

1 Q. Page after that appears to be a  
2 magnification?

3 A. I agree.

4 Q. And we have 100 year event with a  
5 magnification after that and finally a 250 year event  
6 with a magnification after that?

7 A. That's correct.

8 Q. Now at the very last we have a 500 year event  
9 with a magnified section?

10 A. Yes.

11 Q. I would like to take a look at the first 2  
12 pages having to do with a 10 year event, and I know it's  
13 hard to see on this first page which is why we blew up  
14 the second, so I'm going to ask you to turn to the  
15 second page here, but initially on the first page do you  
16 see the colored dots on the right, the key there that  
17 indicates water depths? I'm sorry, I'm looking at the  
18 very first page.

19 A. Yes.

20 Q. And it has a sort of pink color for what  
21 looks like 1/10 to 1 foot of water, green for 1 to 2  
22 feet of water, a brownish red for 2 to 3 feet, and maybe  
23 a teal for 3 to 4 feet, purple for 4 to 5 feet, blue for  
24 5 to 10 feet, and a green for 10 to 20 feet; is that  
25 correct?

1056

1 A. Yes.

2 Q. I would like you to turn to the second page,  
3 and you said that you are familiar with the area  
4 affected by this closure, and I would kind of like you  
5 to look right in the middle of that page, go 2 or 3  
6 inches from the bottom, does that look like the  
7 Hickox/I-5 interchange area?

8 A. I can see that on the map, yes.

9 Q. Okay. And I would like you to look at the  
10 area affected by the closure. Now this 10 year flood  
11 event doesn't seem to indicate that there is any level  
12 of water in this Hickox area; is that correct?

13 A. Not on the map, no.

14 Q. So there is not on Hickox Road, Dike Road,  
15 Stackpole, or Britt?

16 A. No.

17 Q. Okay, I would like you to turn to the next  
18 page, the 25 year flood event, and let's turn to page 4  
19 here, the magnified part. And again I would like to  
20 direct your attention to the Hickox Road, and this does  
21 not appear to indicate that there is any water over the  
22 Hickox Road west of it looks like I-5 interchange there;  
23 is that correct?

24 A. That's correct.

25 Q. And there does not appear to be any water

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1 over Britt Road or Dike Road?

2 A. I'm trying to remember exactly where Britt  
3 and Dike join there, but --

4 Q. Well, if you follow Hickox Road to the --

5 JUDGE TOREM: Ms. Endres, it might be easier  
6 for him to look over his right shoulder and see the  
7 aerial photograph, which has a lot more detail than  
8 these maps.

9 Q. Sure, this may be helpful, here's the Hickox  
10 Road railway crossing.

11 A. Correct.

12 Q. Here's Dike Road.

13 A. Yes.

14 Q. And then Britt Road is kind of the windy one.

15 A. Correct.

16 Q. Blackburn is here, and down here we have  
17 Stackpole.

18 A. Okay.

19 JUDGE TOREM: For the record, Ms. Endres has  
20 given a brief tour of the lower part of the city and  
21 county on Exhibit 65.

22 Mr. Watkinson, does that refresh your memory  
23 and help you make sense of these other floodplain maps?

24 THE WITNESS: Yes.

25 BY MS. ENDRES:

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1 Q. So again it does not appear that there is any  
2 water over Dike Road, Britt Road, Hickox Road, or  
3 Stackpole Road for this 25 year flood event?

4 A. That's correct.

5 Q. I would like you to turn to the next page  
6 which shows the 50 year event and the one after that  
7 that shows the magnification, and let's take a closer  
8 look at this, do you see where the Hickox Road is on  
9 this one?

10 A. Yes, I do.

11 Q. And is it accurate to say that it appears  
12 there may be some water at various points over Hickox  
13 Road at various depths?

14 A. Yes, it does.

15 Q. And I would like you to take a look at Britt  
16 Road, it appears that Britt Road does not have water  
17 over it in this?

18 A. That's correct.

19 Q. And it does not appear that Dike Road has  
20 water over it?

21 A. Correct.

22 Q. And it does not appear that Stackpole Road  
23 has water over it?

24 A. That's correct.

25 Q. And it's fair to say that according at least

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1 to the depiction here Hickox Road is under water in the  
2 50 year flood event before Dike Road, Britt Road, or  
3 Stackpole Road; is that correct?

4 A. According to the studies that the Corps did,  
5 yes.

6 Q. Now let's look at this in terms of evacuation  
7 purposes. For the residents that live here on Britt, or  
8 excuse me, on Hickox Road, it does appear that should  
9 Hickox Road be under water, they still have an available  
10 evacuation route to the south through Hickox if not  
11 further south through other routes because it does not  
12 appear to be under water?

13 A. That's true, that's given that a levee  
14 failure occurs at the exact point on the map that the  
15 Corps study was conducted.

16 Q. Sure, I understand that.

17 So from this it appears that Hickox Road, is  
18 it fair to say it appears that Hickox Road may be at a  
19 lower elevation than Stackpole, Britt, or Dike Roads?

20 You know, I don't profess to be a physics  
21 expert here, but I know that gravity --

22 A. I really can't say based on this, I don't  
23 know what the elevations are.

24 Q. Okay.

25

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1                                    E X A M I N A T I O N

2    BY JUDGE TOREM:

3            Q.    Mr. Watkinson, is it your understanding that  
4    water seeks the lowest point?

5            A.    That's correct.

6            Q.    So I think Ms. Endres wants us to conclude  
7    from these drawings from the Corps that Hickox Road  
8    would be lower than places there's no water; would you  
9    agree with that?

10          A.    I would agree.

11          Q.    Okay.

12          A.    It's also possible that there's deviations in  
13    ground elevation and water, there could be areas that  
14    are lower on the map yet that don't show water just  
15    based on where the levee failures were programmed into  
16    the Corps' study.

17

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

19    BY MS. ENDRES:

20          Q.    Sure. I would like to turn to a different  
21    topic briefly here. We have had testimony in this case  
22    about the possibility of closing this public crossing  
23    and making it essentially a private crossing with locked  
24    gates for emergency access, and I believe you testified  
25    in your prefiled testimony that a concern of yours for

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1 flooding evacuation or need to bring in sand bags or  
2 riprap if the crossing is closed is that that is no  
3 longer an available route. Now if the capability for an  
4 emergency access gate is there, doesn't that satisfy  
5 your concerns for the purpose of the emergency flooding  
6 needs accessing Hickox Road?

7 A. Can you explain that a little bit, please.

8 Q. Sure. I guess I would just like you to  
9 assume that with an emergency gate the crossing would be  
10 able to be opened if there was a flooding emergency so  
11 that residents would be able to have an evacuation route  
12 as well as ingress for sand bagging supplies and riprap.  
13 Would you agree that that would satisfy your concerns  
14 with respect to flooding should the crossing be no  
15 longer a public crossing?

16 A. I agree.

17 MS. ENDRES: Thank you, I have no further  
18 questions.

19 JUDGE TOREM: Mr. Fallquist, any redirect?

20 MR. FALLQUIST: Yes, Your Honor, thank you.

21

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

23 BY MR. FALLQUIST:

24 Q. Mr. Watkinson, thank you, I think I brought  
25 the wrong exhibit up with me, but -- no, I've got it



1062

1 right here. Is this report, this 2003 U.S. Army Corps  
2 of Engineers report, really something that's within your  
3 purview?

4 A. It is not.

5 Q. What's your understanding of how that study  
6 -- what's your understanding as to how -- the  
7 methodology of that study, if any? I mean how is that  
8 inundation predicted?

9 A. From what I understand, the inundations are  
10 predicted with if a break should occur or a levee  
11 failure should occur in a certain location, what areas  
12 may be affected and inundated by water given that, given  
13 a break or a breach in that location.

14 Q. And so these areas are picked essentially at  
15 random by a computer?

16 A. I'm not sure how they were --

17 Q. Okay, but --

18 A. -- probably were --

19 Q. But they're --

20 A. -- picked by the Corps.

21 Q. Okay, but they're just sites that were picked  
22 by the Corps. Can they be conclusively relied upon as  
23 levee failure points? If you don't know, that's fine.

24 A. I really don't know.

25 Q. Regardless of what's depicted on that map

1063

1 with respect to 10 year or 25 year events, have 25 year  
2 events or lesser events caused flooding in the vicinity  
3 of Hickox Road?

4 A. As far as I can recollect, the last flooding  
5 in Hickox Road was in the '50's I believe, and I'm not  
6 familiar with what size of event that was. My concern  
7 in keeping Hickox Road available as an evacuation, as a  
8 means of getting to evacuation routes and evacuating  
9 people from that area is that the Corps' study does not  
10 take into effect a spontaneous failure of a portion of  
11 the levee.

12 Q. Yeah, I was going to ask about that. And  
13 really waters can come from anywhere at any time; is  
14 that the case?

15 A. That's correct, and if -- depending upon a  
16 spontaneous levee failure occurring upstream of Hickox  
17 Road, and if in that instance Hickox Road was not  
18 available for egress, then it's going to cause people to  
19 have to travel a further distance and have it -- just  
20 they would have more difficulty in leaving that area in  
21 a rapid manner.

22 Q. In 1990, in the 1990 flood, did flood waters  
23 come from the south in that event?

24 A. 1990 we had flooding on Fir Island.

25 Q. Okay, well, maybe I'm -- it's not really that

1 important.

2           In the event that there is a flood fight  
3 effort in the vicinity of Hickox Road by Diking and  
4 Drainage District 3 or other municipalities or entities  
5 participating in that effort, do you anticipate that  
6 there would be congestion, equipment, material,  
7 personnel, in that area?

8           A.     There could very well be. Typically during a  
9 flood fight effort many times the roads that are  
10 adjoining levees are used for flood fight purposes. It  
11 could easily be that one lane is closed and we're  
12 conducting flood fight operations, the district is  
13 conducting flood fight operations there adding to  
14 congestion. Sometimes we would establish possibly a one  
15 way route for trucks to enter and exit an area that's  
16 under -- being -- that's where flood fight operations  
17 are occurring.

18           Q.     And in that sort of situation, it would be  
19 useful to have as many routes open as possible?

20           MS. ENDRES: Your Honor, I'm going to object,  
21 some of these questions are leading, and it seems as  
22 though all we're doing here is reiterating  
23 Mr. Watkinson's prefiled testimony at this point.

24           MR. FALLQUIST: I suppose I could rephrase  
25 some of this. It was a bit leading because it was on

1065

1 redirect, but I guess if it's redundant or cumulative I  
2 would be happy to move on.

3 JUDGE TOREM: I will sustain the objection,  
4 and let me see if you think I need any further, let me  
5 ask two questions and see if this settles it for this  
6 witness.

7 MR. FALLQUIST: Sure.

8

9 E X A M I N A T I O N

10 BY JUDGE TOREM:

11 Q. Mr. Watkinson, it seems to me that the bottom  
12 line for you is if there's a planned and deliberate  
13 evacuation because you see a weather event that's going  
14 to cause a flood, you have agreed with Ms. Endres that a  
15 possible solution to the proposed closure of a private  
16 crossing which can be unlocked and made useful for  
17 either flood fight or flood evacuation, that solves your  
18 concerns in a predicted flood; is that correct?

19 A. Correct, yes.

20 Q. However, you still have concerns in the event  
21 of any sudden breaks of a dike or levee system in which  
22 there wouldn't be time for a gate to be gotten to and  
23 unlocked?

24 A. I do.

25 Q. Does that sum up your concerns essentially?

1066

1 A. Very well.

2 JUDGE TOREM: Any other questions for this  
3 witness?

4 MR. FALLQUIST: No, Your Honor.

5 JUDGE TOREM: Mr. Jones.

6

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

8 BY MR. JONES:

9 Q. Mr. Watkinson, are you part of the incident  
10 command structure for the flood fighting in Skagit  
11 County?

12 A. I am.

13 Q. And would you be also involved in the  
14 incident command structure that make decisions about  
15 evacuation?

16 A. I am not.

17 Q. Okay. We have heard some testimony from the  
18 City of Mount Vernon about the means of coordinating  
19 action during a flood fight, how would you describe your  
20 role in the incident command structure?

21 A. During a flood fight my role is to gain as  
22 much knowledge as I can about the event and  
23 communicating with other jurisdictions and agencies and  
24 providing a picture as to what is currently happening to  
25 the unified command group working in the County

1067

1 Emergency Operations Center.

2 Q. Can you give me the names of the people who  
3 are operating the Unified Command Center?

4 JUDGE TOREM: Mr. Jones, are we going to  
5 build out the whole command structure for the County,  
6 where are we going?

7 MR. JONES: Well, I'm wanting to demonstrate  
8 the role of this witness as compared to others who might  
9 have other opinions about the subject matter.

10 JUDGE TOREM: Okay, let's get there quickly.

11 A. The unified command structure, the unified  
12 command group is comprised of the Skagit County Sheriff  
13 and/or his representative, the Director of the Skagit  
14 County Health Department or his representative, the  
15 Director of the Skagit County Public Works Department or  
16 their representative, and Director of the Skagit County  
17 Emergency Management Department or their representative.

18 BY MR. JONES:

19 Q. And is Dan King currently acting as emergency  
20 management department head?

21 A. He is currently interim director for  
22 emergency management, that's correct.

23 Q. Okay. And it would be this group that would  
24 make decisions about evacuation or not; is that right?

25 A. That's correct.

1068

1 Q. And they would also make decisions about  
2 opening or closing gates, that sort of decisionmaking;  
3 is that right?

4 A. Most likely, yes.

5 Q. Okay, are you familiar with --

6 MR. JONES: Let's see, I have no further  
7 questions.

8 JUDGE TOREM: Okay, thank you, Mr. Jones.

9 Any other questions for this witness?

10 Mr. Fallquist, follow up?

11 MR. FALLQUIST: Yeah, just one quick follow  
12 up.

13

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

15 BY MR. FALLQUIST:

16 Q. Just a follow-up question to a question that  
17 I asked earlier, I asked you if this study was within  
18 your purview, I guess I wanted to elaborate on that a  
19 little bit. Is this study, the 2003 Corps of Engineers  
20 study, something that generally speaking you would be  
21 familiar with?

22 A. I am familiar with that the study exists.

23 Q. But are you familiar --

24 A. It's not an active planning document that we  
25 use in our office at this time.

1069

1 Q. And would you be familiar with its  
2 methodology or any of the limitations associated with  
3 its methodology?

4 A. No.

5 MR. FALLQUIST: Thank you.

6 MR. ROGERSON: Your Honor, can I make one  
7 brief point regarding draft methodology.

8

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

10 BY MR. ROGERSON:

11 Q. Mr. Watkinson, you saw a lot of maps with a  
12 lot of levels of different flood records.

13 A. Right.

14 Q. 10 year, 15 year.

15 A. Yes.

16 Q. My question is, are you aware of whether or  
17 not the numbers on basic flood elevations are being  
18 looked at currently by FEMA?

19 A. Yes, they are.

20 Q. And in your opinion have you or in your  
21 experience have you seen any projected draft maps on new  
22 base flood elevations?

23 A. I have seen them, I have seen the proposed  
24 maps.

25 Q. FEMA maps?



1070

1 A. That's correct.

2 Q. Do those numbers go up?

3 A. They go up significantly.

4 MR. ROGERSON: Thank you.

5 JUDGE TOREM: Mr. Rogerson, the flood  
6 elevation maps, are you saying that the water levels  
7 predicted are higher?

8 MR. ROGERSON: Right.

9 JUDGE TOREM: Okay, I just wanted to  
10 understand what that meant.

11 Any other questions for this witness?

12 MS. ENDRES: Just one brief one, Your Honor.

13 JUDGE TOREM: Go ahead.

14

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

16 BY MS. ENDRES:

17 Q. You have testified that and you have said  
18 that Hickox is an important access route in the case of  
19 a flooding emergency situation. Isn't it important that  
20 if the crossing was closed and there were locked gates  
21 that someone would be aware of the situation and make  
22 sure they were unlocked in the event of a flooding  
23 emergency?

24 A. Who would be responsible for unlocking those  
25 gates?

1071

1 Q. Are you asking me?

2 A. Yes.

3 Q. I'm just asking your opinion if you think  
4 that that's an important consideration given your  
5 testimony that you believe it's an important route for  
6 ingress and egress during a flooding event?

7 A. It depends on the availability of having  
8 those gates unlocked.

9 JUDGE TOREM: Mr. Watkinson, it's clear from  
10 the map that this is bordering the City and the County  
11 jurisdictions. For the sake of Ms. Endres' questions,  
12 let's presume that both the County and the City will  
13 have the ability and access to a key to unlock the gate,  
14 we're going to presume cooperation here.

15 Q. So I guess my question is, do you agree that  
16 that's an important thing to make sure someone does in  
17 the event of flooding if it is locked?

18 A. It is, it would be under this circumstance,  
19 yes.

20 Q. Is that something that the County would build  
21 into its planning at this location for flood operations?

22 A. If that was -- if the crossing was  
23 eliminated, we would have to build some provision in for  
24 that.

25 Q. Thank you.

1072

1           A.     If the only solution was to contact  
2 Burlington Northern at 2:00 in the morning on a Sunday  
3 and have someone bring a key, I would have problems with  
4 that.  If County or City staff had availability to a  
5 key, then it would not be as severe.

6           MS. ENDRES:  Thank you.

7           Did I move for admission of Exhibit 117?

8           JUDGE TOREM:  You just did.

9           Any objections?

10           Okay, then the various event flood year maps  
11 at 117 will be admitted.

12           Any other questions for this witness?

13           Mr. Watkinson, thank you very much for your  
14 time.

15           The next witness is Ric Boge.

16           (Witness RIC BOGE was sworn.)

17           JUDGE TOREM:  While Mr. Fallquist is getting  
18 to the podium, let me ask you if you brought with you it  
19 looks like copies of your prefiled written testimony  
20 which is Exhibit 41, your resume' which is Exhibit 42, a  
21 Skagit County job description of your surface water  
22 manager is Exhibit 43, photographs of the 1951 flooding  
23 in the vicinity of Hickox Road Exhibit 44, another  
24 photograph of that same flooding marked as Exhibit 45  
25 because you have drawn on the approximate present

1073

1 location of Interstate 5, Exhibit 46 you also brought  
2 perhaps a map showing major levee failures in the lower  
3 Skagit River Basin, Exhibit 47 another map of possible  
4 future levee failures, and Exhibit 48 a map of the  
5 Skagit River floodplain. Do you have all those in front  
6 of you, sir?

7 THE WITNESS: Yes, I do.

8 JUDGE TOREM: All right.

9 Can you state and spell your name for the  
10 record, and then I'll turn it over to Mr. Fallquist.

11 THE WITNESS: Ric Boge, R-I-C, B-O-G-E.

12

13 Whereupon,

14

RIC BOGE,

15 having been first duly sworn, was called as a witness  
16 herein and was examined and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. FALLQUIST:

20 Q. Thank you, Mr. Boge, you have already stated  
21 your name, can you please describe your position,  
22 employment.

23 A. Yes, I am a Surface Water Manager for Skagit  
24 County Public Works.

25 Q. And how long have you held this position?

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1 A. A little over three years.

2 Q. And prior to that, how long have you been  
3 employed with Skagit County?

4 A. I've been employed with Skagit County for a  
5 little over 17 years.

6 Q. And did some of that previous experience  
7 pertain to matters that would relate to your current  
8 position?

9 A. Yes. When I was first hired by the County,  
10 in the first year I was hired, 1990, I got involved with  
11 flooding and worked as a public information officer  
12 during that event and in other flood events up until my  
13 role now, Surface Water Manager.

14 Q. Okay. Did you cause to be produced and filed  
15 written direct testimony along with related exhibits  
16 previously referenced in this case on or about November  
17 5th, 2007?

18 A. Yes, I did.

19 Q. At the time it was filed, was that testimony  
20 true and correct?

21 A. Yes.

22 Q. And is it true and correct today?

23 A. Yes.

24 MR. FALLQUIST: I would like to move to admit  
25 Mr. Boge's prefiled direct testimony, Exhibit 40, and

1075

1 all the attached exhibits, 41 --

2 JUDGE TOREM: All right, so Exhibits 41  
3 through 48?

4 MR. FALLQUIST: Yes, Your Honor.

5 JUDGE TOREM: Are there any objections to any  
6 of those exhibits?

7 MS. ENDRES: No.

8 JUDGE TOREM: All right, seeing none, those  
9 will be admitted as well.

10 Cross-exam.

11

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

13 BY MS. ENDRES:

14 Q. Hello, Mr. Boge, how are you doing?

15 A. I'm well.

16 Q. I'm Kelsey Endres and I represent BNSF  
17 Railway Company. I liked how the Judge posed his last  
18 or one of his questions to Mr. Watkinson, so I'm just  
19 going to reiterate it to you here. I want you to assume  
20 that the County or the City together need to plan a  
21 deliberate evacuation because of a weather event that's  
22 going to create a flood, and I know you have testified  
23 about your concern with flooding, this crossing be open  
24 because of your flooding concerns, wouldn't a gate that  
25 could be opened during a major flooding event to allow

1076

1 flood fighting and/or evacuation alleviate your  
2 concerns?

3 A. Not entirely, no.

4 Q. Are you aware that regardless of whether this  
5 crossing is closed in this hearing that freight trains,  
6 the design of the siding track is that long freight  
7 trains can pull over and wait while other trains can  
8 pass them?

9 A. I was not aware of that, but I am now.

10 Q. I'm sorry, I thought that might have been  
11 your concern.

12 I would like you to assume that the crossing  
13 is closed to the public but is open during an emergency  
14 flooding situation, wouldn't that alleviate your  
15 concerns of access to Hickox Road from east of the  
16 railroad tracks?

17 A. Not entirely, no.

18 Q. I guess I'm having a hard time trying to  
19 understand the difference between having an open public  
20 crossing and the open crossing during a flood for the  
21 purpose of flooding concerns in an emergency flooding  
22 situation.

23 A. Well, maybe I'm not tracking you correctly,  
24 but my only concern would be an unexpected break in the  
25 levee in that area where there's little time to go get a

1077

1 key and open a gate.

2 MS. ENDRES: I have no further questions.

3 JUDGE TOREM: Any need for redirect?

4 MR. FALLQUIST: Maybe just one or two quick  
5 questions.

6

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

8 BY MR. FALLQUIST:

9 Q. In any given flood season, even outside of  
10 the flood season, is it possible that flooding could  
11 occur at any time in any location within the vicinity of  
12 Hickox Road?

13 A. Yes, with sufficient moisture under  
14 sufficient conditions, weather conditions, yes, flooding  
15 could occur at any time.

16 Q. And do you always have advance, would we  
17 always have advance notice of this?

18 A. No, we would not, especially in the case  
19 where there were a weak spot in a levee that was not  
20 known about, and even if the river would never have got  
21 up to flood stage but was up just below flood stage for  
22 a long period of time, that could lead to a problem.

23 Q. So this area could flood even if the river  
24 wasn't even at flood stage?

25 MS. ENDRES: Objection, leading, Your Honor.



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1 MR. FALLQUIST: I'm just restating his  
2 testimony.

3 JUDGE TOREM: Overruled.

4 So I think the question was, could the river  
5 flood the area even if it wasn't a flood stage event.

6 A. Yes, it could.

7 BY MR. FALLQUIST:

8 Q. And at that -- in such a situation, would  
9 there be advance notice to open up a locked gate?

10 A. Maybe, maybe not, depending on the  
11 circumstances.

12 MR. FALLQUIST: All right, thank you.

13

14 E X A M I N A T I O N

15 BY JUDGE TOREM:

16 Q. Mr. Boge, you submitted some photographs,  
17 Exhibit 44 and 45, that showed a 1951 flooding, it's  
18 labeled at the bottom, Conway, Washington during  
19 February 1951 flood.

20 A. Correct.

21 Q. Do you know what caused that incident?

22 A. What caused the particular flooding in this  
23 area? It's my understanding it was a levee break just  
24 south of Conway.

25 Q. Do you know if that was caused by an

1079

1 unexpected failure, or was it one in coordination as you  
2 suggested earlier perhaps with excessive rain or  
3 precipitation or moisture?

4 A. I do not know the particulars of exactly why  
5 it failed there.

6 Q. But it was a levee failure just south of  
7 Conway?

8 A. Yes.

9 JUDGE TOREM: Okay, that was all the  
10 questions I had as to what that map or picture  
11 represented.

12 Mr. Rogerson.

13 MR. ROGERSON: I have one question.

14

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

16 BY MR. ROGERSON:

17 Q. You talk about levee failure, in your  
18 prefiled testimony you talked about the age and the  
19 history of levee failures in the area, but I don't think  
20 anybody has ever asked, what are these levees made out  
21 of, what are they constructed out of?

22 A. Well, that's a question the dike district  
23 commissioners can probably best answer. I have been  
24 told it's dirt that was piled up, shoved up, graded up,  
25 and to form some berms, and those berms were gradually

1080

1 built up to become levees. It's my understanding that  
2 most of the levees are constructed of materials from the  
3 vicinity of the levee.

4 Q. Army Corps certify these levees?

5 A. Well, no, they do not certify the levees.

6 Now the Army Corps does enroll levees in what they call  
7 their PL 8499 program, and that's where if you maintain  
8 a levee to their specifications, they will help cost  
9 share if that levee is damaged during a flood event.

10 Q. I misspoke, FEMA to certify a levee to raise  
11 it out of a floodplain out of that risk, are these  
12 levees, have they been certified?

13 A. No.

14

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

16 BY MR. FALLQUIST:

17 Q. I just have one question to follow up with  
18 respect to the 1951 flood event photo, is it your  
19 understanding that that, which depicts the vicinity of  
20 Hickox Road, was that a 10 year event or a 25 year  
21 event?

22 A. Well, according to the data from the USGS and  
23 the Corps of Engineers that translates different flows  
24 into different events, that was about a 25 year event.

25 Q. So you're saying that a 25 year event could

1081

1 inundate the Hickox Road area or has in the past?

2 A. Yes.

3 MR. FALLQUIST: Thank you.

4 JUDGE TOREM: Any other questions for this  
5 witness?

6 MS. ENDRES: Just one moment, please, Your  
7 Honor.

8

9 E X A M I N A T I O N

10 BY JUDGE TOREM:

11 Q. While she's finding that question, Mr. Boge,  
12 your last answer was that the 1951 flood event was a 25  
13 year event and it did flood Hickox Road area?

14 A. Yes.

15 Q. And so you were here for Mr. Watkinson's  
16 testimony and questions?

17 A. I was.

18 Q. So did you hear the questions about the 25  
19 year flood event based on a separate prediction of a  
20 different location of the dike break not flooding Hickox  
21 Road?

22 A. Yeah, I think that that was taken from a  
23 study that's not intended to be used for precisely  
24 identifying where breaks will occur and how deep the  
25 water will get at those areas.

1082

1 Q. So would it be fair from the 1951 event and  
2 photos and your explanation that it came from a dike  
3 failure south of Conway indicate that wherever the water  
4 is going to go is dependent on where the dike will  
5 break?

6 A. Water goes downhill as we said earlier, yes.

7 Q. So it's a pretty high degree of variability  
8 as to where water will go based on where it starts?

9 A. That's right.

10 JUDGE TOREM: Ms. Endres, did you find your  
11 question?

12 MS. ENDRES: I did not.

13 JUDGE TOREM: Okay, anything else for this  
14 witness?

15 Mr. Boge, thank you very much.

16 All right, it's now 3:30, we're not going to  
17 take another break, but we're going to shift gears for  
18 Mr. Jones and his witnesses.

19 Mr. Scarp, is it your understanding that the  
20 next witness then should be Mr. David Boon, is that who  
21 you and Ms. Endres are prepared for next, or did you  
22 have some other order preferred?

23 MR. SCARP: I would like to know exactly who  
24 we have for the West Valley.

25 JUDGE TOREM: My understanding is, maybe they

1083

1 can help me out with a raised hand in the back, is that  
2 David Boon is here, and his son Jeffrey Boon is here,  
3 Mr. DeJong the school principal is here, Mr. DeVlieger  
4 is also here, and Mr. Morrison, so we have five  
5 remaining witnesses.

6 MR. SCARP: Well, I think I can probably  
7 dispense with the cross of Mr. David Boon, I think  
8 there's similar testimony with the other witnesses, so  
9 that would move us down to four.

10 JUDGE TOREM: All right, so Mr. --

11 MR. SCARP: And I'm ready whenever.

12 JUDGE TOREM: Which witness would you like to  
13 cross-examine first, and what I'll do is --

14 MR. SCARP: Doesn't make any difference to  
15 me. Well, if the school principal, Mr. DeJong, is here,  
16 probably has matters to attend to.

17 JUDGE TOREM: He's told me he's cleared his  
18 afternoon. I anticipated that same concern, but his  
19 calendar is to be here for whatever we need. Let me  
20 suggest to you that if you want to take David Boon last  
21 just in case rather than waive his cross-examination.

22 MR. SCARP: That's fine.

23 JUDGE TOREM: If any of the other witnesses  
24 say something you think you can make a point there.

25 Mr. Boon, would you be willing to stay until

1084

1 the bitter end?

2 MR. BOON: We get paid by the hour.

3 JUDGE TOREM: I recognize that you and your  
4 wife have been here for pretty much the whole thing, so  
5 thank you, appreciate that.

6 Let's then for me making a choice since you  
7 all are not making one --

8 MR. SCARP: I'm happy to have Mr. DeJong.

9 JUDGE TOREM: All right, Mr. DeJong, please  
10 come and take the witness stand.

11 MR. JONES: I mentioned this morning I think  
12 that there was an issue that had come to light recently  
13 about the street, and so Mr. DeJong has come -- I'm  
14 asking him to bring with him something that I have not  
15 provided to anyone and that I am seeing for the first  
16 time today, but I would like to at least give him an  
17 opportunity to explain this.

18 JUDGE TOREM: Yes, thank you for the  
19 reminder.

20 MR. JONES: We'll begin by introducing his  
21 testimony, and we can take up the other matter after  
22 that is done.

23 JUDGE TOREM: All right, thank you.

24 (Witness PATRICK DEJONG was sworn.)

25 JUDGE TOREM: Mr. DeJong, can you state and

1085

1 spell your last name for the record.

2 THE WITNESS: Patrick DeJong, it's  
3 P-A-T-R-I-C-K, capital D-E capital J-O-N-G.

4 JUDGE TOREM: My notes indicate that your  
5 prefiled testimony has been marked as Exhibit 79, that  
6 your resume' was marked as Exhibit 80, your job  
7 description as the school principal for the Mount Vernon  
8 Christian School is Exhibit 81, and you have provided us  
9 also 3 photographs of the road in front of the school  
10 showing children crossing and perhaps some crossing  
11 guards, those photographs have been marked as Exhibit  
12 82, and we're going to find out about some potential new  
13 exhibits shortly, but I'm going to have Mr. Jones  
14 inquire as to if anything has changed in those exhibits  
15 to this point and then take up the other item which he  
16 is going to spring on us shortly.

17 MR. JONES: Thank you, Your Honor.

18

19 Whereupon,

20 PATRICK DEJONG,  
21 having been first duly sworn, was called as a witness  
22 herein and was examined and testified as follows:

23

24

25



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

2   BY MR. JONES:

3           Q.     Mr. DeJong, have you had an opportunity to  
4   review your prefiled testimony that was signed on the  
5   5th of November?

6           A.     Yes, I have.

7           Q.     And with respect to the questions and the  
8   answers that were provided by you at that time in your  
9   declaration, do those facts remain true?

10          A.     Yes, with one exception, item 7.

11          Q.     Okay.

12          A.     It says -- I had stated yes to the question  
13   are there plans for revision of Blackburn Road, I said,  
14   yes, the City of Mount Vernon plans to install a  
15   sidewalk inside the curb bounding the Blackburn Road as  
16   it is today, and that's Mount Vernon Christian School is  
17   providing that street revision. That is with the  
18   building project that we have going on, so I guess  
19   indirectly the City is doing it, but the school is  
20   paying for it, so I don't know if that's important or  
21   not.

22          Q.     Okay, well, because of that relationship  
23   between your prefiled testimony and the issue that I  
24   brought up, maybe --

25                   JUDGE TOREM: Let me suggest that before we

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1 get to the new issue and clutter things that with that  
2 revision to page 3 of Mr. DeJong's testimony we now move  
3 admission for the prefiled items 79, 80, 81, and 82, are  
4 there objections, in noting question 7 on page 3 of  
5 Exhibit 79, are there objections to the admissibility of  
6 these items?

7 MR. SCARP: Of his prefiled testimony?

8 JUDGE TOREM: Correct, along with the other  
9 supporting exhibits that came in, 79, 80, 81, and 82,  
10 which included those photographs of the school crossing.

11 MR. SCARP: I don't have any objection to the  
12 photographs.

13 JUDGE TOREM: All right.

14 MR. SCARP: Or his prefiled testimony as  
15 revised.

16 JUDGE TOREM: All right, so those four items  
17 are admitted.

18 Now, Mr. Jones, you wanted to do some  
19 additional questioning of this witness as to a new  
20 Blackburn Road issue that came up?

21 MR. JONES: Yes, if I might do that now, that  
22 would be appreciated.

23 JUDGE TOREM: Please do.

24 BY MR. JONES:

25 Q. Mr. DeJong, as I understand it, Mount Vernon

1088

1 Christian School has a building program that was  
2 mentioned in your answer to number 7?

3 A. That's correct, sir.

4 Q. And today you brought with you some plans  
5 that weren't plans at the time but now have become  
6 actually a construction project; is that right?

7 A. Yeah, at the time of my writing of this,  
8 those plans were not fully finalized, and the  
9 requirements by the City of Mount Vernon for street  
10 improvements since have been finalized, and these are  
11 the civil drawings, so it affects 7, item 7 of my  
12 statement, but it defines it.

13 Q. Just to give the tribunal an opportunity to  
14 understand the issue, is it true that the City of Mount  
15 Vernon as a condition of the improvements that the  
16 Christian School is making has required sidewalks to be  
17 built within the street right-of-way of Blackburn Road  
18 near the school?

19 A. That is correct, including egress crosswalks  
20 and bump outs.

21 Q. Okay. These bump outs, could you describe  
22 those for the --

23 A. We are expanding the street out about 18  
24 inches I think is the drawing requirements, and then  
25 beyond that the bump outs for pedestrian egress go out

1089

1 about 3 1/2 to 4 feet I believe. It takes up a total of  
2 6 feet on the bump outs narrowing of the street.

3 Q. And is this happening on both the north and  
4 the south side of Blackburn Road?

5 A. It just happens on the south side, sir.

6 Q. Okay. In your testimony you had expressed  
7 concern about large vehicles such as --

8 MR. SCARP: Your Honor, if we've gotten past  
9 the part about what the plans and the alterations are, I  
10 guess I would say we're reiterating direct testimony at  
11 this point.

12 JUDGE TOREM: Well, I think I will allow  
13 Mr. Jones and I will anticipate his questioning here to  
14 ask if your concerns that were expressed in the prefiled  
15 testimony are lessened or magnified by the reduction of  
16 street width in front of the school.

17 That was where you were going, wasn't it?

18 MR. JONES: Yes.

19 A. If there is an increase in agricultural or  
20 large traffic vehicles such as Mr. DeVlieger's truck,  
21 yes, I have great concerns for school safety,  
22 particularly between the hours of 7:30 and 8:30 and 2:30  
23 and 4:00 in the afternoon.

24 BY MR. JONES:

25 Q. And was that made worse by this change in the

1090

1 plans that you have described?

2 A. I think it narrows the street, and that could  
3 affect it, or it narrows the usable space on the street.

4 MR. JONES: Okay.

5 JUDGE TOREM: Okay, thank you, let's tender  
6 this witness for cross-examination.

7 MR. JONES: Yeah.

8 MR. SCARP: Thank you.

9

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

11 BY MR. SCARP:

12 Q. Mr. DeJong, do you know Mr. DeVlieger?

13 A. As an acquaintance, yes.

14 Q. He talked to you --

15 A. I know of his business, yes.

16 Q. All right. Have you been talking to him  
17 about the trucks he's going to drive past your school?

18 A. Well, I watch the truck come by the school  
19 now.

20 Q. He drives his trucks by there now?

21 A. Occasionally, yes.

22 Q. All right. Farm equipment?

23 A. No, I do not see much of his farm equipment,  
24 sir.

25 Q. Other farm implements and equipment, do they

1091

1 come by?

2 A. Occasionally.

3 Q. Okay. There's a fair amount of --

4 MR. SCARP: And I would, if I may, approach,

5 Your Honor?

6 JUDGE TOREM: Please.

7 BY MR. SCARP:

8 Q. To the west, and I don't want to -- probably  
9 moving this -- and I will -- there's a little sticker  
10 here that says Blackburn railroad crossing, and over  
11 here is the intersection of Blackburn and Britt, and I  
12 think your school is right there with all those.

13 A. Our school encompasses this 28 to 30 acres  
14 right there.

15 Q. Right. And this building here looks like it  
16 has a bunch of buses parked, is that you?

17 A. No, this is the Mount Vernon public school.

18 Q. Oh, I'm sorry, you're over right in here --

19 A. We are here, and this is being -- this is a  
20 little bit dated. There is a large new additional high  
21 school being built with 250 parking spaces, so we would  
22 anticipate with growth that the traffic on Blackburn  
23 would increase, but our elementary school is right  
24 there.

25 Q. Can you put your finger on your elementary

1092

1 school, I apologize, the blue roof?

2 A. Yes.

3 Q. All right, so you've got --

4 JUDGE TOREM: For the record --

5 MR. SCARP: For the record --

6 JUDGE TOREM: -- this is the buildings closer  
7 to the Blackburn and Britt Road intersection.

8 THE WITNESS: Blackburn and Douglas where our  
9 crossing is now, and there are 330 students who go  
10 across that road in the morning and in the evening,  
11 because there is no other parking.

12 JUDGE TOREM: All right, I understand that,  
13 sir, I'm just trying to get a geographical reference  
14 that's not here, here, and pointing there on your  
15 finger.

16 THE WITNESS: I'm sorry.

17 JUDGE TOREM: Because I don't want to take  
18 your finger for the record, so I will note that it's at  
19 the cross streets you have said, and it's closer to the  
20 Britt side of that map than the Blackburn Road railroad  
21 crossing?

22 THE WITNESS: That is correct.

23 JUDGE TOREM: Okay, I think anybody reviewing  
24 the transcript, not finding your finger there, will be  
25 able to find this on a map. And that was Exhibit 65

1093

1 that we're referring to essentially.

2 MR. SCARP: Thank you, Your Honor.

3 BY MR. SCARP:

4 Q. To the west of that area is a certain number  
5 of parcels of what appears to be farmland; do you see  
6 that?

7 A. Yep.

8 Q. And is it your understanding that those  
9 parcels right there are currently farmed and you see  
10 farm trucks, sprayers, various farm implements that go  
11 back and forth to get to those parcels?

12 A. Not a great deal, because I believe they use  
13 Hickox.

14 Q. All right.

15 A. That's my understanding. I don't think they  
16 like to drive down Blackburn, sir.

17 Q. You don't, all right.

18 A. But that's an opinion.

19 Q. All right. And part of the reason is  
20 because, let me ask you this, is there a speed limit  
21 decrease there in the school zone?

22 A. Yes, sir, when people choose to use it.

23 Q. And what's the speed limit?

24 A. I believe it's 25, sir.

25 Q. When school is in session?



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1 A. Yes.

2 Q. Okay.

3 A. I do not believe we have a lower speed limit  
4 sign there.

5 Q. All right. And you have indicated in your  
6 prefiled testimony, and I'm referring to paragraph 5,  
7 that consequently, right in the middle of that  
8 paragraph, some agricultural traffic for tilling the  
9 soil, planting crops, harvesting crops, and hauling  
10 supplies does travel on Blackburn Road.

11 A. Occasionally, yes.

12 Q. Okay. Have you undertaken an analysis to  
13 determine what would constitute a substantially greater  
14 number of trips if Hickox Road crossing is closed?

15 A. Your question is have I commissioned a study  
16 to do that?

17 Q. Some type of analysis.

18 A. No, other than my observations daily.

19 Q. Okay, and talking with Mr. DeVlieger and some  
20 others?

21 A. No, we have not spoken directly about the  
22 increase. Just knowing farmland, I am assuming if  
23 they're going to not have access to one road, they're  
24 going to come down another, and the closest one is  
25 Blackburn.

1095

1 Q. All right.

2 A. That's my assumption.

3 Q. Most of the farm area that's shown on what we  
4 affectionately refer to as the affected area by the  
5 closure of Hickox Road is all farther south of the Britt  
6 Road where it intersects with Dike Road; do you agree  
7 with that?

8 A. Yes, probably, yeah.

9 Q. Are you aware if trucks and farm equipment  
10 currently use Stackpole Road?

11 A. No.

12 Q. Don't know?

13 A. You know, I'm not out there enough, sir, to  
14 know. I'm in my building most days.

15 Q. Okay. Now you were asked some questions,  
16 Mr. DeJong, about the narrowing of roads, do you know if  
17 the narrowing of roads typically decreases speeds as  
18 opposed to wider, bigger roads for motorists?

19 A. Well, I would assume that that would be the  
20 intent to do that.

21 Q. All right. So do you think that narrowing  
22 the road at Blackburn past your school will have an  
23 overall tendency to decrease motorist speed?

24 A. Possibly.

25 Q. All right. Would you agree with me,

1096

1 Mr. DeJong, that sidewalks definitely provide a safer  
2 environment for pedestrians than not having sidewalks?

3 A. Yeah, that's true, I believe that.

4 Q. So do you believe that the construction of  
5 sidewalks there for your school is going to provide a  
6 significant safety upgrade for your students?

7 A. No.

8 Q. Than having them walk in the street?

9 A. They don't walk down that side of the street.

10 Q. Okay, you're having sidewalks put in in front  
11 of your school on Blackburn?

12 A. It's not by choice.

13 Q. But they're being put in there?

14 A. Yeah. It's not by choice. It's by the  
15 City's requirement and over the objection of the five  
16 land owners that own that land.

17 Q. Do you anticipate that your students and the  
18 people who come in to pick them up will use those  
19 sidewalks?

20 A. Probably not, because they don't park on that  
21 side of the street, sir, they park at the school, at the  
22 church across the street which has angular parking, and  
23 there's parking on Douglas, and currently we're using  
24 the parking lot behind the church for our high school  
25 students. I would admit that that will cease, but I

1097

1 don't think I'm going to be able to change the behavior  
2 patterns of parents.

3 Q. So you anticipate that even though these  
4 sidewalks are being constructed in front of your school  
5 that they won't be used by pedestrians relating to the  
6 ingress and egress of your school?

7 A. I don't think it's going to have a  
8 significant impact.

9 Q. Okay.

10 A. We would not build the sidewalks if the City  
11 wasn't demanding that we do that infrastructure change.

12 Q. Do you have school buses for your school?

13 A. Yes, we do, sir, we share with -- we have a  
14 cooperative agreement with Immaculate Conception  
15 Regional School, which is a local Catholic school, we  
16 run three buses.

17 Q. Do your students get dropped off on Blackburn  
18 or --

19 A. Yes.

20 Q. -- somewhere off the road?

21 A. Yes, right in front of the school, sir.

22 Q. Do they have the red lights and the arms that  
23 stick out when you let them out?

24 A. Well, in this process of -- part of the  
25 process is that we have to build a entrance and exit

1098

1 driving circle for our buses.

2 Q. So that the school children will be dropped  
3 off in a driving circle that will be inward toward the  
4 school from the road?

5 A. Yes.

6 Q. You sound puzzled, my word inward probably  
7 threw you, didn't it?

8 A. Well, they have to circle around, you have to  
9 -- the buses come down Blackburn headed west. Then they  
10 have to turn and cross the eastbound traffic and swing  
11 into our lot. It's going to be tricky enough to do  
12 that, but that circular drive that we are being required  
13 to make will allow our students to be exited off of the  
14 road in a safer manner.

15 Q. Okay.

16 A. Although we have very -- our numbers are  
17 pretty low in transportation.

18 Q. Where did you let those kids off before you  
19 were building this traffic circle, let them off on the  
20 street?

21 A. Well, basically yes, it's about an 8 foot  
22 indentation in the street there.

23

24

25

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1 EXAMINATION

2 BY JUDGE TOREM:

3 Q. Sir, is that on the north side or the south  
4 side of Blackburn?

5 A. It's on the south side. It is actually a  
6 portion of our property.

7 Q. And the new turning driveway is also located  
8 on the south side?

9 A. Yes, sir, that's correct.

10 Q. So did you ever drop kids off on the north  
11 side and have them cross the street?

12 A. The buses don't. The parents do, because I  
13 will not allow them to pull in there, that's a nightmare  
14 for safety, because you got kids running in between  
15 buses.

16

17 CROSS - EXAMINATION

18 BY MR. SCARP:

19 Q. Do you have crossing guards?

20 A. Yes and -- yes, we do.

21 Q. Have you had any incidents of injuries with  
22 regard to your students and the motor vehicles that drop  
23 them off or pick them up?

24 A. Not at this time, not that I know of.

25 Q. All right, and so now the street's going to

1100

1 be a little narrower, so for any kids crossing the  
2 street it will be a shorter distance?

3 A. From where?

4 Q. From the other side of the street, the north  
5 side.

6 A. Well, the street's not moving, I'm missing --  
7 I'm not tracking your question.

8 Q. Isn't the street getting narrower, wasn't  
9 that your testimony?

10 A. Yeah, because of the bump out, yeah, that's  
11 correct, and 18 inches of parking space.

12 Q. So it will be a shorter distance for them to  
13 cross the street once your improvements are in place?

14 A. Yeah, they will have to be on the street less  
15 time if that's your question, yes.

16 Q. Now, Mr. DeJong, do you think the narrower  
17 streets and the slower speed in front of the school, do  
18 you think that would discourage more large farm vehicles  
19 from wanting to come through there during the time when  
20 you've got kids being dropped off?

21 A. Probably. I don't think they want to mix  
22 with children and traffic and kids. I don't think that  
23 they want to.

24 MR. SCARP: All right, that's all I have,  
25 thank you, Mr. DeJong.

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1 JUDGE TOREM: Mr. Jones, any need for  
2 redirect on this?

3 MR. JONES: No, Your Honor.

4 JUDGE TOREM: Okay, any other questions for  
5 Mr. DeJong?

6 MR. JONES: I guess there is one thing,  
7 excuse me, I didn't move the admission of his exhibits.

8 JUDGE TOREM: Well, you did move the  
9 admission of 79 through 82, I particularly don't think I  
10 need those whole plans as part of the exhibit, so I  
11 would almost appreciate if you wouldn't move those into  
12 admission, because you would have to lay a foundation  
13 and tell me how relevant it is.

14 MR. LOCKWOOD: And that would be over our  
15 objection, Your Honor.

16 JUDGE TOREM: I don't think we need to have  
17 you make that objection.

18 MR. JONES: I appreciate counsel indulging us  
19 to let this issue be included in the testimony at this  
20 time.

21 JUDGE TOREM: Let me thank you for making us  
22 aware of the new plans, but the level of detail I see  
23 there I think I have got all the information I need, I  
24 am going to be doing a driving tour before I leave town  
25 this week and be able to see the current state of the



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1 roadway. And having seen recent school improvements in  
2 other jurisdictions that include bump outs, I know what  
3 you're talking about, I can imagine where those will be,  
4 and I definitely will be pausing when I go past your  
5 school later this week and have a chance to look at the  
6 current situation and imagine what the future narrowing  
7 of the roadway will be, so I think that's sufficient  
8 rather than take these plans, which are clearly not  
9 uniform in size, home with me.

10 MR. SCARP: Your Honor, before the witness is  
11 excused, I did forget one question.

12 JUDGE TOREM: Please.

13 MR. SCARP: I'm sorry, Mr. DeJong.

14 THE WITNESS: That's all right.

15 BY MR. SCARP:

16 Q. The new high school parking lot for 250 cars,  
17 how far from your school is that approximately?

18 A. It's on the same property.

19 Q. All right, and is --

20 A. It's on the back side of the housing area.

21 Q. So is that designed to take additional cars  
22 off the street that are otherwise parked in the  
23 vicinity?

24 A. That have parked at the church, yes, it's  
25 going to remove those high school students, and that's

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1 what it's designed for. Or for large events, I believe  
2 the City ordinance talks about 1 space for every 4  
3 people, and our largest seating capacity is 1,000 in the  
4 gymnasium, so yes.

5 MR. SCARP: Understand, thank you.

6 JUDGE TOREM: Thank you, sir, thank you very  
7 much.

8 Next witness will be Mr. Jeffrey Boon.

9 (Witness JEFFREY BOON was sworn.)

10 JUDGE TOREM: Can you state and spell your  
11 name for the record.

12 THE WITNESS: Jeffrey Boon, J-E-F-F-R-E-Y,  
13 B-O-O-N.

14 JUDGE TOREM: Mr. Boon, I understand your  
15 exhibits that were submitted in advance were Exhibits 71  
16 your prefiled direct testimony, Exhibit 72 a map of your  
17 family and business residence, and Exhibit 73 is another  
18 map showing the railroad siding extension area, and  
19 Exhibit 74 a variety of I think 7 pages of photographs  
20 of some farm equipment, so I will ask Mr. Jones to walk  
21 you through that now.

22 MR. JONES: Yes, thank you, Your Honor.

23

24

25

1104

1 Whereupon,

2 JEFFREY BOON,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

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

7 BY MR. JONES:

8 Q. Mr. Boon, have you had a chance to look at  
9 your prefiled testimony again today?

10 A. Yep.

11 Q. And upon review, does it appear to you that  
12 the facts which were related in answer to the questions  
13 in your prefiled testimony signed in November of 2007  
14 continue to be true?

15 A. Yep.

16 Q. Any changes that you would like to make at  
17 this time?

18 A. No.

19 MR. JONES: Okay, I would move the admission  
20 of the prefiled testimony of Jeffrey Boon along with the  
21 map exhibits and the photographs, I believe that in his  
22 testimony he describes those exhibits.

23 JUDGE TOREM: Any objection?

24 MR. SCARP: No objections, Your Honor.

25 JUDGE TOREM: Exhibits 71 through 74 are

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1 admitted.

2 Mr. Scarp, are you oriented towards this  
3 witness?

4 MR. SCARP: I am, Your Honor.

5

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

7 BY MR. SCARP:

8 Q. Good afternoon, Mr. Boon, I'm Bradley Scarp,  
9 and I represent BNSF Railway Company. I was looking at  
10 your prefiled testimony, and I noticed that you said in  
11 there that currently your trucks at times currently use  
12 Stackpole Road to get to the Conway frontage?

13 A. No.

14 Q. Not very often?

15 A. No.

16 Q. Okay. Do you ever go across Stackpole?

17 A. Very rarely, just to visit the neighbor or  
18 something like that.

19 Q. Okay you note in here that you would be  
20 concerned, and I'm looking at page 6 of your prefiled  
21 testimony, that you would be concerned about our  
22 equipment and employees crossing at Stackpole where  
23 there is no warning signal for the train coming or  
24 going. If Stackpole -- and I'm sorry, on the following  
25 page you have used the term unregulated crossing, is

1106

1 that what you mean by that, where it doesn't have gates  
2 and lights?

3 A. Yes.

4 Q. Okay. And if the crossing at Stackpole had  
5 gates and lights, would that alleviate your concern  
6 about safety for your equipment and your employees?

7 A. I would say if we were forced to use the  
8 road, it would help, but it's still extremely dark, and  
9 in foggy times it's hard to even see if there's anything  
10 coming because it's out in the middle of a couple fields  
11 basically.

12 Q. Stackpole is?

13 A. (Nodding head.)

14 Q. But I'm talking about the safety concern of  
15 what you said was unregulated as opposed to Hickox which  
16 currently has gates and lights, and if those warning  
17 device upgrades were there, would that alleviate that  
18 concern for you?

19 A. Yes.

20 Q. Okay. You have some other concerns obviously  
21 from a business standpoint, and I would like to address  
22 those, Mr. Boon. At page 4 of your prefiled testimony,  
23 you talk about the issue of being able to remove your  
24 cattle from a danger posed by flooding even if you had  
25 warning. And is that because even if you had warning,

1107

1 you would have a heck of a lot of work on your hands to  
2 get all those cattle into trucks and move them around if  
3 you were going through Stackpole?

4 A. No, actually the biggest impact is that we  
5 have to wait until the absolute end because it could --  
6 moving of cattle is extremely difficult and not  
7 necessarily -- not difficult, but it's extremely hard on  
8 the cows. Cows can get hurt, get killed, we lose all  
9 the production on those cows for several weeks after we  
10 move them.

11 Q. Stress?

12 A. Because of stress. And we also -- we would  
13 have nowhere to go with them because our farm -- we  
14 would have to be hauling them all over the place trying  
15 to find a place to house them, and so they would be  
16 making long trips. And so the longer the trip, the  
17 harder it is on the cows.

18 Q. So what you would like to do is go right down  
19 Hickox Road and across that crossing and out?

20 A. Yes.

21 Q. All right.

22 A. The more corners you take, it causes more  
23 stress on the cows.

24 Q. All right. Now if this crossing, and I'm  
25 only talking about from an evacuation standpoint as you

1108

1 have just described, if this crossing had the  
2 availability for use during a circumstance such as a  
3 predicted evacuation or actual evacuation, declaration  
4 of an emergency whatever that case may be, would that  
5 satisfy your concern if you had access to that crossing  
6 for purposes of evacuation?

7 A. Yeah. But like somebody else said is that,  
8 you know, as long as they're there at 2:00 in the  
9 morning when it's time to move. And it's going to take  
10 -- it would take us a very long time to move all our  
11 cows, and so we would have to be started -- and the  
12 timetable just wouldn't work out.

13 Q. Well, in the amount of time, and I'm not  
14 going to ask you because I'm assuming you have never had  
15 to evacuate all your cattle for a flood; is that  
16 correct?

17 A. Not at this location.

18 Q. Okay.

19 A. I have been involved with it at another  
20 location.

21 Q. All right. And it's a time consuming and  
22 laborious process to get those cattle into trucks and do  
23 all that?

24 A. Mm-hm.

25 Q. Not to mention dangerous?

1109

1 A. Mm-hm.

2 Q. And so it's not something that is going to  
3 happen, you're not -- it's not like yelling at the kids  
4 saying get in the car, we're going?

5 A. No.

6 Q. All right. With that in mind, if you worked  
7 under the assumption that this would be part of a  
8 process of a larger flood evacuation and flood fighting  
9 operation that affected more than just West Valley  
10 Farms, would that satisfy your concerns that somebody if  
11 that word was given had opened the access for that  
12 crossing?

13 A. Yeah.

14 Q. All right.

15 A. As far as the flood pertains.

16 Q. That's all my question was limited to, and I  
17 know you have separate concerns, and I'm going to  
18 address those.

19 Mr. Boon, do you drive or does your farm  
20 operation require the use of, whether it's independent  
21 haulers or your own equipment, any 3-axle rigs?

22 A. Yes.

23 Q. Okay. And are those just comparatively  
24 speaking a little harder to handle, maneuverability is  
25 worse?



1110

1 A. Yes, they're wider vehicles.

2 Q. Okay. Now I see that you talked in your  
3 prefiled testimony still at page 4 that a truck with  
4 driver is in the neighborhood of \$75, \$80 bucks an hour  
5 if you're paying for the service. I assume that's some  
6 part of your operations?

7 A. As far as what?

8 Q. I'm not sure, I guess that was the question.

9 A. The reason that's in there is because if we  
10 have to drive 4 miles around that we have to hire these  
11 people extra. Because in order to get things harvested  
12 in a timely fashion, we need to be able to continuously  
13 go, and our harvester can't stop, and the only way to do  
14 that is to hire people, extra trucks to get around the  
15 extra 4 miles.

16 Q. Whether you're paying for that for guys that  
17 are already there or you're hiring contracting that out,  
18 that's a rate that you're using to pencil that into your  
19 business?

20 A. That's the going rate.

21 Q. All right. Now you have calculated that if  
22 you have to go around, take a left turn out of your  
23 farm, head up to Dike, go down a mile and come back  
24 across Stackpole; is that correct?

25 A. Yes.

1111

1 Q. Now have you ever -- I have seen your folks  
2 here a lot, but I confess I haven't seen how much of  
3 this proceeding you have been here for, do you  
4 understand that the proposed siding extension going  
5 southward across Hickox down towards Stackpole, and by  
6 siding I'm talking about the railroad siding track, is  
7 designed for big freight trains to pull in there and be  
8 able to allow other trains, both passenger trains and  
9 freight trains, to meet and pass?

10 A. Yes.

11 Q. Okay. And that part of the issue here is  
12 that those trains will be along that track and may sit  
13 there for an extensive period of time, could be a couple  
14 hours, and there was some testimony that if a train goes  
15 dead, which is a parlance for the crew has to get off  
16 and you have to bring in a new crew by law, that it  
17 could sit there for hours. Are you aware of what we're  
18 talking about when we talk about the trains that will  
19 sit there?

20 A. Yeah.

21 Q. Okay. Now I want you to assume that somebody  
22 comes out of your farm and takes a right and goes down,  
23 and as they approach the railroad tracks at the Hickox  
24 Road crossing that the gates come down and that that  
25 3-axle rig or something is rolling up and the gates come

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1 down and sit there and stop and the lights are flashing  
2 and a big train rolls up and stops, what do you think  
3 you would tell your driver to do knowing that this thing  
4 could be sitting there for hours?

5 A. Well, that's assuming that you get the  
6 crossing or you get the siding put in, but I would  
7 probably have to tell him to try to turn the truck  
8 around and go around, and then that stops the whole  
9 process.

10 Q. Okay. Would that be a problem with some of  
11 that equipment?

12 A. Yes.

13 Q. All right.

14 A. Because it's not just 3, only 3-axle  
15 machines, we have some semis also.

16 Q. Okay. And that's not a terribly wide, wide  
17 road, and it's slightly elevated there as it gets close  
18 to the crossing, isn't it?

19 A. Mm-hm.

20 Q. That was a yes?

21 A. Yes.

22 Q. Sorry, she's writing all those things down,  
23 that's why.

24 It would be problematic if that was an  
25 ongoing from an economic standpoint to have a driver sit

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1 there in your truck and wait hopefully for that train to  
2 move soon, wouldn't it?

3 A. Yeah. But I mean if the crossing is closed,  
4 we probably wouldn't be sending them on a right-hand  
5 turn.

6 Q. But I'm talking about if the crossing had  
7 gates that allowed it to be open but you could run up  
8 there and have to face that, it would cause similar  
9 economic problems?

10 A. Yes.

11 MR. SCARP: All right, those are all the  
12 questions I have, Your Honor.

13 Thank you, Mr. Boon.

14

15 E X A M I N A T I O N

16 BY JUDGE TOREM:

17 Q. Mr. Boon, let me ask if following Mr. Scarp's  
18 hypothetical, let's even assume that these 4 quadrant  
19 gates that have been discussed otherwise are put in and  
20 the crossing is left open, but there is the distinct  
21 possibility if BNSF got a waiver on the 10 minute  
22 regulation, which I think Commission Staff may even have  
23 encouraged them through Mr. Zeinz to have applied for,  
24 but they could use the siding as described by Mr. Scarp,  
25 that there may not be a lot of predictability as to

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1 whether it's just meeting and passing freight trains or  
2 meeting and passing passenger trains, but the operation  
3 of that crossing would be such that with some frequency,  
4 whether in response to weather events and track closures  
5 elsewhere or just in response to BNSF operational needs,  
6 longer freight trains pulled in and blocked that for my  
7 example let's just use twice a month, we don't know if  
8 that's back to back days or in the same week but twice a  
9 month, and it came during harvest season and you needed  
10 to get that corn chopper operation you described so well  
11 in your prefiled testimony going, how would you plan for  
12 that?

13 A. I would have to try to find trucks from  
14 other, hired trucks you know, from other areas. And  
15 trucks are extremely hard to find that time of the year  
16 because everyone else is also harvesting at the same  
17 time. And there's many times in the fall where we only  
18 have a 1 week or a 3 day window, and we have this open  
19 bunker feed that's subject to mold and rain and  
20 everything else, and it would seriously hamper what we  
21 would be able to do, especially if that train pulled in  
22 on the second day after we started filling that bunker  
23 and we weren't able to find trucks to help us keep the  
24 harvest going, we could potentially lose several hundred  
25 thousand dollars worth of feed from mold and spoilage.

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1 Q. So if I'm understanding you correctly, even  
2 if the crossing was left open, because of the  
3 possibility of blockage, economically you might have to  
4 plan to go around even if that was an option?

5 A. Yeah, I guess we would -- it would always  
6 have to be in the back of our mind because being so  
7 unpredictable.

8 Q. And because of what you have described as the  
9 nature of keeping the chopper going, it can't pause, you  
10 need a steady supply of empty trucks to fill, no matter  
11 what, whether the crossing is closed or open, if you're  
12 going to be responsible with your business planning, you  
13 will have to try to hire sufficient trucks for the  
14 longer route?

15 A. Yeah, but then -- yeah.

16 Q. What I'm trying to ask is, is there a way  
17 that I can in your point of view, assuming the siding is  
18 going to be put in as you said, that's not my option,  
19 that's somebody else's, but in response to the siding,  
20 how do I accommodate the railroad public safety  
21 concerns, the City flood evacuation concerns, and the  
22 Boon family farms concerns for all and allow you not to  
23 incur these extra business expenses; do you have a  
24 proposed solution that I should consider?

25 A. Put a siding out in Conway.

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1 Q. All right, well, that goes outside my  
2 hypothetical, I recognize that. I'm sure if I was  
3 sitting in Conway, they might recommend Mount Vernon.

4 A. Well, it would only affect a couple people  
5 down there, so it just seems short sighted to be putting  
6 it up in the hottest area of the -- I mean right by  
7 town, it doesn't really make sense.

8 Q. All right, I understand your concerns, but if  
9 I understand correctly also you don't have a, assuming  
10 the siding is where it's going to be probably, you don't  
11 have a solution that I can make work for you whether  
12 it's open or closed, private or public?

13 A. Is there any way that they can tell us  
14 whether a train is going to sit there for 8 hours?

15 Q. That may be possible, but I don't think that  
16 I as a judge for the Commission can condition an open or  
17 closed siding based on continual communications from  
18 Mr. Scarp's client to the neighbors. It may possibly be  
19 that BNSF will seek to open a toll-free number for which  
20 you can call to see how long that train is planning on  
21 being there, but that would be up to railroad  
22 operations, and it may be something community  
23 relationswise that you seek to approach the railroad to  
24 consider. That's outside my jurisdiction as well.

25 JUDGE TOREM: Any other questions for this

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1 witness?

2 All right, thank you, Jeffrey Boon.

3 It's now about 4:10, I want to just take a 5  
4 minute comfort break, and then we're going to press on  
5 with the remaining witnesses. We have Mr. DeVlieger and  
6 Mr. Morrison left and maybe David Boon as well if you  
7 choose to call him, unless at this point having heard  
8 from his son you want to waive cross.

9 MR. SCARP: I don't have any need to cross  
10 Mr. David Boon.

11 JUDGE TOREM: All right, then let me ask the  
12 parties as to Exhibit 67, which is the prefiled direct  
13 testimony of David Boon, Exhibit 68 another map of the  
14 family residence and business, Exhibit 69 a map of the  
15 railroad siding extension, and Exhibit 70 the  
16 photographs of the farm equipment that came with David  
17 Boon's prefiled testimony, is there a stipulation then  
18 that those should be admitted without an opportunity for  
19 his cross-examination?

20 MR. JONES: I would so stipulate.

21 MR. SCARP: I'm sorry, I was talking, your  
22 Honor.

23 JUDGE TOREM: Yes, are you stipulating while  
24 you're talking that these exhibits will come in from  
25 David Boon?



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1 MR. SCARP: Are these the photographs and --

2 JUDGE TOREM: From David Boon.

3 MR. SCARP: Oh, yes, I'm stipulating,  
4 absolutely.

5 JUDGE TOREM: All right, then those Exhibits  
6 are admitted, 67 through 70 for those of you keeping  
7 score at home, and we will take a 5 minute break and  
8 come back with either Mr. DeVlieger or Mr. Morrison and  
9 wrap things up.

10 (Recess taken.)

11 JUDGE TOREM: It's a little after 4:20, we're  
12 back on the record, I've been informed by Mr. Scarp that  
13 as it stood when he told me he was going to waive his  
14 ability to cross-examine Mr. DeVlieger and Mr. Morrison.  
15 Despite that, Mr. DeVlieger has taken the witness stand  
16 because Mr. Jones advises the tribunal there may be a  
17 correction or clarification to Exhibit 83, which is  
18 Mr. Devlieger's prefiled testimony. Is that correct,  
19 sir?

20 MR. JONES: Yes, I wanted to give  
21 Mr. DeVlieger a chance to explain the number of trucks,  
22 I think he has had over time different numbers of  
23 trucks, and so it's quite simple. I disclosed that to  
24 Mr. Scarp at least, I don't know about Mr. Lockwood, and  
25 just wanted to give him an opportunity to clarify that.

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1 I don't know that it makes a great deal of difference,  
2 but it was a difference between his prefiled testimony  
3 and --

4 JUDGE TOREM: All right, let me swear in  
5 Mr. DeVlieger.

6 (Witness JOHN DEVLIEGER was sworn.)

7

8 Whereupon,

9 JOHN DEVLIEGER,

10 having been first duly sworn, was called as a witness  
11 herein and was examined and testified as follows:

12

13 E X A M I N A T I O N

14 BY JUDGE TOREM:

15 Q. Can you state and spell your last name for  
16 us.

17 A. John DeVlieger, that's J-O-H-N, DeVlieger is  
18 D-E capital V as in Victor, L-I-E-G-E-R.

19 Q. And, sir, did you go over with your attorney,  
20 Mr. Jones, what I have marked as Exhibit 83, four pages  
21 of your prefiled direct testimony?

22 A. Yes, that's correct.

23 Q. And I understand that at the time it was  
24 signed in November of last year, it was true and  
25 correct; is that --

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1           A.     Yes, we actually sold a truck so that's why  
2 the number of trucks is incorrect.

3           Q.     All right so let me find that paragraph.

4           JUDGE TOREM: Mr. Jones, which is it?

5           MR. JONES: It is --

6           JUDGE TOREM: Paragraph 2 where it says, we  
7 have three trucks that are hauling product?

8           MR. JONES: Right.

9 BY JUDGE TOREM:

10          Q.     All right, so, Mr. DeVlieger, how would you  
11 modify this regarding that you have three trucks, how  
12 many do you have now?

13          A.     Well, my original statement said four trucks,  
14 and this is correct, I have three trucks as of this  
15 time.

16          Q.     So why don't you briefly review the rest of  
17 this testimony and see if there's any other reference to  
18 the number of trucks.

19                 MR. JONES: With that being clarified, and  
20 maybe I misunderstood what Mr. DeVlieger was saying  
21 because it looks like it's a matter of timing rather  
22 than actually the number being different, so I would  
23 offer his prefiled testimony at this time.

24                 And with the Court's indulgence, Mr. Morrison  
25 is here, stipulation has been made by Mr. Scarp as to

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1 the admissibility of his testimony, maybe we can just  
2 move for the admission of both these prefiled testimony  
3 items with their attached exhibits.

4 JUDGE TOREM: And in this case, there are no  
5 attached exhibits, Exhibit 83 is 4 pages,  
6 Mr. DeVlieger's testimony, he has now confirmed for us  
7 that it is in fact correct. It may be given the length  
8 of time that's gone on with this case since the petition  
9 and the active involvement of the public in  
10 communicating with the Commission with comments or  
11 otherwise that a 4 truck comment came in prior to this  
12 November 3 truck testimony. I will probably be able to  
13 find that when I review the rest of the public comments  
14 again later, but I assume, Mr. DeVlieger, that your  
15 testimony is accurate?

16 THE WITNESS: Yes, this is accurate, we have  
17 3 trucks currently working, yes.

18 JUDGE TOREM: All right, any objection to  
19 Exhibit 83, which is Mr. DeVlieger's testimony?

20 All right, none, it's admitted.

21 Thank you, sir.

22 THE WITNESS: Thank you.

23 JUDGE TOREM: And I understand then there's a  
24 stipulation, so Mr. Morrison, Darrin Morrison, won't  
25 have to testify, are there any objections as to allowing

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1 his testimony, which is a 5 page, barely 5, carryover of  
2 Mr. Jones's signature block to the fifth page, 5 pages  
3 of prefiled testimony, no other supporting documents,  
4 any objection to that?

5 MR. SCARP: No objection.

6 JUDGE TOREM: All right, so Exhibit 84 is  
7 admitted.

8 MR. JONES: And we also have, Your Honor,  
9 David Boon, because he was kind of put at the end by  
10 choice.

11 JUDGE TOREM: Yes, and just before the last  
12 break we did admit Exhibits 71 through 74 I think it was  
13 and stipulated to those, or 67 through 70, sorry, those  
14 were David Boon's exhibits, so I think for Western  
15 Valley Farms all of your exhibits have come in.

16 MR. JONES: The exception would be Richard  
17 Smith, who is scheduled for the 31st of January by  
18 telephone to confirm his testimony.

19 JUDGE TOREM: That's correct.

20 MR. SCARP: Did that include David Boon's  
21 testimony?

22 JUDGE TOREM: Yes.

23 MR. SCARP: All right, no objections  
24 obviously.

25 JUDGE TOREM: So it appears that our

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1 testimonial portion of today's hearing is essentially  
2 completed. Let me just review some housekeeping issues  
3 with the attorneys. I know that Mr. Rogerson probably  
4 is exhausted yet has to suffer through a city council  
5 meeting this evening, so we'll try to be quick.

6 I have asked counsel about Exhibit 104 that  
7 was previously proffered as potentially useful during  
8 cross-examination, and I have been told that those  
9 overview photos that show I think potential turnarounds  
10 on Hickox Road, that exhibit was not used and will not  
11 be suggested as being offered for admission, so I have  
12 made a note that Exhibit 104 is not being offered.

13 Staff had potentially use for Exhibit 107,  
14 which was the railway's response to Staff Data Request  
15 Number 2, and as far as my notes show, that was under  
16 Mr. MacDonald, I don't know that, Mr. Thompson, Exhibit  
17 107 was referenced or utilized, do you want to check  
18 that Exhibit 107?

19 MR. THOMPSON: I don't believe we referred to  
20 it, and the information I needed was in 108, so.

21 JUDGE TOREM: All right, so you're not  
22 offering that one?

23 MR. THOMPSON: No.

24 JUDGE TOREM: All right.

25 Now we did admit I believe Exhibit 126 with

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1 the grade deck, or we at least talked about it, does  
2 anybody remember if we formally admitted those  
3 spreadsheets, or did we get lost in the greater than 1,  
4 less than 1 number discussion?

5 MR. JONES: That was 126 I think.

6 JUDGE TOREM: That was 126, I'm trying to  
7 recall --

8 MS. ENDRES: I do have 126 checked off.

9 JUDGE TOREM: All right, so if it wasn't on  
10 the record previously, 126 had been offered, I will  
11 formally note that it's admitted now.

12 There had been some other DOT inventories,  
13 Mr. Thompson, Exhibits 112, 113, and 114 as of December  
14 18th, 2007, that were marked but never referred to. Is  
15 that an oversight, or is that correct?

16 MR. THOMPSON: They were never referred to.

17 JUDGE TOREM: Did you want to hold off on  
18 those just in case Mr. Norris comes back on January  
19 31st?

20 MR. THOMPSON: Let's do that.

21 MS. ENDRES: Is that the --

22 MR. THOMPSON: The grade crossing inventory  
23 information for each of the three crossings. And  
24 actually I was just looking for an accident prediction  
25 number on there, which it does not actually contain I

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1 discovered later, so.

2 JUDGE TOREM: All right, so those three  
3 documents I would anticipate we won't admit, but in case  
4 Mr. Norris is called back for further exam at the end of  
5 the month, I will let you make that decision at that  
6 time.

7 The other testimony as far as the City's  
8 exhibits go, Exhibits 16 and 17 for Mr. Liou will be  
9 offered and most probably admitted on January 31st when  
10 he testifies. All of the rest of the City's items were  
11 offered and admitted.

12 As far as the County's witnesses, all of  
13 those were offered and admitted today.

14 For the Commission, all of Mr. Johnston's and  
15 Mr. Curl's exhibits were offered and admitted, but  
16 Mr. Zeinz of course is held in abeyance until the end of  
17 the month when he is ready to appear.

18 And I think we just went through for Western  
19 Valley Farms, it's the same situation, all were offered  
20 and admitted except for Mr. Smith's two documents, those  
21 will be handled at the end of next month as well.

22 As to the cross-examination exhibits,  
23 Ms. Endres, from the railway, Exhibit 115, the Skagit  
24 County Natural Hazard Mitigation Plan, the excerpts from  
25 there were not referenced nor were the Skagit County



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1 public bulletins from the 2006 flood, I think those were  
2 press releases. Was there an intent to offer those at a  
3 later date for either Mr. Liou or Mr. Smith?

4 MS. ENDRES: There may be, Your Honor.

5 JUDGE TOREM: Okay, so we'll hold those out.

6 And Mount Vernon Fire Department Flood  
7 Handbook excerpts, Exhibit 118, wasn't referenced nor  
8 were Exhibits 120 through 125, various maps. I think  
9 you referenced MapQuest maps without telling me if that  
10 was the ones in 121 or in 136, it was just a casual  
11 reference but without any proffer from an evidentiary  
12 matter. Any concern about those Exhibits 120 to 125 or  
13 136 and 137 becoming part of the record today, or are  
14 you if you need them offered in, they will come in  
15 later?

16 MR. SCARP: I'm sorry, what is 120, oh, 136  
17 is out.

18 JUDGE TOREM: Okay, so that won't be offered?

19 MR. SCARP: We're not going to make everyone  
20 carry their stack of MapQuest.

21 JUDGE TOREM: I'm glad, that was a lot of  
22 paper.

23 137 was something about the Conway and  
24 Cedardale fire stations.

25 MR. SCARP: Oh, you know, I guess we would

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1 just reserve those, I'm not sure, but --

2 JUDGE TOREM: Okay, very well.

3 Those are all the evidentiary housekeeping  
4 items I've got. We are committed and I will send out a  
5 notice with the following deadline dates, so look for  
6 this probably coming to you by E-mail and regular mail  
7 next week. Our next hearing date will be January 31st  
8 at 9:00 in the morning, I believe the Goldsmith Building  
9 in Seattle. At that time we will have the three  
10 witnesses we have discussed, Mr. Zeinz, Mr. Liou, and  
11 Mr. Smith by telephone, and perhaps if I'm notified  
12 other witnesses. That would potentially include  
13 Mr. Norris, we left the door open for a further  
14 discussion based upon Mr. Bell's testimony today. If  
15 anybody feels that's necessary, please work it out, and  
16 we'll have a limited examination of that witness if I  
17 have notice in advance. So send me a quick motion, and  
18 indicate hopefully it's an agreed motion so we can add  
19 him formally to that docket, and I will amend the  
20 notice, but at this time it's three witnesses. The  
21 possibility of a fourth is going to require paperwork on  
22 your part and a revision on my part.

23 The following day on February 1st is the  
24 deadline for not only public comment but also the  
25 deadline for counsel to file with the Commission any new

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1 exhibits that were offered and admitted at this basis,  
2 so any of these, I think I made it clear earlier on that  
3 exhibits could be offered and admitted but they needed  
4 to be E-filed, so any of those new cross-examination  
5 exhibits that came up Monday morning, so if they're  
6 after number 126, then you know if it's after 126 or  
7 some other ones you numbered for direct exam for some of  
8 the other witnesses they need to come in. And I  
9 encourage you to go through your list, and if you have  
10 questions, send me an E-mail, and I will tell you if  
11 that one has already been filed or not. And I say that  
12 simply because there were some like Exhibit 95 for  
13 Mr. Gordon, that's not greater than 126 so you can't  
14 just rely on that rule. There's certain exhibits, and  
15 if you have questions, I can try to help you out for  
16 housekeeping purposes. I don't want an incomplete  
17 record to come back and haunt anybody when eventually  
18 someone is disappointed with my decision here and it  
19 gets appealed and something is not there for the appeal.  
20 So the deadline to get that done is February 1st.

21           February 15th is going to be your deadline  
22 for posthearing briefs. When you read that set of  
23 briefs that come in from the parties, it's a holiday  
24 Monday the following week for President's Day, but you  
25 will still need to decide by Thursday night, Friday

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1 morning if you're going to petition for supplemental  
2 response briefs to anything that might be a surprise in  
3 the arguments that come in. When 5:00 ticks by on  
4 February 22nd, if I hear nothing, there won't be  
5 supplemental briefs even if at 5:05 the E-mail comes in,  
6 that's going to be the deadline, close of business on  
7 February 22nd.

8           And I think those are all the items that are  
9 going to be in that notice that go out to you. I  
10 anticipate tomorrow sometime I will get out and do the  
11 driving loop unless the weather is so poor that I need  
12 to come back another day, I have no idea.

13           Are there any other housekeeping items we  
14 need before we close today?

15           It's only 4:35, we could run this out until  
16 5:00, guys.

17           All right, I see none, so we are adjourned  
18 with this stage of the evidentiary hearing at 4:35. We  
19 will reconvene the other witnesses January 31st at 9:00  
20 a.m., thank you all.

21           (Hearing adjourned at 4:35 p.m.)

22

23

24

25