

ENTERED  
Office of Proceedings  
September 15, 2015  
Part of  
Public Record

Docket No. FD 35915

---

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

TRI-CITY RAILROAD COMPANY, LLC, a Washington  
limited liability company,

Petitioner,

v.

THE CITY OF KENNEWICK, of the State of Washington, located in  
Benton County, Washington; THE CITY OF RICHLAND, of the State of  
Washington, located in Benton County, Washington,

Respondents.

---

**SUPPLEMENTAL REPLY BRIEF  
OF THE CITY OF KENNEWICK  
AND THE CITY OF RICHLAND**

---

Lisa Beaton,  
Kennewick City Attorney,  
WSBA # 25305  
Heather Kintzley  
Richland City Attorney,  
WSBA # 35520

FOSTER PEPPER PLLC  
P. Stephen DiJulio, WSBA No. 7139  
Christopher G. Emch, WSBA No. 26457  
Stephanie G. Weir, WSBA No. 41722  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101-3299  
Telephone: (206) 447-4400  
Email: dijup@foster.com  
Email: emchc@foster.com  
Email: weirs@foster.com

*Attorneys for Respondents City of Kennewick and City of Richland*

**TABLE OF CONTENTS**

	<i>Page</i>
1. INTRODUCTION .....	3
2. STANDARD OF REVIEW .....	4
3. SAFETY OF CROSSING NOT IN DISPUTE.....	5
4. DISPOSITIVE MATERIAL FACTS ON OPERATIONS.....	6
5. TCRY PREVIOUSLY ADMITTED NO OPERATIONAL INTERFERENCE.....	9
6. TCRY’S GCOR AND CITY CODE ASSERTIONS ARE RED HERRINGS.....	11
6.1 GCOR and The Kennewick Municipal Code Support the Cities, Not TCRY.....	11
6.2 The Crossing Would Not Require “Broken” Trains. ....	13
6.3 TCRY Is Not Restricted From Using the Siding. ....	14
7. EVIDENCE RELIED UPON .....	15
8. TCRY DOES NOT MEET ITS BURDEN OF PROOF REGARDING UNREASONABLE INTERFERENCE WITH RAILROAD OPERATIONS.....	17
9. CONCLUSION.....	20

## GLOSSARY

ALJ:	Administrative Law Judge
BNSF:	Burlington Northern Santa Fe Railroad Company
Cities:	The City of Richland and City of Kennewick
CP	Court of Appeals Clerk's Papers, numbered 0-000000001-2209, which contains the full record in UTC Docket TR-130499, as certified at CP 0-000000069-73.
Crossing:	The Center Parkway extension between Kennewick and Richland, to Tapteal Drive in Richland
ICCTA	Interstate Commerce Commission Termination Act, 49 U.S.C. 10101, <i>et. seq.</i>
GCOR	General Code of Operating Rules, Seventh Ed. (April 1, 2015)
Kennewick:	The City of Kennewick
KMC	City of Kennewick Municipal Code
Petitioner:	TCRY
Richland:	The City of Richland
Richland Junction	The commencement of the Port of Benton rail line (extension from UPRR) to Hanford
STB	Surface Transportation Board
TCRY:	Tri-City Railroad Company, LLC
UPRR:	Union Pacific Railroad Company
UTC (or	The Washington Utilities and Transportation

Commission): Commission

## **1. INTRODUCTION**

The Cities respectfully submit this Supplemental Reply Brief pursuant to the STB's August 31, 2015 decision to allow additional briefing to help "clarify the arguments presented and ensure a fully developed record" and respond to new assertions contained in TCRY's Rebuttal. For clarity, the Cities' Supplemental Reply Brief highlights the applicable legal framework and then addresses key dispositive issues regarding the at-grade Crossing, which extends the Center Parkway public street between the City of Kennewick and the City of Richland. In short, none of TCRY's new speculative assertions change the fundamental conclusion that the Center Parkway Crossing fits squarely within the STB's well-recognized exemption from federal jurisdiction for routine crossings under 49 U.S.C. §10501(b). The Crossing is widely supported, exceeds safety standards, and will not unreasonably or unduly interfere with railroad operations. TCRY's intransigence should not be allowed to scuttle years of good faith cooperation and hard work by all other rail carriers and planners on an important regional project.

## 2. STANDARD OF REVIEW

In analyzing TCRY's Rebuttal, it is important to recognize that TCRY bears the burden of proof at all times in this action, and that the standard for preemption is high.

It is unequivocal that the burden of proof, by statute, is on "the petitioner seeking a declaratory order from an administrative agency." *City of Lincoln v. Surface Transp. Bd.*, 414 F.3d 858, 862 (8th Cir. 2005) (citing 5 U.S.C. §556(d)); accord *Eastern Alabama Railway LLC – Petition for Declaratory Order*, Docket No. FD 35583, 2012 WL 758259 at \*3 (Served March 9, 2012); *Union Pacific Railroad Company – Petition for Declaratory Order*, Docket No. FD 35504, 2011 WL 6155578 at \*3 (Served Dec. 12, 2011); *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305, 2011 WL 742698 at \*2 (Served March 3, 2011).

Moreover, the standard for preemption for routine crossings under 49 U.S.C. §10501(b) is consistently high. Section 10501(b) preempts regulations that would unreasonably or unduly interfere with railroad operations or pose undue safety risks and routine crossings are not typically preempted. *Maumee & W.R.R. Corp. and RMW Ventures, LLC – Petition for Declaratory Order*, Docket No. 34354, 2004 WL 395835, at \*2 (Served March 2, 2004); *Franks Inv. Co., LLC v. Union Pacific Ry.*

*Co.*, 593 F.3d 404, 413 (5th Cir. 2010) (“Substantial interference with railroad operations will be preempted; routine crossing disputes will not.”); *New Orleans & Gulf Coast Ry. Co. v Barrois*, 533 F.3d 321, 332 (5th Cir. 2008) (“[t]he STB has clearly identified where routine crossing disputes, such as the one at issue in this case, fall in this scheme of ICCTA preemption. Routine crossing disputes are *not* typically preempted” (italics emphasis in original)).

Whether the track is an exempted track under Section 10906 is irrelevant. The Board’s exercise of jurisdiction is determined by looking at the fundamental jurisdictional question – whether the proposed at-grade crossing unreasonably interferes with railroad operations or safety rather than the nature of the track. *New York & Atlantic Ry. v. Surface Transp. Bd.*, 635 F.3d 66, 72 (2nd Cir. 2011); Cities’ Reply Brief at 39-41.

### **3. SAFETY OF CROSSING NOT IN DISPUTE**

The safety prong of the STB jurisdictional analysis is not in dispute. Cities’ Reply submitted extensive factual findings that the Crossing exceeds safety standards. *See* Cities’ Reply Brief at pp. 33-35; Verified Statement and Affidavit of Kevin Jeffers, dated June 11, 2015 (“Jeffers V.S.”); Verified Statement and Affidavit of Susan Grabler, dated June 11, 2015 (“Grabler V.S.”).

TCRY's Rebuttal did not address these facts and abandoned the safety issue, pivoting to focus solely on operations. Thus, there is no material safety issue in dispute. Moreover, the extensive UTC record submitted by the Cities supports these safety findings. While the focus of the UTC proceedings centered on whether the benefits of the Crossing outweighed the risks, the UTC's findings in favor of the Crossing are highly relevant and equally apply to the safety prong of the STB's analysis.<sup>1</sup>

#### **4. DISPOSITIVE MATERIAL FACTS ON OPERATIONS**

The second prong of the STB jurisdictional analysis is whether the Crossing would unreasonably or unduly interfere with railroad operations. The record overwhelming supports the conclusion that the Crossing is a routine crossing that does not meet the standard for preemption because it does not unreasonably or unduly interfere with railroad operations. Speculative assertions in TCRY's Rebuttal do not alter the fundamental dispositive facts, including:

- TCRY Does Not Operate Unit Trains. TCRY's assertions regarding potential unit train disruption has no merit. TCRY does not operate any unit trains, and has no grounds to assert

---

<sup>1</sup> TCRY's Petition to the STB raised safety issues that TCRY previously raised before the UTC and before the Benton County Superior Court. TCRY has already raised and lost these safety issues in both forums. CP 644-645 (UTC Order 03) CP 2207-2209 (Benton County Superior Court Order Affirming the UTC's Order).

purported interference with unit trains. BNSF invested in a unit train processing facility in the Horn Rapids Industrial Park in north Richland after signing a track use agreement specifically allowing the Center Parkway Crossing. UPRR signed the same track use agreement and subsequently operated unit trains to the Horn Rapids Industrial Park without complaint. Rogalsky Suppl. V.S. ¶¶ 27-28.

- Track Blockage Is Miniscule. The Cities' track closure findings are unrebutted and dispositive: "At most, the Crossing will be blocked less than 1% of the day based upon current railroad usage<sup>2</sup>, and less than 3% of the day, even assuming TCRY's unrealistic projection that rail traffic will increase 85 percent.<sup>3</sup>" See Cities' Reply at pp. 25-26, 32. As a result, TCRY's new assertions about car counts and track usage do not prove interference. The track usage over the Crossing is undisputed – at most, the Crossing will be blocked less than 3% of the day.<sup>4</sup>
- BNSF and UPRR Do Not Contest the Crossing. BNSF and UPRR do not contest the Crossing. CP 0-00000790, 794 (track use agreement by and between the City of Richland and BNSF); CP 0-00000769, 773 (track use agreement by and

---

<sup>2</sup> CP 0-000001183 (TCRY cross-examination of Spencer Montgomery, author of the JUB Study).

<sup>3</sup> CP 0-000001183-1185 (TCRY cross-examination of Spencer Montgomery), attention to CP 0-000001185:18-25 (explaining that the Crossing will not be closed more than three percent of the day).

<sup>4</sup> TCRY continues to misstate and exaggerate speculative railcar counts. TCRY contends that the City of Richland projected 12,500 carloads a year, citing to the new John Miller Affidavit at p. 14. However, it is plainly evident that the referenced testimony of Mr. Ballew from the City of Richland was in response to questions about the "maximum, most optimistic development scenario" not what was likely to occur. This was not the Cities' "projection," and does not change the finding that at most the Crossing "will be blocked less than 1% of the day based upon current railroad usage, and less than 3% of the day, even assuming TCRY's unrealistic projection that rail traffic will increase 85 percent." Cities' Reply at pp. 25-26, 32; Rogalsky Suppl. V.S. ¶ 14.

between the City of Richland and UPRR). TCRY is the only entity seeking review of this Crossing. This is an objective, uncontroverted fact.

- An Existing Operating Plan Is In Place. The Port and City trackage accommodates the operations of three railroads (BNSF, UPRR, and TCRY). BNSF and UPRR do not object to the Crossing, and an Operating Plan has been adopted to resolve any disputes and operational issues. Exs. A and B to Weir Suppl. V.S. (Operating Plan at ¶10: “In the event a dispute arises among the parties concerning the application of this Operating Plan or proposed changes... the dispute shall be submitted to the Port of Benton under the terms of the Port-TCRY Railroad Lease and the underlying contracts with BNSF and UP for resolution.”) The STB may take judicial notice of this Operating Plan as a matter of public record.
- All Vehicular Traffic Stops During Railway Operations. It’s uncontroverted that the Crossing’s safety features will stop all vehicular traffic during railway operations. Jeffers V.S. ¶ 11 (“The gates will go down as a train approaches and will stay down when a train occupies the tracks within the limits of the crossing. The gates will not rise until all trains have cleared the crossing limits.”). TCRY’s submission of the Rhett Peterson statement does not rebut the critical dispositive fact that the railroad always maintains the right of way over the track.
- The Cities Field Study Shows No Interference. The Cities’ Field Study data, the dates of the Field Study, and the location of the cars on the siding are objective and verifiable facts that demonstrate that the Crossing does not unreasonably interfere with railroad operations. TCRY offers no evidence to “rebut” these objective facts. To the contrary, Foster Peterson’s Verified Statement appears to agree with the data. Foster Peterson V.S. ¶9 (“These photographs appear to document the normal operations of a Class III railroad of this size ...”). And Foster Peterson does not rebut the placement of the cars or that the fact that cars remained on the siding for days at a time and those cars were located immediately in front of the proposed Crossing. Supplemental field data collected since the Cities’

filed their Reply brief further confirms the lack of interference with TCRY's operations. Rogalsky Suppl. V.S. ¶¶ 29-37; Grabler Suppl. V.S. ¶¶ 10-11.

- The Track Owner Has Granted The Easement. The Port of Benton, the fee owner of the tracks, has granted the Cities the necessary easement for the Crossing. No additional approval is necessary from the Port of Benton or from TCRY, as the lessee of the tracks. Pursuant to the October 19, 2006 Railroad Crossing Agreement, the Cities are exercising their "authority granted by law" to condemn a vehicular right-of-way. CP 210 (the Cities' agreement with the Port of Benton), CIP 214 (the easement deed).

#### **5. TCRY PREVIOUSLY ADMITTED NO OPERATIONAL INTERFERENCE**

It is particularly frustrating and disappointing to the Cities that TCRY rejected the Cities' good faith efforts to involve TCRY in the planning process, and that TCRY has now changed position and contradicted prior testimony where TCRY admitted that the Crossing would not affect its operations.

TCRY's Rebuttal included a new witness statement from Randolph Peterson, TCRY President and CEO. In paragraph 4-5 of the Randolph Peterson Verified Statement, dated June 23, 2015, Mr. Peterson asserts that TCRY declined to attend a planning meeting about the Crossing because TCRY had made it clear to the Cities that the Crossing would "drastically interfere with its railroad operations." That meeting took place on December 11, 2012. CP 0-000001582.

Mr. Peterson's June 23, 2015 statement is flatly contradicted by the record. In fact, Mr. Peterson requested that Center Parkway cross both of the Port tracks and testified against reasonable alternatives to the Crossing before the Administrative Law Judge in the UTC proceedings. For example, in response to direct questioning by the ALJ on November 20, 2013 (CP 0-000001369-1370), Mr. Peterson admitted that safety was TCRY's only issue and that TCRY's railroad operations would be unaffected by the Crossing:

Q (by Administrative Law Judge Torem). One of the options we heard about, I think at Mr. Jeffers' testimony yesterday, was the consideration of leaving both tracks and still opening the road. What's TCRY's opposition if both tracks are left?

A (by Randolph Peterson). Okay. **When we're there, those gates are down**, we're doing our railroading, we got, you know, we got our two tracks, **build the road. We don't care.**

Q. So can you answer my question?

A. Yeah.

Q. **Do you oppose putting the road through if the two tracks stayed in place and operations continued as they were now?**

A. **As long as we have good, hundred percent crossing protection.** You know, our job is to protect our workers first.

Q. So if I understand your position correctly, the opposition is only to the removal of the passing track as a casualty of putting the road through.

A. I'm not -- I'm not the attorney. I don't know what all the legal issues and so on and so forth. But **from an operating standpoint --**

**Q. That's all I'm asking.**

**A. Operating standpoint, we will continue to operate uninhibited,** and there's going to be a lot of, you know, at times, there's going to be a lot of folks sitting, you know.

*See* CP 0-000001369-1370 (Testimony of Randolph Peterson, November 20, 2013, Docket No. TR-130499, pp. 416:14 - 417:13) (bold emphasis added); *see also* Jeffers Suppl. V.S. ¶ 3.<sup>5</sup>

**6. TCRY'S GCOR AND CITY CODE ASSERTIONS ARE RED HERRINGS**

In its Rebuttal, TCRY alleges for the first time that the Crossing will result in TCRY losing a third (1/3) of its 1900 foot siding, which TCRY asserts will affect storage and switching operations in violation of GCOR and the Kennewick Municipal Code. TCRY's assertions have no merit.

**6.1 GCOR and The Kennewick Municipal Code Support the Cities, Not TCRY.**

TCRY's new railway interference argument is misguided and based upon two regulations: (1) TCRY's adoption of the General Code of

---

<sup>5</sup> Because the issue of operational interference was raised and adjudicated in a prior proceeding involving the same parties, waiver and estoppel apply. *See generally*, Restatement (Second) of Judgments Ch. 1 at 6 (1982) ("The principle underlying the rule of claim preclusion is that a party who once has had a chance to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so."); *Western Coal Traffic League – Petition for Declaratory Order*; Docket No. FD 35506 (Served July 25, 2013) ("We have the authority to take equitable actions").

Operating Rules (“GCOR”) and (2) Ch. 11.80 of the Kennewick Municipal Code (“Code” or “KMC”). According to TCRY’s new argument, these provisions will eliminate “the width of the vehicular right of way, plus 250 feet to either side” from the main track and the siding.

TCRY misstates, misapplies, or simply does not understand the plain language of GCOR and the Code, which is not mandatory but rather permissive:

GCOR 6.32.4: “**When practical**, avoid leaving cars, engines, or equipment standing closer than 250 feet from the road crossing when there is adjacent track.”

GCOR 6.32.6.: “**When practical**, a standing train or switching movement must avoid blocking a public crossing longer than 10 minutes.”

Kennewick Municipal Code 11.80.090. “**When it can be avoided**, cars of engines must not be left standing nearer than two hundred fifty feet (250’) to a road crossing.

In other words, none of the provisions cited by TCRY support or demonstrate any negative impact to TCRY’s operations because the provisions require clearance only “when practical”. To the contrary, the plain language of these provisions establish that TCRY has the flexibility to maintain its railway operations on the 1900-foot siding when the siding is needed for railway operations. If for example, TCRY wants to store cars on the siding, it would be able to do so on the full siding outside of

the Crossing itself (less than 100 feet). *See also* KMC 11.80.040 (restricting motorists from obstructing or delaying trains).

The Supplemental Verified Statements of Kevin Jeffers, Susan Grabler, and Pete Rogalsky support the finding that GCOR and the City Code will not cause any interference with railway operations. *See* Kevin Jeffers Suppl. V.S. ¶¶ 4-7; Susan Grabler Suppl. V.S. ¶¶ 3-9; and Pete Rogalsky Suppl. V.S. ¶ 11.

## **6.2 The Crossing Would Not Require “Broken” Trains.**

TCRY’s assertion that trains would have to be broken to clear the Crossing if held for more the 10 minutes is similarly misleading and does not support a finding of unreasonable interference with railroad operations. The GCOR provision addressing blocking public crossings (GCOR 6.32.6) uses permissive language. GCOR 6.32.6 provides that “[w]hen practical, a standing train or switching movement must avoid blocking a public crossing longer than 10 minutes.” This choice of language sets forth a preference – to avoid blocking whenever practical – rather than an express admonition that a railroad would “have to be broken” as asserted by Foster Peterson at paragraph 8, page 13 of the Rebuttal Verified Statement.

Each of the City of Kennewick Municipal Code provisions referenced by TCRY also use permissive rather than prohibitory language. For example, in KMC 11.80.090, the provisions addressing Blocking Intersections, the code states that “[n]o person shall stop any railroad train or car within an intersection except to avoid an accident or upon direction of a peace officer, *when it can be avoided.*” (emphasis added). In KMC 11.80.090, the provision addressing blocking streets when switching, the code states that, “[w]hen it can be avoided, cars or engines must not be left standing nearer than two hundred fifty feet (250’) to a road crossing. A public crossing must not be blocked for more than five (5) minutes *when it can be avoided.*” (emphasis added). Further, the City expressly recognizes the primacy of federal law at KMC 11.80.900, which notes that the chapter shall be construed consistently with applicable federal and state laws and regulations, and recognizes the primacy of rail operations on the tracks by making it a violation for any person to obstruct or delay the railroad track (KMC 11.80.040).<sup>6</sup>

### **6.3 TCRY Is Not Restricted From Using the Siding.**

The Field Study provided by the City and cited by TCRY (Rebuttal Brief, p. 29) demonstrates that there has been no instance where the full

---

<sup>6</sup> The relevant provisions of the City of Kennewick Municipal Code are found in KMC Chapter 11.80, attached to the Supplemental Verified Statement of Stephanie Weir, Ex. C.

1900-foot siding is necessary for TCRY's railway operations. *See also* Rogalsky Suppl. V.S. ¶¶ 26-37. Moreover, the project will not remove any tracks, and BNSF and UPRR have eliminated their use of the siding. Jeffers V.S. ¶¶ 6, 10, 12; Jeffers Suppl. V.S. ¶¶ 11-13.

Thus, the evidence demonstrates that (1) TCRY's actual documented operations do not require the full 1900-foot siding, and (2) no provision restricts TCRY from using the siding when or if TCRY's operations require the siding. Cars can be stored on the full siding outside of the Crossing itself (less than 100 feet). TCRY has presented the Board with no basis to assert jurisdiction here.<sup>7</sup>

## **7. EVIDENCE RELIED UPON**

The Cities' Supplemental Reply is supported by the existing record, the materials and verified statements submitted with its Reply, and Supplemental Verified Statements of Pete Rogalsky, Kevin Jeffers, and Susan Grabler.<sup>8</sup> As explained in their original verified statements, Mr.

---

<sup>7</sup> The Supplemental Verified Statement of Pete Rogalsky explained why any expansion of the 1,900 foot siding is speculative at best. Rogalsky Suppl. V.S. ¶ 22.

<sup>8</sup> TCRY incorrectly asserts that the Cities did not challenge all material allegations of fact contained in TCRY's Petition For Declaratory Order and accompanying verified statements. The Cities' reply rebutted all of TCRY's principal arguments, supported by the verified statements of Pete Rogalsky, Kevin Jeffers, and Susan Grabler, and the full UTC record that was submitted to the STB with the Cities' reply. The reply materials submitted by the Cities are consistent with the STB's modified procedures

Rogalsky, Mr. Jeffers, and Mr. Grabler have decades of professional engineering experience, have extensive first-hand knowledge about the planning for and analysis of the Crossing, and are well qualified to testify about the Crossing and its impact on operations at the Crossing. As explained further below and in the supplemental verified statements of Mr. Rogalsky, Mr. Jeffers, and Mr. Grabler submitted herewith, TCRY's purported "operations" expert rebuttal testimony provided does not support a finding of unreasonable interference, but rather asserts extraneous facts and issues, ignores dispositive facts, and misconstrues the plain language of rules and regulations.

TCRY's attempt to minimize the relevancy of the extensive UTC record is particularly misguided. The UTC record is directly relevant because it demonstrates the planning and safety provisions of the

---

and standard of review. *See, e.g., The TJX Companies, Inc.--Petition For Declaratory Order--Certain Rates And Practices Of Sweeney Transportation, Inc., And Knickerbocker East-West, Inc.* STB Docket No. 41192, slip op. at 7, 2002 WL 31097636 at \*4 (Served September 20, 2002) ("Petitioner bases its argument that we must accept its factual assertions unless rebutted by [respondent] on our rule of procedure at 49 CFR 1112.6.... But this rule does not help [petitioner]. A fair reading of [respondent]'s reply shows that it controverts all of [petitioner]'s key arguments. The fact that the reply may not recite a specific rejection of all of the petitioner's factual allegations would not and could not justify our accepting [petitioner]'s claims as uncontroverted when they are, in fact, being vigorously disputed."). In addition, the Cities submit the Supplemental Verified Statements of Rogalsky, Jeffers, and Grabler in response to the Verified Statements of Rhett Peterson, John Miller and new witnesses Randolph Peterson, Foster Peterson, and Lisa Anderson.

Crossing. The UTC record is also relevant because it show that TCRY failed to participate in any planning process for the Crossing at all. *See, e.g.,* Jeffers V.S. ¶¶ 8-10 (despite extensive notice and requests, “TCRY did not attend the site visit or diagnostic meeting and did not respond to the invitation or messages”); *also see* CP 0-000000824-826 (Testimony of Rick Simon, Development Services Manager for the City of Richland); CP 0-000000109-110 (UTC Diagnostic Meeting Record).

**8. TCRY DOES NOT MEET ITS BURDEN OF PROOF  
REGARDING UNREASONABLE INTERFERENCE  
WITH RAILROAD OPERATIONS**

As explained above, TCRY bears the burden of proof in this action. There is no dispute that the Crossing exceeds safety standards, and there is simply no material evidence supporting a finding that would rise to the level of unreasonable or undue interference with railroad operations. Instead, TCRY offers new speculation and more unfounded assertions about future track usage based on anecdotal events that occurred after May 26, 2015, such as TCRY’s anecdote about UPRR sending empty refrigerated railcars for temporary storage pending a plant opening in July. These speculative assertions about unspecified future interference with operations have no merit and do not meet TCRY’s burden of proof. In addition, they are undercut by the fact that no other rail carrier, including UPRR, opposes the Crossing.

TCRY does not meet its burden of proving undue interference with railway operations. TCRY attempts to make this argument in Section V of its Rebuttal Brief. As demonstrated below, Section V does not support TCRY's assertions:

Section V.A. discusses TCRY's lessee status. It does not contain any evidence regarding railroad operations.

Section V.B. discusses the *BNSF v. TCRY* federal court decision. TCRY cannot "rebut" the objective facts set forth in this court order. This section also does not contain any evidence regarding the purported undue interference with railroad operations.

Section V.C. includes TCRY's assertions regarding car counts, but it does not provide any evidence regarding any purported undue interference with railroad operations.

Section V.E. does not provide any evidence prepared by TCRY regarding its use of the siding. Instead, it relies upon the Cities' Field Study. As described in the Supplemental Verified Statements of Susan Grabler and Pete Rogalsky, the siding track will remain, allowing TCRY to store cars and to conduct switching operations. But the Field Study demonstrates that TCRY does not use the siding to allow one train to pass another train. Again, TCRY submits no evidence to demonstrate undue interference with railroad operations. Supplemental Verified Statements of Susan Grabler ¶ 11 and Pete Rogalsky ¶ 37.

Section V.G. makes the obvious point that regional improvements do not trump federal law. The Cities never made this argument.<sup>9</sup>

---

<sup>9</sup> The Cities also acknowledge that local regulations cannot regulate railroad operations. That is why the Kennewick Municipal Code begins with the phrase "**When it can be avoided, ...**". Also see Kennewick Municipal Code 11.80.900, titled preemption (acknowledging the limitations of local regulations on railroad operations).

Again, this section does not provide any evidence regarding any purported undue interference with railroad operations.

Section V.H. does not provide any evidence regarding operations. The Cities note that the UTC record is relevant because it includes extensive review of the Crossing's safety features. The Cities contend that "extensive review" has occurred, considering (1) the Crossing underwent a two day hearing before an Administrative Law Judge, (2) the UTC Commissioners reviewed and unanimously approved the Crossing, and (3) Washington's Superior Court reviewed the record and issued an Order in favor of Cities. TCRY argues that these facts do not amount to an "extensive review" of the UTC record. TCRY's grasping argument fails.

Section V.I. contains no evidence, and TCRY fails to acknowledge Kennewick Municipal Code 11.80.900, which explicitly acknowledges federal regulations.

Sections V.D and V.F of TCRY's Rebuttal rely upon the Rebuttal Verified Statement Rhett Peterson at p. 3-4 (citing GCOR) , the Rebuttal Verified Statement of Foster Peterson at ¶ 8 (citing GCOR at p. 12-13) and ¶ 17. These provisions argue that TCRY will lose 1/3 of its 1900-foot siding because of GCOR and the Kennewick Municipal Code. The Supplemental Verified Statements of Kevin Jeffers ¶¶ 4-7, Susan Grabler ¶¶ 3-9, and Pete Rogalsky ¶ 11 rebut this contention, which was analyzed in detail above.

Finally, the Section V.J. includes "catch all" blanket citations to the Rebuttal Verified Statements of Foster Peterson, Rhett Peterson, and John Miller. Once again, TCRY does not cite any specific evidence to

demonstrate unreasonable interference with railroad operations. The Supplemental Verified Statements of Kevin Jeffers, Susan Grabler, and Pete Rogalsky address and rebut each argument raised in TCRY's Rebuttal Verified Statements.

TCRY also erroneously asserts that they have rebutted the Rogalsky, Jeffers, and Grabler Verified Statements. *See e.g.* Rogalsky V.S. ¶¶ 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 18, 19, 25, 29; TCRY Rebuttal Brief p. 15-16. As described in Rogalsky's Supplemental Verified Statement, TCRY did not and, in fact, cannot "rebut" these paragraphs that largely provide objective facts to the STB. Further, Mr. Rogalsky's Supplemental V.S. explains why the Crossing will have no impact on TCRY's railroad operations. Similarly, TCRY did not rebut the objective facts continue in the Jeffers and Grabler Verified Statements. TCRY did not "rebut" ¶¶ 2, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23 in the Jeffers VS. *See* Suppl. Jeffers Verified Statement ¶¶ 8-30. TCRY did not "rebut" ¶¶ 2, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 in the Grabler VS. *See* Grabler Suppl. Verified Statement ¶¶ 12-37.

## **9. CONCLUSION**

The Crossing will not unreasonably interfere with railroad operations. TCRY's refused to participate in any dialog or project planning to remove the siding track from the Crossing location, changed

positions on the Crossing, and electing instead to litigate the Crossing in several forums. TCRY's arguments and objections to the project have been carefully considered and repeatedly rejected over a several year process. The STB and governing law hold that routine rail crossings, such as the Center Parkway, project, do not implicate federal preemption. The Cities respectfully request that TCRY's Petition For Declaratory Order be denied.

RESPECTFULLY SUBMITTED this 15th day of September, 2015.

Lisa Beaton,  
Kennewick City Attorney, WSBA # 25305  
Heather Kintzley,  
Richland City Attorney, WSBA # 35520

FOSTER PEPPER PLLC

By: s/ P. Stephen DiJulio  
P. Stephen DiJulio, WSBA No. 7139  
Christopher G. Emch, WSBA No. 26457  
Stephanie G. Weir, WSBA No. 41722  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101-3299  
Telephone: (206) 447-4400  
Facsimile: (206) 447-9700  
Email: [dijup@foster.com](mailto:dijup@foster.com)  
Email: [emhc@foster.com](mailto:emhc@foster.com)  
Email: [weirs@foster.com](mailto:weirs@foster.com)

*Attorneys for Respondents City of Kennewick  
and City of Richland*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder Anne K. Schroeder <b>Paine Hamblen LLP</b> 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 <a href="mailto:william.schroeder@painehamblen.com">william.schroeder@painehamblen.com</a> <a href="mailto:greg.hesler@painehamblen.com">greg.hesler@painehamblen.com</a> <a href="mailto:will.schroeder@painehamblen.com">will.schroeder@painehamblen.com</a>	____ U.S. Mail ____ Hand Delivery ____ Overnight Mail <u> X </u> E-Mail
--	--

s/ Christopher G. Emch  
Christopher G. Emch

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a  
Washington limited liability company,

Petitioner,

v.

THE CITY OF KENNEWICK, a Washington  
municipal corporation; THE CITY OF  
RICHLAND, a Washington municipal  
corporation,

Respondents.

No. FD 35915

SUPPLEMENTAL VERIFIED  
STATEMENT AND AFFIDAVIT OF  
PETE ROGALSKY, P.E.

**CONTAINS COLOR**

COMES NOW Pete Rogalsky who declares under penalty of perjury that the foregoing is true and correct:

- 1. I reaffirm my Verified Statement and Affidavit dated June 12, 2015 (“Rogalsky VS”).
- 2. I have reviewed the Rebuttal Verified Statements from John Miller, Foster Peterson, Randolph Peterson, and Lisa Anderson.

**THE REBUTTAL VERIFIED STATEMENT OF JOHN MILLER DOES NOT REBUT THE ROGALSKY VS**

- 3. The Rebuttal Verified Statement of John Miller does not “rebut” ¶¶ 5, 6, 7, 8, 9, 11, 12, 13, 14, and 16 the Rogalsky VS, as addressed in detail below.<sup>1</sup>

<sup>1</sup> TCRY’s Rebuttal Brief provides: “The Rebuttal Verified Statement of John Miller is being offered to rebut ¶¶ 5, 6, 7, 8, 9, 11, 12, 13, 14, 16 of the Rogalsky Verified Statement”. TCRY Rebuttal Brief, p. 15, ¶ 15.

- 1 4. ¶ 5 of Rogalsky VS provides objective facts regarding the UTC petition process and the  
2 location of the main track and siding track.
- 3 5. ¶ 6 of Rogalsky VS provides the objective fact that BNSF and UPRR have no objection  
4 to the Crossing.
- 5 6. ¶ 7 of Rogalsky VS provides the objective fact that the UTC unanimously approved the  
6 Crossing.
- 7 7. ¶ 8 of Rogalsky VS provides the objective fact that TCRY is a lessee on the Port of  
8 Benton track.
- 9 8. ¶ 11 of Rogalsky VS cited TCRY's assertion in its STB petition. I acknowledge that  
10 TRY asserted that it handled 2,247 carloads in 2013.
- 11 9. ¶ 12 of Rogalsky VS correctly asserted that TCRY did not provide any data or records to  
12 STB regarding track usage or projected track usage. When I signed the Rogalsky VS on  
13 June 12, 2105, TCRY provided only unsupported assertions regarding track usage.  
14 TCRY did not provide any verifiable data or records until it submitted Lisa Anderson's  
15 Rebuttal Verified Statement, dated June 23, 2015.
- 16 10. ¶ 13 of Rogalsky VS remains a correct and accurate statement. To date, TCRY has not  
17 provided STB with any data or records to STB regarding its use of the siding. The Cities'  
18 Field Study provides the STB with the only information regarding TCRY's use of the  
19 siding. Perhaps this is why TCRY's Rebuttal brief cites the Cities' data, but does not  
20 provide its own siding use data.
- 21 11. ¶ 14 of Rogalsky VS remains a correct and accurate statement. The plain language of  
22 GCOR and the Code is not prescriptive but rather permissive:

23 GCOR 6.32.4: "**When practical**, avoid leaving cars, engines, or equipment  
24 standing closer than 250 feet from the road crossing when there is adjacent track."

25 GCOR 6.32.6.: "**When practical**, a standing train or switching movement must  
26 avoid blocking a public crossing longer than 10 minutes."

1 Kennewick City Code 11.80.090. **“When it can be avoided**, cars of engines  
2 must not be left standing nearer than two hundred fifty feet (250’) to a road  
3 crossing.

4 The Supplemental Verified Statements of Kevin Jeffers and Susan Grabler explain that  
5 the safety features of the Crossing allow TCRY to use the siding within 250 feet of the  
6 road crossing. TCRY has not provided the STB with any evidence demonstrating that the  
7 Crossing will have any undue interference with TCRY’s operations.

8 12. The evidence submitted by the Cities also demonstrates that TCRY did not require the  
9 full siding during the entire duration of the Field Study from February 10, 2015 to  
10 present. TCRY submitted photos of refrigerated cars at an off-site location, but these  
11 photos do not provide any evidence of TCRY’s use of the siding.

12 13. TCRY’s arguments about the operational impact of the Crossing ignore the fact that a  
13 simple engineering solution is available that could more than mitigate the claimed impact  
14 of the Crossing on the siding track. More than 2,000 feet of unobstructed Port of Benton  
15 right of way lies immediately to the west of the existing siding. TCRY has refused to  
16 consider this engineering solution, instead litigating the impacts of the crossing on the  
17 existing track.

18 14. ¶ 16 of the Rogalsky VS remains a correct and accurate statement. The referenced  
19 testimony of Mr. Ballew from the City of Richland is in response to questions about the  
20 “maximum, most optimistic development scenario” (not what was likely to occur). This  
21 was not the Cities’ “projection”.  
22  
23  
24  
25  
26

1 **THE REBUTTAL VERIFIED STATEMENT OF FOSTER PETERSON DOES NOT**  
2 **REBUT THE ROGALSKY VS**

- 3 15. The Rebuttal Verified Statement of Foster Peterson does not “rebut” ¶¶ 8, 14, 16, 18, 19,  
4 25, 26 of the Rogalsky VS, as addressed in detail below.<sup>2</sup>
- 5 16. For the same reasons described above, Foster Peterson’s Verified Statement does not  
6 “rebut” ¶ 8, 14, or 16 of the Rogalsky VS. Again, the GCOR and Kennewick Code are  
7 permissive. Thus, TCRY has provided no evidence demonstrating that the proposed  
8 Crossing will have any undue interference with TCRY’s operations.
- 9 17. TCRY’s arguments about the operational impact of the Crossing ignore the fact that a  
10 simple engineering solution is available that could more than mitigate the claimed impact  
11 of the Crossing on the siding track. More than 2,000 feet of unobstructed Port of Benton  
12 right of way lies immediately to the west of the existing siding. TCRY has refused to  
13 consider this engineering solution, instead litigating the impacts of the crossing on the  
14 existing track.
- 15 18. ¶ 18 of Rogalsky VS provides the objective fact regarding the Field Study documents.
- 16 19. ¶ 19 of Rogalsky VS provides the objective fact regarding the Field Study dates.
- 17 20. ¶¶ 25 and 26 of Rogalsky VS provides the objective fact that TCRY cars are located  
18 immediately in front of the proposed Crossing. TCRY does not contest this fact,  
19 although TCRY proposes to use the word “spotted,” rather than the word “staged.”  
20 TCRY does not contest that cars stayed at the same location of the siding for three days  
21 or more, and, on many occasions, the cars stayed at the same location for more than a  
22 week.

23  
24  
25 <sup>2</sup> TCRY’s Rebuttal Brief provides: “[The Rebuttal Verified Statement of Foster Peterson] is  
26 being offered to rebut ¶¶ 8, 14, 16, 18, 19, 25, 26 of the Rogalsky Verified Statement”. TCRY  
Rebuttal Brief, p. 15, ¶ 14.

1 **THE REBUTTAL VERIFIED STATEMENT OF RHETT PETERSON DOES NOT**  
2 **REBUT THE ROGALSKY VS**

- 3 21. The Rebuttal Verified Statement of Rhett Peterson does not “rebut” ¶¶ 14, 16, 18, 19, 25,  
4 26 of the Rogalsky VS, as addressed in detail below.<sup>3</sup>
- 5 22. ¶ 14 of Rogalsky VS provides information regarding the Horn Rapids Industrial Parks  
6 and the Crossing’s safety devices. Rhett Peterson does not “rebut” these facts. Instead,  
7 Rhett Peterson cites unit trains operations and dispatch. TCRY’s rebuttal announced, for  
8 the first time, exploration of the possibility of extending the siding by as much as 10,000  
9 feet. To date, TCRY has not presented this possibility to the City of Richland for  
10 inclusion in any transportation planning process. I find this idea far-fetched from a  
11 technical perspective because of the cost of expanding the track in the vicinity of the  
12 existing siding. Less than 2,000 feet to the east of the siding is a Union Pacific bridge  
13 over the six-lane Columbia Center Boulevard. The existing bridge is only wide enough  
14 to locate the existing single track. The expense of widening this bridge, which is  
15 surrounded by expensive urban improvements, would be substantially more than building  
16 siding track elsewhere on the Port of Benton or Union Pacific rights of way. Less than  
17 4,000 feet to the west of the siding are two structures that would require widening to  
18 support a second track and the at-grade crossing of Steptoe Street that would require  
19 modifications. The expense of these modifications would be substantially more than  
20 building siding track elsewhere on the Port of Benton or Union Pacific rights of way.  
21 Regardless of these issues, TCRY does not demonstrate any impact to operations  
22 because, as demonstrate above, the GCOR and Kennewick Code are permissive. The  
23 Crossing will not eliminate 1/3 of the 1900 foot siding. TCRY has provided the Board no  
24 facts or law to support this unfounded assertion.

25 <sup>3</sup> TCRY’s Rebuttal Brief provides: “The Rebuttal Verified Statement of Rhett Peterson is being  
26 offered to rebut ¶¶ 8, 14, 16, 18, 19, 25, 26 of the Rogalsky Verified Statement”. TCRY Rebuttal  
Brief, p. 15-16, ¶ 16.

1 23. For the same reasons cited above, Rhett Peterson’s Verified Statement does not “rebut”  
2 Rogalsky VS ¶ 16 (re City projections), ¶¶ 18-19 (providing objective facts regarding the  
3 Field Study), and ¶¶ 25-26 (providing objective facts regarding the location of cars on the  
4 siding).

5  
6 **THE REBUTTAL VERIFIED STATEMENT OF RANDOLPH PETERSON DOES NOT  
REBUT THE ROGALSKY VS**

7 24. The Rebuttal Verified Statement of Randolph Peterson does not “rebut” the objective fact  
8 set forth in ¶ 10 of the Rogalsky VS.<sup>4</sup>

9 **THE REBUTTAL VERIFIED STATEMENT OF LISA ANDERSON DOES NOT REBUT  
THE ROGALSKY VS**

10 25. As described above, the Rebuttal Verified Statement of Lisa Anderson does not “rebut”  
11 the objective facts set forth in ¶ 11-12 of the Rogalsky VS.<sup>5</sup> Again, Ms. Anderson’s  
12 Rebuttal Verified Statement is the first time that TCRY has provided to the STB  
13 verifiable data.

14 **NO INTERFERENCE WITH RAILROAD OPERATIONS**

15 26. TCRY does not contest the fact that the Crossing will be closed, at most, three percent of  
16 the day assuming TCRY’s Cities Response Brief, p. 25, 32. As background, this three  
17 percent (3%) figure includes the completion of Horn Rapids Rail Loop, the Preferred  
18 Freezer Services Plant, and TCRY’s projected increase in rail traffic. *See e.g.*, TCRY  
19 cross-examination of Spencer Montgomery CP 0-000001185:18-25. I remain skeptical  
20 of TCRY’s car counts and car projections. Nonetheless, assuming that these projects are  
21 true, TCRY did not and cannot contest the fact that the Crossing will be closed less than  
22 three percent of the day. As previously described in the Verified Statements of Kevin  
23

24 <sup>4</sup> TCRY’s Rebuttal Brief provides; “The Rebuttal Verified Statement of Randolph Peterson is  
being offered to rebut ¶¶ 10 [sic] of the Rogalsky Verified Statement ...” TCRY Rebuttal Brief,  
25 p. 16, ¶ 18.

26 <sup>5</sup> TCRY’s Rebuttal Brief provides; “The Rebuttal Verified Statement of Lisa Anderson is being  
offered to rebut ¶¶ 10 [sic] of the Rogalsky Verified Statement ...” TCRY Rebuttal Brief, p. 16,  
¶ 17.

1 Jeffers and Susan Grabler, TCRY has the right-of-way as it proceeds through this  
2 Crossing. The Crossing's gates and other safety features will block vehicular  
3 interference with the railroads operations. No other operational interferences exist as  
4 GCOR and the Kennewick Code permit TCRY to complete its operations near, and,  
5 when necessary, at the Crossing.

- 6 27. BNSF invested in a unit train processing facility in the City's Horn Rapids Industrial Park  
7 after signing a track usage agreement specifically allowing the Center Parkway Crossing.  
8 Union Pacific signed the same track usage agreement and both BNSF and Union Pacific  
9 have subsequently operated unit trains to the Horn Rapids Industrial Park without  
10 complaint.
- 11 28. TCRY does not operate any unit trains, and has no grounds to assert purported  
12 interference with unit trains.

### 13 **THE CITY'S FIELD STUDY**

- 14 29. The City's Field Study began on February 10, 2015 and ended on August 13, 2015. For  
15 the purposes of this proceeding for the STB, the attached exhibits include information  
16 from May 26, 2015 through August 13, 2015.
- 17 30. ¶¶ 17 through 26 of Rogalsky VS describe the procedures and findings of the City's Field  
18 Study for the time period between February 10, 2015 and May 26, 2015.
- 19 31. The same procedures as described in ¶¶ 17 through 26 of Rogalsky VS were followed for  
20 the Field Study for the time period between May 26, 2015 and August 13, 2015.
- 21 32. Based on the information in the time lapse footage, the City prepared a seventeen page  
22 chart that identifies train movements on the Port of Benton tracks near the Crossing. This  
23 chart is attached as **Exhibit A**. Exhibit A identifies the date of the movement, the time of  
24 the movement, and total amount of cars, and the railroad responsible for moving the cars.
- 25 33. Based on the information in the still photos, the City prepared a series of four graphics,  
26 attached as **Exhibit B**. Exhibit B shows the date and location of cars on the siding. In

1 each instance, the cars were stationary. **Exhibit C** identifies the dates when City took the  
2 still photos.

3 34. Exhibits A through D are true, accurate, and complete copies of the materials that the City  
4 of Richland created to gather quantifiable data on track usage.

5 35. To provide the STB with additional information, the Cities have provided the STB with a  
6 hard drive that includes a true, accurate, and complete copy of the updated time lapse  
7 footage and the still footage (**Exhibit D**). The hard drive was sent by overnight delivery  
8 to the STB on September 14, 2015.

9 36. I have personally observed the tracks (including train movement) and the proposed  
10 Crossing. I have considered the record of train movement from railway-filed reports with  
11 the WUTC.

12 37. The field study and my past observations show that railcars were present on the siding on  
13 most days during the referenced period. Based on the Field Study and observations, once  
14 the cars were placed on the siding, they typically stayed at the same locations on the  
15 siding for three (3) days or more, and on many occasions they stayed for more than a  
16 week. The siding will remain once the Crossing is constructed. This will allow TCRY to  
17 store cars and to conduct switching operations. But the Field Study conclusively  
18 demonstrates that the siding is not used to allow one train to pass another train. TCRY  
19 has provided no conflicting data to demonstrate how the Crossing will impact its  
20 operations.

1 **SIGNED AND SWORN STATEMENT**

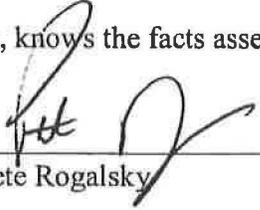
2 1. Pursuant to 49 CFR 1112.9:

3 State of Washington,

4 County of Benton,

5 Pete Rogalsky, being duly sworn, deposes and says that he has read the foregoing  
6 statement, knows the facts asserted there are true and that the same are true as stated.

7  
8 Signed

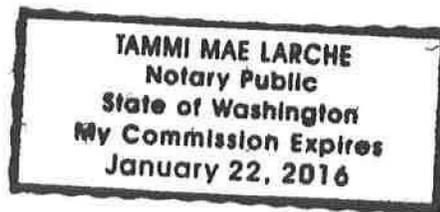
  
Pete Rogalsky

9 Signed and sworn to before me this <sup>15<sup>th</sup></sup> 16<sup>th</sup> day of September, 2015.

10 Notary Public of Franklin Co.

11 My Commission expires 1/22/2016

12 *Tammi Mae Larche*



CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder <b>Paine Hamblen LLP</b> 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 <a href="mailto:william.schroeder@painehamblen.com">william.schroeder@painehamblen.com</a> <a href="mailto:greg.hesler@painehamblen.com">greg.hesler@painehamblen.com</a> <a href="mailto:will.schroeder@painehamblen.com">will.schroeder@painehamblen.com</a>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> E-Mail
---	---

*s/Christopher G. Emch*  
Christopher G. Emch

# Exhibit A

## May 2015 RR Study 2 - Center Parkway

KEY:

BNSF = Burlington Northern Santa Fe Railway

TCRR = Tri City Railroad

W & E = West or East

STND = Standard

CPW = Center Parkway

XING = Crossing

DATE	FILE NAME	FILE TIME	STND TIME (W or E)	TOTAL CARS	(BNSF OR TCRR)	RUN TIME
1 5/26/15	CPW Study 5-26-2015 1of2	4:19	12:20PM	W	12	TCRR 5AM TO 1:18PM
2	End of Study 1					Red, White & Blue Engine
3 5/27/15	CPW Study 5-26-2015 2of2	0:00	0	0	0	0 1:20PM TO 8PM
4						
5 5/27/15	CPW Study 5-27-2015	1:41	7:49AM	W	6	BNSF 5AM TO 8PM
6						Orange Engine
7 5/27/15	CPW Study 5-27-2015	3:14	10:24AM	E	3	BNSF 5AM TO 8PM
8						Orange Engine
9 5/27/15	CPW Study 5-27-2015	4:13	12:03PM	E	6	TCRR 5AM TO 8PM
10						REd, White & Blue Engine
11 5/27/15	CPW Study 5-27-2015	5:25	2:09PM	W	31	TCRR 5AM TO 8PM
12						REd, White & Blue Engine
13 5/28/15	CPW Study 5-28-2015	2:01	8:25AM	W	0	BNSF 5AM TO 10:30AM(disc full)
14					ENGINE ONLY	Orange Engine
15 5/28/15	CPW Study 5-28-2015	2:56	10:01AM	0	0	0 CAMERA BUMPED
16						
17 5/28/15	CPW Study 5-28-2015	0	10:30AM	0	0	0 5AM TO 10:30AM(disc full)
18						
19 5/29/15	CPW Study 5-29-2015	0	0	0	0	0 1:55PM TO 8PM(disc full)
20						
21 5/30/15	CPW Study 5-30-2015	0	0	0	0	0 5AM TO 8PM
22						
23 5/31/15	CPW Study 5-31-2015	0	0	0	0	0 5AM TO 8PM
24						
25 6/1/15	CPW Study 6-1-2015	1:13	7:09AM	W	15	BNSF 5AM TO 8PM
26						Orange Engine
27 6/1/15	CPW Study 6-1-2015	3:16	10:28AM	E	6	BNSF 5AM TO 8PM

28							Orange Engine	
29	6/1/15	CPW Study 6-1-2015	3:48	11:21AM	E	11	TCRR	5AM TO 8PM
30							Red, White & Blue Engine	
31	6/1/15	CPW Study 6-1-2015	4:17	12:13PM	W	0	TCRR	5AM TO 8PM
32						ENGINE ONLY	Red, White & Blue Engine	
33	6/2/15	CPW Study 6-2-2015	3:16	10:27AM	E	8	TCRR	5AM TO 8PM
34							Red, White & Blue Engine	
35	6/2/15	CPW Study 6-2-2015	3:40	11:08AM	W	7	BNSF	5AM TO 8PM
36							Orange Engine	
37	6/2/15	CPW Study 6-2-2015	4:22	12:21PM	W	36	TCRR	5AM TO 8PM
38							Red, White & Blue Engine	
39	6/2/15	CPW Study 6-2-2015	5:13	1:43PM	E	6	BNSF	5AM TO 8PM
40							Orange Engine	
41	6/3/15	CPW Study 6-3-2015	1:13	7:04AM	W	8	BNSF	5AM TO 8PM
42							Orange Engine	
43	6/3/15	CPW Study 6-3-2015	2:28	9:09AM	E	6	TCRR	5AM TO 8PM
44							Red, White & Blue Engine	
45	6/3/15	CPW Study 6-3-2015	2:40	9:28AM	E	4	BNSF	5AM TO 8PM
46							Orange Engine	
47	6/3/15	CPW Study 6-3-2015	4:16	12:11PM	W	38	TCRR	5AM TO 8PM
48							Red, White & Blue Engine	
49	6/4/15	CPW Study 6-4-2015	1:32	7:40AM	W	0	BNSF	5AM TO 8PM
50						ENGINE ONLY	Orange Engine	
51	6/4/15	CPW Study 6-4-2015	2:33	9:17AM	E	0	BNSF	5AM TO 8PM
52						ENGINE ONLY	Orange Engine	
53	6/4/15	CPW Study 6-4-2015	3:14	10:24AM	E	7	TCRR	5AM TO 8PM
54							Red, White & Blue Engine	
55	6/4/15	CPW Study 6-4-2015	4:04	11:50AM	W	9	TCRR	5AM TO 8PM
56							Red, White & Blue Engine	
57	6/5/15	CPW Study 6-5-2015	1:36	7:47AM	W	3	BNSF	5AM TO 8PM
58							Orange Engine	
59	6/5/15	CPW Study 6-5-2015	3:24	10:42AM	E	10	TCRR	5AM TO 8PM
60							Red, White & Blue Engine	
61	6/5/15	CPW Study 6-5-2015	3:35	10:50AM	E	13	BNSF	5AM TO 8PM
62							Orange Engine	
63	6/5/15	CPW Study 6-5-2015	4:01	11:45AM	W	2	TCRR	5AM TO 8PM
64						Staging @ xing	Red, White & Blue Engine	
65	6/6/15	CPW Study 6-6-2015	0	0	0	0	0	5AM TO 8PM
66								

67	6/7/15	CPW Study 6-7-2015	0	0	0	0	0	5AM TO 8PM
68								
69	6/8/15	CPW Study 6-8-2015 1of2	1:52	8:08AM	W	5	BNSF	5AM TO 1:20PM
70							Orange Engine	
71	6/8/15	CPW Study 6-8-2015 1of2	3:22	10:39AM	E	7	BNSF	5AM TO 1:20PM
72							Orange Engine	
73	6/8/15	CPW Study 6-8-2015 1of2	3:45	11:15AM	E	10	TCRR	5AM TO 1:20PM
74							Red, White & Blue Engine	
75	6/8/15	CPW Study 6-8-2015 1of2	4:25	12:45	W	8	TCRR	5AM TO 1:20PM
76						Staging @ xing	Red, White & Blue Engine	
77	6/8/15	CPW Study 6-8-2015 2of2	0:00	0	0	0	0	1:24AM TO 8PM
78								
79	6/9/15	CPW Study 6-9-2015 1of2	1:09	6:59AM	W	9	BNSF	5AM TO 1:05PM
80							Orange Engine	
81	6/9/15	CPW Study 6-9-2015 1of2	2:54	9:51AM	E	9	BNSF	5AM TO 1:05PM
82							Orange Engine	
83	6/9/15	CPW Study 6-9-2015 1of2	3:36	11:01AM	E	6	TCRR	5AM TO 1:05PM
84							Red, White & Blue Engine	
85	6/9/15	CPW Study 6-9-2015 1of2	4:24	12:23AM	W	23	TCRR	5AM TO 1:05PM
86							Red, White & Blue Engine	
87	6/9/15	CPW Study 6-9-2015 2of2	0:00	0	0	0	0	1:10PM TO 8PM
88								
89	6/10/15	CPW Study 6-10-2015	1:04	6:50AM	W	12	BNSF	5AM TO 8PM
90							Orange Engine	
91	6/10/15	CPW Study 6-10-2015	3:02	10:05AM	E	3	BNSF	5AM TO 8PM
92							Orange Engine	
93	6/10/15	CPW Study 6-10-2015	3:29	10:50AM	E	10	TCRR	5AM TO 8PM
94							Red, White & Blue Engine	
95	6/10/15	CPW Study 6-10-2015	4:11	12:01PM	W	7	TCRR	5AM TO 8PM
96							Red, White & Blue Engine	
97	6/11/15	CPW Study 6-11-2015	2:58	10:01AM	E	6	TCRR	5AM TO 8PM
98							Red, White & Blue Engine	
99	6/11/15	CPW Study 6-11-2015	3:01	10:06AM	W	6	BNSF	5AM TO 8PM
100							Orange Engine	
101	6/11/15	CPW Study 6-11-2015	3:37	11:10AM	W	2	TCRR	5AM TO 8PM
102							Red, White & Blue Engine	
103	6/11/15	CPW Study 6-11-2015	4:40	12:48AM	E	7	BNSF	5AM TO 8PM
104							Orange Engine	
105	6/12/15	CPW Study 6-12-2015	0:48	6:24AM	W	0	BNSF	5AM TO 8PM

106					ENGINE ONLY	Orange Engine	
107	6/12/15	CPW Study 6-12-2015	2:05	8:29AM	E	3	BNSF 5AM TO 8PM
108						Orange Engine	
109	6/12/15	CPW Study 6-12-2015	3:17	10:29AM	E	7	TCRR 5AM TO 8PM
110						Red, White & Blue Engine	
111	6/12/15	CPW Study 6-12-2015	3:57	11:36AM	W	3	TCRR 5AM TO 8PM
112						Red, White & Blue Engine	
113	6/13/15	CPW Study 6-13-2015	0:00	0	0	0	0 5AM TO 8PM
114							
115	6/14/15	CPW Study 6-14-2015	0:00	0	0	0	0 5AM TO 8PM
116							
117	6/15/15	CPW Study 6-15-2015	2:14	8:44AM	W	9	BNSF 5AM TO 8PM
118						Orange Engine	
119	6/15/15	CPW Study 6-15-2015	3:29	10:49AM	E	14	TCRR 5AM TO 8PM
120						Red, White & Blue Engine	
121	6/15/15	CPW Study 6-15-2015	3:53	11:30AM	E	12	BNSF 5AM TO 8PM
122						Orange Engine	
123	6/15/15	CPW Study 6-15-2015	4:17	12:14PM	W	3	TCRR 5AM TO 8PM
124						Red, White & Blue Engine	
125	6/16/15	CPW Study 6-16-2015	2:03	8:26AM	E	5	BNSF 5AM TO 8PM
126						Orange Engine	
127	6/16/15	CPW Study 6-16-2015	4:03	11:46AM	E	10	TCRR 5AM TO 8PM
128						Red, White & Blue Engine	
129	6/16/15	CPW Study 6-16-2015	5:02	1:26PM	W	21	TCRR 5AM TO 8PM
130						Red, White & Blue Engine	
131	6/17/15	CPW Study 6-17-2015	2:11	8:40AM	W	9	BNSF 5AM TO 8PM
132						Orange Engine	
133	6/17/15	CPW Study 6-17-2015	4:33	12:37PM	E	6	TCRR 5AM TO 8PM
134						Red, White & Blue Engine	
135	6/17/15	CPW Study 6-17-2015	4:50	1:04PM	E	4	BNSF 5AM TO 8PM
136						Orange Engine	
137	6/17/15	CPW Study 6-17-2015	5:12	1:45PM	W	5	TCRR 5AM TO 8PM
138						Red, White & Blue Engine	
139	6/18/15	CPW Study 6-18-2015 1of2	2:37	9:24AM	W	2	BNSF 5AM TO 11PM
140						Orange Engine	
141	6/18/15	CPW Study 6-18-2015 2of2	0:11	11:21AM	E	6	TCRR 11:05AM TO 8PM
142						Red, White & Blue Engine	
143	6/18/15	CPW Study 6-18-2015 2of2	0:14	11:26AM	E	5	BNSF 11:05AM TO 8PM
144						Orange Engine	

145	6/18/15	CPW Study 6-18-2015 2of2	1:04	12:51PM	W	5	TCRR	11:05AM TO 8PM
146							Red, White & Blue Engine	
147	6/19/15	CPW Study 6-19-2015 1of2	1:06	6:54AM	W	4	BNSF	5AM TO 8:10AM (disc full)
148							Orange Engine	
149	6/19/15	CPW Study 6-19-2015 2of2	0:02	12:47PM	W	8	TCRR	12:42PM TO 8PM (disc full)
150							Red, White & Blue Engine	
151	6/20/15	CPW Study 6-20-2015	0	0	0	0	0	5AM TO 8PM
152								
153	6/21/15	CPW Study 6-21-2015	0:00	0	0	0	0	5AM TO 8PM
154								
155	6/22/15	CPW Study 6-22-2015	2:38	9:27AM	W	15	BNSF	5AM TO 8PM
156							Orange Engine	
157	6/22/15	CPW Study 6-22-2015	4:25	12:23PM	E	15	TCRR	5AM TO 8PM
158							Red, White & Blue Engine	
159	6/22/15	CPW Study 6-22-2015	4:32	12:34PM	E	5	BNSF	5AM TO 8PM
160							Orange Engine	
161	6/22/15	CPW Study 6-22-2015	4:59	1:22PM	W	2	TCRR	5AM TO 8PM
162							Red, White & Blue Engine	
163	6/23/15	CPW Study 6-23-2015	1:29	7:37AM	W	2	BNSF	5AM TO 8PM
164							Orange Engine	
165	6/23/15	CPW Study 6-23-2015	2:32	9:16AM	E	3	TCRR	5AM TO 8PM
166							Red, White & Blue Engine	
167	6/23/15	CPW Study 6-23-2015	2:36	9:21AM	E	4	BNSF	5AM TO 8PM
168							Orange Engine	
169	6/23/15	CPW Study 6-23-2015	3:25	10:46AM	W	5	TCRR	5AM TO 8PM
170							Red, White & Blue Engine	
171	6/24/15	CPW Study 6-24-2015	1:08	6:56AM	W	7	BNSF	5AM TO 8PM
172							Orange Engine	
173	6/24/15	CPW Study 6-24-2015	2:36	9:21AM	E	6	BNSF	5AM TO 8PM
174							Orange Engine	
175	6/24/15	CPW Study 6-24-2015	2:40	9:29AM	E	5	TCRR	5AM TO 8PM
176							Red, White & Blue Engine	
177	6/24/15	CPW Study 6-24-2015	3:22	10:38AM	W	5	TCRR	5AM TO 8PM
178							Red, White & Blue Engine	
179	6/25/15	CPW Study 6-25-2015	1:56	8:20AM	W	11	BNSF	5AM TO 8PM
180							Orange Engine	
181	6/25/15	CPW Study 6-25-2015	3:14	10:27AM	E	9	BNSF	5AM TO 8PM
182							Orange Engine	
183	6/25/15	CPW Study 6-25-2015	3:35	10:59AM	E	7	TCRR	5AM TO 8PM

184							Red, White & Blue Engine	
185	6/25/15	CPW Study 6-25-2015	3:39	11:08AM	W	0	TCRR	5AM TO 8PM
186							RR Service Pickup	
187	6/25/15	CPW Study 6-25-2015	4:12	12:02PM	W	0	TCRR	5AM TO 8PM
188						ENGINE ONLY	Red, White & Blue Engine	
189	6/26/15	CPW Study 6-26-2015	2:46	9:38AM	E	8	TCRR	5AM TO 8PM
190							Red, White & Blue Engine	
191	6/26/15	CPW Study 6-26-2015	2:48	9:43AM	W	3	BNSF	5AM TO 8PM
192							Orange Engine	
193	6/26/15	CPW Study 6-26-2015	3:28	10:50AM	W	1	TCRR	5AM TO 8PM
194							Red, White & Blue Engine	
195	6/26/15	CPW Study 6-26-2015	4:30	12:31PM	E	6	BNSF	5AM TO 8PM
196							Orange Engine	
197	6/27/15	CPW Study 6-27-2015	0:00	0	0	0	0	5AM TO 8PM
198								
199	6/28/15	CPW Study 6-28-2015	0:00	0	0	0	0	5AM TO 8PM
200								
201	6/29/15	CPW Study 6-29-2015 1of2	1:10	6:58AM	W	9	BNSF	5AM TO 1:29PM
202							Orange Engine	
203	6/29/15	CPW Study 6-29-2015 1of2	2:49	9:43AM	E	14	BNSF	5AM TO 1:29PM
204							Orange Engine	
205	6/29/15	CPW Study 6-29-2015 1of2	3:16	10:28AM	E	13	TCRR	5AM TO 1:29PM
206							Red, White & Blue Engine	
207	6/29/15	CPW Study 6-29-2015 1of2	4:15	12:07PM	W	16	TCRR	5AM TO 1:29PM
208							Staging @ xing	
209	6/29/15	CPW Study 6-29-2015 2of2	0:00	0:00	0	0	0	1:35PM TO 8PM
210								
211	6/30/15	CPW Study 6-30-2015 1of2	1:02	6:44AM	W	4	BNSF	5AM TO 1:20PM
212							Orange Engine	
213	6/30/15	CPW Study 6-30-2015 1of2	2:05	8:28AM	E	0	BNSF	5AM TO 1:20PM
214						ENGINE ONLY	Orange Engine	
215	6/30/15	CPW Study 6-30-2015 1of2	2:37	9:23AM	E	4	TCRR	5AM TO 1:20PM
216							Red, White & Blue Engine	
217	6/30/15	CPW Study 6-30-2015 1of2	3:37	11:04AM	W	11	TCRR	5AM TO 1:20PM
218							Red, White & Blue Engine	
219	6/30/15	CPW Study 6-30-2015 2of2	0:00	0	0	0	0	1:25PM TO 8PM
220								
221	7/1/15	CPW Study 7-1-2015	1:15	7:13AM	W	4	BNSF	5AM TO 8PM
222							Orange Engine	

223	7/1/15	CPW Study 7-1-2015	2:28	9:09AM	E	9	BNSF	5AM TO 8PM
224							Orange Engine	
225	7/1/15	CPW Study 7-1-2015	3:00	10:02AM	E	7	TCRR	5AM TO 8PM
226							Red, White & Blue Engine	
227	7/1/15	CPW Study 7-1-2015	3:36	11:04AM	W	1	TCRR	5AM TO 8PM
228							Red, White & Blue Engine	
229	7/2/15	CPW Study 7-2-2015	3:05	10:10AM	E	4	TCRR	5AM TO 8PM
230							Red, White & Blue Engine	
231	7/2/15	CPW Study 7-2-2015	4:00	11:48AM	W	15	TCRR	5AM TO 8PM
232						Staging @ xing	Red, White & Blue Engine	
233	7/3/15	CPW Study 7-3-2015	2:00	8:21AM	W	15	BNSF	5AM TO 8PM
234							Orange Engine	
235	7/3/15	CPW Study 7-3-2015	3:47	11:20AM	E	12	BNSF	5AM TO 8PM
236							Orange Engine	
237	7/4/15	CPW Study 7-4-2015	0:00	0	0	0	0	5AM TO 8PM
238								
239	7/5/15	CPW Study 7-5-2015	0:00	0	0	0	0	5AM TO 8PM
240								
241	7/6/15	CPW Study 7-6-2015	1:21	7:22AM	W	12	BNSF	5AM TO 8PM
242							Orange Engine	
243	7/6/15	CPW Study 7-6-2015	2:57	9:59AM	E	11	BNSF	5AM TO 8PM
244							Orange Engine	
245	7/6/15	CPW Study 7-6-2015	3:11	10:20AM	E	7	TCRR	5AM TO 8PM
246							Red, White & Blue Engine	
247	7/6/15	CPW Study 7-6-2015	4:03	11:46AM	W	10	TCRR	5AM TO 8PM
248							Red, White & Blue Engine	
249	7/7/15	CPW Study 7-7-2015 1of2	1:54	8:12AM	W	4	BNSF	5AM TO 2:38PM
250							Orange Engine	
251	7/7/15	CPW Study 7-7-2015 1of2	3:04	10:07AM	E	6	BNSF	5AM TO 2:38PM
252							Orange Engine	
253	7/7/15	CPW Study 7-7-2015 1of2	3:22	10:37AM	E	3	TCRR	5AM TO 2:38PM
254							Red, White & Blue Engine	
255	7/7/15	CPW Study 7-7-2015 1of2	4:13	12:05PM	W	8	TCRR	5AM TO 2:38PM
256							Red, White & Blue Engine	
257	7/7/15	CPW Study 7-7-2015 2of2	0:00	0	0	0	0	2:40PM TO 8PM
258								
259	7/8/15	CPW Study 7-8-2015 1of2	2:01	8:23AM	W	13	BNSF	5AM TO 1:37PM
260							Orange Engine	
261	7/8/15	CPW Study 7-8-2015 1of2	4:26	12:25PM	E	4	TCRR	5AM TO 1:37PM

262							Red, White & Blue Engine	
263	7/8/15	CPW Study 7-8-2015 1of2	4:51	1:06PM	E	6	BNSF	5AM TO 1:37PM
264							Red, White & Blue Engine	
265	7/8/15	CPW Study 7-8-2015 2of2	0:00	0	0	0	0	1:40PM TO 8PM
266								
267	7/9/15	CPW Study 7-9-2015	2:54	9:53AM	W	6	BNSF	5AM TO 8PM
268							Orange Engine	
269	7/9/15	CPW Study 7-9-2015	3:45	11:17AM	E	5	TCRR	5AM TO 8PM
270							Red, White & Blue Engine	
271	7/9/15	CPW Study 7-9-2015	4:29	12:31PM	E	9	BNSF	5AM TO 8PM
272							Orange Engine	
273	7/9/15	CPW Study 7-9-2015	4:33	12:36PM	W	5	TCRR	5AM TO 8PM
274							Red, White & Blue Engine	
275	7/10/15	CPW Study 7-10-2015	1:24	7:21AM	W	13	BNSF	5AM TO 8PM
276							Orange Engine	
277	7/10/15	CPW Study 7-10-2015	3:22	10:38AM	E	4	BNSF	5AM TO 8PM
278							Orange Engine	
279	7/10/15	CPW Study 7-10-2015	3:26	10:44AM	E&W	0	TCRR	5AM TO 8PM
280							RR Service Pickup	
281	7/10/15	CPW Study 7-10-2015	4:54	1:11PM	E	6	TCRR	5AM TO 8PM
282							Red, White & Blue Engine	
283	7/10/15	CPW Study 7-10-2015	5:39	2:29PM	W	2	TCRR	5AM TO 8PM
284							Red, White & Blue Engine	
285	7/11/15	CPW Study 7-11-2015	0:00	0	0	0	0	5AM TO 8PM
286								
287	7/12/15	CPW Study 7-12-2015	0:00	0	0	0	0	5AM TO 8PM
288								
289	7/13/15	CPW Study 7-13-2015	2:33	9:22AM	W	40	BNSF	5AM TO 8PM
290						2 ENGINES	Orange Engine	
291	7/13/15	CPW Study 7-13-2015	3:29	10:52AM	E	11	TCRR	5AM TO 8PM
292							Red, White & Blue Engine	
293	7/13/15	CPW Study 7-13-2015	4:22	12:17PM	W	3	TCRR	5AM TO 8PM
294							Red, White & Blue Engine	
295	7/13/15	CPW Study 7-13-2015	5:24	2:01PM	E	17	BNSF	5AM TO 8PM
296						2 ENGINES	Orange Engine	
297	7/14/15	CPW Study 7-14-2015	1:50	8:05AM	W	6	BNSF	5AM TO 8PM
298							Orange Engine	
299	7/14/15	CPW Study 7-14-2015	3:03	10:06AM	E	3	TCRR	5AM TO 8PM
300							Red, White & Blue Engine	

301	7/14/15	CPW Study 7-14-2015	3:50	11:29AM	W	16	BNSF	5AM TO 8PM
302							Red, White & Blue Engine	
303	7/14/15	CPW Study 7-14-2015	5:06	1:32PM	E	4	BNSF	5AM TO 8PM
304							Orange Engine	
305	7/15/15	CPW Study 7-15-2015 1of2	1:09	8:15AM	W	3	BNSF	5AM TO 1:34PM
306							Orange Engine	
307	7/15/15	CPW Study 7-15-2015 1of2	3:38	11:04AM	E	4	TCRR	5AM TO 1:34PM
308							Red, White & Blue Engine	
309	7/15/15	CPW Study 7-15-2015 1of2	4:17	12:08PM	E	13	BNSF	5AM TO 1:34PM
310							Orange Engine	
311	7/15/15	CPW Study 7-15-2015 1of2	4:17	12:15PM	W	8	TCRR	5AM TO 1:34PM
312							Red, White & Blue Engine	
313	7/15/15	CPW Study 7-15-2015 2of2	0:00	0	0	0	0	1:35PM TO 8PM
314								
315	7/16/15	CPW Study 7-16-2015 1of2	1:48	8:02AM	E&W	0	TCRR	5AM TO 9:50AM
316							RR Service Pickup	
317	7/16/15	CPW Study 7-16-2015 1of2	2:47	9:39AM	W	21	BNSF	5AM TO 9:50AM
318							Orange Engine	
319	7/16/15	CPW Study 7-16-2015 2of2	1:08	11:48AM	E	2	TCRR	9:55AM TO 8PM
320								
321	7/16/15	CPW Study 7-16-2015 2of2	1:46	12:52PM	W	8	TCRR	9:55AM TO 8PM
322								
323	7/16/15	CPW Study 7-16-2015 2of2	2:42	2:25PM	E	11	BNSF	9:55AM TO 8PM
324						2 ENGINES		
325	7/17/15	CPW Study 7-17-2015	3:48	11:22AM	E	15	TCRR	5AM TO 8PM
326							Red, White & Blue Engine	
327	7/17/15	CPW Study 7-17-2015	4:46	1:01PM	W	13	TCRR	5AM TO 8PM
328						Staging @ xing	Red, White & Blue Engine	
329	7/18/15	CPW Study 7-18-2015	0:00	0	0	0	0	5AM TO 8PM
330								
331	7/19/15	CPW Study 7-19-2015	0:00	0	0	0	0	5AM TO 8PM
332								
333	7/20/15	CPW Study 7-20-2015	2:35	9:23AM	W	24	BNSF	5AM TO 8PM
334						2 ENGINES	Orange Engine	
335	7/20/15	CPW Study 7-20-2015	4:00	11:42AM	E	14	TCRR	5AM TO 8PM
336							Red, White & Blue Engine	
337	7/20/15	CPW Study 7-20-2015	4:34	12:40AM	W	4	TCRR	5AM TO 8PM
338							Red, White & Blue Engine	
339	7/21/15	CPW Study 7-21-2015	2:37	9:23AM	E	30	BNSF	5AM TO 8PM

340					2 ENGINES	Orange Engine	
341	7/21/15	CPW Study 7-21-2015	3:05	10:09AM	E	5	TCRR 5AM TO 8PM
342						Red, White & Blue Engine	
343	7/21/15	CPW Study 7-21-2015	3:53	11:29AM	W	15	TCRR 5AM TO 8PM
344						Red, White & Blue Engine	
345	7/22/15	CPW Study 7-22-2015	2:39	9:30AM	W	10	BNSF 5AM TO 8PM
346						Orange Engine	
347	7/22/15	CPW Study 7-22-2015	3:56	11:34AM	E	3	TCRR 5AM TO 8PM
348						Red, White & Blue Engine	
349	7/22/15	CPW Study 7-22-2015	4:34	12:38PM	W	3	TCRR 5AM TO 8PM
350						Red, White & Blue Engine	
351	7/22/15	CPW Study 7-22-2015	5:51	2:47PM	E	19	BNSF 5AM TO 8PM
352						Orange Engine	
353	7/23/15	CPW Study 7-23-2015	3:31	10:55AM	E	11	TCRR 5AM TO 8PM
354						Red, White & Blue Engine	
355	7/23/15	CPW Study 7-23-2015	4:01	11:45AM	W	0	BNSF 5AM TO 8PM
356					2 ENGINES	Orange Engine	
357	7/23/15	CPW Study 7-23-2015	4:19	12:15PM	W	10	TCRR 5AM TO 8PM
358						Red, White & Blue Engine	
359	7/23/15	CPW Study 7-23-2015	5:43	2:32PM	E	11	BNSF 5AM TO 8PM
360					2 ENGINES	Orange Engine	
361	7/24/15	CPW Study 7-24-2015	1:04	6:53AM	W	8	BNSF 5AM TO 8PM
362						Orange Engine	
363	7/24/15	CPW Study 7-24-2015	3:39	11:07AM	E	11	BNSF 5AM TO 8PM
364					2 ENGINES	Orange Engine	
365	7/24/15	CPW Study 7-24-2015	3:46	11:18AM	E	3	TCRR 5AM TO 8PM
366						Red, White & Blue Engine	
367	7/24/15	CPW Study 7-24-2015	4:21	12:17PM	W	3	TCRR 5AM TO 8PM
368						Red, White & Blue Engine	
369	7/25/15	CPW Study 7-25-2015	0:00	0	0	0	0 5AM TO 8PM
370							
371	7/26/15	CPW Study 7-26-2015	0:00	0	0	0	0 5AM TO 8PM
372							
373	7/27/15	CPW Study 7-27-2015 1of2	3:49	11:22AM	E	16	TCRR 5AM TO 1:45PM
374						Red, White & Blue Engine	
375	7/27/15	CPW Study 7-27-2015 1of2	4:28	12:28PM	W	4	TCRR 5AM TO 1:45PM
376						Red, White & Blue Engine	
377	7/27/15	CPW Study 7-27-2015 2of2	0:00	0	0	0	0 1:50PM TO 8PM
378							

379	7/28/15	CPW Study 7-28-2015 1of2	1:36	7:46AM	W	10	BNSF	5AM TO 1:10PM
380							Orange Engine	
381	7/28/15	CPW Study 7-28-2015 1of2	3:03	10:07AM	E	4	TCRR	5AM TO 1:10PM
382							Red, White & Blue Engine	
383	7/28/15	CPW Study 7-28-2015 1of2	4:05	11:50AM	E	24	BNSF	5AM TO 1:10PM
384							Orange Engine	
385	7/28/15	CPW Study 7-28-2015 1of2	4:29	12:30PM	W	19	TCRR	5AM TO 1:10PM
386							Red, White & Blue Engine	
387	7/29/15	CPW Study 7-28-2015 2of2	0:00	0	0	0	0	1:15PM TO 8PM
388								
389	7/29/15	CPW Study 7-29-2015	1:23	7:23AM	W	5	BNSF	5AM TO 8PM
390							Orange Engine	
391	7/29/15	CPW Study 7-29-2015	3:20	10:49AM	E	6	BNSF	5AM TO 8PM
392							Orange Engine	
393	7/30/15	CPW Study 7-30-2015	1:41	7:52AM	W	4	BNSF	5AM TO 8PM
394							Orange Engine	
395	7/30/15	CPW Study 7-30-2015	3:27	10:46AM	E	8	TCRR	5AM TO 8PM
396							Red, White & Blue Engine	
397	7/30/15	CPW Study 7-30-2015	3:42	11:14AM	E	10	BNSF	5AM TO 8PM
398							Orange Engine	
399	7/30/15	CPW Study 7-30-2015	3:47	11:21AM	E&W	0	TCRR	5AM TO 8PM
400							RR Service Pickup	
401	7/30/15	CPW Study 7-30-2015	4:15	12:09PM	W	4	TCRR	5AM TO 8PM
402						Staging @ xing	Red, White & Blue Engine	
403	7/31/15	CPW Study 7-31-2015	2:22	8:59AM	W	8	BNSF	5AM TO 8PM
404							Orange Engine	
405	7/31/15	CPW Study 7-31-2015	4:24	12:20PM	E	5	TCRR	5AM TO 8PM
406							Red, White & Blue Engine	
407	7/31/15	CPW Study 7-31-2015	4:52	1:08PM	W	0	TCRR	5AM TO 8PM
408						ENGINE ONLY	Red, White & Blue Engine	
409	7/31/15	CPW Study 7-31-2015	5:37	2:23PM	E	8	BNSF	5AM TO 8PM
410							Orange Engine	
411	8/1/15	CPW Study 8-1-2015	0:00	0	0	0	0	5AM TO 8PM
412								
413	8/2/15	CPW Study 8-2-2015	0:00	0	0	0	0	5AM TO 8PM
414								
415	8/3/15	CPW Study 8-3-2015	1:34	7:40AM	W	10	BNSF	5AM TO 8PM
416						2 ENGINES	Orange Engine	
417	8/3/15	CPW Study 8-3-2015	3:19	10:34AM	E	17	TCRR	5AM TO 8PM

418							Red, White & Blue Engine	
419	8/3/15	CPW Study 8-3-2015	3:54	11:32AM	E	13	BNSF	5AM TO 8PM
420						2 ENGINES	Orange Engine	
421	8/3/15	CPW Study 8-3-2015	4:19	12:12PM	W	5	TCRR	5AM TO 8PM
422							Red, White & Blue Engine	
423	8/4/15	CPW Study 8-4-2015	1:19	7:15AM	W	4	BNSF	5AM TO 8PM
424							Orange Engine	
425	8/4/15	CPW Study 8-4-2015	2:15	8:50AM	E	6	TCRR	5AM TO 8PM
426							Red, White & Blue Engine	
427	8/4/15	CPW Study 8-4-2015	2:49	9:42AM	E	11	BNSF	5AM TO 8PM
428						Staging @ xing	Orange Engine	
429	8/4/15	CPW Study 8-4-2015	3:00	10:00AM	W	7	TCRR	5AM TO 8PM
430							Red, White & Blue Engine	
431	8/5/15	CPW Study 8-5-2015	1:10	7:01AM	W	4	BNSF	5AM TO 8PM
432							Orange Engine	
433	8/5/15	CPW Study 8-5-2015	3:11	10:20AM	E	3	Engine	5AM TO 8PM
434							Unmarked Engine	
435	8/5/15	CPW Study 8-5-2015	3:33	10:56AM	E	6	BNSF	5AM TO 8PM
436						2 ENGINES	Orange Engine	
437	8/5/15	CPW Study 8-5-2015	3:50	11:31AM	W	5	Engine	5AM TO 8PM
438							Unmarked Engine	
439	8/6/15	CPW Study 8-6-2015 1of2	0:59	6:41AM	W	0	BNSF	5AM TO 1:53PM
440						2 ENGINES	Orange Engine	
441	8/6/15	CPW Study 8-6-2015 1of2	2:15	8:45AM	E	5	BNSF	5AM TO 1:53PM
442						2 ENGINES	Orange Engine	
443	8/6/15	CPW Study 8-6-2015 1of2	3:21	10:36AM	E	8	TCRR	5AM TO 1:53PM
444							Red, White & Blue Engine	
445	8/6/15	CPW Study 8-6-2015 1of2	3:57	11:36AM	W	0	TCRR	5AM TO 1:53PM
446						ENGINE ONLY	Red, White & Blue Engine	
447	8/6/15	CPW Study 8-6-2015 2of2	0:00	0	0	0	0	1:55PM TO 8PM
448								
449	8/7/15	CPW Study 8-7-2015 1of2	1:32	7:35AM	W	7	BNSF	5AM TO 10:40AM
450						2 ENGINES	Orange Engine	
451	8/7/15	CPW Study 8-7-2015 1of2	2:51	9:47AM	E	6	TCRR	5AM TO 10:40AM
452							Red, White & Blue Engine	
453	8/7/15	CPW Study 8-7-2015 1of2	3:01	10:03AM	E	7	BNSF	5AM TO 10:40AM
454						2 ENGINES	Orange Engine	
455	8/7/15	CPW Study 8-7-2015 2of2	0:02	10:51AM	W	4	BNSF	10:45AM TO 8PM
456							Orange Engine	

457	8/8/15	0	0:00	0	0	0	0	5AM TO 8PM
458								
459	8/9/15	0	0	0	0	0	0	5AM TO 8PM
460								
461	8/10/15	CPW Study 8-10-2015	1:39	7:50AM	W	4	BNSF	5AM TO 8PM
462						2 ENGINES	Orange Engine	
463	8/10/15	CPW Study 8-10-2015	3:31	10:54AM	E	14	BNSF	5AM TO 8PM
464						2 ENGINES	Orange Engine	
465	8/10/15	CPW Study 8-10-2015	4:51	1:06PM	E	15	TCRR	5AM TO 8PM
466							Red, White & Blue Engine	
467	8/10/15	CPW Study 8-10-2015	5:25	2:07PM	W	2	TCRR	5AM TO 8PM
468							Red, White & Blue Engine	
469	8/11/15	CPW Study 8-11-2015	1:33	7:38AM	W	8	BNSF	5AM TO 8PM
470						2 ENGINES	Orange Engine	
471	8/11/15	CPW Study 8-11-2015	3:22	10:38AM	E	6	BNSF	5AM TO 8PM
472						2 ENGINES	Orange Engine	
473	8/11/15	CPW Study 8-11-2015	5:07	1:37PM	E&W	0	TCRR	5AM TO 8PM
474							RR Service Pickup	
475	8/12/15	CPW Study 8-12-2015	1:18	7:15AM	W	11	BNSF	5AM TO 8PM
476						2 ENGINES	Orange Engine	
477	8/12/15	CPW Study 8-12-2015	2:05	8:29AM	E	9	TCRR	5AM TO 8PM
478							Red, White & Blue Engine	
479	8/12/15	CPW Study 8-12-2015	3:02	10:08AM	W	11	TCRR	5AM TO 8PM
480							Red, White & Blue Engine	
481	8/12/15	CPW Study 8-12-2015	3:47	11:20AM	E	7	BNSF	5AM TO 8PM
482						2 ENGINES	Orange Engine	
483	8/13/15	CPW Study 8-13-2015	1:01	6:46AM	W	0	BNSF	5AM TO 2:06PM
484						2 ENGINES	Orange Engine	
485	8/13/15	CPW Study 8-13-2015	2:22	8:58AM	E	5	BNSF	5AM TO 2:06PM
486						2 ENGINES	Orange Engine	
487	8/13/15	CPW Study 8-13-2015	3:35	10:43AM	E	11	BNSF	5AM TO 2:06PM
488							Orange Engine	
489	8/13/15	CPW Study 8-13-2015	3:59	11:42AM	W	3	TCRR	5AM TO 2:06PM
490							Red, White & Blue Engine	
491								
492		End of Field Study Per PKR						
493								
494								
495								

496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534

535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573

574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612

613

614

# Exhibit B

# City of Richland

## CENTER PARKWAY PROJECT RR Car Staging Layouts May 26, 2015 thru Aug 13, 2015



### Legend

- City Limits
- +++++ Railroad

NOTE: DATES DO NOT INCLUDE WEEKENDS.

**DATES:**

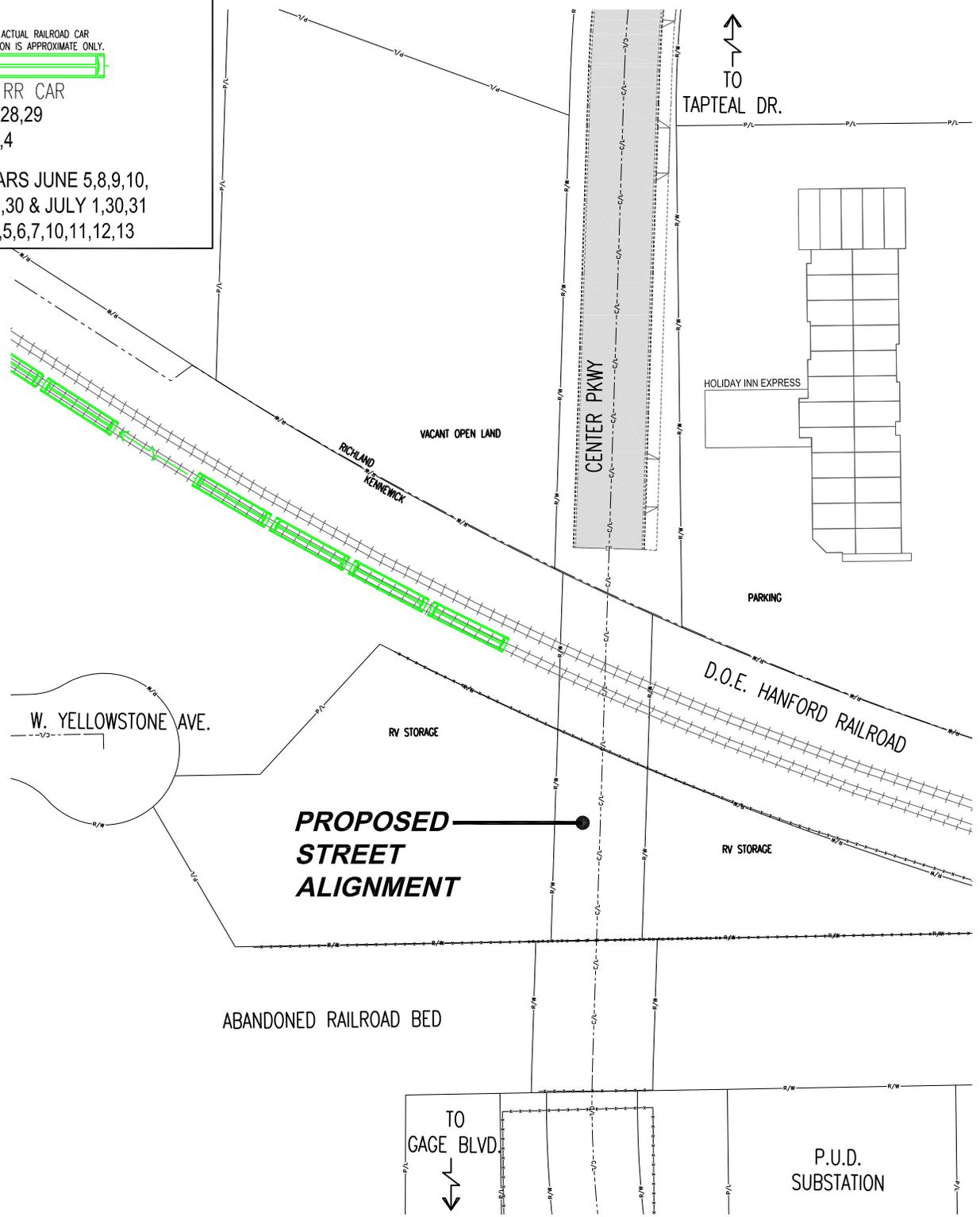
NOTE: ACTUAL RAILROAD CAR LOCATION IS APPROXIMATE ONLY.



RR CAR

MAY 26,27,28,29  
JUNE 1,2,3,4

NOTE: 0 CARS JUNE 5,8,9,10,  
11,12,16,29,30 & JULY 1,30,31  
& AUG. 3,4,5,6,7,10,11,12,13



CAD DWG: Center\_parkway\_base\_scn site map study 2.DWG  
DATE: 09.09.2015  
DRAWN BY: SC NYBY  
SCALE: NONE

# City of Richland

## CENTER PARKWAY PROJECT RR Car Staging Layouts May 26, 2015 thru Aug 13, 2015

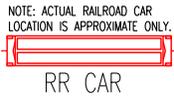
### Legend

- City Limits
- ++++ Railroad



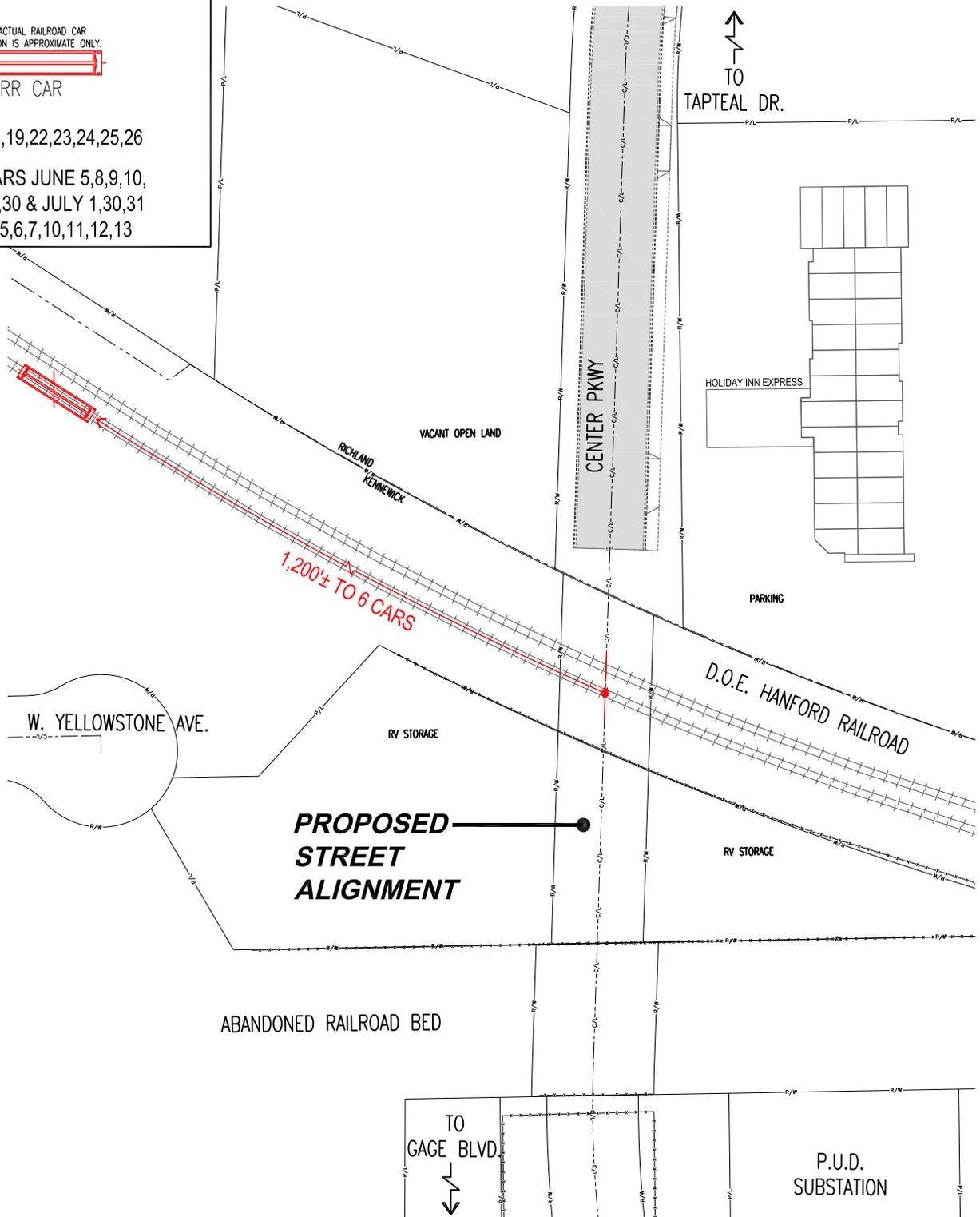
NOTE: DATES DO NOT INCLUDE WEEKENDS.

#### DATES:



JUNE 17,18,19,22,23,24,25,26

NOTE: 0 CARS JUNE 5,8,9,10,  
11,12,16,29,30 & JULY 1,30,31  
& AUG. 3,4,5,6,7,10,11,12,13



CAD DWG: Center\_parkway\_base\_scn site map study 2.DWG  
DATE: 09.09.2015  
DRAWN BY: SC NYBY  
SCALE: NONE

## 6 Railroad Car Stage

(STUDY 2) 2 of 4  
-31

# City of Richland

## CENTER PARKWAY PROJECT RR Car Staging Layouts May 26, 2015 thru Aug 13, 2015



### Legend

- City Limits
- +++++ Railroad

NOTE: DATES DO NOT INCLUDE WEEKENDS.

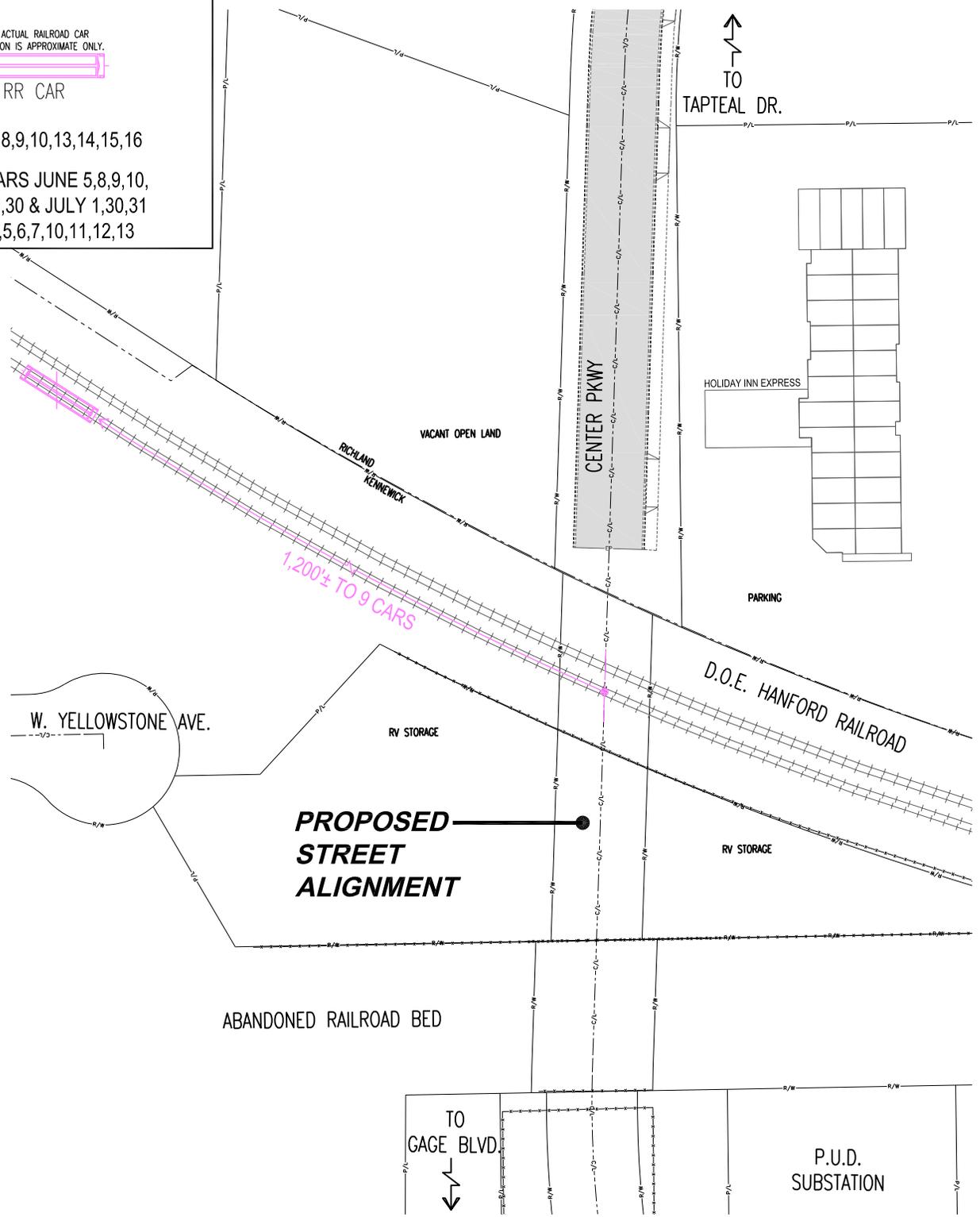
**DATES:**

NOTE: ACTUAL RAILROAD CAR LOCATION IS APPROXIMATE ONLY.

RR CAR

JULY 2,6,7,8,9,10,13,14,15,16

NOTE: 0 CARS JUNE 5,8,9,10, 11,12,16,29,30 & JULY 1,30,31 & AUG. 3,4,5,6,7,10,11,12,13



CAD DWG: Center\_parkway\_base\_scn site map study 2.DWG  
DATE: 09.15.2015  
DRAWN BY: SC NYBY  
SCALE: NONE

## 9 Railroad Car Stage

(STUDY 2) 3 of 4

# City of Richland

## CENTER PARKWAY PROJECT RR Car Staging Layouts May 26, 2015 thru Aug 13, 2015

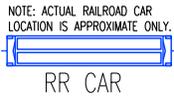
### Legend

- City Limits
- +++++ Railroad



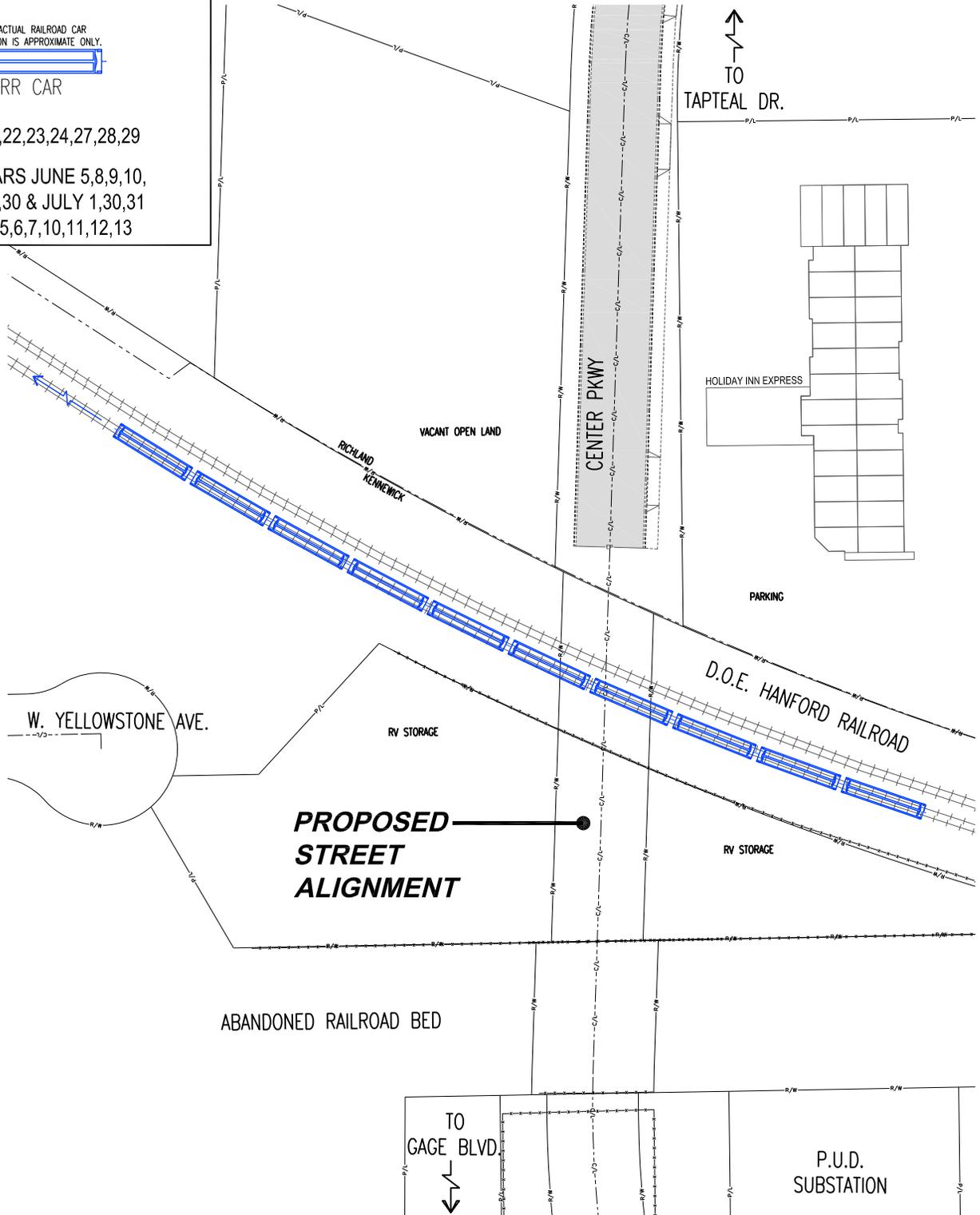
NOTE: DATES DO NOT INCLUDE WEEKENDS.

#### DATES:



JULY 20,21,22,23,24,27,28,29

NOTE: 0 CARS JUNE 5,8,9,10,  
11,12,16,29,30 & JULY 1,30,31  
& AUG. 3,4,5,6,7,10,11,12,13



CAD DWG: Center\_parkway\_base\_scn site map study 2.DWG  
DATE: 09.15.2015  
DRAWN BY: SC NYBY  
SCALE: NONE

### 19 Railroad Car Stage

(STUDY 2) 4 of 4

# Exhibit C

# City of Richland

## CENTER PARKWAY PROJECT Site Visit Schedule May 26, 2015 thru Aug 13, 2015

### Camera Legend



Time-Lapse Camera  
(AVI Files, 5am to 8pm)



Still Shot Camera  
(Jpg Files, Daily)

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

STUDY TO DATE  
SUBMITTED PACKAGES:  
2-10-2015 THRU 5-26-2015  
5-26-2015 THRU 8-13-2015

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					



CAD DWG: Center\_parkway\_base\_scn site map.DWG  
DATE: 09.08.2015  
DRAWN BY: SC NYBY  
SCALE: NONE

END THE STUDY  
8-13-2015

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a  
Washington limited liability Company,

Petitioners,

v.

THE CITY OF KENNEWICK, a Washington  
municipal corporation; THE CITY OF  
RICHLAND, a Washington municipal  
corporation,

Respondents.

No. FD 35915

SUPPLEMENTAL VERIFIED  
STATEMENT AND AFFIDAVIT OF  
KEVIN JEFFERS, P.E.

COMES NOW Kevin Jeffers who declares under penalty of perjury that the foregoing is true and correct:

1. I reaffirm my Verified Statement and Affidavit dated June 12, 2015, which identifies over 15 years' experience in the railroad industry ("Jeffers VS").
2. I have reviewed the Rebuttal Verified Statements from John Miller, Foster Peterson, Randolph Peterson, and Lisa Anderson.

**GENERAL CODE OF OPERATING RULES AND KENNEWICK MUNICIPAL CODE**

3. John Miller, Foster Peterson, and Randolph Peterson are incorrect in asserting that the Crossing will impact operations because of the application of the General Code of Operating Rules ("GCOR") and the Kennewick Municipal Code. As an initial matter, the Crossing will not remove 1/3 of the 1900-foot siding. The Crossing will not remove any

1 of the siding. This design was to accommodate TCRY's preference as stated for the first  
2 time before the Washington Utilities and Transportation Commission's Administrative  
3 Law Judge. TCRY's position at the hearing was new information to me because TCRY  
4 chose not to attend any of the meetings that were related to this Crossing.<sup>1</sup> I quote the  
5 transcript from UTC hearing, where Mr. Peterson, President of TCRY, testified on  
6 November 20, 2103 that he "didn't care" if the Cities built the Crossing if both tracks  
7 remained and the Crossing was protected:

8 Q (by Administrative Law Judge Torem). One of the options we heard about, I think at  
9 Mr. Jeffers' testimony yesterday, was the consideration of leaving both tracks and still  
opening the road. What's TCRY's opposition if both tracks are left?

10 A (by Randolph Peterson). Okay. **When we're there, those gates are down**, we're doing  
11 our railroading, we got, you know, we got our two tracks, **build the road. We don't**  
**care.**

12 Q. So can you answer my question?

13 A. Yeah.

14 Q. **Do you oppose putting the road through if the two tracks stayed in place and**  
15 **operations continued as they were now?**

16 A. **As long as we have good, hundred percent crossing protection.** You know, our job  
is to protect our workers first.

17 Q. So if I understand your position correctly, the opposition is only to the removal of the  
18 passing track as a casualty of putting the road through.

19 A. I'm not -- I'm not the attorney. I don't know what all the legal issues and so on and so  
forth. But **from an operating standpoint -**

20 Q. **That's all I'm asking.**

21 A. **Operating standpoint, we will continue to operate uninhibited**, and there's going to  
22 be a lot of, you know, at times, there's going to be a lot of folks sitting, you know.

23 CP 0-000001369-1370 (Testimony of Randolph Peterson, November 20, 2013, Docket  
No. TR-130499, pp. 416:14 - 417:13).

24 <sup>1</sup> TCRY did not engage in the Cities' extensive planning process for the Crossing. TCRY  
25 submitted no comments during the planning process. CP 0-000000826 (Testimony of Rick  
Simon, Development Services Manager for the City of Richland). In 2012 TCRY also did not  
26 attend the UTC's diagnostic meeting for the Crossing. CP 0-000000109-110 (UTC Diagnostic  
Meeting Record).

1 I provide this information as a direct response to the Rebuttal Verified Statement  
2 of John Miller ¶ 27. I also provide it as a direct response to the Rebuttal Verified  
3 Statement of Randolph Peters ¶¶ 4-5.

- 4 4. Nothing in the GCOR or the Kennewick Code will preclude TCRY's use of the siding. I  
5 am familiar with the GCOR and Kennewick Code provisions cited by TCRY for the first  
6 time in their rebuttal brief. Both GCOR 6.32.4 and GCOR 6.32.6, preface the rule with  
7 the phase "**When practical**". Similarly, the Kennewick Municipal Code 11.80.090 is  
8 prefaced with the phase "**When it can be avoided**". The proposed at-grade highway-rail  
9 crossing will, by design, have active warning devices (flashing lights and gates) that will  
10 warn motorists when a train is approaching the crossing. Thus, the sight distance for  
11 drivers from the roadway along the tracks in advance of the crossing is not an important  
12 safety factor as would be the case with a passively protected (signs only) crossing. Thus,  
13 there is no practical reason to restrict the storage of rail cars to 250 feet or more from the  
14 proposed crossing. If the length of the cars to be storage required cars to be placed close  
15 to, but clear of, the crossing, this would not be impractical or unsafe.
- 16 5. Safety is the purpose of the setback referenced in the GCOR and the Kennewick  
17 Municipal Code. I have over 15 years of railway safety expertise. As the primary safety  
18 engineer for the Crossing, I can attest to the fact that there is no practical reason why  
19 railcars must remain 250 feet away from the Crossing with safety features that exceed the  
20 industry standard.
- 21 6. Further, the engineered safety devices, specifically the gates, will block vehicular traffic  
22 when TCRY or other's trains are moving over the Crossing on either track.
- 23 7. For these reasons, TCRY has not demonstrated that the application of GCOR or the  
24 Kennewick Code will impact any railway operation. This information is in direct  
25 response to the Rebuttal Verified Statement of Foster Peterson ¶ 8 at p. 12-13 and the  
26

1 Rebuttal Verified Statement of Rhett Peterson ¶ 4, p. 7 (citing GCOR and the Kennewick  
2 Municipal Code).

3  
4 **THE REBUTTAL VERIFIED STATEMENT OF JOHN MILLER DOES NOT REBUT  
THE JEFFERS VS**

5 8. The Rebuttal Verified Statement of John Miller does not “rebut” ¶¶ 2, 5, 6, 10, 12 of the  
6 Jeffers VS, as addressed in detail below.<sup>2</sup>

7 9. ¶ 2 of the Jeffers VS is where I reaffirm my pre-filed testimony before the Utilities and  
8 Transportation Commission (“UTC”). Mr. Miller’s response does not rebut this fact.

9 10. ¶ 5 of the Jeffers VS provides the objective fact of my 15-plus years’ experience in the  
10 railroad industry. It also identifies the materials that I reviewed, which includes my  
11 observations of the Port of Benton line, discussions with Cities’ engineering and  
12 operational staff, research of TCRY, and myreview of the UPRR timetable. In response  
13 to TCRY, I used the UPRR timetable as a historic reference. The timetable was in no  
14 means dispositive of my findings. I note that TCRY still has not provided the STB with  
15 its timetable. I would have reviewed this information if TCRY made this information  
16 available.

17 11. ¶ 6 of the Jeffers VS provides an objective fact that BNSF and UPRR have eliminated  
18 their use of the railroad siding.

19 12. ¶ 10 of the Jeffers VS provides the objective fact that the UTC approved the Crossing  
20 over both tracks and that the project will not remove any tracks.

21 13. ¶ 12 provides the objective fact that BNSF and UPRR do not use this siding.  
22  
23  
24

25 <sup>2</sup> TCRY’s Rebuttal Brief provides: “The Rebuttal Verified Statement of John Miller is being  
26 offered to rebut ... ¶¶ 2, 5, 6, 10, 12 of the Jeffers Verified Statement”. TCRY Rebuttal Brief, p.  
15, ¶ 15.

1 **THE REBUTTAL VERIFIED STATEMENT OF FOSTER PETERSON DOES NOT**  
2 **REBUT THE JEFFERS VS**

- 3 14. The Rebuttal Verified Statement of Foster Peterson does not “rebut” ¶¶ 13, 14, 15, 18,  
4 19, 20, 21, 22, and 23 of the Jeffers VS, as addressed in detail below.<sup>3</sup>
- 5 15. ¶ 13 of the Jeffers VS provides the car count that I provided to the UTC. As a  
6 professional engineer who oversees railway projects, I am acutely aware of railway  
7 traffic. My projections were based upon the only verifiable data that TCRY provided to  
8 the UTC and the STB at the time that I submitted my Verified Statement. I note that  
9 Foster Peterson does not “rebut” my conclusion that TCRY moves two to four trains past  
10 the proposed crossing on a daily basis. Instead, he points to cars that are stored off-site  
11 that may be used in the future. Regardless, TCRY does not contest the fact that the  
12 Crossing will be closed, at most, three percent of the day based upon TCRY’s figures.  
13 Cities Response Brief, p. 25, 32. As background, this three percent (3%) figure includes  
14 the completion of Horn Rapids, the Preferred Freezer Services Plant, and TCRY’s  
15 projected increase in rail traffic. *See e.g.*, TCRY cross-examination of Spencer  
16 Montgomery CP 0-000001185-18-25.
- 17 16. ¶ 14 of the Jeffers VS provides my conclusion that TCRY is unlikely to handle 4,175  
18 carloads in 2015. TCRY submitted data Ms. Anderson’s Verified Statement that TCRY  
19 has handled 1,067 carloads through June 17, 2015. TCRY represents that it anticipates  
20 and additional 2,625 carloads, citing its Cash Flow Forecast. I maintain that TCRY’s  
21 analysis remains speculative. Regardless, TCRY does not contest the fact that the  
22 Crossing will be closed, at most, three percent of the day assuming TCRY’s projected  
23 increase in traffic as described above.

24  
25 <sup>3</sup> TCRY’s Rebuttal Brief provides: “[The Rebuttal Verified Statement of Foster Peterson] is  
26 being offered to rebut ... ¶¶ 13, 14, 15, 18, 19, 20, 21, 22, and 23 of the Jeffers Verified  
Statement”. TCRY Rebuttal Brief, p. 15, ¶ 14.

1 17. ¶ 15 of the Jeffers VS explains that the safety devices avoid conflicts. As demonstrated  
2 above, Foster Peterson’s citation to the GCOR is misplaced. Foster Peterson cites no  
3 authority to prove that TCRY faces any risk that would result in any unreasonable  
4 interference with railroad operations.

5 18. ¶ 18 of the Jeffers VS provides objective data regarding the Cities’ Field Study.

6 19. ¶ 19 of the Jeffers VS provides objective data regarding the location of cars in the Cities’  
7 Field Study.

8 20. ¶ 20 of the Jeffers VS provides my summary of the Field Study. Foster Peterson raises  
9 issues with terminology, but he does not “rebut” my conclusion that TCRY is using the  
10 siding for car storage.

11 21. ¶ 21 of the Jeffers VS provides objective data regarding the location of the cars during the  
12 Field Study.

13 22. ¶ 22 of the Jeffers VS concludes that TCRY’s railway operations do not require blocking  
14 the Crossing. Foster Peterson does not “rebut” this conclusion. As described above,  
15 TCRY will have the right to continue its operations after the Crossing is constructed.

16 23. ¶ 23 of the Jeffers VS concludes that there will be no impact on movement of freight (i.e.,  
17 no impact on operations). I maintain this conclusion after reviewing the materials  
18 prepared by TCRY.

19 **THE REBUTTAL VERIFIED STATEMENT OF RHETT PETERSON DOES NOT**  
20 **REBUT THE JEFFERS VS**

21 24. The Rebuttal Verified Statement of Rhett Peterson does not “rebut” ¶¶ 11, 16, 17 of the  
22 Rogalsky VS, as addressed in detail below.<sup>4</sup>

23 25. ¶ 11 of the Jeffers VS explains that railroad operations will always have the right-of-way  
24 at the Crossing. Mr. Peterson does not rebut this fact. Instead, Mr. Peterson incorrectly

25 <sup>4</sup> TCRY’s Rebuttal Brief provides: “The Rebuttal Verified Statement of Rhett Peterson is being  
26 offered to rebut ... ¶¶ 11, 16, 17 of the Jeffers Verified Statement”. TCRY Rebuttal Brief, p. 15-  
16, ¶ 16.

1 argues that the Crossing will remove 1/3 of the siding, citing GCOR provisions. For the  
2 reasons stated above, Mr. Peterson is incorrect. The application of the cited GCOR  
3 provisions will not unduly interfere with TCRY's operations.

4 26. ¶¶ 16-17 of Jeffers VS provides facts regarding UPRR and BNSF **trains**. The rebuttal  
5 addresses **cars**.

6 **THE REBUTTAL VERIFIED STATEMENT OF RANDOLPH PETERSON DOES NOT**  
7 **REBUT THE JEFFERS VS**

8 27. The Rebuttal Verified Statement of Randolph Peterson does not "rebut" the objective fact  
9 set forth in ¶¶ 8-9 of the Jeffers VS that TCRY chose not to participate in the planning  
10 process or the UTC diagnostic meeting for the Crossing.<sup>5</sup> Randolph Peterson's Rebuttal  
11 Verified Statement concedes this fact. Thus, it cannot be described as a rebuttal.

12 **THE REBUTTAL VERIFIED STATEMENT OF LISA ANDERSON DOES NOT REBUT**  
13 **THE JEFFERS VS**

14 28. As described above, the Rebuttal Verified Statement of Lisa Anderson does not "rebut"  
15 the summary of operations set forth in ¶ 13-14 of the Jeffers VS.<sup>6</sup> Ms. Anderson does not  
16 provide any summary of how many TCRY trains pass the Crossing location on a daily  
17 basis. Instead, Ms. Anderson states how many carloads TCRY handled through June 17,  
18 2015, and she estimates based upon TCRY's Cash Flow Forecast how many additional  
19 carloads TCRY will service between July 31, 2015 and December 31, 2015. This does  
20 not "rebut" my track usage conclusion. Again, Ms. Anderson's Rebuttal Verified  
21 Statement is the first time that TCRY has provided the STB verifiable data. Regardless,  
22 TCRY does not contest the fact that the Crossing will be closed, at most, three percent of  
23 the day assuming TCRY's track usage data submitted to the UTC. Cities Response Brief,

24 <sup>5</sup> TCRY's Rebuttal Brief provides; "The Rebuttal Verified Statement of Randolph Peterson is  
25 being offered to rebut ... ¶¶ 8-9 of the Jeffers Verified Statement ..." TCRY Rebuttal Brief, p.  
26 16, ¶ 18.

<sup>6</sup> TCRY's Rebuttal Brief provides; "The Rebuttal Verified Statement of Lisa Anderson is being  
offered to rebut ... ¶¶ 13, 14 of the Jeffers Verified Statement ..." TCRY Rebuttal Brief, p. 16, ¶  
17.

1 p. 25, 32. As stated above, this three percent (3%) figure includes the completion of  
2 Horn Rapids, the Preferred Freezer Services Plant, and TCRY's projected increase in rail  
3 traffic. *See e.g.*, TCRY cross-examination of Spencer Montgomery CP 0-000001185:18-  
4 25.

5 **SUMMARY**

6 29. I have reviewed the Rebuttal Verified Statement submitted by TCRY. Based upon my  
7 review of TCRY's materials, TCRY has not demonstrated that the Crossing will create  
8 any safety concerns or cause any undue interference to TCRY's operations.

9 30. TCRY did not "rebut" ¶¶ 2, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23 in the  
10 Jeffers VS. As described above, TCRY cannot "rebut" objective facts. *See e.g.*, John  
11 Miller's Verified Statement at ¶ 26 purportedly "rebutting" ¶ 6 of the Jeffers Verified  
12 Statement (providing the objective fact that BNSF and UPRR no longer use of the  
13 railroad siding in the vicinity of Center Parkway). Some of TCRY's "rebuttals" are, in  
14 fact, admissions. *See e.g.*, Rhett Peterson Verified Statement ¶ 4-5 conceding the point  
15 that I made in Jeffers Verified Statement ¶¶ 8-9 (TCRY did not attend the site visit or  
16 diagnostic meeting for the Crossing). I reaffirm the entirety of my Verified Statement.

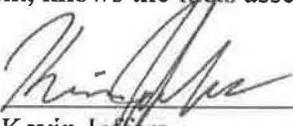
1 **SIGNED AND SWORN STATEMENT**

2 31. Pursuant to 49 CFR 1112.9:

3 State of Washington,

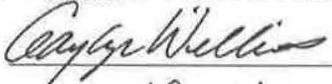
4 County of Pierce,

5 Kevin Jeffers, being duly sworn, deposes and says that he has read the foregoing  
6 statement, knows the facts asserted there are true and that the same are true as stated.

7  
8 Signed 

Kevin Jeffers

9 Signed and sworn to before me this 15th day of September 2015.

10 Signed: 

11 Notary Public of Washington.

12 My Commission expires 2/22/16.



13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
**SUPPLEMENTAL VERIFIED STATEMENT AND  
AFFIDAVIT OF KEVIN JEFFERS – 9**

**FOSTER PEPPER PLLC**  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder <b>Paine Hamblen LLP</b> 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 <a href="mailto:william.schroeder@painehamblen.com">william.schroeder@painehamblen.com</a> <a href="mailto:greg.hesler@painehamblen.com">greg.hesler@painehamblen.com</a> <a href="mailto:will.schroeder@painehamblen.com">will.schroeder@painehamblen.com</a>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> E-Mail
---	---

s/Christopher G. Emch  
Christopher G. Emch

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a  
Washington limited liability company,

Petitioners,

v.

THE CITY OF KENNEWICK, a Washington  
municipal corporation; THE CITY OF  
RICHLAND, a Washington municipal  
corporation,

Respondents.

No. FD 35915

SUPPLEMENTAL VERIFIED  
STATEMENT AND AFFIDAVIT OF  
SUSAN GRABLER

COMES NOW Susan Grabler who declares under penalty of perjury that the foregoing is true and correct:

1. I reaffirm my Verified Statement and Affidavit dated June 12, 2015, which identifies my 42 years' experience in the railroad industry ("Grabler VS").
2. I have reviewed the Rebuttal Verified Statements from John Miller, Foster Peterson, Randolph Peterson, and Lisa Anderson.

**GENERAL CODE OF OPERATING RULES AND THE KENNEWICK MUNICIPAL CODE**

3. John Miller, Foster Peterson, and Randolph Peterson are incorrect in asserting that the Crossing will impact operations because of the application of the General Code of Operating Rules ("GCOR").

SUPPLEMENTAL VERIFIED STATEMENT AND  
AFFIDAVIT OF SUSAN GRABLER- 1

**FOSTER PEPPER PLLC**  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

- 1 4. TCRY will be able to park/spot their cars within 250 feet of the Center Parkway crossing.  
2 I understand that TCRY raised this issue for the first time in its rebuttal, citing the  
3 General Code of Operating Rules (GCOR). GCOR states in 6.32.4: “**When practical,**  
4 avoid leaving cars, engines, or equipment standing closer than 250 feet from the road  
5 crossing when there is adjacent track.” This GCOR is where railway safety and railway  
6 operations intersect.
- 7 5. Since both tracks at the proposed Center Parkway crossing will have the most current  
8 state-of-the-art Automatic Warning Devices designed and installed, the Railroad Signal  
9 Bungalow proposed for this crossing will have a railroad signal system known as a  
10 Constant Warning Time Device (CWTD). What this means is that the railroad will have  
11 electrical current running through the rails, creating the railroad signal circuit also known  
12 as the approaches to the crossing. The signal design is based on the timetable speed on  
13 each track.
- 14 6. The Signal Bungalow monitors each track 24/7-365 days a year. Its job is to look for any  
15 train movements in either direction on either track. Once the signal system detects a train,  
16 it predicts the time when the train will reach the crossing. The FRA requires a warning  
17 time of between 20 – 40 seconds of Automatic Signal activation before the train actually  
18 enters the crossing, whether the train is moving at 5 mph or at 50 mph, you will have a  
19 Constant Warning Time, which is what constitutes the CWTD.
- 20 7. Now, if the signal system predicts that the train will stop before it reaches the crossing,  
21 the signals will time out and the gates will rise back up to their upright position and the  
22 flashing lights will cease flashing. Once the train starts to move again, the signals are  
23 reactivated, the gates drop and the flashing light signals activate warning the public of an  
24 impending train approach to the crossing.
- 25 8. In just about every city or town you will find Automatic Warning Devices adjacent to  
26 existing buildings. Just like the cars that TCRY, parking/spotting cars on the siding, the

1 buildings block the view of the trains to the public, however since there are Automatic  
2 Warning Devices at a majority of these type crossings, the visibility of the train is not as  
3 important as the visibility of the Automatic Warning Devices. My point is that since the  
4 latest state of the art Railroad Automatic Warning Devices will be installed at the Center  
5 Parkway crossing, there is no "practical" reason why trains or cars cannot be parked  
6 within 250 feet of the crossing.

- 7 9. Similarly, the Kennewick Municipal Code 11.80.090 is prefaced with the phrase "**When it**  
8 **can be avoided**". The Kennewick Municipal Code provides no basis for asserting undue  
9 interference in railway operations.

10 **FIELD STUDY**

- 11 10. I have reviewed the updated Field Study materials, which are identified in the  
12 Supplemental Verified Statement of Pete Rogalsky. The Field Study materials continue  
13 to demonstrate the same issues that I discussed in my previous Verified Statement.
- 14 11. The Field Study shows that railcars were present on the siding on most days during the  
15 referenced period. Based on the Field Study, once the cars were placed on the siding,  
16 they typically stayed at the same locations on the siding for three (3) days or more, and  
17 on many occasions they stayed for more than a week. The siding will remain once the  
18 Crossing is constructed. This will allow TCRY to store cars and to conduct switching  
19 operations. But the Field Study conclusively demonstrates that the siding is not used to  
20 allow one train to pass another train. TCRY has provided no conflicting data to  
21 demonstrate how the Crossing will impact its operations.

1 **THE REBUTTAL VERIFIED STATEMENT OF JOHN MILLER DOES NOT REBUT**  
2 **THE GRABLER VS**

- 3 12. The Rebuttal Verified Statement of John Miller does not “rebut” ¶¶ 2, 9, 10, 11, 15, 16,  
4 17, 19, 23, 24 of the Grabler VS, as addressed in detail below.<sup>1</sup>
- 5 13. ¶ 2 of the Grabler VS is where I reaffirm my pre-filed testimony before the Utilities and  
6 Transportation Commission (“UTC”). Mr. Miller’s response does not rebut this fact.
- 7 14. ¶ 9 of the Grabler VS provides the objective fact that the City of Richland and the City of  
8 Kennewick have received unanimous approval from the UTC to extend Center Parkway  
9 across the main track and siding.
- 10 15. ¶ 10 of the Grabler VS provides the objective fact that BNSF and UPRR have no  
11 objection to the Crossing. They were not parties to the UTC petition. They are not  
12 parties to this petition before the STB.
- 13 16. ¶ 11 of the Grabler VS provides the objective fact that TCRY is a lessee of the tracks.
- 14 17. ¶ 15 of the Grabler VS provides the conclusion that BNSF makes trips to the Port of  
15 Benton. TCRY replies that the Port of Benton is an entity. In response, of course the  
16 Port of Benton is a governmental entity, but (most) everyone with common sense  
17 understands that the Port is also a location, just like New York City is also a  
18 governmental entity and a physical location. TCRY does not rebut the fact that BNSF  
19 makes trips to the Port of Benton.
- 20 18. ¶ 16 of the Grabler VS provides the objective fact that UPRR trains made no trips on the  
21 tracks. This paragraph also concludes that this finding is consistent with UPRR data  
22 submitted by UPRR to UTC.
- 23 19. ¶ 17 of the Grabler VS provides the objective fact that identifies the location of the  
24 siding. Here, TCRY purports to rebut the fact that it stores cars on the siding, while, in a

25 <sup>1</sup> TCRY’s Rebuttal Brief provides: “The Rebuttal Verified Statement of John Miller is being  
26 offered to rebut ... ¶¶ 2, 9, 10, 11, 15, 16, 17, 19, 23, 24 of the Grabler Verified Statement”.  
TCRY Rebuttal Brief, p. 15, ¶ 15.

1 different Verified statement, TCRY argues that is important for TCRY to store cars on  
2 the siding. *See e.g.*, Rebuttal Verified Statement of Foster Peterson ¶ 9. TCRY provides  
3 no rebuttal here.

4 20. ¶ 19 of the Grabler VS summarizes the data provided in the Field Study. Mr. Miller does  
5 not provide any data that questions the authenticity of the Field Study data. Instead, he  
6 reiterates his previous affidavit that discusses the use of the siding. Curiously, TCRY has  
7 not provided the STB with one practical example of these occurring on the tracks. The  
8 only verifiable data of siding usage before the STB is the Cities' Field Study.

9 21. I also take issue with the fact that TCRY questions my 42 years of railroad experience.  
10 Prior to joining DEA, I worked for 34 years at UPRR in the Engineering Department,  
11 with the last 24 years working as a Manager of Industry & Public Projects covering a  
12 total of nine western states.

13 22. During my tenure at UPRR, I was first based in Portland, Oregon with the rail design  
14 group, from 1973 – 1983. I eventually became the Chief Draftsman responsible for all  
15 elements of railroad design projects in Oregon. From 1983 -1993, I managed all public  
16 projects in Oregon and Northern California with the state, county and local municipalities  
17 that the railroad operated through. From 1993 to 2007, I worked in Denver, Colorado as  
18 the Manager of Industry & Public Projects for Texas, Arkansas, Louisiana, New Mexico,  
19 Wyoming, Colorado, and Nebraska. During my 24 years in the public projects group, I  
20 was responsible for all new industry and public projects in a total of nine states before my  
21 retirement. I have managed hundreds of public projects similar to the extension of Center  
22 Parkway while at UPRR.

23 23. During my tenure at UPRR I regularly worked with short line railroads.

24 24. For several years I was also responsible for training all new Northern Region Managers  
25 of Industry and Public Projects and co-authoring the UPRR Industry Track Specifications  
26

1 used by private engineers and contractors for new industry track projects, including new  
2 industry tracks that cross public and private roadways.

3 25. My credentials are set forth fully in my previous Verified Statement.

4 26. ¶¶ 23-24 of the Grabler VS provides my conclusion that the Crossing will not impact  
5 TCRY's operations. I reaffirm this conclusion. As described above, TCRY overstates its  
6 position on GCOR and the Kennewick Code. The crossing will not eliminate 1/3 of the  
7 siding. Consistent with controlling law and regulations, the entire siding remains  
8 available for TCRY's use when it is necessary for TCRY's railway operations. And, as  
9 identified in Pete Rogalsky's declaration, there are other solutions available to hold unit  
10 trains to accommodate train traffic in this area. TCRY cannot demonstrate that this  
11 routine crossing will have any impact, much less an undue impact, on railroad operations.

12  
13 **THE REBUTTAL VERIFIED STATEMENT OF FOSTER PETERSON DOES NOT  
REBUT THE GRABLER VS**

14 27. The Rebuttal Verified Statement of Foster Peterson does not "rebut" ¶¶ 11, 13, 17, 18,  
15 19, 20, 21, 22, 23, 24 of the Grabler VS, as addressed in detail below.<sup>2</sup>

16 28. ¶ 11 of the Grabler VS provides the objective fact that TCRY is a lessee of the tracks.

17 29. ¶ 13 of the Grabler VS provides objective data regarding the Cities' Field Study,  
18 including the date of the study and the photos in the Field Study data.

19 30. ¶ 17 of the Grabler VS provides the objective fact identifying the location of the siding.  
20 As described above, TCRY cannot contest that the siding is used to store cars when it  
21 asserts this very fact in other Verified Statements submitted on behalf of the company.

22 31. ¶ 18 of the Grabler VS provides the objective fact that cars were located immediately in  
23 front of the proposed Crossing. TCRY also questions my railroad experience. I stand by  
24

25  
26 <sup>2</sup> TCRY's Rebuttal Brief provides: "[The Rebuttal Verified Statement of Foster Peterson] is  
being offered to rebut ... ¶¶ 11, 13, 17, 18, 19, 20, 21, 22, 23, 24 of the Grabler Verified  
Statement". TCRY Rebuttal Brief, p. 15, ¶ 14.

1 my 42 years' experience in railroad engineering, outlined in detail in my Verified  
2 Statement and above.

3 32. ¶ 19 of the Grabler VS provides the objective fact that TCRY parked cars on the siding  
4 for days at a time. As described above, TCRY's "rebuttal" raises GCROR issues for the  
5 first time, and TCRY's "rebuttal" fails to properly apply the GCOR. The GCOR will not  
6 eliminate use of 1/3 of the siding.

7 33. ¶¶ 20-22 of the Grabler VS provide an explanation of the safety features of the Crossing.  
8 TCRY's "rebuttal" does not question the safety features. These safety features are  
9 directly relevant to railway operations because they provide right-of-way to all railway  
10 operations. Further, Foster Peterson appears to take the unprecedented position that STB  
11 must extend jurisdiction any time there is a "possibility" for train/motor vehicle  
12 interaction. Rebuttal Verified Statement of Foster Peterson, ¶ 18, p. 23 ("Not having an  
13 at-grade Crossing is, from a railroad operations standpoint safer than installing an at-  
14 grade crossing given the separation of track and roadway removes the possibility of train  
15 / motor vehicle interaction."). Here, TCRY via Foster Peterson misstates the  
16 jurisdictional test before the STB. The test is whether the crossing will cause  
17 unreasonable or undue interference with railroad operations. TCRY has not shown any  
18 interference in railroad operations. And the Cities have provided the STB with  
19 voluminous material demonstrating that the Crossing poses only speculative safety risks.

20 34. ¶¶ 23-24 of the Grabler VS provide my conclusion that the Crossing will not impact  
21 operations. TCRY does not "rebut" this conclusion because its concern about the loss of  
22 siding is based upon a misunderstanding of GCOR and the Kennewick Municipal Code.  
23  
24  
25  
26

1 **THE REBUTTAL VERIFIED STATEMENT OF RHETT PETERSON DOES NOT**  
2 **REBUT THE GRABLER VS**

3 35. The Rebuttal Verified Statement of Rhett Peterson does not “rebut” ¶¶ 13, 17, 18, 19, 23,  
4 24 of the Grabler VS.<sup>3</sup> Each of these purported “rebuttals” are addressed in detail,  
5 immediately above.

6 **CONCLUSION**

7 36. I have reviewed the Rebuttal Verified Statements submitted by TCRY. Based upon my  
8 review of TCRY’s materials, TCRY has not demonstrated that the Crossing will create  
9 any safety concerns or cause any undue interference to TCRY’s operations.

10 37. TCRY did not “rebut” ¶¶ 2, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 in the  
11 Grabler VS. As described above, TCRY cannot rebut objective facts. See e.g., John  
12 Miller’s Rebuttal Verified Statement of John Miller at ¶17 purportedly “rebutting” ¶ 11  
13 of the Grabler Verified Statement (providing the objective fact that TCRY is a lessee of  
14 the tracks). I reaffirm the entirety of my Verified Statement.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>3</sup> TCRY’s Rebuttal Brief provides: “The Rebuttal Verified Statement of Rhett Peterson is being offered to rebut ... ¶¶ 13, 17, 18, 19, 23, 24 of the Grabler Verified Statement”. TCRY Rebuttal Brief, p. 15-16, ¶ 16.

1 **SIGNED AND SWORN STATEMENT**

2 25. Pursuant to 49 CFR 1112.9:

3 State of Colorado,

4 County of Arapahoe,

5 Susan Grabler, being duly sworn, deposes and says that she has read the foregoing  
6 statement, knows the facts asserted there are true and that the same are true as stated.

7  
8 Signed *Susan Grabler*  
9 Susan Grabler, Principal  
10 Railroad Coordination, LLC  
11 7914 S. Pennsylvania Drive  
Littleton, CO 80122



My Commission Expires: 02/08/2016

12 Signed and sworn to before me this 15th day of September, 2015.

13 Notary Public of Colorado.

14 My Commission expires 2/8/2016

15 *JRM* John Romero  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SUPPLEMENTAL VERIFIED STATEMENT AND  
AFFIDAVIT OF SUSAN GRABLER- 9

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder <b>Paine Hamblen LLP</b> 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 <a href="mailto:william.schroeder@painehamblen.com">william.schroeder@painehamblen.com</a> <a href="mailto:greg.hesler@painehamblen.com">greg.hesler@painehamblen.com</a> <a href="mailto:will.schroeder@painehamblen.com">will.schroeder@painehamblen.com</a>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> E-Mail
---	---

s/Christopher G. Emch  
Christopher G. Emch

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a  
Washington limited liability Company,

Petitioners,

v.

THE CITY OF KENNEWICK, a Washington  
municipal corporation; THE CITY OF  
RICHLAND, a Washington municipal  
corporation,

Respondents.

No. FD 35915

SUPPLEMENTAL VERIFIED  
STATEMENT AND AFFIDAVIT OF  
STEPHANIE G. WEIR

COMES NOW Stephanie G. Weir who declares under penalty of perjury that the  
foregoing is true and correct:

1. I am one of the attorneys for the Respondents, the City of Kennewick and the City of Richland, in the above-captioned action. I am competent to testify to the matter contained herein based on my personal knowledge.
2. Attached hereto as **Exhibit A** is a true and correct copy of the Proposed Comprehensive Operating Plan, *BNSF Railway Co v. Tri-City and Olympia R.R.*, United States District Court, Eastern District of Washington, No. CV-09-5062-EFS (Document 336-1, Filed January 20, 2012).
3. Attached hereto as **Exhibit B** is a true and correct copy of the Order Adopting the Comprehensive Operating Plan, Entering Judgment, and Closing File, *BNSF Railway Co*

SUPPLEMENTAL VERIFIED STATEMENT AND  
AFFIDAVIT OF STEPHANIE G. WEIR – 1

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

1 v. *Tri-City and Olympia R.R.*, United States District Court, Eastern District of  
2 Washington, No. CV-09-5062-EFS (Document 343, Filed February 14, 2012).

3 4. Attached hereto as **Exhibit C** is a true and correct copy of Chapter 11.80 of the  
4 Kennewick Municipal Code.

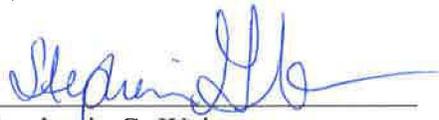
5  
6 **SIGNED AND SWORN STATEMENT**

7 Pursuant to 49 CFR 1112.9:

8 State of Washington,

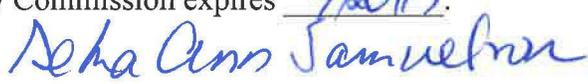
9 County of King,

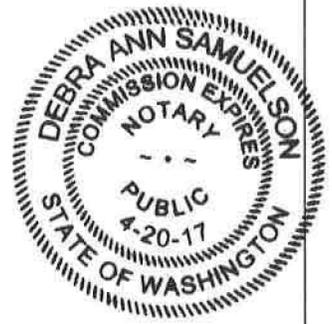
10 Stephanie G. Weir, being duly sworn, deposes and says that he has read the foregoing  
11 statement, knows the facts asserted there are true and that the same are true as stated.

12 Signed   
13 Stephanie G. Weir

14 Signed and sworn to before me this 15<sup>th</sup> day of September 2015.

15 Notary Public of State of Washington

16 My Commission expires 4/20/17.  
17 



CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder <b>Paine Hamblen LLP</b> 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 <a href="mailto:william.schroeder@painehamblen.com">william.schroeder@painehamblen.com</a> <a href="mailto:greg.hesler@painehamblen.com">greg.hesler@painehamblen.com</a> <a href="mailto:will.schroeder@painehamblen.com">will.schroeder@painehamblen.com</a>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> E-Mail
---	---

*s/Christopher G. Emch*  
Christopher G. Emch

# Exhibit A

# EXHIBIT A

### PROPOSED OPERATING PLAN

1. UP and BNSF recognize TCRY as the operating railroad on the line and will accordingly comply with requirements of GCOR 1.14 (Employee Jurisdiction).
2. Regular UP and BNSF operations will begin with entry to the line at Richland Junction at such time as agreed to between each respective railroad and TCRY. This does not preclude operation on any days or at times as needed and will be coordinated between UP, BNSF and TCRY.
3. Authority for movement shall be GCOR Rule 6.28 (other than main tract). GCOR rules shall be formally adopted and subscribed to by all parties. Prior to each entry on to TCRY tracks at Richland Jct, UP and BNSF shall be required to contact TCRY and TCRY will be required to be available to respond 24/7, pursuant to instructions listed in Timetable, System Special Instructions or General Order via radio on AAR channel 15/15 or telephone to coordinate operations including providing TCRY with an estimated departure time.
4. Communications shall be on AAR channel 15/15 as designated by TCRY. This shall in no way relieve any party of compliance with GCOR 6.28 and is for efficient use of the track only.
5. Operations testing of train crews shall be performed by the officers of the respective railroads in accordance with their own testing guidelines or jointly with TCRY.
6. Any car storage or required line maintenance shall be communicated by TCRY to UP and BNSF and shall not unreasonably impede service to railroad customers.
7. TCRY will provide either a clear track in Richland yard or a clear and accessible wye track to run around cars to be spotted at railroad customers.
8. Based upon potential changes in business patterns and volumes over time, any party may initiate discussions to revise the Operating Plan. Proposed changes to this Operating Plan shall be submitted to the Port of Benton for prior approval. The Port shall review the proposed changes for compliance with Port-TCRY Railroad Lease and the underlying contracts with BNSF and UP.
9. Timetable, System Special Instructions and General Orders submitted with this document which becomes effective December 22, 2011 at 00:01 shall remain in effect. Any modifications,

additions or deletions which do not unreasonably restrict the rights of the parties may be enacted by TCRY upon 5 calendar days notice in advance of the effective date. Proposed System Special Instructions and General Orders shall be submitted to the Port of Benton for prior approval. The Port shall review the proposed changes for compliance with Port-TCRY Railroad Lease and the underlying contracts with BNSF and UP. TCRY may, at its reasonable discretion, issue General Orders which will be immediately effective to protect the safety of railroad employees and the general public, such as temporary speed restrictions, tracks removed from service, malfunctioning grade crossing warning devices or other similar conditions requiring immediate protection.

- 10. In the event a dispute arises among the parties concerning the application of this Operating Plan or proposed changes to the Plan, Timetable, System Special Instructions and General Orders, related to rail operations over property given to the Port of Benton by the Department of Energy on or about October 1, 1998, the dispute shall be submitted to the Port of Benton under the terms of the Port-TCRY Railroad Lease and the underlying contracts with BNSF and UP for resolution.

Agreed and submitted on \_\_\_\_\_, 2012 by:

\_\_\_\_\_  
Union Pacific

\_\_\_\_\_  
BNSF Railway Company

\_\_\_\_\_  
Tri City Railway



**Tri-City & Olympia Railroad Company  
General Order No. 1  
Effective: December 22, 2011, 00:01**

All General orders issued prior to December 22, 2011 are annulled.

On March 21<sup>st</sup>, 2000, the Tri-City Railroad Company of Richland, Washington, which is now known as the Tri-City & Olympia Railroad Company, submitted the required documentation to the Federal Railroad Administration to support the start up of local railroad service by TCRY.

The following programs, policies and procedures have been adopted by the Tri-City & Olympia Railroad Company:

- Roadway Worker Protection
- On-Track Safety Manual for Roadway Worker Protection
- Locomotive Engineer Qualification Program
- Drug & Alcohol Testing Programs
- Radio Standards
- Blue Signal Protection
- Flag Protection
- Accident Reporting
- Operating Rules & Operations Testing Program
- Safe Work Practices for Train & Engine Employees
- Timetable & Special Instructions
- Crossing Signal Reporting
- DOT Hazardous Material Training Regulations
- Internal Control Plans

The Tri-City & Olympia Railroad Company offers railroad switching and transportation services and shipment reload operations.

**RV Peterson  
CEO  
Tri-City & Olympia Railroad Company**



**Tri-City & Olympia Railroad Company**  
**General Order No. 2**  
**Effective: December 22, 2011, 00:01**

Occupancy of TCRY track from Richland Jct, MP B46.6 to Hanford (Horn Rapids Road) MP B35.8 is governed by GCOR Rule 6.28.

Upon arrival at Richland Jct all trains needing to occupy TCRY track must contact TCRY yardmaster or authorized employee.

To obtain permission to proceed past Steptoe Station No. 00201 (MP B45.8) contact TCRY yardmaster or authorized employee and provide train consist, destination and estimated departure time.

To obtain permission to proceed past Saint Station No. 00212 (MP B38.6) contact TCRY yardmaster or authorized employee and provide train consist, destination and estimated departure time.

To obtain permission to proceed past Horn Rapids Station No. 00310 (MP B37.0) contact TCRY yardmaster or authorized employee and provide train consist, destination and estimated departure time.

TCRY radio frequency:160.335  
TCRY telephone: 509-727-8824.

**RV Peterson**  
**CEO**  
**Tri-City & Olympia Railroad Company**



**Tri-City & Olympia Railroad Company**  
**General Order No. 3**  
**Effective: December 22, 2011, 00:01**

The following Systems Special Instructions and Timetables are now in effect:

1. TCRY System Special Instructions No. 8, dated December 22, 2011.
2. TCRY Timetable 1<sup>st</sup> Subdivision No. 8, dated December 22, 2011.

TCRY System Special Instructions No. 7 and TCRY Timetable 1<sup>st</sup> Subdivision No. 7 are RESCINDED and superseded by the foregoing.

All hours of service employees, officers and supervisors are required to have a copy of the current Timetable and System Special Instructions in their possession while on company property and engaged in company service.

These timetables, which are in effect until rescinded by General Order, shall be governed accordingly.

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



**Tri-City & Olympia Railroad Company**  
**General Order No. 4**  
**Effective: December 22, 2011, 00:01**

The following rules are now in effect:

1. General Code of Operating Rules, Fifth Edition, Effective April 3, 2005, including UPRR Amendments up to July 24, 2009
2. UPRR Air Brake and Train Handling Rules, effective April 1, 2004 (Including revisions up to August 13, 2009)
3. UPRR TY&E Safety Rules, effective July 30, 2005 (Including revisions up to August 7, 2009)
4. BNSF Mechanical Safety Rules and Policies, effective April 15, 2007 (Including revisions up to January 30, 2009)
5. UPRR Maintenance of Way Operating Rules, effective November 17, 2008 (Including revisions up to July 24, 2009)
6. UPRR Employee Safety Rules, effective July 30, 2007 (including revisions up to August 7, 2009)
7. UPRR Maintenance of Way Safety Rules effective November 17, 2008 (including revisions up to July 24, 2009)
8. United States Hazardous Material Instructions for Rail, effective July 29, 2009.
9. Tri City & Olympia Railroad Company On-Track Safety Manual for Roadway worker Protection, effective June 22, 2005
10. North American Emergency Response Guidebook, 2008 edition

**RV Peterson**  
**CEO**  
**Tri-City & Olympia Railroad Company**



**Tri-City & Olympia Railroad Company**  
**General Order No. 5**  
**Effective: December 22, 2011, 00:01**

**Switching and Spotting Industries**

For Safety and efficiency, all switching and spotting of freight cars at TCRY served industries will be done with a charged air system on every car.

RV Peterson  
CEO  
Tri-City & Olympia Railroad Company



**Tri-City & Olympia Railroad Company**  
**General Order No. 6**  
**Effective: December 22, 2011, 00:01**

**Amendment to TCRY TY&E Safety Rule S-13.7.1 A. General Requirements 1**

It will be the policy of Tri City & Olympia Railroad Company to stop the car, locomotive, or other on-track equipment at least 25 feet from the switch stand to be lined, when possible.

**RV Peterson**  
**CEO**  
**Tri-City & Olympia Railroad Company**



**TRI-CITY & OLYMPIA RAILROAD CO.**

**SYSTEM SPECIAL  
INSTRUCTIONS**

**No. 8**

**Effective 00:01**

Supersedes System Special Instructions No. 7

**December 22, 2011**

**RV Peterson, CEO**

**IMPORTANT PHONE NUMBERS**

Police & Fire Emergency	911
Non-emergency Kennewick	509-628-0333
“ “ Richland	509-628-0333
RV PETERSON, CEO	509-554-0503
Rydel Peterson Vice President	509-460-0523
Rhett Peterson, Operations Manager/Yardmaster	509-727-8824
Rhett Peterson, Operations Manager Office	509-371-8114
TRI-CITY RR Office	509-371-8313
Emergency Contacts:	
Signals:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Track:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Alternate Contact: Rydel Peterson	509-460-0523
CHEMTREC	1-800-424-9300

**Special Instructions:**

- 1. **Speed Restrictions**  
(Maximum Speed Permitted)  
All Subdivisions 25mph  
See individual subdivision for specific speeds
- 2. As stated in the Operating Plan "Prior to each entry onto TCRY tracks at Richland Junction, UP and BNSF shall be required to contact TCRY and TCRY will be required to be available to respond 24/7, pursuant to Instructions listed in Timetable, System Special Instructions or General Order via radio on AAR channel 15/15 or telephone to coordinate operations including providing TCRY with an estimated departure time."
- 3. **Track Side Failed Equipment Detectors (FED)**  
NONE
- 4. **In effect on: TRI CITY & OLYMPIA RAILROAD CO.**

Employees will be governed by:

General Code of Operating Rules, Fifth Edition, effective April 3, 2005, including UPRR Amendments up to July 24, 2009

For Exceptions Refer to TCRY General Orders

UPRR Air Brake and Train Handling Rules, effective April 1, 2004 (Including revisions up to August 13, 2009)

UPRR TY&E Safety Rules, effective July 30, 2005 (Including revisions up to August 7, 2009)

BNSF Mechanical Safety Rules and Policies; effective April 15, 2007 (including revisions up to January 30, 2009)

UPRR Maintenance of Way Operating Rules, effective November 17, 2008 (including revisions up to July 24, 2009)

UPRR Employee Safety Rules, effective July 30, 2007 (including revisions up to August 7, 2009)

UPRR Maintenance of Way Safety Rules effective November 17, 2008 (including revisions up to July 24, 2009)

United States Hazardous Material Instructions for Rail, effective July 29, 2009.

Tri City & Olympia Railroad Company On-Track Safety Manual for Roadway Worker Protection, effective June 22, 2005

North American Emergency Response Guidebook, 2008 edition

- 5. **Equipment Restrictions**  
The following equipment must be placed ahead of caboose or on the rear of caboose-less trains, except in work trains. Spacer/Idler cars may be used when necessary.

- Pile drivers
- Locomotive cranes
- Empty ribbon rail cars
- Rear end only cars
- Jordan spreaders
- Wedge plows
- Dozers

When pile drivers, cranes, derricks or similar equipment are being moved on their own wheels or on cars in a train, they must be properly loaded and secured. Booms must be properly secured and, when possible, boom must be trailing. Equipment must be inspected before being moved.

Spreaders and dozers being moved in train must, when possible, be headed in the direction train is moving and wings must be properly secured.

6. Car Restrictions

Six or eight axle cars as well as dimensional cars (high/wide) may not move on Tri-City Railroad Co. trackage without prior approval of the General Manager.

A high/wide load may be moved in a train only after excessive dimension clearance message is received or a crewmember ascertains any applicable restrictions from the General Manager.

Crewmember must advise the General Manager and other crewmembers that train contains a high/wide load. Until the General Manager has been notified, the crewmember is responsible for protection against other wide loads.

Clearance message will contain all restrictions encountered over the entire route of movement.

When a high/wide load is set out enroute between terminals, load must be placed on a track which will provide sufficient clearance from the main track and the General Manager advised that the car is being set out.

When a high/wide load is handled, the crew is responsible for compliance with all restrictions in an excessive dimension clearance message.

A train must not pass a location where a restriction is shown for the meeting or passing of trains without authority from the General Manager.

7. Emergency Stop or Severe Slack Action

ALL Trains: Train must be visually inspected before proceeding if unusual slack action was experienced when stopped or if excessive power is required to start train. If excessive power is not required to start train, and physical characteristics prevent a complete walking train inspection, inspect as much of the train as possible. The train may then be moved, but may not exceed 5 MPH for the distance necessary to complete the inspection, and must be stopped immediately if excessive power is required to keep train moving.

8. Rule 6.32.2 Automatic Crossing Devices

Under any of the following conditions, a movement must not foul a crossing equipped with automatic warning devices until the device has been operating long enough to provide warning and the crossing gates, if equipped, are fully lowered:

- Movement had been delayed or stopped within 3,000 feet of the crossing
- Movement is closely following another movement
- Movement is on other than the main track or siding

**Employees must observe all automatic crossing warning devices and report any that are not operating properly to the yardmaster or proper authority by first available means of communication. Notify all affected trains as soon as possible.**

9. Securing Cars or Engines

When hand brakes are required, apply a sufficient number of hand brakes, but not less than two when there are two or more cars.

10. Time signals

Time signals received from WWVTIME may be used to set watches and clocks to correct time. The hours are given in Coordinated Universal Time; so, only the minutes and seconds may be used. Telephone number for WWVTIME is (402) 271-4601

11. Rule 4.3 Timetable Characters

- B General orders, Notices and Circulars
- C Radio Communications
- J Junction
- T Turning facility
- P Telephone

12. Grade Crossing Accidents

The following information is designed to serve as post grade crossing accident guidelines. It is designed to provide the utmost in safety for you and your crew.

After the accident has occurred and the train is stopped:

- a) Ensure the safety of crewmembers, accident victims, and the public.
- b) Meet the requirements of rule 6.23.
- c) Ascertain and advise emergency services of exact location of the accident.
- d) Include alternate routes for the emergency vehicles if your train is blocking road crossings.
- e) Assess the damage to the vehicle and train to determine if there is any danger to your crew or the public.
- f) Assign a crewmember to monitor a radio to provide further information for emergency assistance.
- g) If it is safe, render assistance to accident victims. It is important not to move the victim unless a life-threatening situation exists.
- h) Only give information to:  
The investigating officer, or, Authorized company managers. Cooperate with the investigating officer. Answer the officer's questions and provide as much information as you can recall. Record the badge number and name of the investigating police officer, that the headlight is on, and that the whistle and bell on lead unit are in proper working order. Also, note that the crossing warning devices are functioning.
- i) Assign a crewmember to verify the accuracy of the train list. Save all train lists, track warrants, track condition messages and other pertinent documents and provide these to Tri-City Railroad Co. Ascertain that no part of your train is derailed and that it will be safe to proceed once released by the investigating officer.
- j) Personal counseling will be available to any crew member who might experience post-accident trauma.

### SPEED TABLE

Time Per Mile		Miles Per Hour	Time Per Mile		Miles Per Hour
Minutes	Seconds		Minutes	Seconds	
12	--	5.0	2	45	21.8
6	--	10.0	2	30	24.0
5	--	12.0	2	15	26.7
4	--	15.0	2	10	27.7
3	30	17.1	2	5	28.8
3	--	20.0	2	--	30.0

FEET	TENTHS OF A MILE
528	.1
1,056	.2
1,584	.3
2,112	.4
2,640	.5
3,186	.6
3,696	.7
4,224	.8
4,752	.9

END



**TRI-CITY & OLYMPIA RAILROAD CO.**

**TIMETABLE  
1<sup>st</sup> Subdivision**

**No. 8**

**Effective 00:01**

**December 22, 2011**

**RV Peterson, CEO**

**IMPORTANT PHONE NUMBERS**

Police & Fire Emergency	911
Non-emergency Kennewick	509-628-0333
“ “ Richland	509-628-0333
RV PETERSON, CEO	509-554-0503
Rydel Peterson Vice President	509-460-0523
Rhett Peterson, Operations Manager/Yardmaster	509-727-8824
Rhett Peterson, Operations Manager Office	509-371-8114
TRI-CITY RR Office	509-371-8313
Emergency Contacts:	
Signals:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Track:	Primary – Rhett Peterson, 509-727-8824 Alternate – Mario Mendoza, 509-727-6622
Alternate Contact: Rydel Peterson	509-460-0523
CHEMTREC	1-800-424-9300

TRI-CITY RAILROAD COMPANY

Timetable No. 7 Page 2 of 3

**TCRY Station Table**

Siding Length	Station No's	Mile Post Location	Stations	Rule 4.3 Opr's	Method of Operations
		B46.7	Union Pacific		GCOR 6.28
1800	00200	B46.6	Richland Jct.	J	GCOR 6.28
	00201	B45.8	Steptoe		
547	00205	B43.9	City Dock		
	00209	B39.5	Airport		
	00210	B39	Lamb		
845	00211		ConAgra		
	00212	B38.6	Saint		
	00300	B38.6	TCRY Yard	B,C,P,	
	00310	B37	Horn Rapids	T	
	00350	B35.8	Hanford		
	400		City Spur		

***TCRY LOCATIONS NOT SHOWN ON TABLE***

B45.7  
 B45.5  
 B44.4  
 B44.4  
 B43.3  
 B42.7  
 B41.9  
 B41.0  
 B40.0  
 B38.5

Irrigation Canal Bridge  
 Columbia Park Trail Overpass  
 Yakima River Bridge  
 Bike Path Pedestrian Crossing  
 Jadwin Ave Crossing  
 Berry's Overpass Bridge  
 Duportail Road Crossing  
 Cemetery Road Crossing  
 Van Giesen Road Crossing  
 Highway 240 Road Crossing

TRI-CITY RAILROAD COMPANY

Timetable No.7 Page 3 of 3

## Special Instructions

### 10. Speed Restrictions

MP 46.6 to MP 38.6	20 MPH
MP B38.6 to MP B35.8	10 MPH
Trains & engines through	
Turn-outs	10 MPH
On tracks other than Industrial tracks	
Or sidings	10 MPH
City Lead	10 MPH
Kingsgate Crossing	5 MPH

### 11. The following Bridges and Overpasses have no walkway:

- Irrigation Canal Bridge MP B45.7
- Columbia Park Trail Overpass MP B45.5
- Yakima River Bridge MP B44.4
- Berry's Overpass Bridge MP B42.7

### 12. Type of Operation

GCOR Rule 6.28

**END**

# Exhibit B

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BNSF RAILWAY COMPANY,  
Plaintiff,  
UNION PACIFIC RAILROAD  
COMPANY, and PORT OF BENTON,  
Plaintiff-Intervenors,  
v.  
TRI-CITY & OLYMPIA RAILROAD  
COMPANY LLC,  
Defendant.

NO. CV-09-5062-EFS

**ORDER ADOPTING COMPREHENSIVE  
OPERATING PLAN, ENTERING  
JUDGMENT, AND CLOSING FILE**

This matter comes before the Court on the parties' submissions regarding the Comprehensive Operating Plan in this matter. ECF Nos. 333-339. On December 14, 2011, the Court issued an Order granting Plaintiff BNSF Railway Company's (BNSF) motion for summary judgment, denying Defendant Tri-City & Olympia Railroad Company LLC's (TCRY) motion for summary judgment, and denying other motions as moot. ECF No. 329. In order to give effect to the Court's permanent injunction, the Court required the parties to meet and develop a Comprehensive Operating Plan (COP) to govern the operation of the Richland Trackage. *Id.*

The parties stipulated to an extension of the deadline for their proposed COP, ECF No. 332, but when the parties met on January 12, 2012,

1 they were unable to resolve disputes over two aspects of the COP. See  
2 Brodin Decl., ECF No. 336 ¶ 10. The parties agreed that on the  
3 stipulated date, they would each file their proposed COP along with a  
4 five-page memorandum in support. *Id.*

5 On January 20, 2012, BNSF, TCRY, and Plaintiff-Intervenor Union  
6 Pacific Railroad Company (UP) all submitted memoranda in support of their  
7 proposed COPs. ECF Nos. 333, 334, & 337. On January 27, 2012,  
8 Plaintiff-Intervenor the Port of Benton ("Port") submitted a memorandum  
9 in support of its proposed COP. ECF No. 339. After carefully reviewing  
10 the submissions of the parties and the record in this matter, the Court  
11 is fully informed and determines that it can decide upon the terms of the  
12 final COP without oral argument. See Local Rule 7.1(h)(3)(b)(iv). As  
13 discussed below, the Court adopts the ten-paragraph COP submitted by  
14 BNSF. See ECF No. 336-1.

15 The parties have no disagreement regarding the substance of the  
16 first seven paragraphs of the COP. TCRY objects to paragraphs eight  
17 through ten, which were proposed by the Port. However, these paragraphs,  
18 which give the Port the power to approve proposed changes to the  
19 operating plan, System Special Instructions, and General Orders, as well  
20 as to resolve disputes arising under the plan, are necessary to implement  
21 the authority granted to the Port in the 1947 Agreement and the Railroad  
22 Lease. See ECF No. 329 at 2-9 (discussing history of agreements  
23 regarding the Richland Trackage). Accordingly, the Court finds that  
24 these paragraphs are properly included in the COP.

25 Additionally, BNSF and UP disagree about whether the COP should have  
26 an eleventh paragraph that uses language from the Court's December 14,

1 2011 Order, including the statement that "[n]either BNSF nor UP has a  
2 right to serve the Hanford site directly." *Id.* at 16. However, as BNSF  
3 correctly notes, this statement is taken out of context and is an  
4 imprecise representation of the Court's declaratory judgment; the issue  
5 of direct service to the Hanford site was not before the Court, had not  
6 been briefed, and indeed, appears to be unripe for decision at this time.  
7 Accordingly, the Court rejects UP's proposed COP and adopts the proposed  
8 COP submitted by BNSF.<sup>1</sup>

9 For the reasons discussed above, **IT IS HEREBY ORDERED:**

10 1. The ten-paragraph Proposed Operating Plan submitted by BNSF, **ECF**  
11 **No. 336-1**, is hereby **ADOPTED** as the Comprehensive Operating Plan  
12 governing the Richland Trackage.

13 2. **Judgment** shall be **ENTERED with prejudice** in Plaintiffs' favor.  
14 The Court retains jurisdiction over this matter to enforce the terms of  
15 its injunction.

16 3. The February 29, 2012 hearing is **STRICKEN**.

17 4. This file shall be **CLOSED**.

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
19 this Order and distribute copies to counsel.

20 **DATED** this 14<sup>th</sup> day of February 2012.

21  
22 S/ Edward F. Shea

EDWARD F. SHEA

23 United States District Judge

24 Q:\Civil\2009\5062.Final.COP.1c2.wpd

25  
26 <sup>1</sup> Additionally, the Court issues an Amended Order clarifying this  
aspect of the December 14, 2011 Order.

# Exhibit C

## CHAPTER 11.80

### RAILROADS

#### SECTION:

- 11.80.010: Requirement for Railroad to Maintain all Railroad Crossings in Good Repair Within the Corporate Limits of the City
- 11.80.020: Repair and Maintenance of Railroad Crossings shall be Under the Direction of the Department of Public Works
- 11.80.030: Penalty
- 11.80.040: Obstructing or Delaying Trains
- 11.80.050: Conductor or in His Absence the Engineer Responsible
- 11.80.060: Refusal to Stop a Train
- 11.80.070: Flagman at Grade Crossings
- 11.80.080: Blocking Intersections and Obstructing Emergency Vehicles
- 11.80.090: Blocking Use of Street when Switching
- 11.80.900: Preemption

**11.80.010: Requirement for Railroad to Maintain All Railroad Crossings in Good Repair Within the Corporate Limits of the City:** It shall be the duty of all railroads which have railroad tracks within the City limits to maintain that portion that they own of all road crossings within the City in good condition and repair, clean and free from all obstructions to street travel. (Ord. 1575 Sec. 1, 1971)

**11.80.020: Repair and Maintenance of Railroad Crossings Shall Be Under the Direction of the Department of Public Works:** It shall be the duty of the Director of Public Works to inspect all railroad crossings within the City limits. When the Director finds a railroad crossing not to be in good repair, he shall give notice by certified mail, to the local office of the railroad company in question, specifying the maintenance or repair required to remedy this situation. If the railroad company does not have a local office, then this notice shall be given to the nearest office of the railroad. (Ord. 1615 Sec. 1, 1972; Ord. 1575 Sec. 2, 1971)

**11.80.030: Penalty:** It is unlawful for any railroad operating within the City limits to fail to complete the necessary repairs or maintenance as specified by the Director of Public Works, as provided for in this Chapter, within sixty (60) days after the Director of Public Works has mailed notice of repair and maintenance required. Any railroad company who fails to complete the required maintenance or repair within sixty (60) days from the time of mailing the notice by the Director of Public Works is guilty of a class 2 infraction. (Ord. 3631 Sec. 3, 1995; Ord. 2858 Sec. 5, 1984; Ord. 1615 Sec. 2, 1972; Ord. 1575 Sec. 3, 1971)

**11.80.040: Obstructing or Delaying Trains:** Every person who shall obstruct, hinder or delay the passage of any car lawfully operated upon any railway or who shall place any obstruction on a railroad track, shall be guilty of a class 3 infraction. The registered owner or operator of any vehicle is liable for the obstruction of any car caused by the stopping, standing or parking of his vehicle. (Ord. 3631 Sec. 4, 1995; Ord. 3016 Sec. 2, 1986)

**11.80.050: Conductor or in His Absence the Engineer Responsible:** Whenever an act or omission is declared to be a violation of Sections 11.80.060 through 11.80.090, the conductor, or in his absence, the engineer, shall be the person responsible for the operation of the train, locomotive, car or cars unless the Operating Rules of the Railroad provide otherwise and in that case the person so designated by the operating rules shall be responsible. No person shall be liable for any act or omission without his control and no action bona fide taken to avoid accident or hazard or to comply with regulations imposed by any governmental agency shall be considered a violation of the following Sections. (Ord. 3190 Sec. 1 (part), 1990)

**11.80.060: Refusal to Stop a Train:** No person shall, while operating or in charge of a train, refuse or neglect to stop when signaled to stop by a uniformed peace officer. (Ord. 3190 Sec. 1 (part), 1990)

**11.80.070: Flagman at Grade Crossings:**

(1) When cars are shoved, kicked or dropped over road crossings at grade, a crew member must be in position, on the ground, at the crossing to warn traffic until it is occupied, and each movement over the crossing must be made only on his signal. Such warning is not required when:

- (a) Crossing gates are in fully lowered position; or
- (b) It can be seen by a crew member riding the leading car that no traffic is approaching crossing.

(2) When a movement has been delayed or has stopped within three hundred feet (300') of a road crossing equipped with automatic crossing warning device, or closely follows a preceding movement, such crossing must not be occupied by either a forward or a reverse movement unless the crossing warning device has been operating for twenty (20) seconds to provide warning.

If it is not known that such device has been operating twenty (20) seconds, a crew member must be on the ground at the crossing to warn traffic until the crossing is occupied.

(3) Crew members must observe all automatic crossing warning devices and report to the train dispatcher or proper authority by the first available means of communication any that are not working properly and give warning of other movements unless other means of warning traffic have been provided. (Ord. 3190 Sec. 1 (part), 1990)

**11.80.080: Blocking Intersections and Obstructing Emergency Vehicles:** No person shall stop any railroad train or car within an intersection except to avoid accident or upon direction of a peace officer, when it can be avoided. Railroad trains or cars obstructing any right-of-way shall be promptly moved to allow the passage of any emergency vehicle (Ord. 3190 Sec. 1 (part), 1990)

**11.80.090: Blocking Use of Street When Switching:** Cars or engines must be left clear of road crossing signal circuits. When it can be avoided, cars or engines must not be left standing nearer than two hundred fifty feet (250') to a road crossing. Automatic crossing signals must not be actuated unnecessarily by an open switch or by permitting equipment to stand within a controlling circuit. When this cannot be avoided, if the signals are equipped for manual operation, a crew member must manually operate the signals for the movement of traffic. A crew member must restore the signals to automatic operation before a crossing is occupied by a train or engine, or before leaving the crossing. A public crossing must not be blocked for more than five (5) minutes when it can be avoided. (Ord. 3190 Sec. 1 (part), 1990)

**11.80.900: Preemption:** Nothing in this Chapter shall be construed as affecting, directly or indirectly, matters covered by the Federal Railway's Safety Act as preempted by 49 U.S.C. § 20106. Nothing in this Chapter shall be construed as to require a certain speed or length of train. This Chapter shall be construed consistently with applicable federal and state laws and regulations. (Ord. 3702 Sec. 1, 1996)

# Exhibit D

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

05/27/2015 12:36



05/27/2015 12:36



05/27/2015 12:36

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

05/28/2015 09:38



05/28/2015 09:38



05/28/2015 09:38

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

05/29/2015 12:54





05/29/2015 12:54



05/29/2015 12:54

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/01/2015 12:24



06/01/2015 12:24



06/01/2015 12:24

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/02/2015 09:01



06/02/2015 09:01



06/02/2015 09:01

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/03/2015 12:04



06/03/2015 12:03



06/03/2015 12:04

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/04/2015 12:19





06/04/2015 12:19



06/04/2015 12:19

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/05/2015 12:24



06/05/2015 12:24



06/05/2015 12:24

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/08/2015 12:23



06/08/2015 12:23



06/08/2015 12:23

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/09/2015 12:05



06/09/2015 12:04



06/09/2015 12:05

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/10/2015 13:00



06/10/2015 13:00



06/10/2015 13:00

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/11/2015 12:48



06/11/2015 12:48



06/11/2015 12:49

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/12/2015 12:52

NO  
TRESPASSING  
FEDERAL RAILROAD  
PROPERTY

06/12/2015 12:51



06/12/2015 12:51

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/16/2015 12:37

NO  
PARKING  
ON  
RAILROADS

06/16/2015 12:37



06/16/2015 12:37

NO  
TRESPASSING  
VIOLATORS WILL BE  
PROSECUTED

06/17/2015 09:08



06/17/2015 09:08



06/17/2015 09:08

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/18/2015 10:01



06/18/2015 10:01



06/18/2015 10:01

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/19/2015 11:39



06/19/2015 11:38



06/19/2015 11:39

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/22/2015 12:05

NO  
TRESPASSING

06/22/2015 12:05



06/22/2015 12:05

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/23/2015 12:08



06/23/2015 12:08



06/23/2015 12:09

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/24/2015 10:00



06/24/2015 09:59



06/24/2015 10:00

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/25/2015 12:20



06/25/2015 12:20



06/25/2015 12:20

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/26/2015 10:22

NO  
REPAIRS  
ALLOWED

06/26/2015 10:22



06/26/2015 10:23

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/29/2015 12:29

NO  
TRESPASSING  
BEYOND THIS  
POINT

06/29/2015 12:29



06/29/2015 12:29

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

06/30/2015 12:24



06/30/2015 12:24



06/30/2015 12:24

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/01/2015 12:38

NO  
PARKING  
HERE

07/01/2015 12:38



07/01/2015 12:38

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/02/2015 12:23

NO  
TRESPASSING  
BEYOND

07/02/2015 12:23



07/02/2015 12:23

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/06/2015 12:37



07/06/2015 12:37



07/06/2015 12:37

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/07/2015 13:37



07/07/2015 13:37



07/07/2015 13:37

NO  
TRESPASSING  
ON RAILROADS  
OR  
HIGHWAYS

07/08/2015 12:37

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/08/2015 12:37



07/08/2015 12:37

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/09/2015 12:31



07/09/2015 12:30



07/09/2015 12:31

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/10/2015 07:03



07/10/2015 07:03



07/10/2015 07:03

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/13/2015 12:40



07/13/2015 12:40



07/13/2015 12:40

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/14/2015 13:02



07/14/2015 13:02



07/14/2015 13:02

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/15/2015 12:37

NO  
TRESPASSING

07/15/2015 12:37



07/15/2015 12:37

NO  
TRESPASSING  
VIOLATORS WILL BE  
PROSECUTED

07/16/2015 08:54



07/16/2015 08:54



07/16/2015 08:54

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/20/2015 12:33



ARMN  
HD291



NO  
TRESPASSING

07/20/2015 12:33



07/20/2015 12:33

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/21/2015 12:48



ARMN  
110291

BUILDING  
AMERICA

ARMN  
11035

NO  
TRESPASSING

07/21/2015 12:48



07/21/2015 12:48

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/22/2015 12:22



07/22/2015 12:21



EXCESS HEIGHT CAR

APRN

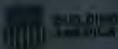
07/22/2015 12:22

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/23/2015 13:05



ARMY  
HOSEN



BUILDING  
AMERICA

07/23/2015 13:05



07/23/2015 13:05

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/24/2015 10:12



NO  
TRESPASSING

ARMN  
110291

DOOR AND LOCK  
MUST BE PROPERLY  
SECURED

 BUILDING  
AMERICA

07/24/2015 10:12



07/24/2015 10:12

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/27/2015 12:45



NO  
EXCESSIVE  
SPEED

07/27/2015 12:45



07/27/2015 12:45

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/28/2015 12:12



ARMN  
110251

BUILDING  
AMERICA

NO  
TRESPASSING

07/28/2015 12:12



07/28/2015 12:12

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/29/2015 13:04





07/29/2015 13:03



07/29/2015 13:04

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/30/2015 15:23





NO  
TRESPASSING

07/30/2015 15:23



07/30/2015 15:23



**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

07/31/2015 06:24



07/31/2015 06:24



07/31/2015 06:25

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/03/2015 10:37



08/03/2015 10:37



08/03/2015 10:37

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/04/2015 12:39



08/04/2015 12:39



08/04/2015 12:39

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/05/2015 12:56



08/05/2015 12:55



08/05/2015 12:56

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/06/2015 12:55



08/06/2015 12:55



08/06/2015 12:55

NO  
TRESPASSING  
VIOLATORS WILL BE  
PROSECUTED

08/07/2015 09:43

NO  
PARKING

08/07/2015 09:43



08/07/2015 09:43

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/10/2015 13:05



08/10/2015 13:05



08/10/2015 13:06

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/11/2015 09:43

NO  
TRESPASSING

08/11/2015 09:43



08/11/2015 09:43

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/12/2015 13:43

NO  
CROSSING

08/12/2015 13:43



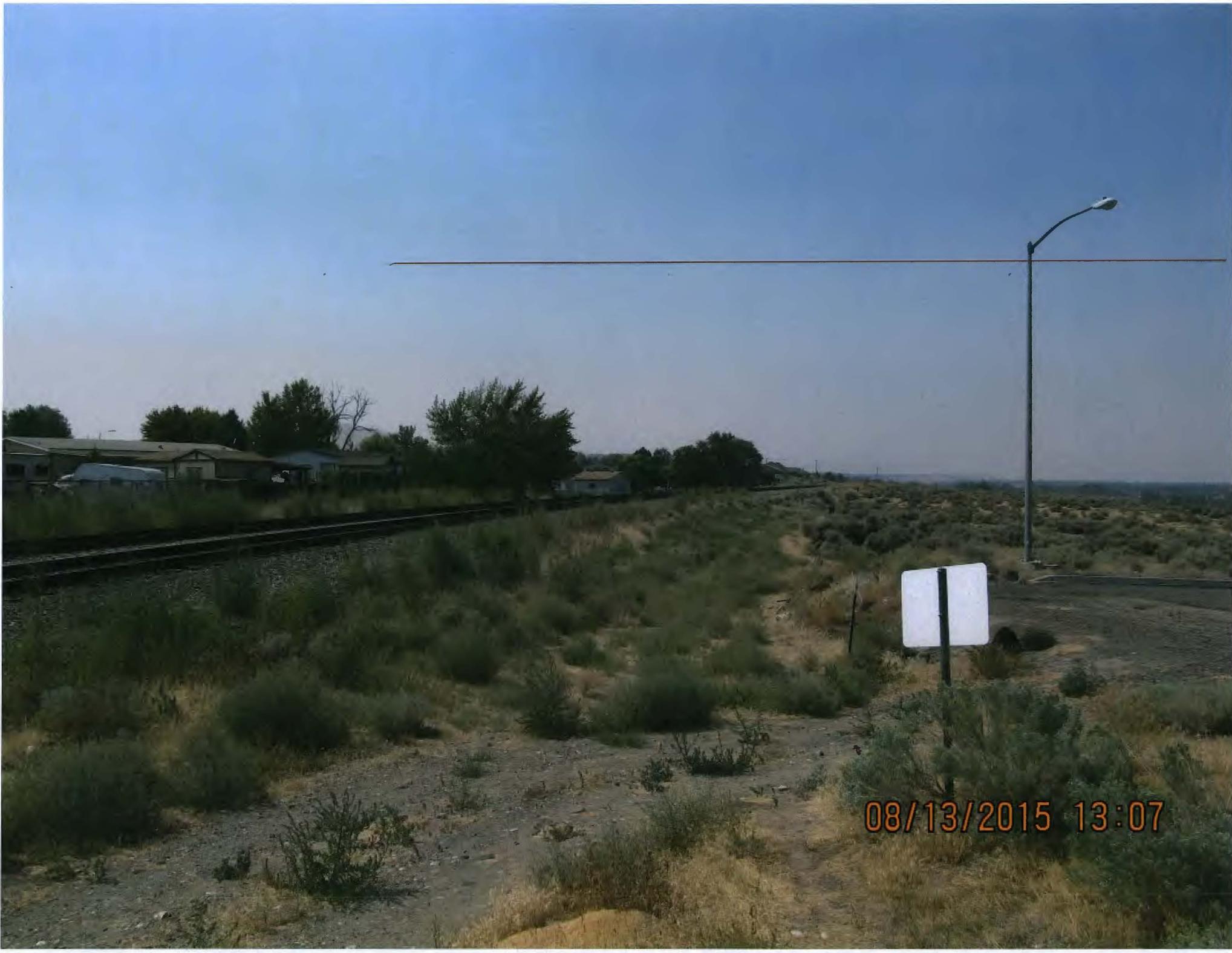
08/12/2015 13:43

**NO  
TRESPASSING**  
VIOLATORS WILL BE  
PROSECUTED

08/13/2015 13:07



08/13/2015 13:06



08/13/2015 13:07