



LAKE PEND OREILLE WATERKEEPER®

Our Lake for Life

Submitted via email to comments@idl.idaho.gov

Ms. Amidy Fuson
Resource Specialist Sr
Lands & Waterway - Public Trust
Pend Oreille Lake Supervisory Area
2550 Highway 2 West
Sandpoint, ID 83864
(208)263-5104

Re: Comments on Public Notice NWW-2007-01303 – BNSF Sandpoint Junction
Connector Project

Dear Ms. Fuson,

On behalf of itself and its members, Lake Pend Oreille Waterkeeper (hereinafter LPOW) submits this comment letter in opposition to BNSF's proposed Sandpoint Junction Connector Project (Project) and requested authorizations from the Idaho Department of Lands.

As detailed herein the Project would threaten local water quality, aquatic life, habitat, public health, welfare, diminish recreational opportunities, and negatively impact ecological and aesthetic values by materially altering the bed and banks of Lake Pend Oreille and other navigable waters of the state.

The Idaho Legislature clearly recognized the authority of the Board to deny encroachment authorizations that negatively affect adjacent property and lake values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality. Idaho Code 58-1306(b). When an encroachment application is received, the Idaho Land Board is also instructed to consider the justification of benefit (public or private) and the detrimental effects on real property and lake value factors. 58-1306(d). Idaho's administrative rules similarly expresses the policy of the State in balancing protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality against the navigational or economic necessity or justification for, or benefit received, from the proposed encroachment. IDAP 20.03.04.012.

We also note that Idaho has worked in partnership with the federal EPA for decades in administering the Clean Water Act's 404 Permit program, a pollution control mechanism aimed directly at avoiding first, and mitigating if necessary, the discharge of dredge or fill into waters

of the United States. While the Project's request for 404 Permit approvals is subject to ultimate approval by the U.S Army Corps of Engineers (USACE), the criteria for 404 permit decisions is directly applicable to the Board's consideration of encroachment authorizations for the Project. I.e., the potential negative effects to water and public resources which the Legislature directed the Board to consider in its decisionmaking, are the same criteria at issue under a 404 permit proposal.

Below is a brief summary of reasonably foreseeable negative impacts the Project will cause or incite in Lake Pend Oreille and Sand Creek, not to mention the nearby community of Sandpoint. These impacts are significant, widespread, and fully within the Board's authority to control and, as LPOW urges, completely avoid, by denying BNSF its requested encroachment permit.

Summary of the BNSF Rail Expansion Project & Foreseeable Impacts to Aquatic Resources

- 1 new bridge over Lake Pend Oreille
- 1 new bridge over Sand Creek
- 2 temporary bridges over each waterway
- Wetland destruction
- Related rail construction on lands running through Sandpoint
- A minimum of 3 years of construction

The Board Should Deny BNSF's Permit Because Its Project Will Create Significant, Unavoidable Impacts That Outweigh Any Potential Benefits

Just as the USACE must undertake a case-by-case evaluation of a specific project involving proposed discharges to determine whether the action is in the public interest, so too must the Board undertake an evaluation and make a finding as regards BNSF's Project, here. The Board should consider the extent of the public vs. private need for the project, the practicability of alternative locations or methods to accomplish the project, and the type and significance of negative effects. Above all else the Board's analysis and final determination should be guided by the Idaho Legislature's intent in balancing the benefit of a project against its harm.

Contrary to its application's suggestion, BNSF's Project can only be considered a large-scale undertaking with significant, long-ranging negative effects on values ranging from the health of local aquatic environment, to aesthetics, to public safety, to lost business income. At the outset we note BNSF failed to provide any meaningful discussion of substantive alternative rail routes; instead of articulating alternative routes that do not require huge, multi-year construction projects in Lake Pend Oreille and Sandpoint it routinely dismissed any such alternatives as impracticable. BNSF's failure to provide any meaningful alternatives should weigh heavily against authorization in the Board's consideration of its permit request. It may well be that there is in fact no reasonable need for the Project as proposed, and no need for the negative impacts it will incite on the Lake and surrounding environment.

More specifically, the Project will cause or create significant physical and chemical impacts, biological impacts, new water quality pollution impacts, and induce negative human, economic, and social impacts or risks.

Dredge & Fill

The Project proposes to permanently fill 0.28 acres of palustrine wetland. The fill will modify the physical characteristics by replacing wetlands with, likely, sand and concrete. The fill will destroy the filtering capacity of the wetlands, which will lead to increased run-off, turbidity, and water temperature. The biological impacts of the proposed fill are significant.

The loss of additional estuarine wetlands only compounds the significant loss of wetlands in the Lake Pend Oreille Watershed. According to a study conducted by Idaho Fish and Game (Murphy and Schmidt, 2010), the wetlands in the Sandpoint area of study (Figure 23) are classified as “completely disturbed” with the following descriptions: numerous/many stressor present, most high impact, most processes and functions disrupted and restoration very difficult or impossible. The Board should deny the requested permits because Lake Pend Oreille’s remaining wetlands provide important ecological benefits to the Lake’s water quality and to aquatic organisms. According to the Idaho Department of Fish and Game (IDFG), wetlands provide essential habitat for many of Idaho’s fish, wildlife, invertebrate, and plant species (Idaho’s Wetland Program Plan, Murphy, 2014). Nearly 50% of bird species rely on wetland and riparian habitats and wetlands, and associated aquatic and riparian habitats, support about 47% of Idaho’s wildlife. Furthermore, Species of Greatest Conservation Need and 46% of the state’s rare plant species are dependent on these habitats. Wetlands also provide additional hydrologic, water quality and ecosystem support including food for fish and waterfowl, groundwater recharge, sediment and shoreline stabilization, filtration, carbon sequestration, recreation and more.

The Board should also consider input from state and federal natural resource agencies. We are particularly concerned with the short and myopic public review timeframe provided for this Project when considering the Project’s intensity, significance, and 3+ year time span. Furthermore, the public cannot meaningfully comment on many of the physical impacts likely to result from the Project because other natural resource agencies have not yet performed their expert reviews of the Project, nor provided the public with evidence and data of those reviews.

Turbidity, Temperature, & Dissolved Oxygen

There is zero analysis of the Project’s likely impacts on receiving waters’ chemical integrity. In fact, there is an apparent assumption that the filling of wetlands and new rail line footwork will not exacerbate temperature conditions in receiving waters or contribute to unnaturally elevated turbidity. The agencies must reject the applicant’s Project because it contains unsupported conclusions. The construction of other rail bridges in the past has been shown to create and incite elevated temperature and turbidity, which harms water quality.

Lake Pend Oreille, where it empties into the Pend Oreille River, is classified as water quality limited under the CWA, Section 303(d) for temperature and dissolved gas supersaturation (IDEQ 2014 Integrated Report). This is the same location where the proposed fill activities would take place if permitted by USACE. TMDLs have not been established for either pollutant. Elevated temperature has several well-documented, negative impacts on aquatic species including ESA-listed salmonids, such as the documented Bull Trout known to inhabit the Project Area. Similarly, turbidity has several adverse effects on water quality, including reducing light for photosynthesis by algae and plants, increasing temperature, and decreasing dissolved oxygen levels. Increases in temperature because of turbidity are caused by the suspended particles absorbing more heat from sunlight and, therefore, increasing the temperature of the water around the particles.

Further, there is no analysis of how placement of fill or rail support beams will alter water temperature due to increases in turbidity, and how any changes in temperature resulting from increased turbidity will exacerbate known impairment conditions in these waters. Also, as a result of turbidity and increased water temperatures, dissolved oxygen levels and light will decrease, harming aquatic biota including federally protected fish species. Placement of fill and construction of bridge pilings will also increase temperature because suspended particles absorb more heat from sunlight.

Biological Impacts

Potential turbidity increases and the impact to aquatic life are great due to the large size and long duration (at least a 3-year construction time period) of aquatic activities. Increased turbidity will also have negative effects on salmonids by impairing their ability to feed and by causing gill damage. Elevated turbidity can also adversely affect benthic macroinvertebrates, upon which fish and other organisms rely for food.

Loss of Habitat & Suspension of Pollutants

The potential for the creation of a new rail line across the Lake, including construction and placement of new pylons across the channel width, can foreseeably create a chronic mixing zone of elevated temperatures, turbidity, and low dissolved oxygen, affecting aquatic species movement and/or migration, and feeding in Lake Pend Oreille. The placement of fill materials in water harms aquatic life by introducing multiple pollutants contained in the fill sediments. The adverse effects of excess temperature, turbidity, oxygen demand, and other fill pollutants is well known and proven to be negative to aquatic life and their habitat conditions. The dredging will increase each of these pollutants, which will harm aquatic life.

Furthermore, BNSF simply failed to adequately consider any studies on ESA-listed species presence at and near the Project area.

Light, Noise, & Vibration

The contemplated 3+ year construction period, without any further information, indicates a

potentially significant intensity of impacts on the aquatic environment of Lake Pend Oreille. Potentially debilitating impacts to aquatic species include noise, unnatural light, suspension of sediment, turbidity, loss of salmonid habitat and ability to rest or avoid predation, and potential attractant for other aquatic species to dangerous construction zones (particularly the creation of a new rail bridge across the Lake). These impacts were simply not discussed in the public notice.

Numerous studies show light can affect a variety of aquatic organisms and may attract or repel such organisms. The public notice does not indicate whether lighting will be used on ships or barges during times of darkness and construction, which could result in additional impacts to aquatic species. Possible adverse impacts caused by lights during dredging activity could be attraction of fish or aquatic organisms to the construction area, causing harm either by increased sound levels, turbidity levels, or the possibility of harm from contact with equipment.

The long-term and constant nature of this Project are particularly troubling and distinguish this project from smaller operations that the Board routinely approves. This controversial project requires close scrutiny. We are particularly concerned because public notice materials fail to provide any best available science on the impacts of fill or rail bridge construction on turbidity and sediment, nor analyze the potential impacts on ESA-protected Bull trout, nor on other aquatic organisms.

Stormwater

Stormwater pollution is a leading cause of water quality degradation in the United States. According to the National Research Council, “[s]tormwater runoff from the built environment remains one of the great challenges of water pollution control, as this source of contamination is a principal contributor to water quality impairment of waterbodies nationwide.”¹ Stormwater from construction sites can lead to discharges of sediment, turbidity, nitrogen, phosphorus, metals, trash and debris, nutrients, organic matter, pesticides, petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), other toxic organics, substances that can modify pH, and pathogens. EPA acknowledges that the cumulative effects of these pollutants are significant.²

An important Board consideration should be the detrimental impacts of polluted stormwater from both bridge construction and terrestrial land conversion near aquatic sites on local water resources. The public notice does not estimate how much new impervious surface will be created by the totality of the Project. These figures must be known to properly understand the scope and significance of potentially toxic and harmful stormwater pollution on the Lake and its

¹ Urban Stormwater Management in the United States, National Research Council (Oct. 15, 2008), http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf (emphasis added).

² See EPA’s Environmental Impact and Benefits Assessment for Proposed Effluent Guidelines and Standards for the Construction and Development Category, 3–6 (Nov. 2009), <http://www.epa.gov/guide/construction/>; see also 74 Fed. Reg. 62996, 63010 – 011 (December 1, 2009).

environs. It is likely that stormwater pollution caused by construction of the Project will contribute to degraded water quality in Lake Pend Oreille and its tributaries given that rail lines and supporting features are impervious terrain that contain industrial chemicals and pollutants that are susceptible to movement in precipitation events. In some cases, stormwater pollution discharges may exacerbate existing impairments; in other cases, stormwater pollution discharges may create new pollution impairment concerns. Based on these factors the Board should deny the applicant's proposal to significantly increase pollution to this watershed.

Human, Economic, & Social Risks & Impacts

The Project could also have numerous human, social and economic impacts:

- Air quality. The proposed Project may result in increased deposition of particulate material from diesel engines and the release of coal dust from uncovered coal rail cars.
- Noise pollution. The proposed Project may increase noise pollution from train whistles at crossings as well as track vibration.
- Traffic congestion. The proposed Project may increase train traffic through at-grade crossings, resulting in more "gate down" time.
- Delayed emergency response. The proposed Project may increase train traffic through at-grade crossings, delaying emergency responders from reaching patients in need of critical care.
- Impacts to local economy. The proposed Project may increase train traffic that will hamstring the local economy as a function of the other impacts listed above. Tourism, local business investment and the real estate market may all suffer losses.

To elaborate on the environmental impacts, the Project could cause economic harm by inhibiting the flow of boat traffic, diminishing the tourism appeal of the area, and negatively impacting the housing market. In addition to these delays faced by tourist vessels on water and vehicles on land, the Project would affect tourism in the area in general, which is a significant contributor to the economy of Bonner County and Sandpoint in particular. Rail traffic is perceived as unsafe despite BNSF's assertions of safety. There were 4 derailments in North Idaho and Western Montana in 2017. Of particular significance was the loaded coal train that derailed on the banks of the Clark Fork River, which is Lake Pend Oreille's largest tributary. In an industry where perception is reality, tourism as an economic generator depends on a positive perception of the area. Further industrialization of the unique, otherwise rural nature of the Lake Pend Oreille Watershed may thereby lead to decreased tourism, decreased jobs, and a decreased taxable base for the County and State. Additionally, property values of areas near construction sites would experience a considerable decrease, due to factors such as the diminished aesthetic appeal of the area as well as the ongoing subjection to the accident zone of rail lines. Also associated with the risks inherent in rail derailment or explosions are increased insurance costs.

The Board should also consider the impacts of increased hazardous substances transport through and over human communities in the Lake Pend Oreille Watershed, particularly with respect to volatile Bakken crude oil. The analysis must include consideration of public safety and environmental impacts in the case of a spill, train derailment, and/or explosion. The analysis must also account for economic impacts to the local recreational economy of increased rail traffic, as well as consequences of accidents such as those noted above.

The Project Will Harm ESA-Listed Species and Critical Habitat

The federal government may not approve any permit if it “jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of . . . critical habitat” 33 C.F.R § 230.10(b)(3). As discussed above, the destruction of shoreline habitat and the prolonged construction of new lake bridge crossings will jeopardize the struggling bull trout population found in Lake Pend Oreille. The USFWS has not completed a Biological Assessment of the Project’s likelihood to harm ESA-protected species or their habitat; however, based on BNSF’s application alone the Board can be reasonably certain the Project will at minimum significantly affect salmonid habitat and water quality. Because the Project will put at-risk a protected species, and because Idaho’s Lake Protection Act recognizes and prioritizes protection of aquatic species, the Board should deny BNSF’s requested permit authorizations.

Violations of Idaho Water Quality Standards

The Project will cause or contribute to violations of Idaho’s water quality standards. This includes the protection of aquatic life and fishing use, both designated uses, narrative criteria, biocriteria, dissolved oxygen, temperature, toxic substances, turbidity and the state’s antidegradation policy. Critically, IDEQ has tiered its request for public comments on the Project’s 401 certification to the same timeframe as comments for this Project. This means the State has not yet performed its review of the likely Project’s pollution impacts, and no agency materials or findings are available to inform the public of those impacts at this time. Regardless, the best available science provided by commenters above suggests, uniformly, that the Project will entail significant water quality standards violations. Insofar as IDEQ’s 401 Certification Process remains open, we request that the Board consider comments on that Certification in reaching a decision on the Project.

Conclusion

The Board should deny the requested Lake Protection Act permit and associated encroachment authorizations because BNSF’s project represents far more cost, than benefit, and will result in significant, unavoidable, negative impacts to waterways, landscapes, natural and human communities. The Project will have numerous negative, harmful environmental effects and is contrary to the public interest. It will harm the local environment surrounding new rail infrastructure and it will induce environmentally harmful upstream fossil fuel production.

The public notice does not address these or the economic or social harms discussed above, nor recognize that environmental harms translate into economic damage, particularly for tourism dependent local economies like that of Lake Pend Oreille. If pollution sickens people, or restricts their travel, economic productivity will suffer – as it will, more directly, if clean air and water and adequate pollution controls are not available. Similarly, as landscapes are industrialized, tourism, agricultural, forestry, hunting and angling, and other place-dependent industries will suffer.

When weighed against the purported benefit – pecuniary wealth to a private corporation, not local Idaho citizens or Idaho businesses – it is clear that BNSF’s project represents a circumstance of Idaho taking all the risks and suffering all the negative consequences, while private shareholders reap all the benefits. The many significant impacts weigh all the more strongly against BNSF’s permit because there is no public need for the Project.

While BNSF acknowledges that rail traffic has steadily increased over time, they have not provided any meaningful data to the public to justify the need for expanded rail bridge infrastructure in the Lake Pend Oreille Region including, but not limited to the number of trains that pass over the existing rail bridges in Sandpoint per day, expected increases in rail traffic volumes, or quantitative data on how the proposed three new bridges would reduce wait times, particularly at at-grade crossings in Sandpoint. Until these claims are verified or refuted through a full Environmental Impact Statement (EIS), the Board should refrain from making any kind of authorization determination.

Sincerely,

Shannon Williamson, Ph.D.
Executive Director
Lake Pend Oreille Waterkeeper

Email: shannon@lakependoreillewaterkeeper.org

Phone: 208-587-7188

From: lacy robinson
To: [Comments](#)
Subject: bnsf comments
Date: Wednesday, May 23, 2018 6:45:08 PM

I am very opposed to the proposed BNSF long bridge project. It's too dangerous for our lake water and BNSF does not have a good track record on safety- not good enough for me to trust them.

Please don't allow this project to go through. We don't need or want this in Sandpoint!

Lacy Robinson
PO Box 733
Sandpoint, ID
208-691-7911



208.265.9565 • PO Box 2308, Sandpoint, ID 83864 • www.idahoconservation.org

April 30, 2018

U.S. Army Corps of Engineers
U.S. Coast Guard
U.S. Environmental Protection Agency
Federal Rail Administration

RE: Comments on BNSF Sandpoint Junction Connector, NWW-2007-01303

Dear Agency Representatives:

Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting Idaho's human health and environment.

Attached, please find my comments on behalf of the Idaho Conservation League regarding BNSF's Sandpoint Junction Connector project in Bonner County, Idaho.

Please do not hesitate to contact me at (208) 265-9565 or mnykiel@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Nykiel". The signature is fluid and cursive, written in a professional style.

Matthew Nykiel
Conservation Associate

Introduction

In our first set of comments submitted on March 7, 2018, we outlined the background of Burlington Northern Santa Fe's (BNSF) Sandpoint Junction Connector project proposal (SJC), the relevant permitting agencies' legal authority, and the scope of potential impacts that could result if this project is approved. We incorporate our March 7, 2018 comments here by reference, to avoid redundancy.

The following comments primarily address the U.S. Army Corps of Engineers' (ACOE) regulatory authority and requirements to review, regarding BNSF's SJC project. However, many of our comments apply broadly to the review and analysis required of other federal permitting agencies in this case.

It is our understanding that that U.S. Coast Guard (USCG) intends to open its own public comment period at a later date to inform its National Environmental Policy Act (NEPA) review of the SJC project. We intend to submit additional comments, which will address the USCG's role more specifically, at that time.

Requests

The following comments address several different issues surrounding the permitting processes involved with BNSF's SJC project. We summarize here the specific requests and actions we encourage the ACOE and other permitting agencies to take into consideration:

1. Pursuant to 33 CFR 325.2(d)(4), we request the district engineer advise the other permitting agencies of its position on the Department of Army (DA) permit but defer its final decision, until the USCG has reached a decision on the bridge permit;
2. When reviewing the SJC, we request the ACOE and USCG use a broad scope of analysis that includes an analysis of impacts to all rail line communities along the BNSF rail corridor;
3. We request the ACOE explain the basis of its regulatory action pursuant to Section 404 of the Clean Water Act and the 404(b)(1) Guidelines;
4. We request a detailed analysis of the potential direct, indirect, and cumulative impacts on rail line communities along the BNSF rail corridor that may be impacted by the SJC project;
5. We request that the ACOE and USCG require a single Environmental Impact Statement (EIS);
6. If the ACOE or USCG decline to require an EIS, we further request that the permitting agencies make the Environmental Assessment (EA) available to the public and facilitate a public comment period and hearing on the EA; and

7. We request the Federal Rail Administration (FRA) to share its subject matter expertise on the relationship between rail safety and public/environmental safety, as the ACOE and USCG conduct their regulatory review of the SJC project.

ACOE Should Defer its Final Decision on the DA Permit

Pursuant to 33 CFR 325.2(d)(4), we request the district engineer advise the other permitting agencies of its position on the DA permit but defer making a final decision, until the USCG has reached a decision on the bridge permit.

We are concerned that if BNSF initiates dredge and fill activities in this case, before securing a bridge permit and other permits associated with the SJC proposal, it would risk unnecessary destruction of wetlands and waters of the United States, should any other associated permit for the project be denied or should BNSF choose not to pursue the project, as it did in 2014.¹ The ACOE's regulations guiding its processing of permit applications states:

“In unusual cases the district engineer may decide that due to the nature and scope of a specific proposal, it would be prudent to defer taking final action until another agency has acted on its authorization. In such cases, he may advise the other agency of his position on the DA permit while deferring his final decision.”

33 CFR 325.2(d)(4).

The nature and scope of BNSF's SJC proposal is unusual, as these comments will further explain below. Therefore, it would be prudent for the district engineer to defer taking a final action until the USCG and other agencies have an opportunity to consider the entirety of BNSF's proposal.

The ACOE and other permitting agencies have received over 2,000 public comments regarding BNSF's proposal. Indeed, interest in this project is warranted because the project would likely impact rail line communities throughout the Pacific Northwest, including in Idaho, Montana, Washington and Oregon. As such, the nature and scope of this project is unusual, warranting the district engineer to defer taking a final action in this case, until other permitting agencies have the opportunity to review the project and weigh in.²

¹ “Plans for second rail bridge across Lake Pend Oreille put on hold,” The Spokesman-Review, Sept. 16, 2015 (available at <http://www.spokesman.com/stories/2015/sep/16/plans-for-second-rail-bridge-across-lake-pend/>).

² Based on personal communications with the USCG, it appears that the USCG has not received BNSF's full SJC proposal application, and the USCG is delaying its own public comment period, until it has a chance to fully review the proposal. Accordingly, it would be prudent and reasonable for the ACOE to afford the other main federal permitting agency in this case the time to review the proposal.

Scope of Analysis

When reviewing the SJC, we request the ACOE and USCG use a broad scope of analysis that includes an analysis of impacts to all rail line communities along the BNSF rail corridor subject to the SJC project proposal.

The scope of analysis describes the portions of an overall project the ACOE will evaluate as the area subject to the federal action. This is the geographic limit of federal responsibility for the action and is the basis for subsequent NEPA analysis and compliance with other federal laws. According to 33 CFR 325, Appendix B, the ACOE considers four factors in determining sufficient federal control and responsibility, including:

- i. Whether or not the regulated activity comprises “merely a link” in a corridor type project;
- ii. Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity;
- iii. The extent to which the entire project will be within Corps jurisdiction; and
- iv. The extent of cumulative Federal control and responsibility.

33 CFR 325, Appendix B 7.b.(2)(i)-(iv).

Analyzing these factors in relation to BNSF’s SJC project reveals that the federal control and responsibility extends beyond the specific SJC project site and beyond the limits of ACOE jurisdiction because the cumulative federal involvement of the ACOE and other federal agencies is sufficient to grant legal control over additional portions of the project. In other words, the environmental consequences of the larger project (i.e. constructing and installing five separate bridges) are essentially products of the ACOE’s permit action. Accordingly, the ACOE scope of analysis should not be segmented pursuant to its jurisdictional authority but should encompass a single area that includes rail line communities throughout the Pacific Northwest that may be impacted by BNSF’s SJC project.

Factor (i)

The ACOE’s DA permit in this case is an essential component of the overall SJC project. The ACOE’s permit bears on the origin, destination, and route of the project outside of the ACOE’s regulatory boundaries. If BNSF is correct in its claim that the alternatives feasibly capable of meeting its needs in this case are limited to the construction of a second rail bridge at the site of the existing bridge over Lake Pend Oreille, then the ACOE’s DA permit is a compelling force and critical component of the entire project. This aspect of the DA permit in this case favors a broad scope of analysis.

Factor (iv)

Moreover, the extent of cumulative federal control and responsibility in this case is significant. The SJC project requires USCG authorization for the bridge and construction storm water

authorization from the U.S. Environmental Protection Agency.³ In addition, the USCG will act as the federal lead agency overseeing compliance with Section 106 of the National Historic Preservation Act and Endangered Species Act consultation for the proposed bridge projects. Federal agencies will also be charged with reviewing the SJC project's compliance with the Bald and Golden Eagle Protection Act and the Clean Air Act.

Substantial Impacts to Waters of the U.S. and other Federally Regulated Resources

The ACOE's scope of analysis should also be broad due to potential substantial impacts to wetlands, waters of the U.S., endangered species, and cultural resources. At least two of the five proposed bridges will each cross and impact nearly a mile of Lake Pend Oreille (a water of the U.S.). These impacts compound other projected impacts to waters of the U.S. and wetlands, including the permanent discharge of 11,220 cubic yards of rock into 1.16 acres water and wetlands.

The SJC project would also be conducted within a known or historic range of federally listed bull trout and its critical habitat and within known habitat of bald eagles protected by the Bald and Golden Eagle Protection Act.

The area in which dredge and fill activities would take place may also include extensive cultural resources, as was the case during the construction of the nearby Sand Creek Byway.⁴ As a result, the significant extent of waters of the U.S. and wetlands that the SJC project would impact, in addition to other federally protected resources, demands the ACOE utilize a broad scope of analysis in this case.

Scope of Analysis and Scope of the Benefits

The ACOE's scope of analysis should be as broad as the ACOE's analysis is of analyzing the potential benefits of the SJC project.

At 33 CFR 325, Appendix B 7.b.(3), the ACOE's NEPA Implementation Procedures state, "In all cases, the scope of analysis used for analyzing both impacts and alternatives should be the same scope used for analyzing the benefits of a proposal." Presumably, the ACOE will analyze the benefits of the SJC project based on the scope of potential benefits claimed by BNSF. BNSF has claimed a broad scope of benefits.

On its website, BNSF states that the SJC project is "[a] vital link between [the] Pacific Northwest and Mid-West."⁵ BNSF goes on to state that "[t]he new infrastructure will provide

³ We believe the EPA should further evaluate and provide an explanation as to whether or not BNSF is eligible for a General Construction Storm Water Permit for the SJC project.

⁴ "Sand Creek Byway Archaeological Project," last accessed on April 30, 2018 (available at <http://www.idahoarchaeology.org/single-post/2011/11/01/Sand-Creek-Byway-Archaeological-Project>).

⁵ "Second Bridge at Sandpoint Will Relieve Congestion, Enhance Safety," BNSF Railway, last accessed Apr. 30, 2018 (available at <https://bnsfnorthwest.com/news/2018/03/30/second-bridge-at-sandpoint-will-relieve-congestion-enhance-safety/>).

the capacity needed for BNSF's current traffic and future growth, benefiting all the commodities that we transport and the Amtrak trains that run on our main line.”⁶ BNSF claims that the result of the SJC project “will be reduced congestion, enhanced safety, shorter wait times at crossing, and improved service to our customers.”⁷ BNSF also suggests that the benefits of removing the rail bottleneck at Sandpoint will specifically impact other states, including Montana and Washington, as well as producers, shippers, and consumers using BNSF's rail services.⁸ Lastly, in BNSF's SJC Joint Application for Permits, BNSF states that “[t]his project will relieve congestion of rail traffic, and reduce hold times on sidings and wait times at grade crossings both locally and regionally.”⁹

BNSF's SJC project site does not include a single at-grade crossing, so the benefits of the SJC project claimed by BNSF must extend beyond the immediate area of the proposed project. And, given BNSF's statements quoted above, the ACOE's scope of analysis should similarly extend beyond the immediate area of the proposed project and include the benefits and impacts this project will have throughout the Pacific Northwest region.

Regional Impacts Along BNSF's Rail Corridor

While BNSF's SJC project is physically located in Bonner County, along with the specific activities being permitted by the Corps and USCG, the area of impact is far greater. Rail impacts, including crossing delays, derailments, noise, will extend throughout the Pacific Northwest region into communities in Idaho, Washington, Montana, and Oregon. Indeed, BNSF itself extolls the regional benefits it claims the SLC project will create, as cited above. The regional character and implications of this project warrant a broad scope of analysis.

ACOE 404 Permit Evaluation

We request the ACOE explain the basis of its regulatory action pursuant to Section 404 of the Clean Water Act and the 404(b)(1) Guidelines.

Section 404 of the Clean Water Act authorizes the ACOE to regulate and permit the discharge of dredged or fill material into waters of the U.S. The discharges of dredged and fill material proposed in the SJC project, require BNSF apply for an individual DA permit from the ACOE. As such, the ACOE must evaluate whether BNSF's application is in the public interest and whether BNSF's application meets the criteria set out in the CWA Section 404(b)(1) Guidelines. See 33 CFR 323.6(a) and 40 CFR 230.

⁶ See id.

⁷ “BNSF could start on key Idaho bridge by fall,” *Railway Age*, Apr. 3, 2018 (available at <https://www.railwayage.com/freight/bnsf-start-key-idaho-bridge-fall/>); see also BNSF to move ahead with second Sandpoint rail bridge; opposition voiced by mayor,” *The Spokesman-Review*, Apr. 18, 2017 (available at <http://www.spokesman.com/stories/2017/apr/18/bnsf-to-move-ahead-with-second-sandpoint-rail-brid/>).

⁸ “BNSF plans 2nd bridge over Lake Pend Oreille to ease rail congestion,” YouTube video last accessed on April 30, 2018 (available at <https://www.youtube.com/watch?v=4MKEYm4jXqo>).

⁹ See BNSF SJC Joint Application for Permits at Box 15. Purpose and Need, page 2.

Specifically, the 404(b)(1) Guidelines state that “Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.” 40 CFR 230.10(a).

According to the standards of review stated above, we request the ACOE thoroughly explain why or why not BNSF’s SJC project is in the public interest, by setting out the factors, benefits, and impacts the ACOE took into consideration. We also request that the ACOE require and share publicly a more thorough analysis of the practicable alternatives to the proposed discharge. BNSF’s alternatives analysis appears unduly restricted to alternatives that require a new rail bridge across Lake Pend Oreille. Whereas, there may be other practicable and feasible alternatives, involving changes in BNSF’s operations, for example, which may avoid the impacts proposed in the SJC project.

We also request that the ACOE explain why the pilings associated with BNSF’s SJC project do not constitute a discharge of fill material requiring Section 404 authorization. Although placement of pilings in waters of the U.S. for linear projects do not always have the effect of a discharge of fill material, the unique circumstances and scale of the SJC project may, in this case, have the effect of a discharge of fill material. See 33 CFR 323.3(2). The ACOE should further evaluate the circumstances in this case and scale of pilings required by the SJC project. Afterward, the ACOE should explain whether or not the proposed pilings constitute a discharge of fill material, pursuant to Section 404 of the CWA.

Evaluation of Potential Direct, Indirect, and Cumulative Impacts

Under NEPA, an EIS must consider direct effects, indirect effects, and cumulative effects. “Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetics, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. 1508.8.

The direct effects of an action are those effects “which are caused by the action and occur at the same time and place.” 40 CFR 1508.8(b). The indirect effects of an action are those effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 CFR 1508.8(b). For example, “[i]ndirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” *Id.* These types of growth-inducing impacts must be analyzed, even when they are characterized as “secondary.” *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975) (requiring EIS to address growth-inducing impacts of freeway interchange planned in agricultural area on the edge of urban development). In fact, “[f]or many projects, these secondary or induced effects may be more significant than the project’s primary effects... While the analysis of secondary effects is often more difficult than defining the first-order physical effects, it is also indispensable.” Fifth Annual Report of the Council on Environmental Quality, 410-11 (Dec. 1974).

The comments below further elaborate how the SJC project individually, or in combination with the other BNSF proposed rail expansion projects in the region, will likely cause significant local and regional impacts that the ACOE and USCG should study and evaluate.

Public Safety Impacts From Increased Rail Traffic

According to BNSF, the SJC project is needed to accommodate more train traffic. An increase and more constant stream of train traffic will adversely impact public health and safety, the environment, and the economy through increased vehicle and pedestrian accidents, increased derailments and cargo spills, coal dust releases, and increased travel time delays (affecting both local economies and emergency response).

A. Train Traffic

To our knowledge, BNSF has not conducted or released a traffic impact study, evaluating the SJC project's impact to overall rail traffic and congestion in the Sandpoint area or broader region. Without such a study, the ACOE cannot confirm BNSF's claims that rail congestion and crossing wait times will be reduced. There is a reasonable likelihood that adding a second rail line through the bottleneck at Sandpoint will, contrary to BNSF's claims, facilitate greater quantities of trains to pass through the region at greater frequencies, potentially causing longer wait times at crossings and delays for emergency responders. The potential for these impacts should be studied and made reviewable by the public.

The Washington Department of Transportation projects that the number of freight trains along the rail corridor on which BNSF has proposed the SJC project will increase from 56 trains per day to 114 trains per day by 2035, and further increases will continue beyond 2035 to 125 trains per day, representing the practical capacity of the rail corridor in the area.¹⁰ Therefore, the ACOE and USCG must conduct a traffic impact study to compare current traffic delays to future potential delays if the SJC project is completed.

B. Hazardous and Volatile Substance Transport by Rail

In addition to impacts from delays, the ACOE and USCG should also review the impacts from train derailments and especially derailments of crude oil, coal, and other hazardous substances. In 2016, three railroads in our county transported significantly more than 300,000 rail cars or tank cars containing various forms of hazardous materials and crude oil.¹¹ And, as of 2017, approximately 24 unit trains per week carrying crude oil from the Bakken oil fields in the

¹⁰ WSDOT Washington State Rail Plan, Integrated Freight and Passenger Rail Plan 2013-2035 (available at <http://www.wsdot.wa.gov/NR/rdonlyres/F67D73E5-2F2D-40F2-9795-736131D98106/0/WashingtonStateRailPlan20132035.pdf>).

¹¹ 2017 Lake Pend Oreille Geographic Response Plan at 26 (available at <https://evogov.s3.amazonaws.com/media/136/media/60622.pdf>).

Dakotas and Saskatchewan travel through Sandpoint.¹² This is significant given that in the spring of 2017, at least four significant derailments occurred in Bonner and Boundary Counties near waterways.¹³ The ACOE and USCG, therefore, must evaluate the increased risk of derailments if the SJC project is completed and must evaluate the potential impacts of such derailments.

The 2017 Lake Pend Oreille and Pend Oreille River Geographic Response Plan also identified a range of equipment, training, evacuation, procedural, and geographic vulnerabilities and deficiencies posed by the derailment of trains carrying crude oil and other hazardous materials and Bonner County's capacity to respond to such a derailment.¹⁴

The ACOE and USCG should consider and evaluate requiring additional safety protocol and resources for rail travel and emergency response, given the importance and range of critical resources in this area. The EIS should further analyze the impacts of increased rail traffic with and without additional safety and emergency response protocols and resources.

C. Seismic Activity in Lake Pend Oreille and Northern Idaho

Derailments are a special concern in Bonner and Boundary Counties because of the prevalence of earthquake activity, much of which is focused in Lake Pend Oreille. In the past 10 years, the two northern most counties in Idaho experienced 39 unique earthquakes, ranging in magnitude from 1.5 to 3.9.¹⁵

The vast majority of earthquakes in northern Idaho occur in or around Lake Pend Oreille. Of the 39 earthquakes that occurred since 2008, 36 occurred in or around Lake Pend Oreille. This is significant given the location of the SJC project and any increases in train traffic the SJC project would facilitate around Lake Pend Oreille. The ACOE and USCG must study and evaluate the impact and risk of approving the SJC project, given the local seismic activity.

D. Coal Dust Emissions from Uncovered Rail Cars

Impacts from coal dust will also impact public safety, as BNSF continues to ship coal in uncovered rail cars. Coal dust has been shown to be a cause of rail bed instability and derailments. The Surface Transportation Board, which found coal dust to be "a pernicious ballast foulant," acknowledged that the quantity of coal emitted by a train into the air, water, and onto tracks is not insignificant.¹⁶ This is particularly relevant given that BNSF was the subject of litigation in 2017 regarding allegations that BNSF violated the Clean Water Act by

¹² Id.

¹³ Id. at 30.

¹⁴ Id. at iv-v.

¹⁵ Data last accessed on April 30, 2018 (available at www.earthquake.usgs.gov).

¹⁶ Arkansas Electric Cooperative Corporation--Petition for Declaratory Order, FD_35305_0 (available at <http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/40436?OpenDocument>).

illegally discharging various forms of coal and coal dust into waters of the U.S.¹⁷ This litigation was resolved in a settlement agreement that requires BNSF to conduct a study of commercial and operational feasibility of car covers for use on open-top coal and petcoke railcars, as well as remove significant accumulations of coal and/or petcoke materials in areas on or adjacent to BNSF's right-of-way.¹⁸ The ACOE and USGS must evaluate how much coal dust BNSF currently generates, how much BNSF might generate with increased rail traffic after the SJC project, and the resulting impacts to public health and local water bodies.

Public Health Impacts from Increased Rail Traffic

Public health will also be impacted by the SJC project, which will affect both the air rail line communities breathe and the water from which these communities drink and in which these communities recreate. BNSF's application to the USCG indicates that the Sandpoint area is designated as in maintenance for PM₁₀, pursuant to the Clean Air Act. Emissions from diesel locomotives and coal dust emitted from uncovered rail cars may further impact Sandpoint's ambient air quality for PM₁₀. The ACOE and USCG must evaluate how much PM₁₀ emissions BNSF currently generates, how much BNSF might generate with increased rail traffic after the SJC project, and the resulting impacts to public health.

Furthermore, coal dust emitted by uncovered rail cars could also impact the quality of water used by the public for drinking and recreation. The Pend Oreille Lake Subbasin Assessment Unit (AU) 17010214PN018L_0L (this AU includes the water bodies that will be directly impacted by the SJC project but does not include the many water bodies that will be indirectly impacted throughout the rail corridor region) is designated for domestic water supply and primary contact recreation. However, this AU does not fully support the primary contact beneficial use because the AU is impaired by high mercury levels.

The SJC project has a high likelihood of increasing train traffic carrying coal in uncovered rail cars, which would continue to emit coal and coal dust, a component of which is mercury, into this AU. The agencies must evaluate how much additional coal dust will be emitted and what the human health impacts are using baseline air quality conditions in Sandpoint. The ACOE and USCG should also further consider and evaluate whether requiring covered coal train would mitigate the potential impacts from coal dust described above.

¹⁷ "BNSF Railway agrees to study covers for rail cars transporting coal to reduce dust," The Spokesman-Review, Nov. 15, 2016 (available at <http://www.spokesman.com/stories/2016/nov/15/bnsf-railway-environmental-groups-reach-settlement/>).

¹⁸ See Case No. C13-0967-JCC, Consent Decree, Sierra Club v. BNSF Railway Company (available at <https://cases.justia.com/federal/district-courts/washington/wawdce/2:2013cv00967/193334/384/0.pdf?ts=1493825037>).

Economic Impacts

The SJC project individually, or in combination with the other BNSF proposed rail expansion projects in the region will significantly impact the economies of dozens of communities along the rail line.

A. Construction and Operation of Bridges Across Sand Creek and Bridge Street

In Bonner County, the construction of the SJC project alone will weigh heavily on our tourist- and outdoor recreation-based economy. BNSF projects that the SJC project will cost at least \$100 million and require at least 3 years to construct. In total, five additional bridges will be constructed during this time, three permanent and two temporary. The three new bridges proposed over Sand Creek and Bridge Street occur near the heart of downtown Sandpoint, where many of Sandpoint's local small businesses are located. Indeed, Bridge Street is the sole road that provides access to the City of Sandpoint's primary access to public shoreline on Lake Pend Oreille and renown park, City Beach. Bridge Street also is the sole access road for several businesses, residences, and a hotel. The agencies should evaluate how construction will impact local businesses by impairing access and serenity and estimate the resulting economic impact.

B. Construction and Operation of Bridges Across Lake Pend Oreille

The two additional bridges proposed to cross over Lake Pend Oreille will also significantly impact the local economy. Lake Pend Oreille is used for a myriad of recreational water activities, including fishing, kayaking, and tour boating. Dozens of residential homes, hotels, and businesses are located along the shoreline of Lake Pend Oreille, within view or earshot of BNSF's rail bridge as well. Adding a second rail bridge across the lake would particularly impact all of these interests over the course of the three-year minimum construction period, where construction noise and potential impediments to navigational travel may disturb the character of the community residents invested in the community for or tourists seek out. Similar impacts may continue into the future, as a new rail bridge may facilitate greater train traffic and associated impacts like train noise. Because increases in train traffic and noise could impact property values these potential impacts should be analyzed and evaluated. Further consideration should also be given to construction sequencing and potentially limiting construction to the non-tourist season, to avoid or mitigate local economic impacts.

The project as a whole may facilitate increases in train traffic, which could further delay the movement of commerce by road in the region, as well as individuals traveling to small local businesses.

Wildlife, Aquatic Health, and Historic Properties

The EA or EIS in this case must include an analysis of impacts to biological and aquatic resources on both public and private lands and waters in the affected area – the affected area

includes the site of the SJC project, as well as the rail corridor through which impacts, both negative and beneficial, from the SJC project may occur. Biological and aquatic resources include terrestrial and fresh water mammals, game and non-game resident and migratory bird species, raptors, songbirds, amphibians, reptiles, fisheries, aquatic invertebrates, wetlands, and vegetative communities. The ACOE and USCG must ensure that up-to-date baseline information on all potentially impacted flora and fauna is made available, so that adequate impact analyses can be completed.

Habitat degradation, fragmentation, and loss must all be assessed, along with any resulting impacts to wildlife and aquatic species.

A. Impacts to Water and Wetland Resources

The SJC project will likely negatively impact water resources and wildlife in Bonner County and throughout the rail corridor. As mentioned above, BNSF's proposal would discharge 14,900 cubic yards of rock into wetlands or waters of the U.S. This project would also require impacts to 1.54 acres of wetlands and waters of the U.S. At the completion of the SJC project and for years to come, the project would result in indirect impacts to water resources both locally and throughout the rail corridor.

The SJC project's impact to water resources is significant because the impacted waters of the U.S. are already impaired. The Lake Pend Oreille AU, which includes a portion of Sand Creek, does not fully support aquatic life use due to mercury levels, flow regime alterations, and phosphorus. This AU also does not fully support the primary contact recreation beneficial use due to mercury levels. A TMDL for total phosphorus was approved for this AU in 2008, and this AU is in line for a TMDL for mercury. The dredge and fill activities associated with the SJC project, as well as the coal and coal dust that will escape uncovered rail cars will likely further degrade this water body. As mentioned above, the additional train traffic the SJC project would facilitate would also increase the likelihood of a derailment and spill of substances or materials that may also contaminate these water bodies.

B. Impacts to Wildlife and Aquatic Species

The SJC project's potential impacts to water resources listed above may similarly impact or harm species and critical habitat listed under the Endangered Species Act. There is a population of federally listed bull trout in Lake Pend Oreille, which also includes bull trout critical habitat. In addition to the dredge and fill activities provided above, noise from construction of the SJC and increases in train traffic may also negatively impact this species.

The bald eagle is also federally protected under the Bald and Golden Eagle Protection Act and is a species that inhabits Bonner County and relies on Lake Pend Oreille as a food source. The SJC project proposes dredging, filling, and affecting terrestrial areas along Lake Pend Oreille, which include a variety of mature tree species bald eagles may use for nesting, refuge, and

vantage. The ACOE and USCG must study and evaluate the impacts the SJC project would have on bald eagles in particular, as well as other local and migratory bird species.

C. Impacts to Floodplain

Flooding is also a risk with potential impacts to the community and ecological resources, where the SJC project is proposed. According to the Northwest River Forecast Center, this year Lake Pend Oreille is 60% likely to exceed flood levels at the gauge station in Hope, ID.¹⁹ U.S. Army Corps of Engineer Water Management Section Chief, Kevin Shaffer, has stated that “it’s almost certain we see flooding downstream [of the Hope gauge station].” The ACOE and USCG must study the impacts associated with flood risk to construction of the SJC project and to future operations of the SJC rail line.

D. Rathdrum Prairie-Spokane Valley Sole Source Aquifer

Additional rail traffic facilitated by the SJC project individually and in conjunction with other BNSF rail expansion projects near Cocolalla Lake and Hauser will also increase the risk of derailment over the Rathdrum Prairie-Spokane Valley Aquifer (RPSV). This aquifer is an EPA designated sole source aquifer and an Idaho designated sensitive resource aquifer. The RPSV underlies approximately 321 square miles of land in Idaho and Washington and provides drinking water to approximately 100,000 people in Idaho and 400,000 people in Washington.²⁰ Spills and contamination are significant concerns for the RPSV aquifer because the aquifer is an unconfined, valley fill aquifer. This means there is no barrier limiting or blocking the flow of water down into the aquifer from the surface. The rocks and sediments in the aquifer are fit together very loosely, so water (and any contamination) moves quickly through the aquifer. In some places, water has been estimated to move at a rate of 50 feet per day.²¹ The indirect impacts from BNSF’s project proposals may be significant given the importance and sensitivity of the RPSV aquifer. The ACOE and USCG must study and evaluate these potential impacts and make these findings available to the public.

E. Cultural Resources

The SJC project may also harm tribal and historic properties in the project site. Native American tribes, such as the Kalispel, used and inhabited Lake Pend Oreille and its shores since time immemorial. Tribal sacred places and cultural items may still exist in the project area that must be respectfully identified and protected according to the NHPA. These sacred places and cultural items may exist both on land and at depth in Lake Pend Oreille or Sand Creek.

¹⁹ “Army Corps: Flooding ‘almost certain’ this spring,” The Sandpoint Reader, Apr. 19, 2018 (available at <http://sandpointreader.com/army-corps-flooding-almost-certain-spring/>).

²⁰ “Rathdrum Prairie Aquifer,” Idaho Department of Environmental Quality (available at <http://www.deq.idaho.gov/regional-offices-issues/coeur-dalene/rathdrum-prairie-aquifer/>).

²¹ “Sole Source Aquifers,” Idaho Department of Environmental Quality (available at <http://www.deq.idaho.gov/water-quality/ground-water/sole-source-aquifers/>).

Moreover, the SJC project site may also hold cultural items from early white migrants into this region. In advance of the construction of the Sand Creek Byway, not far from the SJC project site, the Sand Creek Byway Archaeological Project recovered almost 600,000 artifacts from this area.²² Given the prevalence of artifacts in this area, it is critical that the USCG, as lead agency implementing the NHPA, conduct a thorough inventory of potential impacts to these cultural resources. The Sandpoint Train Station is also listed on the National Register of Historic Places and must be reviewed and protected according to the NHPA.

F. Greenhouse Gas Emissions

The Council for Environmental Quality (CEQ), which implements NEPA at the federal level, issued draft federal guidance on how to evaluate the effects of GHG under NEPA.²³ The Federal Guidance confirms that both direct and indirect greenhouse gas emissions should be evaluated in the context of “cumulative effects” in an EIS if significant. Id. at 5 (“Analysis of emissions sources should take account of all phases and elements of the proposed action over its expected life, subject to reasonable limits on feasibility and practicality.”).

Under the Federal Guidance, NEPA documents should put direct and indirect greenhouse gas emissions associated with a project in the context of the “aggregate effects of past, present, and reasonably foreseeable future actions” related to climate. Id. at 9-10. As the guidance confirms, the duty to evaluate all climate related impacts is not “new.” Rather, climate is an important factor to be considered within NEPA’s existing framework. Id. at 11.

Therefore, the agencies in this case must evaluate the direct and indirect greenhouse gas emissions of the increase of BNSF locomotives that the SJC project will facilitate, as well as the indirect greenhouse gas emissions that may be caused by an increase of fossil fuel transport by rail that the SJC project will facilitate.

ACOE and USCG Should Prepare a Single EIS

The construction of the SJC project and operations of a new rail line and bridges, individually and in combination with other proposed rail expansion projects, will cause significant, harmful impacts to the rail line communities along the BNSF rail corridor.

An EIS is required when a project “may” significantly impact the environment. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005) (emphasis in original). “[T]his is a low standard.” *California Wilderness Coal. v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1097 (9th Cir.

²² “Sand Creek Byway Archaeological Project,” Idaho Archaeology (available at <http://www.idahoarchaeology.org/single-post/2011/11/01/Sand-Creek-Byway-Archaeological-Project>).

²³ Available at http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf.

2011) (quoting *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006)) (emphasis added).

The Council of Environmental Quality's (CEQ) implementing regulations for NEPA set forth 10 factors that must be considered when evaluating the intensity of potential environmental effects. 40 CFR 1508.27(b). The presence of any one of these factors may require an EIS. *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2005).

BNSF's project triggers nearly all of the NEPA "intensity" factors. It affects public safety, affects unique characteristics of the area, is highly controversial, has highly-uncertain effects and unique and unknown risks, will have cumulatively significant impacts, and threatens violations of federal and state law and policies for environmental protection. See 40 CFR 1508.27(b)(2), (3), (4), (7) and (10).

Public Safety

NEPA requires an EIS where a project may significantly impact public safety. 40 CFR 1508.27(b)(2). In determining the "significance" of potential environmental impacts, one must consider "the degree to which the proposed action affects public health or safety." 40 CFR 1508.27(b)(2).

As indicated above, BNSF transports a significant volume of crude oil, coal, and other hazardous substance along the rail corridor where the SJC project is proposed. This particular area of the rail corridor has been subject to several recent derailments, that could have significantly harmed public health and safety had the derailments involved crude oil or other hazardous or volatile materials. The risk to public health and safety will continue as long as BNSF continues to ship these materials. And, the SJC project will likely increase this risk by facilitating a greater volume and frequency of rail traffic throughout this rail corridor.

Unique Characteristics of the Area

NEPA requires an EIS when a project may impact "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." 40 CFR 1508.27(b)(3). See *Cascadia Wildlands v. U.S. Forest Serv.*, 937 F.Supp.2d 1271, 1281 (D. Or. 2013) (ordering EIS where timber project "may" have significant impacts to "unique attributes" of potential wilderness area).

The pile-driving into Lake Pend Oreille and permanent displacement of those parts of the lake to construct a nearly mile-long bridge associated with the SJC project will impact the unique characteristics of this local area. Indeed, Lake Pend Oreille is both unique and ecologically critical. It is Idaho's largest lake and one of the largest lakes in the western United States.²⁴

²⁴ Lake Pend Oreille is the fifth deepest lake in the United States.

Lake Pend Oreille covers an area of 94,600 acres in Northern Idaho and reaches depths over 1,200 feet. Water recreation is a major attraction for local residents and visitors to Lake Pend Oreille and the Pend Oreille River. Lake Pend Oreille and its 226-mile shoreline provide a diverse range of aquatic and upland habitat important to sustaining fish and wildlife.

Lake Pend Oreille is, arguably, the most famous fishing lake in Idaho. The lake is home to a major kokanee salmon fishery, in addition to the site of the world record bull trout (14.5 kg) and world record rainbow trout (16.8 kg), which were caught in Lake Pend Oreille in the 1940s.

Lake Pend Oreille is also an important waterfowl migration and wintering area. The lake serves as a major spring and fall stop for waterfowl migrating along the Pacific Flyway. The wintering population of redhead ducks—which may be the largest in the United States—is 98 percent of Idaho’s total and 20 percent of the Pacific Flyway population. These are just some of the unique and ecologically critical features of the area that necessitate an EIS.

Highly Controversial

NEPA requires the preparation of an EIS for “highly controversial” actions. See 40 CFR 1508.27(b)(4). An action is highly controversial “when substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor, or there is a substantial dispute about the size, nature, or effect of the major Federal action.” *Nat’l Parks & Conservation Ass’n. v. Babbitt*, 241 F.3d 722, 736 (9th Cir. 2001) (“NPCA”) (quotations omitted), *abrogated on other grounds by Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010).

Here, at least 2,000 people have submitted comments of concern and have raised substantial questions about the size, nature, and extent of the project’s impacts. For example, BNSF claims the project will reduce vehicle traffic delays in the area; however, adding more rail infrastructure may facilitate an increase in overall train traffic and vehicle delays, causing not only inconvenience, but lost economic productivity and reduced ability to respond to emergencies. An EIS must be prepared to address these highly controversial impacts.

Highly Uncertain Impacts; Unique or Unknown Risks

An EIS is also required where “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 CFR 1508.27(b)(5). See *National Parks, supra*; *Blue Mountains Biodiversity Proj. v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998).

Here, many of the impacts discussed above, including public safety, risk of spills to water, coal dust impacts to air and water, involve uncertain, unique, and unknown risks for the reasons already set forth above. An EIS must be prepared to resolve the uncertainties associated with these risks.

Cumulative Impacts

In deciding whether to prepare an EIS, an agency must consider not only the proposed action but also “whether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 CFR 1508.27(b)(7). “Cumulative impact” means “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” *Id.* at 1508.7.

“Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* Where an agency fails to adequately analyze cumulative impacts, this can raise substantial questions about whether the project will cause cumulatively significant environmental impacts. *Ocean Advocates*, 402 F.3d at 870 (finding substantial question as to significance due to “perfunctory and conclusory” cumulative impacts analysis).

Here, a single EIS analysis, including an analysis of similar impacts from BNSF rail expansions proposals throughout the region is necessary. A single EIS is required for multiple discreet actions under some circumstances, for example, when the projects have common timing, geography, and/or impacts. There are at least two other BNSF projects in the region that share common timing, geography, and impacts with the SJC project.

BNSF has proposed to install 2.8 miles of additional track along a water of the U.S., roughly 8 miles south of the SJC project.²⁵ In addition, BNSF is in the process of proposing the construction of 4.4 miles of additional rail track roughly 42 miles south of the SJC project, from Hauser, Idaho to Spokane Valley.²⁶ The Hauser-Spokane Valley proposal will similarly impact waters of the U.S.

Considering the BNSF projects and actions described above along with the SJC project together, direct, indirect, and cumulative impacts are likely significant, necessitating an EIS.

Threatens Violations of Law

Where a proposed action threatens violations of federal, state, or local law or requirements imposed for the protection of the environment, the agency must prepare an EIS. 40 CFR 1508.27(b)(10). Here, this factor is also triggered due to threatened violations of the Endangered Species Act, Bald and Golden Eagle Protection Act, EPA’s Sole Source Aquifer protections, Idaho’s Sensitive Resource Aquifer protections, and Idaho’s Water Quality Standards and associated Total Maximum Daily Loads.

²⁵ “Draft 401 Certification – BNSF Railway Company Cocolalla Double Track Project, Idaho Department of Environmental Quality, last accessed Apr. 30, 2018 (available at <http://www.deq.idaho.gov/news-public-comments-events/public-comment-opportunities/draft-401-certification-bnsf-railway-company-cocolalla-double-track-project/>); see also Joint Application for Permits, NWW-2018-128 (available at <http://www.deq.idaho.gov/media/60181411/westmond-creek-unnamed-tribs-cocolalla-lake-bnsf-railway-401-certification-application-0418.pdf>).

²⁶ “BNSF to double track on line linking Spokane Valley to Hauser, Idaho,” *The Spokesman-Review*, Feb. 26, 2018 (available at <http://www.spokesman.com/stories/2018/feb/26/bnsf-to-double-track-on-line-linking-spokane-valle/>).

Public Involvement

We request that if the ACOE or USCG decline to require an EIS, that the permitting agencies make the EA available to the public and facilitate a public comment period and hearing on the EA.

Both the facts and law involved in BNSF's SJC proposal obligate the production of an EIS, but in the case the ACOE or USCG do not require an EIS, we request the ACOE and USCG afford our community an opportunity to review and comment on the EA and FONSI. Further, due to the complexity, broad range of impacts, and long time-line of BNSF's SJC proposal, it would also be prudent and reasonable for the ACOE and USCG to hold a public hearing and answer questions the public might have, before finalizing any decision pertaining to an EA or FONSI.

Soliciting further public comment and addressing public concerns may not be required in as robust a way for the ACOE's purposes in processing an EA and FONSI, but as the agencies overseeing the protection of our local environment and the maintenance of our public safety, it would be appropriate in this case to grant additional public involvement. We hope that BNSF, as the permit applicant and corporate neighbor to our communities in this case, would agree on this point too.

Federal Rail Administration Subject Matter Expertise

The Federal Rail Administration should provide subject matter expertise on the relationship between rail safety and public/environmental safety with the USCG.

The USCG is less familiar than the FRA with the impacts associated with railroads and the transportation of crude oil, coal, and other hazardous materials by rail. The FRA should help mitigate this deficiency by providing resources to USCG that will assist in the USCG evaluation of impacts likely to result from the SJC project.

Certificate of Service

Idaho Conservation League delivered the Comments dated April 30, 2018 regarding the BNSF Sandpoint Junction Connector, NWW-2007-01303 via electronic mail:

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208.265.9565 • PO Box 2308, Sandpoint, ID 83864 • www.idahoconservation.org

Chris Bromley
Hearing Coordinator
Idaho Department of Lands

Submitted via email to: comments@idl.idaho.gov

May 23, 2018

RE: ERL-96-S-0096E – BNSF Railway Co.

Dear Mr. Bromley:

Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting Idaho's human health and environment.

Attached, please find my comments on behalf of the Idaho Conservation League regarding BNSF's Sandpoint Junction Connector Proposal.

Please do not hesitate to contact me at (208) 265-9565 or mnykiel@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Nykiel". The signature is fluid and cursive.

Matthew Nykiel
Conservation Associate

ICL Comments

Idaho Code and Rules

According to Idaho Statute, Title 58, Chapter 13, IDL must process applications for encroachments on and in navigable lakes in Idaho. In processing an application for such an encroachment, IDL must also consider and apply Idaho Statute, Title 67, Chapter 43, as well as IDAPA 20.03.04.012 and 030.

In particular, IDL rules require that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.

IDAPA 20.03.04.012.01.

In addition, IDL rules require that approval of encroachments not in the aid of navigation in navigable lakes be authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.

IDAPA 20.03.04.030.02.

Environmental Protection and Navigational or Economic Necessity

We request IDL consider all the potential impacts to property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. We have identified some of the potential impacts to these values in comments we submitted on April 30, 2018, which we incorporate here by reference and have attached to the present comment submittal. We request IDL give due consideration to these potential impacts, including but not limited to:

- Impacts to the values stated above both during the construction of the SJC proposal and after installation;
- Impacts to water quality from coal dust emissions from uncovered coal rail cars, mercury deposition from train exhaust, and contamination from potential derailments.
- Impacts to the aesthetic beauty of the lake and surrounding area from increases in train noise, including from the movement of trains and train horns;
- Impacts to wildlife and fish habitat, including impacts to bull trout habitat and impacts to bird species that utilize trees and other flora near the segment of rail proposed for construction; and
- Impacts to the value of private property directly adjacent to the SJC proposal and private property in the surrounding area that will be impacted by the construction and continued operation of the SJC proposal.

We also request IDL analyze and identify the economic necessity and/or justification for the SJC proposal. In particular, we request IDL identify with particularity how the SJC proposal is economically necessary, justified, and/or provides benefits for Bonner County. And, we request IDL explain how IDL weighted the potential impacts to resource values against the navigational, economic necessity, or justification for the SJC proposal.

Furthermore, we request IDL identify and explain all other feasible alternatives IDL analyzed in considering the SJC proposal. We request IDL analyze other alternatives to building a second rail bridge across Lake Pend Oreille including but not limited to:

1. Addressing rail congestion by using the BNSF rail line between rail mile posts 75 and 72 (through Dover) and contracting with Union Pacific to utilize and/or build additional track that would cross the Pend Oreille River at rail mile post 69;¹
2. Addressing rail congestion by adjusting and improving rail traffic management (i.e. we request IDL and BNSF analyze whether BNSF could direct and control rail traffic in a way that would reduce rail congestion without necessitating the build out of more rail infrastructure.); and
3. A no action alternative that analyzes whether or not the SJC proposal will result in permanent and long-term benefits to Bonner County.

State Trust Lands

We request IDL analyze and evaluate the ownership of the beds and banks of Lake Pend Oreille and Sand Creek in which BNSF intends to construct new rail infrastructure for the SJC proposal. BNSF has claimed that the lake bed and land on which it intends to install pilings and other rail infrastructure is not state trust land owned by the people of Idaho because this land was granted to BNSF before Idaho statehood. It may be the case that BNSF exercises a right-of-way over these lands, but it may also be the case that BNSF's right-of-way does not grant BNSF title over the beds and banks of Lake Pend Oreille and Sand Creek.

We request IDL make a finding as to the ownership of the lands on which BNSF intends to install rail infrastructure, according to the SJC proposal. If IDL discovers that BNSF does not own title to the beds and banks of Lake Pend Oreille and Sand Creek, we request IDL re-open this application for further review and public comment.

Defer a Final Decision

We request IDL defer its final decision on this matter unless and until BNSF secures a Department of Army Permit (DA), permitting the SJC proposal. We are concerned that if BNSF initiates work on the SJC proposal before securing a bridge permit and other permits associated with the SJC proposal, it would risk unnecessary destruction or encroachment upon state trust lands and the navigable waters of the state of Idaho. As such, we request IDL delay a final decision on the SJC proposal until all other permitting agencies have had the opportunity to review the proposal and weigh in.

¹ See <http://fragis.fra.dot.gov/GISFRASafety/>.

Idaho Department of Lands
U.S. Coast Guard
U.S. Army Corps of Engineers

May 23, 2018

I have always loved the railroads. As a child my uncle would always attach a drawing of the Great Northern goat to his letters. The trains went from Hope to Paradise

But times have changed. The trains are longer, faster, and carrying more volatile Balkan oil and coal. Small towns like Hope and Sandpoint were built by the railroads but now these towns are recreational hubs. Can you imagine double track by City Beach? NOW THE RR IS ASKING US TO CARRY ALL THE RISK WITH NO REWARD.

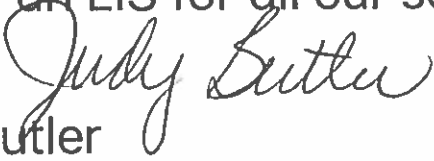
I speak for the health of the Clark Fork River, Lake Pend Oreille, the creatures and the peoples who live here. Can Burlington Northern build a double track over the biggest fresh water Lake in the Northwest and keep it clean and safe? We need an Environmental Impact Statement to answer that question. LPO is a significant recharger of the Sole Source Aquifer serving The Rathdrum Prairie and Spokane. It is Sandpoint's principal Resource. NOW WE CARRY ALL THE RISK AND NO REWARD.

Why isn't the Balkan oil refined before it is carried long distances over rail? If an explosion were to occur, Sandpoint fire chief said we would have to wait for equipment from Spokane. Why isn't the Railroad required to provide emergency personnel and equipment to handle fires? The money the RR spent on the many full page ads in the Spokesman Review supporting the new bridge would have made better publicity if spent on new equipment, or more safety personnel.

In the last few years fire danger has been extremely high. Last August it was stage three when a train derailment occurred near the Clark Fork. Heavy equipment which I was told was "exempt" from the fire rules cleared the lines quickly. But the risk of spontaneous combustion from wet coal required the Heron firemen to monitor the coal for a matter of months before it was cleaned up. How long would Sandpoint have to wait?

CITIZENS ARE ASKED TO CARRY ALL THE RISK AND
SHAREHOLDERS REAP THE REWARDS.

Construction is expected to last 3 years. It is a big project. Please require an EIS for all our sakes.


Judy Butler

140 Monarch View
Hope, Idaho 83836



DEPARTMENT OF
ECOLOGY
State of Washington

Crude Oil Movement by Rail and Pipeline

*Quarterly Report: January 1, 2018 through
March 31, 2018*

April 2018
Publication 18-08-005

Publication and Contact Information

This report is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1808005.html>

For more information contact:

Spill Prevention, Preparedness, and Response Program

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To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7455 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Crude Oil Movement by Rail and Pipeline

Quarterly Report: January 1, 2018 through March 31, 2018

Spill Prevention, Preparedness, and Response Program
Washington State Department of Ecology
Olympia, Washington

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Table of Contents

	<u>Page</u>
List of Figures and Tables.....	ii
Introduction.....	1
Crude Oil by Rail Summary	2
Crude Oil by Pipeline Summary	8
Crude Oil Spills – Rail and Pipeline	9
Crude Oil Movement by Vessel.....	10
An Overview of Crude Oil Movement in Washington.....	11
Contact Information	13
Appendix A – Washington Railroad Routes.....	14
Appendix B – API Gravity and Crude Oil Types	15

List of Figures and Tables

Page

Figures

Figure 1: Weekly Total Volumes of Crude Oil by Rail for the 1st Quarter of 2018	6
Figure 2: Crude Oil Movement by Route for the 1st Quarter of 2018	7
Figure 3: 12-Month Crude Oil Movement by Mode	11
Figure 4: Quarterly Crude Oil Movement by Mode	12

Tables

Table 1: Crude Oil Movement by Rail	3
Table 2: Crude Oil Movement by Pipeline	8
Table 3: Crude Oil Movement by Vessel	10
Table 4: Crude Type by API Gravity	15

Introduction

To enhance crude oil spill preparedness and response in Washington State, on August 24, 2016, Ecology adopted the rule, [Oil Movement by Rail and Pipeline Notification](#). The rule establishes reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil in or through the state.¹ Additionally, the rule identifies reporting standards for Ecology to share information with emergency responders, local governments, tribes, and the public.

This rule is the result of 2015 Legislative direction to provide a better understanding of the changing risk picture for crude oil transported in Washington State as a result of the introduction of crude oil transport by rail and the associated changes in both the volume and properties of crude moving through Washington.

Timely notice of oil movement information is necessary for emergency responders and planners to effectively prepare for and respond to oil spills and other incidents associated with transporting crude oil by rail and pipeline. Providing adequate information about the dates, routes, and properties of crude oil can help protect people living and working near railroads and pipelines, the economy, and environmental resources of Washington State.

Ecology is required to publish information collected under the rule to its website on a quarterly basis. The quarterly reports provide:

- Aggregated information on crude oil transported by rail to facilities in Washington.
- Information about crude oil movement by pipeline in or through the state.
- Reported spills during transport and delivery of crude by rail and pipeline.
- Volume of crude oil transported by vessel.

The reports are intended to inform the public about the nature of crude oil movement through their communities.

The reporting period for this quarterly report is January 1, 2018 through March 31, 2018.

¹ Chapter 173-185 WAC

Crude Oil by Rail Summary

Movement of crude oil by rail in Washington State began in 2012 and has continued to increase since that time. Rail routes transporting crude oil enter the state from Idaho near Spokane and from British Columbia near Bellingham, and Ecology continues to monitor other potential routes. Large segments of the rail routes travel along the I-5 corridor, and cross or run next to major waterways, including the Columbia River and Puget Sound. (See Appendix A for a map of railroad routes in the state.)

Capturing information on the properties of crude oil, the volume transported, and the routes used to transport it allows for proper planning, placement of resources, and opportunities to provide detailed information to responders in the event of a spill, ensuring a more effective overall response. The rule directs Ecology to gather this information by requiring facilities receiving crude oil by rail to report all scheduled crude oil deliveries to be received by the facility each week for the succeeding seven-day period. Facilities enter this information into Ecology's Advance Notice of Transfer (ANT) database.

Information reported by facilities on scheduled crude oil deliveries includes the region of origin of crude oil, the railroad route taken to the facility within the state (if known), scheduled time and volume in barrels (bbls) of the delivery, and gravity of the oil. Ecology uses the standard American Petroleum Institute (API) gravity ranges to define the Crude Type in the ANT database. (See Appendix B for the API gravity definition and Crude Type ranges.)

Ecology is required to aggregate the information provided on a statewide basis by route, week, and type of crude oil. Aggregate information from the ANT database is provided in [Table 1](#) for the period January 1, 2018 through March 31, 2018, representing the 1st quarter of 2018. Each week is numbered by calendar week and is aggregated by route and type of crude. The information provided includes:

- Total weekly volume in barrels (bbls) of crude oil transported by rail
- Route
- Region of origin
- Crude type
- Route volume
- Estimated number of railcars per route delivering crude oil (assumes each car holds 680 bbls)

Thirteen calendar weeks are reported in the 1st quarter of 2018 starting at calendar week 1 and ending at calendar week 13.

Table 1: Crude Oil Movement by Rail**Calendar Week 1**

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3, 4	North Dakota	Light Crude	325,000	477
1A, 2, 3, 4, 5	North Dakota	Light Crude	214,500	315
1B, 2, 3	Alberta	Heavy Crude	118,036	173
Weekly totals:			657,536	965

* Week 1 contains six days of reported ANT volumes due to the dates of the reporting period.

Calendar Week 2

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	206,343	303
1A, 2, 3, 4	North Dakota	Light Crude	325,000	477
1A, 2, 3, 4, 5	North Dakota	Light Crude	496,500	730
1B, 2, 3	Alberta	Heavy Crude	117,662	173
5	Alberta	Light Crude	64,000	94
Weekly totals:			1,209,505	1,777

Calendar Week 3

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	206,006	302
1A, 2, 3, 4	North Dakota	Light Crude	390,000	573
1A, 2, 3, 4, 5	North Dakota	Light Crude	356,000	523
1B, 2, 3	Alberta	Heavy Crude	59,028	86
Weekly totals:			1,011,034	1,484

Calendar Week 4

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	131,076	192
1A, 2, 3, 4	North Dakota	Light Crude	390,000	573
1A, 2, 3, 4, 5	North Dakota	Light Crude	485,300	713
1B, 2, 3	Alberta	Medium Crude	172,809	254
Weekly totals:			1,179,185	1,732

Calendar Week 5

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	208,226	306
1A, 2, 3, 4	North Dakota	Light Crude	390,000	573
1A, 2, 3, 4, 5	North Dakota	Light Crude	567,000	833
1B, 2, 3	Alberta	Medium Crude	59,061	86
4, 5	Saskatchewan	Heavy Crude	7,980	11
Weekly totals:			1,232,267	1,809

Calendar Week 6

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	138,556	203
1A, 2, 3, 4	North Dakota	Light Crude	390,000	573
1A, 2, 3, 4, 5	North Dakota	Light Crude	355,000	522
1B, 2, 3	Alberta	Medium Crude	58,000	85
4, 5	Saskatchewan	Heavy Crude	9,120	13
5	Saskatchewan	Light Crude	68,000	100
Weekly totals:			1,018,676	1,496

Calendar Week 7

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	68,353	100
1A, 2, 3, 4	North Dakota	Light Crude	329,550	484
1A, 2, 3, 4, 5	North Dakota	Light Crude	71,500	105
1B, 2, 3	Alberta	Heavy Crude	117,334	172
4, 5	Saskatchewan	Heavy Crude	570	0
Weekly totals:			587,307	861

Calendar Week 8

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	203,300	298
1A, 2, 3, 4	North Dakota	Light Crude	399,100	586
1A, 2, 3, 4, 5	North Dakota	Light Crude	286,000	420
Weekly totals:			888,400	1,304

Calendar Week 9

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	200,417	294
1A, 2, 3, 4	North Dakota	Light Crude	399,100	586
1A, 2, 3, 4, 5	North Dakota	Light Crude	272,500	400
1B, 2, 3	Alberta	Heavy Crude	119,350	175
Weekly totals:			991,367	1,455

Calendar Week 10

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	132,055	194
1A, 2, 3, 4	North Dakota	Light Crude	403,650	593
1A, 2, 3, 4, 5	North Dakota	Light Crude	363,000	533
Weekly totals:			898,705	1,320

Calendar Week 11

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	203,370	299
1A, 2, 3, 4	North Dakota	Light Crude	390,000	573
1A, 2, 3, 4, 5	North Dakota	Light Crude	505,500	743
1B, 2, 3	Alberta	Medium Crude	118,677	174
Weekly totals:			1,217,547	1,789

Calendar Week 12

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	337,898	496
1A, 2, 3, 4	North Dakota	Light Crude	399,100	586
1A, 2, 3, 4, 5	North Dakota	Light Crude	716,300	1,053
1B, 2, 3	Alberta	Medium Crude	59,115	86
Weekly totals:			1,512,413	2,221

Calendar Week 13

Route Segments	Region of Origin	Crude Type	Volume (bbls)	Est # Cars
1A, 2, 3	North Dakota	Light Crude	133,513	196
1A, 2, 3, 4	North Dakota	Light Crude	338,650	498
1A, 2, 3, 4, 5	North Dakota	Light Crude	563,500	828
1B, 2, 3	Alberta	Medium Crude	59,366	87
Weekly totals:			1,095,029	1,609

Note: The data provided in Table 1 was reported to Ecology by the receiving facility into the ANT database as required by Chapter 173-185 WAC. Ecology cannot confirm the data or verify its accuracy.

2018 Quarter 1 Total Volume (bbls): 13,498,971

A summary of the data shows:

- Three regions of origin were reported: Alberta, North Dakota, and Saskatchewan.
- Three types of crude oil were reported: heavy, medium, and light.
- Routes 1A, 1B, and 2 through 5 were used to transport crude by rail.
- The total volume of crude oil transported by rail during the quarter was 13,498,971 barrels (566,956,782 gallons).
- The average weekly volume of crude oil transported by rail was 1,038,382 barrels (43,612,060 gallons).
- The total number of rail cars moving crude oil by rail was 19,822 cars.
- The average number of rail cars per week moving crude oil by rail was 1,525 cars.
- 92.0% of crude oil transported by rail was light crude, 4.1% was heavy crude, and 3.9% was medium crude.
- North Dakota was the region of origin for 91.1% of crude oil transported by rail. Alberta was the region of origin for 8.3% of crude oil transported by rail, and Saskatchewan was the region of origin for 0.6% of crude oil transported by rail.

Figure 1 shows the weekly total volumes of crude transported by rail for each calendar week in the 1st quarter of 2018.

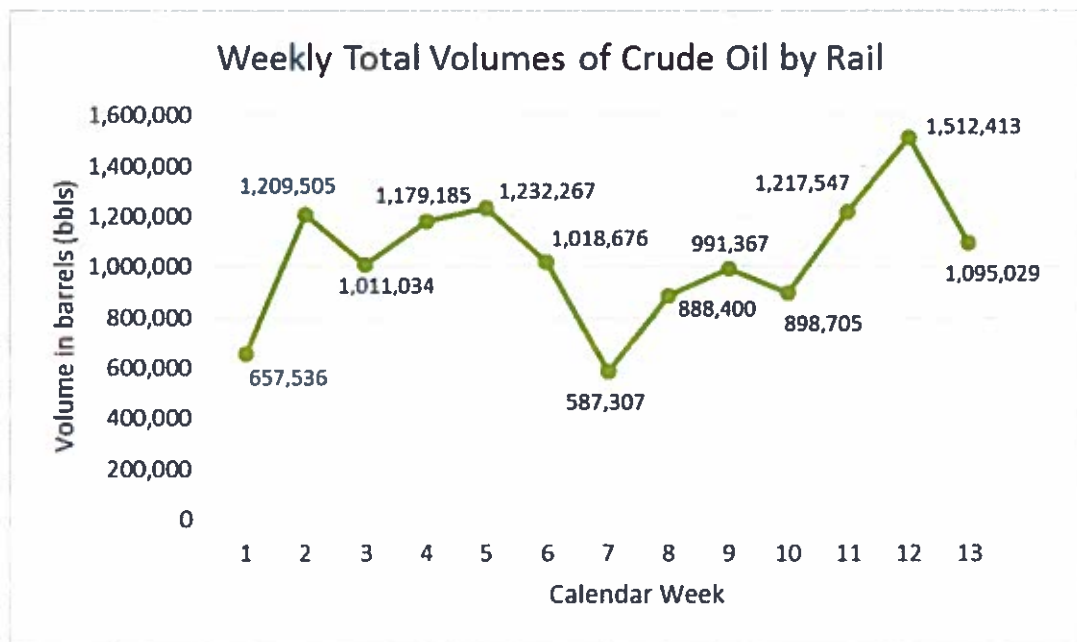


Figure 1: Weekly Total Volumes of Crude Oil by Rail for the 1st Quarter of 2018

** Week 1 contains six days of reported ANT volumes due to the dates of the reporting period.*

The lowest weekly volume was 587,307 barrels (24,666,894 gallons) in Week 7. The highest weekly volume of crude transported by rail was 1,512,413 barrels (63,521,346 gallons) in Week 12.

Figure 2 displays crude transported by rail by route for the 1st quarter of 2018.

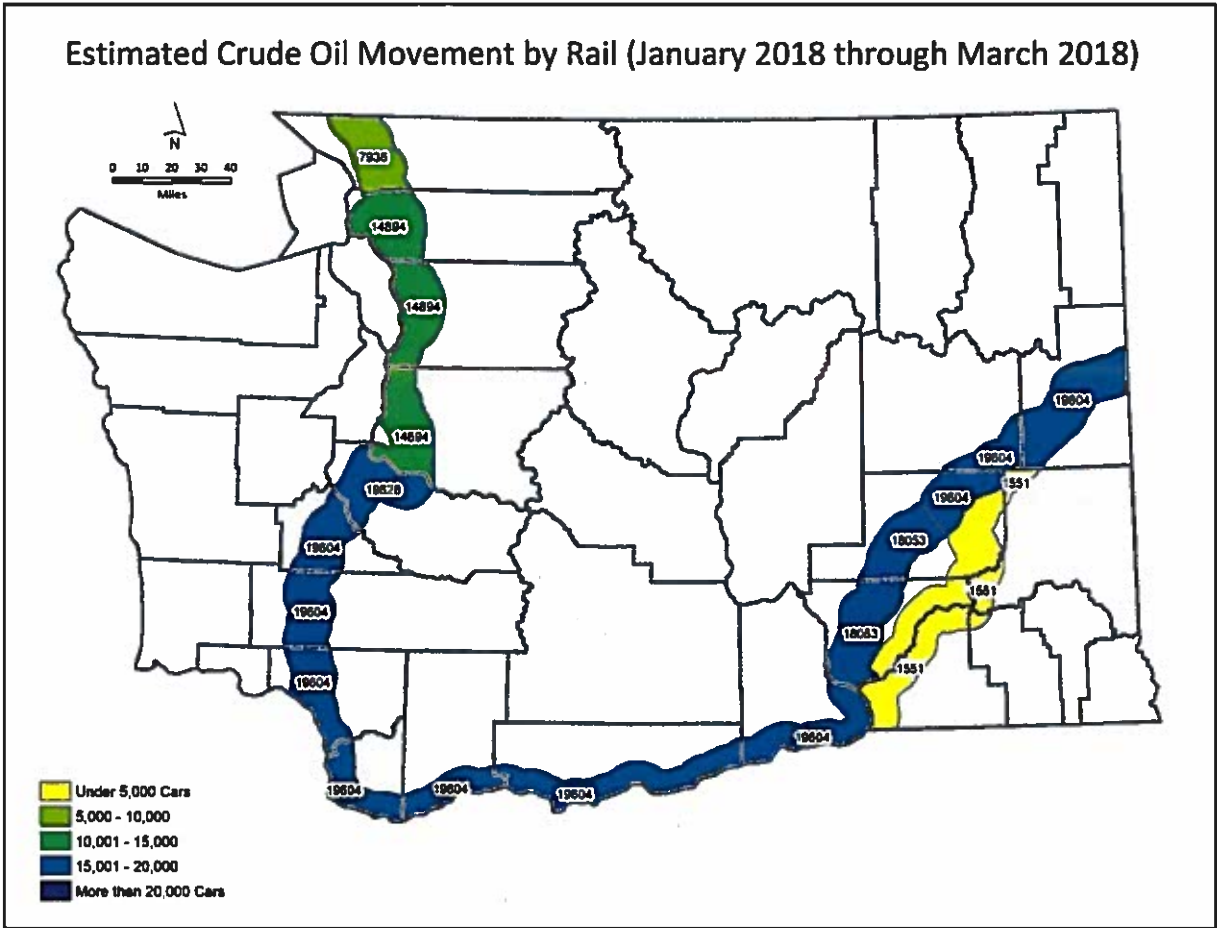


Figure 2: Crude Oil Movement by Route for the 1st Quarter of 2018

Crude Oil by Pipeline Summary

Pipelines exist inland and may be located near waterbodies and populated areas. Knowing the types and quantities of crude oil transported through pipelines in Washington State helps Ecology properly plan for and execute a rapid, aggressive, and well-coordinated response to a spill.

Under the rule, transmission pipelines that transport crude oil in or through the state must provide Ecology biannual notice of all crude oil transported in or through the state.² Biannual notice must be submitted each year by July 31 for the period from January 1 through June 30 and by January 31 for the period from July 1 through December 31. Biannual notice provided by pipelines includes contact information for the pipeline and the total volume of crude oil transported in or through the state during the reporting period by state or province of origin.

The most recent biannual notices from pipelines covered the period from July 1, 2017 through December 31, 2017. [Table 2](#) below provides the total volume of crude oil transported in or through the state by pipelines during this period.

Table 2: Crude Oil Movement by Pipeline

Period	State or Province of Origin	Volume (bbls)
July 1, 2017 – December 31, 2017	Alberta	31,273,477

Note: The data provided in Table 2 was reported to Ecology by the pipelines transporting crude oil in or through the state, as required by Chapter 173-185 WAC. Ecology cannot confirm the data or verify its accuracy.

The next biannual notices from pipelines will cover the period from January 1, 2018 through June 30, 2018 and must be submitted to Ecology by July 31, 2018.

² Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification

Crude Oil Spills – Rail and Pipeline

Oil spills can have significant impacts to the public, environment, and economy. Ecology strives to protect Washington's environment, economy, and public health and safety through a comprehensive spill prevention, preparedness, and response program.

The rule directs Ecology to provide the number and volume of spills to the environment during the transport and delivery of crude oil by rail and pipeline in each quarterly report.³ For the period of January 1, 2018 through March 31, 2018, zero crude oil spills to the environment were reported. In the event there are spills to report in the future, Ecology will provide this information and include the date of the spill, the county where the spill occurred, the source, material, and volume of the spill.

³ Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification

Crude Oil Movement by Vessel

In 2006, the state adopted rules for advance notice of oil transfers for vessels and facilities. Ecology has been receiving advance notice of transfer data for all transfers to or from vessels in Washington State since that time.

In order to provide a full picture of crude oil movement in Washington State, a summary of crude oil movement by vessel is provided below, which is in addition to the requirement for this quarterly report as described in the rule.⁴

Table 3 below provides the total volume of crude oil in barrels of inbound and outbound vessel transfers for the period of January 1, 2018 through March 31, 2018. Inbound vessel transfers refers to crude oil movement from vessels to facilities, while outbound vessel transfers refers to crude oil movement from facilities to vessels.

Table 3: Crude Oil Movement by Vessel

Vessel Transfers	Volume (bbls)
Inbound	24,135,617
Outbound	475,679

Note: The data provided in Table 3 was reported to Ecology into the ANT database as required by Chapter 173-180 WAC and Chapter 173-184 WAC. Ecology cannot confirm the data or verify its accuracy.

A summary of vessel transfer data for the quarter shows:

- The total volume of crude oil transferred to or from vessels for the 1st quarter of 2018 was 24,611,296 barrels (1,033,674,430 gallons).
- The total volume of crude oil transferred inbound from vessels to facilities was 24,135,617 barrels (1,013,695,930 gallons).
- The total volume of crude oil transferred outbound from facilities to vessels was 475,679 barrels (19,978,500 gallons).
- There were 75 total vessel transfers of crude oil (inbound or outbound).
- The average volume of crude oil transferred to or from vessels per week was 1,893,177 barrels (79,513,418 gallons).⁵

⁴ Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification

⁵ The quarterly average was calculated using 13 calendar weeks instead of 14 calendar weeks because Calendar Week 53 contains only one day of reported ANT volumes due to the dates of the reporting period.

An Overview of Crude Oil Movement in Washington

A broad view of crude oil movement in Washington State can be seen when comparing the movement of crude oil transported into the state by vessel, rail, and pipeline.

Figure 3 shows the estimated percentage of crude oil transported by vessel (inbound only), rail, and pipeline for the last four quarters, covering the period of April 1, 2017 through March 31, 2018.*

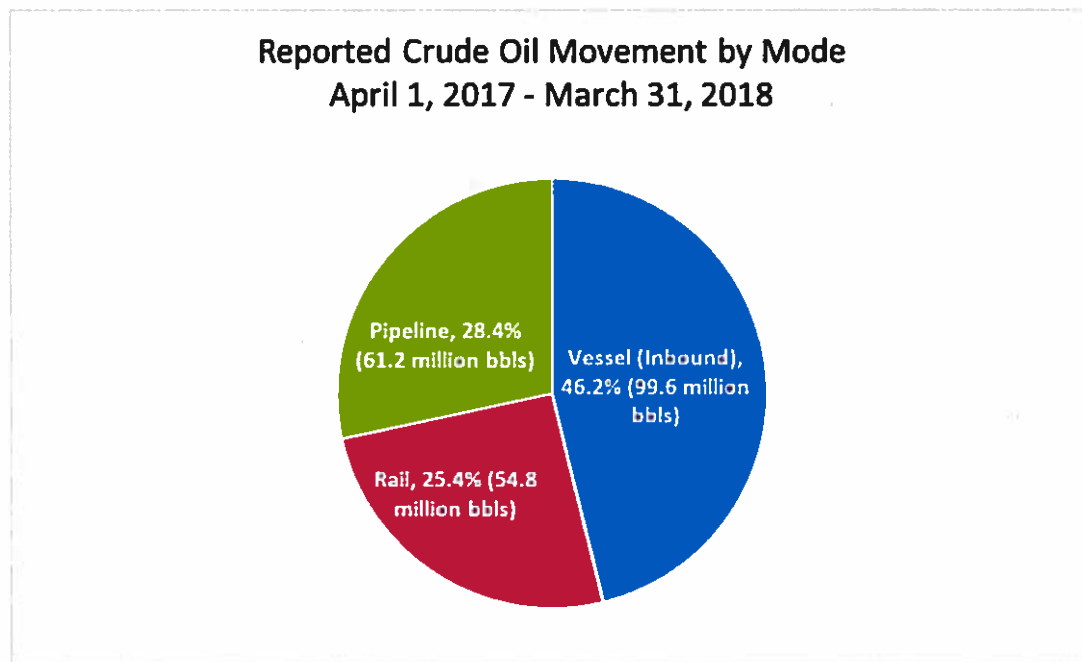


Figure 3: 12-Month Crude Oil Movement by Mode

**Note: The most recent biannual notices from pipelines were submitted to Ecology for the period from July 1, 2017 through December 31, 2017. The next biannual notices submitted by pipelines will cover the period from January 1, 2018 through June 30, 2018 and must be submitted to Ecology by July 31, 2018. For Figure 2, Ecology estimated crude oil movement by pipeline for the period based on data provided in previous biannual notices.*

Between April 1, 2017 and March 31, 2018, vessels were responsible for 46.2% of reported crude oil movement into the state, while rail was responsible for 25.4% and pipeline for 28.4%.

Figure 4 shows crude oil movement by mode for each quarter that rail and pipeline crude oil data has been collected, covering the period of October 1, 2016 through March 31, 2018.

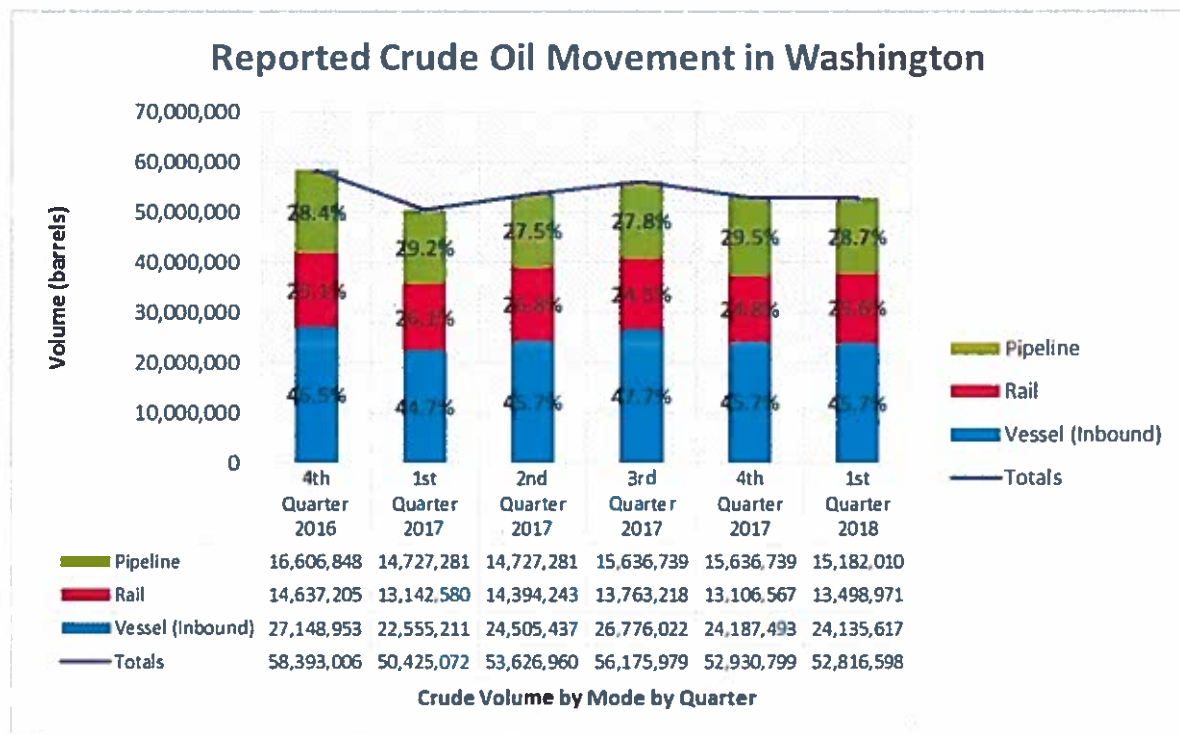


Figure 4: Quarterly Crude Oil Movement by Mode

Ecology will continue to receive information about crude oil movement and use the data to summarize changes over time.

Contact Information

Jack Barfield

Department of Ecology

Spills Program

P.O. Box 47600

Olympia, WA 98504-7600

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Email: jack.barfield@ecy.wa.gov

Kevin Truong

Department of Ecology

Spills Program

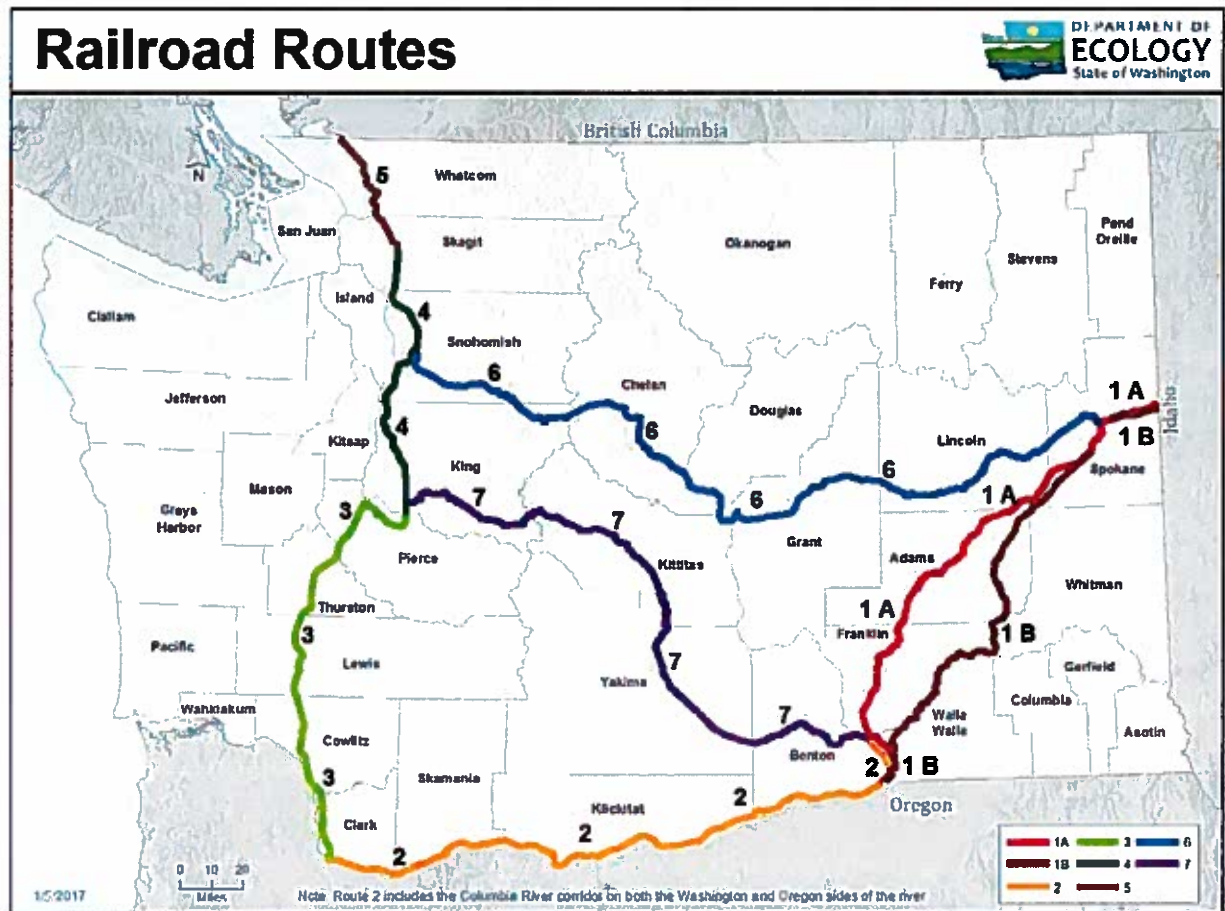
P.O. Box 47600

Olympia, WA 98504-7600

Phone: (360) 407-6950

Email: kevin.truong@ecy.wa.gov

Appendix A – Washington Railroad Routes



Appendix B – API Gravity and Crude Oil Types

Information reported by facilities on scheduled crude oil deliveries includes the gravity of the oil. Ecology uses the standard American Petroleum Institute gravity (API gravity) ranges to define the Crude Type in the ANT database.

API gravity is the measure of the density of petroleum liquid in relation to the density of water and is used to classify oils as light, medium, heavy and extra heavy. The lower the API gravity, the more likely it is to sink in water. Crude Type by API gravity is shown in the table below.

Table 4: Crude Type by API Gravity

Crude Type	API Gravity Range
Light Crude	31.2-50 API
Medium Crude	22.3-31.1 API
Heavy Crude	10-22.2 API
Extra Heavy Crude	0-9.9 API

Local

Washington asks if railroads could afford \$700M oil train spill

By Samantha Wohlfeil

February 13, 2016 06:28 AM

Updated February 18, 2016 03:31 PM

Railroads that haul oil trains through Washington state will need to report whether they could afford around \$700 million to pay for a derailment and spill, under a recently finalized state rule.

As announced Feb. 9, the requirement is one of three oil train safety rules the state Utilities and Transportation Commission crafted as required under legislation that state lawmakers passed in 2015.

The new rules, which take effect March 11:

ADVERTISING

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- Require signs with basic safety information be posted at private rail crossings along routes that carry full or empty oil trains.
- Allow certain cities such as Bellingham, Aberdeen, Spokane, Tacoma, and Richland to opt into a state rail crossing inspection program to get free assistance with inspections.
- Require railroads to include financial information in their annual report to the UTC to show if they could address a “reasonable worst case spill” of oil.

Reasonable worst case

The portion of the rule most heavily scrutinized during a months-long comment process was the requirement to show financial ability to pay for a reasonable worst case spill. The rule required commission staff to first define what a “reasonable” worst case spill looks like, and second, calculate what cleaning that up might cost.

They didn’t want the worst case. They wanted something reasonable.

Jason Lewis, Utilities and Transportation Commission transportation policy adviser

Railroads objected to the proposed spill scenarios, and argued that the requirement to show whether they could afford cleanup was pre-empted by federal law.

Johan Hellman, on behalf of BNSF, wrote Sept. 21, 2015, that the company was concerned with a draft that had defined the reasonable worst case spill as half the train's contents, and had set minimum cleanup costs at \$400 per gallon.

"We find both the definition and the minimum cost to be greatly exaggerated," Hellman wrote.

The worst case calculation was refined to be based on the fastest speed an oil train travels, but both BNSF and Union Pacific Railroad continued to object to the requirement.

In a Dec. 7 letter to the commission, Melissa Hagan argued on behalf of Union Pacific that requiring the railroad to detail the insurance it carries, along with its ability to pay for the reasonable worst case cleanup, would "compromise the integrity of Union Pacific's confidential business records" and was "blatantly discriminatory."

Other people who commented said the rule didn't go far enough in its estimates for how much oil could spill and how much those damages could cost.

State Sen. Christine Rolfes, D-Kitsap County, told the commission she thought the reasonable worst case spill amount was "far too conservative" and the estimated cleanup cost seemed "excessively low."

Dale Jensen, spill prevention preparedness and response manager for the state Department of Ecology, also wrote to say an estimated \$400 per gallon cleanup cost would cover only a "portion of the overall costs of an oil spill" and "in the event of a worst case spill, the true cost of damages incurred could certainly exceed the level established within the proposed rule."

The commission agreed with Jensen but said the legislation refers to a "reasonable" worst case, not an absolute worst case spill.

Calculating the reasonable worst

In crafting the rule, commission staff looked to federal rule-making by the Pipeline and Hazardous Materials Safety Administration and Federal Railroad Administration, and to the actual worst derailment of ethanol or crude oil in North America, which happened in Lac-Mégantic, Quebec.

"Quebec was a terrible tragedy that really put a lot of these types of regulations more in the public eye," said Jason Lewis, who helped craft the rule as transportation policy adviser for the commission.

In Quebec, a parked, unmanned 72-car train loaded with Bakken crude oil rolled downhill, reaching 65 mph before crashing into the downtown and killing 47 people in July 2013. Sixty-three cars derailed and about 1.6 million gallons of oil leaked.

The worst oil train derailment in North America occurred in Lac-Mégantic, Quebec, where 63 cars of a 72-car Bakken crude oil train derailed at 65 mph, killing 47 people.

Although Quebec is the worst oil train derailment to date, Washington state legislators specifically asked the commission to find a "reasonable" worst case scenario for the financial reporting requirement, Lewis said.

"They didn't want the worst case. They wanted something reasonable," Lewis said. "It's an ambiguous term that we really had to work to define."

The commission looked to other state rules and used PHMSA and FRA logic to scale down from the incident in Quebec, Lewis said.

The final rule says to take the maximum oil train speed (usually 45 to 50 mph), divide it by 65 (the speed in Quebec), and account for kinetic force to get the estimated percentage of the train's cargo they should be prepared to clean up.

To illustrate, assume the longest BNSF crude oil unit train transported in 2015 was 110 tank cars and that those trains go 45 mph at their fastest.

Under the new formula, the railroad needs to show whether it has the means to pay for a theoretical spill of 47.9 percent of that oil.

Each tank car has a maximum volume of 30,000 gallons, so the train could carry at most about 3.3 million gallons.

At a cleanup cost of \$400 per gallon, the new guidelines want to know if the railroad could pay \$632.3 million.

If that train were to go 50 mph at its fastest, the reporting amount would be closer to \$781 million.

\$632.3 million to \$781 million Amount railroads need to show they could pay for a spill in Washington state if their fastest 110-car oil train goes 45 to 50 mph

UTC staff also took into account that supertanker vessels that can carry 84 million gallons of oil through Puget Sound are required to get certificates of financial responsibility through Ecology that cap out at \$1 billion, Lewis said.

"If we went much higher in terms of total release or cost of cleanup, it would be difficult to justify a higher cap," Lewis said.

BNSF challenged similar legislation in California, claiming in court that federal rules pre-empt state laws that try to regulate rail.

When asked whether BNSF would similarly challenge Washington's rules or still had concerns about the worst case scenarios, BNSF spokeswoman Courtney Wallace wrote that BNSF was committed to work in good faith with Washington to promote safety.

We have never expected taxpayers to assume the expense of a cleanup after a derailment, and we stand by the practices that have allowed us to keep that record to date.

Courtney Wallace, BNSF spokeswoman

"Nothing is more important to us than safely moving all of the commodities we carry, including crude oil. BNSF is a common carrier and our operations are governed by the Interstate Commerce Commission Termination Act, which generally pre-empts state and local regulations of railroads," Wallace wrote to The Bellingham Herald.

"BNSF has a strong record of corporate responsibility," Wallace wrote. "We have never expected taxpayers to assume the expense of a cleanup after a derailment, and we stand by the practices that have allowed us to keep that record to date. BNSF is financially sound with a long history, substantial assets and a track record of being a responsible corporate citizen."

Because the rule only requires railroads to show whether they could afford that level of spill in their annual report to the commission, rather than requiring they carry a certain level of coverage, the commission believes the rule does not conflict with federal laws.

Annual reports from the railroads are due to the UTC in May.

Read more here: <http://www.bellinghamherald.com/news/local/article60156446.html#storylink=cpy>

From: Laura Ackerman
Sent: Thursday, May 17, 2018 5:32 PM
To: Laura Ackerman
Subject: LPO GRP

Page 26 and 27. Hazardous materials transported. 52.5% Bakken Crude Class 3 hazard. 11.6% Flammable Gasses, butane and alcohol, 2.1 hazard, 21.1% Other Hazard Class 3 and Combustible Liquid and 14.8% Hazard Class 9 and other hazardous material.

3 RRs carry it, and 300,000 rail or tank car. 24 unit trains per week through Sandpoint.

Pg. 30 "Railroad accidents in Bonner county are common" 1995 to 2014 BNSF had 13 , MRL had 8 and UP had 15, and PE Valley has 1.

Why have oil spill contingency plan if you have a GRP? Pg. 38 response strategies were designed for use with persistent heavy oils that float on water and may not be suitable for other petroleum products or hazardous substances.

Pg. 61 19 Public Registered water systems of surface water. 11 draw straight from the lake.

Pg. 63 Average time between derailment and onset of fire is less than 20 minutes. Often quicker.

Pg. 98. LPO is part of Rathdrum Prairie Aquifer. 100,000 in Kootenai county and another 400,000 in Spokane County. DEQ classifies RPA a sensitive resource .

Critical Important in protecting it." aquifer. Remediating an underground spill is more complex than above ground.

Appendices: Responding to release. Not the level of detail needed, especially with another bridge over the lake.

Vulnerabilities ID' d in June 2017. Training, Equipment, Geographic and evacuation and procedural. Schools and nursing homes have to have evacuation plans, so why shouldn't railroads have contingency plans? Lake Pend Oreille area is listed as vulnerable. Half of Sandpoint could be required to evacuate if there is a fire. And Bonner County needs to update their plans (check on this). GRPs are guides, they are really important, but they are like the bread in a sandwich, the railroads should provide to state agencies and the public what is in the inside. It's all works together. It will help mitigate some of the vulnerabilities mentioned in the GRP.

SANDPOINT PUBLIC PRE-HEARING SUPPORT

ATTENTION! ON MAY 23RD, 2018 - SANDPOINT PUBLIC PRE-HEARING TO SUPPORT THE SANDPOINT CONNECTOR PROJECT FOR LAKE PEND OREILLE. ATTENDANCE IS NOT MANDATORY, BUT ENCOURAGED FOR NORTHWEST & MONTANA DIVISION EMPLOYEES INTERESTED IN SHOWING THEIR SUPPORT. ATTENDANCE IS ON THE EMPLOYEE'S OWN TIME, BUT WILL BE COMPENSATED FOR ATTENDING. LOCATION: FIRST BAPTIST CHURCH, SAND POINT - THE GREENHOUSE - 1220 MICHIGAN ST - SANDPOINT, ID 83864 DATE: MAY 23RD 2018 - 1700PT PRE-HEARING / 1800PT PUBLIC HEARING AT SANDPOINT MIDDLE SCHOOL GYM. COMPENSATION WILL BE A BASIC DAY - PLEASE SUBMIT A CLAIM CODE 73, WITH THE COMMENT "SUPPORT OF SANDPOINT CONNECTOR PROJECT". PLEASE CHECK-IN AT BNSF BOOTH AT THE CHURCH TO SIGN CHECK-IN SHEET TO VERIFY ATTENDANCE AND COMPENSATION CLAIM.

THANK YOU - MON/MWE DIVISION LEADERSHIP
Enter-PF2---PF3---PF4---PF7---PF8---PF12
Main Exit Print Bkwd Fwrd Next

Position cursor or ENTER screen value to select

Laura Ackerman

From: Laura Ackerman
 Sent: Monday, May 21, 2018 4:03 PM
 To: Laura Ackerman
 Subject: Regulatory fees in annual report. WA UTC <http://apps.leg.wa.gov/wac/default.aspx?cite=480-62&full=true> RR Companies operations

480-62-300

Annual reports—Regulatory fees.

(1) The surface transportation board annual report form R1 must be used by Class I railroad companies in addition to the annual report form published by the commission. Class II and Class III railroad companies must use report forms periodically published by the commission.

(2) Any railroad company that transports crude oil in Washington must submit to the commission, in addition to its annual report, a statement that contains:

(a) All insurance carried by the railroad company that covers any losses resulting from a reasonable worst case spill.

(b) Coverage amounts, limitations, and other conditions of the insurance identified in (a) of this subsection.

(c) Average and largest crude oil train, as measured in barrels, operated in Washington by the railroad company in the previous calendar year.

(d) Information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a reasonable worst case spill of oil as defined in (e) of this subsection including, but not necessarily limited to, insurance, reserve accounts, letters of credit, or other financial instruments or resources on which the company can rely to pay all such costs. For the purposes of this section, the railroad company must calculate the total cleanup costs for a reasonable worst case spill based on a minimum cost of sixteen thousand eight hundred dollars per barrel multiplied by the percentage of the largest train of crude oil described in (e) of this subsection.

(e) For the purposes of this section, a reasonable worst case spill for railroads shall mean the percent of the largest train load of crude oil, as measured in barrels, moved by that company in the previous calendar year, as described below:

$$[(\text{Maximum Operating Speed}/65)^2 = \text{Reasonable Worst Case Percent}]$$

(f) For the purposes of this section, maximum operating speed shall mean the top speed that the railroad company operates any train carrying crude oil in the state.

(3) Each year every railroad company is responsible for obtaining the proper report form from the commission. Reports must be completed for the preceding calendar year's operations. One copy of the completed annual report, along with the regulatory fee, must be submitted to the commission no later than May 1st of each year.

(4) **Regulatory fees.** The railroad company regulatory fee for Class I railroads and companies that haul crude oil is set by statute at two and one-half percent of gross intrastate operating revenue. The regulatory fee for all other railroad companies shall be set at one and one-half percent of gross intrastate operating revenue.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a railroad company must pay is twenty dollars.

(c) The twenty dollar minimum regulatory fee is waived for any railroad company with less than one thousand three hundred dollars in gross intrastate operating revenue.

(d) The commission does not grant extensions for payment of regulatory fees.

(e) If a company does not pay its regulatory fee by May 1st, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

[Statutory Authority: RCW [80.01.040](#), [80.04.160](#), [81.24.010](#), [81.53.010](#), [81.53.240](#), and chapter [81.44](#) RCW. WSR 16-05-032 (Docket TR-151079, General Order R-584), § 480-62-300, filed 2/9/16, effective 3/11/16. Statutory Authority: RCW [80.01.040](#), [80.04.160](#), [81.04.160](#), and 2003 c 296. WSR 04-05-031 (Docket No. A-031232, General Order No. R-512), § 480-62-300, filed 2/11/04, effective 3/13/04. Statutory Authority: RCW [80.01.040](#), [81.04.160](#), [81.24.010](#), [81.28.010](#),

[81.28.290](#), [81.40.110](#), [81.44.010](#), [81.44.020](#), [81.44.101](#)- [81.44.105](#), and chapters [81.48](#), 81.53, 81.54, 81.60, and [81.61](#) RCW. WSR 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-300, filed 1/30/01, effective 3/2/01.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

480-62-305

Railroad community notice requirements.

This rule is not intended to cover immediate safety hazards or emergencies.

(1) At least ten days prior to taking any planned action that may have a significant impact on a community, railroad companies must notify, in writing, the governing authority of the community and the commission of the planned action.

Note: Maintenance practices, such as replacing broken planks if the opportunity to do so is unexpectedly presented, are not considered to be planned actions and would likely prevent safety hazards. In such situations, advance notice would not be required.

(2) Examples of actions that may have significant impact on a community include disrupting the use of a crossing for track inspection, reconstruction, maintenance, or blocking a crossing.

(3) The notice must contain a heading with the words "important notice" in prominent type and contain, at a minimum, the following:

- (a) Date the notice is issued;
- (b) A clear explanation of the type of planned event;
- (c) Specific location of the event;
- (d) An estimation of the start and completion date of the event;
- (e) Any additional information that will assist the community to plan for the event;
- (f) Railroad company contact person and phone number; and

(g) A statement substantially as follows: "If you have questions about the regulatory process, you may contact the Washington Utilities and Transportation Commission at: WUTC, 1300 S. Evergreen Park Dr. S.W., P.O. Box 47250, Olympia, WA 98504-7250; [1-800-562-6150](#) (toll-free). Also, you may contact the Federal Railroad Administration at [1-800-724-5998](#) (toll-free)."

(4) Whenever a highway authority plans to perform maintenance that will affect a crossing, it must notify the railroad company and local jurisdiction at least ten days before performing the maintenance.

(5) Whenever a railroad company plans to perform maintenance that involves changing the type of material used as a grade crossing surface, it must also notify the commission at least ten days prior to performing the replacement.

[Statutory Authority: RCW [80.01.040](#), [81.04.160](#), [81.24.010](#), [81.28.010](#), [81.28.290](#), [81.40.110](#), [81.44.010](#), [81.44.020](#), [81.44.101](#)- [81.44.105](#), and chapters [81.48](#), 81.53, 81.54, 81.60, and [81.61](#) RCW. WSR 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-305, filed 1/30/01, effective 3/2/01.]

480-62-310

Accident reports.

(1) A railroad company must make a telephone report to the commission's designee, the Washington state emergency operations center's twenty-four-hour duty officer (duty officer) at [1-800-258-5990](#) of any event connected to the operation of the railroad company that results in the:

- (a) Release of any hazardous material (i.e., materials that are corrosive, flammable, explosive, reactive with other materials, or toxic);
- (b) Death of any person;

(c) Injury to any person involved in a railroad-highway crossing accident that requires medical treatment in addition to first aid; or

(d) Property damage, amounting to fifty thousand dollars or more to property.

(2)(a) Telephone reports of events listed in subsection (1) of this section must be made by the railroad company within thirty minutes of when it learned of the event. The report must provide detailed information of the event to the duty officer. After receiving the telephone report from the railroad company, the duty officer will identify the necessary critical response and remediation resources and agencies on an initial and continuous basis through the completion of the response to the event; and

(b) The duty officer will notify the commission, the affected county or city emergency management office and other appropriate agencies of the event report.

(c) Provisions contained in (a) and (b) of this subsection must be carried out in accordance with the state's twenty-four hour duty officer standard procedures and the Washington Emergency Management Act, chapter [38.52](#) RCW.

(3) Each event report made under subsection (1) of this section by a railroad company must state, to the extent known, the:

(a) Name of the railroad(s) involved;

(b) Name and position of the reporting individual;

(c) Time and date of the event;

(d) Circumstances of the event;

(e) Number and identity of persons suffering injuries;

(f) Number of fatalities and the identities of the deceased;

(g) The type and amount of hazardous material spilled; and

(h) Other details that will assist in identifying the necessary response, as prompted by the duty officer.

(4) Accidents involving joint railroad company operations must be reported by the railroad company that controls the track and directs the movement of trains where the accident has occurred.

(5) Whenever a railroad company submits an event report to the Federal Railroad Administration, it must submit a copy to the commission at the same time.

(6) Whenever a railroad submits a report to the United States Department of Transportation concerning a hazardous materials incident or accident, it must submit a copy of the report to the commission at the same time.

[Statutory Authority: RCW [80.01.040](#), [81.04.160](#), [81.24.010](#), [81.28.010](#), [81.28.290](#), [81.40.110](#), [81.44.010](#), [81.44.020](#), [81.44.101](#)-[81.44.105](#), and chapters [81.48](#), 81.53, 81.54, 81.60, and [81.61](#) RCW. WSR 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-310, filed 1/30/01, effective 3/2/01.]

Chapter 173-186 WAC
OIL SPILL CONTINGENCY PLAN—RAILROAD

PART I: PURPOSE, APPLICABILITY, AUTHORITY AND DEFINITIONS

NEW SECTION

WAC 173-186-010 Purpose. The purpose of this chapter is to establish railroad oil spill contingency plan requirements, drill and equipment verification requirements, and provisions for inspection of records, effects of noncompliance, and enforcement, which:

(1) Ensure maximally effective and rapid responses to oil spills by plan holders and response contractors;

(2) Ensure constant readiness, well-maintained equipment and trained personnel;

(3) Support coordination with state, federal, local, tribal and other contingency planning efforts;

(4) Provide for the protection of Washington waters, and natural, cultural and significant economic resources by minimizing the impact of oil spills; and

(5) Provide the highest level of protection that can be met through the use of best achievable technology and those staffing levels, training procedures, and operational methods that constitute best achievable protection (BAP) as informed by the BAP five year review cycle (WAC 173-186-410) and as determined by ecology.

NEW SECTION

WAC 173-186-020 Applicability. (1) This chapter applies to:

(a) Railroad facilities required to submit oil spill contingency plans under chapter 90.56 RCW except for facilities as described in subsection (2) of this section.

(b) Railroad facility owners or operators who lease access to state owned railroad tracks.

(c) Any person submitting a contingency plan on behalf of a facility regulated under this chapter.

(d) Primary response contractors (PRCs) under contract to railroad contingency plan holders.

(2) This chapter does not apply to:

(a) A railroad that is owned and operated by the state.

(b) Pipelines or facilities other than railroads. Contingency planning regulations for pipelines and facilities other than railroads are described in chapter 173-182 WAC.

NEW SECTION

WAC 173-186-030 Authority. RCW 88.46.160, 90.48.080, 90.56.005, 90.56.050, 90.56.060, 90.56.210, 90.56.240, 90.56.260, 90.56.270, 90.56.280, 90.56.300, 90.56.310, 90.56.320, 90.56.340, and 90.56.570 provide statutory authority for the contingency plan preparation and review requirements and drill standards established by this chapter for railroads.

NEW SECTION

WAC 173-186-040 Definitions. Unless the context clearly requires otherwise, the definitions in chapters 90.56 RCW, 173-182 WAC and the following apply to this chapter.

"Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

"Cargo" means goods or services carried as freight for commerce.

"Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided in (b) of this subsection, a facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by the department or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

"Oil" or "oils" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under Section 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

"Owner" or "operator" means, in the case of a railroad, any person owning or operating the railroad. Operator does not include any person who owns the land underlying a railroad if the person is not involved in the operations of the railroad.

"Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

"Rail plan holder" means a person who submits and implements a railroad contingency plan consistent with RCW 90.56.210 on the person's own behalf or on behalf of one or more persons.

"Tank car" means a rail car, the body of which consists of a tank for transporting liquids.

"Worst case spill" means, in the case of a railroad, a spill that includes the entire fuel capacity of the locomotive and the entire cargo capacity of the largest number of cargo rail cars carried by the railroad, based on seven hundred fourteen barrels per tank car, complicated by adverse weather conditions unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, unique operations, industry spill history and transfer capacity.

PART II: OIL SPILL CONTINGENCY PLANS

Section A—Plan Submittal and Maintenance

NEW SECTION

WAC 173-186-100 Authority to submit contingency plan. (1) A plan may be submitted by any of the following:

(a) The owner or operator of the railroad; or
(b) A person who has contracted with the railroad to provide containment and cleanup services and who has been approved by ecology.

(2) A person may submit a single integrated plan for more than one railroad provided that all requirements of this chapter are met.

(3) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this chapter may be accepted by ecology.

NEW SECTION

WAC 173-186-110 Submitting a railroad contingency plan. (1) The rail plan holder shall submit two copies of the plan and all appendices. Electronic submission of plans is encouraged, provided it is in an electronic format acceptable to ecology. In the case of electronic submission, only one copy is necessary.

(2) Once the initial plan is approved, rail plan holders shall resubmit their plans to ecology every five years for review and approval.

(3) Ecology will maintain mailing address and electronic submission instructions on the agency web site.

NEW SECTION

WAC 173-186-120 Phase-in dates for this chapter. (1) Railroads that transport crude oil, currently operating in Washington, shall submit plans to ecology no more than ninety days after the effective date of this chapter; however, no later than within thirty days after the effective date of this chapter the rail plan holder shall provide ecology either a federal plan or the following information to demonstrate capability for response to oil spills:

- (a) Contact information for the railroad.
- (b) Notification procedures in case of spills to water.
- (c) Description of rail operations in the state.
- (d) Letter of intent with a primary response contractor.

If the plan covers operations in areas where geographic response plans do not currently exist, the plan will be submitted without that information and a timeline to develop interim resources at risk data will be developed together by the plan holder and ecology.

(2) Railroads exclusively transporting oils other than crude oil, currently operating in Washington, shall submit a plan to ecology or have enrolled in an integrated plan no more than one hundred eighty days after the effective date of this chapter; however, no later than within ninety days after the effective date of this chapter the rail plan holder shall provide ecology either a federal plan or the following information to demonstrate capability for response to oil spills:

- (a) Contact information for the railroad.
- (b) Notification procedures in case of spills to water.
- (c) Description of rail operations in the state.
- (d) Letter of intent with a primary response contractor.

(3) If upon initial plan review ecology determines that there is insufficient access to equipment described in WAC 173-186-310, railroads shall have no more than eighteen additional months after initial plan review to reach full compliance with the equipment planning standards.

(4) For rail plan holders exclusively transporting oils other than crude oils, a letter of intent with a contractor shall initially be sufficient to meet WAC 173-186-220. The rail plan holders shall then have an additional twelve months to secure a contract with a primary response contractor after initial plan approval.

NEW SECTION

WAC 173-186-130 Annual plan maintenance. At least once annually, rail plan holders shall review the entire plan for accuracy and either:

(1) Update and submit the amended page(s) of the plan to ecology for review and approval; or

(2) If no plan changes are needed, provide a letter to ecology confirming that the existing plan is still accurate.

NEW SECTION

WAC 173-186-140 Significant changes to approved plans. (1) At any point during the five year approval period, if there is a temporary or permanent significant change in the personnel or response equipment described in the plan, the rail plan holder shall:

(a) Notify ecology in writing within twenty-four hours of the change; and

(b) Provide both a schedule for the prompt return of the plan to full operational status and a proposal for any backfill to compensate for the temporary significant change. This proposal shall be reviewed and approved by ecology.

(2) Changes which are considered significant include:

(a) Loss of equipment that results in being out of compliance with any planning standard;

(b) Movement of greater than ten percent of available boom, storage, recovery, in situ burn or shoreline cleanup equipment out of the home base as depicted on the western regional response list (WRRL);

(c) Transfers of equipment to support spill response for out-of-region spills;

(d) Permanent loss of initial response personnel listed in command and general staff incident command system (ICS) positions provided in the plan;

(e) Permanent loss of personnel designated as the binding agreement signer;

(f) Changes in the oil types handled; permanent changes in storage capacity; changes in handling or transporting of an oil product;

(g) Changes in equipment ownership if used to satisfy a rail plan holder planning standard; or

(h) Modification or discontinuation of any mutual aid, letter of intent or contract or letter of agreement.

(3) Notification by facsimile or e-mail will be considered written notice.

(4) Failure to report significant changes in the plan could result in the loss of plan approval.

(5) If the proposed change to the plan is to be made permanent, the rail plan holder then shall have thirty calendar days from notification to ecology to distribute the amended page(s) of the contingency plan to ecology for review and approval.

(6) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place the plan into conditional approval or disapprove the plan.

NEW SECTION

WAC 173-186-150 Post-spill review and documentation procedures.

Rail plan holders are required to conduct post-spill review procedures to review both the effectiveness of the plan and make plan improvements. Debriefs with ecology and other participating agencies and organizations may be appropriate if unified command has been established during a spill, and are required when significant plan updates are identified or significant lessons can be recorded and implemented.

Section B—Contingency Plan Format, Content and Implementation

NEW SECTION

WAC 173-186-200 Contingency plan format requirements.

(1) Rail plan holders shall format and maintain plans to maximize their usefulness during a spill. Information shall be readily accessible and plans shall contain job aids, diagrams and checklists for maximum utility. Plans shall be formatted to allow replacement of pages with revisions without requiring replacement of the entire plan.

(2) Plans shall be divided into a system of numbered, tabbed chapters, sections and annexes/appendices. Each plan shall include a detailed table of contents based on chapter, section, and annex/appendix numbers and titles, as well as tables and figures.

(3) Where provided by ecology, an easy-to-use boilerplate plan for rail plan holders may be used.

NEW SECTION

WAC 173-186-210 Binding agreement.

(1) Each plan shall contain a written statement binding the rail plan holder to its use. Form number ECY 070-550 may be used.

(2) The binding agreement shall be signed by each of the following: (a) The rail plan holder, (b) the owner or operator, or a designee with authority to bind the owners and operators of the railroad covered by the plan.

(3) The plan holder shall submit the agreement with the plan and shall include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(4) In the statement, the signator shall:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur.

cur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the ICS to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

NEW SECTION

WAC 173-186-220 Contingency plan general content. (1) Contingency plans shall include all of the content and meet all the requirements in this section.

(2) In Washington state, the Northwest Area Contingency Plan (NWACP) serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Rail plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans shall include the following:

(a) Each plan shall state the name, location, type and address of the facility and the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill volume. If oil handling operations vary on different rail routes, more than one worst case spill volume may be submitted to ecology for consideration.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date and page of the amendment and the name of the authorized person making the change.

(d) Each plan shall have a table of contents and a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall provide a list and map of expected rail routes in Washington and a description of the operations covered by the plan, including locations where fueling occurs and an inventory of above ground storage tanks and the tank capacities.

An inventory of above ground storage tanks and tank capacities is not required if the total above ground storage capacity from containers with capacity of at least fifty-five gallons is less than one thousand three hundred twenty gallons.

(f) Each plan shall list all oil cargo transported, including region of origin, oil types, physical properties, and health and safety hazards of the oil cargo. A safety data sheet (SDS) or equivalent information may satisfy some of these requirements; the plan shall identify where the SDS or equivalent is kept for emergency response use.

(g) Each plan shall have the PRC's name, address, phone number or other means of contact at any time of the day, and include:

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan. If the entire contract is not submitted, that document shall be available for inspection, if requested by ecology.

(ii) For mutual aid agreements that a rail plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(h) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. This includes:

(i) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(ii) An organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. If a response contractor is used to fill positions, they shall agree in writing to staff the positions. If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(iii) A detailed description of the planning process and job description for each spill management position; except if the rail plan holder follows without deviation the planning process or job descriptions contained in the NWACP. If the planning process or job descriptions are consistent with those contained in the NWACP, then the rail plan holder may reference the NWACP rather than repeat the information.

(iv) Include a description of the type and frequency of training that the spill management team receives, which shall include at a minimum ICS, NWACP policies, use and location of geographic response plans (GRPs), the contents of the plan and worker health and safety. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(v) Identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours.

(i) Each plan shall include procedures for immediately notifying appropriate parties that a spill or a substantial threat of a spill has occurred. The procedures shall establish a clear order of priority for immediate notification and include:

(i) A list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members. The notification section shall include names and phone numbers, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.

(ii) Identify the central reporting office or individuals responsible for implementing the notification process.

(iii) Include a form to document those notifications.

(j) Each plan shall contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party shall provide waste disposal records to ecology upon request.

(k) Each plan shall state how an oil spill will be assessed for determining product type, potential spill volume, and environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(i) Each plan shall list procedures that will be used to confirm the occurrence, and estimate the quantity and nature of the spill. An updated notification report is required if the initially reported estimated quantity or the area extent of the contamination changes significantly. Rail plan holders and responsible parties are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation.

(ii) The plan shall contain a checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

(l) Each plan shall include a description of the methods to be used to promptly assess spills with the potential to impact groundwater, including contact information in the plan for resources typically used to investigate, contain and remediate/recover spills to groundwater.

(m) Each plan shall include concise procedures to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

(n) Each plan shall include a description of the sensitive areas and a description of how environmental protection will be achieved, including containment, enhanced collection and diversion tactics.

(i) The plan shall include information on natural, cultural and economic resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics; public beaches, water intakes including both drinking and agricultural water supplies, private and public wells that supply drinking water, and marinas; shellfish resources, significant economic resources and vulnerable populations to be protected in the geographic area covered by the plan.

(ii) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If railroad facilities occur in areas where descriptions of the sensitive areas and a description of how environmental protection will be achieved do not exist, railroad plan holders will submit summary descriptions of the sensitive areas and prepare booming strategy "control points" for waterways in the vicinity of the railroad tracks.

(o) Each plan shall identify potential initial command post locations.

(p) Each plan shall contain a description of how the rail plan holder meets each applicable planning standard in Section C of this chapter.

NEW SECTION

WAC 173-186-230 Field document. (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill or a substantial threat of a spill. The

owner or operator of the railroad shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations for use during an initial response. The locations where field documents are kept shall be listed in the plan.

(2) At a minimum, the field document shall contain:

(a) Procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures; and

(c) The checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

NEW SECTION

WAC 173-186-240 Plan implementation procedures. Every rail plan holder is required to implement the ecology approved plan in any response to an oil spill and drill. A decision to use a different plan shall first be approved by the state and federal on-scene coordinators.

Section C—Planning Standards

NEW SECTION

WAC 173-186-300 Planning standards. (1) Ecology shall apply a planning standard when determining the ability of a rail plan holder to meet the requirements of these regulations. The planning standards described in this chapter do not constitute cleanup standards nor response standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this chapter does not constitute failure to comply with a contingency plan, for purposes of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

In an actual spill event, initial deployment shall be guided by safety considerations. The responsible party shall address the entire volume of an actual spill regardless of the planning standards.

(2) Ecology will use the procedures described in WAC 173-182-345 and 173-182-348 to evaluate recovery capability required in these planning standards.

NEW SECTION

WAC 173-186-310 Equipment planning standards. (1) The equipment necessary to address the worst case spill volume is brought to an incident over a period of time. The methodology to determine this is described in WAC 173-186-380 and 173-186-400. The spreadsheet referred to in WAC 173-186-380 will be used to demonstrate compliance with these equipment requirements.

(2) The following planning points shall be used to calculate the equipment access and timelines, as applicable to the plan holder. There shall be at least one planning point for each plan. If rail operates in an area where a planning point does not exist, ecology will develop one or more planning points during the plan review process.

Location	Within a five mile radius of a point at Latitude/ Longitude
Bellingham	48°45'7.003"N, 122°29'2.115"W
Mukilteo/Everett	47°58'15.401"N, 122°13'44.976"W
Seattle	47°35'32.642"N, 122°19'49.044"W
Tacoma	47°14'39.119"N, 122°24'23.921"W
Centralia/Chehalis	46°41'26.620"N, 122°58'9.712"W
Longview/Kelso	46°9'15.778"N, 122°54'57.501"W
Aberdeen	46°58'32.008"N, 123°48'33.378"W
Vancouver	45°40'29.530"N, 122°41'31.781"W
Coulee City	47°36'38.209"N, 119°17'43.416"W
Tri-Cities (Kennewick)	46°12'34.024"N, 119°6'14.065"W
Colfax	46°52'38.350"N, 117°21'10.692"W
Clarkston	46°25'53.599"N, 117°3'25.114"W
Spokane	47°39'57.991"N, 117°23'24.746"W
Colville	48°38'18.875"N, 118°4'48.810"W
Pend Oreille/Colville National Forest	48°45'54.659"N, 117°24'9.704"W
Okanogan	48°21'52.386"N, 119°34'28.344"W
Wenatchee	47°27'16.949"N, 120°20'0.204"W
Yakima/Union Gap	46°32'1.385"N, 120°28'23.376"W
Moses Lake	47°6'41.058"N, 119°17'0.334"W

Location	Within a five mile radius of a point at Latitude/ Longitude
Bingen	45°43'15.298"N, 121°29'4.066"W

(3) All rail plan holders shall demonstrate access to the equipment in the table below within the time frames identified based on the areas rail plan holders operate.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
6	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived 5,000 feet of boom available for containment, recovery or protection could have arrived Alternatively, resources identified to deploy a site specific strategy to keep oil from entering surface waters or penetrating into the ground could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 4,100 barrels within 24-hour period could have arrived	1 times the effective daily recovery capacity (EDRC) appropriate to operating environment
12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived	1.5 times the EDRC appropriate to operating environment
24	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 20% of worst case spill volume or 16,000 barrels within 24-hour period could have arrived	2 times the EDRC appropriate to operating environment
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 20,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-186-320 Maintenance records for oil spill response equipment. Rail plan holders that own oil spill response equipment shall develop schedules, methods, and procedures for response equipment maintenance. Maintenance records shall be kept for at least five years and made available if requested by ecology. Equipment shall be listed on the WRRRL or equivalent spreadsheet included in the contingency plan.

NEW SECTION

WAC 173-186-330 Planning standards for crude oils. (1) Rail plan holders carrying, handling, storing, or transporting crude oils shall have a letter of intent with a primary response contractor that maintains the resources and/or capabilities necessary to respond to a spill of oil that may weather, and sink or submerge. Such equipment shall include, but is not limited to, the following:

(a) Sonar, sampling equipment or other methods to locate the oil on the bottom or suspended in the water column;

(b) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(c) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(d) Equipment necessary to assess the impact of such discharges; and

(e) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

(2) The equipment shall be capable of being on scene within twelve hours of spill notification.

NEW SECTION

WAC 173-186-340 Planning standards for in situ burning. Based on the NWACP, plan holders operating in areas where in situ burning could be approved shall identify equipment for the use of in situ burning including locations of fire booms, air monitoring equipment, firefighting foam, igniters and aircraft or vessels to be used to deploy the igniters. These resources shall be capable of being on scene within twelve hours of spill notification.

NEW SECTION

WAC 173-186-350 Planning standards for shoreline cleanup. Each rail plan holder shall identify and ensure the availability of response resources necessary to perform shoreline cleanup operations capable of being on scene within twenty-four hours of spill notification.

NEW SECTION

WAC 173-186-360 Planning standards for air monitoring to protect oil spill responders and the public. Rail contingency plans shall include a narrative description of applicable federal, state, and local requirements and the plan holder's resources for conducting air monitoring to protect oil spill responders and the public, including:

(1) A description of how initial site characterization for responders will occur;

(2) A description of air monitoring instruments and detection limits that will be used when monitoring for public safety;

(3) A description of action levels for various oil constituents of concern based on products handled by the railroad (benzene, H₂S, etc.);

(4) A description of how data management protocols and reporting time frames will be managed under unified command;

(5) A description of how communication methods to at-risk populations will be managed under unified command;

(6) A description of how evacuation zones and shelter-in-place criteria are established under unified command.

NEW SECTION

WAC 173-186-370 Planning standards for wildlife rescue and rehabilitation. Each plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the capability to arrive on scene within twenty-four hours of spill notification.

NEW SECTION

WAC 173-186-380 Documenting compliance with the planning standards. (1) The rail plan holder shall describe how the planning standards found in this chapter are met.

(2) The rail plan holder shall include in the plan, a spreadsheet provided by ecology on the resources to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel by type, quantity, home base and provider.

(3) Ecology will use the process and criteria found in WAC 173-182-350 to analyze the spreadsheet.

Section D—Plan Evaluation

NEW SECTION

WAC 173-186-400 Plan evaluation criteria and alternative method of evaluating planning standards. (1) Rail plan holders shall prepare a plan that demonstrates capability, to the maximum extent practicable, of promptly and properly removing oil and minimizing environmental damage from a variety of spill sizes, up to and including worst case spills. Ecology will evaluate plans using the process and criteria contained in WAC 173-182-610.

(2) A rail plan holder may request that ecology review and approve a plan using an alternative planning standard. Such requests should be submitted with the plan and shall be subject to a thirty day

public review period and comment period which includes, but is not limited to, interested local and tribal governments and other stakeholders.

(a) The proposal shall include, at a minimum:

(i) A reference to which planning standard(s) in this chapter the proposal will be substituted for;

(ii) A detailed description of the alternative proposal including equipment, personnel, response procedures, and maintenance systems that are being proposed; and

(iii) An analysis of how the proposal offers equal or greater protection or prevention measures as compared to the requirement in this chapter.

(b) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(i) The alternative compliance proposal is complete and accurate; and

(ii) The alternative compliance proposal provides an equivalent or higher level of protection in terms of spill preparedness and response when compared with the planning standards found in this chapter.

(c) Ecology may reconsider an approval at any time, in response to lessons learned from spills, drills, and significant plan changes which indicated that the requirements of this section for approval are not met.

NEW SECTION

WAC 173-186-410 Oil spill contingency plan best achievable protection five-year review cycle. Using the procedures and criteria outlined in WAC 173-182-621, ecology will review the planning standards at five-year intervals to ensure the maintenance of best achievable protection to respond to a worst case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety.

NEW SECTION

WAC 173-186-420 Process for plan approval. Rail owners or operators for new railroad operations shall submit plans to ecology no less than sixty-five days prior to their planned date for beginning of operations in Washington.

(1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the rail plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.

(2) Once a plan has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan available for public review and comment. Ecology will accept comments on the plan for a period of thirty days after the plan has been made publicly available. No later than sixty-five days from

the date of public notice of availability, ecology will make a written determination either approving, conditionally approving, or disapproving the plan. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

(a) If the plan is approved, the rail plan holder will receive a certificate of plan approval and the plan expiration date. Approved plans shall be valid for five years.

(b) If the plan is conditionally approved, ecology may require a rail plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. In the conditional approval ecology will describe:

(i) Each specific restriction and the duration for which it applies;

(ii) Each required item to bring the plan into compliance; and

(iii) The schedule for rail plan holders to submit required updates, including a reference to the regulatory standard in question.

Restrictions may include, but are not limited to, additional information for the plan or additional requirements to ensure availability of response equipment.

Conditional approval expires no later than eighteen months from date of issue at which time the rail plan holder shall need to request an extension, which is subject to public review.

Ecology shall revoke its conditional approval prior to the expiration date when a rail plan holder fails to meet the terms of the conditional approval. The revocation will be in the form of an appealable order.

(c) If the plan is disapproved, the rail plan holder shall receive an explanation of the factors.

(3) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

(4) Public notice will be given of any approval, conditional approval, or disapproval of a plan.

NEW SECTION

WAC 173-186-430 Process for public notice and opportunity for public review and comment period. (1) The purpose of this section is to specify the procedures for notifying the public which includes interested local and tribal governments about contingency plan status and decisions in order to provide opportunities for the public to review and comment.

(2) In order to receive notification of the public review and comment period, interested public, local, and tribal governments should sign up on the ecology e-mail list (listserv) for posting notice about plan review and comment. Ecology's web site will also be used to post notice of public review and comment periods.

(3) Public comment periods shall extend at least thirty days. Public notice, review, and comment periods are required in the following circumstances:

(a) Plan submittals for railroads that have never submitted a plan in Washington;

(b) Plan updates required by WAC 173-186-130;

(c) The submittal of plans for five-year review as required by WAC 173-186-110;

(d) Requests for an alternative planning standard in accordance with WAC 173-186-400;

(e) Rail plan holder requests for drill requirement waivers in accordance with WAC 173-186-540; and

(f) A permanent significant change to an approved plan.

(4) Public notice, review, and comment period are not required in the following circumstances:

(a) Routine updates to names, phone numbers, formatting, or forms that do not change the approved content of the plan;

(b) Plan updates to resubmit the binding agreement based on changes to the binding agreement signer; and

(c) Annual plan reviews that result in a letter to ecology confirming that the existing plan is still accurate.

PART III: DRILL AND EQUIPMENT VERIFICATION PROGRAM

NEW SECTION

WAC 173-186-500 Drill participation, scheduling and evaluation.

(1) Rail plan holders and PRCs shall participate in a drill and equipment verification program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Exercise Program (NPREP), is relied on to test each component of the plan.

(2) **Ecology's participation in drills:** Rail plan holders and PRCs shall ensure ecology is provided an opportunity to help design and evaluate all tabletop and deployment drills for which the rail plan holder desires drill credit.

(3) **Scheduling drills:** Rail plan holders shall schedule drills on the NWACP area exercise calendar. Drill scheduling requirements are listed in the table in WAC 173-186-510.

(4) **Evaluating drills:** Ecology shall provide a written drill evaluation report to the rail plan holder following each drill. Credit will be granted for drill objectives that are successfully met.

(5) Objectives that are not successfully met shall be tested again and successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(6) Where plan deficiencies have been identified in the written evaluation, rail plan holders may be required to make specific amendments to the plan or conduct additional trainings to address the deficiencies.

(7) A rail plan holder may request an informal review with ecology of the ecology drill evaluation within thirty days of receipt of the report.

NEW SECTION

WAC 173-186-510 Type and frequency of drills. To receive the credit from ecology for performing a required drill, the plan holder shall conduct the following drills within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Two per year	These drills include notification, safety assessments, GRP and equipment deployments.	Scheduled at least 30 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.
Wildlife Deployment Drill	1 - One in each three year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill	This drill will be a deployment of wildlife equipment and wildlife handlers.	Scheduled at least 30 days in advance.

(1) **Tabletop drills:** Tabletop drills are intended to demonstrate a rail plan holder's capability to manage a spill using the ICS. Role playing shall be required in this drill.

(a) During all required tabletop drills rail plan holders shall provide a master list of equipment and personnel identified to fill both command post and field operations roles.

(b) Once during each three year cycle, the rail plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a tabletop drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(2) **Deployment drills:** Rail plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, land-based tactics and equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of rail plan holder owned assets, contracted PRC assets, and nondedicated assets.

(b) Rail plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle.

(c) Rail plan holders shall design drills that will demonstrate the ability to meet the planning standards, including recovery systems

and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the rail plan holder could impact from spills.

(d) At least twice during a triennial cycle, rail plan holders shall deploy a GRP or sensitive area strategy identified within the plan.

(e) Rail plan holders may receive credit for deployment drills conducted by PRCs if:

(i) The PRC is listed in the plan; and

(ii) The rail plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(3) **Unannounced drills:** Unannounced drills may be initiated by ecology when specific problems are noted with individual rail plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(a) Immediately prior to the start of an unannounced drill, rail plan holders will be notified in writing of the drill objectives, expectations and scenario.

(b) Rail plan holders may request to be excused from an unannounced drill if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the rail plan holder is excused, ecology will conduct an unannounced drill at a future time.

(4) **Wildlife deployment drills:** Once every three years rail plan holders shall deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan.

NEW SECTION

WAC 173-186-520 Drill evaluation criteria. The ecology drill evaluation process is based on the 2016 NPREP guidance document. The NPREP guidance document lists fifteen core components that shall be demonstrated by the rail plan holder during the triennial cycle. Ecology adopts the fifteen core components as the criteria used to evaluate rail plan holder tabletop and deployment drills. The core components are as follows:

(1) **Notifications:** Test the notifications procedures identified in the plan.

(2) **Staff mobilization:** Demonstrate the ability to assemble the spill response organization identified in the plan.

(3) **Ability to operate within the response management system described in the plan:** This includes demonstration of the ICS staffing and process identified in the plan.

(4) **Source control:** Demonstrate the ability of the spill response organization to control and stop the discharge at the source, and to effectively coordinate source control activities within the response.

(5) **Assessment:** Demonstrate the ability of the spill response organization to provide an initial assessment of the discharge, or potential discharge, and provide continuing assessments of the effectiveness of the planning and tactical operations.

(6) **Containment:** Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.

(7) **Mitigation:** Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged product. This includes mitigation and removal activities such as dispersant use, in situ burn use, and bioremediation use, in addition to mechanical oil recovery.

(8) **Protection:** Demonstrate the ability of the spill response organization to protect the environmentally, culturally and economically sensitive areas identified in the NWACP and the plan.

(9) **Disposal:** Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) **Communications:** Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) **Transportation:** Demonstrate the ability to provide effective multimodal transportation both for execution of the discharge and support functions.

(12) **Personnel support:** Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(13) **Equipment maintenance and support:** Demonstrate the ability to maintain and support all equipment associated with the response.

(14) **Procurement:** Demonstrate the ability to establish an effective procurement system.

(15) **Documentation:** Demonstrate the ability of the rail plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

NEW SECTION

WAC 173-186-530 Other ways to get drill credit. (1) Drill credits for actual spills: Rail plan holders may request drill credit for a response to an actual spill, provided that ecology has an opportunity to participate during the spill and evaluate the spill response. Credit from spills shall not entirely alleviate the rail plan holder's responsibility to drill. To obtain credit:

(a) The plan holder shall submit a written request to ecology within sixty days of completion of the cleanup operations.

The request shall include documentation supporting the components of WAC 173-186-520.

(b) Within ninety days, the rail plan holder shall submit a lessons learned summary supporting the request for drill credit.

(2) Rail plan holders may request drill credit for out-of-state tabletop drills if:

(a) Ecology has been invited to attend the drill;

(b) Ecology has an opportunity to participate in the planning process for the drill. There shall be a meeting to discuss the scope and scale of the exercise, the drill objectives and the types of criteria for which Washington credit may be applicable;

(c) Documentation of the drill and self-certification documentation shall be provided to ecology within thirty days of the drill; and

(d) Rail plan holders seeking credit for a scheduled out-of-state drill shall use the drill calendar to schedule the drill at least ninety days in advance, to provide ecology an opportunity to participate.

NEW SECTION

WAC 173-186-540 Drill requirement waivers. (1) Rail plan holders may request a waiver for deployment or tabletop drill requirements.

(2) The request shall be in writing and shall describe why a waiver should be considered and how the rail plan holder is meeting the purpose and intent of the drill program.

(3) Rail plan holder's requests for a drill waiver will be made available for public review and comment, including interested local and tribal governments and other stakeholders, for a period of thirty days.

(4) Ecology will evaluate the request and respond in writing within sixty calendar days of receipt of the waiver request.

PART IV: INSPECTION OF RECORDS, NONCOMPLIANCE, AND ENFORCEMENT

NEW SECTION

WAC 173-186-600 Inspection of records. Ecology may verify compliance with this chapter by examining:

- (1) Training and equipment maintenance records;
- (2) Drill records;
- (3) Accuracy of call-out and notification lists;
- (4) Spill management team lists;
- (5) ICS forms;
- (6) Waste disposal records; and
- (7) Post-spill reviews and other records on lessons learned.

NEW SECTION

WAC 173-186-610 Enforcement—Noncompliance. (1) If an owner or operator of a railroad, a person, or rail plan holder is unable to

comply with an approved contingency plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

(a) Place conditions on plan approval.

(b) Require additional drills to demonstrate effectiveness of the plan.

(c) Revoke the approval status.

(2) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.

(3) Any violation of this chapter may be subject to enforcement and penalty sanctions.

(4) Ecology may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this chapter. Each day that a railroad is in violation of this chapter shall be considered a separate violation.

(5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

NEW SECTION

WAC 173-186-620 Severability. If any provision of this chapter is held invalid, the remainder of the chapter is not affected.

SHARE THE SITE

CREW VAN BILL BECOMES LAW IN WASH. STATE

PUBLISHED: MAY 22, 2017

After a prolonged five-year battle against the railroad carriers' opposition to legislation to ensure the safety of their own employees, ESHB 1105, the number one priority of the SMART TD Washington State Legislative Board, was finally enacted into statute law May 16, when a large group of railroad workers who traveled to Olympia, Wash., witnessed the signing of this bill into law by Governor Jay Inslee (D).

The impetus for passing this law was the horrific crew van accident that occurred March 24, 2011, that resulted in the death of 22-year BNSF engineer Tom Kenny, 58; conductor-in-training Chris Loehr, 22; and Coach America van driver Steven Sebastian, 60; and the critical injuries sustained by conductor Dwight Hauck, 52. Those present for the enactment of this legislation included Laura Kenny and her family, the spouse and children of engineer Tom Kenny, as well as Hauck and his wife Susan.

"We are especially grateful to both the Kenny's and the Hauck's for their testimony and strong support of this legislation which was instrumental in our ability to eventually win out over the railroads opposition," Washington State Legislative Director Herb Krohn said.

The new Washington State statute is the most stringent railroad contract crew transportation safety law in our nation, with most of the provisions taking effect on Jan. 1, 2018. According to Krohn, this law brings all rail contract transportation vehicles regardless of seating capacity, under the strict regulatory authority of the Washington State Utilities and Transportation Commission (WUTC). This agency has a mandate to regulate all aspects of rail contract crew transportation services including driver qualifications, equipment and operational safety, driver's hours of service, passenger safety, drug testing provisions, as well as mandatory recordkeeping. The WUTC now has been granted the authority to enforce all aspects of this new law including the investigation of passenger complaints and the imposition of penalties. This law increases state insurance requirements from \$1.5 million to \$5 million of liability coverage, and will require coverage of no less than \$1 million in Uninsured and Underinsured Motorist coverage, currently there are no UIM coverage requirements whatsoever.

Additionally this legislation requires state-approved notices be posted prominently in every contract crew vehicle to inform railroad employees of their right to safe transportation; the notices will also explain how to file safety complaints with the state for investigation. Drivers will soon be required to undergo a state-approved safety training program, they will be automatically disqualified from driving railroad employees for three years if their drivers license has been suspended more than once in the past three years for anything other than non-payment of a traffic ticket; as well as upon conviction of any alcohol or drug related traffic offense, using a vehicle to commit a felony, leaving the scene of an accident, prohibited passing of another vehicle, any railroad grade crossing traffic violations as well as driving with a suspended license.

The WUTC now has the authority to inspect all railroad and contractor passenger transportation vehicles, they are required by the new law to develop a periodic state inspection program for all contract transport vehicles. Lastly, to prevent attempts by railroad officers or contract crew transport companies from retaliating against our members, this new law includes a special confidentiality clause that prohibits agency public disclosure of the identity of any employee who submits a crew transportation safety complaint to the WUTC. While passage of this law is a major advancement, according to Krohn the WUTC rule making process to enforce the provisions of this statute is even more critical. "this is where the rubber really meets the road as the regulations the commission finally adopts will determine precisely how this new law will actually be applied and enforced and will impose the specific expectations on these contract operators." Krohn is already actively engaged in participating in the regulatory development process of the WUTC.

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WASH.
STATE

BNSF whistleblower who exposed safety violations worries others won't come forward

by Michelle Esteban



A former locomotive engineer just won a legal battle in the 9th circuit court of appeals against Burlington Northern Santa Fe railroad after blowing the whistle in 2011 over safety violations. (Photo: KOMO News)





VIEW PHOTO GALLERY

5 photos

TACOMA, Wash. - A former locomotive engineer just won a legal battle in the 9th circuit court of appeals against Burlington Northern Santa Fe railroad after blowing the whistle in 2011 over safety violations.

The Tacoma man says he's worried the dispute with the railroad, which has now continued for years, may silence others from warning of potential trouble on the tracks.

"The public needs to hear this," said Mike Elliott.

He says for seven long years he's been in a battle with BNSF over safety concerns.

Elliott insists he got fired for blowing the whistle on BNSF.

The railroad contends they parted ways with Elliott for 'unrelated' reasons.

He sued the railroad under the Whistleblower Act and won a \$1.25 million verdict.

That was three years ago, but he's yet to see a penny and the court battle continues to this day.

Seven years after he first reported concerns, he worries what message that sends other railroad workers.

"If they don't feel they can come forward and express their concerns and report things, without some type of retaliation, then an important complaint may go by the wayside," said Elliott.

414 North 6th Avenue
Sandpoint, ID 83864
April 22, 2018

Burlington Northern Santa Fe Railroad

Army Corps of Engineers

All other parties involved with the development and implementation of additional railroad tracks over Lake Pend O'Reille

To Whom It May Concern:

I oppose the installation of and have great concern regarding Burlington Northern Santa Fe Company's proposal to build a second 2.2 mile long railroad bridge in Sandpoint, Idaho over Lake Pend O'Reille. My concerns are many.

Currently, 37 to 58 trains travel through Sandpoint daily on to Spokane and then along the Columbia River en route to either Longview or Cherry Point in Washington. Much of the cargo on these trains is the highly volatile oil from the Bakken Fields in North Dakota or coal from the Powder River Basin in Wyoming. Fifty-four million tons of goods go to those ports; forty eight millions tons of the "goods" are coal bound for foreign ports, primarily China. China is currently building one new coal fired power plant per week. They do not have the same air pollution regulations that most developed nations practice; hence air currents bring that air pollution to the western coast of North America. Each train loses up to 31 tons of coal/coal dust en route; eighteen trains equal 205,000 tons of coal dust per year. Coal dust contains arsenic and mercury, both elements cause pulmonary issues affecting people with asthma, COPD, often leading to lung cancer. My ongoing concern is the inevitable increase of trains that will come through Sandpoint carrying the undesirable cargo of oil and coal bound for China.

Another concern with building a second track is the additional traffic snarls that will happen in Sandpoint and our surrounding communities. Currently, daily road closures near Sandpoint and the funnel span from one hour 47 minutes to four hours per day. If BNSF builds the additional tracks, as train traffic increases more stoppage will occur particularly for automobiles many of which come to our area to enjoy and recreate in its beauty...which will be polluted by diesel particulates from the trains, coal dust from uncovered coal cargo, noise pollution, including effects on fish in and wildlife near our lake. The possibility of effecting first responders stopped by trains, especially as train traffic increases, is also of grave concern.

Accidents are another concern. In December 2013, 2400 people needed to be evacuated in Casselton, ND due to a train wreck with oil. July 2013 saw the deaths of 47 people in Quebec from a runaway oil train. Northern Idaho had two derailments in 2017 luckily neither of those were coal or oil spills. But will the next derailment be oil or coal?

Infrastructure costs are passed on to taxpayers. Many of our residents barely make it as it is and to add additional taxes for the greed of others just does not sit well with our values.

Chief Seattle said many years ago, we must plan for seven generations into the future. The owners of the oil and coal companies, and perhaps BNSF, are thinking only in the present and filling their coffers, pleasing their investors. WE have only one precious planet. Please consider thoughtfully the full import of your decisions.

I do not want a second rail going over our lake or through our town and surrounding community traveling over our aquifers and water resources. Environmental impact studies are crucial. Thank you for making the right decision: NO SECOND BRIDGE!

Sincerely,

Ann M. Giantvalley



001778

To whom it may concern regarding the proposed permit for Second Rail Bridge over Lake Pend Orielle:

My name is Rebecca Holland + I live on 20 acres in Selle Valley next to the Pack River. My husband + I moved here in 1975 (43 years ago) primarily to raise a family with the benefits of a pristine Lake between 2 beautiful mountain chains. Our 3 sons grew-up boating on Lake Pend Oreille and now as adults have built a successful water sport business here in Sandpoint. The water quality of LPO is of extreme importance to us.

A constant message given in our home was "Risk vs Reward". Anytime the boys adventured into a bold activity, they were cautioned to gauge the risks they were taking against the thrill of accomplishing some gutsy experience. I'd like to mention, to characterize the extent of their escapades, one of my sons is a 3-time Snowboard Winter Olympian.

We drive into town on Hwy 200 parallel to the RR tracks + have seen increased numbers of long coal trains over the last couple years. Recently, its been very worrisome that there has been numerous derailments in our area, including one on the east shoreline near Hope. Fortunately, the over-turned cars there did not contain dirty coal or crude oil or dump any other hazardous contaminates into our Lake.

Our family employs you to call for a Environment Impact Statement to assess the RISKS regarding this proposed Second Rail Bridge over LPO. We do not know the projected number of increased trains that this project could bring across our Lake or into our community. It is prudent to operate with an understanding of "Risk vs Reward" in this situation that involves a good-size population of people in recreational-based economy here in Bonner County.

Thank you for your consideration on this matter.

Rebecca Holland

300 Amber Dr.

Sandpoint, ID 83864

Comment submitted by: Robin "Sparrow" Ivy, Bonner county resident.
5/23/18

B-1

Hi my name is Robin Ivy but people know me by Sparrow.

I want to thank you gentleman for being here today and listening to us. Doesn't matter what side you are on, it's just important to hear us as a community speak. So thank you!

I first off want to state I support the railroad. I support the good jobs and those hard-working men and women who do their best to make sure we stay safe. This isn't about them. This is about us.

I live in Samuels area which is about 13 miles north of Sandpoint. I live about 1 mile away from a track. It's the track east of the main highway rail at 95 and Samuels.

Last year we had a rail car leak at that track where we walk our dog 3-4 times per week. Beans spilled, I believe and it was a mess. But we were just grateful it was beans. It could have been a derailment of ammonia, or odorless natural gas or oil/crude that exploded on impact. We were lucky. From my neighbors who live on that track to us. We all ducked a bullet. There would have been no way we would have survived, say if it would have been a large odorless natural gas derailment/spillage. We have no siren system or civil defense warning in place, and our only first responders, mostly volunteer firefighters, would take at least 25-30 minutes to even begin to get equipped and respond. There would be no evacuation possible. And if an accident happened at our substation, located at highway 95 & Samuels, our fire station is right next door to it. They potentially couldn't even have access to life saving equipment or vehicles due to the hazards.

This is a very real threat to us every day. Last year we had 4 derailments in one spring, in north Idaho/Montana. And if you would have called BNSF a week before these derailments they would have said it wasn't possible for that to happen. That they have safety features in place. Their rails are checked. They're prepared. Yet all four of those derailments could have been toxic. It could have happened over our long bridge.

So with this reality, I respectfully ask that you please make sure that at least a full environmental impact study is done and that no permitting of any kind is allowed until it is done. It seems such a simple thing to ask when your kids, friends and neighbors, wildlife, businesses, tourism, fishing and hunting are at risk. So simple yet potentially life-saving for us and our wildlife.

Please include these comments for the record.

Robin Sparrow Ivy
66 Artisan Way
Sandpoint, ID 83864

May 23, 1018

TO: Idaho Department of Lands
U. S. Coast Guard
U. S. Army Corps of Engineers

RE: BNSF additional railroad bridges

3 copies -
letter from
John Anderson

CZ

I have lived on the Sunnyside peninsula, northeast of Sandpoint, for 38 years. I am writing to express my strong opposition to the proposed three new railroad bridges. A thorough and complete environmental impact report, which includes an assessment of the option of removing the existing railroad and automobile bridges and replace them with a "western bypass" located west of Sandpoint at a site where the lake is considerably narrower.

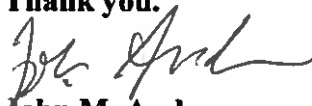
Some of my concerns with any new bridges in existing bridge locations are the following:

1. **Blocking Traffic:** The railroads have not shown consideration of Sandpoint residents in the past, and I do not expect that to change in the future. A second bridge will only double the trains passing through Sandpoint. Maximizing profits will motivate the railroads to schedule additional trains, continuing to block motor vehicles at crossings.
2. **Increased Fire Danger:** When I drove to town the other day, a waiting black oil train stretched for what seemed a mile, blocking me from shopping at the Bonner Mall. It is depressing to see these trains of fracked oil endangering our community with inadequately funded fire and evacuation programs in place.

Living on the Sunnyside peninsula, I and my neighbors will be trapped if a derailed oil train ignites and starts a massive fire. Even if we learn of a spreading fire in time, we have only three escape routes by car - all go over or under the railroad. The worst bottleneck is the railroad underpass, which, due to the railroad's past indifference to proper safety standards, has only one lane of escape for cars going under the railroad! A two-way underpass was a viable option some years ago when the underpass/overpass was 'improved' (rebuilt), but the railroad saved money by still leaving only one lane.

Please mandate a complete environmental impact report on these bridges.

Thank you.


John M. Anderson
81 Lost Horse Lane
Sandpoint, Idaho, 83864
(208) 265-6152

May 23, 1018

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U. S. Coast Guard
U. S. Army Corps of Engineers**

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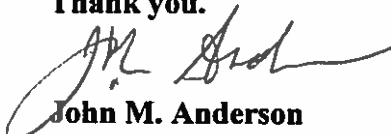
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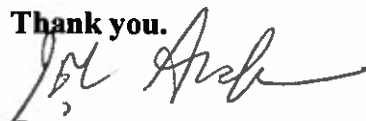
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**John M. Anderson
81 Lost Horse Lane
Sandpoint, Idaho, 83864
(208) 265-6152**

001783

May 23, 1018

TO: Idaho Department of Lands
U. S. Coast Guard
U. S. Army Corps of Engineers

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I have lived on the Sunnyside peninsula northeast of Sandpoint for 38 years and regularly shop and recreate in Sandpoint. I am especially concerned about two things:

1. The environmental impact study should include impacts on present town culture and economy, not merely on archeological "artifacts." This town is known for its scenic beauty. The economic impact on Sandpoint will be negative due to deteriorating visuals and noise pollution. More bridges will encourage additional train traffic. I am concerned that Sandpoint will begin to look and feel like an industrial railroad town.
2. The environmental impact study should include the effects of additional oil and coal freight funneling through Sandpoint. BNSF has said we need more bridges to address the increased train traffic that is in our future. I believe these additional trains will primarily be carrying nonrenewable, soon-to-be obsolete, sources of energy. We do not need more oil and coal trains going through Sandpoint. In addition to the threat to water quality of our lake and rivers in the event of a derailment, as well as to public safety, BNSF should not rely on carbon-based freight for its future profits.

Thank you

Jill Trick

Jill Trick
81 Lost Horse Lane
Sandpoint, Idaho, 83864
(208) 265-6152

3 copies
letter from
Jill Trick

May 23, 1018

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U. S. Coast Guard
U. S. Army Corps of Engineers**

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Thank you



**Jill Trick
81 Lost Horse Lane
Sandpoint, Idaho, 83864
(208) 265-6152**

Testimony of Steven C. Morgan, an Idaho resident, to the Idaho Land Board's Public hearing on 23 May, 2018 regarding the BNSF Sandpoint Connector Junction Project

I am respectfully asking the agencies involved in permitting this project to consider my comments addressed to each individually below. I am asking that each of you make no determination or decision approving a permit until a full and final Environmental Impact Statement has been completed.

To the Idaho Land Board: I moved to Bonner County two years ago after visiting for this beautiful area for many years. I moved here for the beauty of the environment, the wonderful water sport activities, the pristine water and the fishing. I bring my grandchildren here every summer to fish and hopefully to gain an appreciation for nature and to gain a healthy respect for our environment. I am very concerned that the impact of this project on all those things I cherish has not been fully studied.

This project is about more than just the construction, which is far too narrow a view. In reality, this project is about a way of life, a culture, and a potential nightmare scenario for communities and residents all along not just Bonner County's waterways, but extending the entire length of every downstream waterway as well should there be a hazardous chemical spill.

Lastly, I ask you to consider if "feasible alternatives" have truly been considered as required by Idaho Statutes concerning Public Lands and encroachment. By law, actual alternatives must have been considered, not just which side of the old Railroad Bridge is "best". Those are merely design and construction variables, not true alternatives as required by the Statutes. A true alternative to study is whether there are other sites and routes that can avoid critical paths over Idaho waters as much as possible. Take Sandpoint and a bridge over the main channel of the Pend Oreille River and Lake out of consideration entirely. THAT is a true alternative that should be studied.

To the U.S. Coast Guard: I am a property owner, a recreational boater and a fisherman. I am also a disabled veteran having served 30 years. My wife served 22 years and she is also a disabled veteran. We moved to Bonner County about 2 years ago. We came here to visit for many years before that and we both love to boat and fish, especially when our children and grandchildren visit.

My daughter bought a Townhouse that is directly connected to where some of this project will be constructed. She just bought a new fishing boat for our use and has a slip at a Sandpoint Marina. We also kayak and enjoy many water sports here. The existing bridges already impede and limit maritime traffic and safe navigation, especially by novices, can be challenging to negotiate at times. Adding yet another challenge and more limits should be better assessed.

Water and air quality are obviously important to us, as are the fish, and their habitat. We want our grandchildren to enjoy the same waters in safety for their future.

As we age, and as disabled veterans, we are also very concerned that the rail traffic will dramatically increase making it even more difficult for us to obtain emergency response as rail traffic will obviously increase with this new bridge. We have one way in and out of the subdivision where we live and more trains blocking that access is not something we desire. Despite some lip service to improved response times in some areas of Bonner County, this bridge project will definitely cause us more delay and all 103 families who live in Ponder Point as well.

My family is very concerned about the impact on property values. We didn't purchase property here in order to live at a rail yard or a primary rail junction. The vibration, noise, and other impacts on property have not even been studied or addressed. A full EIS will help put our concerns into the spotlight and we ask you to do just that.

To the U.S. Army Corps of Engineers: As a 30 year Marine I have traveled the world. I've been in every U.S. State, all but 2 provinces in Canada and I have seen the impacts on our fragile ecosystems of industrialization. Every single speck of wetlands is absolutely essential to our health and environment. Despite the small size of this proposed fill in this project, the impact to native species and endangered ones especially must be evaluated. I ask for a full EIS before ANY permitted activity begins.

**Testimony of John C. Garton to the Idaho Land Board's Public hearing on 23 May, 2018
regarding the BNSF Sandpoint Connector Junction Project**

I have been coming to Sandpoint every summer for well over a decade. I hope to continue that in the future. I visit old friends who live here, I've stayed at the beautiful Season's Resort and I fish the lakes and rivers all that I can. When I discovered the proposed BNSF bridge project, I was very concerned. When I learned that there was no current plan to perform a full EIS before that construction I was appalled. Friends here tell me that when the by-pass for Highway 95 was proposed, a full EIS was conducted. That highway seems to be far less an impact on the environment than these proposed bridges. Surely a higher risk like this rail bridge deserves more scrutiny?

I am asking the agencies involved to please do a full Environmental Impact Statement before proceeding any further. BNSF should look elsewhere to improve their service, someplace that avoids all these river and lake crossings, who really knows how bad a hazardous waste or oil spill could be on water quality, the fishing and God forbid on the residents who drink these waters.

B-5
RE: BNSF railroad bridge expansion

April 25, 2018
Don Hagen
169 Lakeshore Dr
Sagle, ID 83860

Mr. Steven M Fischer
13th Coast Guard District
915 2nd Ave, Rm 3510
Seattle, WA 98174

Dear Mr. Fischer,

I am asking that the United States Coast Guard do a Full Environmental Impact Statement in the hope that it will show that three new railroad bridges adjacent to the existing ones across Lake Pend Oreille near Sandpoint ID will too greatly contaminate the water quality, lake bottom and shoreline and the marine life in the event of an oil or coal spill. Also, such a spill would very negatively impact tourism in the greater Sandpoint area. Furthermore, unless a regulation is passed to require coal cars to be sufficiently covered to prevent coal dust from falling into the lake, even more of it will contaminate the lake. I am concerned that these extra bridges will too greatly increase the rail traffic and attendant possibility of an oil spill, because, as BNSF stated in their permit application, "the project need is based on continued growth of freight-rail service demands in the northern-tier high-volume traffic corridor between the midwest and the west coast". This is probably due to overpopulation. This existant increase is already increasing the wait times for vehicles at railroad crossings which apparently complicates train

train scheduling and results in a reduction of train traffic across the lake. I live on the lake and see that, even though trains cross about ~~about~~ every ten to fifteen minutes, there are frequent times when no trains cross for twenty-five to fifty-five minutes. I think that more frequent crossings ^{could} occur if BNSF could operate independent of the road crossings. Thus, I conclude, that if increased traffic is inevitable then this is not a bridge problem but rather a road-crossing problem, which could be alleviated by building over/underpasses at nearby road crossings. If this is done then BNSF would be free of any concerns about vehicle delays and could have a more compressed train-traffic schedule.

Another solution would be to run the railroad along I-90. However, this would be extremely expensive and would run into opposition from "nimbysites" along the route.

Sincerely yours,
Donald W. Hagen
Donald W. Hagen

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of:)	
)	Case No.
Encroachment Permit)	PH-2018-PUB-20-001
Application No. L-96-S-0096E)	
)	
BNSF Railway Co.,)	
Applicant.)	
_____)	

PUBLIC HEARING

PONDERAY, IDAHO

MAY 23, 2018

8:00 A.M.

HEARING COORDINATOR

CHRIS M. BROMLEY

REPORTED BY:

PATRICIA L. PULLO, CSR
Notary Public

1 HEARING OFFICER BROMLEY: Yes, you have.
2 Okay. Please come up to the podium.
3 MR. HAGEN: Okay.
4 HEARING OFFICER BROMLEY: And then state and
5 spell your name for the record. Thank you.
6 MR. HAGEN: Hello. My name is Don Hagen,
7 H-a-g-e-n --
8 HEARING OFFICER BROMLEY: Mr. Hagen, again,
9 since you weren't here for the introduction part, we
10 have a court reporter who's transcribing every word
11 that's spoken and --
12 MR. HAGEN: Okay. Speak slowly.
13 HEARING OFFICER BROMLEY: Right.
14 (Continuing.) -- the only way for her to do that is if
15 you speak slowly.
16 MR. HAGEN: Okay.
17 HEARING OFFICER BROMLEY: Thank you.
18 MR. HAGEN: Don Hagen, H-a-g-e-n. And I
19 belong to a group with -- the library calls us The
20 Scholars. We meet at the library once a week.
21 HEARING OFFICER BROMLEY: Hold on. We just
22 lost the --
23 MR. HAGEN: I heard that.
24 HEARING OFFICER BROMLEY: Mr. Hagen, just a
25 moment. So we just lost the mic.

1 (Brief interruption.)

2 MR. HAGEN: Yeah, we call -- the library calls
3 us The Scholars. We meet once a week and we talk about
4 problems like this and try sometimes to do some kind of
5 a public -- about that. And concerning this -- on
6 this -- I'll kind of abbreviate this thing.

7 In BNSFs own words the project need is based
8 on a continued growth of the freight rail service
9 demands in the northern tier high volume traffic
10 corridor between the Midwest and the West Coast. This
11 increase is already increasing the wait times for
12 vehicles at railroad crossings which apparently
13 complicates train scheduling and results in a reduction
14 of train traffic across the lake.

15 I live on the lake and see that even though
16 trains cross about every 10 to 15 minutes, there are
17 frequent times when no trains cross for 25 to 55
18 minutes. I think that more frequent crossings could
19 occur if BNSF could operate independent of the road
20 crossings. Thus I conclude that if increased traffic is
21 inevitable then this is not a bridge problem but rather
22 a road crossing problem which could be alleviated by
23 building over, slash, underpasses at nearby road
24 crossings. If this is done then BNSF would be free of
25 any concerns about vehicle delays and could have a more

1 compressed train traffic schedule, because once you go
2 across the bridge the train tracks spread out.

3 Okay. And then another possible solution
4 would be to run the railroad along the Interstate 90.
5 However, this would be extremely expensive and would run
6 into opposition from NIMBYites along the route. So
7 there I am. I'm taking a different viewpoint.

8 HEARING OFFICER BROMLEY: Thank you,
9 Mr. Hagen. Okay. Anyone else? Yes, sir.

10 MR. GARTON: Good morning. John Garton,
11 G-a-r-t-o-n. I've been coming to Sandpoint every summer
12 for over 12 years. And one of the first things I do is
13 purchase a out-of-state fishing license. And I also
14 visit old friends that live here, new friends that I've
15 made here. I've stayed at the beautiful Seasons resort.
16 And I fish the lakes and all the rivers every chance I
17 get. And when I discovered the proposed BNSF bridge
18 project, I was concerned that there was no current plan
19 to perform an EIS only an assessment. And then possibly
20 just that before construction and then I was appalled
21 about that.

22 Friends here tell me that the bypass for
23 Highway 95, when that was proposed, a full EIS was
24 conducted. That highway seems to be far less an impact
25 on the environment than these proposed bridges. Surely

1 a high risk like this rail bridge deserves more
2 scrutiny. I'm asking the agencies involved to please do
3 a full environmental impact statement before proceeding.

4 And BNSF should look elsewhere to improve
5 their service someplace that avoids all the river and
6 lake crossings here. Who really -- in the -- if there
7 is, God forbid, a waste -- hazardous waste or oil spill,
8 who knows what the quality of the water, the fishing,
9 and the drinking -- drinking water for those residents.
10 Thank you very much.

11 HEARING OFFICER BROMLEY: Thank you,
12 Mr. Garton.

13 MR. MORGAN: Good morning, Mr. Facilitator.

14 HEARING OFFICER BROMLEY: Good morning.

15 MR. MORGAN: Madam Recorder. My name is
16 Steven, S-t-e-v-e-n, Morgan, M-o-r-g-a-n.

17 Land Board members, Corps of Engineers, Fish
18 and Game, the Coast Guard, I've got comments for each
19 and every one of you individually. I'll start generally
20 by saying that I'm respectfully requesting that the
21 agencies involved in permitting this project consider my
22 comments individually. I ask that you make no
23 determination or decision approving a permit until a
24 full and final environmental impact statement has been
25 completed.

1 To the Idaho Land board, I moved to Bonner
2 County two years ago after visiting this beautiful area
3 for many years. I moved here for the beauty of the
4 environment, the wonderful water sport activities, the
5 pristine water and, like Mr. Garton, the fishing. I
6 bring my grandchildren here every summer to fish and
7 hopefully to gain an appreciation for nature and to gain
8 a healthy respect for our environment.

9 I'm very concerned that the impact on this
10 project on all these things and that they have not been
11 fully studied before decisions are being made. I heard
12 a lot about a very, very narrow definition of what this
13 project is. You know, 0.28 acres here, point, you know,
14 whatever. It's more than just 0.28 acres of fill into
15 wetlands areas. It's more than just two bridges and
16 maybe some traffic delays or navigation delays. This
17 project is going to change everything we care about in
18 Bonner County. Everything. This is going to impact
19 everything downstream if there's a spill. It's going to
20 impact our water, our drinking water, the way that we
21 navigate our bridges, operate our boats. And these
22 things have to be considered.

23 One of the things the Land Board you mentioned
24 you have to look at is alternatives. Well, an
25 alternative of whether we build it on the north side or

1 the south side of the existing bridge is not a true
2 alternative. That's a red herring. Real alternatives
3 is what else can we do, like the first gentleman who
4 testified. You know, Can we put it somewhere else? Can
5 we move it? Are there other ways to do this besides
6 building a bridge? That is what I'd like you to
7 consider, please.

8 To the U.S. Coast Guard, I'm a property owner,
9 a recreational boater and a fisherman. I'm also a
10 disabled veteran having served over 30 years. My wife
11 served 22 years and she's also a disabled veteran. We
12 moved to Bonner County, as I said, two years ago. And
13 when we came to visit, we always boated and fished
14 especially when our children and grandchildren came. My
15 daughter recently bought a townhouse at The Seasons.
16 This is directly connected to some of this project and
17 wherever constructed. She just bought a new fishing
18 boat for our use. And she has a slip in Sandpoint. We
19 also kayak and we enjoy almost all the water sports we
20 can here.

21 The existing bridges already impede and limit
22 maritime traffic, safe navigation and especially for
23 novices. And this can be challenging to navigate at
24 times. Adding yet another challenge and more limits
25 should be better assessed. Water and air quality are

1 obviously important to us as well. As we fish and we
2 want to consider their habitat because we want our
3 grandchildren to also enjoy that. And as we age and as
4 disabled veterans we find that it's very concerning to
5 us that rail traffic, no matter what's being said, it's
6 going to increase. I don't think any major corporation
7 in America is going to spend \$150 million because -- for
8 no reason. It's going to increase.

9 I live in Ponder Point. We have one way in
10 and one way out. We already get 60 trains a day, around
11 there. If that increases it's going to be harder and
12 harder for us to get in and harder and harder, God
13 forbid, for emergency vehicles to access our
14 neighborhood. I'm also concerned about impact on
15 property values. You know, they talked about impacts.
16 They talked about, you know, the fish and the water and
17 that's all important too. But I didn't hear anything
18 about the impacts on property values. That's something
19 that an EIS would put our minds at rest about. Is this
20 going to be a good thing for Bonner County? I don't
21 know. But Idaho needs to consider our values as well,
22 not just BNSF.

23 To the Army Corps of Engineers, as a 30-year
24 Marine I've traveled the world. I've been in every U.S.
25 state and all but two provinces in Canada. And I've

1 seen the impacts on our fragile ecosystems of
2 industrialization. Every single speck of wetlands is
3 essential to the health and environment. Despite the
4 small size of this proposed fill, the impact on native
5 species and endangered ones especially must be
6 evaluated. I ask for a full EIS before any permitted
7 activity begins.

8 In closing I'll give you two examples. When I
9 moved here Highway 200 was not too bad. There's two
10 rail tracks along there. If you look at what BNSF has
11 done, they clear-cut all the trees and now if you just
12 drive out of here and look down there, it looks like an
13 industrial wasteland. If that's what Sandpoint wants is
14 an industrial wasteland then that's what they're going
15 to get.

16 And my last example, you know, 0.28 acres
17 doesn't sound like much. But if I took my pen and I
18 drew a wart on the nose of the Mona Lisa, people would
19 be upset about it. BNSF is doing more than drawing a
20 wart on the nose of the Mona Lisa. They're going to
21 change everything in this county. And if there's a
22 spill, it's going to change everything permanently down
23 water from us. Thank you very much.

24 HEARING OFFICER BROMLEY: Thank you
25 Mr. Morgan. Sir.

1 MR. KENNALY: Good morning.

2 HEARING OFFICER BROMLEY: Good morning.

3 MR. KENNALY: Thank you for receiving
4 comments. My name is Andrew Kennaly, A-n-d-r-e-w
5 K-e-n-n-a-l-y. And I simply want to echo some of the
6 comments I've heard this morning.

7 I appreciate the presentation to get a bigger
8 picture of what the plans are. I appreciate the
9 possible engineering benefits of a safer system than we
10 currently have. However, I'm a bit concerned about the
11 increased potential in railway traffic and the increase
12 in the already happening pollution of this industry.
13 I'm referring to the noise pollution specifically.

14 If you take all the railroad crossings within
15 earshot and all the horn blasts, if you were to link all
16 those together right now it would be about four hours of
17 constant noise. And that affects property values. That
18 affects quality of life. And if you increase that it's
19 only going to get worse. And it seems to me that if
20 Burlington Northern Santa Fe is very proud of the fact
21 that this is privately funded, that they have lots of
22 money to spend on helping our lives be better, they
23 could fork out a few hundred thousand bucks to address
24 grade crossings and the need for silent crossings. Like
25 in Europe, they have a more advanced system than we do.

1 That would go a long way to help mitigate noise.

2 It would not address the larger problem of an
3 industrial society. And that I think is reflected back
4 on us, our desire for consumption and viewing nature as
5 a commodity. So I would encourage us to not only do
6 what we can to help mitigate pollution, but to also
7 analyze how it is we view our world and our role in it.
8 So thank you.

9 HEARING OFFICER BROMLEY: Thank you
10 Mr. Kennaly. Sir, with glasses.

11 MR. CRAMER: Good morning. My name is Richard
12 Cramer, C-r-a-m-e-r. And I'd like to echo what the
13 gentleman just said regarding noise pollution. I live
14 off of Lakeshore Drive. And there are two crossings
15 there, and it is a constant whistle. And when they --
16 when I listened to the presentation they said that the
17 traffic wouldn't increase. There's -- if you build it
18 they won't come. But what -- then he followed it up by
19 saying that the trains have to wait. It's like -- it's
20 self-regulated because you can't have more trains on
21 that bridge. So self-regulating.

22 When you add that second lane, there's no way
23 that the traffic is not going to increase. That's the
24 purpose of the bridge. And I would like to see that --
25 in the event that this permit is approved that they

1 mandate that BNSF provide rail crossings in Bonner
2 County -- if there's a railroad crossing in Bonner
3 County they put a -- or where it crosses a road they put
4 a crossing so we don't have to hear the constant
5 whistles. Thank you very much.

6 HEARING OFFICER BROMLEY: Thank you,
7 Mr. Cramer. Sir on the end.

8 MR. LEWIS: Good morning.

9 HEARING OFFICER BROMLEY: Good morning.

10 MR. LEWIS: My name's Jim Lewis, L-e-w-i-s. I
11 am the chief sales and marketing officer for Montana
12 Rail Link. I'm here on behalf of our nearly 1200
13 employees and hundreds of local and regional businesses
14 that move their products across our railroad to voice
15 our support for the Sandpoint Junction Connector.

16 HEARING OFFICER BROMLEY: Could you slow down
17 just a little bit. Thank you, Mr. Lewis.

18 MR. LEWIS: Sorry. We'd also like to
19 encourage timely approval of the necessary permits.
20 Based in Missoula, Montana, MRL is a Class 2 regional
21 railroad that operates over 900 miles of track from
22 Huntley to Sandpoint, Idaho. We serve over 125 local
23 businesses directly and hundreds of regional shippers
24 whose products move across our line.

25 We transport these products to domestic and

1 international markets on a daily basis. We are
2 committed to providing transportation services that
3 result in long-term growth and prosperity for our
4 company, customers and employees. Our shipments help
5 feed, clothe, supply and power American and
6 international homes and businesses every day.

7 Our crews currently operate trains over the
8 single bridge which requires approaching trains to come
9 to a stop and wait for clearance. Quite often it takes
10 longer to travel from Sandpoint to Hauser, Idaho, than
11 all the way from Missoula, Montana, to Sandpoint, which
12 is 220 miles. It's 43 miles from Sandpoint to Hauser.

13 Our crews get on the train in Missoula, and
14 it's typically a seven-and-a-half to eight-hour run to
15 Sandpoint. It can be another five or six hours to get
16 to Hauser from here. And so even just coming in today,
17 I saw a couple of our trains that were staged waiting to
18 get across the bridge.

19 A second bridge would eliminate this
20 bottleneck and improve the flow of rail shipments
21 throughout the Pacific Northwest thus improving service
22 to our existing rail customers and allowing them to
23 connect to their markets who continue to demand a more
24 efficient and timely supply chain.

25 We are a global economy and U.S. producers

1 must be able to keep pace with global competitors who
2 are investing heavily in transportation infrastructure
3 to gain an edge over the U.S. So we would hope that
4 this project will be approved and the necessary permits
5 are approved. Thank you.

6 HEARING OFFICER BROMLEY: Thank you,
7 Mr. Lewis. Anyone else? Yes, ma'am.

8 MS. HUNTLEY: My name is Kathleen Huntley,
9 H-u-n-t-l-e-y. I had a few questions, so I don't know
10 who to address but to address everybody.

11 I concur with the gentleman that we need an
12 environmental impact report. Currently I would like to
13 know the percentage of toxic materials that are going
14 down this line, not automobiles or people. I would like
15 to know if they've considered alternative routes as has
16 been suggested. And that would be a good thing. I
17 would like to know what "permanent fill" means. I don't
18 comprehend that term.

19 On the construction line timeline, you spoke
20 about operating in winter. I don't know who wrote that
21 report. That doesn't seem to be feasible up here. I
22 notice that when you address the environment impact the
23 term "navigatible" was used quite a bit for our boats,
24 but I didn't see about environmental. We do have fish
25 species here that are endangered species. I think it's

1 the bull trout. I might be corrected on that. But they
2 do -- and I'm not using the right term -- fish migrate
3 but they call it something else, up river, down river.
4 So going over Sand Creek during construction, how is
5 that going to be addressed? Are there going to be
6 cofferdams built?

7 And the spills. We have had a high percentage
8 of spills here, sometimes due to no one's fault. Due to
9 the weather, due to saturation of tracks, due to this,
10 due to that. How is that going to be addressed? And
11 when those toxic spills happen, will it go downstream?
12 Because we eventually go to the Pacific Ocean from this
13 waterway.

14 So I think -- again, I'm going to repeat it.
15 We need a really comprehensive independent environmental
16 impact report. I emphasize the word "independent."
17 I've worked on major environmental issues before, and
18 the reports were written by the company, which did not
19 make them impartial. Thank you.

20 HEARING OFFICER BROMLEY: Thank you,
21 Ms. Huntley. Anybody else? Yes, ma'am.

22 MS. NEFF: Hi. My name is Emily Neff,
23 E-m-i-l-y N-e-f-f. And I wasn't planning to speak.
24 However, I was surprised that the time allotted for
25 this, at least what I saw, was 8:00 to 4:00 p.m. So I

1 was expecting a lot more information on the project.

2 I appreciate the trains remove road traffic
3 and are also a safer and more efficient form of travel
4 for our goods. However, there were a lot of questions
5 that I found were unanswered. How much time will this
6 save per train trip, approximately? I realize every
7 train is different lengths and they go different speeds.
8 How much faster will trains be able to travel? Will
9 they be speeding through town faster? Will that cause
10 any issues? Will that cause any more environmental
11 problems with maybe coal dust or dirt or whatever
12 that's -- that's thrown up into the air? How many
13 trains need to wait for another train right now as it
14 is?

15 We didn't hear -- we didn't hear any kind of
16 numbers on anything. What is the length of time that
17 trains are sitting there idling and -- you know, idling
18 their diesels? It would be great if we were able to
19 remove this amount of diesel from our air, the idling
20 time. How much will this project increase the capacity
21 of the rail line? And has BNSF been told that the
22 amount of coal and oil transported is projected to
23 increase? If it's not projected to increase then would
24 I expect would be other goods and -- other goods would
25 be able to be transported at a faster rate, the goods

1 that we're not going to be worried about transporting.
2 So I'd like to know what goods -- what goods that they
3 project will increase. Are they the hazardous ones or
4 are they the non-hazardous ones?

5 So, anyway, I was -- that's about all the
6 questions I had and comments. Again, I was just very
7 surprised at the -- for the lack of information that was
8 given in presenting today. Thank you.

9 HEARING OFFICER BROMLEY: Thank you. Anyone
10 else? Okay. Last call. Yes, ma'am.

11 MS. YOST: My name is Helen Yost. I spell the
12 last name Y-o-s-t. I'm here on behalf of at least 300
13 supporters, Wild Idaho Rising Tide. We're a climate
14 activist group. I'd also like to incorporate in these
15 comments much of our writing that we've not yet
16 submitted to the various agencies but that are available
17 on our website and on our Facebook pages.

18 We haven't looked extensively into the
19 application, but when we do we're horrified by what we
20 see and the possible environmental, social and economic
21 impacts to not only the Sandpoint area community but the
22 entire regional community of this project proposed by
23 BNSF.

24 For decades the Sandpoint-Spokane railroad
25 funnel community who cherishes and relies on the clean

1 water, air and lands of beautiful Lake Pend Oreille in
2 north Idaho for our shared economy and life ways has
3 endured the ongoing dangers and pollution of Burlington
4 Northern Santa Fe or BNSF Railway. The company hauls 95
5 percent of the volatile fracked Bakken crude oil, all of
6 the heavy-metal-laden Powder River Basin coal and many
7 other toxic substances through this region via its
8 northwest pipeline on wheels, is what we like to call
9 it. It spews coal dust and diesel emissions, risks and
10 degrades the health and safety of resident and visiting
11 people and wildlife with pollution, noise, hazardous
12 materials, derailments and accidents, including three
13 wrecked coal and corn trains within 33 miles of
14 Sandpoint just last year between March and August 2017.
15 And over the last 20 years dozens of injures and deaths
16 of pedestrians, family pets and vehicle drivers and
17 passengers.

18 Meanwhile, BNSF coerces local state and
19 national citizens, elected officials and emergency and
20 regulatory agencies to accept and promote these
21 escalating abuses of discounted rural and urban rail
22 line communities advocating the consumer complicity and
23 corporate conquests that drive gratuitous unjust global
24 capitalism, basic human rights violations, one of those
25 being that this project will clearly pollute our

1 drinking water. And, of course, all this adding up to
2 more pollution and climate change.

3 While BNSF questionably boasts about its local
4 jobs and monetary incentives, interstate commerce rules
5 ensure that Idaho receives no state taxes from
6 transitting trains, none of those trains, by the way,
7 also stop in Sandpoint to deliver the goods that they
8 say, you know, we're going to benefit from. Compared to
9 the origins and destinations of this rail freight,
10 remote north Idaho gains much less railroad revenue and
11 employment and supports fewer state track inspectors and
12 emergency response personnel and equipment. But, of
13 course, like all greedy industrialists, BNSF now wants
14 more plunder for profit in spite of the price already
15 being paid by people and the planet for this perpetually
16 reinforcing, increasingly destructive expansion of
17 fossil fuel infrastructure and invasion of our natural
18 habitat.

19 BNSF is -- I won't tell you their plans. You
20 already know what they are, so I'll leave that part out.
21 But we believe this process is essentially -- BNSF is
22 attempting to avoid, minimize and expedite the required
23 State and federal permitting and public notice and
24 participation processes for this project.

25 We would demand an environmental impact

1 statement on this. And I'll go into some of the details
2 of why we think that there will be potential significant
3 adverse impacts on environmental quality, endangered
4 species, regional safety, emergency response, vehicle
5 traffic flow, noise and pollution levels, recreational
6 experiences, tourism businesses, economic opportunities
7 and, of course, our critical lake and aquifer water
8 resources.

9 First off, the Idaho Department of
10 Environmental Quality released a report fairly recently
11 in the last couple years. It found auto high
12 susceptibility from three main point sources. That
13 would be the rail lines surrounding and over the lake,
14 Highway 95 and another unstated spot that's being
15 mediated. Perhaps it's the black rock slag pile.

16 So BNSF, every time a train crosses this lake,
17 on average, taking directly from BNSF's numbers, coal
18 dust and chunks go into the lake. We believe most of
19 those deposits have landed to the west side of the
20 current rail bridge over the lake due to prevailing
21 winds. The strong storm winds blow from the northeast
22 perpendicular to the bridge. Also the flow of the lake
23 into the river also pushes everything to the west of
24 that bridge.

25 BNSF says they want to drill almost a thousand

1 piles into the lake for both a permanent bridge and a
2 temporary bridge. 700 of those piles are going to be
3 not only drilled into the lake but removed again. That
4 causes a ton of sedimentation, water turbidity, even the
5 bubble curtains that are meant to contain the noise and
6 the sediment from this pile driving cause even more
7 turbidity and, of course, that impacts endangered
8 species.

9 We find it incomprehensible that this project
10 would move forward with anything but an environmental
11 impact statement when you are going to be driving piles
12 into toxic heavy-metal-laden coal deposits in endangered
13 species habitat. And, of course, the release of those
14 toxins in those coal deposits are going to directly
15 impact our water intake supply. By the way, that IDEQ
16 study was of the Sandpoint Public Works water intake
17 system in the lake. And, you know, any release of
18 sedimentation and toxic coal into our water supply is
19 going to directly impact the health and safety of 9,000
20 residents in this region that rely on that lake water
21 for our very lives.

22 It's -- of course the noise is also going to
23 impact fish. It's going to impact fishermen. For five
24 miles under water that noise will travel. All the way
25 down to Dover, all the way up to Oden Bay. This is all

1 in the application. And we believe there's navigational
2 dangers as well in the construction of this bridge.

3 BNSF has gone to great lengths to line up the
4 piers of the new bridge with the existing bridge but
5 they neglect to note that their construction bridge, the
6 widths between the piers is only half the length of the
7 existing bridge and the permanent bridge so that people
8 approaching from, let's say, the City Beach side, from
9 the east side, and going under the bridge might not see
10 piers that are in the middle of the existing bridge --
11 the construction bridge piers.

12 So 43 percent of the Columbia River basin
13 waters come from our watershed, from the Clark Fork,
14 Lake Pend Oreille and Pend Oreille River watershed. And
15 we believe that the pollution impacts mostly from the
16 construction but also from the ongoing coal that's
17 coming off these trains going over the bridge and all
18 the possibilities that a second bridge raises for
19 increased risks of derailments of hazardous and toxic
20 substances into our waters. All of this would impact
21 not only our area but all the waters downstream in the
22 Columbia Basin.

23 So this has a huge scope, this construction
24 project. And it needs nothing less than a full
25 environmental impact statement. And, of course, there's

1 much more I could say, but I thank you for listening and
2 for your time. And we hope to incorporate even more
3 details of these comments before the deadline or maybe
4 not. Thank you.

5 HEARING OFFICER BROMLEY: Thank you, Ms. Yost.
6 I did see a hand in the back. Please, ma'am. Thank
7 you.

8 MS. JAMES: Thank you. My name is Anne James.
9 Anne with an e. J-a-m-e-s.

10 I'm a resident of Pend Oreille County. I live
11 in Newport, Washington. And I come to Sandpoint two or
12 three times a week and love this area. I echo other
13 folks' sentiments in preventing a potential industrial
14 wasteland, which -- which paints a very bleak picture of
15 this beautiful area. I support protecting this fragile
16 ecosystem and support a full and independent EIS. Thank
17 you.

18 HEARING OFFICER BROMLEY: Thank you. Anyone
19 else?

20 MR. GEIGER: Good morning.

21 HEARING OFFICER BROMLEY: Good morning.

22 MR. GEIGER: My name's Steve Geiger. Thank
23 you guys all for being here and giving us this
24 opportunity.

25 HEARING OFFICER BROMLEY: Would you please

1 spell your last name.

2 MR. GEIGER: G-e-i-g-e-r. And, you know, I've
3 lived here for 25 years and become very used to the
4 trains. When I first moved here into Kootenai, the
5 first night I thought there was a damn earthquake,
6 actually, because I wasn't used to it from where I came
7 from. And after a while, you know, I just -- you just
8 kind of get used to that stuff. And so I don't really
9 have a problem with the noise or anything.

10 I've heard this stuff about coal dust for many
11 years. I've talked to many people that do snowshoeing
12 and stuff around the tracks. They've never seen
13 anything on the snow at all. I don't know if it's just
14 a microscopic thing or not. But I just -- I don't see
15 where there's an issue with that, to be perfectly
16 honest.

17 I fully support this second bridge. I think
18 it's been overdue in my opinion. We have stacking
19 issues. We have wait time issues. We have emergency
20 access issue. And I would hope that this would all
21 help. So I think that as you guys go through this
22 permitting process if -- if that process comes back with
23 the fact that you would need to do further EIS
24 assessment then -- then, you know, I think we would all
25 agree with that. But I think if it comes back that you

1 do not need it, I think that it would just be a lot of
2 wasted time and money. So I just want to say I'm in
3 support of this. And thank you for your time.

4 HEARING OFFICER BROMLEY: Thank you,
5 Mr. Geiger. Anyone else?

6 (Brief pause.)

7 HEARING OFFICER BROMLEY: All right. If there
8 are no additional comments from the general public then
9 the way that we had talked about this at the beginning
10 was to circle back then with BNSF on any reply or
11 follow-up that it might choose. So BNSF, is there
12 anything you would like to address now?

13 MR. JONES: Good morning. My name is Matt
14 Jones with BNSF Railway. The last name is spelled
15 J-o-n-e-s.

16 I just want to make one very quick comment to
17 correct one of the earlier comments this morning. The
18 comment was made that BNSF because of interstate
19 commerce rules does not pay taxes in Idaho. And that is
20 incorrect. BNSF, like other companies that operate in
21 the state of Idaho, pays income tax, property tax, sales
22 and use and all other applicable taxes. So just wanted
23 to clarify that point. Thank you very much.

24 HEARING OFFICER BROMLEY: Thank you. Is there
25 anything else then from BNSF? All right. With that

1 then I've taken all of the public comment. This
2 hearing -- and the time on the clock on the far wall,
3 it's approximately 9:34. And I will bring this
4 morning's session to a close. Thank you. Let's go off
5 the record.

6 (Whereupon, the public hearing was
7 concluded at 9:34 a.m.)

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REPORTER'S CERTIFICATE

I, Patricia L. Pullo, Certified Shorthand
Reporter, do hereby certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time any witnesses were placed under oath;

That the testimony and all objections made
were recorded stenographically by me and were thereafter
transcribed by me or under my direction;

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability;

That I am not a relative or employee of any
attorney or of any of the parties, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 4th day of June, 2018.

PATRICIA L. PULLO, C.S.R. #697
Notary Public
816 Sherman Avenue, Suite 7
Coeur d'Alene, ID 83814

My Commission Expires 11/13/2018.

BEFORE THE STATE BOARD OF LAND COMMISSIONERS
STATE OF IDAHO

In the Matter of:)	
)	Case No.
Encroachment Permit)	PH-2018-PUB-20-001
Application No. L-96-S-0096E)	
)	
BNSF Railway Co.,)	
Applicant.)	
_____)	

PUBLIC HEARING

SANDPOINT, IDAHO

MAY 23, 2018

6:00 P.M.

HEARING COORDINATOR

CHRIS M. BROMLEY

REPORTED BY:

PATRICIA L. PULLO, CSR
Notary Public

1 behalf the Idaho Department of Lands. Thank you.

2 HEARING OFFICER BROMLEY: Thank you,
3 Ms. French. Okay. That concludes then the public
4 agencies entities, the BNSF presentation. And at this
5 point then I would open the floor to any public comment.
6 And, again, if you spoke this morning please be
7 courteous of the other people who are here. And if you
8 still wish to repeat your comments I'll take those at
9 the end.

10 Again, please spell and state your name so
11 that we can transcribe that into the record. And I
12 would ask you, again, to also consider limiting your
13 comments to no more than five minutes. Sir.

14 And then in order to be orderly, let's take a
15 hand when somebody wants to speak and then I'll address
16 you so that we can come up one at a time.

17 MR. LOCKWOOD: I am Steve Lockwood, S-t-e-v-e
18 L-o-c-k-w-o-o-d. I would ask that the -- well, first
19 let me state there are two bridges currently, one, the
20 BNSF bridge, and the second the Union Pacific bridge
21 near Dover. I would think it would be in the public
22 interest for both bridges to be considered. The UP
23 bridge is far less utilized than the BNSF bridge, and I
24 suspect could handle the traffic for sometime to come.
25 Thank you.

1 HEARING OFFICER BROMLEY: Thank you,
2 Mr. Lockwood. Ma'am in the yellow shirt.

3 MS. WACHOWIAK: Monica Wachowiak,
4 W-a-c-h-o-w-i-a-k. I came all the way in from Spokane,
5 Washington, because you might think this affects just
6 here in Idaho, but it actually affects Washington as
7 well. I also ride the Amtrak. I've taken it cross-
8 country a few times. And when we get stuck waiting for
9 a train to move, it's very frustrating.

10 We are -- this whole area is booming, and we
11 are all train dependent. And to think that the
12 infrastructure we have now is enough is just mind
13 boggling. And you can't rule with emotion. You have to
14 rule with rationale.

15 I wrote a whole thing, but you're going to
16 hear numbers and stats all night and to think we should
17 stop the trains, slow them down or just have more trucks
18 on the road, that's actually against the environment.
19 And if you say you're for the environment, another
20 bridge is going to put less diesel engines just sitting,
21 putting more emissions in the air. If you're thinking
22 about safety, a second bridge is going to make it safer
23 because there's going to be less wear and tear on the
24 bridge we already have.

25 Everything that you -- you think you're -- is

1 the right thing right now to have just one bridge, stop
2 and look at it and take three steps back. Think of it
3 as a picture. Look at that bridge. It's there. It's
4 been there for so long. We need a second one to make it
5 more safe. BNSF has done the math, has done the
6 science. They didn't just wake up one morning and say,
7 oh, let's make another bridge. They've done everything
8 they do. Let them build it right, build it safe, create
9 more jobs. Thank you.

10 HEARING OFFICER BROMLEY: Thank you,
11 Ms. Wachowiak. All right. Ma'am in the red shirt,
12 right in the front row. Thank you.

13 MS. HOLLAND: Good evening. My name is
14 Rebecca Holland, R-e-b-e-c-c-a H-o-l-l-a-n-d. I live on
15 20 acres in Selle Valley next to the Pack River.

16 My husband and I moved here in 1975, that's 43
17 years ago, primarily to raise a family with the benefits
18 of the pristine lake between two beautiful mountain
19 chains. Our three sons grew up fishing and boating on
20 Lake Pend Oreille, and now as adults have built a
21 successful water sport business here in Sandpoint.

22 The water quality of LPO is of extreme
23 importance to us. The constant message given in our
24 home was risk versus reward. Anytime the boys ventured
25 into a bold event, the activity -- they were cautioned

1 to gauge the risk they were taking against the thrill of
2 accomplishing some gutsy experience. I'd like to
3 mention, to characterize the extent of their escapades,
4 one of my sons is a three-time snowboard winner
5 Olympian.

6 We drive into town on Highway 200 parallel to
7 railroad tracks and have seen increased numbers of long
8 coal trains over the last couple years. Recently it's
9 been very worrisome that there had been numerous
10 derailments in our area, including one on the east
11 shoreline near Hope. Fortunately the overturned cars
12 there did not contain dirty oil or crude -- dirty coal
13 or crude oil or dump any other hazardous contaminants
14 into our lake. But this is a red flag.

15 Our family employs you to call for an
16 environmental impact statement to assess the risk
17 regarding this proposed second rail bridge over LPO. We
18 do not know the projected number of increased trains
19 that this project could bring across our lake or into
20 our community. It is only prudent to operate with an
21 understanding of risk versus reward in this situation
22 that involves a good size population of people working
23 here in a recreationally based economy here in Bonner
24 County.

25 Thank you for your consideration.

1 HEARING OFFICER BROMLEY: Thank you,
2 Ms. Holland. Ma'am in the black shirt up front. And
3 then sir right after that.

4 MS. GIANTVALLEY: Thank you for the
5 opportunity to speak this evening. My name is Ann
6 Giantvalley. A-n-n. Giantvalley is G-i-a-n-t-
7 v-a-l-l-e-y.

8 I oppose the installation of and have great
9 concern regarding Burlington Northern Santa Fe Company's
10 proposal to build a second 2.2-mile-long railroad bridge
11 in Sandpoint, Idaho, over Lake Pend Oreille. My
12 concerns are many. Currently 37 to 58 trains travel
13 through Sandpoint daily onto Spokane and then along the
14 Columbia River and back to either Longview or Cherry
15 Point in Washington. Much of the cargo on these trains
16 is the highly volatile oil from the Bakken fields of
17 North Dakota or coal from the Powder River Basin in
18 Wyoming. Fifty-four million tons of goods go to those
19 ports. Forty-eight million tons of the goods are coal
20 bound for foreign ports, primarily China.

21 China is currently building one new coal-fired
22 power plant per week. They do not have the same air
23 pollution regulations that most developed nations
24 practice, hence air currents bring that air pollution to
25 the western coast of North America.

1 HEARING OFFICER BROMLEY: Ms. Giantvalley, if
2 I could just ask you to slow down a little bit.

3 MS. GIANTVALLEY: Sorry.

4 HEARING OFFICER BROMLEY: Thank you. Our
5 transcriber would really appreciate it.

6 MS. GIANTVALLEY: Okay.

7 HEARING OFFICER BROMLEY: Thank you very much.

8 MS. GIANTVALLEY: Each train loses up to 31
9 tons of coal and coal dust en route. Eighteen trains
10 equals 205,000 tons of coal dust per year. Coal dust
11 contains arsenic and mercury. Both elements cause
12 pulmonary issues affecting people with asthma, COPD,
13 often leading to lung cancer. My ongoing concern is the
14 inevitable increase of trains that will come through
15 Sandpoint carrying the undesirable cargo of oil and coal
16 bound for China.

17 Another concern with building a second track
18 is the additional traffic snarls that will happen in
19 Sandpoint and our surrounding communities. Currently
20 daily road closures near Sandpoint and the funnel spend
21 from one hour 47 minutes to four hours per day. If BNSF
22 builds the additional tracks, as train traffic
23 increases, more stoppage will occur particularly for
24 automobiles, many of which come to our area to enjoy and
25 recreate in its beauty which will be polluted by diesel

1 particulates from trains, coal dust from uncovered coal
2 cargo, noise pollution including effects on fish and
3 wildlife near our lake. The possibility of affecting
4 first responders stopped by trains especially as train
5 traffic increases is also of grave concern.

6 Accidents are another concern. In December
7 2013, 2400 people needed to be evacuated in Casselton,
8 North Dakota, due to a train wreck with oil. July 2013
9 saw the deaths of 47 people in Quebec from a runaway oil
10 train. Northern Idaho had two derailments in 2017.
11 Luckily neither of those were coal or oil spills. But
12 will the next derailment be coal or oil?

13 Infrastructure costs are passed onto the
14 taxpayers. Many of our residents barely make it as it
15 is and to add additional taxes for the greed of others
16 just does not set well with many of our values. Chief
17 Seattle said many years ago, We must plan for seven
18 generations into the future. The owners of the oil and
19 coal companies and perhaps BNSF are thinking only in the
20 present, filling their coffers, pleasing their
21 investors.

22 We have only one precious planet. Please
23 consider thoughtfully the full import of your
24 decisions -- I do -- on the second rail going over our
25 lake or through our town and surrounding community,

1 travelling over our aquifers and water resources.
2 Environmental impact studies are crucial. Thank you for
3 making the right decision. No second bridge. Thank
4 you.

5 HEARING OFFICER BROMLEY: Thank you,
6 Ms. Giantvalley. The sir with the black shirt in the
7 back.

8 MR. CRONENBERG: Good evening, Director. My
9 name is Bill Cronenberg. B-i-l-l C-r-o-n-e-n-b-e-r-g.
10 I'm coming tonight to -- I'm here in favor of the second
11 bridge. I am personally a rail enthusiast, and I enjoy
12 coming here to Sandpoint to do my photography and also
13 research on the history and the past of -- for
14 railroads. And I travel all over the entire western
15 United States doing my photography and historical
16 research.

17 What I wanted to point out to you tonight was
18 in addition to the presentation by BNSF, I would like to
19 point out that the BNSF railroad, amongst all the other
20 Class 1 railroads that operate in the United States, is
21 very friendly and very conscious of the people who live
22 in or around the railroad track that they operate on.
23 And I'd like to point out an example of something that
24 recently happened in history that took place down in New
25 Mexico.

1 Down in New Mexico after the merger of BN and
2 Santa Fe, they made the BNSF railroad. They were -- the
3 issue that came up with them was exactly the same issue
4 that we have here today where they had a giant
5 bottleneck that occurred in what's called the Abo Canyon
6 near Belen, New Mexico.

7 So shortly after the merger they began the
8 process of planning for building a second main line
9 through this canyon area. The planning process was
10 started in 2004. And in that planning process they
11 brought in construction contractors and consultants and
12 studied the canyon very closely. And this canyon was
13 very historical to the history and to the people of New
14 Mexico at the time because this was a walkway, a pathway
15 that was taken by Native Americans and missionaries
16 going all the way back to the 16th century. And so
17 there were concerns about the archaeological aspect of
18 Abo Canyon at the time.

19 And so BNSF and their consultants and
20 construction contractors worked very closely during the
21 permitting process to ensure that there would be as
22 little environmental impact on the Native American
23 tribe's land that was to the north of the track and to
24 the ranchers track (sic) to the south. And there were
25 times when they did surveys where they looked at all of

1 the areas where there were potential archaeological
2 sites and they discovered several. And including one
3 area where there are ancient Indian cave drawings that
4 were painted on the caves and the walls of the canyon
5 themselves that date back to the 15th century. And so
6 during the planning process, BNSF intentionally avoided
7 those areas to avoid any conflict and also to be
8 respectful the Native American tribes who still live
9 there and call that area their home.

10 So in 2008 the construction began, and BNSF
11 did everything possible and worked very hard to mitigate
12 dust and any environmental impacts of erosion --
13 potential erosion through the (unintelligible) that --
14 during rain storms and flooding and made sure that the
15 migrating animals were taken care of as well as making
16 sure, again, that the Native Americans weren't impacted.

17 The ranchers who lived in the area, they
18 rented land -- BNSF rented the land locally to take care
19 of the spoil from some of the construction process that
20 was taking place. And after the construction was
21 completed, the land was cleaned up and it looked the
22 same as it was prior to construction.

23 That project was completed between 2008 and
24 2011. And it is fully functional and working at this
25 time. And I would just like to point out to you that I

1 appreciated what BNSF did. They are very concerned
2 about the local people who live there and the rights of
3 the Native Americans, even so much so that they limit
4 land access to that area for people like myself who
5 enjoy going and visiting and watching the trains just
6 strictly because they understand the needs of the people
7 that live there and want to make sure that the impact to
8 their land is not being affected by people like myself
9 who like to go there for visits. That's how much they
10 will -- they work so hard to do that.

11 I am very confident here today during your
12 permitting process that during the construction of our
13 second bridge that BNSF will do everything possible to
14 limit the amount of, you know, even dust and dirt
15 contamination in the waterway and any potential damage
16 that may be occurred to the navigable waterways through
17 here during construction phase of the bridge. That's
18 all I have to say. Thank you.

19 HEARING OFFICER BROMLEY: Thank you,
20 Mr. Cronenberg. The gentleman with the hand up in the
21 second row.

22 MR. PIETZ: My name is Dave Pietz. D-a-v-e
23 P-i-e-t-z. My wife, Lynn, and I have been residents of
24 Bonner County for approximately ten years. We have
25 enjoyed our time in the community, but I wish to speak

1 to particularly the Burlington Northern railroad for my
2 concerns about the shipments particularly of hazardous
3 material out of North Dakota, the Bakken oil fields,
4 that I've been aware of for sometime.

5 My background is in handling hazardous
6 material shipments. I worked with industry, and I
7 worked with the government. I know something about
8 that. I'm not totally up to date on where the railroad
9 stands with a couple issues. I know that they were
10 required to update -- upgrade their tank cars a year or
11 so ago, and they -- there was a delay. They were
12 allowed some more time, I believe, to get that -- that
13 done so that the tank cars would be better able to
14 handle this mixture of oil and flammable liquids that
15 are in those cars that come through our town.

16 Also, there was an independent study by an
17 organization that looked at railroads' track situations,
18 roadbed, all of that, all over the U S. and made a
19 report. It was in the Federal Register or some other
20 places that there's a lot of areas where the track
21 conditions are not good and they need to be upgraded.
22 This contributes to more risk when you're shipping
23 flammable liquids and other types of hazardous
24 materials.

25 This afternoon my wife, Lynn, and I were

1 sitting out at the crossing into our neighborhood. And
2 I saw, as I have many times, tank cars with particularly
3 I would mention to you the number 1267, which is for
4 flammable liquids. And every one of those cars, if
5 it's -- if it's got what it -- that the placard says has
6 got flammable liquid in it.

7 Now, I know that, you know, in the oil fields
8 they've mixed the flammable liquids with the oil and
9 they've been able to get by with it. This has been
10 going on for a while. The business (unintelligible) is
11 down. I know that. But this is a hazard. I don't care
12 if we have one bridge, two bridge or ten bridges. As
13 long as there's flammable liquids coming through this
14 town, there's going to be a risk for a spill and
15 environmental damage, fires, other types of problems
16 with people that are anywheres near these tracks.

17 I know the fire department has emergency
18 response information and is prepared for helping people.
19 But, frankly, there should be something done to improve
20 the situation. The industry that's shipping these and
21 the industries and the -- the shippers, they have a
22 responsibility to make -- they can separate the
23 flammable liquids from the oil. That's one thing they
24 could do. Or there should be a way where these
25 shipments could be made safely. I do know that the

1 railroads have to take what they're given as long as the
2 shipments are prepared properly. But I don't think this
3 is a very good situation for this community.

4 So I hope that I -- I hear all of the comments
5 about building a new bridge and whatever else is going
6 to happen here, but I hope those shipments are prepared
7 so that they can be safer for the people that live
8 around this community. That's all I have to say.

9 HEARING OFFICER BROMLEY: Thank you,
10 Mr. Pietz. There was a woman in the back with a black-
11 and-white striped shirt. And I saw your hand right
12 before his. So let's go to you please.

13 And maybe that's a blue-and-white striped
14 shirt. Was that right?

15 MS. BUTLER: It's black.

16 HEARING OFFICER BROMLEY: Black. Okay. I'm
17 having a hard time. Thank you.

18 MS. BUTLER: My name is Judy, J-u-d-y, Butler,
19 B-u-t-l-e-r. I'm from Hope, Idaho. I've always loved
20 railroads. The trains went from Hope to paradise and
21 now I live in Hope. But times have changed. The trains
22 are longer, faster, carrying more volatile oil and coal
23 and run by fewer actual people.

24 Small towns like Hope and Sandpoint were built
25 by the railroads. But now these towns are recreational

1 hubs. Can you imagine double track going into City
2 Beach? Now the railroad wants us to carry the risk with
3 no reward. I speak for the health of Lake Pend Oreille,
4 the creatures and the peoples who live here. Can
5 Burlington Northern build a double track over the
6 biggest fresh water lake in the northwest? Yes, of
7 course, they can build it. And I have great faith in
8 the engineers. The question is can they operate it
9 cleanly and safely? We need an environmental impact
10 statement to answer that question.

11 Lake Pend Oreille is also a significant
12 recharger of the sole-source aquifer serving the
13 Rathdrum Prairie and Spokane. It is Sandpoint's
14 principal resource. Are we being asked to carry the
15 risk and no reward? Why aren't the Bakken oils refined
16 before being carried long distances over rail? If an
17 explosion were to occur, I heard the Sandpoint fire
18 chief say he would have to wait for equipment from
19 Spokane. Why isn't the railroad required to provide
20 emergency personnel and equipment to handle fires? The
21 money the railroad spent on all these beautiful -- and
22 they're beautiful pictures of Lake Pend Oreille -- full
23 page ads in the Spokesman-Review supporting the new
24 bridge would have been better spent on new equipment and
25 given better publicity.

1 We need the railroads. We love the railroads.
2 We want clean water and safe, safe neighborhoods. In
3 the last few years fire has been our biggest fear.
4 Danger has been extremely high. Last August it was a
5 stage 3 fire danger when a train derailment occurred
6 near Heron, Montana, just up the road from me. Heavy
7 equipment appeared to clear the lines quickly, pick up
8 the rail cars, et cetera. But the risk of spontaneous
9 combustion from wet coal required the Heron people to
10 monitor that coal for months before the railroad finally
11 cleaned it up. How long would Sandpoint be willing to
12 wait for a clean-up?

13 Are citizens being asked to carry all the risk
14 and not reap the rewards? Is it the shareholders of
15 Berkshire Hathaway who will profit from this?
16 Construction is expected to last, I heard, three years.
17 This is a big project. We need an environmental impact
18 statement for all our sakes. Thank you.

19 HEARING OFFICER BROMLEY: Thank you,
20 Ms. Butler. Gentleman in the green shirt right up here
21 in the second row. And maybe it's really blue.

22 MR. NYKIEL: My name is Matt Nykiel, M-a-t-t
23 N-y-k-i-e-l. And I'm here on behalf of the Idaho
24 Conservation League. We represent over 30,000 members
25 across the state of Idaho, many of whom live in the

1 northern part of the state. And our mission is to
2 protect the air you breathe, the water you drink and the
3 land you love. And I appreciate everyone's time here to
4 hold the hearing. Some of my comments are directed
5 towards the hearing coordinator as well as towards the
6 U.S. Army Corps of Engineers and the U.S. Coast Guard.
7 So take them as they come.

8 I think the main part -- the main idea in my
9 comment is that as a representative of members across
10 the state, we just hope that BNSF is a good corporate
11 neighbor. We recognize that traffic by rail can be a
12 very good thing. But as it was stated in the comment
13 before, rail traffic has changed over the years. There
14 are over -- as identified in our geographic response --
15 in Bonner County 24 unit trains -- oil trains pass
16 through Sandpoint every week. And that's often glossed
17 over, as we saw in the presentation. And I agree that
18 we get a lot of goods, iPhones and iPads. And as a
19 millennial many think that I'm super attached to my
20 iPhone, as I clearly am today, but I would give that up
21 in a heartbeat to protect the lake and the way -- our
22 way of life here in Sandpoint.

23 I would ask that IDL examine and analyze
24 whether or not there are direct benefits to the city of
25 Sandpoint and Bonner County, direct economic benefits.

1 It's been claimed by BNSF that this proposal
2 would reduce traffic congestion and crossing delays.
3 But those are all claims at this point. And the company
4 has yet to actually conduct an analysis showing that the
5 bridge would reduce congestion and reduce traffic delays
6 at crossings. Stopped trains can delay people but so
7 can moving trains. And if the bridge adds capacity to
8 our rail infrastructure and allows more trains to be
9 moving through our community, that's going to delay
10 people too. And I think we need to analyze that and
11 actually know are there going to be benefits to us or
12 not or is this just a claim, sort of, guessed at by
13 BNSF.

14 I also think both the federal and State
15 agencies should analyze this project in concert with
16 other double tracking projects that are going on in this
17 region. I think the environmental analysis that has
18 been conducted so far has been done improperly because
19 it's been segmented. These proposals by BNSF are part
20 of a larger regional project and they should be analyzed
21 as such. BNSF has claimed regional impacts and many of
22 the commenters have touted the regional benefits of
23 these projects. And so I think the project should be
24 analyzed as part of a whole. And we should understand
25 the cumulative impacts of what happens when we double

1 track through Sandpoint but also next to Lake Cocolalla
2 and also through Hauser and into Spokane. We need to
3 understand how that impacts everyone up and down the
4 rail. That hasn't been done yet. And I think for that
5 reason that's why an environmental impact statement is
6 so important. And I don't think it's really asking too
7 much that a project that's garnered over 2,500 comments,
8 I don't think it's too much to ask that we have a high
9 bar of environmental review. And it's not improper that
10 we ask that now. That was incorrect by commenters
11 before me to say that it is incorrect to be asking for
12 an EIS now. BNSF could of their own accord say we will
13 as a good corporate neighbor agree to conduct an
14 environmental impact statement so that we can assure the
15 people who we are neighbors to that this project will be
16 safe and proper and actually benefit the community.

17 I heard BNSF say that they pay their fair
18 share of taxes. I don't think that's entirely true in
19 my view. We often bear the cost of BNSF infrastructure.
20 They may pay for the bridge itself, but we have to pay
21 for the emergency response. We have to pay for the
22 capability to respond. We don't have year-round access
23 to the lake as it is with boats if an accident were to
24 happen. We don't have the necessary boom in every
25 sensitive location to respond to an oil spill if it were

1 to happen. We would have to get a lot of response
2 materials from throughout the region. And so those
3 costs are on us. And BNSF is asking us to bear them.
4 So I'd ask IDL and the federal agencies to really
5 consider that in context of an EIS as well.

6 I was also a little alarmed that one of the
7 reasons for this project is redundancy. Because I think
8 we should be sure that the rail bridge, whenever it's
9 being operated, whether it's old or new, is always and
10 at all times safe. And if there is thought that there
11 may be a problem or a failure with the current rail
12 bridge, that should be addressed now rather than
13 building a redundancy.

14 I would also ask that the agencies review what
15 actions were taken after the recent derailments last
16 year in Cocolalla, above the Moyie River, in Kootenai,
17 near Heron, Montana. BNSF -- and I realize that that
18 wasn't -- those accidents weren't all by BNSF but some
19 were. And we have yet to see reviews of the studies of
20 what caused those problems and what specific actions
21 BNSF has taken to avoid and prevent a similar one. I
22 think before we add more rail infrastructure we should
23 be sure that BNSF and other railroads can operate the
24 current railroad infrastructure safely.

25 And with that I appreciate the agencies' time

1 here and listening to our comments. I've submitted
2 several comments ahead of this. These are just -- my
3 comments now were just to emphasize those. Thank you.

4 HEARING OFFICER BROMLEY: Thank you,
5 Mr. Nykiel. The gentleman in the orange shirt in the
6 second row.

7 MR. HINKLE: My name is Gabe Hinkle. G-a-b-e
8 H-i-n-k-l-e. I am a locomotive engineer for BNSF.

9 One point I'd like to bring up is everybody in
10 this room probably agrees that Highway 95 was redone --
11 redone and expanded for to meet a demand and a purpose.
12 And that is the exact same reason that this bridge needs
13 to be done. Me personally, I know the trains I've been
14 on have taken me from Hauser, Idaho, to Sandpoint in
15 five hours. Okay. What this bridge is going to do --
16 it's not going to double train traffic. It's going to
17 reduce by half the amount of time the trains are sitting
18 in front of your houses making noise, emissions, all
19 that type of thing and having you get from getting to
20 work or the store or anything else and also for
21 emergency crews to access areas that they need to
22 access.

23 So all over the modern world freight trains
24 are known to be the most safe -- safest, efficient and
25 most environmentally responsible way of transporting

1 freight. Contrary to what many people say or want to
2 believe, they're not going to go away. We need them
3 just like any other demand that we have. So instead of
4 running them on reduced rail and aging infrastructure,
5 let's build something that's going to be advantageous
6 for all of us. Thank you.

7 HEARING OFFICER BROMLEY: Thank you,
8 Mr. Hinkle. Ma'am in the green shirt right there in the
9 second row.

10 MS. FRITZ: Thank you.

11 HEARING OFFICER BROMLEY: Thank you.

12 MS. FRITZ: My name is Jane Fritz. J-a-n-e
13 F-r-i-t-z. I have lived in the Sandpoint/Bonner County
14 area for 39 years now. And I'm here to speak on a few
15 issues that haven't been brought up yet. And I just
16 want to echo two things I have heard. One is that I
17 really think hazardous shipments are a great concern.
18 And I don't think an environmental assessment would
19 adequately address those things. And I also am an
20 Amtrak traveler. It's my preferred way to travel. So I
21 really appreciate that Sandpoint is the only station in
22 Idaho where you can take an Amtrak train somewhere. And
23 I've circumnavigated the country a couple of times.

24 So I also, though -- the gentleman who spoke
25 about the New Mexico situation is just a perfect lead-in

1 for one of the things I wanted to say. Because this is
2 a State agency hearing, and we've heard from state
3 officials and county officials and city officials, we
4 have not heard from any tribal officials.

5 For almost 30 years now I have worked with the
6 tribes as executive director of the Idaho Mythweaver.
7 And we work with tribes in the region, particularly the
8 Kalispell tribe who have lived here along our lake
9 shores, at City Beach, Bottle Bay, for 10,000 years. So
10 it is interesting to me that no mention of notification
11 to tribes. I don't see any tribal representatives here.
12 I do not speak for them. Let me be very clear about
13 that. But I have worked on cultural issues for almost
14 30 years, and 15 or better of those years with the
15 Kalispell tribe. Including two years ago we took boat
16 tours from Sandpoint City Beach on the lake along Sand
17 Creek and learned of cultural sites, traditional sites
18 that were thousands of years old. And these tours were
19 sponsored by our organization but had tribal members on
20 board including our tour guide, Hannah Armstrong, who is
21 the education director for the tribe, including the
22 chairman of the Kalispell tribe. I learned a lot. All
23 the people who attended those boat tours, and we did
24 actually four of them, learned a lot.

25 So there's been no mention of tribal impacts,

1 cultural impacts. You don't have to pay attention as a
2 state agency. But as a federal agency, the Coast Guard
3 and the Army Corps of Engineers, do if an EIS is brought
4 in. And that would allow the tribes to comment. Not
5 just the Kalispell tribe but the Confederated Salish and
6 Kootenai Tribes of the Flathead who use this corridor
7 along Lake Pend Oreille for traveling to other
8 reservations. And they've been doing it for thousands
9 of years as well.

10 There's just a lot that could be brought up
11 that you don't know. I've seen one document that was
12 done around the bypass. It's about this thick
13 (indicating) just on Kalispell. So there's a lot there.

14 Okay. I've already used four minutes.

15 So that's one of my hats is I just encourage
16 an EIS because the tribes then would be involved.
17 Another agency that would be involved with an EIS is the
18 U.S. Fish and Wildlife Service. We have migratory birds
19 that live along our lake, along Sand Creek. I happen to
20 be a lover of osprey. I was out with an osprey
21 biologist recently, couple weeks ago, identifying sites.
22 We have a nest that's at our Memorial Field that's
23 watched by people from dawn to way past dusk of an
24 osprey cam. It's a species that's a migratory bird and
25 protected by federal law. However, last year when BNSF

1 started exploring this idea, didn't tell anybody really,
2 just brought a crane out at our dog beach and started
3 digging for pilings. There were nesting birds. They
4 did no notification to U.S. Fish and Wildlife Service.
5 And I know this because I called. And he said they did
6 this before when they did repair on the old structure.
7 So that's not good corporate partnership. An EIS would
8 address some of those things. And we have eagles that
9 nest. We have a boat, the Lake Pend Oreille Cruises,
10 that takes tours to see just eagle nests and osprey
11 nests. Her business would be severely impacted by this
12 construction.

13 So I'm already over my five minutes. I
14 apologize. But I wrote the book about Lake Pend Oreille
15 called "Legendary Lake Pend Oreille" and spent four and
16 a half years on that book. I learned a lot. We have an
17 incredible resource here that could be impacted.

18 I'd like to echo Mr. Lockwood's statement
19 about looking to a western route if this really has to
20 happen. I happen to live in Dover. And the river --
21 you know the Indians crossed the river at Seneacquoteen.
22 When they wanted to go to Spokane that's where they
23 went. And then they came this way. So a western route
24 ought to be explored. And an EIS would slow things
25 down, and that's what we need. This is too serious of

1 an issue to try to, you know, steam roll.

2 So thank you very much for your listening, and
3 I appreciate being able to make comments.

4 HEARING OFFICER BROMLEY: Thank you, Ms.
5 Fritz. Gentleman in the hat.

6 MR. KRECH: Hello. My name is Timothy Krech.
7 T-i-m-o-t-h-y K-r-e-c-h. I've been -- thank you for
8 having this hearing, sir.

9 HEARING OFFICER BROMLEY: Thank you for being
10 here.

11 MR. KRECH: You're welcome. I've been a
12 resident of Bonner County since 2000. And I'm -- to
13 full disclosure, I'm also on the board of Rock Creek
14 Alliance.

15 Ironically last year I went to the family
16 reunion in St. Paul, Minnesota, and found out that my
17 great-great-grandfather actually built the railroad that
18 runs along the Pend Oreille River. I'm here not to
19 inadequately oppose the second bridge but to say that
20 there are a lot of things missing in the process that
21 we've got to today. And I'm echoing those coherent
22 remarks of others before me about an environmental
23 assessment is inadequate to the amount of work that
24 would happen and the -- the impact of so many more
25 trains or, even if it's not more trains, just more

1 movement of trains across the lake.

2 I'm a contractor. I know that there are
3 potential catastrophes in construction. I was just
4 looking at a website that showed that BNSF has had 15
5 major accidents in the last 12 years which included many
6 people being killed, including a lot of BNSF railroad
7 workers.

8 I credit BNSF with great work. I appreciate
9 the kind of work that you're trying to do on a daily
10 basis to maintain your railways on the one hand. On the
11 other hand, as another person said, at the Lakes
12 Commission meeting that I went to last year, I talked to
13 the fire chief here and to a BNSF vice president about
14 what would happen if we had a major spill on one -- on
15 the bridge of oil. And the chief said that he's got a
16 mobile boom trailer parked at dog beach, or near it, and
17 he could get that out in the wintertime. But the other
18 mobile piece is a half an hour away by BNSF. And the
19 two of them together would be insufficient to stop any
20 kind of pollution from an oil train catastrophe on the
21 bridge going down river in anything less than two hours.
22 They could not actually get the equipment there or move
23 the gear into place to stop the oil from going down
24 river.

25 What would happen to the dam? What would

1 happen to the ecosystem down river? I'm just advocating
2 for a more thorough and thoughtful environmental
3 assessment.

4 In the '70s I worked on a commission to give
5 the federal government a -- I was a student -- to give
6 the federal government an opinion about a master plan
7 for Yosemite National Park. We spent thousands of
8 hours. We traveled to many places across the country.
9 And we came up with a draft master plan that was
10 actually implemented, but it was never given any teeth.
11 So I don't come here with hope that BNSF or IDL or the
12 other -- the Coast Guard -- I'm a Coast Guard veteran --
13 would come to this project with their capacities. I
14 don't want to come with hope. But I want to come with
15 some teeth to it. And I think the teeth could be
16 addressed in an environmental impact assessment or
17 statement that is not just an assessment but is actually
18 providing the opportunities Jane just said for other
19 opportunities -- for other -- well, like the tribe, for
20 other invested people to have an opinion and be heard
21 clearly.

22 I'm curious as to the -- sort of the weight of
23 the 2,000 people who have sent in written responses and,
24 you know, obviously there's a majority of people here
25 who are against this or at least against it where it

1 stands today. I mean, I think it's not unreasonable to
2 ask for a complete environmental review and assessment
3 and statement that actually considers all these issues
4 that are pending before us.

5 So thank you for your time. And I appreciate
6 everybody that's showing up too.

7 HEARING OFFICER BROMLEY: Thank you,
8 Mr. Krech. Woman in the back with the sunglasses.
9 Thank you.

10 MS. MARCOCCIO: Hi. My name is Andrea
11 Marcoccio, A-n-d-r-e-a M-a-r-c-o-c-c-i-o. I'm a new
12 business owner in town and a homeowner.

13 We decided to open our business here because
14 of the quality of life which includes our wonderful lake
15 and outdoor and ride and recreation that we are so lucky
16 to have. I came tonight to raise my concern for public
17 health and safety related to our water quality and air
18 quality and the increased risk for derailments while
19 crossing the lake and the impact that could have on our
20 customers.

21 Our actual business model includes the use of
22 clean water. And so the impact it could have on our
23 economic success, as well as our collective quality of
24 life as a community. So I stand in support of a full
25 and final environmental impact statement because that's

1 something still left to be done. And I think that's the
2 least we could do if we're working together as good
3 corporate partners and citizens.

4 And just wanted to flag that in the
5 presentation from BNSF, they talked about 50 percent of
6 their rail carries commerce and 25 percent carries
7 agricultural but they left out the last 25 percent. And
8 so I'd just like to call the question of what that is so
9 that we understand what the plan is for what will be
10 traveling across our lake. And I think that would
11 become evident in our full and final environmental
12 impact statement. Thank you.

13 HEARING OFFICER BROMLEY: Thank you,
14 Ms. Marcoccio. Gentleman in the back with the blazer.

15 MR. KEIM: Thank you, sir. For the record my
16 name is Pat Keim. That's spelled P-a-t K-e-i-m. I came
17 here today out of Helena, Montana. I'm here as a
18 private citizen, but for full disclosure I am a retiree
19 of Burlington Northern Santa Fe or BNSF Railway.

20 I had 48 years of experience. Most of that
21 experience was in operations and quite a bit of it was
22 in government relations as well. At one point in my
23 career I had operational responsibility over the Spokane
24 terminals and that operational responsibility included
25 responsibilities into the Sandpoint area from that

1 direction. Subsequently in my career I was based as a
2 division superintendent in Montana with operational
3 responsibilities from the east into Sandpoint. So I am
4 quite familiar with the operations and the trackage and
5 the layout here in Sandpoint. And I'm familiar with the
6 bottleneck problem here in Sandpoint. After those
7 assignments in Montana, I became director of government
8 relations for the Pacific Northwest space. And so I've
9 worked with the governments and legislative and
10 regulatory requirements throughout the Pacific
11 Northwest.

12 I can tell you from an operational point of
13 view that the situation with the bottleneck here in
14 Sandpoint is a serious problem. If you look at the map
15 of BNSF it's like an hourglass. It all comes down to
16 one spot here and that's the bridge. And that is a
17 significant operational bottleneck. You see it here
18 every day, those of you that live here, the trains
19 backed up stopped, stopped on your crossings, stopped
20 over in front of your homes waiting to come across the
21 bridge.

22 Now, I've heard it said for several times --
23 I've been involved with this project. I was actually
24 consulting with it at the initial inception of the
25 project. And I heard it said several times that the

1 addition of a second bridge across Pend Oreille Lake
2 will result in more trains through this area. That is
3 simply not true. Those trains are here now and those
4 trains are coming whether that second bridge is built or
5 not. The question is how are you going to safely,
6 efficiently and environmentally soundly move them
7 through this area?

8 Are you going to maintain to have the one
9 bridge and let these trains continue to sit here and
10 idle and back up further and further, or are you going
11 to resolve the bottleneck issue? And that's really what
12 we're here about today.

13 I can tell you from my experience in the
14 railroad that a moving train is safer than a standing
15 train because it creates less congestion in the
16 community, it gets through your community faster and a
17 moving train is safer because it's when you slow down
18 trains and speed up trains that they're at their most
19 unsafe point.

20 So I urge you to move forward with this
21 project. Solving this bottleneck here in Sandpoint is
22 crucial to transportation throughout the northwest.
23 It's crucial to the safety and the efficiency of this
24 area. I can tell you from 48 years of experience with
25 BNSF and its predecessor companies that this company is

1 committed to safety. It is committed to efficiency.
2 It's committed to good corporate responsibility and
3 citizenship. And it's committed to the environment.
4 Thank you for your time.

5 HEARING OFFICER BROMLEY: Thank you, Mr. Keim.
6 The woman in the fifth or sixth row there. Yes, you.
7 Thank you.

8 MS. NEWTON: Helen Newton. H-e-l-e-n
9 N-e-w-t-o-n. 423 South Huron, Sandpoint.

10 I grew up here in Bonner County on a 240-acre
11 dairy farm, ten miles northeast of Sandpoint out near
12 where Northside School is now. And 59 years ago this
13 week I graduated from high school in this room. I'm
14 probably the oldest person in the room. And that's just
15 fine. You'll all get here some day.

16 I literally have heard trains travel through
17 Bonner County my entire life, every day. There were
18 many years when the trains traveled through town along
19 Fifth Avenue and then out along Highway 2. I was city
20 clerk in 1982 when Sally (unintelligible), the first
21 woman mayor of Sandpoint got the call from Senator
22 Simms' office in Washington, D.C., that money had been
23 allocated to remove that through-town track. She was
24 just squealing with delight. We were so excited. I was
25 still city clerk 15 years later when the work began to

1 remove the track. David Sawyer was mayor then.

2 I heard two County commissioners tonight give
3 strong support for this project. And I heard a mayor
4 say that he and the Council were opposed to it. I'm
5 sure there are people in this room who are constituents
6 of all three of those gentlemen who disagree with their
7 position.

8 When I was very young, I was afraid when we
9 crossed the wooden bridge for vehicles across the river.
10 It was a very scary proposition for me. I was sure
11 those railings, which were about this high (indicating)
12 and very flimsy, were not going to hold the car if we
13 went off. That bridge would be a one-way bridge now
14 because vehicles are so much larger and there's so much
15 more weight. We have had three new vehicular traffic
16 bridges since then, yet we are still using a
17 100-year-old railroad bridge.

18 I would ask you to imagine all of the products
19 that are carried by the railroad. If the trains didn't
20 carry them, they'd be on the highways. There's a risk
21 there too. And I think the risks to our environment and
22 to our safety are reduced by this second bridge. Thank
23 you.

24 HEARING OFFICER BROMLEY: Thank you,
25 Ms. Newton. The gentleman in the back with the green

1 shirt.

2 MR. HALL: I'm David Hall, H-a-l-l, from
3 Moscow and outside of Sagle. Thank you for holding the
4 hearing here tonight. I generally share the
5 environmental concerns of the (unintelligible) tonight,
6 but I won't go -- repeat those, belabor them.

7 I'm opposed to the construction of an
8 additional bridge or bridges over any part of Lake Pend
9 Oreille or nearby waterways. There definitely needs to
10 be an environmental impact statement not a lesser
11 environmental assessment. It must address the real
12 dangers of derailment, including more infrastructure to
13 maintain. Further, the effects of the temporary pilings
14 and their removal must be considered carefully. Heavy
15 metal laden coal and other toxic substances that are
16 getting hauled over the existing bridge with much no
17 doubt in the sediments.

18 The Idaho Department of Water Resources is
19 currently studying the hazards created by disturbing
20 bottom sediments in Lake Coeur d'Alene -- I believe
21 that's the agency -- and finding worrisome preliminary
22 results. At the very minimum there will be lots of
23 turbidity in removing of the temporary piles. And just
24 again I'd like to ask that an EIS be done. Thank you.

25 HEARING OFFICER BROMLEY: Thank you, Mr. Hall.

1 Others? Yes, ma'am.

2 MS. ACKERMAN: My name is Laura Ackerman.

3 L-a-u-r-a A-c-k-e-r-m-a-n. Good evening. Thank you for
4 having this hearing. I'm the energy director at the
5 Lands Council in Spokane, Washington. And I am here --
6 and especially after listening to all of these comments
7 on both sides -- to support a full environmental impact
8 statement for the Sandpoint Connector Project.

9 HEARING OFFICER BROMLEY: Ms. Ackerman, if you
10 could --

11 MS. ACKERMAN: Am I reading too -- too --

12 HEARING OFFICER BROMLEY: -- if you could just
13 please slow down a little bit. Thank you.

14 MS. ACKERMAN: Sorry. I apologize.

15 HEARING OFFICER BROMLEY: Thank you very much.

16 MS. ACKERMAN: I have read the Lake Pend
17 Oreille geographic response plan. A couple things I
18 want to mention out of it. I notice somebody -- I don't
19 know who did this (indicating), but some of these --
20 some of the comments that I am going to read are similar
21 to these. But I had no part of this.

22 Just want you to know that railroad accidents
23 in Bonner County are common, page 30 you can read the
24 details in the plan. Pages 26 and 27, 52 percent of the
25 hazardous material transported in the -- in -- here in

1 the county are Bakken crude. Nineteen public registered
2 water systems of surface water and 11 of them come
3 straight from the lake, page 61.

4 The one thing that I really want to point out
5 is on page 98, Lake Pend Oreille is a part of the
6 Rathdrum Prairie aquifer. The DEQ classifies it as a
7 sensitive resource. It serves a hundred thousand people
8 in Kootenai County and another 400,000 in Spokane
9 County. And it's critically important to protect it.
10 Those are not my words. They are in the plan.

11 Remediating an underground spill is more
12 complex than an above-ground spill. And in 2017 the
13 vulnerabilities of the lake were identified in the plan.
14 Briefly they are training, equipment, geographic and
15 evacuation and procedural vulnerabilities. I think
16 somebody already stated that half of Sandpoint would be
17 required to evacuate if there is a fire. So the
18 geographic response plan is --

19 HEARING OFFICER BROMLEY: Ms. Ackerman, if you
20 could just slow down a little bit.

21 MS. ACKERMAN: Slow down. Sorry.

22 HEARING OFFICER BROMLEY: Thank you.

23 MS. ACKERMAN: It's -- it's -- they are good
24 that these exist. And they exist all over the United
25 States, not just for here. And they're important but

1 they're not enough. So schools and nursing homes, for
2 example, have to have evacuation plans. So I think it's
3 reasonable that Class 1 railroads -- so this would also
4 include UP -- should have to have oil spill contingency
5 plans in the state of Idaho.

6 Think of the geographic response plan as like
7 the outside of a sandwich. It's the bread, but the
8 contingency plan is what's on the inside. And it's more
9 detailed and it's more important. And Class 1 railroads
10 in Washington state and California are required to have
11 oil spill contingency plans or C plans. And I have
12 provided to Mr. Bromley the WACs for this in Washington
13 state because BNSF has done one in Washington state.
14 And it's been approved by the Washington State
15 Department of Ecology. And they have to be consistent
16 with the northwest area contingency plan, as does the
17 Lake Pend Oreille geographic response plan. And so this
18 is really important because it adds an extra layer of
19 safety, and we need more details of how potential oil
20 spills would be cleaned up.

21 And I think an EIS could also thoroughly look
22 more at insurance, that railroads would be required to
23 show that they have a level of insurance in case of a
24 derailment, a spill or a fire. And in Washington state
25 that's at 700 million. It won't necessarily be required

1 to cover all the expense of clean-up since it's based on
2 a reasonable worst-case spill and not an absolute one.
3 But I think that is important for Idaho residents and
4 for Washington state residents because we get part of
5 the drinking water.

6 We also have a quarterly report in Washington
7 state about the movement of crude oil by rail and
8 pipeline. The latest one ended March 31st of this year.
9 And so the oil in Spokane, it comes through Sandpoint
10 first. And it mostly comes from Alberta, North Dakota
11 and Saskatchewan. And most of it was light crude from
12 North Dakota, 91 percent of it. In Spokane County, from
13 January to March of this year, 19,604 oil cars came
14 through. So that's a lot of oil to not seriously
15 consider having an in-depth look via an EIS for this --
16 for this project. That's also in the packet.

17 A couple of things BNSF, and UP for that
18 matter, should all be using Tier 4 engines. They are
19 the cleanest diesel burning engines. If people really
20 care about air quality, that's -- and BNSF -- BNSF says
21 they do, that's what they should be doing. They should
22 also be pushing North Dakota to stabilize the oil.
23 Texas does this. They require it. And I think North
24 Dakota can do that. If they need a little push from
25 railroads, that's a good idea. I agree with what --

1 overall what Matt Nykiel said and -- and Judy Butler and
2 I also agree with Jane Fritz. We should have a Section
3 106 under the National Historic Preservation Act. And
4 the U.S. Forest Service -- the Fish and Wildlife Service
5 should be involved with this.

6 Also, this isn't just about the fire. It's
7 about the rail communities down rail, Spokane and the
8 thousands of other communities between here and the
9 Bakken. And if you want to talk to a very conservative
10 city, the city councilors, go talk to the city of
11 Spokane Valley who have grave concerns about traffic.
12 They actually were publicly against the proposed
13 Vancouver energy project at the port of Vancouver being
14 proposed by Tesoro Savage now (unintelligible) and they
15 just sold out to another oil company, Marathon, I
16 believe. But they were against it. And they're not
17 anti-commerce. And they were not anti-oil. But the
18 fact that they have to pay -- most of the upgrades that
19 you have to pay in the city of Spokane, you're going to
20 pay for them as taxpayers. It's not Burlington Northern
21 Santa Fe or UP. And you can talk to Terry Whiteside
22 of -- read "Heavy Traffic Still Ahead" if you want to
23 know the details of that.

24 So I think it's really important to have an
25 EIS to talk about all of this because it's not -- the

1 public process is really important. We need to go
2 through scoping. We need to have a draft environmental
3 impact statement, and then we need to have another
4 public hearing. And that's under the National
5 Environmental -- Environmental Policy Act. That's
6 really important because it fulfills the
7 responsibilities of each generation as trustee of the
8 environment for succeeding generations. So we owe that
9 to not only people in Sandpoint but people below
10 Sandpoint and above Sandpoint.

11 Thank you for having this hearing. And thank
12 you for the opportunity to comment. I appreciate it.

13 HEARING OFFICER BROMLEY: Thank you,
14 Ms. Ackerman. The gentleman with the hat in the front
15 row.

16 MR. SPANGLER: I'm Tim Spangler. I'm from
17 Superior, Montana.

18 HEARING OFFICER BROMLEY: Mr. Spangler, if you
19 would please spell your last name.

20 MR. SPANGLER: Timothy, T-i-m-o-t-h-y,
21 Spangler, S-p-a-n-g-l-e-r. I've lived in Superior,
22 which is on the Clark Fork up the river. Next to the
23 trains the Milwaukee used to go through and the NP
24 changed to Burlington Northern. My family has been
25 there for -- since the 1890s. So, I mean, I'm familiar

1 with the trains. I used to ride them. I used to ride
2 the Milwaukee into Portland.

3 What I've seen in the last ten years has
4 convinced me that what BNSF is saying about their
5 environmental consciousness is -- is totally false.
6 BNSF is mainlining carbon big time. They're mainlining
7 carbon and we're all going to suffer for it. And nobody
8 talks about the world. They talk about Sandpoint. They
9 talk about Spokane. What about the rest of the world?
10 What about the rest of the world?

11 I don't have a lot more to say, but I don't
12 believe them. I don't believe BNSF. They are not
13 environmentally conscious, period.

14 HEARING OFFICER BROMLEY: Thank you,
15 Mr. Spangler.

16 MR. SPANGLER: Thank you.

17 HEARING OFFICER BROMLEY: Anyone else?

18 (Brief pause.)

19 HEARING OFFICER BROMLEY: All right. As I
20 stated at the beginning then, after the general public
21 comment had concluded then I was going to ask for BNSF
22 to provide any reply that it may wish to provide. So
23 with that, I would encourage BNSF to speak if it so
24 chooses.

25 MR. JONES: Good evening. This is Matt Jones

1 with BNSF. J-o-n-e-s. And thank you for the
2 opportunity to respond, but we have nothing further to
3 add at this time. So thank you.

4 HEARING OFFICER BROMLEY: Thank you,
5 Mr. Jones. All right. With that we will conclude the
6 hearing. I thank everybody for attending and providing
7 comment. At this point then the record is closed. And
8 let's go off the record. Thank you.

9 (Whereupon, the public hearing was
10 concluded at 8:15 p.m.)
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REPORTER'S CERTIFICATE

I, Patricia L. Pullo, Certified Shorthand
Reporter, do hereby certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time any witnesses were placed under oath;

That the testimony and all objections made
were recorded stenographically by me and were thereafter
transcribed by me or under my direction;

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability;

That I am not a relative or employee of any
attorney or of any of the parties, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 4th day of June, 2018.

PATRICIA L. PULLO, C.S.R. #697
Notary Public
816 Sherman Avenue, Suite 7
Coeur d'Alene, ID 83814

My Commission Expires 11/13/2018.