

**5. Proposed Language of Final Order.**

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WVFBNSF respectfully requests the Commission amend the initial order to reflect the record and testimony and suggests the following changes and omissions:<sup>1</sup>

<i>Initial Order</i>	<i>Original Language</i>	<i>Proposed Language</i>
¶ 8	. . . (4) BNSF negotiate and separately enter into two private crossing agreements for limited continued use of the Hickox Road grade crossing, the first with the local government entities . . . , and the second with Western Valley Farms in order to accommodate the seasonal harvesting and related cross-highway transportation of its corn or other feed crops.	<del>. . . (4) BNSF negotiate and enter into a private crossing agreement for emergency use only of the Hickox Road grade crossing with the local government entities party to this case (City of Mount Vernon, Skagit County, and Skagit County Fire District No. 3 in order to accommodate response to emergencies affecting the health, safety, and welfare of the surrounding communities.</del>
¶ 45	. . . If the Hickox Road crossing were closed, the trucks would be forced to use the Stackpole Road crossing, adding several minutes to each trip and a distance of about four miles each way, thus increasing costs. <u>Boon's and their employees can see when the crossing is blocked and would be able to use the crossing more times than not.</u>	<del>When the Hickox Road crossing is closed, the farm trucks and equipment will have to use the Stackpole Road crossing, adding several minutes to each trip and a total distance of about four miles, thus increasing costs. However, the crossing will be blocked for indeterminate and sometimes lengthy periods of time each day and Jeffrey Boon testified it is very difficult to turn his large trucks (including semi trucks) around. So even if the crossing remained open for Western Valley Farms' use, he would instruct the trucks not to use the Hickox crossing; at times so as to prevent them from getting stuck should a train stop on the siding and block the crossing during the truck's approach. The wait time would incur hourly costs and prevent that truck's use during the wait. For these reasons, closing the Hickox crossing will have little, if any real net effect to the farm operation once the siding track project is complete.</del>

<sup>1</sup> To the extent that additional modifications are necessary to make the rulings in the final order consistent with the findings, record and issues identified herein, WVFBNSF requests that those appropriate changes be made.

<i>Initial Order</i>	<i>Original Language</i>	<i>Proposed Language</i>
¶ 79	In this case, BNSF recognizes that it may be necessary to convert the existing public crossing at Hickox Road into a private crossing for emergency access use by local governmental authorities. However, the evidence in this case further suggests that a second private crossing agreement with local farming interests is also merited in order to accommodate transportation requirements associated with the late summer and early fall harvest seasons.	<del>In this case, BNSF recognizes that it may be appropriate to convert the existing public crossing at Hickox Road into a private crossing for emergency access use by local governmental authorities.</del>
¶ 81	In order to ensure the safety of crews fighting the rising river and any members of the public making use of the crossing to evacuate the area west of the railroad tracks, the safety measures now in place at the Hickox crossing must remain in place. Although BNSF may typically prefer to remove warning bells and gates from an active grade crossing converted to a private crossing, the potential for extended periods of flood-related emergency use at this private crossing mandates otherwise. When the locked gate at Hickox Road is opened for flood-fight activities, the multi-day nature of these operations suggests a high potential for collision between a train and motor vehicle traffic rushing to evacuate or attend to flood-fight responsibilities. <del>Use of flag men by either the local government(s) or the railway during such a crisis period would not be an efficient use of manpower.</del> Posting and use of flaggers shall also be addressed by the diagnostic team in accordance with FRA standards for situations that would require the crossing to remain open for major emergency response or flood fighting activities.	<del>In a flood-related emergency, it is important to maximize the safety of crews fighting the rising river, any members of the public making use of the crossing to evacuate the area west of the railroad tracks, and persons traveling on trains along the tracks. A diagnostic team will be required to determine the warning devices, if any, to be appropriate when the crossing is converted to an emergency access only private crossing. Posting and use of flaggers shall also be addressed by the diagnostic team in accordance with FRA standards for situations that would require the crossing to remain open for major emergency response or flood fighting activities.</del>
<i>Initial</i>	<i>Original Language</i>	<i>Proposed Language</i>

<i>Order</i>		
¶ 85	<p>The evidence presented in this case also makes clear that special considerations are necessary when closing a road that provides the most direct access to a long established business that could be “financially landlocked” if existing access is eliminated. As noted above, the FRA specifically includes farm crossings within its listing of appropriate uses for private crossings.</p>	<p><del>{Entire paragraph omitted from final order}.</del></p>
FN 143	<p>We note that a private crossing already exists north of Hickox Road for the benefit of David Christianson’s business, which would otherwise be geographically landlocked. This order does not address the modifications, if any, that might become necessary to the existing private crossing agreement between BNSF and Mr. Christianson once the siding project is complete.</p>	<p><del>We note that a private crossing already exists north of Hickox Road for the benefit of David Christianson’s business. This order does not address the modifications, if any, that might become necessary to the existing private crossing agreement between BNSF and Mr. Christianson once the siding project is complete.</del></p>
¶ 86	<p>Western Valley Farms’ need for the Hickox Road crossing is greater than and distinct from all other local agricultural businesses operating in the area west of the crossing. During most times of the year, the movement of farm equipment to fields bisected by I-5 is an annoyance that must be accomplished across whatever route is shortest and safest. Closure of the Hickox Road grade crossing will <del>not</del> alter this situation for Western Valley Farms, Mr. Smith, Mr. Devlieger, <del>and or any</del> other agricultural concerns. <u>Mixing farm equipment with urban traffic on Blackburn Road is not safe even though the numbers of vehicles are low. There is a jeopardy to school use in addition</u></p>	<p><del>During most times of the year, the movement of farm equipment to fields bisected by I-5 is an annoyance that must be accomplished across whatever route is shortest and safest. Closure of the Hickox Road grade crossing will not alter this situation for Western Valley Farms, Mr. Smith, Mr. Devlieger, or any other agricultural concern.</del></p>

<i>Initial Order</i>	<i>Original Language</i>	<i>Proposed Language</i>
¶ 87	<p>However, the uncontested evidence presented in this case shows that Western Valley Farms has become totally financially dependent on the existence of the Hickox Road crossing during the late summer harvest season. It is not merely a matter of inconvenience to require Western Valley Farms to hire several additional trucks and drivers to transport its corn harvest across I-5, but a question of threatening the financial health of a long-established family farm business. Therefore, BNSF shall be required to convert the public crossing into a gated private crossing for seasonal use by Western Valley Farms.</p>	<p><del>Western Valley Farms may have a financial interest in the existence of the Hickox Road crossing during the late summer harvest season. However, the evidence elicited at the hearing shows that, once the siding project is complete, Western Valley Farms will inevitably direct its trucks away from the Hickox crossing to avoid the risk of unpredictable closure due to blockage by trains and stranded farm equipment that would result. If closure potentially threatens the financial viability of the farm, Western Valley Farms has alternate avenues to seek potential redress.</del></p>
¶ 88	<p><del>During the existence of a private crossing, it will remain possible for BNSF freight trains to block the Hickox Road crossing and potentially interfere with Western Valley Farms' harvest operations, requiring trucks to detour around the blocked crossing and utilize Stackpole Road to access the farm's storage silos. However, BNSF and Amtrak cannot reasonably be expected to cease their operations to accommodate the Western Valley Farms harvest season. Instead, the parties should provide each other with sufficient advance notice of their schedules to minimize disruptions to Western Valley Farms and allow BNSF (and Amtrak) to advise its engineers of farm equipment temporarily making use of the crossing at Hickox Road.</del></p>	<p>During the existence of a private crossing, it will remain possible for BNSF freight trains to block the Hickox Road crossing and potentially affect Western Valley Farms' harvest operations by requiring trucks to utilize Stackpole Road to access the farm's storage silos. <u>Although</u> <del>However</del>, BNSF and Amtrak cannot reasonably be expected to cease or modify their operations or system wide communications policies to accommodate the Western Valley Farms harvest season, <u>the visibility of the siding and its proximity to the farm make use with gates and lights reasonably safe.</u></p>

<i>Initial Order</i>	<i>Original Language</i>	<i>Proposed Language</i>
¶ 89	BNSF shall promptly enter into negotiations with Western Valley Farms to draft an appropriate private crossing agreement that allows seasonal access across the tracks at Hickox Road for Western Valley Farms' harvest operations. This private crossing agreement shall include a requirement for Western Valley Farms to provide advance notice to BNSF of its harvest schedule and for BNSF to then provide Western Valley Farms applicable schedules for planned rail traffic, including any projected blockings of the Hickox Road crossing due to meet and pass or other operational requirements.	<del>Freight trains do not operate on set schedules. Therefore, use of the siding track by trains and blocking of the Hickox Road (private) crossing therefore cannot reasonably be calculated and advance notice of trains blocking the crossing cannot be provided. Further, the Commission cannot condition an open or closed siding track based on continual communications from BNSF to the neighbors.</del>
¶ 104	The Hickox Road crossing is critically located and its continued use is crucial for established harvest activities of Western Valley Farms, LLC.	<del>Although the Hickox Road crossing has been utilized by Western Valley Farms, LLC, for harvest activities, the intended frequent use of the siding track by parked trains for unpredictable durations at any time renders the crossing constructively closed to use by semi-trucks, tractor-trailers, and other large farm equipment that cannot turn around once stopped at the crossing. The benefit of allowing Western Valley Farms to access the crossing will be outweighed by the crossing's exceptionally hazardous conditions.</del>
¶ 113	The financial impact on Western Valley Farms from closing the Hickox Road crossing cannot be adequately mitigated without creation of a private crossing to permit continued seasonal use of the crossing for harvest activities.	<del>The WUTC lacks authority to consider or evaluate damage to property associated with crossing closures. Other remedies may be available by law to compensate owners for damage to or devaluation of property, if any.</del>

<i>Initial Order</i>	<i>Original Language</i>	<i>Proposed Language</i>
¶ 115(2)(c)	<p>Third, BNSF shall enter into negotiations with the City of Mount Vernon, Skagit County, and Skagit County Fire Protection District No. 3 to draft a private crossing agreement that ensures continued access across the tracks for local emergency response to flood-related events as well as incidents where the health, safety, and welfare of local residents would be improved. BNSF shall submit this agreement to the Commission no later than <del>seventy-five</del> <u>sixty</u> days after entry of a Final Order in this matter.</p>	<p><del>Third, BNSF, the City of Mount Vernon, Skagit County and Skagit County Fire District 3 shall negotiate in good faith and enter into a private crossing agreement that ensures continued access across the tracks for local emergency response and flood-related events. The private crossing agreement shall reflect a diagnostic team's determination as to the applicable warning devices, if any, to be implemented when the crossing is converted to an emergency access private crossing. The private crossing agreement shall determine which party will undertake the work and cost of removal. BNSF shall submit this agreement to the Commission no later than seventy-five days after entry of a Final Order in this matter.</del></p>
¶ 115(2)(d)	<p>Fourth, BNSF shall enter into negotiations with Western Valley Farms to draft a private crossing agreement that allows seasonal access across the tracks for the purpose of transporting its corn harvest from east of I-5 to the farm location at Hickox Road. BNSF shall submit this agreement to the Commission no later than sixty days after entry of a Final Order in this matter.</p>	<p><del>{Entire paragraph omitted from final order}.</del></p>
¶ 115(2)(e)	<p>Finally, in support of these private crossing agreements and to ensure adequate safety at the private crossing, BNSF shall continue to operate and maintain the existing safety features at the Hickox Road crossing.</p>	<p><del>{Entire paragraph omitted from final order; see proposed ¶ 115(2)(e)}.</del></p>

¶ 116	The Commission retains jurisdiction over the subject matter and the parties to the proceeding to effectuate the terms of this Order.	<del>The Commission retains jurisdiction over the subject matter and the parties to the proceeding to effectuate the terms of this Order, unless and until the Order amounts to regulation of railroad operations, i.e., would constructively cause BNSF and WSDOT to halt the siding track project.</del>
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