

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 665

RAIL TRANSPORTATION OF GRAIN

SUPPLEMENTAL COMMENTS

OF

MONTANA WHEAT & BARLEY COMMITTEE
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
IDAHO BARLEY COMMISSION
IDAHO WHEAT COMMISSION
IDAHO GRAIN PRODUCERS ASSOCIATION
MONTANA GRAIN GROWERS ASSOCIATION
NEBRASKA WHEAT BOARD
NEBRASKA WHEAT GROWERS ASSOCIATION
OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
SOUTH DAKOTA WHEAT INC.
TEXAS WHEAT PRODUCERS BOARD
TEXAS WHEAT PRODUCERS ASSOCIATION
WASHINGTON WHEAT COMMISSION
NATIONAL ASSOCIATION OF WHEAT GROWERS
NATIONAL BARLEY GROWERS ASSOCIATION

And

THE HONORABLE BRIAN SCHWEITZER, GOVERNOR, STATE OF MONTANA

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I. INTRODUCTION

These commenting parties (collectively called the "Wheat & Barley Commissions"), by and through their representative, submit these Supplemental Comments in STB Ex Parte No. 665, *Rail Transportation of Grain*, the Board's inquiry into the current state of the railroads' handling of shipments of grain and other agricultural commodities. As reported in the Comments filed in this proceeding on October 30, 2006, and in oral testimony by the undersigned at the Board's November 2, 2006 Hearing, the Wheat & Barley Commissions have been working to gather and analyze relevant information beyond the information that could be produced during the period between the Board's notice and its Hearing. One of the surveys being conducted involved data collection at various grower group listening and convention settings through mid-December.

The Wheat & Barley Commissions thank the Board for honoring our request that the record be held open for an extended period of time to allow completion of the studies and the compilation of the report material for the Board's consideration. The study results shed light on the effect on grain producers and state and local governments of consolidation efforts by railroads, including efforts to work with a smaller number of larger grain elevators. Those results also confirm the need for action by the STB.

II. STATEMENT OF INTEREST

The Montana Wheat & Barley Committee is administratively attached to Montana State Government, headed by the Honorable Brian Schweitzer, Gover-

nor. The Wheat & Barley Commissions, various Grower groups, the National Association of Wheat Growers, and the National Barley Growers Association collectively represent over 100,000 farm producers in the United States. The Wheat & Barley Commissions represent producers in the major wheat and barley producing areas of the United States covering large parts of the grain growing belts of the Great Plains and many other parts of the country from the Eastern U.S. to the West Coast.

The Wheat & Barley Commissions are charged with representing the interests of wheat and barley producers in the marketing of their grains domestically and internationally. The National Association of Wheat Growers and the National Barley Growers Association represent virtually all of the wheat and barley growers in the United States, a vast majority of whom are captive to single rail carriers for significant portions of their freight shipments. As detailed below, the facts presented in these Supplemental Comments support concerns already voiced by these and other agricultural interests in this proceeding, by the U.S. Department of Agriculture, and by the Government Accountability Office in its Report 07-94. Accordingly, we call on the STB to take action pursuant to 49 U.S.C. Section 721 to investigate "the management of the business of carriers" insofar as it has led to the grain transportation issues raised in this proceeding, and in particular the issues raised in these comments regarding adverse impacts of the shuttle rate program.

III. WHEAT AND BARLEY GROWERS ARE UNIQUE RAIL TRANSPORTATION USERS

Growers of wheat and barley are unique in the rail transportation world. They generally bear but do not directly pay railroad freight rates and charges. In Montana, growers are captive in large part because virtually all grain shipments are handled by just one railroad system, BNSF or its affiliates. Unlike a number of other rail customers they are unable to pass excessive rail freight costs on to any other party. The growers' grain receipts reflect rates as high as 400+% of variable costs to move Montana grain to market – some of the highest rail rates in the nation. As stated in the Opening Comments in this proceeding, the grain producers are frustrated with this Board's lack of focus on providing solutions and avenues for relief from exploitation by market dominant railroads.

The Wheat & Barley Commissions and the growers they represent are faced with the combined effects of increasing railroad monopoly and market power and ineffective rail regulation.

IV. A REVIEW OF THE STATE OF RAIL TRANSPORTATION FOR WHEAT AND BARLEY GROWERS TODAY

The Wheat & Barley Commissions showed in their Opening Comments that:

- the farm producers in this country have little or no rail transportation choice;
- farm producers throughout the Great Plains and the Pacific Northwest have long been subject to excessive freight levels with rates at

250-300-400 and even 500% of variable cost, far above the threshold of jurisdiction for relief;

- the highest R/VC levels on agricultural products are found in captive areas in the western U.S., namely in Arizona, California, Colorado, Idaho, Kansas, Montana, Minnesota, North Dakota, Nebraska, South Dakota, Oklahoma, Oregon, Texas, and Washington;
- vast areas of the agricultural west have lost competitive service in ICC/STB approved mergers over the last thirty years;
- the GAO Report 09-74 results are mirrored in the Comments of the Wheat & Barley Commissions' Opening Statements filed October 30, 2006;
- the price of rail transportation has risen from around 15% of the price of wheat 30 years ago to as high as 30-50% today as the growing areas have become more captive;
- the railroads today pick and choose which crops will be marketed when and where; and
- the STB has not provided rate relief and service remedies and has failed to protect the competitive balance between railroads and rail customers outlined in the GAO report and called for in the Staggers Rail Act of 1980.

In these Supplemental Comments, the Wheat & Barley Commissions provide further evidence of the foregoing problems, provide suggested remedies,

and call on the Board to expand this proceeding or initiate a new proceeding to consider and implement remedial action.

The Wheat & Barley Commissions also note for the record once again that the grain experience is mirrored in the rail transportation of coal, silica, sand, plastics, chemicals as well as many other industries covering the width and breadth of this country. The key point with respect to this proceeding is that the wheat and barley growing areas in this country need the STB's help.

As stated in the *Alliance for Rail Competition* Comments in this proceeding and echoed here, "At every turn, they (the farm grain producers) face Board-created barriers to reasonable rates, adequate service, and rail to rail competition that the STB shows little inclination to remedy. In these and other respects, the promise of the Act is belied by the way its provisions have been interpreted by the ICC and STB, so as to insulate the railroad industry from effective regulatory oversight and from marketplace discipline."

Grain producers recognize the need of railroads for adequate revenues, but the Board has not focused on the price being paid by the grain producers and has not seen fit to provide reasonable remedies to guard against market abuse. We remind the Board of the mandates outlined in the Rail Transportation Policy in 49 U.S.C. Section 10101(12) to "prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination."

The evidence presented by GAO studies in 2006, 2002 and 1999 point to the same conclusion: the Board is not adequately protecting large parts of the country from abuse by market dominant railroads.

V. THE MONTANA RAIL SERVICE COMPETITION COUNCIL HAS COMPLETED THE INITIAL PHASE OF ITS 2006 MONTANA GRAIN RAIL TRANSPORTATION SURVEY

The Montana Rail Service Competition Council (MRSCC), chaired by Mike O'Hara, was created by the last Montana Legislature, and charged under House Bill No. 769 "to Promote Rail Service Competition in State" and "to develop a comprehensive and coordinated plan to increase rail service competition in Montana." MRSCC has recently completed the first phase of a detailed study of rail transportation of grain from Montana origins. It has not been possible in the time available to conduct similar studies in each of the represented states, but clearly the trends identified by MRSCC – reduced service and reliability, service disruptions, increasing captivity and increasing rates, charges and cost shifting – are similar throughout the wheat and barley growing areas. See the Wheat & Barley Commissions' Opening Comments filed October 30, 2006, and other record evidence provided by governmental, agricultural and shipper interests.

The MRSCC study is a comprehensive review and evaluation of the 2006 grain harvest in Montana. It also develops a factual predicate to quantify the effect the railroad shift from 26 and 52 car loading facilities to 110 car shuttle facilities has had on the trucking of grain from farms to ever more distant elevators. In essence, shuttle elevators were fostered by the carriers to load, move, and deliver grain efficiently from shuttle origins approved by the serving carrier that of-

ten received financial inducements from carriers to construct the high-speed loading facilities necessary to make shuttle trains operate at peak. Lower rail rates available to shuttle users enable shuttle elevators to attract grain away from non-shuttle elevators.

The Wheat & Barley Commission's Opening Comments cited a recent study by the Montana Grain Growers Association showing the trend of ever more distant hauling by Montana grain producers in order to market their grain. The MRSCC study confirms the thesis of that original study by Montana Grain Growers and further quantifies the amount of hauling and type of highways being utilized by the farm producers to get their crops to ever more distant markets.

These trends have been studied because of the impact which railroad shuttle train marketing programs have had on Montana governmental entities, shifting costs to State and county governments for road repairs and lessening competition between grain elevators, which eventually will mean lower prices to farmers.

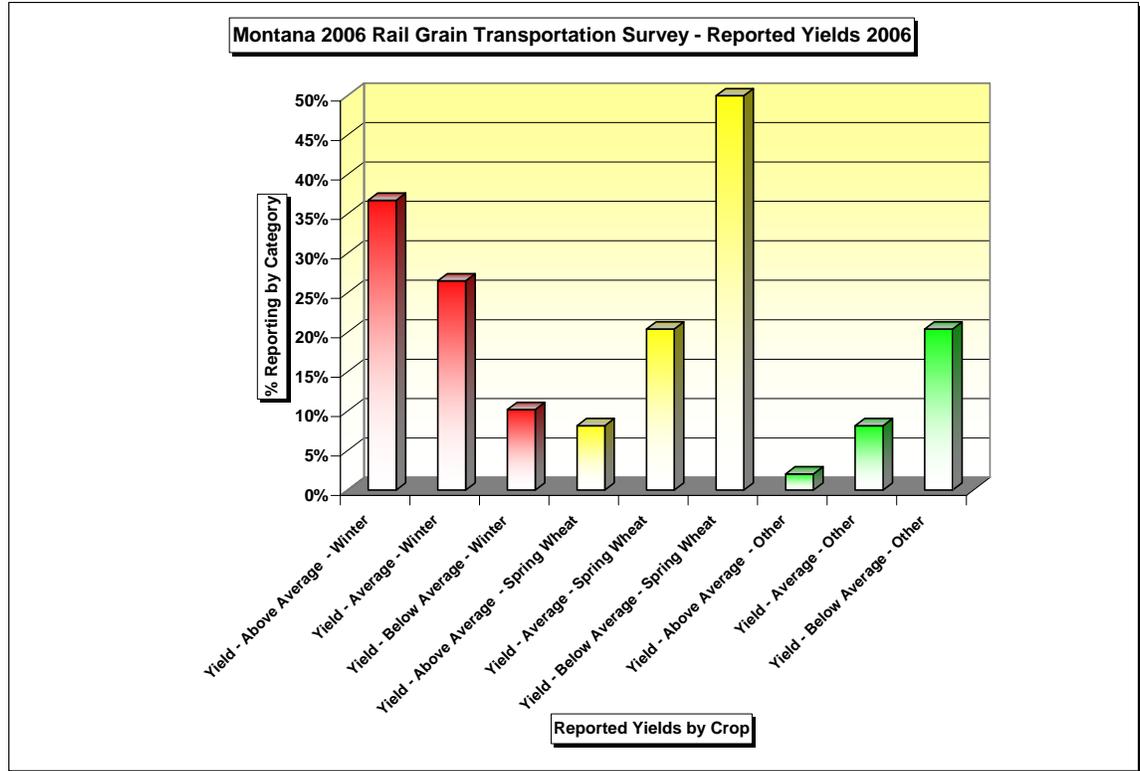
VI. BASELINE FOR THE MONTANA 2006 RAIL GRAIN TRANSPORTATION SURVEY AND STUDY

In Montana, 2006 was a year in which yields were both above average or below average crop yields depending on the crop being grown and the location of the growing area. Montana is a large state and traditionally produces the third largest wheat crop of any state in the U.S. Part of the state grows winter wheat (wheat that is planted in the fall – goes dormant in the winter – and then grows to maturity in the summer), spring wheat (which is planted in the spring for maturity in the summer), barley (which is planted in the spring for maturity in the summer),

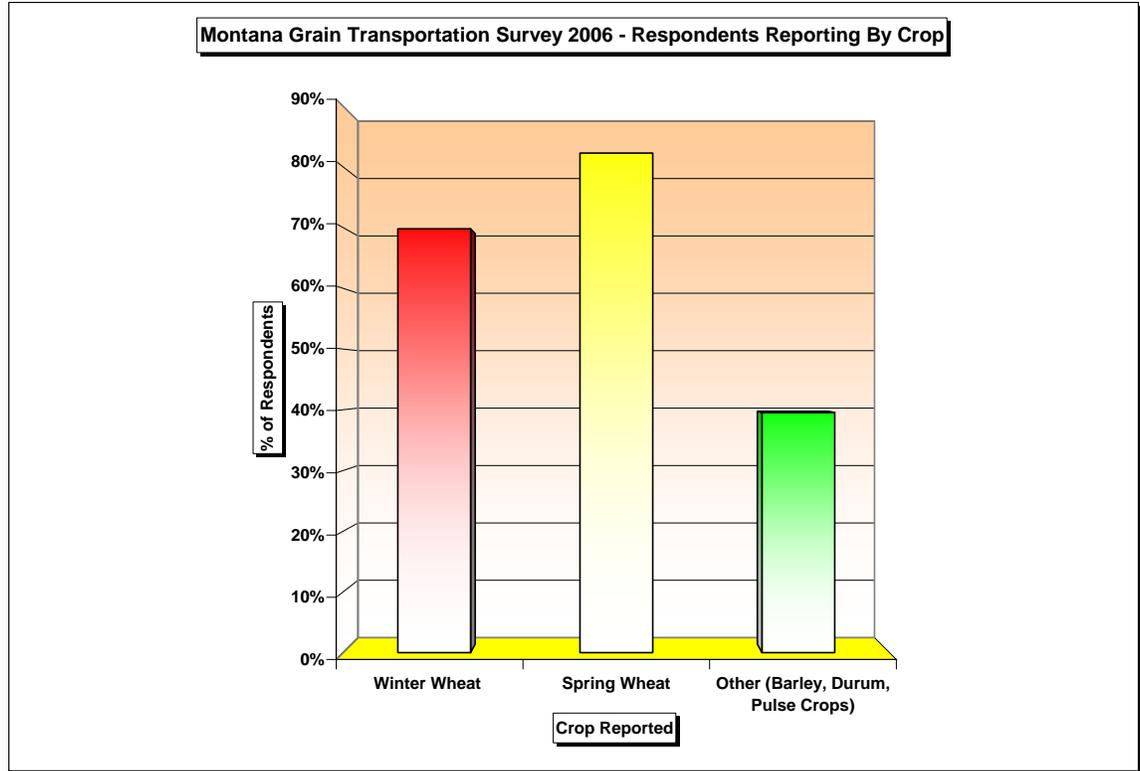
durum (which is planted in the spring for maturity in the summer) and various peas and lentils which are planted in the spring for maturity in the summer.

Much of the central plains area suffered from a below-average wheat crop during the 2006 harvest due to very dry and drought conditions. However, parts of Montana produced above average crop yields while other parts had less than average yields. Generally, the winter wheat crop was above average and the spring planted crops were at or below average.

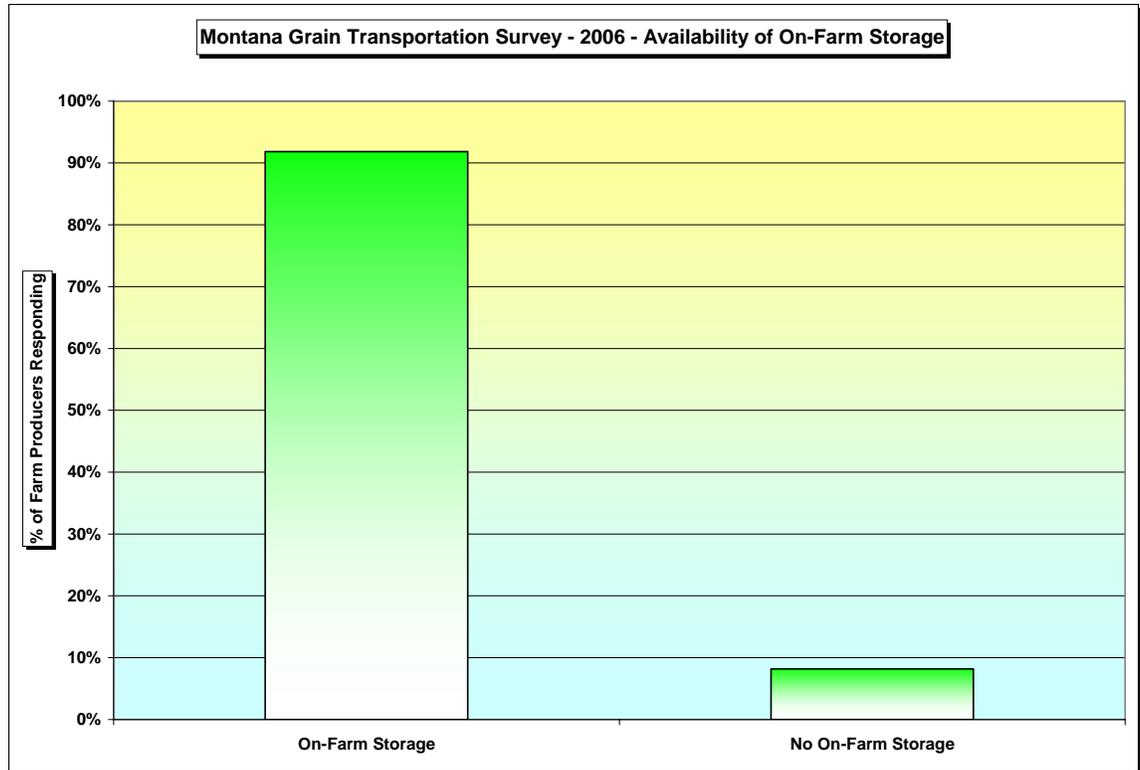
The reported yields by the respondents to the study clearly showed this variance in production. Even though the study showed a mix of both spring and winter crops, farm producers still had major transportation delays. Elevators were often "plugged," that is, they could not accept more grain because they were at full capacity. Rail service problems were a major cause of these conditions, which occurred despite the fact that rail rates and charges on Montana grain shipments are extremely high.



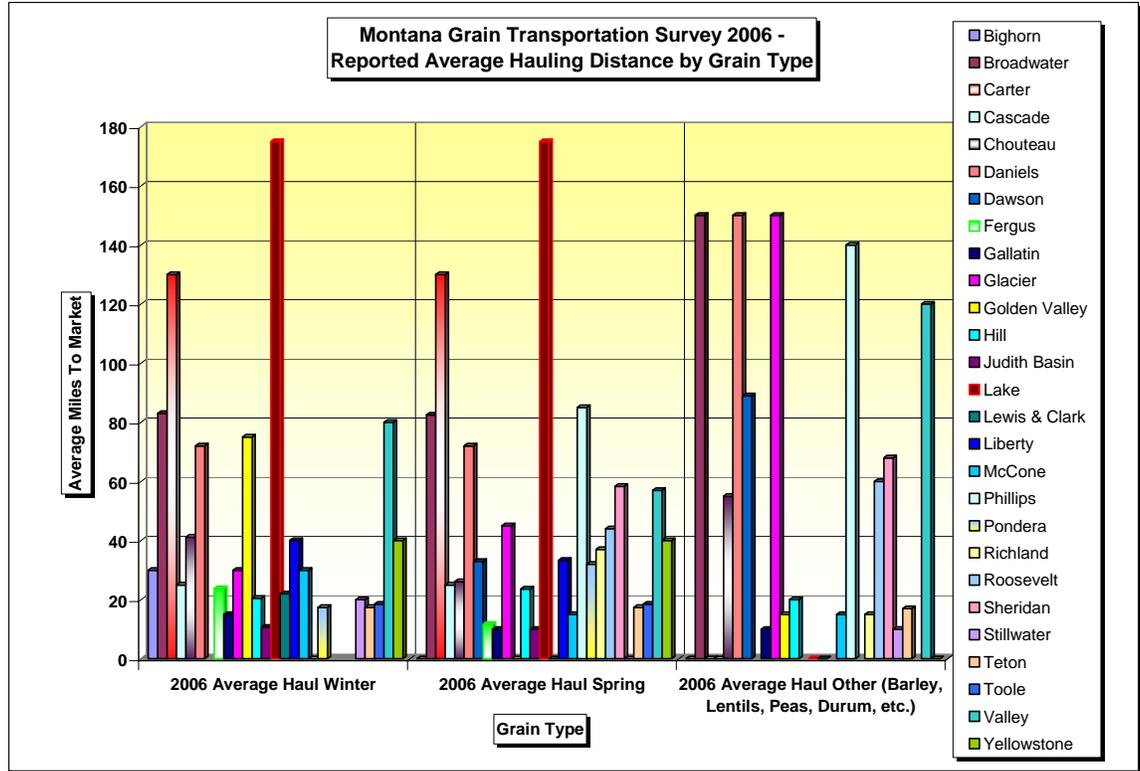
The study showed a general balance for the crops harvested in Montana, geographically the 4th largest state in the Union. Over 70% of the respondents grew winter wheat and over 80% of the respondents grew spring wheat and approximately 40% of the respondents grew other major crops (barley, durum, peas, lentils, etc.).



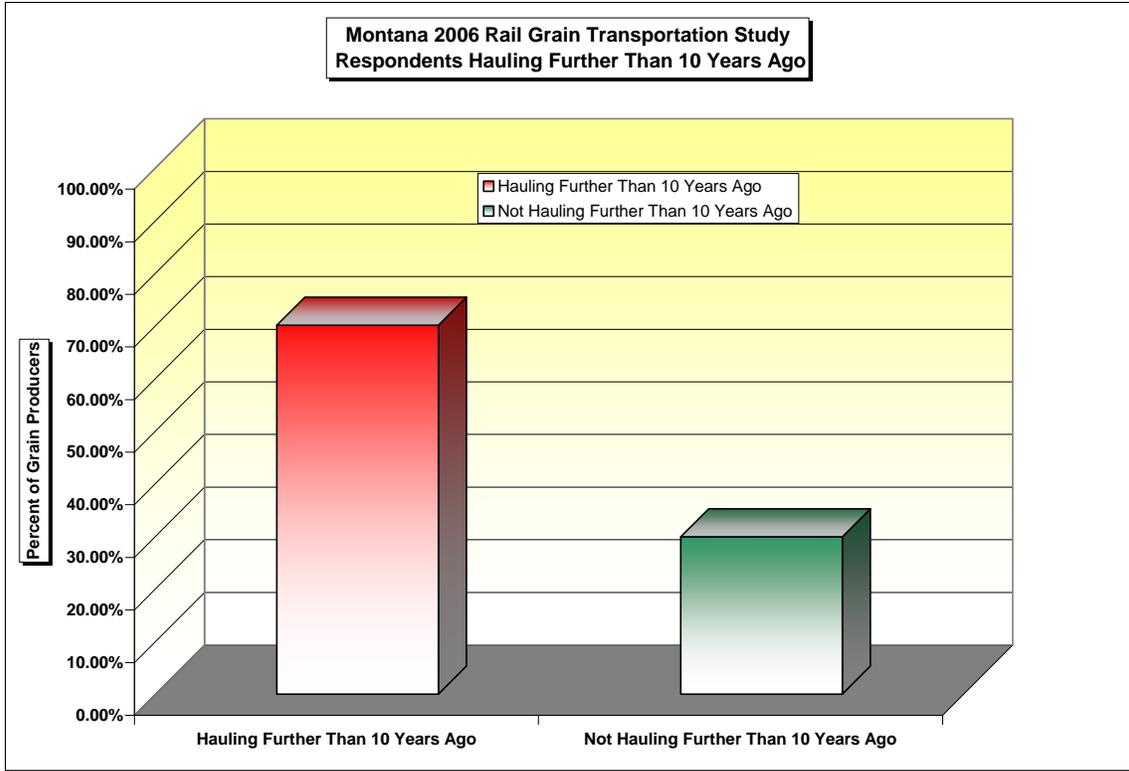
Over 91% of the farm producers responding to the survey had on-farm storage with the ability to store some or all of the crop after harvest before delivery to the grain elevator. This has become a necessity given current price fluctuations and transportation delays.



Grain producers from twenty-seven counties (virtually all of the grain producing counties in Montana) reported a range of average hauling distances to the marketing elevator for the 2006 season, as shown in the graph below. Clearly the distances vary with the counties and the crops. The greatest distances shown on the graph are for producers in Carter County at 130 miles (one way) and Lake County at 175 miles (one way) for both winter and spring wheat. It is also clear from the graph that 'Other' crops (durum, barley, peas, lentils and other pulse crops) show higher hauling distances. But the real question is how have these hauling distances changed over the last 10 and 20 years?

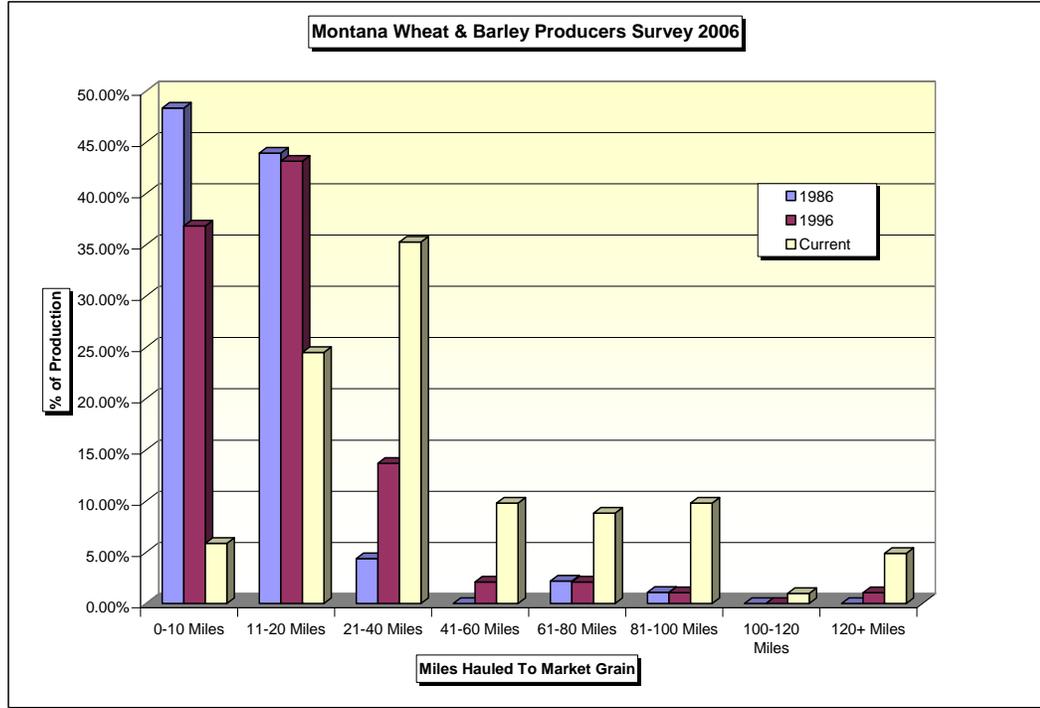


The survey requested respondents to indicate whether their hauling distances have increased over the past 10 years. Over 70% of the Montana grain producers are hauling their products farther than they were 10 years ago, and

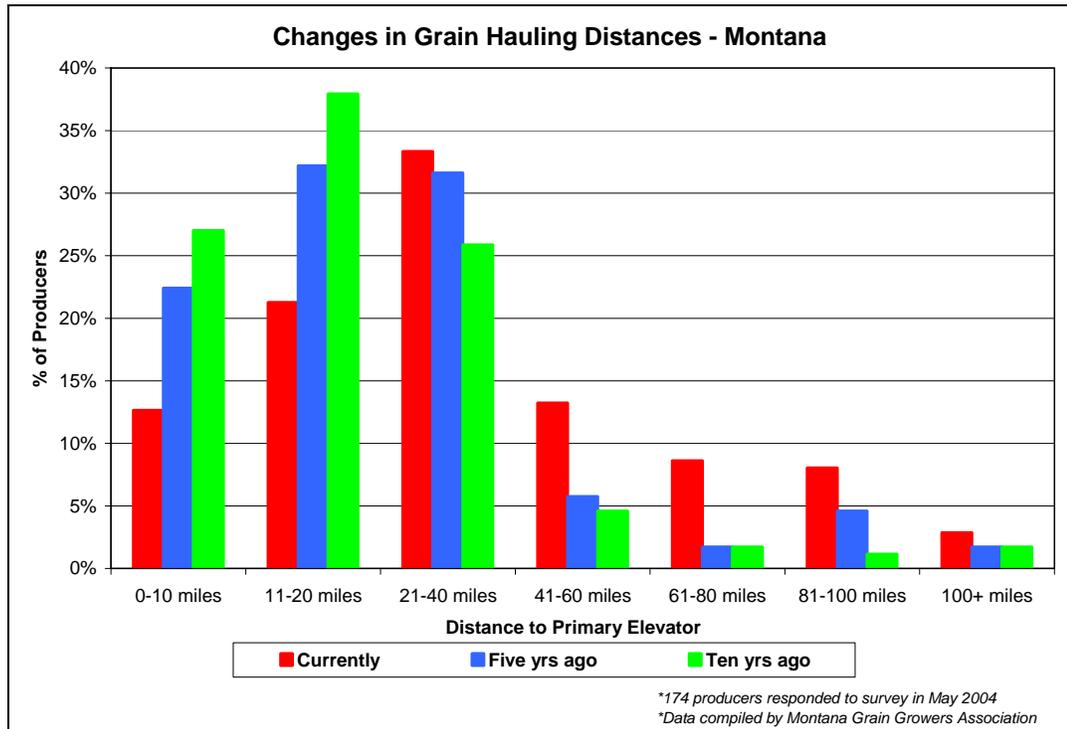


100% of those hauling farther than 10 years ago are also hauling farther than they were 20 years ago. This trend reflects the transition to a smaller number of elevators located in the state. The distances to local elevators continue to increase in all of the plains states.

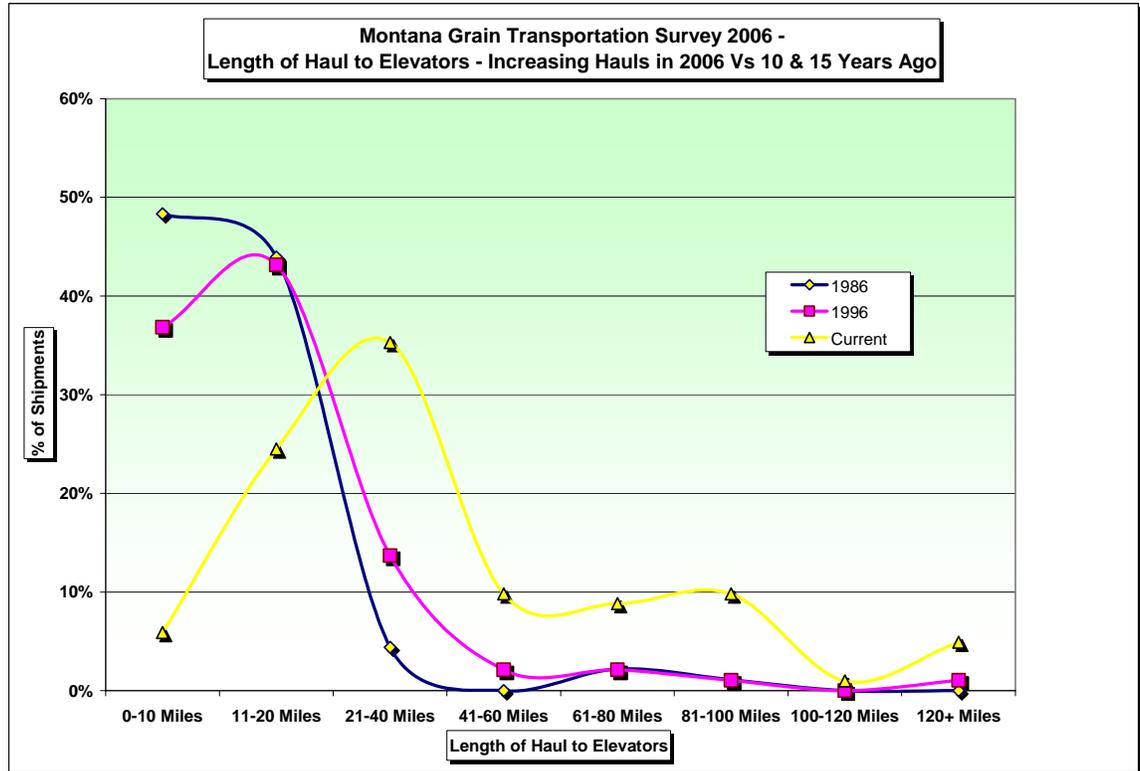
When the distances are tracked for all respondents, it is clear that the average distances are continuing to increase substantially – mirroring the results of the 2004 Montana Grain Growers Association study presented in the previous Comments of Wheat & Barley Commissions.



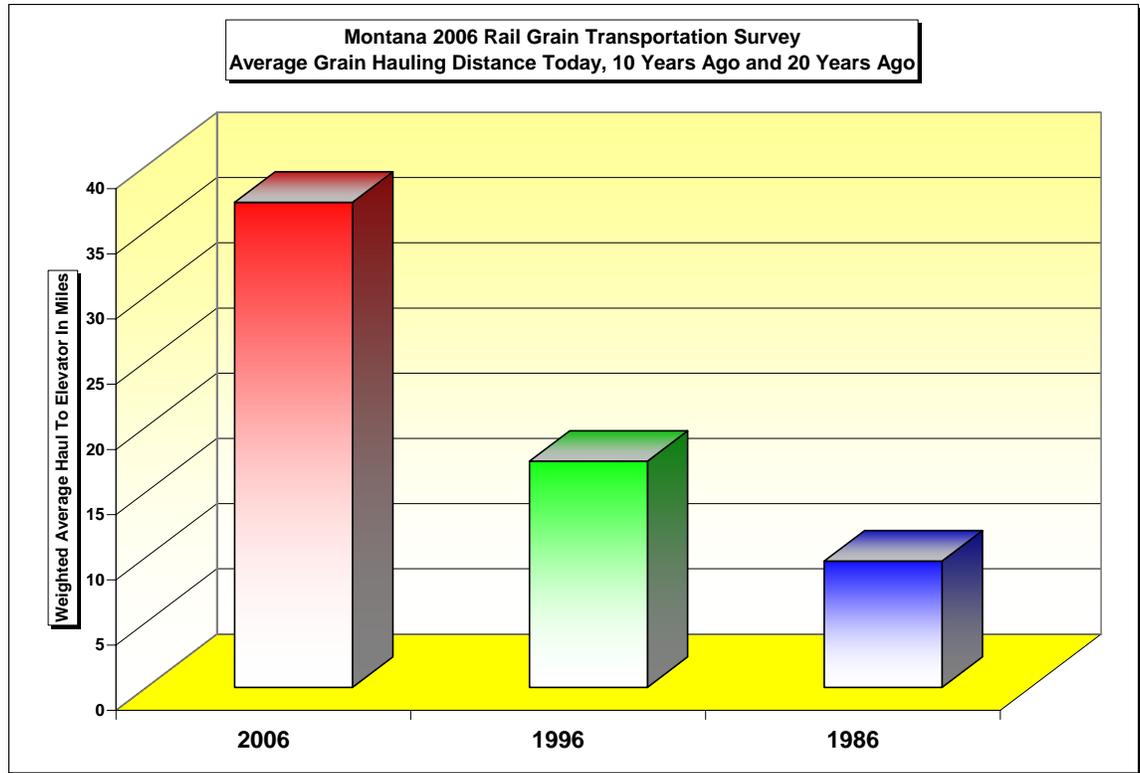
When displayed in a bar graph, the trend of ever-increasing longer hauls is clearly demonstrated. The Montana Grain Growers Association study conducted in May, 2004 shows very similar trend results, supporting



the results in the MRSCC Montana Rail Grain Transportation 2006 study. The evidence is thus strong that the trend to longer and lengthening hauls is real. It is also noteworthy that the number of hauls with average mileages in the 41 to 100 mile blocks has increased dramatically in the last 10 years.

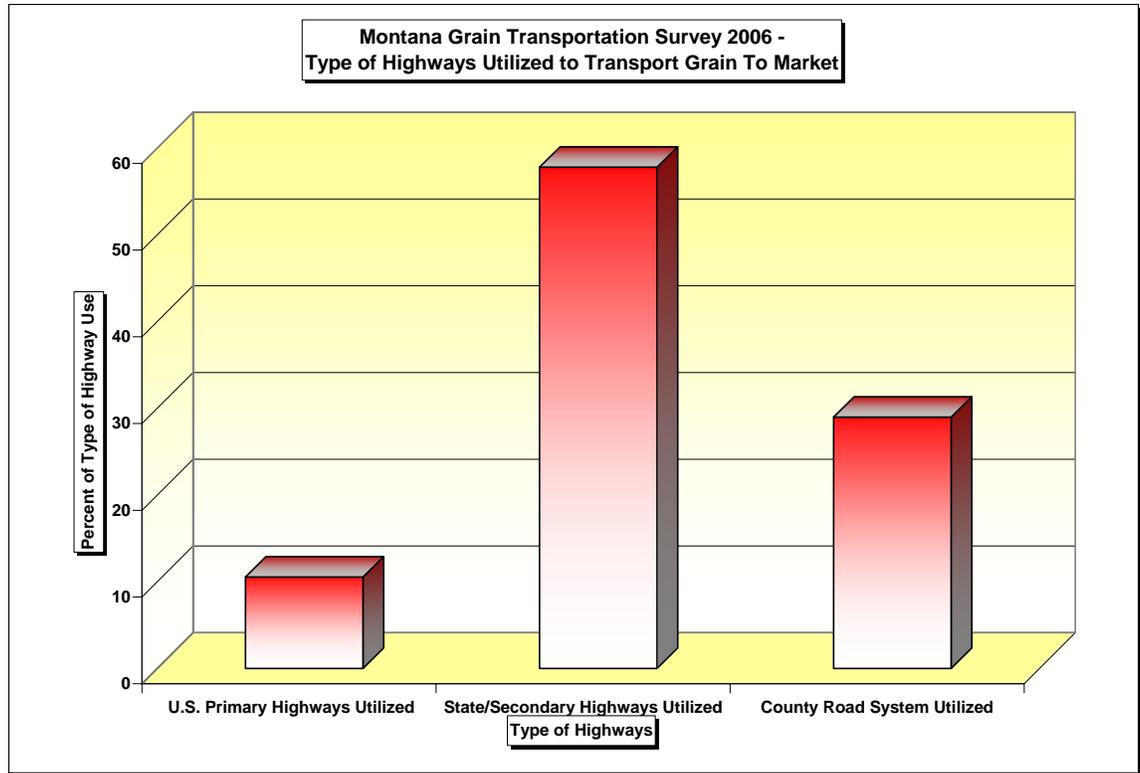


The data from all respondents shows an average one way haul today of 37.19 miles compared to an average haul of 17.35 miles 10 years ago (an increase of 114%), and 9.69 miles 20 years ago (an increase of 285%). Notably, 70% of all respondents are showing increases in hauling distances.



Additionally, this increase in average haul takes place predominantly on Montana's secondary highway system. Thus the movement to fewer numbers of grain elevators served by BNSF and its affiliates has led to increased costs and burdens to producers trucking farther and farther, and increased costs and burdens to the State of Montana in higher highway maintenance costs – particularly on State secondary highways.

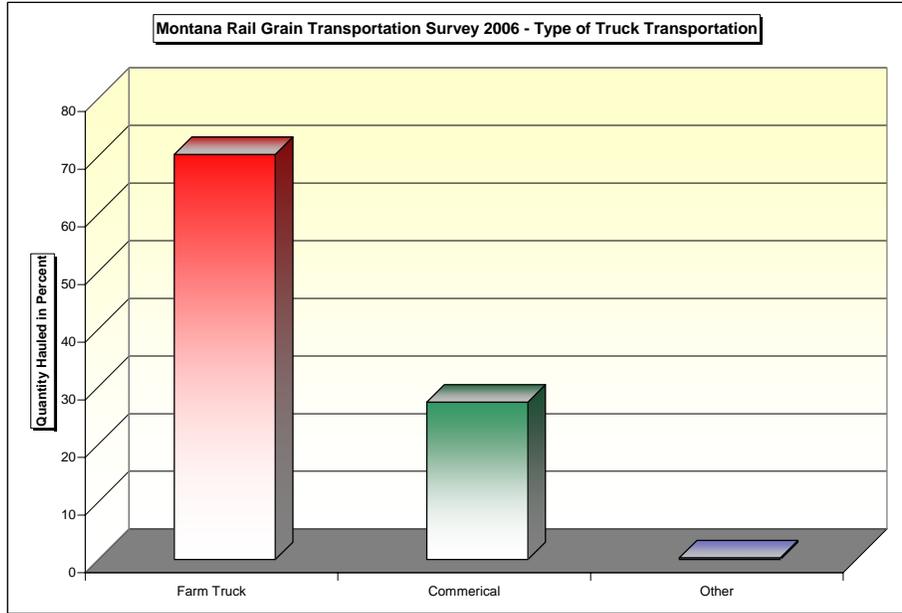
Working with the Montana Department of Transportation, the MRSCC will be developing estimates of the relative dollar costs associated with these trends, but the time constraints of the filing deadline in this proceeding did not permit completion of that part of the analysis. It is significant that these added trucking and highway costs are locally borne costs.



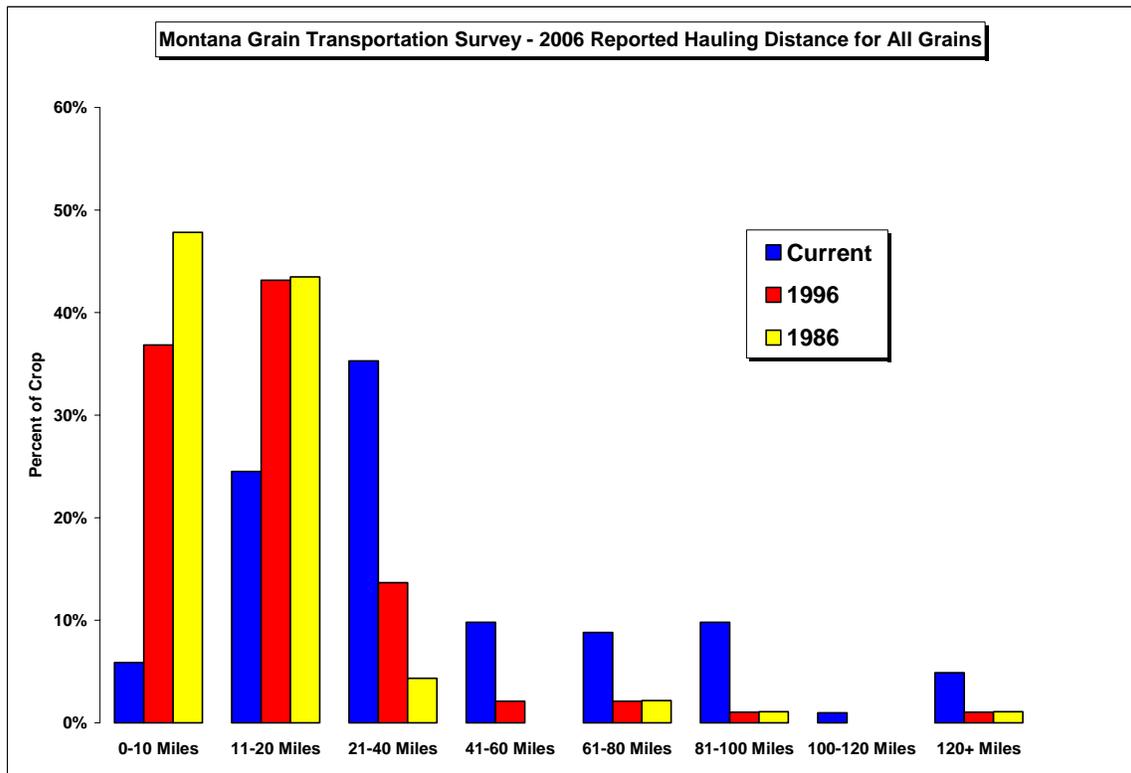
Similar evidence of adverse impacts should be expected in virtually all of the Plains states because states other than Montana are also experiencing the loss of elevator facilities and ever-lengthening hauls to fewer and fewer elevators. The most important point developed by this study is that it rebuts claims by major Class I railroads that they are lowering grain rates nationally. The evidence contained in the MRSCC study shows that while a downward trend in rates per ton-mile might be occurring, the cost to the grain producers and the States are simultaneously rising because clear transfers of costs and burdens from the private railroad sector to the public sector and the farm producers.

Over 70% of the initial farm hauls occur in Farm trucks with about 27% occurring in Commercial trucks. Farm trucks are generally small capacity vehicles, requiring repetitive trips to move a farmer's crop to an elevator for rail ship-

ment. Longer and more frequent hauls mean a greater investment in labor, fuel and truck costs.



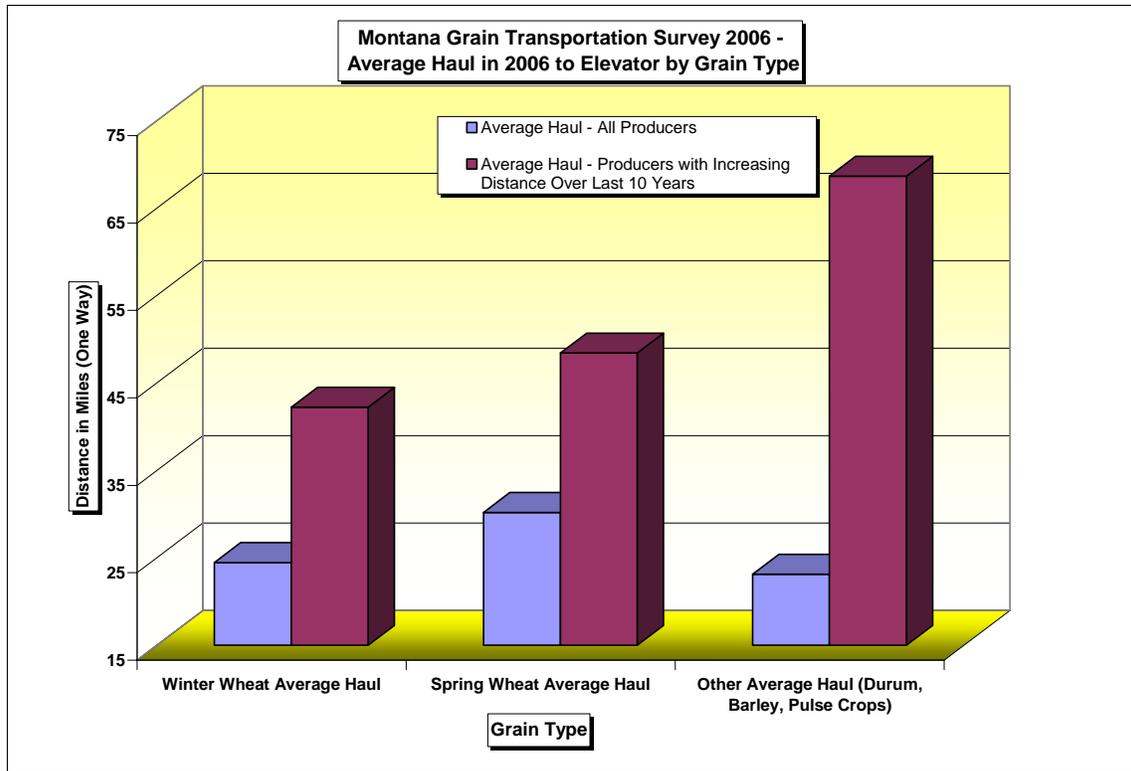
The crop percent overlaid by the average hauling distances shows that the hauling distances are continuing to spiral upward.



As the railroads move the grain industry to shuttle elevators and away from single, 26 car and 52 car loading facilities, the grain elevators to which producers need to haul their grain are becoming ever more distant. These increased costs of gathering are being shifted to the farm producers and the state and local highways in virtually every mileage block we see.

One of the most important findings of the study centers around the graph below. The farm producers reporting increases in hauling distances over the last 10 or 20 years are showing current average hauls much higher than farm producers who are still able to use nearby elevators. It is clear that the burdens and costs of increased hauling are not falling on every producer but are concentrated

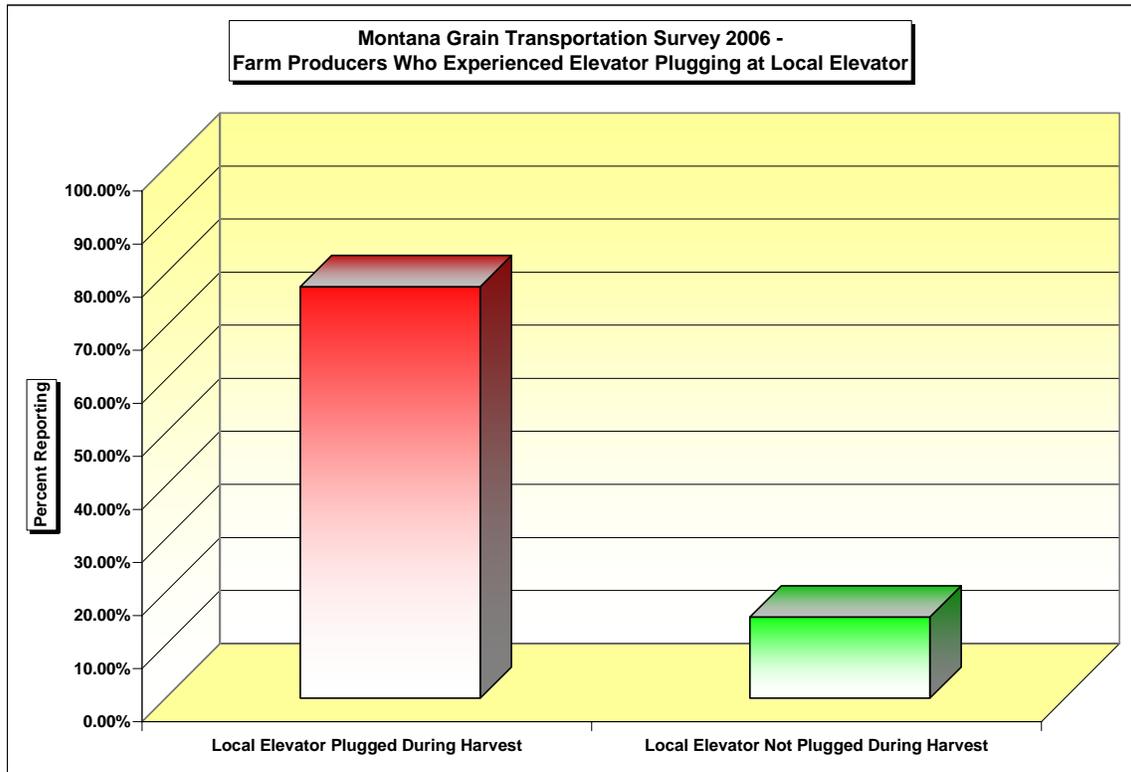
most heavily on those who have lost access to local elevators are thus more cap-
 tive. In this way, market dominant railroads are imposing higher costs and bur-
 dens on farm producers and merchandisers, over and above the increased costs
 reflected in higher rail rates and charges.



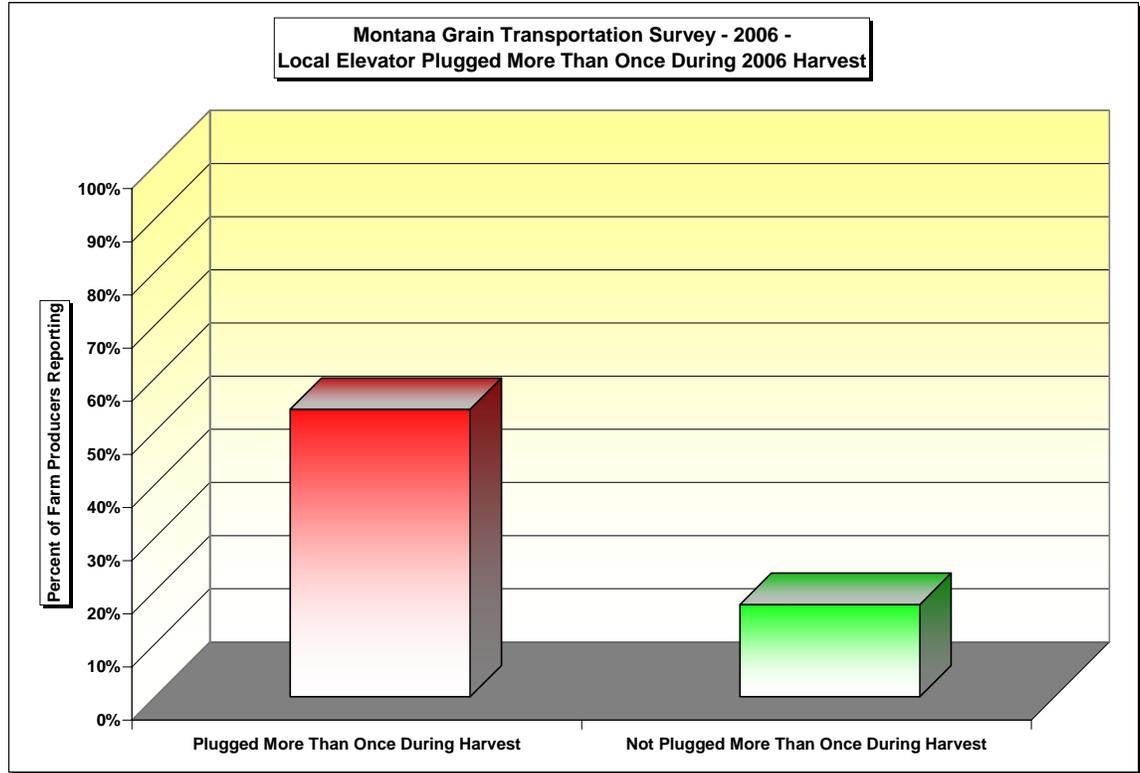
VII. EVEN THOUGH THE MAJOR GRAIN PRODUCING AREAS IN THE U.S. (OUTSIDE OF MONTANA) SUFFERED BELOW AVERAGE PRODUCTION, MOST OF THE MONTANA GRAIN PRODUCER RESPONDENTS REPORT EXPERIENCING MULTIPLE PLUGGING OF THE ELEVATORS

Over 78% of the grain producers responding to the survey reported ex-
 perienceing elevator plugging during the harvest. The Montana harvest comes at
 the end of the harvest season, due to the State's northern location, and in 2006,

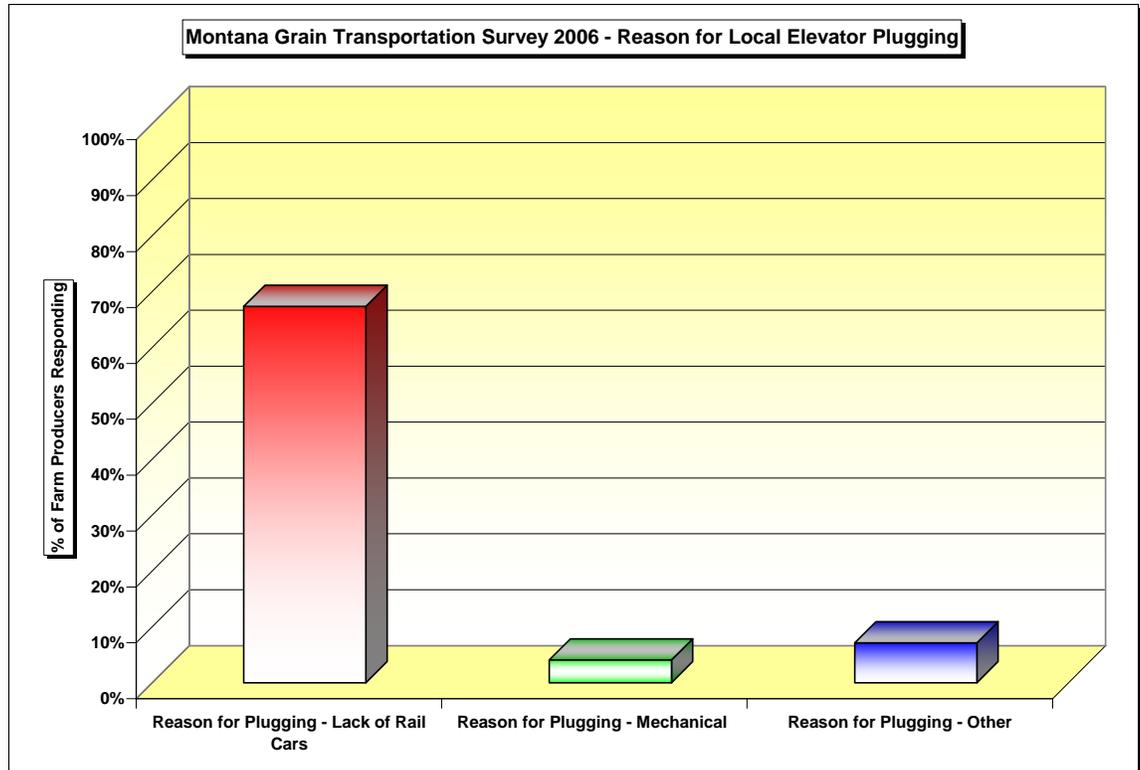
came on the heels of major reductions in crop production experienced elsewhere in the Great Plains due to dry conditions. These reductions in grain volumes outside Montana should have enabled railroads serving Montana elevators to improve their service. This did not happen.



Additionally over 54% of those grain producers reporting elevator plugging during the 2006 harvest saw multiple pluggings during the harvest season.



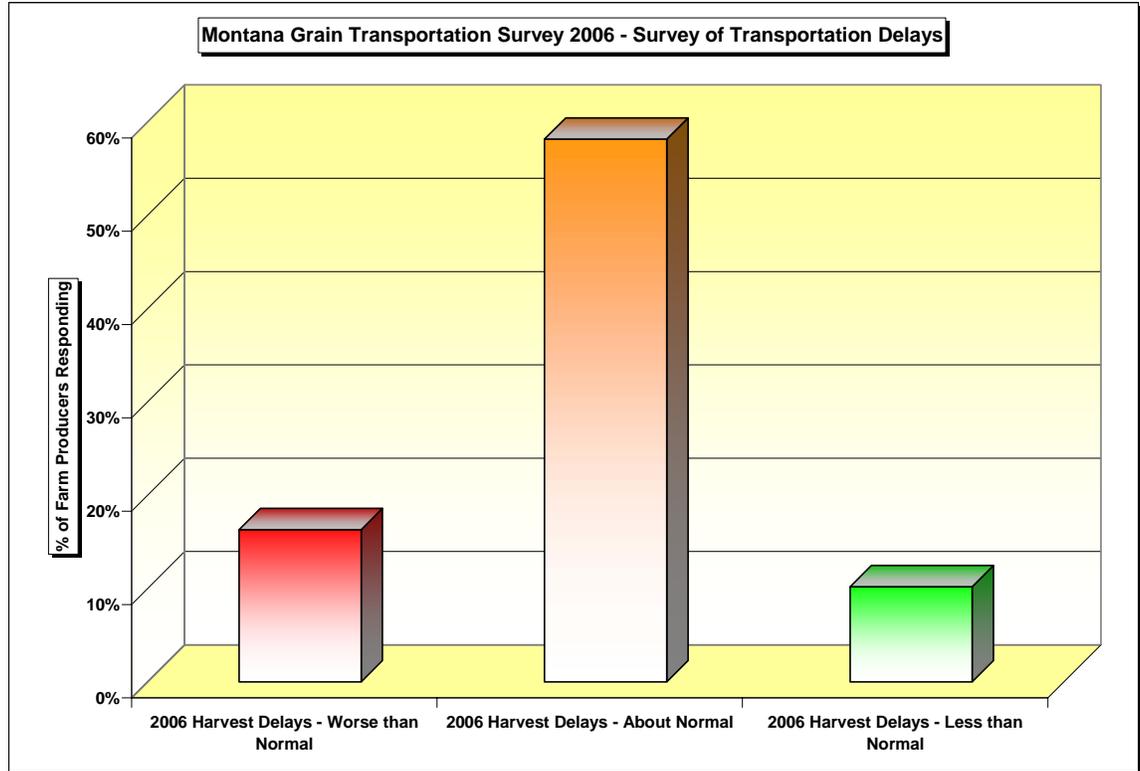
Over 67% of the grain producers reported that the major reason for the plugged elevators was lack of rail cars. That, in turn, may in part be a function of other carrier issues such as lack of power.



Although these results are evidence of severe problems, the farm producers responding to the survey felt that their poor service was essentially "business as usual" for the railroad! It should be disturbing to the Board that inconsistent and unreliable service to those who pay some of the highest, most profitable transportation rates in the nation has come to be seen as the norm. Many of the farm producers responding to the survey pointed out that in 2006, when Montana had crop yields both above and below average, production on the central plains as a whole was below average. Yet, Montana producers were faced with the "normal" rail car shortages and reports of plugged elevators. It is no coincidence that these results were reported in Montana, the state with the highest percentage of rail line controlled by a single railroad in the nation.

It may be understandable that railroads do not keep a car supply on hand to meet system-wide peak demands. But by the time the Montana harvest occurs, wheat harvests in the lower plains states are over. Further, and perhaps most important, if Montana shippers are paying high rates and providing substantial profits to BNSF, there is no reason why Montana does not receive car supplies commensurate with the high revenue that its rail rates produce. In all other respects, BNSF says that it is entitled to put its assets to work where they yield the highest profits. There is no reason why those who pay the highest rates should have to wait so long for service.

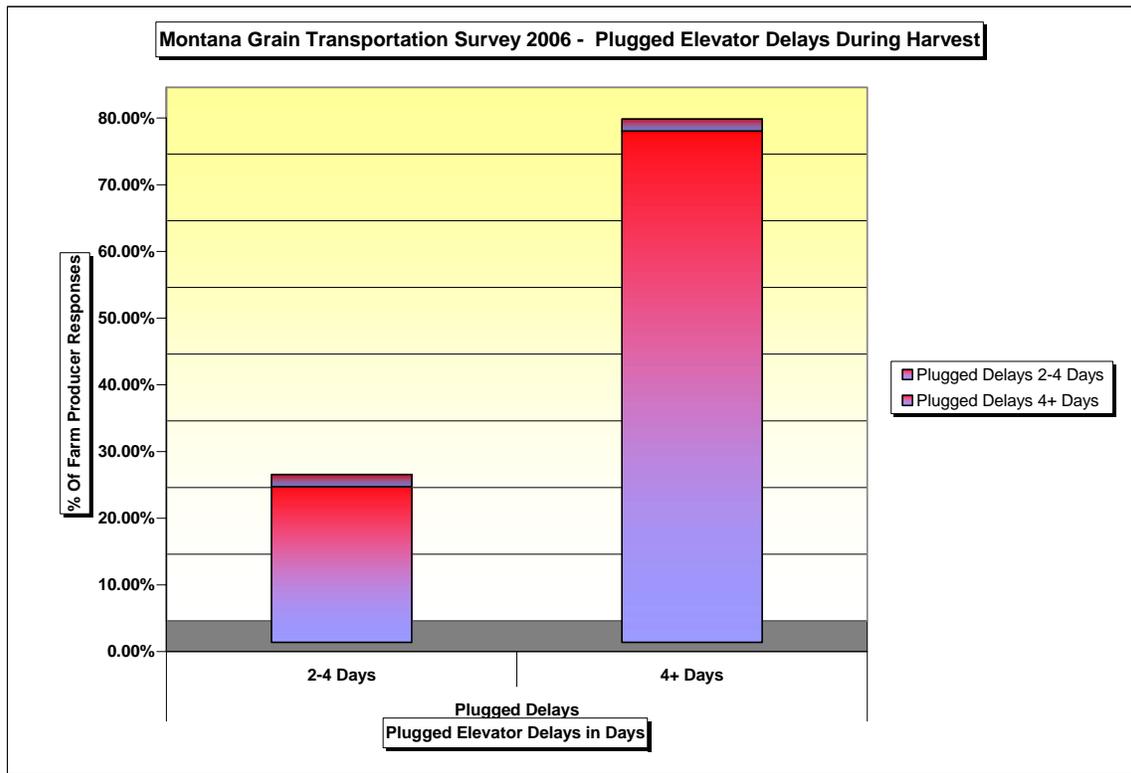
Many comments accompanied the survey returns and while space and time do not allow for a complete listing, one interesting comment suggested that farm producers "don't expect good service from the railroad even though they pay over 40% of the price of their wheat to the railroad, nor do they expect the STB will do ever do anything about it."



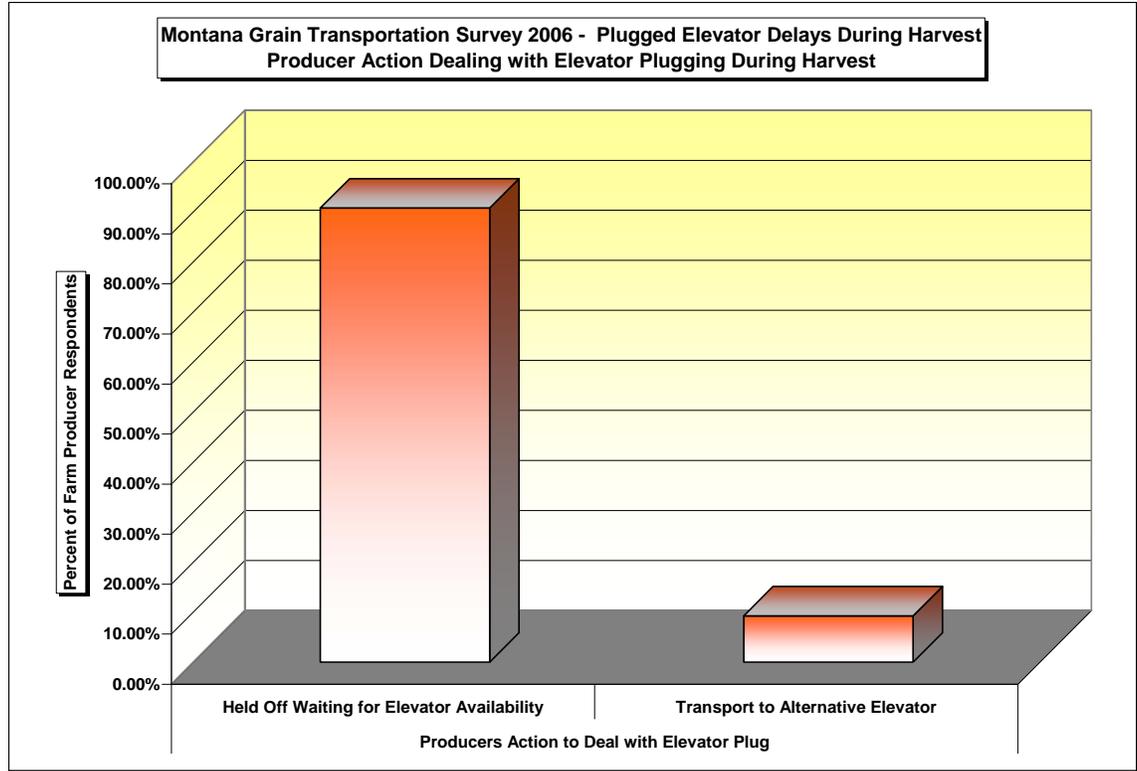
The preliminary results already show that farm-to-rail costs are continuing to increase and that railroads are achieving their own internal operating efficiencies at the expense of the farm and public sectors. When some areas are experiencing truck hauls of over 100 miles one way to deliver grain to a shuttle elevator, that conclusion is inescapable.

Car shortages occur more frequently at non-shuttle origins than at shuttle elevators, providing another forced inducement for grain producers to use carrier-preferred shuttle elevators. The resulting frequent delays create powerful incentives for shifts of grain to shuttle elevators, because farm producers depend for their livelihood on a crop produced once a year, and the price for that crop can

fall dramatically when delivery opportunities are missed due to poor rail service.



The long distances to alternative elevators meant that, over 90.7% of the time, farm producers held onto their grain and waited for railroad cars to arrive so the elevator could be unplugged. The railroad, due to its market dominance and the corresponding lack of market alternatives for the farm producer, has little risk of loss of traffic because there is no effective competitor to provide an alternative marketing option for grain producers in the event of delays.

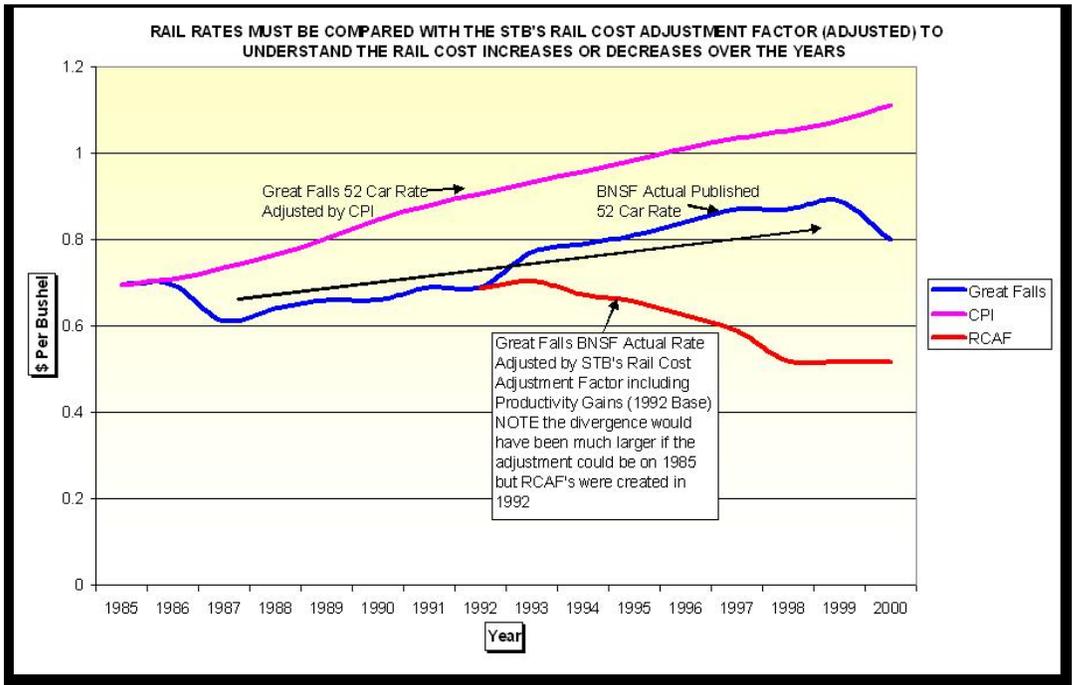


The railroads frequently cite national statistics allegedly showing "decreasing rail rates." The Board must understand that in large part, this reported decrease is offset by escalating cost shifting to farm producers and state/local governments.

VIII. COMPARING RAIL RATE CHANGES USING THE RCAF INSTEAD OF THE CPI IS INSTRUCTIVE

Class I railroads frequently compare freight rate histories against a CPI index. However comparing these same rates against the RCAF, which was created by the ICC/STB for utilization in adjusting rail freight rates, provides a more accurate portrayal. In the chart below we have taken a chart one of the Class I railroads utilizes frequently and supplemented the chart by adding a comparison

line adjusting the published rates in accordance with the RCAF for each year since 1992.



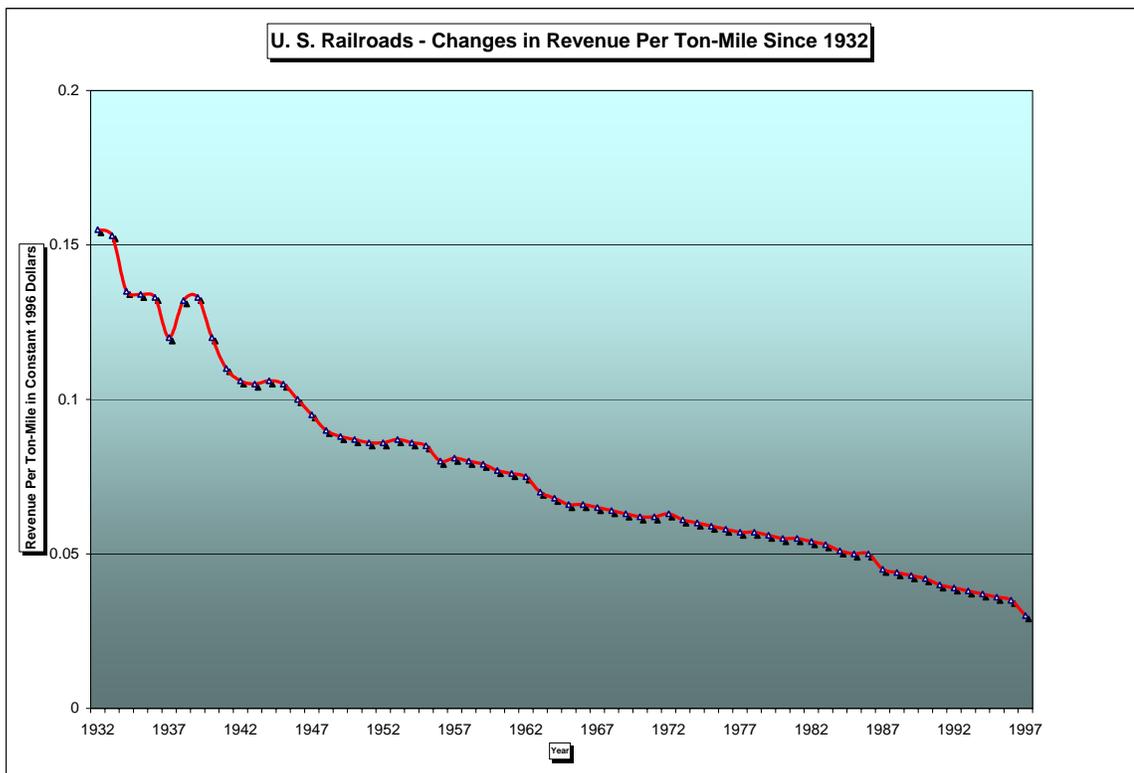
What this charge shows is that while rate increases may appear consistent with CPI increases, they have been accompanied by significant cost decreases as measured by the RCAF-A. As a result, railroad revenues from grain transportation have increased dramatically.

IX. COMPARISONS BY THE CLASS I RAILROADS SHOWING A DECREASE IN RATES/TON-MILE DO NOT PROVIDE A COMPLETE PICTURE OF WHAT IS HAPPENING IN THE FIELD

The Wheat & Barley Commissions continue to hear railroads stating that rail rates per ton-mile have fallen since the date of the Staggers Rail Act of 1980. The railroads imply that this decrease provides evidence that rates nationally have fallen and somehow the decline is due to success of Staggers Rail Act provisions. However, rates per ton-mile fall when the average load increases and/or

the average distance increases. It is possible to have rising rates and falling rate per ton-mile numbers at the same time. Additionally, not one rail customer in the U.S. pays a rate per ton-mile for rail services.

In fact, when one tracks the history of rates per ton-mile as published by the ARR since 1932, rates per ton-mile have been falling steadily since 1932. Passage of the Staggers Rail Act of 1980 is not the sole and may not be the most important cause of the continued downward trend of rates per ton-mile during the 1980's and 1990's. Since pervasive regulation prior to 1980 did not prevent such reductions, they should not be threatened by modest STB measures to level the playing field today.



X. DISCUSSION - IMPACTS OF SHUTTLE TRAIN RATE STRUCTURES AND POLICIES ON COMPETITION AND HIGHWAY COSTS.

Railroads find it more efficient in transporting grain to operate large (100 to 110 car) shuttle trains than to operate smaller units, such as 26-car trains. An increasing portion of wheat, which is the principal crop in the Great Plains and the Pacific Northwest, is moving in shuttle train service. There is no doubt that the shuttle concept provides for more efficiency for the railroad, such as the BNSF and UP, and perhaps for the elevator company that operates the origin shuttle elevator. However, this trend has decidedly negative impacts on other important segments of the various state economies, as well as on the State of Montana as a whole over the long run.

A grain train shuttle origin requires special investments of a significant nature in order to realize the maximum economies from shuttle train service. The freight rate applicable to a shuttle train is lower than the freight rate applicable to a similar-sized ordinary unit train for which a shipper makes no repetitive shuttle train operating commitment. Freight rate reductions for shuttle trains become more pronounced if the shipper commits itself to operate the shuttle train for an extended period of time, as provided in BNSF's tariff. A shipper will not undertake such a commitment without access to origin and destination elevator facilities that can meet the specially-tailored operating conditions under which shuttle trains can receive even further reduced rates.

The grain shuttle train economic incentives offered by BNSF Railway, the primary carrier serving Montana, include a payment of \$100.00 per car if the shuttle train is loaded at origin within 15 hours, and an additional \$100.00 per car

at destination if it is unloaded within 15 hours. Those two discounts alone amount to some \$22,000 per 110-car shuttle train. When the shuttle train rate discount itself is added, the total discount available to a wheat shuttle train operating from a Montana origin to a port at the Pacific Northwest (the most common destination for Montana wheat) is approximately \$59,125 per train, which is the equivalent of about \$ 0.15 per bushel compared to the rates paid by an elevator shipping 52-car units. The spread favoring shuttles is even greater for an elevator shipping 26 cars at rates exceeding those for 52 car shipments.

The \$ 0.15 per bushel advantage available to wheat shuttle train shippers does not come without a cost to the elevator, farming, and governmental communities in Montana. In order to load the wheat shuttle train within 15 hours, as necessary to earn the per car rapid loading discount, the origin elevator has to equip itself with high speed loading equipment and tracks long enough to accommodate the shuttle train without interrupting the loading process for switching. These alterations to an existing facility are estimated to cost several million dollars, excluding the cost to acquire any additional land that may be required for the shuttle train expansion. In some cases the BNSF is believed to be defraying some of the costs incurred by some elevators for their investment in track and shuttle infrastructure. Of course, if a new facility is built to handle wheat shuttle trains, the land, track, and elevator equipment costs to satisfy the shuttle program requirements likewise add many millions of dollars to the investment.

Elevators that invest in shuttle train loading facilities generally are rewarded in one of two ways, or perhaps in both ways. First, if the origin carrier

wants to provide an inducement for the construction of a shuttle loading facility, it can offer to contribute to the shuttle loading construction costs. This may have been the case at several shuttle origins in Montana. When this occurs, the elevator must be enlarged or built at a location agreeable to the railroad and the construction assistance will take the form of a rebate or discount per carload shipped, sometimes after the elevator meets a minimum shipping requirement annually. Such refunds normally cease after a certain number of years or when a maximum agreed contribution has been made by the carrier.

A longer term economic advantage to the shuttle elevator flows from the rate advantage afforded by the shuttle program when compared with rates available to other elevators that are vying for the same origin wheat production. The shuttle elevator operator maximizes the benefits of the shuttle facility by putting as much wheat through it as possible, not only to earn any volume-based rebates that the origin carrier may offer, but also to earn the margins that the market offers on wheat trades.

One might wonder why it is that a smaller grain elevator would seemingly stand idly by while another company invested in shuttle-loading capacity. The answer often lies with the railroad, which is not willing to subsidize shuttle elevator construction costs for two competitive facilities when just one can meet the carrier's anticipated shuttle loading needs from that particular grain production area. The railroad may not stop the construction of a competitive shuttle origin facility, but its unwillingness to contribute to the construction costs through rate

refunds or track allowances places the subsidized origin facility at a distinct advantage.

Because the ground simply does not yield enough wheat to support two high-speed, high-volume loading facilities that are situated in relatively close proximity, the elevator with a railroad-furnished subsidy has an advantage that deters the construction of a competitive shuttle loader. The effect of these actions by the railroad in assisting some elevators but not all contributes to what is called "forced sourcing" in the industry. Forced sourcing is not just limited to agricultural movements but is found in coal, chemicals and other industries as well.

To attract large volumes of wheat, the shuttle operator may well offer the farmer a better price for wheat delivered to the elevator than the price being offered by a competitive facility that does not have the lower shuttle rates available. As indicated, the competitive advantage provided by the shuttle program may be as much as \$ 0.15 per bushel, which is a very significant amount in the marketplace. An elevator that has a \$ 0.15 per bushel advantage over a competitor is positioned to attract a great deal of wheat away from that competitor by offering a higher price to farmers who are willing to deliver that wheat to the shuttle facility.

The shuttle system may appear beneficial for the shuttle elevator and for the farmer delivering wheat to that elevator, but these benefits may be illusory, at least for the farmer. Although the shuttle elevator may offer a better price for delivering wheat than a smaller, non-shuttle elevator, the farmer selling to the larger elevator in all likelihood will have a much greater cost to get that wheat to the

elevator than would be incurred if the wheat could just be delivered in a normal farm truck to a local, smaller grain elevator as outlined in the studies above.

Shuttle elevators require much longer truck trips for most farmers. When farmers sell to a nearby local elevator, they generally use their small farm trucks to deliver the wheat to the elevator, making as many of the short trips as it takes. Wheat is not a dense grain. In Montana, the average yield is approximately 35 bushels per acre. Thus, for each 110-car wheat shuttle train, at approximately 3,750 bushels per car, some 412,000 bushels of wheat must be delivered to the elevator. (These figures disclose why competition between shuttle elevators for the same acreage output is a daunting gamble and why a single shuttle elevator may tend to dominate an entire growing region.) Just 10 shuttle trains a year consume over 4 million bushels of wheat. It takes some 114,000 producing acres to produce such a quantity, and that acreage may spread out over a radius of up to 50-100 miles.

This data illustrates why there is a significant cost attached to delivering wheat to a shuttle facility. Because shuttle facilities are distant from each other for many farmers, the trip to a shuttle elevator is longer and more expensive for the average wheat farmer, as shown by the 2006 Montana Rail Grain Transportation Survey. These longer trips have several economic consequences.

First, they require more man-hours of farm labor if the farmer's own truck is used, which has a cost to the farmer. Based upon the 2006 Montana Rail Grain Transportation Survey, 70% of the movements are in the farm trucks. Second, they require investments by farmers in larger trucks. More and more

farmers are being forced to invest in full-size, 18-wheel trucks (which are still classified in the study as farm trucks) to move grain from the farm to the shuttle elevator in order to avoid a multiplicity of trips in smaller farm trucks. If a farmer chooses not to make the larger truck investment directly, and hires a trucker, the cost exists nevertheless. Third, the longer trips require the purchase of more truck fuel. While these types of costs fall more heavily on farmers who live a greater distance from the shuttle elevator than those fortunate enough to live nearby, on average the farming community is paying a great deal more to get wheat to a shuttle elevator than it did to get wheat to a local elevator that shipped smaller units.

Because the shuttle elevator has a strong economic incentive to attract as much wheat as possible, it will bid enough to the farmer to compensate for the expenses of moving wheat to the larger elevator, but the benefit to the farmer stops there. The shuttle elevator understandably will offer no higher a bid to the farmer than is necessary to induce the movement of grain to the shuttle elevator, and will tend to keep for itself whatever other profits are derived from the lower shuttle rate structure unless and until forced by other market considerations to act otherwise. Thus lower shuttle rates do not necessarily result in a significantly higher farm income even when elevator bids to farmers are increased by the shuttle loader, because the increased bids are largely offset by increased farmer costs.

The party likely to suffer most in the short term from the railroad's preference for a shuttle rate structure is the community as a whole and its governmen-

tal subdivisions. To make the shuttle network function efficiently for the benefit of the railroad, it is indisputable that grain must travel longer distances in heavier trucks over state and county roads (see study results above). These increased road burdens come at a substantial cost to local government and all taxpayers. The filing timetable in this proceeding has not allowed for completion of the State estimates for county and state highway maintenance and repair bills based upon the increased use of highway truck.

Of course, any increase in State expenses due to increased hauling to ever more distant elevators will be reflected ultimately in state and local taxes. Collectively, these costs represent a real transfer of wealth from state and public treasuries to the railroad, which is the primary beneficiary of the shuttle program. What is occurring in Montana and other states in the Great Plains and the Pacific Northwest, and probably in other agricultural production areas as well, is that rail service is acting as a force to impose more traffic on highways, rather than acting as railroads portray themselves in TV commercials, as the savior of America's highways.

XI. WHAT WILL HAPPEN WHEN THE RAILROAD SPONSORED SHUTTLE PROGRAM IS EFFECTIVE IN ELIMINATING THE NON-SHUTTLE ELEVATOR FACILITIES?

In the short run, the shuttle elevator appears to be a beneficiary of the shuttle train program. But its advantages stem to a great extent from the rate relationship between shuttle rates and those applicable to smaller units, a differential that enables the shuttle elevator to outbid the non-shuttle elevator, based on lower relative rail rates. Eventually, however, and probably in the not too distant

future, the highly successful BNSF shuttle program will drive the smaller elevators entirely out of business, especially as locomotive power seems to be more available for shuttle than for other services. With their demise, there no longer will be rail service for less-than-shuttle quantities of wheat and other crops such as barley, peas, lentils and other pulse crops that depend on small elevators and move in small shipment quantities. Additionally, many smaller elevators handle inbound fertilizer movements.

The only wheat rate in the marketplace will be the shuttle rate, and there no longer will be any reason for the railroad to offer a lower shuttle rate designed to attract wheat away from smaller elevators. BNSF will be at liberty to raise its shuttle rates without any such constraint.

If shuttle origins have no other origin elevator competition, they will be under no origin market compulsion to offer reduced rates to farmers regardless of how far the farmer may have to truck wheat to the elevator. Normally, increased rail rates result in lower elevator bids to farmers. The long run result of a successful shuttle program that dominates or eliminates elevator competition in any growing area is a long run lower price to the farmer, even if the farmer gets a higher apparent price in the short run.

XII. THE POTENTIAL LOSS OF LESS THAN SHUTTLE ELEVATORS WILL ALSO RESULT IN THE LOSS OF MARKET WINDOWS FOR NON-WHEAT CROPS

The long term effects of the shuttle elevator program and the resulting elimination of smaller, less than shuttle load elevators will result in the potential loss of market windows for all of the other important crops grown as alternative or

rotational crops on the dryland wheat farms in Montana and other states. **This should be of major concern to the Board.** It has already happened with Barley over the last 15 years, as shown in the *National Barley Growers Association* Opening Comments in this proceeding. The railroad program of forced sourcing wheat movements on the Great Plains and in the Pacific Northwest will lead to curtailment of alternative crop production and marketing. Railroads are providing less transport capacity and power for small, non-shuttle grain shipments. In turn, that curtails the farmers' ability to plant crops that are an alternative to wheat, even when higher market prices for alternative crops are available or good land management practices suggest crop rotation. These practices also lead to lower producer income.

XIII. THE BOARD SHOULD INVESTIGATE AND REPORT ON THE MANAGEMENT OF THE BUSINESS OF THE CARRIERS

The Board should investigate the impact of the BNSF shuttle rate structure on state highway expenditures, agricultural competition, and commodity prices in the State of Montana. Pursuant to 49 U.S.C. Section 721(b)(1), the Board is authorized to "inquire into and report on the management of the business of carriers providing transportation and services." The "business" of BNSF, a carrier providing transportation and services to communities and citizens of Montana and other Great Plains and Pacific Northwest states, is resulting in a significant transfer of costs from the railroad to the communities it serves and a threat to the long run maintenance of competition among grain elevators for the purchase of farmers' wheat in Montana and other states. As elevator competition decreases, so will prices paid to the farmers. The Board is empowered to "inquire into and report

on the management of the business of carriers providing transportation and services" to shippers in the State of Montana and the other states to determine if those carrier practices are contrary to the interests of the public, including the agricultural community and the affected states. See also, in this regard, the Comments previously filed by GAO, at pages 25-26.

XIV. THE BOARD SHOULD ALSO REQUIRE RAILROADS TO REPORT NOT LESS THAN ONCE ANNUALLY ON THE LOCATION, NATURE OF, AND EXPENDITURE FOR WHAT THE CARRIERS CHOOSE TO CHARACTERIZE AS "INFRASTRUCTURE" IMPROVEMENTS AND INVESTMENTS

The railroad industry, and BNSF in particular, have asserted repeatedly that high freight rates for agricultural commodities and other commodities are necessary to fund infrastructure improvements. The Board itself stated recently that "[r]ail capacity is strained, demand for transportation service is forecast to increase, and railroads must make capital investments to meet that demand." *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1) (July 28, 2006, Decision at 11).

Wheat shipments in Montana and in neighboring states move at some of the highest grain rates in the nation, with revenue/variable cost ratios estimated to be over 300 percent in many cases (see Opening Comments by Wheat & Barley Commissions). While the Wheat & Barley Commissions agree that rail service is not always up to par and could benefit from infrastructure investment, rail rates being paid by grain shippers certainly are high enough to fund improved infrastructure to move wheat to market.

Unfortunately, however, it is by no means clear that BNSF intends to use its extremely generous mark-ups from Montana and other states' wheat shipments to make infrastructure improvements that will repay Montana and other states' shippers for their forced contribution to BNSF revenues. On the contrary, other shippers who are not paying similarly high rates may be the principal beneficiaries, along with BNSF stockholders.

The Wheat & Barley Commissions are aware that STB Chairman Nottingham is of the view that railroads are a "network system ... [i]f you're a shipper in Iowa, you should be very interested in improvements that are going on in Chicago or southern California, because it's those chokepoints that can hurt Iowa shippers."¹ However, what is of concern to Montana and the other states is the fact that there are many railroad infrastructure investments that have nothing whatsoever to do with the movement of Montana and other states' traffic through "chokepoints" that are harmful to such shipments.

The major railroads frequently announce that new intermodal yards are to be constructed at substantial cost with railroad funds (which come largely from shippers). Those yards, notably near ports to handle international intermodal traffic, are of great benefit to intermodal traffic, foreign originators of that traffic, and railroads seeking new intermodal business. Wall Street is encouraging intermodal traffic growth despite an already strained infrastructure. Such yards do absolutely nothing to relieve congestion on the routes from elevators in Montana and other grain states to ports in the Pacific Northwest or the Gulf Coast. Indeed, the addition of intermodal yards to handle increased volumes of intermodal

¹ [Traffic World](#), December 11, 2006.

shipments may exacerbate problems at existing "chokepoints", and may create new chokepoints by adding more traffic to a railroad network that is already strained, according to the Board's own observation.

Montana and other states do not currently ask the Board to call for more equitable railroad infrastructure investments to be made with railroad revenues from Montana and other state's freight rates. However, railroads should be required to disclose in publicly filed statements just where infrastructure dollars are going, where they came from, and what is being built or improved. Montana and the other states suspect that, with the exception of intermodal traffic, the Board may find that much of the vaunted infrastructure investment planned and made by railroads is in reality normalized maintenance, normalized equipment replacement, and normalized employee training, without discernible capacity *expansion*.

Montana and the other states request the Board to utilize its authority under 49 U.S.C. Section 721(b)(1) and other provisions of the Act to require railroads to report not less than once annually on the location, nature of, and expenditure for what the carriers choose to characterize as "infrastructure" improvements and investments. Such reports will enable Montana and other shippers to determine whether the funds being generated by their high rates are redounding to their benefit or disproportionately to the benefit of other shippers who may not be providing as great a contribution to railroad earnings as are those in Montana and other Wheat and Barley states.

XV. CONCLUSION

This Board should not continue to tolerate excessive freight rate levels and forced sourcing practices by the major Class I railroads throughout the growing areas of the U. S. for the purpose of facilitating future rail infrastructure investment in this country. This Board is charged under the Rail Transportation Policy “to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital”. 49 U.S.C. Section 10101(6). The nation’s railroads have reached or are reaching "revenue adequate" financial positions while many agricultural shippers continue to pay rail rates ranging from 250% of variable cost to more than 500% of variable cost. The Board is hereby petitioned to open an investigation, develop relevant facts, and report on the railroad business practices that are transferring wealth from the public sector to the private sector, eliminating competition, controlling movements

and markets and creating an economic burden on farm producers and state governments.

THE HONORABLE BRIAN SCHWEITZER, GOVERNOR,
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MONTANA WHEAT & BARLEY COMMITTEE
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
IDAHO BARLEY COMMISSION
IDAHO WHEAT COMMISSION
IDAHO GRAIN PRODUCERS ASSOCIATION
NEBRASKA WHEAT BOARD
NEBRASKA WHEAT GROWERS ASSOCIATION

OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
SOUTH DAKOTA WHEAT INC.
TEXAS WHEAT PRODUCERS BOARD
TEXAS WHEAT PRODUCERS ASSOCIATION
WASHINGTON WHEAT COMMISSION
MONTANA GRAIN GROWERS ASSOCIATION
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Respectfully submitted,


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Dated: January 12, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have, this 12th day of January 2007, caused copies of these supplemental comments to be served on the persons on the STB service list in this proceeding.


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