F. E. "Skip" Kalb, Jr.
Director
Strategic Development

BNSF Railway Company
P.O. Box 961051
Fort Worth, TX 76161-0051
2650 Lou Menk Drive, 2nd. Fl.
Fort Worth, TX 76131-2830
817-867-6133 Office
817-352-0376 Fax
817-271-3057 Cell

January 22, 2013

VIA EMAIL AND OVERNIGHT MAIL

Mr. Randel Perry
U.S. Army Corps of Engineers, Seattle District
GPT/BNSF Custer Spur EIS Co-Lead Agencies
1100 112th Avenue Northeast, Suite 400
Bellevue, Washington 98004
Email: comments@eisgatewaypacificwa.gov

Re: Comments in Response to Notice of Intent to Prepare a Joint Environmental Impact Statement (EIS): Gateway Pacific Terminal Project and Custer Spur Improvements Project (77 Fed. Reg. 58531, Sept. 21, 2012)

Dear Mr. Perry:

Through this letter, BNSF Railway ("BNSF") provides comments in response to a Notice of Intent ("NOI") to conduct public scoping for the above-referenced project pursuant to the National Environmental Policy Act of 1969, as amended ("NEPA"). 77 Fed. Reg. 58531 (Sept. 21, 2012).

As described in the NOI, BNSF proposes to construct certain improvements to its existing Custer Spur rail line to provide enhanced rail service to the Cherry Point area, and to serve the proposed Gateway Pacific Terminal ("GPT") project. The existing Custer Spur rail line presently provides rail service to existing industrial activities at Cherry Point, located in Whatcom County, Washington. BNSF's proposed improvements to the Custer Spur area would provide additional rail capacity in this area, enabling BNSF to more efficiently serve industrial customers in this area.

BNSF representatives attended each of the public scoping meetings conducted by the U.S. Army Corps of Engineers ("the Corps") and other co-lead agencies. BNSF takes seriously the public comments made to date regarding the proposed projects, and are committed to carefully consider these comments during the development of the proposed action. Comments and information contained in this letter are intended to respond in part to some of the comments received to date. As noted below, BNSF believes that technical studies submitted by the applicants will assist the agencies during the development of the Draft Environmental Impact Statement ("DEIS"). BNSF remains committed to a thorough evaluation of the proposed actions, and stands ready to assist the co-lead agencies in the development of required permitting documents.

In comments made to date regarding the Custer Spur improvements project, certain parties have suggested that that the geographic scope of analysis under NEPA should extend well

beyond the Cherry Point area in order to address the effects of train traffic, coal dust, and other purported impacts in localities throughout Washington State or even other states. For the reasons provided below, BNSF concludes that extending the geographic scope of analysis beyond the area directly impacted by the Custer Spur improvements project would be inappropriate, and in conflict with applicable agency policies and regulations.

I. Overview of NEPA Scoping Requirements

Several purposes exist for NEPA's scoping process, including notification of affected parties and the narrowing of issues to receive in-depth treatment. *See Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1117 (9th Cir. 2002) (abrogated on other grounds by *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). It is through the scoping process that important issues are separated from those that do not require extensive analysis.[1] The analyzing agency is responsible for choosing the issues important for analysis, and it should not abdicate that role by deferring to the public where no true basis for concern exists. *Id.*

CEQ regulations require an analysis of the direct and indirect effects of the proposed action. *See* 40 C.F.R. § 1508.8. However, CEQ regulations expressly limit analysis of indirect impacts to those which are "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Courts applying these regulations have held that "remote" or "speculative" impacts do not require analysis. Specifically, an impact is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." *See Sierra Club v. Marsh,* 976 F.2d 763, 767 (1st Cir.1992). *See also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005). "Reasonable foreseeability" does not include "highly speculative harms" that "distort the decision making process" by emphasizing consequences beyond those of "greatest concern to the public and of greatest relevance to the agency's decision." *See City of Shoreacres*, 420 F.3d at 453.

Although the Custer Spur itself—a portion of railroad track that will provide rail service to the proposed GPT project—could experience an increased number of loaded trains (approximately nine per day should the terminal reach full capacity), it is speculative and not reasonably foreseeable that construction of the Custer Spur improvements or the GPT project will cause train traffic to increase on any particular line in the State. Current trends indicate that train traffic will increase by approximately 13 percent statewide in the next thirty years (Figure 13). This projection already includes any increases associated with commodity shipment to the proposed terminal.

As discussed in more detail below, the statewide increase in train traffic is not attributable to the GPT project or any other specific commodity movement. No credible evidence indicates that the proposed Custer Spur improvements would cause increased train traffic throughout Washington State. State and nationwide train traffic is dynamic and is determined by numerous factors, including but not limited to the following:

- A diverse set of customers each with variable schedules
- Markets driven by global supply and demand factors

[1] *See* Council for Envtl. Quality, Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping (Apr. 30, 1981).

- Competing modal choices, which themselves are influenced by factors such as highway congestion
- Population growth and the resultant demand for BNSF's transportation services
- Energy and environmental efficiencies of rail
- Scheduling factors for individual shipments, including seasonality and weather events.

These supply and demand scenarios play out across the entire rail system in the United States, as further explained below.

In addition, BNSF operates a number of rail lines and retains the right to operate over some lines that are owned and/or controlled by other railroads. Possible routes thus include BNSF rail lines and other lines that may provide more convenient transportation options. Which route a train will take on a given day depends not only on convenience or distance, however, but also on the numerous variables listed above. While BNSF strives to provide reliable, exceptional rail transportation services, these diverse and complex factors do not allow for complete certainty or predictability. Therefore, the route a particular train will take or how many trains any route will need to absorb is speculative, and not subject to precise prediction.

This letter addresses the following reasons why it is impermissibly speculative to assume that the proposed Gateway Pacific Terminal (GPT) project or Custer Spur improvements project would increase rail traffic along any particular route:

1) BNSF rail traffic is complex and variable based on a host of factors beyond our control, which makes likely predictions impossible.
2) Several independent, government studies predict that rail traffic will increase over time due to various economic conditions, such as demand for commodities of the type proposed to be shipped at the proposed terminal.
3) BNSF already has adequate capacity on its mainline for the proposed GPT project. No upgrades other than the proposed Custer Spur Improvements are necessary to accommodate the proposed GPT project.[2]
4) Commodities will be shipped regardless of the proposed GPT project, either to existing or potential future terminals on the West Coast by any number of rail routes.

The letter also briefly discusses the concerns expressed regarding the purported impacts of coal dust, demonstrating that best practices sufficiently address controlling coal dust during rail car transit.

II. BNSF Rail Operations

A. Range of Operations

BNSF operates as a common-carrier and is one of North America's leading freight transportation companies operating on 32,000 route miles of track in 28 states, as well as

---

[2] *See* Letter from Matt Rose, Chairman & CEO, BNSF Railway, to Governor Christine Gregoire (May 14, 2012) (enclosed).

connections with Mexico via five border gateways and Canadian via three border gateways, and direct service to and from British Columbia and Manitoba. BNSF also employs more than 40,000 individuals and serves more than 40 ports (Figure 1).

BNSF is one of the top transporters of consumer goods, grain, industrial goods and low-sulfur coal that help feed, clothe, supply, and power American homes and businesses every day. BNSF and its employees have developed one of the most technologically advanced, and efficient railroads in the industry. And we are working continuously to improve the value of the safety, service, energy, and environmental benefits we provide to our customers and the communities we serve.

Additional information regarding BNSF is available on our website at: www.bnsf.com.

BNSF Rail Network

Figure 1. BNSF Railway System Map (Source: BNSF Railway)

B. Variability of Customer Demand

BNSF has a diverse customer base and has segmented its business into 4 main groupings: Industrial Products, Consumer Products, Coal and Agricultural Products. These business groups are further differentiated into 43 forecast groups and 178 sub-forecast groups. These customers' demands are subject to the same complex factors as those driving the economy; one segment may experience significant growth while another segment is in decline. This variability in customer demand creates considerable uncertainty with respect to the timing

and volume of future transportation of specific commodities. The following graphic (Figure 2) demonstrates this often unpredictable change in volume in certain segments which occurred from 2006 to 2011.

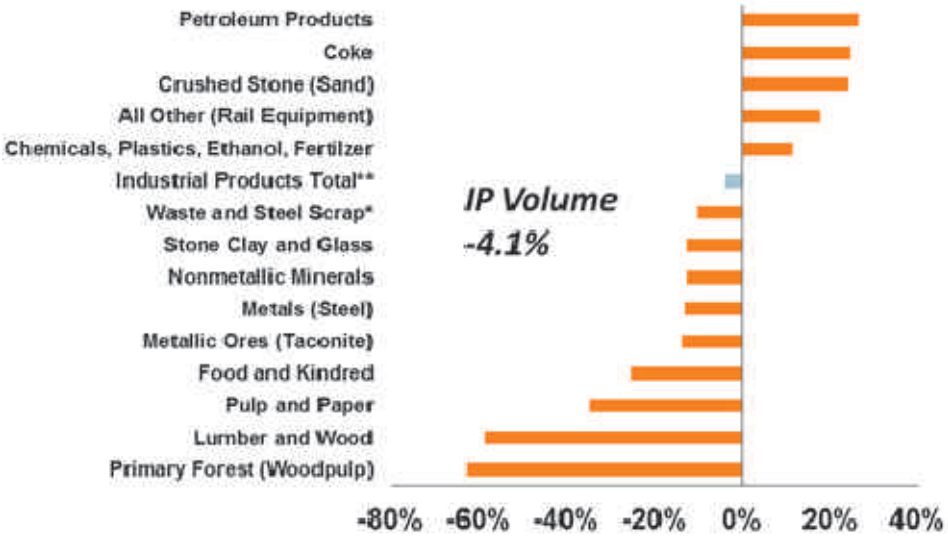

Figure 2. Rail Volume Changes for Industrial Products (IP) 2006-2011 (Measured by number of carloads)

For example, nationwide rail traffic has been affected by a decreased demand for lumber and other paper and pulp mill bulk and finished products, resulting from the depressed housing market due to the recent economic recession, as illustrated by Figure 3 below.

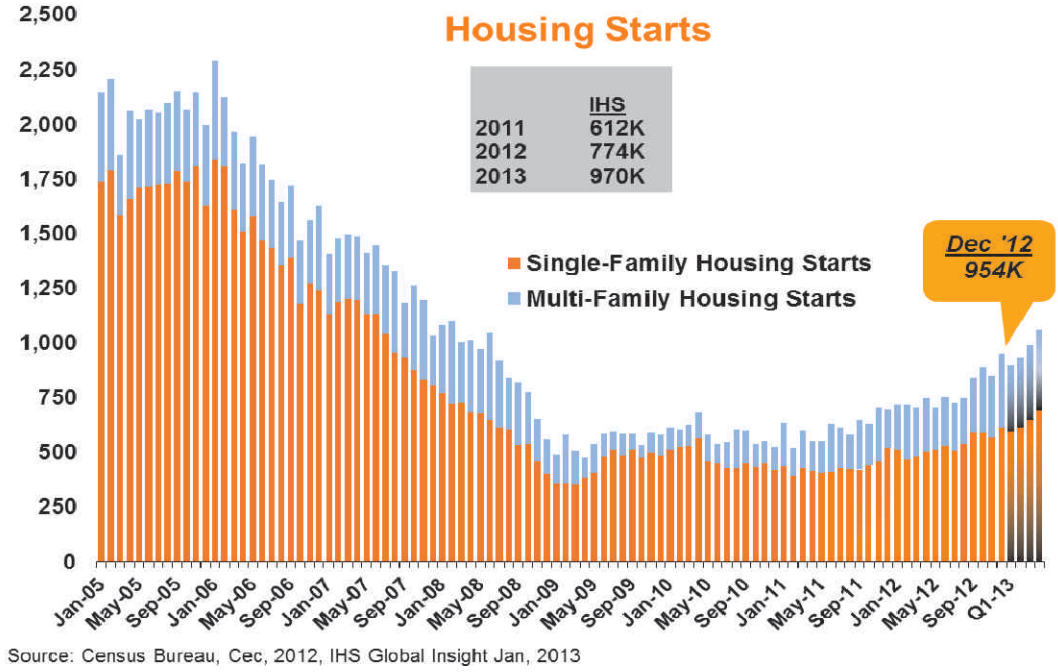

Figure 3. Housing Starts Jan. '05-2013 (Est.)

This dramatic reduction in housing starts resulted in decreased volumes of lumber transported within the Pacific Northwest region, and this decrease severely impacted BNSF's rail

network, as shown on the following line density map (Figure 4).

Figure 4. Lumber Rail Units 2012 vs. 2006 (Source: BNSF Railway)

Figure 4 above is a Line Density Map that depicts conceptually the relative decrease in rail shipments of lumber on the BNSF rail system from 2006 to 2012.The gray lines in Figure 4 above represent the retained volume of lumber transported on the BNSF network after the housing recession, and the red represents volume lost from 2006 levels. Many segments lost well over 50% of the 2006 lumber volume.

In contrast, BNSF also has experienced growth in other segments. For example, the demand has increased for petroleum, sand, and a number of other industrial products, causing increased demand for rail shipments of these commodities and products. Due to this unpredictability of customer demand, shipping volumes vary widely in the course of a single year, as illustrated by Figure 5 below.

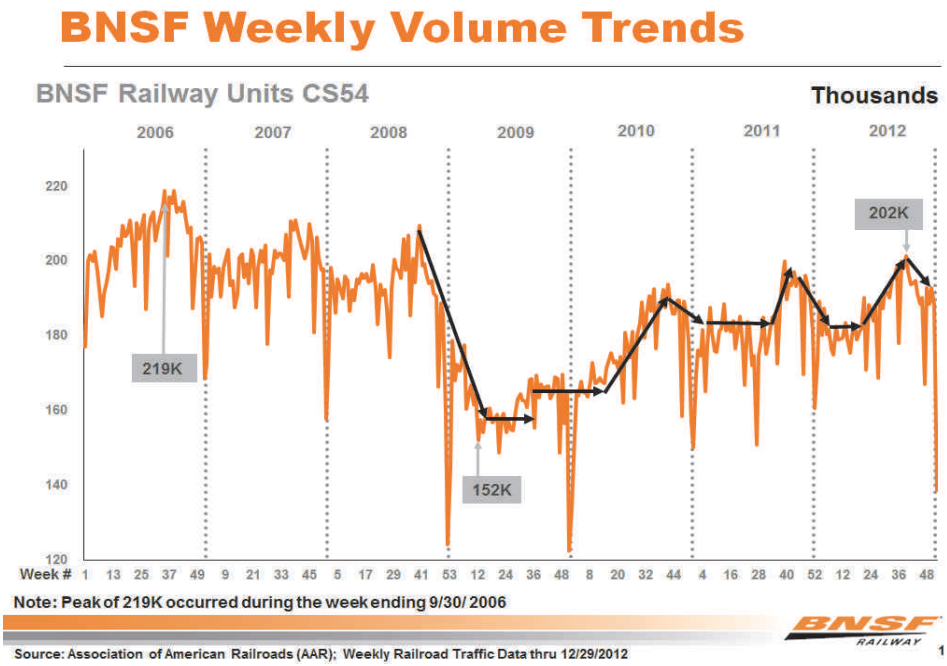

Figure 5. BNSF System Weekly Volume Trends 2006-2012

A good example of this variability of demand can be seen with the increase in domestic shale production and the development of the Bakken Shale oil field in Montana and North Dakota. BNSF has been hauling Bakken crude out of the Williston Basin area by rail for over five years to oil refineries in the Midwest and the Gulf as well as the East and West Coasts, including Canada.In that time, volume of these shipments has increased nearly 7,000 percent, from 1.3 million barrels in 2008 to 88.9 million in 2012. The following map (Figure 6) illustrates the location of the various Shale Formations relative to BNSF's rail network.

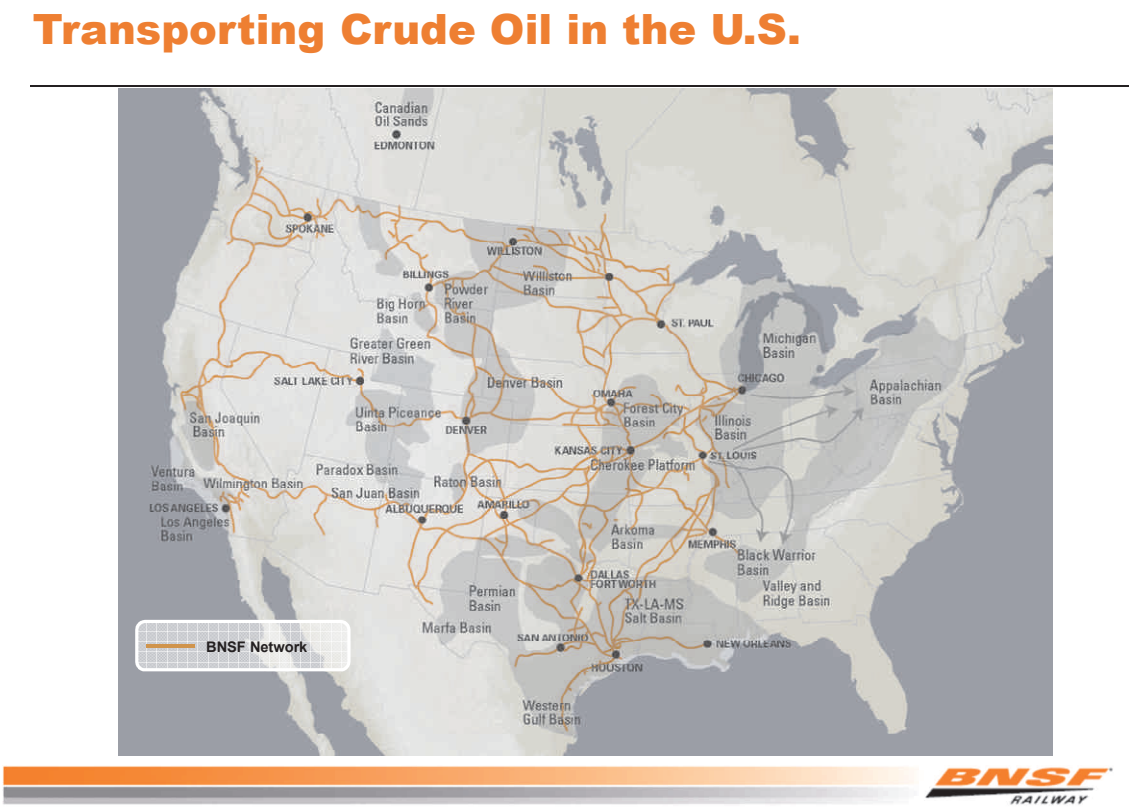

Figure 6. (Source EIA:: BNSF Railway-Shale Formations)

Other factors can also affect rail volumes over particular segments. Railroads operate in a competitive marketplace. We compete with other modes: trucks and barge as well as other rail carriers. Business shifts between modes and carriers based on price, service, capability, and reliability. These shifts can be meaningful and can have major impacts to our network volumes.

C. Variability of Global Demand

In addition to the variables mentioned above, global market demand also drives the amount of business handled on our rail network at any given time. We mention here only three of the major export sectors that move on our rail network to or from the PNW area ports, either in export or import: grain, coal, and intermodal transport. All three sectors demonstrate high variability in demand levels. Moreover, the impact of Canadian markets also plays a significant role in BNSF's rail operations in the Pacific Northwest. Consequently, it is not possible to precisely predict the potential impact of global demand on BNSF's railway traffic .

1. Grain, including Corn and Soybeans

Oilseed demand by China may be peaking at 55-60 million metric tonnes (mmt) of soybean imports per year. However, if China begins importing more corn, then the peak will likely be much higher. Pacific Northwest port capacity has been expanded recently to accommodate these potential increased export needs.[3]

[3] Source: The ProExporter Network (2011).

Developing countries will be driving export grain growth as they become more dependent on agricultural imports. By 2030, they could be producing only 86% of their own needs and importing almost three times present levels.[4] These grain export trends are expected to continue in the long term, with the United States remaining the leader in corn, soybean, and wheat exports.[5]

The volume of exports/imports of agricultural commodities is driven by numerous factors ranging from currency fluctuations, weather, population growth, and changing diets. BNSF has a common carrier obligation to handle these commodities in export/import and is an important link in the global supply chain, to the benefit of the United States agricultural industry as well as our trading partners. Due to this natural fluctuation of agricultural markets, however, long term volumes are unpredictable.

2. Intermodal

Our Consumer Products Business Unit is responsible for both domestic and international containers, domestic trailers, and finished automobiles. The levels of all consumer products fluctuate with consumer spending and the general state of the U.S. and global economies. These trends are likewise reflected in overall rail traffic. Figures 7 and 8 below illustrate these fluctuations.

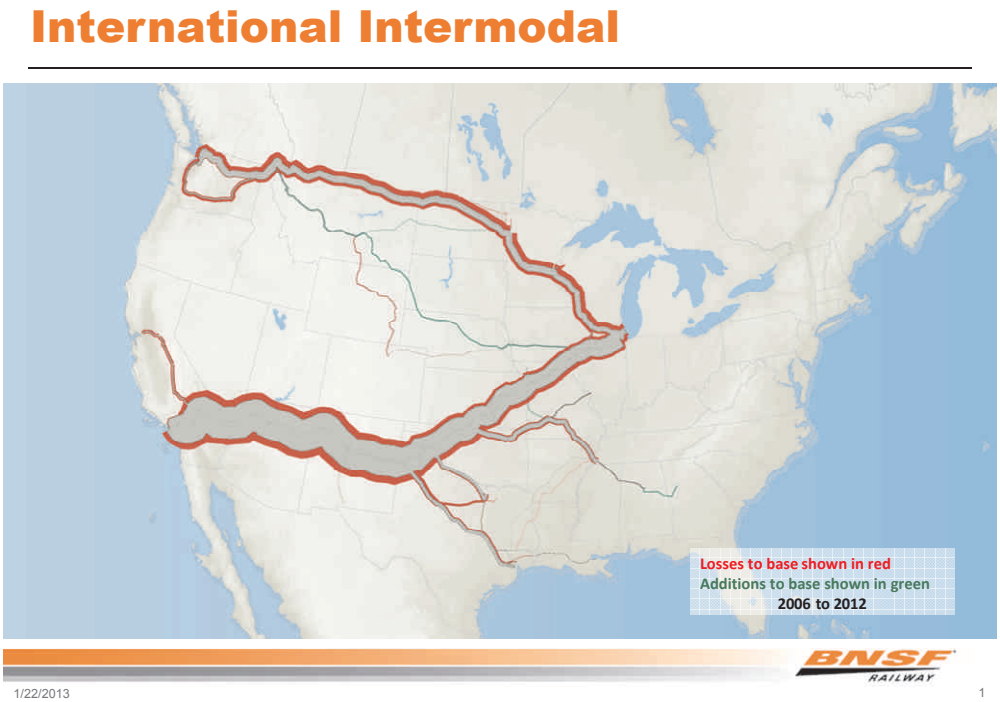

Figure 7. Changes in international intermodal density from 2006 to 2012 (Source: BNSF Railway).

---

[4] Source: World Agriculture Towards 2015.

[5] Source: USDA Long Term Projections (Feb. 2011).

As Figure 7 illustrates, overall transpacific trade decreased considerably, with the volume moving in and out of West Coast ports down 13% since 2006 and West Coast vessel calls down 20% since 2006. Losses in the Pacific Northwest were driven by these decreases in transpacific trade.

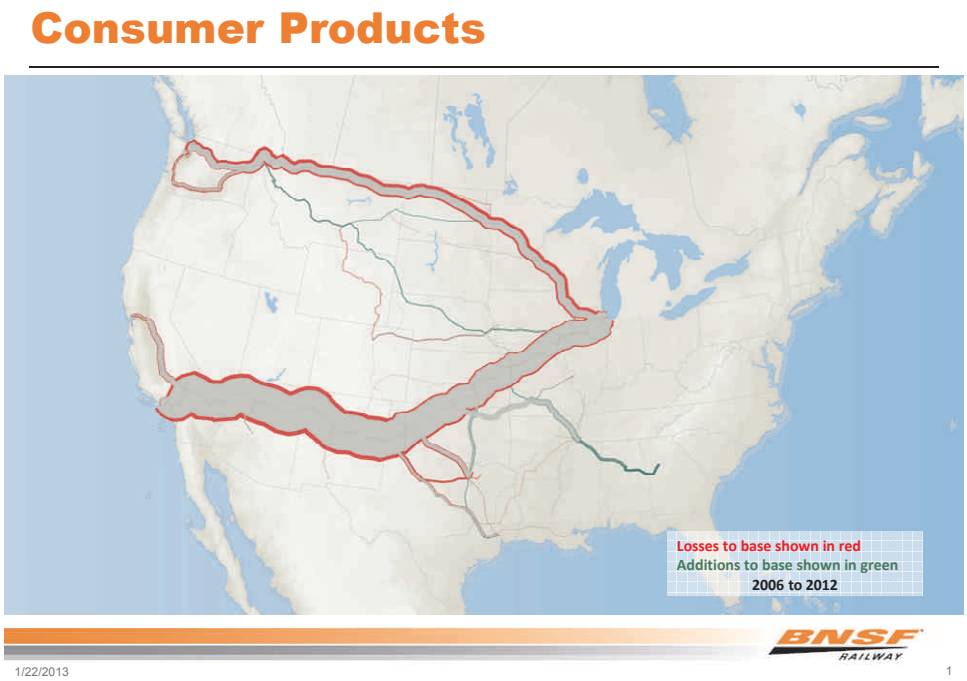

Figure 8. Changes in Line Density from 2006-2012 for Consumer Products (Source: BNSF Railway).

Figure 8 illustrates Southeastern growth driven by Over the Road Conversion (converting trucks to rail traffic). Again, Pacific Northwest losses were driven by transpacific trade economics, such as consolidation to the Southwest and larger vessels. These figures demonstrate the significant impact numerous outside factors can have on railway demand.

3. Coal

Almost all coal for export is delivered to terminals by rail. The volumes often differ significantly year to year. According to the National Mining Association[6], since 1985 United States coal exports have been as high as 109 million short tons (in 1991) and as low as 39 million short tons (in 2002). In 2011, the U.S exported 107 million short tons, but only two years earlier exported only 59 million short tons.

Likewise, the Energy Information Administration[7] reports similar variability in coal exports volumes:

---

[6] Source: National Mining Association, International Coal Review: "U.S. Bituminous Coal Exports, 1985 – 2011 (Million Short Tons) Updated March 2012, (Excludes anthracite & lignite).

[7] Source: U.S. Energy Information Administration / Annual Energy Review 2011.

2001	2002	2003	2004	2005
50,012,000	40,393,000	43,735,000	49,316,000	51,690,000

2006	2007	2008	2009	2010	2011
51,264,000	60,607,000	83,478,000	60,404,000	83,178,000	107,300,000

These variations illustrate the dependence that coal export volumes have on world markets, as opposed to terminal capacity. Basic economics of supply and demand, rather than individual terminals and projects, drive coal export volumes.

The wide divergence of opinions on the amount of coal that will be shipped from the United States to foreign markets is best illustrated by the energy forecasts of two of the largest energy companies in the world: ExxonMobil and British Petroleum. ExxonMobil predicts that from its peak in 2025, coal demand will decline by more than 10% by 2040 (Figure 9).

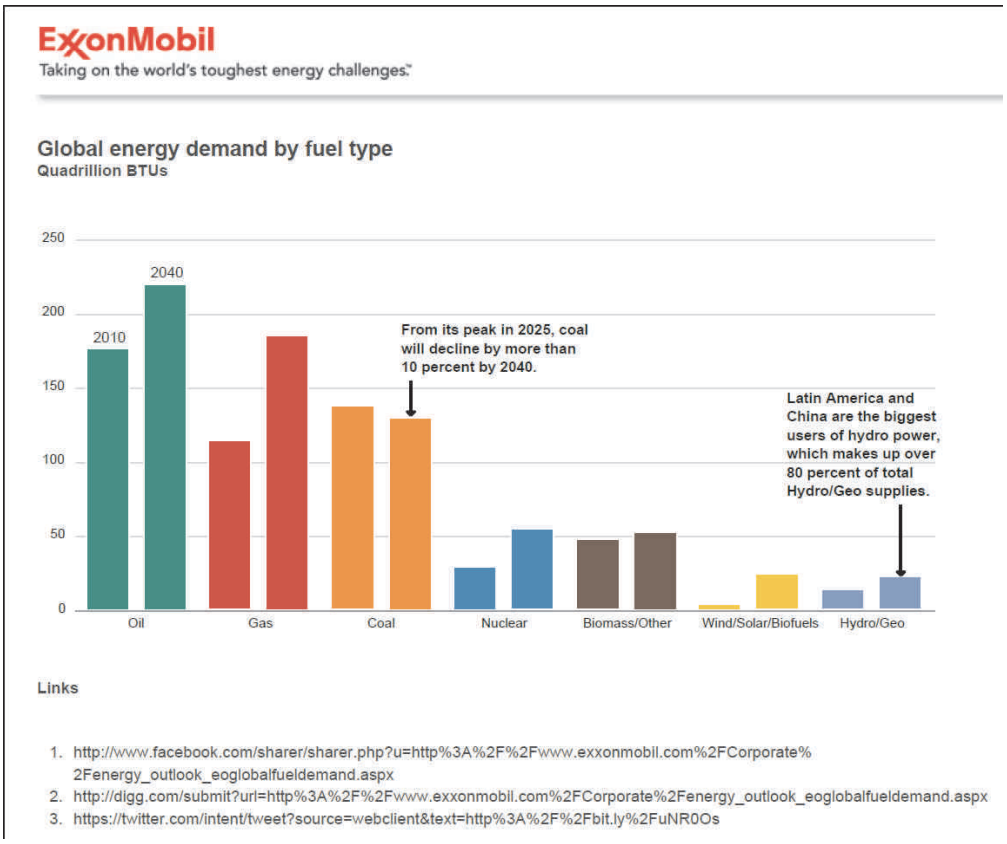

Figure 9. Global energy demand by fuel type (Source: ExxonMobil).

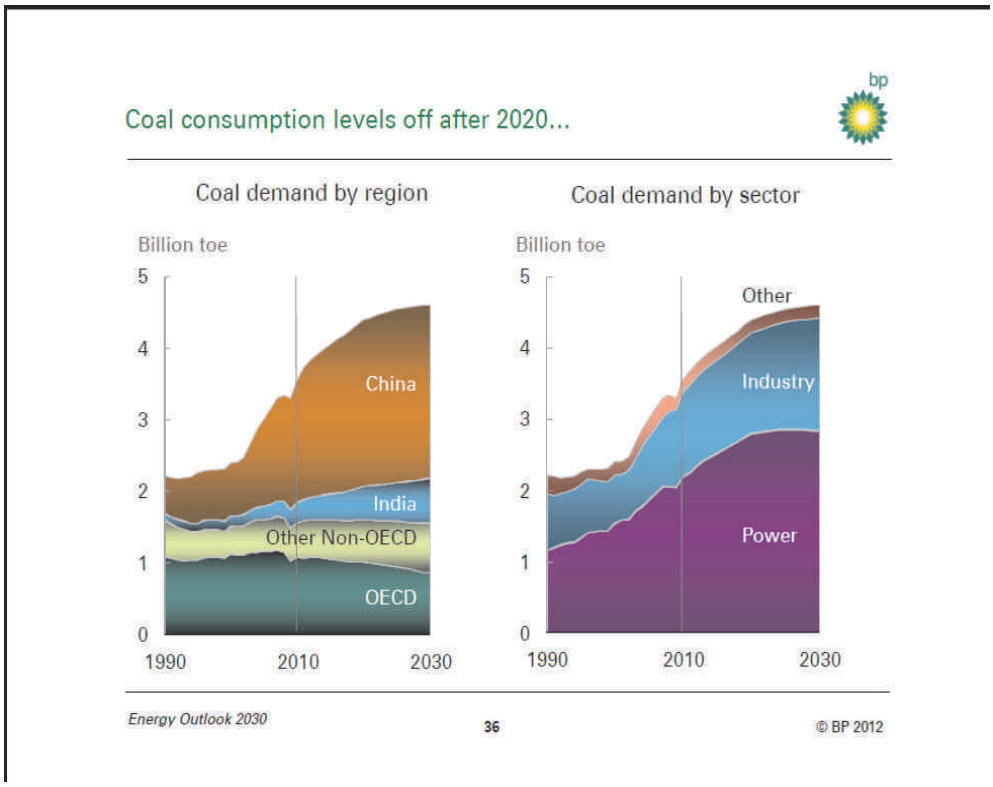

Figure 10. Coal demand by region and sector (Source: British Petroleum)

British Petroleum, in contrast, predicts that coal consumption will level off in 2020, without a foreseeable decline, as illustrated by Figure 10 above. Increased Chinese coal consumption is expected to level off at that time, significantly altering the global trend.

These projections, just two of many differing outlooks, illustrate the uncertainty inherent in any prediction about future coal demand.

4. Canadian Rail Market

The Custer Spur's location near the western end of the BNSF rail network adds complexity and variability to any analysis of regional rail traffic. Other countries compete heavily with the U.S. for export trade to the growing Asian markets. Specifically, resource rich Australia and Western Canada are aggressively pursuing Asian export opportunities. The Wall Street Journal has reported that last year for the first time ever, British Columbia sent more exports to the Pacific Rim than to the U.S. Also, Asia's share of Canada's trade stood at 15%, up from approximately 9.5% a decade ago. China's share alone was 7.2% in 2010.[8]

BNSF has the capability to provide rail service to both existing and future proposed coal export terminals in British Columbia, Canada through its existing rail network, as illustrated in Figure 11 below.

[8] Source: The Wall Street Journal, "Resource-Rich Canada Looks to China for Growth", May 14, 2012.

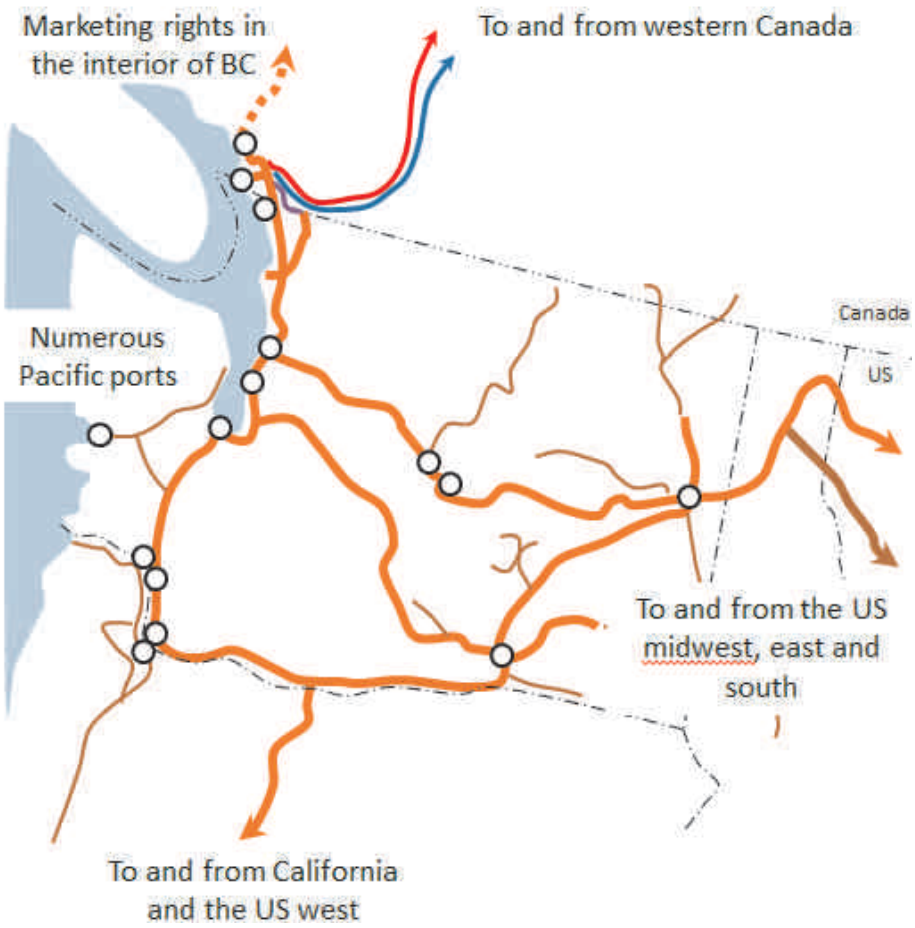

Figure 11. BNSF rail network (Source: BNSF Railway)

Moreover, BNSF directly serves numerous industries and port facilities in British Columbia, connects with three other railways, and has further marketing rights via its unique north-south line of railway between Washington State and British Columbia. These abilities enable BNSF to serve an expansive number of present customers and consider future opportunities across western Canada and the United States.

BNSF's base business on its rail line involves the interchange of customers' shipments between BNSF and three Canadian railways. Major commodities include lumber and forest products, iron and steel, minerals and ores, petrochemical products, machinery, grain products and many others. These commodities are the building blocks of Canadian and U.S. economic trade and are highly dependent upon global markets, the domestic economies of both countries, and the U.S./Canadian exchange rate. Origins and destinations of these shipments vary widely and include all western Provinces and States.

From the peak of the housing boom through the trough of the recent recession, BNSF's train volumes declined by as much as 30%, reflecting the Canadian marketplace. The rebuilding of the economy and new opportunities are expected not only to restore past volumes but also to result in growth in line with that of the Canadian and U.S. economies.

Further change is guaranteed. Global demand for coal has heightened interest in the

export of coal, while the dissolution of the Canadian Wheat Board may drive increased grain and grain products volumes either north to Canada or south to the U.S. BNSF expects that these continuing market shifts will provide opportunities for growth.

BNSF's access to marine terminals at numerous port facilities in Canada and the U.S. Pacific Northwest is one of the principal reasons BNSF expects rail traffic to increase significantly, with or without the GTP project. These port facilities are positioning themselves to capitalize on international trade opportunities in a wide variety of commodities with global origins and destinations. A number of ports plan to establish the capacity for millions of additional containers to be handled through their facilities, and existing and new port capacity will be utilized to handle increasing volumes of bulk commodities like potash, grain and coal. BNSF expects that a number of these ports will use its rail line as customers in both the U.S. and Canada seek the proper balance of port access, capacity, economics and timing.

Any number of factors can alter BNSF's outlook significantly and adversely, however. A protracted economic malaise in the U.S. may lessen the need for forest products. Global commodity pricing and demand is already showing significant declines in some sectors, which will certainly affect some customer's need for transportation.

BNSF's north-south cross-border line represents a unique asset that serves to enable not only U.S.-Canada trade, but also global trade to and from the two nations. BNSF expects that the historical importance of this line will continue well into the future. As the above discussion indicates, BNSF forecasts increased use of this rail line with or without the GPT project. However, given the many unknown variables, it is impossible to forecast increases in train traffic along specific routes with the accuracy required for meaningful analysis under NEPA.

C. Weather Events

Weather events are another major factor that contribute to the uncertainty of BNSF's rail operations on any given day or location. Unanticipated weather, or weather events of unexpected force, can disrupt BNSF's ability to handle commodities on any particular rail route, in some cases for extended periods of time. A perfect though unfortunate example is the flooding that we experienced in 2011 (Figure 12). This flooding caused service disruptions for 10 months and the need to reroute trains on over 40% of our rail network.

Minot, N.D.

Figure 12. Weather conditions experienced by BNSF (Source: BNSF Railway).

In summary, a multitude of factors affect BNSF's rail operations in the Pacific Northwest region, including, but not limited to, regional and global market demand, intermodal competition, cross-border opportunities, and unanticipated weather events. As a result of the interplay between these various factors, quantifying any single cause of increased traffic in one location at a given time is impossible. Without the ability to analyze the cause of traffic increase or decline, future increases are likewise unpredictable. Any attempt to make such predictions would yield speculative figures with no certain basis in fact. These are not quantifiable impacts that assist a NEPA analysis.

III. Projected Freight Rail Demand in the United States

Independent of the demand for rail service to or from any single facility, historical data demonstrates that shipping volumes have increased over time. Relying on these past trends, the Federal Highway Administration has predicted that this overall increase will continue (Figure 13).[9] Since they are based on past trends, these predictions incorporate the very type of fluctuations that make specific and localized increases impossible to predict. As a result, these predictions take into account variables such as new export opportunities and the rise and fall of customer demand, to yield a high level estimate of likely future changes. Since the current project is just one such new opportunity, any associated increases in train traffic have been accounted for already as a component of this projection.

[9] Federal Railway Administration "Preliminary National Rail Plan" (October 2009).

			Tons (000)							
Origin	Destination	Mode	2010	2015	2020	2025	2030	2035	2040	2010-2040 CAGR
Idaho	WA	Rail	53	76	82	88	90	93	95	8.6%
Montana	WA	Rail	8,991	9,543	9,791	10,785	12,546	13,893	15,355	7.9%
Oregon	WA	Rail	79	149	158	162	165	171	175	12.1%
Washington	WA	Rail	3,338	4,363	4,295	4,443	4,609	4,767	4,916	5.7%
Wyoming	WA	Rail	4,218	6,687	7,900	8,944	9,320	9,381	9,330	12.0%
Total (all states)	**WA**	**Rail**	**31,942**	**50,973**	**54,468**	**60,241**	**65,411**	**70,468**	**75,078**	**13.0%**
Idaho	WA	Truck	4,074	6,013	6,890	7,310	7,686	8,038	8,732	11.5%
Montana	WA	Truck	336	452	438	438	432	428	422	3.3%
Oregon	WA	Truck	15,910	21,306	23,673	26,181	28,620	31,558	35,402	12.1%
Washington	WA	Truck	226,472	302,616	309,309	326,220	344,303	360,189	379,597	7.7%
Wyoming	WA	Truck	44	112	128	152	179	195	213	25.2%
Total (all states)	**WA**	**Truck**	**259,350**	**351,581**	**363,111**	**385,582**	**409,375**	**431,322**	**458,663**	**8.5%**

Figure 13. Washington state traffic by rail is predicted to increase steadily, for an increase of 13% by the year 2040 (Source: Federal Highway Administration).

A. The State of Washington

In the 30 years from 2010 to 2040, the State of Washington is expected to grow annual truck volumes by 6.4 million trucks to 15.8 million.[10] This increase in truck traffic will result in additional highway congestion and drive additional freight to the more energy and environmentally efficient rail system.

By comparison, if and when the GPT Project reaches full capacity, the associated train traffic would represent only a fraction of one percent of the total transportation increase represented by the anticipated natural economic growth for the State of Washington (Figure 13).

This growth in transportation enables the economies of both the State of Washington and the United States to meet the projected growth expectations of the shipping public. In 2010, freight-dependent businesses represented 44% of the Washington state jobs.[11]

[10] This is based on analysis of the USDOT 30-Year Freight Tonnage Forecast, using an average 24 tons of freight per truck.

[11] Source: WSDOT State of Transportation (March 2012).

B. Nationwide Freight Rail Growth Projections

As noted above, a number of independent government agencies, national associations, and transportation professionals have predicted for years that this general growth trend will continue. Several national studies (FRA, AASTO, GAO, Global Insights) have predicted that rail traffic in the United States will increase over the next 20-25 years based on a variety of factors[12].

Some of the major factors contributing to this estimated growth in freight rail traffic include:

1) Population Growth
2) Highway Congestion
3) Energy efficiency of Rail
4) Environmental Benefits of Rail vs. Truck
5) Increased Demand
6) Need for Maintaining Global Competitiveness
7) Increased Passenger Use of the Rail Network

For example, the "National Rail Freight Infrastructure Capacity and Investment Study" which was performed by Cambridge Associates for the AAR, estimates that rail traffic will increase by 88% by 2035.

Population	338 million, 0.87% CAGR
Vehicle miles traveled	4.09 trillion, 8.13% CAGR
Rail gross ton miles	1.82 trillion, 1.94% CAGR
Truck ton miles	4.17 trillion, 1.96% CAGR
Port volume	58 million TEUs, 5.4% CAGR

Figure 14. Compounded Annual Growth Rate Projections (CAGR) by 2020 (Source: Global Insights, AASHTO, FHWA)

The AASHTO study entitled, "Transportation Reboot: Restarting America's Most Essential Operating System, The Case for Capacity: To Unlock Gridlock, Generate Jobs, Deliver Freight, and Connect Communities" (July 2010) emphasizes the importance of the nation's transportation system:

> *"We have prepared this report to describe how important an efficient freight system is to the economy, the congestion already taking place, the growth in anticipated demand, and the challenge of keeping America competitive in the world economy."*

AASHTO's study makes it clear that congestion on the nation's highways is emphasizing the need for the railroads to handle more freight.

---

[12] Federal Railway Administration "Preliminary National Rail Plan" (October 2009), National Rail Freight Infrastructure Capacity and Investment Study (September 2007), American Association of State Transportation Officials, "Transportation Reboot: Restarting America's Most Essential Operating System" (July 2010), Government Accounting Office, SURFACE TRANSPORTATION Restructured Federal Approach Needed for More Focused, Performance-Based, and Sustainable Programs (March 2008).

IV. Commodity Shipments Regardless of the Proposed GPT Project.

As shown above, coal and other commodities will be shipped regardless of the GPT project. Although the GPT project may change the terminal used to receive some of these shipments, it will not increase the overall volume shipped, given the number of existing terminals on the West Coast, including Canada.

As stated under the discussion of our rail service capabilities to/from Canada, BNSF has the capability to provide rail service to both existing and future proposed coal export terminals in British Columbia, Canada through its extensive rail network. Given the number of existing and potential future terminals, it would be speculative and not reasonably foreseeable that the GPT project would increase rail traffic on any particular route.

V. BNSF Continues to Improve its Rail System

BNSF possesses the capacity to handle the potential rail volumes that could be realized from the full capacity of the GPT project, as discussed in more detail below. Rail improvements are made financially possible only by increased freight rail volume. This system ensures that the necessary private capital to refresh BNSF's physical plant and capacity becomes available as necessary to provide adequate levels of service along rail lines.[13]

A. Rail Volumes

As previously stated, growth in freight rail traffic of all commodities has significantly increased and is projected to continue to increase. This is good for local economies and the environment, as railroads are the most environmentally efficient and cost effective way to move freight. Moving freight by rail uses less energy, reduces pollution, lowers greenhouse gas emissions and cuts highway congestion, when compared to all other transportation modes.

In addition, BNSF has continued to make improvements to its lines that have resulted in improved system-wide train velocity[14]over the last few years (Figure 15). At the same time, however, current BNSF rail volumes, while having shown improvement, are short of volumes occurring in 2006. Rail volumes on the national network average 52,000 units a week fewer than peak volumes in 2006. Of the 20 traffic segments that the industry tracks, volumes in just three of those segments are up while volumes in all others are flat or declining due to a sluggish economy.

B. Capital Investment

In 2006, when the intermodal segment and other rail freight volumes were growing quickly, BNSF and the rail industry invested heavily in the network to accommodate our customers' growth.

---

[13] See Enclosure-Letter from Matt Rose, Chairman & CEO, BNSF Railway, to Governor Christine Gregoire (May 14, 2012.

[14] Train velocity is measured in rail miles traveled per day by commodity type, terminal dwell, etc.

BNSF has made unprecedented capital improvements from 2000 through the 2012 Capital Investment Plan, including the following:

- $36.5 billion total Capital Investment
- 2,800 locomotive acquisitions
- 16,000 additional grain car acquisitions
- The addition of more than 1,000 miles of 2nd, 3rd and 4th main track (not including sidings) to our system.
- In 2013 alone, BNSF will invest a record $4.1 billion in rail improvements.

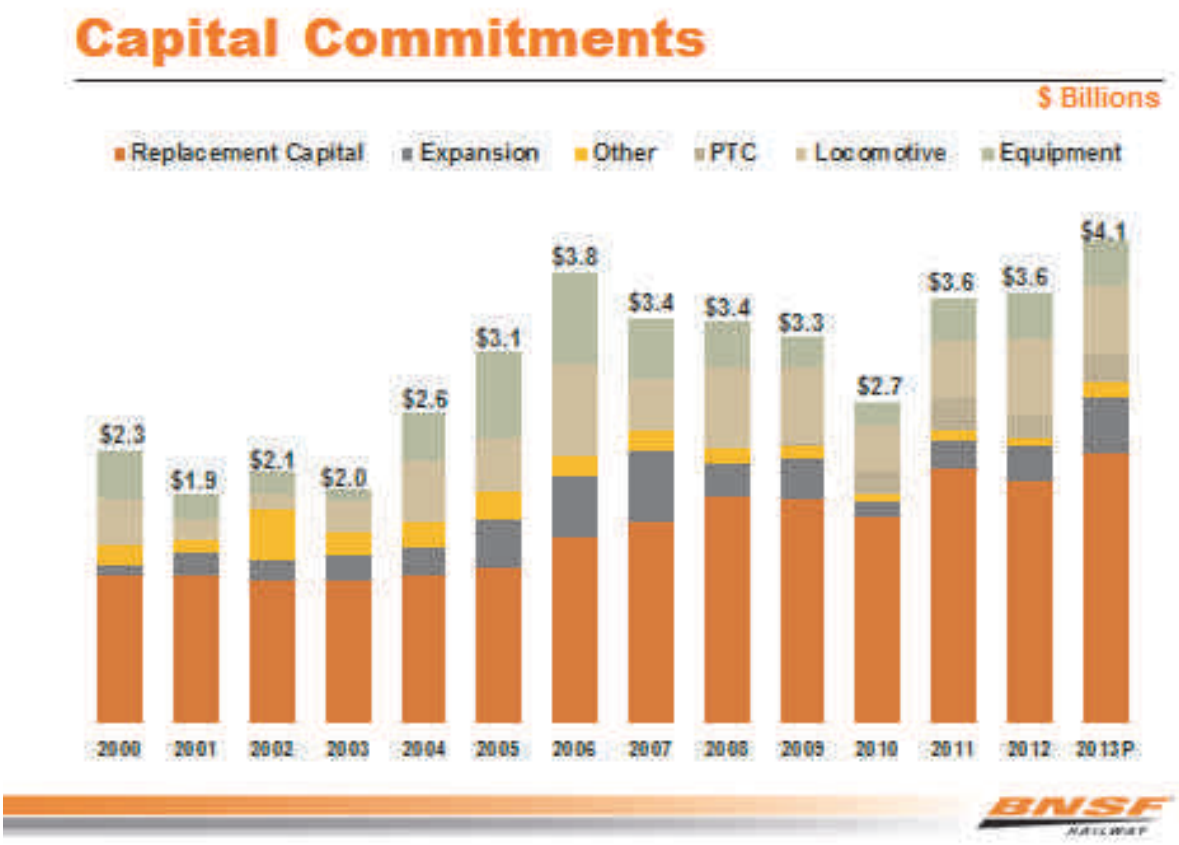

Figure 15: BNSF Railway Capital Expenditures (2000-20013P) in Billions of Dollars (Source: BNSF Railway) Note: $ = Billions

C. Assertions of Independent "Capacity Studies"

BNSF has been made aware of certain so-called independent studies of BNSF's rail capacity related to the GPT project, even though these third party researchers made no attempt to contact BNSF directly for input. These consultants do not have access to BNSF data and have no knowledge of what is needed for freight rail capacity in the region without talking to key freight rail providers, such as BNSF. The credibility of these independent studies, therefore, is questionable; they represent the kind of speculation disfavored under NEPA.

The following additional information regarding these independent "capacity studies" is

important:

(1) References to certain past BNSF capacity discussions, such as the WSDOT 2006 study, are out of date because they omit capacity improvements that have been implemented since that time.

(2) Based upon the overall growth in business, any capacity improvements that might be needed sometime in the foreseeable future would be necessary regardless of the outcome of the proposed GPT project. In fact, various capacity improvements, including the idea of a second main track along the city waterfront in Bellingham, have been under discussion for years. BNSF is looking at several ideas, and so far has not reached any conclusions.

(3) Any capacity improvements that may be needed in the region to accommodate future growth for all commodities and/or passenger service will be carefully evaluated, planned and constructed in cooperation with appropriate public agencies and requirements.

(4) Certain studies appear to rely on past passenger rail studies for information. Developing capacity improvements for passenger rail service differs from adding capacity for freight trains because passenger trains require greater speed than freight trains and, therefore, require capacity in excess of what would normally be required for freight trains alone. Freight can move more linearly at slower speeds and without adherence to tight arrival or departure schedules. Therefore, studies for passenger trains are not reliable for analyzing freight rail needs and do not provide an accurate picture of either the capacity need or of possible ways to maintain efficiency for either freight or passenger rail.

(5) BNSF funds virtually all of its capacity improvements for freight rail. Certain independent "capacity studies" have incorrectly stated that "state and federal money regularly pay for the cost of rail improvements." This is true for passenger rail, but not freight rail. As noted above, BNSF spent $3.6 billion in its capital program in 2012, and plans an approximate $450 million increase for 2013 to $4.1 billion, which will be an all time record capital commitment program for our company. Moreover, BNSF regularly invests over $100 million annually in Washington State to preserve, maintain, and grow freight rail capacity. In 2012 alone, $110 million was invested in improvements across the state, to enhance service for existing customers.

BNSF routinely performs studies for potential capacity improvement based on the best information available on our customers' dynamic needs and changing traffic volumes. Other than improvements at the Custer Spur almost 17 miles away from Bellingham, no other rail improvements related to GPT have been proposed or will be required.

For all of the reasons cited above, concerns about BNSF's ability to provide capacity to support the GPT project and maintain the existing level of service are unfounded.

VI. <u>Coal Dust</u>

Coal dust from the rail cars traveling to and from the GPT has been raised as an issue of concern for this project. The railroads were the first parties to identify that coal dust came off of railcars in the vicinity of the loading point at the mines. Since 2005, BNSF has extensively

researched both the impacts of coal dust escaping from coal cars loaded at Powder River Basin (PRB) mines and effective methods of preventing the loss of coal dust from loaded trains.

Use of best practices in loading techniques and technology in the PRB will effectively address the coal dust issue. For example, Peabody Energy recently states its intent to use best practices when loading coal at its PRB mine facilities prior to shipment to the proposed GPT project. This commitment should effectively address concerns regarding this issue as treated loads release virtually no dust.

Coal has been hauled by rail in the state of Washington for decades traveling through Washington to ports in British Columbia. Despite decades of hauling coal in the state of Washington, BNSF is not aware of a single complaint raised about coal dust until the recent interest in coal exports. Indeed, there is no scientific research or study, or even anecdotal evidence, that coal dust from trains has ever negatively impacted a community in Washington. For additional information on this issue, please refer to the enclosure entitled "Coal Dust Facts."

VII. Traffic Impacts

During the public scoping process, several commenters expressed concerns about the potential impacts of the proposed GPT project on vehicle traffic patterns in the local community. BNSF is working with the Corps and other agencies to analyze the potential impacts of the Custer Spur project on vehicle traffic in the action area. BNSF recommends that the DEIS evaluate traffic studies recently submitted by the applicants that assess many of the concerns expressed by the public during the scoping period.

Regarding rail crossings in general, BNSF is committed to managing train traffic to minimize crossing delays. The chance of an emergency vehicle having to cross the intersection at the exact time a train is passing is very low. Delays caused by traffic on the highway are more likely. In the event a train is stopped at a crossing, BNSF has posted emergency contact numbers at all public grade crossings for contacting a 24-hour operations center during crossing emergencies.

VIII. Diesel Emissions

During the public scoping process, several commenters also expressed concerns about the potential impacts of diesel emissions associated with rail traffic in the action area. Similar to traffic issues discussed above, BNSF is working with the Corps and other agencies to analyze impacts of the proposed action on air quality in the action area. BNSF recommends that the DEIS evaluate air quality studies recently submitted by the applicants that assess many of the concerns expressed by the public during the scoping period.

Since the beginning of 2000, BNSF has acquired 2,800 new locomotives that are more fuel efficient than the older locomotives they replaced. In 2012, BNSF spent $1.1 billion on rolling stock and new Tier 3 locomotives that achieve the highest EPA emissions standards available, and result in a reduction in diesel emissions of 69 percent relative to older locomotives. Each year, as BNSF acquires new locomotives, it acquires the locomotives with the highest EPA emissions standards available on the market.

This effort has yielded one of the industry's newest and most fuel-efficient fleets of road locomotives that are able to pull more freight with less fuel. Over the past 10 years, BNSF fuel consumption has only increased 14 percent, while the volume and distance of freight moved has increased 29 percent.

Additionally, idle-control mechanisms installed on locomotives reduce air emissions and fuel consumption by automatically shutting down locomotives that aren't being used. We've equipped nearly 90 percent of our locomotives with idle-control technology, and all new locomotives we purchase are equipped with this technology. We will continue to retrofit older locomotives.

IX. Programmatic or Regional NEPA Analysis

Some parties have suggested that the Corps prepare a "programmatic" or "regional" EIS to analyze potential marine terminal projects on the West Coast. Neither of these analytical approaches is necessary or appropriate in this case, and should not be pursued by the Corps.

NEPA authorizes agencies to prepare a programmatic EIS under certain circumstances. *See* 40 C.F.R. §§ 1502.4(b), 1508.18(b)(3). However, the existence of a federal program is a prerequisite to preparing a programmatic EIS. *See National Wildlife Fed'n v. Appalachian Regional Comm'n*, 677 F.2d 883, 888 (D.C. Cir. 1981). In the current case, the Corps has not proposed any program related to the development of export terminals in the Pacific Northwest. In the absence of any program, the Corps should follow its long established procedures for considering applications on a case-by-case basis when they are filed with the agency.

Even without a federal program, some stakeholders have asked that a "regional" EIS be prepared for all of the Pacific Northwest bulk export terminal projects because they are "similar." An agency is never required to prepare a single EIS for multiple independent projects. *See Earth Island Inst. v. U.S. Forest Service*, 351 F.3d 1291, 1306 (9th Cir. 2003); *Izaak Walton League of Am. v. Marsh*, 655 F.2d 346, 374 n. 73 (D.C. Cir.), *cert. denied*, 454 U.S. 1092 (1981). It is not appropriate for the Corps to prepare a regional EIS in this case because the terminal projects at issue are private projects that are entirely independent of one another. It is entirely possible that one or more of these projects may not proceed.

Preparing a single EIS in this case would not be practical, nor would it result in a more informed decision-making process given the significant differences between these marine terminal projects. *See, e.g., Churchill County v. Norton*, 276 F.3d 1060, 1074-79 (9th Cir. 2001). Indeed, requiring a programmatic or regional EIS in this case could create a harmful precedent for a range of rail projects, including enhancing passenger service in the Northwest, making it impossible to complete these projects in a timely manner.

X. Conclusion

In order to fulfill its obligations under NEPA requirements, the analyzing agency is responsible for choosing the issues deemed important for analysis. CEQ regulations expressly limit the analysis requirements to direct impacts and those potential indirect impacts that are reasonably foreseeable, not those that are remote or speculative.

In this regard, it is clear from the foregoing that rail freight traffic not only in the State of Washington, but nationwide as well, is dynamic and is determined by numerous factors including, but not limited to:

- A diverse set of customers each with variable schedules
- Markets driven by global supply and demand factors
- Currency fluctuations
- Competing modal choices
    - ✓ Itself influenced by factors such as highway congestion
- Population growth and the resultant demand for BNSF's transportation services
- Energy and environmental efficiencies of rail
- Scheduling factors for individual shipments, including seasonality and weather events.

Thus, it is clear that the predicted trend of growth in rail freight traffic is a result of numerous factors and has long been a nationally recognized issue as documented in several Government studies. Therefore, train traffic is not driven by any single project, including the proposed Custer Spur improvements or the GPT project.

Even with rail shipments bound for the GPT project, it is not reasonably foreseeable that GPT train traffic will measurably impact rail traffic beyond the rate already anticipated for all commodities. Overall train traffic is predicted to be substantially similar to historical traffic averages, whether or not shipments associated with the GPT project are taken into account. Accordingly, no factual link exists between the proposed GPT project and increased train traffic throughout the state of Washington.

Since neither the Custer Spur improvements nor the GPT project would cause direct or indirect rail traffic impacts outside the area of the Custer Spur, neither project is a legal cause of such alleged impacts. As a result of the multiple variables impacting nationwide traffic patterns (shipment demand, weather, and scheduling factors, etc.), analysis of any alleged impacts from the projects would also be infeasible from a practical standpoint. These considerations are acknowledged in recent CEQ draft guidance on analysis of greenhouse gas impacts, which states that analysis of speculative impacts is not required, and that the analysis of upstream and downstream effects must be bounded by considerations of feasibility.

Simply stated:

- NEPA & CEQ guidelines are clear that speculative analysis is not required
- Train traffic is dynamic and driven by a wide variety of diverse factors.
- Train traffic on any particular line on BNSF's extensive rail network is therefore impossible to predict
- Train traffic is not driven by any single project
- Train traffic is predicted to grow by both the public and private sector with or without the Custer Spur Improvements or GPT projects
- BNSF has adequate capacity to handle the potential GPT rail business and no upgrades other than the proposed Custer Spur Improvements are necessary to accommodate the proposed GPT project
- Commodities will continue to be shipped to Canada whether or not the GPT is ever built

In conclusion, and for all the reasons cited herein, BNSF opposes any scope of review for the Custer Spur Improvements project that would expand the scope of analysis of rail-related impacts beyond the geographical region of the Custer Spur.

BNSF would like to thank the Corps and the other co-lead agencies for this opportunity to provide comments and information concerning the appropriate scope of the Custer Spur Improvements project EIS.

Sincerely,

F. E. Kalb, Jr.
Director Strategic Development
BNSF Railway Company

Enclosures

Matthew K. Rose
Chairman and Chief Executive Officer

BNSF Railway Company
P.O. Box 961052
Fort Worth, TX 76161-0052

2650 Lou Menk Drive
Fort Worth, TX 76131-2830

tel 817.867.6100
fax 817.352.7430
matthew.rose@bnsf.com

May 14, 2012

The Honorable Christine Gregoire
Office of the Governor
Post Office Box 40002
Olympia, WA 98504-0002

Dear Governor Gregoire:

As you are aware, this subject of the potential impact on Washington state from the opening of new bulk export facilities along the state's coast has generated substantial interest and public debate. Unfortunately, much of the public discussion is misleading and incorrect. As a result, I write to provide you with additional information regarding these assertions.

For over a century, BNSF Railway Company (BNSF) has been serving Washington state. Our railroad is a key component of many of the state's leading economic engines—from natural resources to consumer products and aerospace. International trade has always been a driver of Washington's diverse economy, and bulk commodities, such as coal and agricultural products from Montana and Wyoming, have been part of Washington's export trade flow for decades.

The proposed Gateway Pacific Terminal (GPT) at Cherry Point would enable the state to benefit directly from the growth in the export of bulk commodities and allow Washington state ports to effectively compete with ports in Canada and Mexico.

At the outset, much of the public debate about GPT (and other proposed export terminals) has been framed by national advocacy groups that are attempting to affect world energy and climate policy. These groups are not interested in seeing the proposed terminal's economic and environmental impacts on Washington state properly evaluated. These groups have raised a number of assertions which are incorrect. In particular, I would like to highlight a few issues: existing and future freight capacity, ongoing commitments to passenger rail service and capacity, and particulate matter and coal dust.

Freight Rail Capacity and Investment—It has been asserted in the media that freight rail traffic serving GPT will cause a potential shortage of capacity for other port freight movements and passenger rail service. This assertion is incorrect. Rather, I want to assure you that BNSF will ensure that we have adequate capacity to handle current and future freight and passenger volumes. The reality is that increased freight rail volume, including coal, provides the necessary private capital to refresh BNSF's physical plant and expand capacity.

Some have suggested exaggerated increases in train counts resulting from the GPT facility. Like any freight flow that fluctuates with an ever-changing global marketplace, we do not know what the net effect in train traffic would be. (For example, the GPT facility could well draw business away from Canadian exports, thereby reducing traffic north of the border.) Whatever the daily

train count, it will be a small fraction of the overall freight and passenger rail traffic in Washington state.

Strategic planning, construction, and maintenance of rail infrastructure and facilities are central to BNSF's ongoing commitment to its current customers in Washington and across our 28-state system. We constantly update and refine a capital investment program that anticipates and responds to dynamic customer needs and changing traffic volumes, as well as deployment of new technology to ensure even higher levels of efficiency and safety.

BNSF regularly invests over $100 million annually in Washington state to preserve, maintain and grow freight rail capacity. In 2012, $106 million is slated for improvements across the state, to enhance service for existing customers. As evidenced by our recent capital investments at the Seattle International Gateway and other yard improvements, new rail access to the Port of Vancouver, advanced signalization, and siding construction and extensions around the state—BNSF is actively investing in Washington to ensure that we meet current and future customers' rail service requirements. As new business opportunities are considered, their impact on velocity, capacity and a host of other potential impacts are evaluated to ensure that service requirements will be met for new—as well as existing—customers.

Passenger Rail Capacity and Service—Next, I want to assure you that our agreements with Washington state and Amtrak will ensure that increased freight traffic will not harm the Amtrak Cascades and Sounder commuter rail operations. Detailed agreements obligate BNSF to meet specific service requirements, and there are consequences for failure to do so.

Since its launch in the mid-1990s, Amtrak Cascades passenger volumes have consistently grown, along with its ridership popularity. This success is tied directly to BNSF's commitment to consistently high on-time performance, and would not be possible but for the fact that BNSF accommodated its own growth in freight volumes through consistent and aggressive capital investment and operations efficiencies. For close to two decades, Washington state and BNSF have built a partnership of success, based on the blending of public and private investment, to meet growing public and private traffic volumes. And, our experience with Sounder commuter rail is no different. Our agreements with Sound Transit, in effect, dedicate rail capacity to help ensure the success of service levels and schedules.

Emissions Reduction—In 2012, BNSF will make an overall capital investment of $3.9 billion, including $1.1 billion for the purchase of new rolling stock with most of that for energy-efficient, low-emission locomotives. These new "Tier 3" locomotives achieve the highest EPA emissions standards available from locomotive manufacturers. From pre-2000 units, these latest locomotives cut NOx by 60 percent and particulate matter by 69 percent.

With the newest locomotive fleet in the industry, and further deployment of other green technology—like the wide-span electric cranes installed in Seattle (the first in North America), we are proud of our environmental stewardship. Rail is four times more fuel-efficient and has 75 percent less emissions than trucking, making it the most environmentally-friendly mode of surface transportation, and we are continuing to make strides toward a cleaner environment.

Coal Dust—Despite decades of hauling coal in Washington, we are not aware of a single complaint raised about coal dust until the recent interest in coal exports. In fact, railroads were first to recognize coal dust, which impacted proper track ballast drainage near the mines, resulting in derailments. In response, we have called on customers to treat coal carloads with a surface "crusting agent" at the mine to prevent dust. While the exact method of coal dust suppression is

a decision of the mine and the railroad, we can be confident that, as a result of these steps, virtually no measurable coal dust will exit coal cars in Washington state or any point along the trip from the mines to the port facility.

As always, BNSF is committed to working with Washington to strengthen the state's trade competitiveness and grow family wage jobs, and to do so in an environmentally-responsible manner.

Sincerely,

Matthew K Rose

Matthew K. Rose

COAL DUST FACTS

Coal Dust Is Not An Issue Near Unloading Destinations:

Since 2005, BNSF has been at the forefront of extensive research regarding the impacts of coal dust escaping from coal cars that are loaded at Powder River Basin (PRB) mines in Wyoming and Montana and effective methods of preventing the loss of coal dust from loaded trains. BNSF's research and experience has shown that coal dust escape can be a problem near mine loading points, but that it decreases as the railcars move further from the PRB. Coal dust is not an issue near coal unloading destinations, such as those proposed in the Pacific Northwest, nor has a complaint of coal dust from rail cars ever been lodged with a clean air agency in Washington or with BNSF until the announcement of prospective bulk export terminals. In addition, BNSF has established coal loading rules discussed below that will effectively eliminate coal dust even in areas near the mine loading points.

Starting in 2005, to protect its track right-of-way close in to the mines, BNSF established an extensive data collection system in the PRB under the guidance and direction of an environmental and energy research and development firm, SWA, and an environmental engineering firm, Conestoga-Rovers Associates. Dustfall collectors were placed at various points on the right-of- way to keep track of overall coal dust deposition along the rail lines. In addition, several trains were equipped with dust monitoring equipment that measured coal dust losses and determined the effectiveness of various mitigation measures.

The data from both types of monitoring showed that coal dust escapes the train in close geographical proximity to the mine and diminishes substantially afterward. This conclusion makes sense. Coal particles that can be blown out of loaded cars in transit are likely to be blown out of the cars early in a trip. In addition, as a train travels any distance, the coal dust particles shift, or sift, their way to the bottom of the railcar as the car is shaken and jostled as it moves down the tracks.

BNSF's maintenance experience confirms that coal dust losses are concentrated on lines near the PRB mines. Coal dust deposits on BNSF's lines in and near the PRB require costly accelerated maintenance far beyond normal maintenance. BNSF maintains regular maintenance schedules on our lines in Washington and Oregon. If coal dust was escaping the trains in the PNW, it would be present in our right of way, and there would be a much higher frequency of maintenance to protect the integrity of the track, similar to BNSF's experience in the PRB. BNSF's testimony before the Surface Transportation Board (STB) indicated that some areas of the Joint Line need to be undercut every 2 to 3 years, and the entire Joint Line needs annual shoulder ballast cleaning. By contrast, other high density lines, like BNSF's TransCon Corridor in New Mexico, are generally undercut every 15 to 20 years (or 10 years for certain segments), and shoulder ballast cleaning is not required. (Sloggett Opening Verified Statement to the STB at pg. 7-8)[1] The maintenance practices that BNSF must carry out in the PRB to deal with coal dust are not needed on our lines in Washington and Oregon because coal dust is not a problem on BNSF's Washington and Oregon lines.

Thanks to BNSF's efforts to understand the problem of coal dust and to promulgate loading rules to protect PRB lines from the effects of coal dust, BNSF is aware of the full range of research that has been done on the issue of coal dust. With the recent community discussions relating to coal transportation through the PNW, there have been claims about coal dust escaping from rail cars that are simply not supported by any data in the research that has been done. For example, it has been asserted that trains carrying coal lose one pound

[1] Undercutting is a ballast maintenance measure where the track and ties are lifted off the ballast, removing the

underlying ballast, cleaning it, and replacing it with clean ballast.

of coal dust for every mile traveled, including areas far from the PRB. There is no data to support this claim. This claim is also inconsistent with common-sense observations of coal movements through the PNW for over two decades. If this claim were accurate, existing coal export traffic in Washington State last year alone would have resulted in 30,000 tons of coal dust escaping the cars within the state boundaries. That's the equivalent of two 125-car coal trains. It's a reasonable assumption to expect that BNSF's customers and the communities it serves would have noticed that amount of coal dust along the route. To our knowledge, there has not been one complaint from a city, county or state air management agency in the PNW related to coal dust. Claims about coal dust losses in the PNW are not validated by any empirical evidence or even anecdotal observation of coal transportation on PNW lines.

Coal Dust-Testing and Conclusions:

As part of BNSF's research, we retained and worked closely with engineering consultants to design monitoring devices for coal dust releases, to implement protocols for measuring coal dust from particular trains, and to analyze the results of field tests. This intensive effort definitively demonstrated that there are practical ways to substantially reduce coal dust releases from loaded railcars in transit and served as the factual underpinning of BNSF's current loading rules.

First, BNSF has found that coal dust releases can be partially reduced by loading coal cars with a modified loading chute that produces a rounded contour of the top of the loaded coal, thereby eliminating sharp angles and irregular surfaces that contribute to coal dust escaping the car in transit. BNSF has created a load profile template for PRB coal mines to follow when they load rail cars. While loading the cars with the proper load profile reduces the escape of coal dust, shippers must take additional measures to ensure that coal dust losses are substantially eliminated.

BNSF found that a topper agent or surfactant can be sprayed over the loaded coal in a rail car at the mine to keep the coal dust from escaping during transit. The topper agent forms a thin crust over the top of the loaded coal that keeps the coal dust in the loaded car. During a seven-month period in 2010, BNSF undertook a large-scale field trial ("Super Trial") of coal dust mitigation measures to obtain more information on the effectiveness of various topper agents and services. Different topper agents were tested in the laboratory and in the field on operating coal trains to determine their individual efficacy in reducing coal dust releases. The Super Trial confirmed that the application of certain topper agents, when used in combination with a modified loading chute, can reduce coal dust losses by at least 85%.

BNSF Loading Rules-Solving the Problem:

Prior to the Super Trial, in 2009, BNSF established a tariff that set a quantitative limit on coal dust that could be released from loaded coal trains, as gauged by certain electronic Trackside monitors located at fixed points on PRB rail lines. In its March 2011 decision in the Arkansas Electric Cooperative Corporation case, the STB found that it was premature for BNSF to enforce coal dust standards through an electronic monitoring system located along the PRB coal lines that measured coal dust losses after the trains left the mines. The STB concluded that shippers need to have more certainty when they load their coal cars that they will be in compliance with BNSF's coal dust rules.

In response to the STB's March 2011 decision, BNSF established a new coal loading rule with the same objective as its prior coal dust standard, which is to reduce coal dust losses from loaded coal cars by at least 85 percent. However, BNSF's new rule accomplishes this objective through an activity-based "safe harbor", whereby shippers can use approved methods of coal dust control to be sure when they load their coal cars that they will be in compliance with BNSF's rule. Under BNSF's loading rule, a shipper will be deemed to be in compliance with BNSF's loading requirements if the shipper loads coal cars using BNSF's Load Profile Template and also ensures that an acceptable topper agent is properly applied to the loaded coal at an effective concentration level and in accordance with the manufacturer's specifications. An acceptable topper agent is one that has been shown to reduce coal dust releases by 85%, and five available topper agents have been shown to meet this requirement. A shipper may also seek to include any other method of coal dust suppression (e.g., compaction or other technology) by submitting a compliance plan to BNSF that provides evidence demonstrating that the alternative compliance measure will reduce coal dust releases by at least 85 percent. The rule went into effect on October 1, 2011.

The information included here has been set out in numerous filings that were submitted to the STB where BNSF has demonstrated the benefits of its coal loading rule in reducing coal dust losses from loaded coal trains.