FEDERAL, STATE, AND LOCAL ROLES IN RAIL SAFETY

(110–66)

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON

RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

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August 4, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee on Railroads, Pipelines, and Hazardous Materials Staff

RE: Field Hearing on the Federal, State, and Local Roles in Rail Safety

PURPOSE OF HEARING

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Thursday, August 9, 2007, at 3:00 p.m., at Norwalk City Council Chambers, 12700 Norwalk Boulevard, Norwalk, California, to receive testimony on Federal, State, and local roles in rail safety.

BACKGROUND

The Federal Railroad Administration ("FRA") organizes train accidents and incidents into three categories: (1) train accidents; (2) grade crossing accidents; and (3) other incidents, defined as any event that causes a death, an injury, or an occupational illness to a railroad employee.

The FRA divides train accidents into five causes: (1) human factors; (2) track and structures; (3) equipment; (4) signal and train control; and (5) miscellaneous. Human factors and track defects consistently rank as the top two causes of all train accidents. According to the FRA, almost 40 percent of all train accidents are the result of human factors. FRA reports that 2,903 train accidents occurred in 2006, resulting in six fatalities and 198 injuries. Of those, 189 train accidents occurred in California; 64 were the result of human factors and 64 due to track defects. Of the remaining accidents, 12 were the result of equipment defects, two were the result of signal defects, and 47 were due to miscellaneous causes.

The FRA reports there were 2,920 grade crossing accidents in 2006, which resulted in 368 fatalities and 1,021 injuries. Grade crossing fatalities in 2006 accounted for 97.48 percent of all rail fatalities and the grade crossing accidents accounted for 84 percent of total rail accidents. In 2006,

167 grade crossing incidents occurred in California, resulting in 35 fatalities and 40 injuries. Fatalities due to grade crossing incidents accounted for 96 percent of all California rail fatalities. This number was the second worst in the nation in 2006, behind Texas; the total number of grade crossing collisions was third worst in the nation.

Rail accidents and incidents are increasing in California. When Congress last reauthorized the FRA in 1994, California had 129 train accidents, of which 54 were due to human factors (42 percent) and 43 due to track defects (33 percent). In 2006, California had 189 train accidents, of which 64 (34 percent) were due to human factors and 64 (34 percent) were due to track defects. While total grade crossing incidents and injuries are down, 216 incidents and 60 injuries in 1994 compared to 167 incidents and 40 injuries in 2006, incidents resulting in grade crossing fatalities have increased 13 percent. In 1994, FRA reported 30 grade crossing incidents that resulted in 43 fatalities in California; in 2006, 34 grade crossing incidents resulted in 36 fatalities.

The California Public Utilities Commission, which administers California's rail safety program, attributes these statistics, in part, to the increased rail traffic in California. In 1997, FRA reported 40 billion revenue ton-miles in California. That number surpassed 60 billion in 2006 and is expected to reach 84.1 billion revenue ton-miles by 2013.

FEDERAL, STATE, AND LOCAL ROLES IN RAIL SAFETY

Federal, State, and local governments all play a role in rail safety.

The FRA, one of 10 agencies within the U.S. Department of Transportation (DOT), administers the Federal rail safety program. It has the authority to issue regulations and orders pertaining to rail safety and to issue civil and criminal penalties to enforce those regulations and orders. The FRA relies on 421 Federal safety inspectors and 160 State safety inspectors to monitor the railroads' compliance with the federally mandated regulations and orders. These inspectors operate out of eight regional offices and are divided into six safety disciplines: (1) Track and Structures; (2) Signal and Train Control; (3) Motive Power and Equipment; (4) Operating Practices, which includes (5) Drug and Alcohol; and (6) Hazardous Materials. They also promote numerous initiatives under the Highway-Rail Grade Crossing and Trespasser Prevention Programs.

Federal law requires all laws, regulations, and orders related to rail safety to be nationally uniform to the extent practicable. A state may adopt or continue to enforce a law, regulation, or order related to rail safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the state requirement. A state may adopt or continue to enforce an additional or more stringent law, regulation, or order only in instances where the law, regulation, or order is necessary to eliminate or reduce an essentially local safety hazard; is compatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

The preemption standard has been a concern among some states and localities that have tried to adopt rail safety regulations to address local safety concerns. A key example is California's efforts following a Southern Pacific ("SP") derailment near Dunsmuir, California in 1991. The SP derailment spilled toxic substances into the Sacramento River, subsequently killing all vegetation and aquatic life, but the incident did not violate any Federal railroad safety regulations. In response to

this and other rail accidents, California attempted to enact legislation to address 23 separate "local safety hazards" across the state, including Dunsmuir. The legislation prescribed specific fixes for each safety hazard, such as designating track engineering standards and scientific validation studies for the extreme track curvature and steepness at the Dunsmuir location.

However, the U.S. Ninth Circuit overturned the California action, stating while the curvature and steepness of the track may present a higher risk of derailment, "the character of the grade/curve combination at issue here does not meet the definition of an 'essentially local safety hazard.'" The Court found that if the FRA regulations were ineffective, they were ineffective nationally. According to the Court's ruling, if the FRA made such a determination, it "could easily and adequately address such concerns." In response to the local environmental impact of a derailment, the Court found that the local consequences to the Sacramento River are no different to any other locale where similar conditions exist. Following the Court's ruling, California requested that Congress amend Federal preemption governing "essentially local safety hazards" to grant States greater latitude in addressing safety concerns. See *Union Pacific Railroad Co. v. CPUC*, 346 F.3d 851 (9th Cir. 2003).

However, a recent decision by the U.S. District Court of Minnesota did find that the local consequences of a rail accident can help determine an "essentially local safety hazard." Earlier this year, the Town of Orr, Minnesota, successfully instituted a 30 mph train speed limit by citing an "essentially local safety hazard." When the Canadian National ("CN") contested the rule, the U.S. District Court of Minnesota ruled in favor of Orr. The Court found that the convergence of many local factors including (1) the track's proximity to a lake which could become contaminated; (2) the swampy soil that could cause a "continuing problem" for restructuring and rebuilding the track; (3) the location of propane tanks close to the tracks; (4) the proximity of churches and other businesses; and (5) the extreme seasonal temperature changes converged to create an "essentially local hazard" due to the dangers a rail accident posed to the environment and the town, as well as the challenges associated with rebuilding the track should a derailment occur. Further, the Court found that CN partially agreed with the safety concerns because it limited train speeds along a portion of track outside of Orr and issued slow orders on extremely cold days. Moreover, the Court found that a local derailment resulted in damage to a propane tank, and an explosion was avoided because there "was little momentum at the end of the crash." CN is appealing the decision. See *Duluth, Winnipeg and Pacific Railway Company, v. City of Orr*; Civil File No. 05-2758 (MJD/RLE).

The preemption standard has also been an issue for rail accident victims who are seeking relief for injuries or damages from the railroads in court. A number of recent Federal court decisions have reached the conclusion that the standard does not preempt state or local regulations that conflict with Federal regulations, but also preempts state tort liability law, thereby preventing the injured parties from bringing a state suit against the carrier. See *Lunden v. Canadian Pacific Railway. Co.*, _F.3d._ (No. 05-1918, 8th Cir., May 16, 2006); *Mehl v. Canadian Pacific Railway. Ltd.* (No. 4-02-cv-009, D.N.D. March 6, 2006). *This issue is addressed in H.R. 1, the Improving America's Security Act of 2007.*

While the preemption standard does not always address state and local safety concerns, the focus of the Federal rail safety program is to understand the nature of rail-related accidents and to analyze trends in railroad safety. To do this, the FRA relies heavily on information reported by the railroads following accidents and incidents. Railroad accident reports attribute more than 90 percent of grade crossing collisions to motorists. However, the DOT Inspector General reports that the

FRA does not routinely review locomotive event recorder data, police reports, and other sources of information to determine the causes of collisions or the need for further investigation.

The Inspector General also found that the FRA investigated few accidents (it investigates two-tenths of one percent of all accidents and incidents involving railroads) and recommended few findings of violations for critical safety defects identified through inspections. From 2002 through 2004, for example, FRA inspectors identified 7,490 critical safety defects out of 69,405 total safety defects related to automated grade crossing warning signals. Yet, FRA recommended only 347 critical defects, or about 5 percent, for findings of violations that carry a fine. According to the Inspector General, the FRA's policy of inspectors using their discretion in deciding whether to recommend a violation has resulted in the small number of critical defects recommended for violations. Furthermore, after violations are determined, Federal law allows the FRA to negotiate-down the amount of civil penalties proposed, resulting in the collection of lower penalties, despite the many critical safety defects found.

While state rail safety standards are limited by the Federal preemption standard, they do play an important and growing role in monitoring railroads' compliance with Federally-mandated safety standards. States first worked with the FRA to enforce Federal rail safety regulations after passage of the Rail Safety Act of 1970. By 1975, Federal regulations enabled states to enforce track and freight car safety standards. The Federal Railroad Safety Authorization Act of 1980 broadened state involvement to include the Safety Appliance, Locomotive Inspection, Signal Inspection, and Hours of Service Acts.

In 1992, the State Safety Participation regulations were revised to permit states to perform rail hazardous materials inspections, thereby allowing them to participate in all of the safety disciplines. Three years later, the Grade Crossing Signal System Safety regulations were revised to authorize both Federal and State signal inspectors to insure that railroads properly tested, inspected, and maintained automated warning devices at grade crossings.

Today, 30 states employing 160 safety inspectors participate in the FRA's Rail State Safety Participation Program. State programs generally emphasize planned, routine compliance inspections; however, states may undertake additional investigative and surveillance activities consistent with overall program needs and individual state capabilities. In California, the California Public Utilities Commission ("CPUC") administers the state's participation in the FRA's Rail State Safety Program.

Before participation can begin, each State agency must enter into a multi-year agreement with FRA to exercise specified authority. This agreement may delegate investigative and surveillance authority regarding all or any part of Federal railroad safety laws.

Federal, State, and local governments and public organizations play a critical role in grade crossing safety. In addition to the FRA, the Federal Highway Administration (FHWA) provides financial assistance to help install grade crossing active warning systems. Operation Lifesaver, a non-profit public education program established in 1972, works to prevent grade crossing accidents by working cooperative with Federal, State, and local government agencies, highway safety organizations, and the nation's railroads.

Notwithstanding FRA actions to promote grade crossing safety, state and local agencies are responsible for: (1) selecting traffic control devices; (2) implementing interconnections between grade crossing warning systems and other traffic control signals in the immediate vicinity; (3) investigating accidents on public roads; and (4) enforcing state requirements regarding clearance of sight obstructions at grade crossings.

Current FRA regulations require that railroads only address vegetation growth at public crossings and only to the extent that the vegetation reduces the visibility of road signs and signals. FRA regulations do not address other types of sight obstructions, such as permanent structures, standing railroad equipment, and topography. Only 13 states, including California, have laws or regulations addressing all types of sight obstructions. These laws vary widely, with mandated sight distances ranging from 40 feet along the railroad property line to as much as 1,500 feet in both directions along the railroad right-of-way.

The Inspector General reported that grade crossing safety could be improved if the remaining 37 states lacking the laws and regulations to address sight obstructions at grade crossings established laws to address all types of sight obstructions, such as structures that block highway users' views of approaching trains and overgrown vegetation. *This recommendation is included in H.R. 2095, the Federal Railroad Safety Improvement Act.*

While many states actively investigate grade crossing accidents, the Inspector General found that the FRA does not always use these reports in their own investigations. California and Illinois are the only states that require local officials to investigate every fatal grade crossing accident. However, the Inspector General reports that a shortage of Federal investigators often means that the FRA relies primarily on the railroads' accident reports regarding the nature, probable cause, and party responsible for most crossing collisions.

According to the Inspector General, installation of active warning devices—such as automatic gates and flashing lights—call attention to approaching trains at some grade crossings. However, 76,000 public grade crossings are equipped only with passive warnings, such as crossbucks, stop signs, and pavement markings that advise motorists of the presence of the crossing, but do not provide warning if a train is approaching. These passive grade crossings fail to ensure that motorists have a full view of approaching trains so that they can determine when it is safe to cross. The FRA reports that California has 12,122 grade crossings, of which 7,661, or 63 percent, are public crossings. Of California's public crossings, 3,266, or 43 percent, are passive.

Finally, the Inspector General reported in 2004 that 36 percent of public grade crossing records have not been updated since 2000. State officials use the inventory to develop public crossing priority lists in order to allocate resources to address grade crossings with a high probability of collisions. Currently, the FRA does not mandate reporting requirements. *This recommendation is included in H.R. 2095, the Federal Railroad Safety Improvement Act.*

EXPECTED WITNESSES

Ron Beilke
Mayor
City of Pico Rivera

Richard Clark
Director
Consumer Protection & Safety Division
California Public Utilities Commission

Clifford Eby
Deputy Administrator
Federal Railroad Administration

Jesus Ojeda
Presenter-Trainer
California Operation Lifesaver

Rick Richmond
Executive Director
Alameda Corridor East Construction Authority

Chris Roberts
Regional Vice President
South Operations
Burlington Northern Santa Fe Railroad

Tim Smith
California State Legislative Board Chairman
Brotherhood of Locomotive Engineers

David Spence
President
San Gabriel Valley Council of Governments

David Wickersham
Chief Engineer - Western Region
Union Pacific Railroad

FIELD HEARING ON FEDERAL, STATE, AND LOCAL ROLES IN RAIL SAFETY

Thursday, August 9, 2007

HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
Norwalk, CA.

The Subcommittee met, pursuant to call, at 3:00 p.m., in Norwalk City Council Chambers, Norwalk Municipal Center, 12700 Norwalk Blvd., Norwalk, California, Hon. Corinne Brown [Chairwoman of the Subcommittee] presiding.

Present: Representatives Brown, Napolitano, and Johnson.

Also Present: Representative Sanchez.

Ms. BROWN. Will the Subcommittee on Railroads, Pipelines and Hazardous Materials come to order. The Subcommittee is meeting today to hear testimony on Federal, State, and local roads and railway safety. I want to thank the Norwalk City Council for their hospitality and then letting us hold our hearing in their chamber.

I also want to thank my friend, Congresswoman Grace Napolitano, for inviting us to her district to hold this hearing today, and I want you to know that we have been working on this hearing for over six months, ever since I became Chairperson, and I have also learned, I am sure, as local people know, that you cannot tell her no, that you will have to work it out.

Rail safety is a growing concern in California. When Congress last reauthorized the FRA in 1994, California had 129 train accidents, of which 54 were due to human factors and 43 were due to track defects. In 2006, California had 189 train accidents, of which 64 were due to human factors and 54 were due to track defects.

While total grade crossing incidents and injuries are down, fatal grade crossing incidents have increased. In 1994, FRA reported 30 grade crossing incidents that resulted in 43 fatalities in California. In 2006, 34 grade crossing incidents resulted in 36 fatalities.

After numerous hearings on rail safety, the Committee on Transportation and Infrastructure reported a comprehensive rail safety bill that will address many of the safety problems being faced by the rail industry, both in California and in the rest of the Nation.

This legislation, which will soon be considered by the whole House, makes numerous improvement to rail safety, including requiring the Secretary of Transportation to develop a long-term strategy for improving rail safety, improving safety at grade crossings, strengthening hour-of-service laws, improving worker train-

ing, requiring new rail safety technologies, and strengthening employee whistleblower protections.

But for these safety measures to be effective, we must remain vigilant. States and localities must work with the Federal Government and help ensure compliance with Federal-mandated safety standards. Finally, rail carriers must be wary of the dangers their operations pose to communities.

I want to thank our witnesses for joining us today. I look forward to hearing their ideas on how Federal, State, and local governments can work together to enforce safety laws and improve rail safety.

Before I recognize the witnesses, I want to acknowledge that the Mayor is here and I will let you introduce the Mayor.

Ms. NAPOLITANO. Mayor Rick Ramirez.

Mayor RAMIREZ. Good afternoon. How is everybody doing today? We would just like to invite you—it is an honor and a privilege to have such a meeting hosted here, in the city of Norwalk, and I would like to welcome our distinguished Member of Congress here to talk about rail safety and issues that affect this region.

I hope that a lot of good will come out of this Committee meeting and that a lot of the issues would be addressed today. It takes a collaborative effort of local, State and Federal officials, working together, to address issues that effect this region. So on behalf of the City Council, and the city of Norwalk, we would like to welcome everyone here this afternoon. And we ordered this special weather for you this afternoon, clear skies and warm weather. So again, thank you and welcome to the city of Norwalk.

Ms. BROWN. Thank you. Thank you, Mr. Mayor. I want you to know, I appreciate the weather. I am just leaving Dallas, and Florida, and Washington, where it was over a hundred. Thank you.

Before I recognize other Members for their opening statements, I ask unanimous consent to allow 14 days for all Members to revise and extend their remarks, and to permit the submission of additional statements and materials by Members and witnesses.

Without objection, so ordered.

Also, I would like to ask unanimous consent for Congresswoman Sanchez, and any other Members of Congress, to participate in today's hearing, to sit and ask questions of the witnesses. Welcome, Congresswoman.

And now the Congresswoman whose district we are in, Mrs. Napolitano, I recognize you for your opening remarks.

Ms. NAPOLITANO. Thank you, Chairwoman Brown, for holding the hearing "in my backyard," so to speak, and I thank my colleagues, Congresswoman Johnson and Sanchez for being with us for this very important hearing, and welcome to the 38th Congressional District.

My district has the most congested urban rail quarters in the country. We have over 160 trains traveling through my district every day, 90 on the Union Pacific and 70 on the BNSF. You can see 14,000 containers, or more, traveling through this hearing, many of them carrying hazardous material, which is a great concern to my electorate and my constituency.

Although we transport over $400 billion worth of trade, we need to ensure that we are working in a collaborative way to continue

working towards the diminishing of the accidents and the fatalities, and of everything that we know can happen.

Just in my district alone, there are over 3 million people that live and reside in the areas that are polluted by the cars waiting to get through the crossings, and many of the railroad tracks, as we well know, run adjacent to residential areas.

And of course the major commuter and business corridors have those rails going right through those areas. Commuters are necessarily burdened by traffic delays at grade crossings, the air quality issues due to pollution from the engines, from the cars and trains, noise from whistles at night, from the rail cars, and of course the safety concerns because we have had derailments in our "back yard," so to speak.

And we have had, in one year, between October 2004 and May 2005, five derailments. So we are very cognizant of what can happen. Thankfully, there were no fatalities, but there was a loss in the millions of dollars, not only to homes and to businesses, but cause great anxiety in our communities.

We need to increase the cooperation of the railroads, the communities, the State, the Federal, and the counties, for rail safety in urban areas.

We need to continue working together, and I know there has been a great effort, and I thank UP, and BNSF is coming very nicely with talking to us, and Lupe, she has been at every meeting we have had since May meeting, on days, when we were sitting at the table, trying to figure out how do we get the railroads to comply with the needs of our communities.

And is Judge Schneider here? Thank you, sir, for being here. You said you would come. Union Pacific legal representative. And we have been at the table for many hours in the last, I would say what? four years.

So I have seen a lot of the changes which are very beneficial to the community, especially when they turned most of the Alameda Corridor into new rail and new concrete ties.

And that's a great benefit. Now we need to start working on collaborative efforts with communities, the schools, the groups, so that your youngsters know that rail barriers are not open to pedestrian traffic. It is a misdemeanor to be in those private areas, and we need to tell them how important it is for them not to "play chicken," trying to move into areas where they can get killed. We have had those already. We don't need anymore.

So we would want to ensure that this hearing—thank you, Chairwoman Brown, for continuing to push the big safety factor of the transportation area in your Committee. Stronger standards for railway inspectors are needed, so that we are ensured that not only is the equipment and the maintenance of such equipment safe enough to be able to traverse our areas, but that those employees are also protected.

The amendments. We need to ensure that they receive the maximum of training necessary to be able to carry out their trust. There are a lot of other things. I would rather just go ahead and say to all of the witnesses, to the people who are here, thank you so much, and especially to my colleagues, because this truly is an area that deserves to be able to have a gathering of those individ-

uals who care about the safety of the community and the safety of the railroad and its people, because they are one of our biggest economies in the area and they bring us prosperity. But we need to work together and have them understand how their actions can affect the safety of our communities.

Thank you, Madam Chair. There are a lot of other things, that I'll put them in writing, and I appreciate you being here.

Ms. BROWN. Thank you, Congresswoman. And Congresswoman Johnson, your opening remarks.

Ms. JOHNSON. Thank you very much. Let me express my appreciation to the Mayor, and various officials here. in the city, for welcoming us, and thank the witnesses for being here.

I am going to ask unanimous consent that I file my entire statement and simply make some opening remarks.

We all struggle to attempt to answer and correct many problems, and it is a partnership between the public and the railroads. The railroads are vitally important, most especially to my State, and we have a lot of accidents. Most of them happen at rail crossings, and we had a conversation en route here, where I talked about some of the things that we had done at home with public education, with PTAs and neighborhood groups, to make sure that safety activities would be understood and practiced by our citizens.

It does not take the responsibility

away from railroads but we hope that working in partnership with many young people, and people who think they can beat the train, and what have you, that we can improve this together.

It is extremely important and there is no way that I can deny that we have had plenty. In Texas, many of them have been a little different than what the Congresswoman here was telling me about. We have not had so many in our urban areas. But we have had the hazardous waste, where chlorine was wasted near San Antonio, and various places, and we could probably go on and on about some of the things that have happened. But we have passed a rail safety bill out of Committee and probably, upon our return to Washington, we will take it up.

And so I thank you for showing the interest, and I feel very certain, with attention being given to this problem by railroads, and our citizenry, cause we can't live without each other, that we will solve this problem, working together. Thank you, and I yield back the balance of my time.

Ms. BROWN. Congresswoman Sanchez.

Ms. SANCHEZ. Thank you. I want to, first and foremost, thank Chairwoman Brown for convening this very important hearing and for allowing me to participate in it as well. I would also like to thank Congresswoman Grace Napolitano for persuading our learned Chairwoman to hold this hearing right here in our region, in Southern California, and my regards to Congresswoman Eddie Bernice Johnson who has traveled to be with us here today, and to all my colleagues for their contributions to the issue of rail safety.

The leadership of these colleagues, as well as that of State and local leaders, and safety advocates, is incredibly important as we consider the issues before us today. Sadly, issues related to railroad safety and operations are among those that only capture public at-

tention when something catastrophic happens, and for many of us in this region, we had a tragedy that happened on October 16th, 2004, that really made us sit up and take notice.

We had a Union Pacific freight train, that was traveling at about 60 miles an hour, that derailed in my district, and that train slammed into two homes and several backyards in West Whittier.

Fortunately, in that particular accident, no one was killed or seriously injured. But it served as a wakeup call for all of us to start thinking about the issue of railroad safety. To that end, I joined my colleague, Congresswoman Napolitano, and county supervisor, Gloria Molina, to take a deeper look into the issues surrounding the Whittier derailment.

With ever-increasing cargo shipments in and out of the port of Long Beach and Los Angeles, this is a growing issue of concern in this part of LA County, and beyond. We discovered, that while rail operations have been getting safer and safer over the past decades, derailments and other ail accidents still occur, often with horrible consequences for the people who work on the trains, as well as those who live near the railroad lines.

The bottom line is that we must consistently push the rail industry and rail regulators to do everything that they can to try to make rail transport as safe as it can be.

I am very pleased that this year, Congresswoman Napolitano was selected to become a Member of the Transportation and Infrastructure Committee. I know that she is using her energy and her experience on rail issues to be a strong advocate for rail safety in our region and across the country.

After the Whittier derailment, Congresswoman Napolitano and I, along with Supervisor Molina, pressed the Union Pacific to increase its inspections of the tracks in our region, and it took a little bit of pushing, but I am pleased to report that Union Pacific ultimately did just that.

We then successfully pushed the U.S. Congress to enact into law the rail safety recommendations made by the National Transportation Safety Board, after the Whittier accident.

Personally, because I come from a labor background and I have experience in protecting workers in dangerous occupations, and so I take very seriously the concerns and recommendations from workers themselves, who are involved in the "day in and day out" operations that we hear about from time to time, when there are problems.

Edward Wytkind, the president of the Transportation Trades Department of the AFL/CIO, recently told a U.S. Senate panel, that the current training structure for rail workers is woefully inadequate. New employees are resigning and leaving the industry because they are dissatisfied with the quality of their training, uncertain of their skills, and uncomfortable with what they are asked to do, with limited support.

And I am very concerned when I hear things like that. So I hope that there will be some discussion today about training issues related to safety and whether any improvements are needed in the rules we have for training rail employees.

Lastly, I want to signal my strong support for Congresswoman Napolitano's efforts to give State rail regulators more power to

order protective measures for local rail safety. As I think the panel will hear today, California has a good core of rail safety inspectors, and yet Federal preemption law prevents California from implementing many of the safety rules that could help in our heavily-used rail corridors.

I think that there should be a way to craft a new rule that allows California, and other States, to push ahead on rail safety without unduly burdening railroads.

In conclusion, I just again want to thank my colleagues, and I look forward to hearing the testimony from the witnesses, and I yield back the balance of my time.

Ms. BROWN. Thank you.

Just one technical announcement. Parking will be validated in the back and will you just raise your hand. So if anyone needs their parking validated. Okay.

And I am pleased to thank all of the witnesses for being here today, but I want to start with our first witness, who is Mr. Cliff Eby, the deputy administrator of the Federal Railroad Administration.

We are pleased to have you here today. If you could limit your oral statement to five minutes, but your entire statement will appear in the record, and then we will have the question-and-answer periods.

Welcome.

TESTIMONY OF CLIFFORD EBY, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. EBY. Chairman Brown, distinguished Members of the Subcommittee, I am very pleased to be here today, representing Secretary of Transportation Mary Peters and Federal Railroad Administrator Joseph Boardman.

The FRA appreciates the opportunity to discuss Federal, State, and local roles in railroad safety. FRA's regulations address a wide range of topics and are based on knowledge and experience acquired over more than a century of railroading in America.

The regulations specify minimum safety standards that railroads must satisfy, and, in practice, typically exceed.

FRA continually evaluates existing regulations and currently has several active rulemakings underway. Our inspection staff of over 400 is distributed across eight regions. In addition, 165 State inspectors perform inspections for compliance with these Federal regulations.

Each inspector is an expert in one of five areas: track, signals and train control, motive power and equipment, operating practices, or hazardous materials.

FRA also employs 18 crossing safety and trespass prevention specialists.

States and localities also play a vital role in assuring railroad safety as well. FRA sincerely values and appreciates the important contributions of States toward the shared goal of making sure railroads operate safely.

Over nearly three decades, the number and rate of train accidents, deaths arising from rail operations, employee fatalities and

injuries, and hazardous material releases all have fallen dramatically.

Between 1978 and 2006, the total number of rail-related accidents and incidents declined 85 percent.

In that time period, total rail-related fatalities have declined 45 percent.

Grade crossing collisions and railroad trespassing deaths account for 97 percent of the 911 total rail-related deaths in 2006.

While the railroad industry's overall safety record is positive, FRA strongly believes that even a single death or injury is one too many.

In light of the tragedy last week in Minneapolis, Minnesota, in which a highway bridge collapsed, I want to briefly mention FRA's involvement in overseeing the Nation's approximately 100,000 railroad bridges.

Nearly all of these bridges were constructed prior to 1940 and most are more than 75 years old. They are owned and maintained by privately-owned railroads. Given the generally excellent safety record of railroad bridges and the fact that most railroads already exceed the safety standards that FRA could incorporate in the regulation, FRA has not issued regulations in this area.

However, record level rail traffic volumes and heavier carloads are placing demands on this critical infrastructure. So we have issued a statement of Agency policy on bridge safety as an appendix to the Federal track safety standards.

FRA recognizes both the long-term and short-term implications of an event like last week's catastrophe and is developing a strategy to ensure the long-term viability of bridges, and other structures.

A primary concern today is the issue of Federalism as it pertains to rail safety. We believe that there is emphasis that in establishing the rail safety preemption provision in 1970, and in subsequent amendments, including the amendment contained in H.R. 1, Congress struck a delicate balance.

It favors national uniformity of railroad safety and security regulations, while preserving an appropriate role for States.

FRA believes that balance is successfully achieved. Under the current statutory regime, States are free to regulate until the Secretary of Transportation issues a regulation or order covering subject matter. This provision works well by allowing States to address subjects not encompassed within Federal regulations, and conditions that are truly local in nature.

It has worked specifically to the benefit of California.

Other enforcement matters within the control of the State and local governments include the aspects of grade crossing safety and railroad trespassing. Issues such as the selection of appropriate traffic control devices, licensing of motor vehicle drivers, and appropriate sight distance at grade crossings are all matters of State law.

Another statutory provision, originally enacted in 1970, provides a mechanism for States to recommend enforcement actions. In fact, every State has an opportunity to employ rail safety inspectors in all of the rail safety disciplines.

Currently, 28 States actively participate in FRA's program, including California, which is one of the most vigorous in enforcing Federal Railroad regulations.

States and localities also have opportunities for input into FRA's regulatory agenda. Like any other party, States may petition for rulemaking, to request that FRA adopt regulations on a particular subject and propose what regulations should say. A good idea to improve rail safety in California is a good idea for improving railroad nationwide.

We strongly believe that States that want to play a larger role in regulating railroad safety should do so through the national regulatory process. Balkanizing regulation of railroad safety would likely roll back many of the safety gains attained over the past 30 years. That would ill-serve the national interest.

FRA personnel strive daily to implement comprehensive initiatives for safety assurance and hazard mitigation, in order to make rail operation safer for the public and rail employees.

We look forward to further discussions with the Subcommittee on reauthorization of the Federal Railroad Rail Safety Program and to bringing about the enactment of the administration's railroad safety bill. Thank you.

Ms. BROWN. Thank you. I met, last week, with the Secretary and we discussed the railroad safety bill, and as it moves forward, we will certainly be looking forward to a further dialogue and discussions. But I hope we all understand the importance of having a railroad safety bill at this time.

And do you want to respond to that? And in addition, I want to thank you very much for including the discussion about the bridge safety in your testimony, and at this time, we have a excellent safety record as far as railroad bridge safety, but as we move forward, what mechanism do you have in place to ensure that we have the proper indexing and that we have checked the bridges as far as structural damage, because what happened last week, we have what? about 586 bridges in the country, and now each State is looking at how those that are structurally damaged, and what we need to do about it, and of course the discussion, of course later, is how you're going to fund the improvements.

Because when Dwight David Eisenhower started the program some 50 years ago, it is now time for us to reinvest in the whole transportation area, whether it's sewer, water, bridges, railroads, mass transit. I mean, we have a major problem in this country and we have got to figure out how we are going to address it.

Mr. EBY. Well, with respect to the railroad safety bill, I think we all agree that it's due time to have a railroad safety bill in place. One of the biggest provisions in that, the one that has gotten most discussion, is hours of service, and I think we all agree that railroad workers can work far too many hours.

We think, at the FRA, that our regulatory approach to that would be the best approach. We think the issue of hours of work goes beyond limbo-time issues, and really needs scientific evidence that we have been establishing over years, in working with the RSAC, and to have that flexibility.

With respect to bridges, this has been a focus of Administrator Boardman's now, for some time, and as a civil engineer, an interest

of mine for a career, and at the FRA, in 2007, we added three bridge engineers for a total of seven. We hope to add more bridge engineers in the future.

Railroad bridges are unique. They, as I mention in the testimony, most of them are 75 years old, or more. They are very robust structures. Only half of them are steel or cast iron structures.

Now surprisingly, there is 30-some percent of railroad bridges that are timber structures, and the remainder are masonry type structures. The standard that railroad bridges use is established by AREMA, the American Railway Engineering and Maintenance-of-Way Association, and those standards go back some 60 years.

Railway bridges are rated in what is referred to as a Cooper rating, and that determines the maximum tonnage that a bridge can handle.

The FRA requires that the railroads follow their inspection plans for those bridges, and almost all bridges are inspected once a year, and depending on tonnage, some more than that, quite more frequently than what the highway bridges inspection cycle is.

We do have some concerns. Administrator Boardman has spoken to the AREMA group. He recently held a roundtable at the last RSAC meeting to look at the future, the next 30 years of railroad bridges.

When they were originally designed, they were originally designed for steam locomotives, 75 years ago, and to be able to support that steam locomotive, so they can take—those bridges were designed to take—a single heavy load and then a series of lighter loads.

Now with the heavier cars, we have the constant pounding on those bridges of every car that goes over them, even though the locomotive is lighter. And so we need to do continued research in this area to see, you know, is there an issue as heavier and heavier loads, more and more traffic goes over these bridges? We are looking at increasing the research in that area.

But it is a strong focus of FRA, and particularly of Administrator Boardman.

Ms. BROWN. I want to commend one of my local railroads, CSX. When we had the bridge to go down in Mississippi, near New Orleans, we are still trying to get the Federal bridge back up, but CSX was up and operational, and rebuilt the entire bridge within months, after it went down.

So, we, in the Federal Government, can learn something about building bridges from the private sector.

One other thing. Will you update us on the status of DOT grade crossing safety action plan.

Mr. EBY. The grade crossing safety action plan. One of the big components that we have been working on, quite a bit lately, is the State and local partnerships, and we just recently completed that effort with the State of Louisiana. We have had initial discussions with the State of Texas, and we are planning a partnership with Illinois, Ohio and California in the upcoming years.

I believe that program stretches out through 2009. We have included in our legislation, and I believe in all the legislation that I have seen, a grade crossing inventory. It is very important that we collect the appropriate data on grade crossings.

We have also recently completed a blocked crossing study that we submitted to Congress last year, and we are in the process of completing our private crossing study that is being—where we have met across the country, talking about private crossing issues.

Ms. BROWN. Ms. Napolitano.

Ms. NAPOLITANO. Thank you, Madam Chair.

Sir, there is a whole bunch of questions, many of them I probably will be putting in writing, because there is just not enough time today. But one of the more salient issues that I have are the grade separations. As you are very well aware, the Alameda Corridor-East runs through my home district. 54 grade crossings.

Now if we are going to have an increase in train traffic out of the ports to the rest of California, the Western States, and the rest of the country, that volume will increase to the point where it will be untenable in terms of pollution for the area, safety, because people will be waiting at those that are not grade separated.

You name it. There is a detrimental effect to the district, and I don't know if we have a map that would show you, the whole corridor is affected.

And I know that ACE is going to be testifying. There are 20 of the 54 that are conceivably going to be grade-separated.

What can FRA do to increase the number of grade separations, especially in the areas where it is so highly populated? Here, streets divide cities. So that means you can have less train speed, that is less time to get the product to market. It also will impact environment, and you are looking at the picture—do we have ...okay. As you can see from Los Angeles, the city of commerce, the upward line, the red line, UP, and then down towards the bottom will be—well, the black line is also UP. It is just mindboggling, the impact this has on our area, and I would like to ensure that we impress upon the Federal rail authority how important it is for us to continue building those separations, not only to be able to get the product to market on time but to be able to ensure the community's health in the environment, in the safety aspect of it.

Could you tell me what—are you working with the State of California on that? Are you working with the ACE project? What can you tell us?

Mr. EBY. Okay. Let me agree with you, that the safest grade crossing is one that is eliminated or closed, and with respect to the Alameda Corridor, you know, that project is, you know, one of the biggest success stories in the country from a public-private partnership standpoint, and in solving the congestion issue in that part of the corridor.

Ms. NAPOLITANO. But that just dumped it on us.

Mr. EBY. Correct. The Secretary's congestion initiative is looking at, you know, the Southern California area. We have Randy Rogers, from the Maritime Administration, out here full time, and my counterpart at MARAD, Julie Nelson, out working as well, you know, looking at improvements in the whole area.

We work very closely with Alameda Corridor East. Sharon Neeley does an outstanding job for this area, in the Washington, D.C., area, in obtaining funds. As you know, FRA has very little discretionary money and doesn't have money for infrastructure of that type.

What we are looking at is improvements like what the Alameda Corridor is trying to do, you know, intelligent grade crossings and signage, improving the throughput, getting the trains through faster.

Ms. NAPOLITANO. That is not going to be enough, sir, and I can tell you, I will continue to fight for additional funding for the East Corridor, and while the Alameda Corridor itself was built underground, below level, they had to stop, and they should have built the rest of the corridor below ground, because then you would have the billions of dollars that we are going to be spending on grade separations, on sewers, on deteriorating environmental impact, on safety, the lives of people. What is that worth?

And so it is something that we cannot overlook and should continue to press forward.

States can play a very important role in assisting the FRA with ensuring safety along the rail lines, and while I agree that the current law should continue to prohibit States from creating regulations that burden interstate commerce, States should be allowed to regulate railroads in order to protect against local safety hazards.

Do you feel States should be allowed to regulate railroads in areas where the Federal Government has not acted?

Mr. EBY. Well, I believe that's the current law. Where there is no Federal Railroad regulation, States are free to adopt those regulations. You are talking about preemption, as discussed in my oral and written testimony, and not being an attorney, I would like to have that stand. But let me just give you my perspective on the whole preemption issue, because it is complex.

I think most people prefer the consistency, the uniformity. You know, that is why you have your favorite department stores, your favorite coffee shops. You know what to expect, you know the level of service, you know what's required of you.

The current system, I believe works very well, and a good example that I gave in the written testimony, with respect to the steep grades in California, and California's ability to require the railroads to follow a consist makeup, that they have in their operating rules.

I think the existing program also, you know, is complemented with the State inspectors that we have, the RSAC process that allows for State, you know, State involvement, and then the ability for States and localities to propose regulations, you know, for Federal adoption.

As I said, a safety rule that is good for California is probably very good for the national interest as well.

Ms. NAPOLITANO. Thank you. I yield back.

Ms. BROWN. Ms. Johnson.

Ms. JOHNSON. Thank you very much.

Mr. Administrator, I wonder if you could give us your opinion on whether we have enough staff to oversee and whether we are working State/Federal, State/local government together to address many of these problems.

Or what do you consider to be the ideal way to approach solving these problems?

Mr. EBY. Congresswoman, it is always tempting to jump at more resources, particularly staffing resources, when it comes to safety

issues. The Inspector General's report, that came out last year, estimated that the FRA can only inspect .2 percent of the railroad incidents and accidents that occur in the Nation each year.

Well, doubling the staff would bring that to .4 percent, and even if those numbers are wrong, we are talking in a very low range of ability to inspect everything.

So, you know, FRA's approach, and what was included in our safety bill was a risk reduction program, and we think this is very important. We need to find smarter ways of identifying the risk hazards that are out there. We have been working a program called Close Call Reporting, in which we are asking railroad operating people to report close calls, accidents that didn't occur, so we can get a better understanding of where potential accidents will be.

We also have collision hazard analysis that we are trying to encourage the railroads and commuter railroads, in particular, you know, to adopt, to look at where the real risks are? trying to find smarter ways of identifying these risks.

So in terms of staffing, we have in our budget every year a slight increase in staffing. We try to identify those areas where we are going to learn something from the accident investigation, from the science that is needed in order to prevent accidents.

Ms. JOHNSON. Thank you very much. I have no further questions.

Ms. BROWN. Ms. Sanchez.

Ms. SANCHEZ. Thank you, and I appreciate your presence here today, Mr. Eby. Is that pronounced——

Mr. EBY. Nearly everybody is saying eBay these days, but——

Ms. SANCHEZ. Okay. I bet you wish you were the founder of eBay. You would probably be making a lot more money than you do working for the Federal Government.

I just wanted to ask a couple of really brief questions.

Of the accidents that FRA investigates, my understanding is that 40 percent of those accidents are due to human factors; is that correct?

Mr. EBY. Correct.

Ms. SANCHEZ. What role do you think that fatigue plays in the human factor percentage?

Mr. EBY. I don't think we have a number that we have assigned to it, but——

Ms. SANCHEZ. Give me ball park here.

Mr. EBY. I would say 90 percent of all human factor issues—I can't believe that most operating, railroad operating people, you know, either have the intent or have—or are poorly trained. I think for the most part, it is a fatigue issue.

Ms. SANCHEZ. It is a fatigue issue.

And, internally, have there been any studies to look at issues of extreme fatigue, or even cumulative fatigue?

Mr. EBY. Yes. We have been working for the past two to three years with research, and have a fatigue model that we are in the process of validating right now, that looks at circadian rhythms, that looks at weekend work, that looks at time, both quality of rest and quantity of rest.

Ms. SANCHEZ. And have there been any recommendations for changing industry practices that might help reduce the fatigue factor, or for the risk of accidents?

Mr. EBY. Well, this is what we are trying to strive for in our safety legislation, on the hours-of-service provision. We are hoping to have regulatory flexibility, so that we can implement, you know, the science associated with this and not have, you know, a very constrained, a prescriptive approach to hours of service.

Ms. SANCHEZ. Okay, and I understand that, but my understanding is that if that is one of the largest contributing factors to accidents, that is maybe where you should focus a lot of your time and attention in terms of recommendations coming from studies that can help reduce the fatigue factor, so that therefore, in the long run, you will be reducing accidents.

Mr. EBY. I agree.

Ms. SANCHEZ. I want to speak with you, really briefly, about a statement that you made regarding the preemption standard in your oral remarks, and I was trying to concentrate and focus on your remarks, but did I hear you say that you did not necessarily favor States regulating rail issues because it could lead to the Balkanization of rail standards?

Mr. EBY. Correct.

Ms. SANCHEZ. Could you explain what you found by that remark, because I found that remark a little troubling, to be honest with you.

Mr. EBY. Well, what I would expect would happen is you would have, you know, community after community adopting their own regulations, and if you kind of think of it from a highway perspective, you know, this section of highway will be allowed and the trucks will be in the left lane, this section of highway wouldn't have trucks at all, this section of highway would be, you know, all four lanes for trucks.

And that not only the regulation but the interpretation and the fines, the penalties, the laws associated with that would create separate islands of regulation across the country, rather than a uniform, consistent standard, which I believe serves the national interest.

Ms. SANCHEZ. And I can certainly understand how, taken to the extreme, each State having their own set of regulations and the differences in interpretations could be burdensome to interstate commerce.

But sort of my fear is that if you use Federal preemption as sort of this blanket way of saying because it creates certainty, we ought to have the same standard across the country, but not necessarily the highest standard, or a really great standard, but, hey, we have got a national standard, and because it creates uniformity, that is good enough because it is certain.

Do you sort of see what I am getting at?

Mr. EBY. Yes. I certainly understand, and we do recognize that the FRA's regulations are the minimum standards that we expect railroads to meet.

Ms. SANCHEZ. You just put your thumb on what I find the most troubling aspect, because if you have a uniform standard and it is

the minimum, it is not doing what is required to protect safety, and that is my number one concern.

I know that you mentioned, and my time is running short, that the FRA only investigates two-tenths of one percent of all accidents, and from what I understand from the DOT Inspector General reports, even though you're investigating a very minuscule number of accidents, you are not routinely using, reviewing locomotive event recorder data, police reports, and other sources of information to determine the causes of collisions or the need for further investigation.

Is that a fair statement?

Mr. EBY. The latter part is. Let me correct the first part in terms of—the .2 percent comes from an Inspector General's report. I am not sure of the data that went into that, and it was, you know, accidents, incidents, inspections that are required during the time. So it's not solely just accidents.

We do tens of thousands of inspections every year, investigate hundreds of complaints, and we investigate the hundred most serious accidents with our inspection force.

Ms. SANCHEZ. And when you investigate those accidents, do you routinely review locomotive event recorder data, police reports, and other sources of information, to find the causes?

Mr. EBY. Yes. In a grade crossing accident, the hundred that we do full investigations, all that data is reviewed.

Ms. SANCHEZ. Okay. But you would agree that a 100 accidents, out of the total number of accidents a year, is still a very minuscule number of investigations?

Mr. EBY. It is small; yes. Right now, we have, we average in railroad grade crossing accidents, there are about 3000 accidents every year, and approximately one death per day in grade crossing accidents.

Ms. SANCHEZ. Okay. Thank you. I appreciate your answers and I yield back.

Ms. BROWN. Thank you. Would you discuss the safety bill that we passed out of Full Committee that is headed to the floor, because I think there are some safety issues in there that we have addressed, that will improve hours of service, decrease risk, decrease hours on the clock, improve rail safety technology, better training, better track standards, more track inspections.

I mean, I think there are some good things in the bill. We started out, initially, the railroads said at the first hearing, they didn't want any bill.

Well, now, you can tell just from this hearing, that there are strong feelings that we need to have a safety bill, and in talking to the Secretary, she agrees, and the key is we need to pass the bill from the House and the Senate, and go to conference, and work with the administration to come up with a safety bill that will—we haven't had one in six years and it is really needed in this country.

Mr. EBY. As I mentioned earlier, we commend the Committee for the hard work that it has done on the rail safety bill. We definitely need a rail safety bill.

I think our major area of disagreement is under the, you know, the hours of service. While we both agree that railroad workers can

work far too many hours, FRA would like regulatory authority to be able to establish regulations that are based on, you know, the science of fatigue, and not just focus on, you know, a small part of that which is limbo time.

And in the other areas, as I recall, I think we are in full agreement. We would like to see the risk reduction program that we included in the Administration's safety bill, and we think that's a sound way of being able to reduce accidents in the railroad industry.

The Administrator has gone on record saying that we expect a 50 percent improvement, if we can implement and work on some of the initiatives under the risk reduction program.

Ms. BROWN. Do you have any follow-up on my last question, Ms. Johnson?

Ms. JOHNSON. Thank you, Madam Chair.

Sir, you indicate that you do one-tenth of one percent of rail inspections, something to that effect. Two-tenths of one percent. Well, in your testimony, you indicate authorized inspection staff, 400, nationwide. How does that work, to be able to do the 3000 accidents, or derailments, or problems that you have every year, with 400 people?

And I realize that States have their own too.

Mr. EBY. Correct. We have 165 State inspectors.

The 400 inspectors do not inspect all 3000 grade crossing accidents. We inspect the top 100 accidents from a severity standpoint in the railroad industry each year, and those include not only, you know, grade crossing accidents but train collisions, derailments and other accidents.

Ms. JOHNSON. Do you have them placed strategically, in areas of greater, I want to say train traffic, for impact?

Mr. EBY. Yes. Under the Rail Safety Action Plan, we have created a National Inspection Program, and this is a data-driven approach to allocating our inspectors across the country. You know, where are the greatest risks? Where would those inspections provide the greatest benefit in terms of reduced accidents?

We have looked at all five disciplines that we study. We have been implementing it now, fully, for about a year, but it started two years before. The initial program was with respect to track.

And so those inspectors are allocated based on where we think we can get "the best bang for the buck."

Ms. JOHNSON. Are these the same inspectors that check maintenance yards and follow through the rail inspectors work?

Mr. EBY. Correct.

Ms. JOHNSON. So besides doing their normal duty, they are also accident inspectors. What else do they do, sir?

Mr. EBY. Well, as I mentioned, they're divided into five disciplines and——

Ms. JOHNSON. Can you break them down by discipline?

Mr. EBY. Yes. We have track——

Ms. JOHNSON. Well, I am talking the numbers.

Mr. EBY. Oh, the numbers?

Ms. JOHNSON. Yes, because they are already expert in the disciplines, but how many are available to do rail maintenance inspection?

Mr. EBY. I have those numbers here. We have 69 track inspectors, 53 signal inspectors, 84 equipment inspectors, 79 operating practice—that is typically referred to as the human factors area—18 crossing and trespassing inspectors, and 33, they are kind of "all other" and in the management support area, of the four hundred. [Subsequently added during editorial work: 55 hazardous materials inspectors]

Ms. JOHNSON. That kind a tells me you are very short-handed, if you have calls for inspectors in specific disciplines. Thank you, Madam Chair. I yield.

Ms. BROWN. I want to thank you very much. Any closing remarks that you want to make?

Mr. EBY. No. Thank you very much.

Ms. BROWN. Well, thank you very much for your testimony. Thank you.

Panel two, and I know we were a little over with this particular panel, but I think it was necessary, and panel two, we are going to try to keep to the timeline because you are committed to tour the area at 6:00.

I would like to welcome and introduce our second panel.

Our first witness is Ron Beilke, and he is the mayor of the city of

Pico Rivera. And our second witness is David Spence, and he is the chair of the coalition—where is Mr. Spence? Okay. And our third witness is Richard Clark, the director of the Consumer Protection and Safety Division for the California Public Utilities Commission. And our final witness on this panel is Rick Richmond, the Executive Director of the Alameda Corridor-East Construction Authority. Welcome.

TESTIMONY OF RON BEILKE, MAYOR, CITY OF PICO RIVERA; DAVID SPENCE, MAYOR, LA CANADA FLINTRIDGE; RICHARD CLARK, DIRECTOR, CONSUMER PROTECTION & SAFETY DIVISION, CALIFORNIA PUBLIC UTILITIES COMMISSION; RICK RICHMOND, EXECUTIVE DIRECTOR, ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY

Mr. BEILKE. Good afternoon, Madam Chairwoman, Members of Congress. Is it on? Now it is really loud.

Good afternoon. As mayor of the city of Pico Rivera and a board member of the Gateway Cities Council of Governments, I thank you for the opportunity to address you today on the issue of railroad safety.

I am proud to speak on behalf of the 27 cities and more than 2 million people that make up the Gateway Cities COGs, as well as for the 66,000 residents of Pico Rivera.

While the concerns expressed in my testimony are based on our own experiences in Pico Rivera, you can rest assured that these same concerns are shared and echoed by every——

Ms. BROWN. Excuse me; just one second. Your mike——

Mr. BEILKE. I noticed that too.

Ms. BROWN. Do we have another mike that he can use?

Mr. BEILKE. Thank you. This is better. All right. I'll begin again. Thank you.

As the mayor of the city of Pico River and a board member of the Gateway Cities Council of Governments, I thank you for the opportunity to address you today on the issue of railroad safety.

I am proud to speak on behalf of the 27 cities and more than 2 million people that make up the Gateway Cities COGs, as well as for the 66,000 residents of Pico Rivera.

While the concerns expressed in my testimony are based on our own experiences in Pico Rivera, you can rest assured that these same concerns are shared and echoed by every member of the Gateway Cities COG.

There is no doubt that the Gateway Cities benefit from a superb transportation infrastructure, an intricate system of road, rail, air and sea routes, that have made the Gateway Cities the industrial powerhouse of Los Angeles County.

There is also no doubt that the completion of the Alameda Corridor will bring even more economic development opportunity and prosperity to the region and to the individual Gateway Cities, including Pico Rivera.

But the railroad component of this ambitious project comes with a price.

The addition, by BNSF, of a 15-mile long third track through Pico Rivera and neighboring cities has raised many new concerns about pollution, congestion, noise and safety. By the year 2010, when the Alameda Corridor is fully operational, rail traffic is expected to triple.

In our case, that will mean more than 300 trains a day through the very heart of our city.

The triple track project and the pending construction of the Passons Grade separation have served to refocus awareness on our sometimes tenuous relationship with railroads, a relationship that began with the community's very birth in the 1850's.

Three major railroads now slice through our city, bringing with them over 100 trains a day. Thousands of vehicles and pedestrians are forced to cross at any one of our four at-grade crossings every single day. The majority of those pedestrians are students on their way to and from school.

The lives of all Pico Rivera residents are affected by trains every day and the potential for catastrophe is extreme.

In Pico Rivera, when we talk about the prospects of railroad disaster, we don't talk in terms of "if," but rather, in terms of "when."

In fact, much of the city's emergency preparedness training is centered around the scenario of a major railroad disaster, and we have already come close.

In just the past four years, two close calls have placed our community in jeopardy. In the first incident, a runaway train careened through the city before deliberately being derailed in Commerce. In the second, a train derailment on the eastern approach to the city damaged houses and property.

Thankfully, nobody was injured. But in other incidents, we have not been so fortunate. Over the past six years, we have lost four—let me correct that. Since this testimony was presented to you, we have lost five residents in railroad accidents, one of them a 15-year-old high school student who was a classmate of my son in high school. That is five too many.

But train derailments and collisions are not the only railroad-related concerns that are a daily factor of life in Pico Rivera.

The railroads continue to cause other health-related and quality-of-life problems that adversely impact our residents.

It is not unusual for trains to idle for hours, sometimes blocking at-grade crossings. As incredulous as this may sound, some of these blockages have occurred when train engineers have slipped into the local 7-11 for a cup of coffee. In one incident, a group of residents informed our sheriff of an engineer that actually left his train to have lunch in a local restaurant.

While the trains idle with their engines running, tons of pollutants, together with diesel and exhaust fumes, pour into our neighborhoods, vehicular traffic comes to a standstill and emergency response vehicles are severely hampered from reaching critical destinations.

And of course at any time of the day there are those incessant whistles.

Another major concern for our city is access to rights-of-way of the railroads. Over the past few year, we have spent millions of dollars on public safety enhancements, community infrastructure and beautification improvements. We also launched a campaign to rid our community of the scourge of graffiti, a campaign so successful, that it has resulted in a 60 percent reduction in graffiti.

Our residents take great pride in the way their neighborhood looks and we all recognize that. Yet railroads rights-of-way remain eyesores. Despite all of our positive efforts and improvements, the railroad rights-of-way remain graffiti-ridden, trash-infested dumping grounds, that only serve as a sanctuary for vandals, criminals and transients.

Access to these rights-of-way on a case-by-case basis by city personnel is imperative, if we are to be fully successful in our efforts to enhance the quality of life of our residents.

At town hall meetings and in resident satisfaction surveys, railroad safety, noise and pollution issues constantly rate among the highest concerns and complaint from our residents.

These concerns and complaints are well-founded, and a constant source of frustration for elected officials due to the railroad companies' reluctance or outright refusal to respond to safety, health and rights-of-way issues in a timely manner.

Despite these setbacks, the city of Pico Rivera continues to take a proactive leadership stance in improving railroad safety and, in some cases, has met with limited success and support from the railroads.

In the year 2000, we developed Railroad Safety Awareness Week, an innovative partnership between the railroad companies, Los Angeles County Sheriff's Department, the El Rancho Unified School District, and Operation Lifesaver.

The week included school presentations, first-responder training for safety personnel, school bus drivers and city work crews, and "officer on the train" ride-alongs to enforce railroad crossing laws for pedestrians and motorists.

In 2005, Pico Rivera was instrumental in the formation of a coalition of municipalities and agency stakeholders affected by the BNSF triple track project. The goal of the coalition is to appro-

priate sufficient funding for all vital grade separation projects associated with the project, and to work together to mitigate ongoing railroad health and safety issues.

Pico Rivera has already begun the acquisition process for the long-awaited Passons Grade Separation Project. Passons Boulevard is one of the busiest thoroughfares in our city. When completed, the grade separation will have a major positive impact on the Pico Rivera community. But with rail traffic expected to triple within the next three years, and with three at-grade crossings remaining in our city, it will not be the end of our community's concerns relating to safety, noise, pollution and traffic delays.

We have been working with the railroads for several years now, and have met with some limited success. However, the biggest issue we face is that we are just one small community while the railroads are national entities.

We are very proactive while the railroads continue to be reactive at best.

In the near term, we strongly urge Congress to assist local communities by mandating a more aggressive and responsive role for the railroads to play in this era of massive railroad expansion throughout our cities and communities, particularly as this expansion relates to health and safety concerns.

Additionally, we ask that the railroads be mandated to grant access to their rights-of-way by cities and communities on a case-by-case basis, in order to mitigate safety, trash, graffiti, and vandalism concerns in a timely fashion.

Congress also needs to address the most significant issue of transportation approximations for the most impacted grade crossings, that will eliminate, or at least reduce, the incidences of fatalities and property damage suffered by local communities in a major railroad corridor.

I will be happy to answer any questions that you may have, and on behalf of the city of Pico Rivera and the Gateway Cities COGS, I thank you for your time.

Ms. BROWN. Thank you, Mayor. We try to adhere to the five minutes.

Mr. Spence, it's going to be left with you now.

Mr. SPENCE. Yes, ma'am. Thank you very much. Chairman Brown and congressional Members, thank you. Grace, you look very comfortable up there in that chair, like you have been there before.

My name is David Spence and I'm the mayor of La Canada Flintridge, and president of the San Gabriel Valley Council of Governments.

Eleven years ago, the San Gabriel Valley Council of Governments put together a project to mitigate the impacts of goods movement and safety and air pollution, and so forth, that you have all discussed in the valley.

Our valley represents about 2 million people and we have 31 incorporated cities and three unincorporated areas in the LA County of the San Gabriel Valley.

Our cities agreed upon an action plan, a number of years ago, and we created the Alameda Corridor-East Construction Authority,

and our executive director, Mr. Rick Richmond, will give you some details, further, about this particular rail improvement project.

I would like to discuss financing briefly, challenges that our local officials have faced while putting together this plan to reduce—or increase the quality of life in the area, has been difficult. We have used local, State, and Federal funds to make this project work, and the COGs been active, working with Congress and the State legislature since 1999, and are grateful for the funds that we have received, which is approximately $560 million to complete the $1.4 billion ACE project.

Our local officials have also worked with the State of California to recognize the urgent need for investment in rail safety and goods movement infrastructure. Governor Schwarzenegger's administration has put together and completed a State Goods Movement Plan, and we believe that this Committee would be served well by looking at this plan, when you consider clarifying the State and Federal roles in goods movement.

Our local officials actively work to support the California State Highway bond measure, and in the San Gabriel Valley, we had one of the highest voting participations for the State of California, and it is because all the local representatives, the mayors and the council members, got behind this project.

The bond includes about $250 million for grade separations. Unfortunately the goods movement infrastructure investment is so great, that these funds are merely a down payment on the project that we are trying to accomplish.

Despite all the efforts of local agencies and the State, we don't really have sufficient resources to facilitate the national trade corridors without a stronger Federal role in this partnership. Our COG recommends that the Committee consider a more defined Federal role for goods movement, and we hope that you will seriously consider a dedicated firewalled freight trust fund for making those improvements, to increasing the safety, not only in our area but across the country.

Our cities believe that ACE is a national model of how local, State and Federal agencies can work together to improve rail safety, congestion, and emission reductions triggered by the ever-increasing surge of goods flowing through California to the rest of the country.

Thank you for allowing me to express these opinions today. I left 50 seconds for my next colleague.

Mr. CLARK. Madam Chairwoman, and Congresswoman Napolitano, thank you very much for having us here today. My name is Richard Clark. I am the director of the Consumer Protection and Safety Division of the California Public Utilities Commission, a position that I have had for the last seven years.

Again, thank you for the opportunity to submit this testimony which reinforces the Commission's former executive director's testimony, Steve Larson, which was submitted to the Subcommittee on January 30th of 2007.

Today, I would like to endorse that testimony and expand upon the State of California's need and desire for Congress to amend the Federal Railroad Safety Act of 1970.

The FRSA, as currently written, contains an express preemption provision, which Federal judges have interpreted to preempt State law in virtually all railroad safety matters. Consequently, the end desired by the railroads, maintaining a uniform national regulatory scheme, has replaced the original intent of the law, increasing railroad safety, by allowing States to fill gaps in Federal railroad safety regulations.

The California Public Utilities Commission, the California legislature, the National Association of Regulatory Utility Commissioners, the National Conference of State Transportation Specialists and the Association of State Railroad Safety Program Mangers, have all endorsed removing subsection 1 from 49 U.S.C. section 20106, such that State railroad safety regulations will be lawful so long as they don't conflict with Federal law and/or they don't establish an undue burden on interstate commerce.

We, at the California Public Utilities Commission, have been in the railroad safety regulatory business since our creation as the California Railroad Commission in 1911. The State of California has regulated railroads operating in our State since 1876. Therefore, we know a thing or two about railroads and railroad safety, which is precisely why we are so committed to rebalancing the authority at the State and Federal governments in the railroad safety arena.

While the uniform regulatory scheme for railroad safety works very well in some incidents, it does not work in all circumstances. Ten years ago, the California Public Utilities Commission issued rules to provide for mitigation of local railroad safety hazards within California in our Decision No. D-97-09-045. It took us four years of very hard work to develop those rules.

We worked long and hard, employed both binomial and multinomial statistical analyses, took round after round of comments from the railroads and many other interested parties, and thoughtfully developed rules that were designed to improve railroad safety in 19 local safety hazard sites in California, sites where the grade and curvature were extreme, and sites where significant numbers of derailments had occurred. Nineteen sites may sound like a lot, but as you can see from the map displayed before you on the wall, local safety hazard sites comprise a total of 4.2 percent of all railroad tracks in California and require the application of only six types of rules.

Track-train dynamics rules. Training. Track Standards. Dynamic braking. End-of-train devices and defect detectors.

California Public Utilities Commission has spent the last 10 years in court fighting against the railroads' preemption arguments. All the while, the railroads have been implementing, albeit frequently after catastrophic events, the very rules that we attempted to put in place 10 years ago. We desire to be in a better position to prevent accidents, rather than continuing to be in a position that responds to accidents.

We, like other States, have experienced significant numbers of unacceptable major railroad crashes. Before I go through the list, there's no counter telling me how much time I have left, so I hope I hit the five minute mark here. I will go quickly through the list.

May 12, 1989. San Bernadino, at the bottom of Cajon Pass, a runaway SP train derailed.

July 14, 1991. A Southern Pacific train derailed near Dunsmuir into the river.

July 28, 1991. A Southern Pacific train was involved in a derailment near Seacliff.

On December 14, 1994, a runaway train owned and operated by the Atchison-Topeka collided with a stationary UP train.

On February 1, 1996, a runaway train at Cajon Pass.

January 12, 1997. Cima grade near Kelso, lost brakes and ran uncontrolled train.

September 8, 2002, at Colfax, 21 cars derailed three miles east of Colfax.

March 21, 2003, at Cliff, California, eight cars derailed.

June 20, 2003, Montclair, 37 cars rolled away and continued rolling for 33 miles as a runaway train.

October 16, 2004, at Pico Rivera, derailed 11 cars.

December 10, 2004, head-on collision between two freight trains.

April 4, 2005, in Slover, California, 13 cars derailed, nine of them with hazardous materials in them.

May 28, 2006, a UP freight train derailed and collided with another UP freight train.

June 14, 2006, a head-on collision on the siding at Kismet. And November 9, 2006, a rail grinding train was a runaway train on the Donner summit.

Let me close by quoting from the Commission's 1997 local safety hazard regulation decision. That which was said then is still true today.

Quote. "Following repeated catastrophic rail accidents and upon direction provided by the California legislature, we have availed ourselves of the authority provided by Congress to impose the safety precautions necessary to eliminate or reduce essentially local safety hazards.

"In doing so, we have taken great pains to ensure that this Commission has done nothing to weaken or conflict with the rightful and valuable exercise of Federal jurisdiction.

"The Commission has also carefully and thoroughly considered every safety measure to ensure that these measures do not unduly or unreasonably burden interstate commerce.

"We implement these regulations not out of any sense of competition or dissatisfaction with the FRA, but, rather, out of sheer necessity to protect California's people, its environment and its commerce against the disastrous consequences of recent rail accidents and toxic spills.

"In issuing this decision, we intend to complement the FRA's efforts and hope that both the railroads and FRA will join us in securing greater safety and fewer accidents in railroad operations in this state."

Thank you for the time. Trains are getting longer and more frequent. The State must be in a position to keep pace with change to prevent accidents in our constituent communities. We would strike subsection 1 of 49 U.S.C. 20106, so that the States can reclaim their rightful authority. Thank you.

Ms. BROWN. Thank you, and he needed your 46 seconds, Mr. Mayor.

Mr. Richmond.

Mr. RICHMOND. Thank you, Madam Chair, and Congresswoman Napolitano. I appreciate the opportunity to be here today and give you a brief update on where we are with the ACE Project, and specifically its attempt to, or how it addresses some of the safety issues you are familiar with from our global perspective.

For us, it all starts with the ports. The ports of LA and Long Beach, as you well know, are physically right next to each other. Collectively, they represent the fourth largest port in the world. They are about six times bigger than the next largest port on the West Coast, which is Oakland, and they are actually twice the size of all the West Coast ports combined, as measured by the amount of container freight coming through, and this past year, in the LA/Long Beach ports combined, over 16 million container units came through the ports and that is expected to grow steadily over the coming years.

The picture that we just left was one of the on-dock rail facilities at the Port of LA, and from there, the trains basically go up the Alameda Corridor, as you are probably familiar with, a fairly recently completed 20 mile route that takes trains from the ports area, and then 90 percent of those trains fan out to the east on two railroads, the Burlington Northern and Santa Fe, which is the southerly blue line on the map, and then Union Pacific, which are the two red lines that you see out to the north end of that map.

About 50 percent of the boxes that leave the ports naturally would be attracted to use the railroad based on where they're headed and the economics of moving those boxes. About 50 percent would naturally want to end up on the freeways, and that's what you see as a result.

This is the south end of the Long Beach Freeway, which basically is little more than a truck highway, almost all day and all night, be part of night, alone. So the thrust at the ports is to get more and more traffic off trucks and on to trains.

Unfortunately, that doesn't eliminate the problem, and as you have heard and know well, Congresswoman Napolitano as well, the trains create their own problems.

We have a program in the ACE Corridor, and in this case I am talking about a four county corridor area, which I will get to in a moment, a smaller portion of it, but basically to deal with the impacts at crossings. We have over 130 crossings that we believe need to be dealt with in terms of eliminating the conflicts. There are over 13,000 hours of delay per day at these crossings.

We need to do this basically because we want to eliminate grade crossing accidents and maintain the local economic viability. The group that I work for is a subset of that four county corridor, we are in the San Gabriel Valley as Mr. Spence mentioned, and in our part of the program we are working on 21 grade separations, safety improvements, serving our area which is about 2 million people.

The project, when completed, will be about $1.4 billion. We have the first half of the program funded in terms of numbers of projects. Unfortunately, in terms of cost, construction inflation has

been overtaking us and we are less than half-funded in terms of the need for funds.

The first emphasis in the program was doing specifically safety, and every one of our crossings that had deficient conditions, we invested the money necessary to deal with the most clear and obvious safety problems, the major thrust being for the elimination of what is called gate drive-arounds, where motorists will get frustrated at not seeing a train at the crossing and do basically an S-curve through, around one gate and around the other, which, you know, is a highly unsafe practice and usually involved in any of the most serious accidents at crossings.

We, effectively, through the construction of medians, or in some cases, installation of four quad gates, we believe we have effectively eliminated that practice in our area.

I do want to mention, at this time, because a couple of you brought up the issue of the school safety concern, or school children safety. As part of our program at all of construction areas, we have instituted a school safety program. We have had briefings at over 150 schools in the corridor and have distributed over 150,000 kits, safety kits to school students, to encourage them to be careful around railroads, particularly as obviously we are in construction; but at all times. Next.

In addition to the safety program and all the major financial burden we have on the program is the elimination of crossings completely through what is called grade separations. We have completed two. The first one you see was opened about three years ago in the cities of Industry and West Covina at Nogales Street. We earlier this year completed a project at Reservoir Street in the city of Pomona. Those are both now in operation.

We have a number of other ones in construction, as you see here, in varying degrees of completion. We are, as I mentioned, about halfway through our overall program in terms of number of locations, but not in terms of funding.

Finally, I want to acknowledge that our favorite equipment operator there is on the job, recently, at every one of our project sites. We are looking for the remainder of the funding of this program, which is about $918 million for ten remaining grade separations.

As has been mentioned earlier, we are actively working with a number of other interested parties around the Nation, and in advocating, as part of the authorization, we are independent from the reauthorization. Some establishment of some form of a dedicated goods movement trust fund. We think that this particular activity lends itself pretty well to that kind of an approach.

You are dealing with a particular sector of the economy that is generating, frankly, a lot of revenue. It is generating a lot of private revenue. It is also generating a lot of Government revenue through customs and local economic benefits.

So we think that there is a real opportunity here to tackle this program and this problem, which is major in terms of the Nation's economy, without necessarily competing, head on, with the highway trust fund problems, which you are intimately familiar with, I am sure, from your position on the Committee.

So we are going to be working hard for that. We are active, right now, at the State level. As has been mentioned, there is a major

goods movement—a piece of the State transportation bond is specific for goods movement infrastructure and we are working to get release of those funds. That is about $2 billion in State funding, and we are active, right now, on a piece of legislation which is similar to an issue we would like to see at the Federal level, which is to institute container fees in the ports of LA and Long Beach, and Oakland, which would fund specifically air quality improvements as well as the infrastructure needed to move the goods through this area.

With that, I will close and be happy to answer any questions.

Ms. BROWN. Thank you very much. I guess my first question would be for all four panelists. I understand, and Ms. Johnson, you may be interested in this question, but California is second to Texas in the number of grade crossings fatalities. What local challenge do you face in regard to grade crossing challenges? I guess from each one of you, I would like some input.

Mr. RICHMOND. As I mentioned, we are hopeful that we will have eliminated them, at least in our jurisdiction. Basically physical improvements to the crossings to make it, if not impossible, very difficult for vehicles to drive around the crossings. Pedestrian control is a little bit more difficult. It is harder to control. But hopefully, through education and adequate safety provisions at the crossings, we will not see as many pedestrian crossing accidents.

Ms. BROWN. One follow-up with you. I notice that you indicated that you wanted to eliminate the whistles that the trains blow. I was elected 25 years ago, and that was the first bill that came up that I was against, because studies show that when you do away with the whistles, the accidents go up. So I mean, how do you address that?

Mr. RICHMOND. The slide where we identified elimination of whistles at grade separations, that does eliminate them——

Ms. BROWN. Yes.

Mr. RICHMOND. —and we do accomplish that at grade separations. A lot of the safety improvements that we have made are, particularly in one city where there is an application for what is known as a quiet zone, which you may be familiar with, which is authorized under Federal Railroad regulation, that is the location where we put in four quad gates to effectively seal off the crossings, completely, and based on that and based on the Federal regs, we believe those locations will qualify for a ban on whistle blowing through the city.

It happens, in many cases in Southern California, the communities have grown up significantly around the railroads. They may have been rather remote, when railroads were first built, but now, for example, in the city of Pomona, it's the largest city in the San Gabriel Valley, over 140,000 people, and the railroad literally goes right through the heart of town, and virtually everybody that lives in that city, and every business and every business district is pretty significantly affected, and we have about 90 trains a day going through Pomona.

And as you can imagine, the whistle blowing is almost incessant, and so I think it is an important issue. We have encouraged and helped the city to meet lower requirements to come up with a safe

way to secure those crossings, but the local interests are pretty significant in terms of the impact to the whistle blowing.

Mr. CLARK. Your question was to local issues, and since I work for the State, I am probably not an appropriate person to answer these questions, so I will pass the mike.

Mr. SPENCE. Rick did a wonderful job of explaining, actually, what we have done in the San Gabriel Valley. It has been very effective, and I would urge you to make it possible for other communities. As a mayor of a city, we need to keep things quiet. Fortunately, I don't have any trains running through my town, but what Rick just said is very effective and we are happy to support that.

Mr. BEILKE. As I stated in the testimony, we have four grade crossings, and one of which we are doing a Passons grade separation but at a cost of, you know, $43 million to do that. So it doesn't look too positive for our other three at this moment, but our city is going to look furthermore into the quiet zone criteria. As we talk about the four quads being installed for the quiet zones, we actually have one crossing that is a slow train crossing. It is obviously not the Metrolink, it is a slow crossing, but there are no barriers there at all. There are flashing lights. And so we have some catching up to do to ensure the safety of our residents.

But at this point, right now, actual precautions as far as possible, you know, cover the dividers so they can't grow around the gates. Those are things that we are going to be looking at in our city.

Ms. BROWN. Ms. Napolitano.

Ms. NAPOLITANO. Thank you, Madam Chair.

How is your working relationship with the railroad communities?

Mr. BEILKE. You know, in all fairness, it has improved over the past couple of years. It reached a pinnacle where the complaints were too obvious and too egregious. We would refer our residents at community meetings to call the Sheriff's Department, because calling city hall was, for the most part, useless. But we have seen improvements, and daily improvement is coming. It is doing dialogue through communication. I did meet, earlier this week, with some union officials, and I really do see the cooperation coming.

Unfortunately, a lot of the issues, I think, that we need to resolve, are monetary, and of course that is a whole other issue there. But overall, though, the communications has got to be the key to developing a collaborative relationship, to help us get through these issues.

We understand the necessity of the railroad. We understand the railroad was there before us. But by the same token, we all need to be good neighbors.

Ms. NAPOLITANO. Mr. Clark, do you feel that the States need additional regulatory authority? As you have heard, critics have said that giving States regulatory authority over railroads will hinder interstate commerce and we wouldn't want to do that. We don't want to slow down the movement of goods across the country.

But how can we work, collaboratively, to be able to make that happen?

Mr. CLARK. Well, the first thing is clear and good communication of course. But I think we need to both be in a somewhat equal power relationship also, because at this point in time we have no

leverage with the FRA. We have no leverage with the railroads, essentially, except on narrow items.

And so in terms of interfering with interstate commerce, it has never been the commission's intention to interfere with interstate commerce. In fact, derailments and major accidents interfere with interstate commerce also.

And so it is always a balance. That is why we spent so many years looking at safety measures to be employed just in the local safety hazard areas that we have identified. I hope that answers your question.

Ms. NAPOLITANO. It does, but is there enough, or adequate cooperation between the State, the Federal, and the local governments, to maintain safety in our communities? And what can be done to make that better?

Mr. CLARK. Again, communication is—and spending the time to be able to communicate with all the people who are involved in the decisions is essential.

Money, of course, helps incredibly, when it comes to the grade separations and the sorts of crossing problems and blocked crossings, and those sorts of things that you see, and the sorts of problems that these folks have brought to your attention here today. I hope that answers your question.

Ms. NAPOLITANO. Well, I would like to have input from some of your staff, because I know we have great support from them.

Mr. CLARK. I appreciate that. We try to make them as available as possible to you. We work with Operation Lifesaver to bring things to the attention of folks. We work with the local fraud departments. We have been working with the Office of Homeland Security and the Office of Emergency Services, and as many different agencies as we can possibly work with.

Ms. NAPOLITANO. Chief Nieto is in the back.

Mr. CLARK. Hi, Chief.

Ms. NAPOLITANO. Thank you.

A question to Mr. Richmond. Have you had concerns with the Government and the railroad industry concerning your ability to complete the safety improvements?

Mr. RICHMOND. To complete the safety improvements? No. We have not. We have had good cooperation, I think, on all fronts. We would, I think, benefit from more support, particularly support that translates into the cost of building some of the projects from the railroad. I think that they take the position that the grade separations are for the benefit of the crossing traffic, not for theirs, and frankly——

Ms. NAPOLITANO. That is a difference of opinion.

Mr. RICHMOND. Yes, and that has been the way it has been for a long time. I think we would benefit from some, I think, help, in the way we go about the projects, it would keep the costs down, but in terms of, you know, being willing to participate and supporting the projects when we need work done, and things of that sort, we have good support.

Ms. NAPOLITANO. The last question, and this is how is the Alameda Corridor able to finance a trench, and why was that not extended into the San Gabriel Valley?

Mr. RICHMOND. The Alameda Corridor was financed largely through user fees, tolls, if you will. There are payments made for every container that operates on the corridor. It is, unfortunately for us, a fairly unique situation. The project represented basically a right of way, and an ability to move goods out of the ports, that didn't exist without the project.

In other words, the routes that the railroads had coming out of the ports were wholly inadequate to deal with the demand. As a result, the ports put together a program which, in the first instance, paid about $400 million in cash to the railroads to buy rights of way, so they started off with revenue from the project, and then they basically voluntarily agreed to use the Alameda Corridor, you know, for their trains, and then they paid a toll based on that.

As a result, it was, out of a $2 billion construction cost, about a billion-six, is user fee financed. Unfortunately for us, as you go east of the north end of the Alameda Corridor, the capacity of both railroads is significantly greater. The Union Pacific has two lines going east and the Burlington Northern has one line, which is in the process of being triple tracked.

So their position is it is not the same circumstance as they faced coming up out of the ports, that they do have infrastructure of their own that they feel is adequate.

Ms. NAPOLITANO. That makes a lot of sense. In other words, it can all stop in Commerce and instead go by air somewhere because——

Mr. RICHMOND. Yes, and I think we are going to—unfortunately, I think we are going to need to look to, I hope, a similar concept of user financing. It may not be as predominant as in the case of the Alameda Corridor. It may not pay for 80 percent of the cost. But I mentioned the issue of container fees. That is one of the sources that we think is a logical way to pay for what needs to be done in areas that are not the same as the Alameda Corridor.

Ms. NAPOLITANO. Thank you, sir. Thank you, Madam Chair.

Ms. BROWN. You had a follow-up, sir? Yes, sir.

Mr. SPENCE. Chairman Brown, I am being told that in the LA Basin, where custom taxes are collected, all of those funds go to the Federal Government and to just general use. We are wondering if there is any way that a portion of those custom taxes, the increase in what is going to take place from now on, be dedicated to help finance some of these safety issues.

It has been talked about by local council members, by our Alameda Corridor East, and this is just a thought that you might take back and look at. I don't know if it is possible. But it would be one way to bring more funds into the issue that we are trying to solve here today.

Ms. BROWN. Yes, sir, it is something that we can take back, but my understanding, the custom tax for the inspection, and we want to get to the point that we inspect all of the cargoes that are coming in, and so that was what we passed with the 9/11 bill. So, you know, we are going to have to look at revenue sources.

And I was thinking, can you tell me what role does the railroad play in the funding of these railroad crossings.

Mr. RICHMOND. The grade separations are the more expensive parts of this whole program. There is actual Federal regulation

that limits the railroad contribution to 5 percent, if there are Federal funds involved.

Locally, we have a 10 percent—if it is only State funded, no Federal funds, there is a 10 percent funding for the railroad. But on the federally-funded projects, which many of ours are, there is Federal regulation which actually limits their participation to 5 percent.

Ms. BROWN. Ms. Johnson.

Ms. JOHNSON. Thank you very much..

My questions will be very simple. Where there is a accident at a crossing area, where a pedestrian or a local driver or something is involved, is it considered a traffic violation?

Mr. CLARK. Is it considered a traffic violation? Usually, it is considered a traffic violation. We investigate all of those. Here, in the State of California, we investigate all of those that involve either a death or a major injury.

Ms. JOHNSON. What kind of fees do you charge for the violation?

Mr. CLARK. I believe it is $271 for trespassing on the right of way, and the citation for crossing, driving around the gates or violating a crossing is a criminal misdemeanor.

Ms. JOHNSON. What kind of revenue do you get from that?

Mr. CLARK. The State of California doesn't get any revenue from that. That goes to the locals.

Ms. JOHNSON. Okay. Well, I notice that there is a need for additional dollars, and I was trying to figure out how we could get them. The Federal Government really does not have them. But I want each of you to tell me how you would help to raise the revenue to get some type of additional funding. Cause every time we talk about—you know, the only way we have is raising taxes, and every time we mention that, we get beat down.

So I know you must have some way you have thought about, that we could get the money for it.

Mr. RICHMOND. You know, our project has been funded basically as a partnership, 40 percent federally funded, 40 percent State funded, 20 percent locally, and railroad funded.

I think, as you look around, I think you can identify that there are benefits that spread across all those various entities. The Federal side. We talked a little bit about the fact that there is a lot of customs revenue that does get generated by this activity. Obviously, for ports area, trade policy is what drives the business, and the fact is that Federal trade policy is what is causing a lot of what is going on, and we are not against it or adverse to it, but, obviously, it is the cause of what is happening in terms of the explosive growth we are experiencing.

So that I think makes an argument for some Federal share. I think there is State—the State obviously benefits. It is a major economic engine for the State government also, so there is a State role, and I am now only talking about sort of traditional government type revenues. I think the big missing piece is what I would call the private beneficiaries. There is a whole string of basically private concerns involved in the logistics chain of international trade.

It will end up, as most people, you know, would tell you, with the people who buy the products. I mean, it may take a while to

work it through the system but it ends up with the people who buy the products.

If you look at putting, as we are talking about, a $30 fee on a 20-foot container, and you look at, let's say, what that means to the price of a pair of $80 tennis shoes, it is probably pennies. So there is an opportunity there, in my view, which is the most screaming opportunity, to get participation from that part of the equation.

So I think there is an argument for everybody being involved, because I think the benefits are either—the problem is either caused, or the benefits accrue across the board.

Ms. JOHNSON. Thank you. Do you have any thoughts or are you just passing a pipe? Do you have any thoughts?

Mr. CLARK. You know, it depends on what aspect of railroad safety you are talking about.

Ms. JOHNSON. Any kind, but most especially where persons cross when they are not supposed to. Nobody wants to hear noise, but where does the responsibility lie? Is it local? It has to be some type of individual responsibility. And, you know, Government really is not a "cash cow." We have to find ways to raise revenues.

But I think more and more, the citizens of this country will have to take the responsibilities for what they do. I don't believe in much being free, not even health care. I think people ought to pay for whatever they get, so they will understand the value of it.

Now I just want to know from you, what would satisfy you to raise additional revenue?

Mr. CLARK. Well, I certainly think in terms of the issues of people crossing in front of trains and trespassing on railroad property, that very vigorous enforcement of the local laws, and fines, will raise some money that can——

Ms. JOHNSON. But it also will teach people to respect.

Mr. CLARK. Yes, ma'am. It is a double benefit there. And so we encourage the locals to enforce as much as they possibly can, understanding that they have other issues that they need to enforce, and limited police officers, and that sort of thing. But when you get ticketed once for crossing in front of the tracks or trespassing on the railroad, you are going to think about it and probably not do it again.

And then it could be used to improve the signage, to improve fencing in a particular area where there is a trespass problem, in order to improve the signal devices at the crossings, and that sort of thing.

Ms. JOHNSON. Let me just share with you that I didn't think a whole lot about parking in a disabled, a handicapped parking spot one night, at about five minutes of the time the stores closed. But when I came out, I had a ticket, and it was $500. I have never done that again.

Mr. CLARK. Yes, ma'am.

And I don't drive in a car pool lane in California. It's $271.

Mr. SPENCE. It's higher now.

Mr. CLARK. Is it?

Mr. SPENCE. Yes.

Ms. JOHNSON. Your comment? I mean, I really want to get some serious thoughts from you.

Mr. SPENCE. Well, the only thing that I would say is that hopefully, we're not going to get that much money from these fines because——

Ms. JOHNSON. But you might want to eliminate the violations.

Mr. SPENCE. Well, I am not that police officer, and I believe all of those funds that would be fined for people violating these rules, would go to either LA County or to the local jurisdiction in which they violated the regulation. Isn't that right, Council Member? Council Member. I am sorry. I still look at you as a Council Member.

Ms. JOHNSON. Former.

Mr. SPENCE. Former.

Mr. BEILKE. Congresswoman, you pose an interesting question, and you are really challenging, I think, for us to "think outside the box," and when I heard the question come up, locally, we are thinking of, you know, raising fines. I mean, a lotta cases of trespassing is by kids, and yes, I guess you could go after the families——

Ms. JOHNSON. They have to be taught as well.

Mr. BEILKE. They do. They do. Right. And of course that is—you know, spending the money on the education can not only prevent that but obviously save lives.

But, again, thinking outside the box, I am thinking of something that I am not saying I actually want to propose in my city, but a reverse user tax, in a sense, even those, the railroads that are putting the goods across, and we are used to taxing the railroads for the use, you know, we have a user tax in our city, it is 5 percent, and it generates about $4 million a year for our general fund, which provides vital services.

So, you know, you are "thinking outside the box." You know, I would not want to be the one to propose it in my city, but, you know, a half a percent increase to that for railroad safety, you know, I am sure the residents would rally against it, saying it is the railroads' responsibility.

You know, of course then you have all the other users that traverse through our city that aren't paying the tax.

But it poses an interesting question, and obviously I think it is one that this whole panel was—it is a tough one. It is always finding it is tough. I mean, you know that better than all of us up here. But that would be my only comment. Some sort of reverse tax that would actually affect the residents.

And who knows? We are starting improvements at a defined amount. That may be a possibility.

Ms. JOHNSON. Well, thank you. I ask that because I really am serious about how we could generate more revenue. But I am also very serious about how we teach people to follow the regulations, because most of the time this is not the railroads' problem when they just violate that, and children have to be taught as well.

Now we had some light rail accidents with kids just climbing over the fence because they didn't want to go to the end of the block to go across where the light was—it was a new light rail system.

And I met with the PTA and the parents, and I said, you know, you have some responsibility for teaching your children not to do this. And the younger the better.

If you are going to blame the transit system for them violating it, then we never will get off first base. So we do have to start teaching our young people early. And they were all fired up that night. But when they left, they realized they had some responsibility.

I just appointed a committee to come up with some answers, because young people have to be taught, and nothing is free anymore. We all have some responsibility for our own safety. Thank you.

Ms. BROWN. Thank you, Ms. Johnson, and Ms. Napolitano, last question.

Ms. NAPOLITANO. Thank you. Director Clark, many communities are planning to implement the quiet zones along the railroad tracks. Your opinion, you stated something along that line. But do they decrease safety around the railroad tracks, the quiet zones? You know, it was something that was brought up.

Mr. CLARK. We are not sure yet because the evidence is not in. The quiet zone rules have not been in effect for that long, for us to be able to measure the safety. We are concerned. It is a total new paradigm to not have railroad whistles blowing at crossings.

It is going to take people a while to get used to that. And then we just want to make sure that the supplemental safety measures that are put in place are such that they increase the safety to the same level as when the whistle is blown. That is what the law is designed to do.

We certainly understand the noise impact on the local communities, and the hazards to health that is incumbent in that issue, and so we are watching and we will be measuring to see whether or not accidents happen in quiet zones.

Ms. NAPOLITANO. Are you working with those communities that have a lot of rail traffic through their areas, such as the COGS?

Mr. CLARK. Yes, ma'am. We work very actively with the local communities and try to get them section 130 money for improving the signaling devices. Section 190 money for grade separations. We try to get them money from the grade crossing maintenance fund also, to make sure that the signal devices work consistently.

And when they present their quiet zone applications to us, we have about 11 or 12 of them at this point that have been approved. We have about 40 cities that have expressed interest. We go out and we do the diagnostic reviews with them, and we try to design a mitigation that fits that particular situation, so that it enhances safety and brings it again to the same levels as when it was——

Ms. NAPOLITANO. Are any of those along the corridor, the Alameda Corridor East?

Mr. CLARK. Is Placentia in the Alameda Corridor- East? Pomona. The city of Pomona I think——

Ms. NAPOLITANO. That is my district; yes.

Mr. CLARK. I think they started, just yesterday with a quiet zone. I could be wrong.

Mr. SPENCE. — construction authority through South Pasadena.

Mr. CLARK. We are certainly working with them also; yes.

Ms. NAPOLITANO. Not in my area.

Mr. CLARK. Right.

Ms. NAPOLITANO. No. But it is good to know that you are working with the communities, and the COGS I am sure might enter-

tain a presentation to the cities to understand what you have and how you have certain sections, that you can help them with the funding to be able to achieve that. Cause I don't think they are totally aware of that. I know I was not, not that I am on the City Council anymore.

Mr. Richmond, the status of the grade separation project in Montebello. I understand there is only one, and I know that they initially had said if they didn't trench, forget it, we don't want it. Is the city now working with you?

Mr. RICHMOND. The city is actually, with some help from the MTA, has reinitiated an effort to revisit the discussion of what makes sense in the city. We have an adopted program that identified a grade separation. The city had wanted all the crossings in the city grade separated, and through construction of a trench, which, frankly, we don't feel the resources are liable to be there, so we basically have pushed their project down on our list. It is still part of our program; but they were not ready to proceed.

I am hopeful that they will reactivate their effort and that we will be able to come up with a mutually acceptable proposal.

Ms. NAPOLITANO. The Alameda Corridor, the Alameda Corridor-East differ in what aspect in the trench? That was built by LACMTA. In other words, it was planned. But there was nothing—what was the cost?

Mr. RICHMOND. The pure construction cost of the Alameda Corridor was $2 billion. There was about $400 million in financing costs, cause they are paying it off over time. So depending on how you define it, it is either $2 billion or $2.4 billion. And remember, that is about a 20 mile single rail corridor. Our Alameda Corridor-East in just the San Gabriel Valley—I am not talking about San Bernadino, Riverside, Orange—just LA County—Alameda Corridor-East is about 70 miles and it has got, in effect, two separate rights of way.

So money would be a much bigger proposition, were you to try to apply the exact same standard of putting it all underground. Our program has a limited application of that in one location in San Gabriel, where we really had no way to do it, other than to lower the railroad, and there may be other isolated situations.

But because our crossings are fairly far apart, it would be rather expensive to put a trench through. But I guess our first goal would be to grade separate more than the 20 crossings we have planned, and right now, we don't have enough funding for all of those.

Ms. NAPOLITANO. Thank you, Madam Chair.

Ms. BROWN. Thank you all for your presentations, and in closing, one last question for all of the witnesses.

I would like to know, what is your working relationship with the railroads. Are they responsive to the local railroad safety concerns, and can you provide any examples? And we will start with you, Mr. Mayor.

Mr. BEILKE. As I mentioned earlier, it is improving, and that is very positive. We have heard the concerns, repeatedly, and they are starting to step forward and offering their assistance. A major one we have right now is the condition of the right of ways, and that is one that I believe in. This past week, I met with the railroad lines, and they have pledged their support to work with that, to

work with our city staff. You know, again, going back to my opening testimony about beautification of the city, when we see the landscaping kept up and the streets clean, and you look down a railroad line and you see the sagebrush and you see the shopping carts and the couches, you know, that is take some wrong direction.

But they have pledged their cooperation. The railroad has in the past, as far as other issues we have had, as far as stopping at the railroad crossings and leaving their engines running. Those are far and few and in between these days, and I will accept their pledge as far as these rights of ways go, and take them up on that, and a lot of the members I received this past week meeting with the railroads, and I intend to have our staff follow up on it and see where this takes us. But I am very optimistic that we will achieve the results we desire.

Ms. BROWN. Thank you.

Mr. SPENCE. As president of the San Gabriel Valley Council of Governments, I hear from my colleagues in other cities, that the railroads are becoming much more cooperative, and I think that people like Congresswoman Napolitano has done a wonderful job of getting their attention, and helping that increased quality of relationship, is so evenly upgraded. So from what I hear, the cooperation has been very good, especially in the last year.

Mr. CLARK. I would characterize our relationship with the railroads as being okay; but not optimal. We have seen some significant improvement. The California legislature has become quite involved in railroad safety in the last few years. They have about doubled our staff for railroad inspection. They passed AB 1935 authored by Assembly Member Bermudez, AB 3023 by Speaker Nunez, both of which dealt with lots of railroad safety issues and critical infrastructure protection on railroads also.

Sometimes it has been difficult banging heads with them. Sometimes we have succeeded with just talking with them.

If I might, there is one program that I think might answer Congresswoman Johnson's question on revenue, that occurred to me as I was listening to the mayor, which is that in the State of California, we work with the local planning departments, and even though the railroads were there first, they were put there in order to attract commerce and trade. And so it is not unusual to find that there is going to be conflicts between people and railroads.

And so we think the way to get out of much of this dilemma is to plan our way out of the dilemma. So we work with the planning departments and we try to encourage them to, if they are going to allow a housing development built on one side of the tracks and there is a school on the other side of the tracks, then the person, the company, whoever is building that housing development, needs to provide a safe way for children to get across the tracks.

And so with user's fees, or with some other sort of fee that is tacked on to the building, this is a program that we put into place and we recently have gotten even more staffing for this place because the governor's office sees the benefit to planning ahead of time, and again, avoiding accidents instead of responding to them.

Mr. RICHMOND. Our interaction with the railroad is primarily in the construction area, when we are trying to implement the project, and I can assure you that the railroad, Union Pacific, is extremely

safety conscious on the construction side, and they keep a pretty close eye on us to be sure we are likewise and our contractors are likewise.

Ms. BROWN. Thank you all very much for your testimony.

The last panel will come forward. We are going to have a five minute, only five minute break, and then we will start the final panel, please.

[Recess.]

Ms. BROWN. Are the other two panelists here? Mr. Smith and Mr. Ojeda. Okay. Good.

I would like to welcome you all. You are our final panelists today, and our first witness is Mr. Chris Roberts, the regional vice president of the South Operations for the BNSF Railroad. Welcome.

And the next witness is David Wickersham, the chief engineer for the Western Region of the Union Pacific Railroad.

And our third witness is Mr. Tim Smith, the California State Legislative Board Chairman, Brotherhood of Locomotive Engineers.

And the final witness today is Mr. Ojeda, presenter-trainer for California Operation Lifesaver. Welcome, sir.

I want to try to adhere to the five minutes so we can ask questions.

TESTIMONY OF CHRIS ROBERTS, REGIONAL VICE PRESIDENT, SOUTH OPERATIONS, BURLINGTON NORTHERN SANTA FE RAILROAD; DAVID WICKERSHAM, CHIEF ENGINEER, WESTERN REGION, UNION PACIFIC RAILROAD; TIM SMITH, CALIFORNIA STATE LEGISLATIVE BOARD CHAIRMAN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS; JESUS OJEDA, PRESENTER-TRAINER, CALIFORNIA OPERATION LIFESAVER

Mr. ROBERTS. First off, I want to thank you for the opportunity to appear here today on the important issue of rail safety.

The South Operations for BNSF encompasses the entire State of California, so I am responsible for all rail operations.

I know you have been given my written testimony, so in brevity, I just want to hit a couple of key points and there are some duplicate things that have already been said, and I don't want to try to go over those again.

But, obviously, Congress plays the most important role in rail safety through policy and legislative matters, and it has to do two things, I think. It has to ensure that we have a safe rail network and that we also allow the railroads to play the vital role they do in our national economy. Those are, I think, the overarching themes that we are trying to accomplish.

I am not going to get into preemption and things like that, but I will talk about why, at least from our standpoint, we think that the regulatory authority, through the Federal Railroad Administration, and having standardized regulations across our networks are so vitally important, because if you think about a patchwork of different regulations and rules, and trying to not only train your employees to comply with those and understanding those standards becomes very, very difficult.

If you take the BNSF Railroad, for instance, we operate in 28 States and two Canadian provinces, and we look at local cities, mu-

nicipalities, and how complex they could become, we are very concerned about it.

We do agree that participation in State agencies—a fine example here is in California, with the Public Utilities Commission, the CPUC, is very beneficial in assisting the FRA in enforcement of Federal rail standards, and also participating with the railroads.

Regardless of the fact to whether there are statutory policies or whatever, it is in the railroad's best interest, for not only our employees, the communities we serve, but our customers, to address rail safety issues.

I am not here to disagree with that. We may disagree with how we get there, but I think the overarching philosophy is just that. And hopefully we can have some further discussion about any questions that I may answer for you through your questions.

Mr. WICKERSHAM. Good afternoon, Chairwoman Brown, Congresswoman Napolitano, Congresswoman Johnson. My name is David Wickersham and I am the chief engineer at Union Pacific, Western Region. I am pleased to be here today and I thank you for the opportunity to testify about Federal, State, and local roles in rail safety.

Union Pacific is fully committed to rail safety. The safety of our employees and operations, and the communities through which we operate are our priority.

This includes employing safe practices in the transportation of hazardous materials and implementation of the comprehensive program for homeland security.

Union Pacific is also actively engaged in efforts to reduce emissions associated with our operations to improve air quality, and quality of life for our communities located along our rail lines.

For instance, a single double stack train can move the equivalent of up to 280 trucks, and we would rather see them on our railroad than on the freeways.

Union Pacific's safety record continues to improve. We have made and continue to make steady progress in all three primary safety categories on our system. Since 2001, we have seen a 47 percent reduction in reportable employee injuries, a 29 percent reduction in crossing accidents, and a 26 percent reduction in rail equipment reportables per million gross ton miles. These gains are the result of a concerted focus on safety. We improved the training and communication process with our employees. We have enhanced our mechanical and track inspections with technology and with training, and our grade crossings, we have implemented a new strategy that centers on high-risk corridors and a partnership with local communities to eliminate redundant crossings and increase enforcement of traffic laws.

Union Pacific is also actively involved with safety regulators at the Federal, State and local levels. An example of this is found here in the Los Angeles Basin. In addition to the significant investments we have made in improving our track, we interact on a daily basis with inspectors from the Federal Railroad Administration and the California Public Utilities Commission. California PUC inspectors are able to perform a variety of rail safety inspections for compliance with Federal standards.

We have also devoted extra resources to address local concerns by increasing our testing of joint bars on our major east-west routes in the Basin.

Working with the Departments of Homeland Security and Transportation, and in accordance with Federal law, Union Pacific has also developed and implemented a hazardous material critical infrastructure security program.

Here, in California, we are cooperating with California PUC, the governor's Office of Emergency Services, and the Office of Homeland Security, to enable them to review sensitive security information relating to security assessments, identification of critical infrastructure, and infrastructure protection plans.

We also are actively engaged throughout Southern California in addressing air quality and public health concerns. In 1998, under an EPA rulemaking, the railroads entered into an enforceable fleet average agreement with the California Air Resources Board, that will reduce nitric oxide emissions from all locomotives on the south coast, on average, by 67 percent, and diesel particulate matter emissions by 48 percent. Particulate matter emissions will be reduced by another 20 percent as a result of a 2005 memorandum of understanding with CARF.

In addition, Union Pacific is introducing another 70 ultra-low emissions locomotives into the LA Basin. These locomotives cut emissions by 80 percent compared with the locomotives that they replaced.

Uniformity of regulatory requirements for railroad safety is both necessary and critical to avoid a patchwork of different State and local programs that will disrupt rail movement of interstate commerce.

By far, the safest railroad is one that operates with a consistent and integrated set of safety rules, practices, employee training and efficiency testing. Our trains and our employees cross State lines on a daily basis. Subjecting them to different rules would create a confusing and workable operating environment.

Federal safety rules take into account the broad range of variability in railroading and provide for these contingencies. However, railroads cannot meet the increasing demands for goods movement if they are hampered by inconsistent regulations from different levels of Government across State lines and local municipalities.

This concludes my testimony, and thank you again for giving us the opportunity to be here, and I would be happy to answer any questions you may have.

Mr. SMITH. Good afternoon, Madam Chairwoman, and Congresswoman Napolitano, Congresswoman Johnson. It is a pleasure to be here. My name is Tim Smith. I am the State chairman for the Brotherhood of Locomotive Engineers and Trainmen, here, in California. We are part of the Teamsters Rail Conference.

I am also the chairman of the National Association of State Legislative Board Chairmen for our organization, and on behalf of BLET National President Don Hahs, who was unable to be here today, I was asked to speak. We represent 30,000 active employees throughout the Nation. We also represent 70,000 active members of the Teamsters Rail Conference.

I would like to thank you again for the opportunity to talk on the subject of our views on Federal, State and local roles in rail safety.

My testimony today will focus on three aspects of what we believe are the appropriate Federal, State, and local roles in rail safety.

First, I'll address statutory and regulatory responsibilities. Then I will turn to safety and security of hazardous material shipments. Finally, I will close with some thoughts concerning pedestrian and highway grade crossings.

The manner in which preemption is currently being enforced is unacceptable. Section 20106 of Title 49 of the U.S. Code, which is the Federal Rail Safety Preemption Provision, allows a State to adopt or continue in force an additional or more stringent law, regulation or order related to railroad safety, only when it, number one, is necessary to eliminate or reduce an essentially local safety hazard.

Number two, is not compatible with a law, regulation, or order of the U.S. Government. And number three, does not unreasonably burden interstate commerce.

The final two conditions in the statute, incompatibility with Federal laws and regulations and burden on interstate commerce, are thresholds that are almost never exceeded by a proposed State or local law or regulation.

However, Federal judge after Federal judge has preempted State and local attempts to regulate rail safety by repeatedly finding that the proposal is not necessary to eliminate or reduce an essentially local safety hazard.

In other words, the Federal judiciary is imposing its own judgment as to whether a local safety hazard exists, irrespective of the judgment of the State and/or local officials elected or appointed to make such determinations.

Some courts have ruled that a lack of Federal regulation concerning a specific subject also preempts State and local action on that subject. This is called negative preemption.

In response to this increasing judicial activism, the National Association of Regulatory Utility Commissions has adopted a resolution recommending that Congress eliminate the local safety hazard clause of section 20106. We support this change because it restores an appropriate balance among the statutory and regulatory roles of Federal, State and local governments.

Action to reform preemption is all the more important in our post 9/11 world.

Moving on to the issue of hazardous materials. Tragedies are no longer solely caused by accidents, as the terrorist attacks on oil and transit facilities in Spain and England in recent years have shown.

The Chlorine Institute has reported that a 90-ton tank car, if targeted by an explosive device, could create a toxic cloud 40 miles long and 10 miles wide. Such a toxic plume, according to the U.S. Naval Research Lab, could kill 100,000 people in 30 minutes in a major metropolitan area.

We support requiring risk and route analyses on a regular basis, and the development of primary and alternative routes for these materials as a matter of transportation planning strategy.

We further believe that Federal, State, and local government should be in possession of sufficient information concerning times and amounts of shipments, so that they may fulfill public safety obligations.

We do believe there is a role for all three levels of government to play in supporting technologies that assist in tracking shipments and developing procedures to minimize, to the greatest extent possible, the length of time dangerous shipments may sit unmonitored or in an unattended facility.

Now moving on to the third phase, grade crossings. While accidents and injuries at public highway rail grade crossings have declined by between one-third and one-half in the past decade, accidents at private crossings have declined by only 10 percent and the number of injuries in private crossing accidents has actually increased by 1 percent.

The boundaries between public and private crossings are often blurred. There are over 94,000 private highway rail grade crossings in the United States, many of which are used by more than one individual.

A private crossing should be defined as one used by a sole land owner or lessee. Once any other individuals routinely use the crossing, it should be no longer considered a private crossing but should be deemed a public crossing.

We believe it is imperative that any private crossing that serves an industry should be held to the same standards that apply to highway rail grade crossing system signal requirements.

The BLET feels that, at a minimum, all crossings should be required to have active warning devices that comply with a manual for uniform traffic control devices.

Active warning devices can significantly improve the level of safety at these grade crossings. However, we would prefer that FRA prohibit the creation of new private crossings and work toward eliminating as many existing private crossings as possible, and we have made that position known to the FRA.

If the FRA determines that it wants to allow the creation of new private crossings, then new private crossings should have active warning devices installed prior to use. If necessary, FRA should request enactment of legislation to address private crossings.

There is one more area that needs to be addressed with regard to grade crossings. It's called CISD, or Critical Incident Stress Debriefing, for crews involved in grade crossing accidents. To illustrate, you cannot imagine the terror a train crew experiences when their train comes roaring around a curve at full speed and a truck, car, or pedestrian is just ahead. You can't blow the whistle long enough or loud enough, and your heart creeps up further into your throat with each passing yard as your closing distance races to zero.

There are two absolute truisms when it comes to motor vehicles trying to beat trains at a grade crossing. Number one is that the train is going to take much longer to stop than the driver could ever imagine, and number two, sadly, is that all ties go to the train.

On some railroads, crews who are involved in such an accident, no matter how serious, are expected to ignore the trauma they

have just suffered and continue operating the train, in some cases after waiting for hours for the coroner to remove the deceased.

A handful of railroads have taken a very progressive approach to CISD, while a few are completely uninterested. The majority in the middle deal with the subject to varying degrees. We believe that requiring, or for that matter, allowing a crew who has been traumatized by involved in a fatal grade crossing or pedestrian accident to continue operating their train presents a public safety hazard.

I would like to take the opportunity today to advocate for the inclusion of CISD in any legislation that deals with highway rail grade crossing safety.

This program should be available to all railroad workers involved in traumatic incidents while on the job.

In our view, the State and local role in crossing safety is relatively simple, especially for a State like California. Full compliance and cooperation with the Federal program will result in significant improvement in crossing safety. We also would ask States and localities to take two other steps.

One is to get tough, and I mean really tough, on enforcement against motor vehicle operators who violate laws governing motor vehicle operation over highway railroad grade crossings.

Commercially-licensed drivers are governed by a complex set of regulations with respect to grade crossings, which include the type of cargo being trucked and the sort of crossing involved.

We believe the frequency of motor vehicle drivers trying to beat the train would decline dramatically, if similarly harsh punishment was handed out to drivers not covered by these CDL penalties.

So in conclusion, rail safety is a full-time effort, and there never are too few hands. When government at the Federal, State and local levels fulfill their respective roles, and coordinate their activities, so that the whole is greater than the sum of the parts, safety is enhanced for all of our members and all of your constituents.

Once again, thanks for the opportunity to present you with our views and I'll be happy to take any questions you may have. Thank you.

Mr. OJEDA. Thank you, Madam Chairwoman, and thank you Members of the Subcommittee. I would like to start by saying thank you for including Operation Lifesaver in today's hearing, in the respective roles of Federal, State, and local officials addressing rail safety.

My name is Jesus Ojeda. I am a presenter-trainer for California Operation Lifesaver and a proud constituent of District 38. Presenter-trainer means I am certified to offer presentations to the public about the importance of practicing safe behavior around railroad tracks.

I am also certified to train others to do the same. Operation Lifesaver is a safety education nonprofit program that is dedicated to eliminating tragedies at highway-rail grade crossings and along railroad rights of way.

In one word, Operation Lifesaver's success is attributable to its volunteers. These are individuals, approximately 3000 in number, who dedicate our time, energy towards educating the public on the dangers that are present on or near railroad tracks.

Many of these volunteers agree to become certified presenters, trained to go out to schools and other community venues. Our State coordinator reaches out to the law enforcement community, bus operators, commercial drivers, emergency responders and others.

Operation Lifesaver is the education component of the three E's of traffic safety strategy. The three E's are simple: education, engineering and enforcement. These three must work in tandem. Operation Lifesaver programs bring these elements together in a way that the public can understand. All of our information is age-appropriate.

Here in California, we work very diligently to educate various communities across the State, from schools that are adjacent to railroad tracks to commercial drivers that have to cross railroad tracks somewhere in the State.

California Operation Lifesaver is leading the way in outreach to non-English speaking populations. I am one of 14 presenters here, in California, and I am one of three presenter-trainers, bilingual, who share this message.

We are the first State to train farm worker educators to become Operation Lifesaver presenters.

Three California presenters and I have just returned from the National Conference of La Raza where we were part of the Latino Expo and we made great contacts to bring back to our communities and help support and educate our children, our community members.

Some of the challenges that our operation faces, in some respects, we are a victim of our own success. Vehicle-train collisions, fatality and injury numbers have dropped substantially, and in the minds of some, are far less threatening than the loss of life we see on the nation's highways.

We need to disabuse policy makers, media and others of this notion.

The consequences of train versus vehicle collisions are carried far beyond those of a single individual, and also affect family members, friends, communities. You are 20 times more likely to die in a collision with a train than within another vehicle.

A vehicle collision also disrupts a highway railroad crossing for hours, gridlocking communities, impairing emergency response capabilities, and sometimes leading to derailments.

As trains carry hazardous materials, the consequences can be even more deadly.

Recommendations. Please continue to fund Operation Lifesaver's program. Much of the funding works its way to the financial step programs in the State. In this regard, Operation Lifesaver commends your efforts, Congresswoman Napolitano, who amended the rail safety bill, including authorization for Operation Lifesaver to continue our safety education in our communities.

Congresswoman Napolitano's efforts would enable Operation Lifesaver to launch a new pilot program whereby we could offer targeted, sustained outreach to communities where risk is a greatest in terms of incidents, and we focus by population density near the tracks.

If Congress approves this program, Operation Lifesaver would work very closely with community leaders, school districts, and

public/private partners to develop and implement programs on a sustained basis to reduce the number of tragedies that occur on railroad tracks.

In conclusion, on behalf of Operation Lifesaver and our national support center, I thank you, Members of the Subcommittee, for coming here to learn first-hand about the challenges of rail safety in one of our busiest corridors. Thank you.

Ms. BROWN. Thank you. I heard our transportation for our next meeting, but we are going to have our questioning, and I guess the first question goes to you, Mr. Roberts.

First of all, let me commend you for BSNF initiative to develop the local train management system. Please tell us more about the deployment schedule of the system, what is involved in it, and is the system going to be deployed here in California?

Mr. ROBERTS. Well, as you know we've had it in test and got approval from the FRA in 2003, in Illinois. Our next implementation is going to be in Texas between—actually, Oklahoma and Texas. So we are implementing that. Then we have plans laid out to progress, but it is an expensive endeavor. For our network, it will be well over $500 million.

And our plan is, based on the other demands we have for capital, to continue to implement as long as our revenue and our returns are adequate to do so.

Ms. BROWN. A follow-up.

Mr. ROBERTS. It is a little bit hard for me to tell you what that timeline would be for our whole railroad because it depends on the economics and how the economy does and how well our railroad performs. But it is our intent, whether by regulation or not, it will be implemented on BNSF.

Ms. BROWN. Track defects constantly rate as one of the two top causes of all train accidents. Your testimony indicates that all BNSF tracks is regularly inspected and the business main line route are inspected daily. In your opinion, what causes these accidents? Is it lack of technology, equipment failure, failure to follow up with inspections, with the regular inspections? How is it that the railroads still experience so many track defect accidents?

Mr. ROBERTS. Well, part of it is—it is human-based. Some of our inspections are done, obviously, with people out inspecting, and people make mistakes. That is one reason that we have gone so much into technology. You know, you can get to a certain level with all of us make mistakes, and the next level, to get to the next level, you really need technology.

So our efforts with rail detection, ultrasonic rail detection, and things, we do different standards, improving our standards for our rail infrastructure, and trying to get more on what I will call a proactive rather than a reactive basis, where we try to understand when something is going to fail, prior to it failing. And that is really the next level, and I think the technology, and even including what the ETMS system allows you to do, will help to that. It will detect a broken rail.

And some parts of our weld, depending on the system and how it operates, you don't have that rail fault detection after what we call an in-service failure breaks.

So I think it's twofold. It is continue to train our people, making sure that they follow the standards and regulations that we have in place, and then keep moving as technology comes on that will allow us to be safer.

Ms. BROWN. I know that you heard the mayor's testimony about the coffee break and I am certain that you dealt with it. Can you explain to us what happened with that.

Mr. ROBERTS. I don't know about the particular instance. I also read it in his testimony. But I assure you we don't condone that.

Ms. BROWN. Absolutely.

Mr. ROBERTS. We have people that don't always do what they're supposed to do. We do have what we call our operations testing program, where we look at whether our employees are following the rules. There's blocking crossings where they're shutting down locomotives and complying with our idling policy. We have people that don't do that. and we handle that in an appropriate way when we—but we will react to that and we appreciate when we are notified of those instances, and we will follow up with the individuals involved.

Ms. BROWN. Yes, sir.

Ms. Napolitano.

Ms. NAPOLITANO. Thank you, Madam Chair.

Mr. Smith, Ive read with great interest, your reference to the employees that are involved in accidents, that are allowed to continue working, or even they must continue working, even after some tragic accident has caused trauma to them, to TSD if you will. I have a great interest in that issue, because it is true, that it is something, that it is necessary for them to be able to understand and deal with.

Is there anything that needs to be done—and I don't mean that to say that there is necessarily—but do the railroads allow time, do they provide enough health referral services to be able for those employees to continue working effectively?

Mr. SMITH. I believe over the years, the rails, especially in California have improved greatly in that area. It was my experience as a locomotive engineer—I have, unfortunately, been involved in those kinds of accidents, and it is not a fun thing to continue your work all the way, the rest of the way that you have to travel. It kind of distracts you, it takes your mind off of things, and it is something that you can't get out of your head.

But we do have peer support on the railroads, that I am aware of, and we also have an opportunity for these people to get counseling, if need be, and the railroads generally are pretty good about getting these crews off the trains, and that includes Amtrak.

But every once in a while, you get one that slips through the cracks, and unfortunately, you know, you take that on a case by case basis.

But, you know, there is the individual who doesn't get the relief that he needs, and, you know, those things need to be worked upon.

But if the railroads' reaction to this sort of an incident were standardized, then there would be no guesswork, everybody would be marching to the same beat, and then there would be no slipping through the cracks.

Ms. NAPOLITANO. Thank you. A concern of course, in the last few years, has been the fact that I have been approached by individuals working for the railroad, indicating to me that they have very little training when they were cast into a role. Has that changed?

Mr. SMITH. That is a major problem. As far as I am concerned, the training is totally inadequate. I understand that the railroads have been in a hiring frenzy for the last few years, and that has tapered off considerably, and in the rush to get employees out there, in the workplace to move the trains, we have a cookie cutter style of conductor and engineer that is created out there.

I believe that that is a harbinger for trouble down the road, because these people do not get that practical experience that we used to get back in my day, when I was a young man coming up in the railroad industry.

It is important for them to see all aspects of railroad life. Too many times, we have a brand new engineer out in the territory with a brand new conductor. It is a case of the blind leading the blind, and I have even heard of them, two people like that in that kind of a situation, having a trainee working with them as well.

We just can't condone that. That is something that is not acceptable. If anything, we need more training, not less training. I have seen some movements lately, from both the BNSF and the UP railroad, and I applaud those, but I can assure you that we need much more than that.

Ms. NAPOLITANO. Madam Chair, I believe there is some portion of the railroad bill that addresses that and I am hoping that will help the situation.

I will submit the rest of the questions for the record, Madam Chair, but I do want to introduce the representative from Senator Diane Feinstein's office, Diego Gonzalez, who has been patiently in the audience. Diego, would you stand up. Thank you, sir.

We did have the deputy chief of staff, Supervisor William Molina, but he had to leave, and we did have one of the councilmen from Montebello, one of the other cities that is affected by the ACE Corridor, and several other people who have come and gone, and I am sorry, I didn't get a chance to think about introducing them. But Madam Chair, I really appreciate your being here. I know we are going to have to go.

I would like to introduce a couple of things for the State, for the record. One is this letter from Supervisor Molina, and a picture of the industry brought to us by Chief Nieto, sitting in the audience. Chief, thank you very much.

Ms. BROWN. Without objection.

Ms. NAPOLITANO. Thank you, Ma'am. I do have no time, and I will defer, and thank you very much.

Ms. BROWN. Mrs. Johnson.

Ms. JOHNSON. I have no further questions, Madam Chair. I am ready to go.

Ms. BROWN. Thank you, Ms. Johnson.

I think I have one last question Mr. Smith, I just want you to know that I went personally to the training class and I crashed, because it is clear that the train cannot stop on the dime, and there is a lot of steel there, and even though I ended up with aid they fixed the grating, I know, for me—but it is important that we do

have a strong educational program for the community and for the children, and so that they can understand what is involved when you go around those rail crossings.

Do you want to respond to that? And in your testimony you talked about the private crossing and the public crossing, and can you tell me, in your opinion, is one safer than the other?

Mr. SMITH. I'll address that, the last part first. Typically, private crossings have no warning gates, no warning lights. They typically might have a stop sign and that is it; if that. So therein lies the inherent hazard. A lot of these private crossings are crossings that go over into industries. Trucks come in and out of there carrying hazardous materials, and other such things, and obviously, it poses a real threat, to not only the people that I represent but the people in the community as well. So that is a real concern.

We need to do what we can to, number one, eliminate the crossings. If we can't eliminate them, let's put some crossing gates up there and make sure they are as safe as they can be.

The second aspect of your question was addressing the educational aspect of grade crossing safety, and I applaud everything that Operation Lifesaver does, as far as getting out there to the public, to the children. I have been involved with it a little bit. It takes a lot of time, so I have to beg off. But they are probably the best answer towards the educational process in the State. In fact, they are nationwide, for that matter, and I have seen them do some great things.

So to me, it seems to me that Operation Lifesaver is on the right track. They just need more support from all entities concerned.

Ms. BROWN. And Mr. Roberts, any closing remarks you want to make? But I do have another question. I understand that the railroads participation in the signaling is what? 5 percent? Do you know why, the history, why is it capped at 5 percent?

Mr. ROBERTS. Of course it was done with the Secretary of Transportation. There are two separate ones, I think, that the deputy administrator mentioned. It is 5 percent if it is partially federally funded. if it is not, then it is 10 percent. And it is not a case of, that we wouldn't like to—I disagreed with one statement that Mr. Richmond made about Alameda Corridor East. Railroads do think eliminating crossings is beneficial to us. So I disagree with that statement that he made.

And I think it is just a matter of, again, being able to fund. If you look at BNSF, 28 States, and tens of thousands of crossings, and an ability of how many we could fund at larger amount. It has to have, I think, a level of reasonableness, is why the Secretary of Transportation put those limits on, so it wouldn't become a financial burden that the railroads couldn't comply with.

But I do think we need to think of other ways. I agree with funding mechanisms. However we decide to do it. I think we have got to be careful about fees. Believe me, I don't want you to raise taxes either.

But sooner or later, we have to understand, you know, we have to understand how they are assessed, I mean, from a higher level, whatever it is, how it is assessed, and then how are we going to ensure, through legislation, that it goes to what we want it to go to?

I mean, too many times, it can be put in general funds and things like that, and that money doesn't get to apply to what we are trying to accomplish. So I don't think the railroads are necessarily categorically opposed to some kind of a fee structure but we just need to understand how is it assessed, and how are those funds applied, so we make sure that they go to what we are trying to solve.

Ms. BROWN. Well, you know, I know that the railroads are operating in the black but it causes these accidents, and we need to figure out how can we best—I mean, because if we can eliminate most of these accidents, that would cut additionally the cost of operating the railroads, because that is built into, I guess, security. It is built into insurance.

So it is built into what you have to pay out because of these accidents.

Mr. SMITH. And I don't disagree. But these are large amounts, and depending on what the solution is.

Ms. BROWN. Yes. It is.

Mr. SMITH. I mean, huge, large amounts. And I think whether you're looking at railroad infrastructure or we look at highway infrastructure——

Ms. BROWN. Or bridges.

Mr. SMITH. Or bridges. As a Nation, we have a complex problem to solve, and we have to really enhance what we have done, because we haven't done things for several years. Which I agree with. But we have to be careful because we can have unintended consequences. If the burden becomes so heavy on a railroad, that it is no longer a viable transportation product, then it just, the freight then moves to the highway and we have got the highway infrastructure issues. So I think we have to be careful about whatever we do and understand what are the consequences of whatever actions we take.

Ms. BROWN. I agree. Any closing remarks, sir?

Mr. WICKERSHAM. Yes. I would just like to add a few comments. I would like to thank Congresswoman Napolitano. We first met two and a half years ago under very unfortunate circumstances. And I would just like to say we are a different railroad than we were two and a half years ago. We are much more community-responsive. I thank you for recognizing Lupe Valdez. Our company has placed a new position, we have reorganized a little bit, we have a new position, a vice president of Public Relations. We will have a position in California that Scott Moore—he is in the audience. He will be working with Lupe, actually, he is in a senior position, but I think, if you will, lined him up accordingly.

Ms. NAPOLITANO. Hes senior to Lupe?

Mr. WICKERSHAM. I don't think so. Lupe will straighten him out. I thank you for recognizing her. I thank you for sharing with us the document on the deficient bridges in your district. I got that from Lupe a couple days ago. I have already passed that on to our bridge managers. That contacts are being made with Caltrans as we speak, cause that could cause us some problems.

You got our attention. We replaced 82 miles of wood ties track with concrete tie track on our two main lines through your district, and we are going to continue that effort until it is complete.

Ms. BROWN. Thank you.

Mr. Smith, anything?

Mr. SMITH. I just think that it is important for us to communicate. Thereby we educate, and I applaud everything you are doing here. I met with Congresswoman Napolitano for quite a time in Washington, D.C., here, a couple months ago. We definitely talked about some issues that are near and dear to railroad labor, and it is forums such as these, that we are able to get those out in the open and come to some kind of a reasonable solution. So, again, thank you for this opportunity.

Ms. BROWN. Okay. Lastly.

Mr. OJEDA. Yes. I would like to thank Congresswoman Napolitano, again, for everything you have done for Operation Lifesaver. I can guarantee you that we will continue working with our communities, our schools, our PTAs, to make sure that our safety message gets across to people. A lot of times, people are not aware of the dangers around the railroad and so it is our job to make sure that we get through to them. Thank you.

Ms. BROWN. We have two questions from Senator Feinstein's office, and I am going to give it to you all, in writing, so that you can respond back to the Committee.

And I want to thank, not just the participants, but the audience, and the Congresswomen for coming, and I thank the witnesses for their testimony and the Members for their questions. Again, the Members of this Subcommittee may have additional questions for the witnesses, and we would ask you to respond to them, in writing.

The hearing record will be held open for 14 days for Members wishing to make additional statements or ask further questions.

Unless there is further business, the Subcommittee is adjourned. Thank you.

[Whereupon, at 5:50 p.m., the Subcommittee was adjourned, subject to the call of the Chair.]

Statement of the Honorable Corrine Brown, Chairwoman
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on Federal, State, and Local Roles in Rail Safety
August 9, 2007

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order.

The Subcommittee is meeting today to hear testimony on Federal, State, and local roles in rail safety.

I want to thank the Norwalk City Council for their hospitality in letting us hold our hearing in their chamber.

I also want to thank my friend, Congresswoman Grace Napolitano, for inviting us to her District to hold this hearing today. Congresswoman Napolitano is a dynamic addition to our Committee and is a strong advocate for rail safety.

Rail safety is a growing concern in California. When Congress last reauthorized the FRA in 1994, California had 129 train accidents, of which 54 were due to human factors and 43 due to track defects. In 2006, California had 189 train accidents, of which 64 were due to human factors and 64 were due to track defects. While total grade crossing incidents and injuries are down, fatal grade crossing incidents have increased. In 1994, FRA reported 30 grade crossing incidents that resulted in 43 fatalities in California; in 2006, 34 grade crossing incidents resulted in 36 fatalities.

After numerous hearings on rail safety, the Committee on Transportation and Infrastructure reported a comprehensive rail safety bill that will address many of the safety problems being faced by the rail industry both in California and in the rest of the

nation. This legislation, which will soon be considered by the whole House, makes numerous improvements to rail safety, including requiring the Secretary of Transportation to develop a long-term strategy for improving rail safety, improving safety at grade crossings, strengthening hour-of-service laws, improving worker training, requiring new rail safety technologies, and strengthening employee whistleblower protections.

But for these safety measures to be effective, we must remain vigilant. States and localities must work with the Federal government and help ensure compliance with Federal-mandated safety standards. Finally, rail carriers must be wary of the dangers their operations pose to communities.

I want to thank our witnesses for joining us today. I look forward to hearing their ideas on how Federal, state, and local

governments can work together to enforce safety laws and improve rail safety.

Before I recognize other Members for their opening statements, I ask unanimous consent to allow 14 days for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses.

Without objection, so ordered.

Also, I would like to ask unanimous consent for Congresswoman Sanchez and any other Members of Congress to participate in today's hearing to sit and ask questions of the witnesses.

Congresswoman Napolitano, I recognize you for your opening statement.

1. Mr. Roberts, what plans does BNSF have to create new tracks and expand capacity through Eastern Los Angeles County?

Rail capacity in Southern California and through Eastern Los Angeles County has increased significantly in the past several years through considerable capital investments made in the state and across the BNSF system. Over the past five years, BNSF has made capital investments of $233 million in California. This year we plan to invest an additional $95.8 million as part of our system wide $2.55 billion capital spending plan. Many capacity enhancing investments made outside of Eastern Los Angeles County and on distant parts of our system will have a direct impact on the ease and efficiency with which freight moves through California. For example, BNSF's ongoing work to complete the double tracking project of its southern transcontinental mainline between Southern California and Chicago (estimated completion 2009) will greatly enhance capacity along this major trade corridor. In addition, BNSF's planned Southern California International Gateway (SCIG) project represents a significant investment in the area which will add tremendous near-dock intermodal capacity and have an immediate positive impact on local highway congestion and related levels of truck emissions

Locally, we continue to make improvements to Hobart Yard in Commerce, which handled 1.4 million lifts in 2006. In addition, we are working closely with Amtrak, SCRRA and Caltrans to add a third main line from Commerce to Fullerton. A total of six grade separations will be constructed as part of the project, helping to reduce traffic noise and vehicle congestion and improve operations/on-time performance for Metrolink, Amtrak's Surfliner and BNSF freight trains. At the end of 2008 we will have completed approximately half of the 15 mile project and plan to continue that work as additional funding becomes available.

2. Mr. Roberts, many cities have expressed concerns about getting access to your right-of-way in order to clean up graffiti. What are your current policies for allowing city workers to access your right-of-way to clean up graffiti?

BNSF has no formal policy concerning city worker access to our rights-of-way. However, given the nature of rail operations with frequent and sometimes unpredictable movements of long, heavy trains, we would be extremely concerned with city employees or anyone other than the appropriate BNSF personnel having unrestricted access to our property. This is first and foremost a safety matter which cannot be compromised. We are open to discussing access issues with city officials on a case-by-case basis and under

circumstances where BNSF employees are present and able to ensure the safety of all involved. We remain committed to being good neighbors and will continue to work cooperatively with local officials, without compromising safety, to address trash and graffiti issues.

3. Mr. Roberts, BNSF has plans to create a new near dock loading facility. What is the status of these plans? Will this new facility reduce pollution and congestion? What do the local communities think of your renovation plans?

The planned Southern California International Gateway (SCIG) project is currently in the Environmental Impact Report (EIR) stage with the Port of Los Angeles, a process we expect will ultimately conclude in early 2008. Once the environmental assessment is finalized, we would hope to begin construction with a target completion date of sometime in 2009.

The SCIG project will indeed contribute to a reduction in pollution and congestion. It will eliminate millions of truck miles from the 710 freeway by handling containers closer to the docks and placing more trains in the Alameda Corridor. This will have an immediate positive impact on highway congestion and related levels of truck emissions. In addition, the facility itself will be one of the greenest in the country, utilizing state-of-the-art electric (as opposed to diesel) rail mounted gantry cranes; liquefied natural gas (or equivalent) hostler tractors and switch engines; low sulfur fuel and idling reduction for associated road locomotives; and reduced noise and light impacts on the surrounding community.

BNSF has received much positive feedback from local elected officials along the 710 freeway corridor. In addition, we have conducted door-to-door surveys in the West Long Beach community, which is adjacent to the SCIG site, and received valuable feedback from hundreds of households. The number one concern among these residents was the need for local jobs. In response, BNSF has committed to a local hire set-aside and jobs training program. In addition, we plan to install a sound wall, plant an urban forest, and employ GPS on the clean truck fleet serving the facility to ensure drivers use only non-residential/industrial routes.

4. Mr. Roberts, in your testimony you cite a 20% decline in human error accidents over the past year. How did you achieve this decline in human error accidents? Were new policies or training implemented?

BNSF continually focuses on ways to improve safety on the railroad. Extensive training, risk-based analysis and corrective actions along with innovative work/rest agreements between management and labor all play important roles in this effort. Over the past year,

the primary decrease in human factors incidents continues to be related to shoving movements and handling of cars ahead of the engine (i.e. switching). BNSF employs aggressive communications and operations testing programs in this area and promotes the recommendations of the Switching Operations Fatalities Analysis Working Group (SWG).

The SWG is comprised of representatives from the Federal Railroad Administration (FRA), American Short Line and Regional Railroad Association (ASLRRA), the Association of American Railroads (AAR), the Brotherhood of Locomotive Engineers and Trainmen (BLET), the United Transportation Union (UTU), and the Volpe National Transportation System Center (VNTSC). SWG recommendations call for employees engaged in switching operations to be aware of The Five Lifesavers: Secure equipment before action is taken; protect employees against moving equipment; discuss safety at the beginning of a job or when a project changes; communicate before action is taken; and mentor less experienced employees to perform service safely. BNSF has rules in place that address the first four recommendations and our new hire training program addresses the fifth. Additionally most division safety action plans have some form of mentoring program.

5. Mr. Roberts, in your testimony you cite programs where your railroad company interacts with local law enforcement and fire departments to teach them about grade crossing safety laws and hazardous materials. In eastern Las Angeles County we have many police and fire departments. Some cities contract to the county for these first responder services and some cities have their own first responders. Do you coordinate with and train all of these law enforcement and fire departments?

BNSF typically coordinates with Metrolink and Amtrak to provide training for local law enforcement and first responders. From January 2000 through May 2005 BNSF Railway trained and/or conducted hazardous materials exercises for over 2,700 community responders in California. BNSF is currently working on a presentation for law enforcement agencies that will be offered to Sheriff substations throughout Los Angeles County this October.

Safety and response training classes are generally open to any local entities that wish to participate and are provided at no cost to the community. "Railroad Emergency Response and Hazardous Materials Awareness" training classes can be scheduled by calling BNSF's Brock Lowman at 785-435-2337 or via email at William.Lowman@bnsf.com.

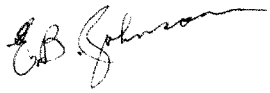
6. Mr. Roberts, when a derailment occurs, how do your companies find out about it and how do you react? Is there technology on the trains to notify a central office of a derailment? How do your safety inspectors interact with first responders to assess and react to derailments?

BNSF maintains a Service Interruption Desk (SID) in Fort Worth which can be reached through a 1-800 number. Typically our train crews will be the first to notify the dispatcher or local trainmaster of a problem who then notify the SID. Notification may in some instances come directly from a member of the general public. When the desk is alerted to an accident or incident on the railroad which requires an emergency response, it follows detailed process and communication charts to notify appropriate agencies and responders. BNSF then works closely with those responders on the ground to ensure they have the necessary resources and information to appropriately handle the situation.

7. Mr. Roberts, in your testimony you discuss an Electronic Train Management System that your company has purchased to prevent human error accidents and protect against misaligned switches and broken rail failures. Is this system being used in this area?

The Federal Railroad Administration's (FRA) approval earlier this year of BNSF's ETMS Product Safety Plan was limited to specific rail line segments and types of operations on our system. The technology is not currently deployed in Southern California as our operations in that area, which include mixed passenger and freight service, have not yet been approved by the FRA. However, BNSF has received permission from the FRA to test ETMS on a 300-mile corridor between Arkansas City, Kansas and Fort Worth, Texas where our trains, Union Pacific Railroad freight trains and Amtrak passenger trains will operate over parts of the route. We are currently working with the FRA to gain approval for other types of operational configurations.

Opening Statement of the Honorable Eddie Bernice Johnson House Subcommittee on Railroads Field Hearing on the Federal, State, and local Roles in Rail Safety Thursday, August 9, 2007 - Norwalk, California



Thank you Madam Chair.

I want to commend you, as well as our host and committee colleague, Congresswoman Napolitano for your leadership on rail safety and for arranging this very important field hearing today.

Of all the critical components necessary for improving this nation's freight and passenger rail system, none exceed the vital importance of ensuring public safety.

Madam Chair, similar to California, the State of Texas has one of the most extensive surface transportation networks in the world.

Texas has more than ten thousand miles of rail track; more than three hundred thousand miles of roadway; and is the leader among states in the number of at-grade rail crossings.

While this robust network represents the underpinning of the Texas economy, this extensiveness does not come without challenges - particularly in the area of at-grade highway-rail grade crossings.

The State of Texas is known for many things; however, the nation's leader in collisions at grade crossings is one that I am not particularly proud of, so I can relate to Congresswoman Napolitano's frustration at many levels.

In 2006, 167 grade crossing incidents occurred in California, resulting in 35 fatalities and 40 injuries. Fatalities due to grade crossing incidents accounted for ninety six percent if all California rail fatalities. This number was the second worst in the nation in 2006, with my State of Texas ranked first.

In 2003, over eleven percent of the three hundred and twenty seven U.S. grade crossing fatalities occurred in Texas, ranking Texas second among all states in this category. Furthermore, the state ranked first among all states in highway-rail grade crossing injuries in 2003.

In 2005, the State led the nation in collisions at grade crossings with three hundred and twenty three.

According to the Federal Railroad Administration's Office of Safety Analysis, last year the State of Texas experienced a grand total of (288) train accidents. While this number represents a 15% decrease from the previous year, Texas still had the most train accidents, (178), of any state during the first six months of 2006.

Madam Chair, bolstering safety along our nation's rail network is vitally important. The reauthorization of the Federal Rail Safety Program, H.R. 2095, is a step in the right direction and I am pleased that the bill we reported from committee a few weeks ago contains grade crossing provisions that will better equip my state to continue to tackle safety challenges head on.

It is my hope that upon our return from the August recess we can advance the bill to the President's desk as soon as possible. As we all know, the program has not been reauthorized since 1994 and the time to act is now.

Again, I commend you and Congresswoman Napolitano for your leadership today.
I particularly want to thank our witnesses that have come before us to testify this afternoon and I look forward to their testimony.

Thank you Madam Chair and I yield back the balance of my time.

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GLORIA MOLINA
SUPERVISOR, FIRST DISTRICT

Testimony By Los Angeles County Supervisor Gloria Molina
Before the Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
August 9, 2007

Norwalk, California

Good Afternoon.

Thank you, Madame Chairwoman and Members, for the opportunity to address what has unfortunately become an issue of increasing concern in recent years—the issue of railroad safety. It is an issue that each of us on local, state, and federal government must shine the light upon, because without greater attention and resources it will only get worse—and that is not fair, or acceptable to the communities we all represent.

I wish to publicly thank Congresswoman Grace Napolitano, who has demonstrated steadfast leadership to improve railroad safety in the wake of several incidents that have endangered residents, and destroyed homes in the communities we both proudly represent.

I joined Congresswoman Napolitano at the remains of the homes of unincorporated West Whittier after a Union Pacific freight train jumped the tracks in 2004. Together, we questioned Union Pacific and Federal officials, seeking answers as to why this occurred, and as we demanded assurances that actions be taken to prevent a similar occurrence in the future. I must say that this Committee is fortunate to have such a committed, frank, and tireless member.

As you move forward to address the complex and challenging issues involved in resurrecting a full fledged federal government role and responsibility in railroad safety, I am confident that each of you will become as knowledgeable and committed to this crucial cause as Congresswoman Napolitano.

In a short two-year period between June 2003 and May 2005, there were seven railroad safety incidents within my Supervisorial District alone:

- On June 20, 2003, a runaway Union Pacific train carrying approximately 30 rail cars loaded with lumber and freight was intentionally derailed in the City of Commerce after reaching extremely dangerous speed. Two homes were destroyed and two more were moderately damaged. Twelve civilians were injured; five were hospitalized.

- On October 16, 2004, a Union Pacific freight train jumped the tracks at Croton Street in the West Whittier unincorporated area, crashing into the yards and living rooms of adjacent residents. There were no fatalities, but one child was slightly injured. At least 25 families were displaced. The rubble left by this train wreck left two homes permanently uninhabitable.

- On March 8, 2005, 22 Union Pacific freight cars derailed on Gale Avenue in the City of Industry. Evacuations of 52 businesses were ordered twice that day due to leaking toxic substances.

- On March 9, 2005, several Union Pacific rail cars derailed in the unincorporated Los Nietos area adjacent to Santa Fe Springs. The rail cars collided with a warehouse, damaging it. Ultimately, it was determined that a teenage vandal had accessed and threw an unlocked, and unsecured switch while the train was moving.

- On May 5, 2005, another train derailment occurred in Vernon.

- On May 25, 2005, a chemical spill occurred in Boyle Heights while a Union Pacific train was being either loaded or unloaded with acetone.

- On May 25, two empty Union Pacific freight cars derailed in Chinatown.

Each of these accidents were attributable to different causes. And while they varied in severity, many were serious. More importantly, they had the potential to produce an even greater calamity that could have threatened the health and safety of significant parts of the region. Luck, primarily—not planning, not action, not safety measures—prevented the greater calamities. We cannot, and should not, count on luck to save our communities from harm in the future.

These tracks are not only adjacent to communities and residences, they are some of the very same tracks that Metrolink, our passenger commuter rail cars, traverse several times daily.

The incidents which have occurred in this region, as well as the many other similar incidents which have occurred even very recently in this nation, should be a wake-up call. We must revamp our nation's neglected railroad safety regulation and enforcement measures from top to bottom, and we must do so in all due haste.

With the increasing role of globalization and world trade, railroads will be counted on more and more to transport goods throughout our nation. Some of the most dangerous chemicals and substances are transported at frightening speeds within feet of homes, schools and communities on rails that may be old, that may have been inspected, by inspectors who may have been properly trained, inspectors who may not be fatigued from long hours and overtime, and by equipment that may detect a fracture or break in a rail or rail joint. There are simply too many "mays" than what is acceptable given the potential dangers.

What Congresswoman Napolitano and I learned as we looked more deeply into some of the incidents mentioned above, was not reassuring. It appeared that:

- Far too much inspection of rails and rail equipment is performed by the railroad companies themselves—companies that have competing fiscal and logistical interests to make safety the primary concern;
- Inspection occurs too infrequently;
- There are far too few properly trained inspectors to adequately and regularly inspect the thousands of miles of track, switches, and other equipment;
- Enforcement actions against safety regulation violators appears sporadic and overly lenient;
- The entire inspection process can be a "hit and miss" proposition with the inability to actually detect today's rail fractures or breaks that could be tomorrow's derailments.

The latter issue was perhaps the most shocking and concerning among the things Congresswoman Napolitano and I learned in the wake of the October 16, 2005 Union Pacific derailment in West Whittier. In that instance, the rail and track was inspected days before this horrific incident. Yet the problems with the insulated rail joint—the cause of that derailment—were not detected. What is worse, is that the railroad inspectors do not even have reliable technology to detect many fractures or problems in these joints.

I apologize for coming to you today with descriptions of the problems, and not concrete solutions. However, I am confident that you will garner the resources, expertise, and resolve within your Committee to craft the necessary remedies.

As local government officials, our role is the role we hope we never again have to exercise. We are the first responders. We mobilize after an accident has occurred to evaluate the public health threats, to take people to safety, to evacuate neighborhoods, to provide medical and mental health care to the victims, and to house those left homeless.

We also coordinate and partner with the federal and other branches of government working as advocates for our residents to ensure that future accidents are avoided, and that is why I am here today.

I know that measures are now being proposed in this Congress to address railroad safety, including the Railroad Safety Enhancement Act of 2007, which seeks to update rail safety programs that have not been updated since 1994. It is clear that the demands of interstate commerce, and the need for uniform regulations and enforcement, necessitate that the federal government must assume the primary responsibility for this area.

Despite that, frustration with what many perceive as inadequate federal action in the wake of many recent accidents, measures have been proposed in the California legislature to transfer more of the enforcement responsibility to the State. That may or may not be a viable option for your Committee to consider. However, one thing is clear—any transfer of responsibility without the requisite funding would not improve our nation's, or our region's, rail safety.

Whether the Federal government retains its jurisdiction or not, it is clear that far greater resources must be devoted to rail inspection, inspector training, inspection technology, and enforcement, than has been in our recent history.

I thank you for this opportunity to address this Committee, and I pledge any Los Angeles County resources that may assist you as you fashion solutions to the federal rail safety program.

Railroad I.C.
City of Industry

Statement Of
The Honorable James L. Oberstar
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Field Hearing On "Federal, State, and Local Roles in Rail Safety"
August 9, 2007

I am pleased that the Subcommittee is holding this field hearing today.

Each year, many people are killed or injured due to rail accidents. In 2006, the Federal Railroad Administration (FRA) reports that 2,903 train accidents occurred, resulting in 6 fatalities and 198 injuries. Further, in 2006, the FRA reports there were 2,920 grade crossing accidents, which resulted in 358 fatalities and 1,021 injuries.

The FRA administers the Federal rail safety program, and it relies heavily on the efforts of State and local governments to monitor railroads' compliance with Federally-mandated safety standards. The FRA employs 421 Federal rail inspectors and 160 state safety inspectors to accomplish this goal. However, this number of inspectors limits the FRA's effectiveness to inspect railroad operations across our nation's rail system.

Recent findings by the Government Accountability Office (GAO) and the U.S. Department of Transportation Inspector General's offices verify this conclusion. The GAO recently reported that the FRA only inspects two-tenths of one percent of railroad operations each year. Additionally, the Inspector General reported that the FRA investigates only a small number of rail accidents each year. For example, from 2000 to 2004, FRA investigated only 13 percent of the most serious grade crossing accidents that occurred.

Further, the Inspector General reports that the FRA fails to review railroad grade crossing collision records in a timely fashion, and as a consequence many rail accidents go unreported for some time after the incident occurs. This hampers the FRA's ability to provide meaningful oversight over railroad operations and to address safety concerns.

These concerns are growing in the face of record demand for rail services. The American Association of State Highway and Transportation Officials forecasts that rail use will grow from 1,239 billion ton-miles in 2000 to 1,821 billion in 2020, an increase of 47 percent. The railroad association also states that the rail industry is hiring a record number of new workers to handle this increased capacity, meaning the rail industry will be under increased pressure to handle its freight shipments and will be doing so with many workers that lack experience in the rail industry.

Therefore, as we move towards reauthorizing the FRA, it is important that we examine the important roles that Federal, State and local governments play to provide necessary rail safety oversight. I look forward to hearing from our witnesses today and am grateful for their participation.

Testimony by Ron Beilke,
Mayor, City of Pico Rivera
Board Member, Gateway Cities Council of Governments
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before the
Subcommittee on Railroads, Pipelines & Hazardous Materials'
Field Hearing on "Federal, State and Local Roles in Rail Safety"

Norwalk City Council Chambers, Thursday, August 9, 2007

Madam Chairwoman and Members:

As Mayor of the City of Pico Rivera and a board member of the Gateway Cities Council of Governments, I thank you for the opportunity to address you today on the issue of railroad safety.

I am proud to speak on behalf of the 27 cities and more than two million people that make up the Gateway Cities Council of Governments, as well as the 66,000 residents of Pico Rivera.

While the concerns expressed in my testimony are based on our experiences in Pico Rivera, you can rest assured that these same concerns are shared and echoed by every member of the Gateway Cities COG.

There is no doubt that the Gateway Cities benefit from a superb transportation infrastructure; an intricate system of road, rail, air and sea routes that have made the Gateway Cities the industrial powerhouse of Los Angeles County.

There is also no doubt that the completion of the Alameda Corridor will bring even more economic development, opportunity and prosperity to the region and to individual Gateway cities, including Pico Rivera.

But the railroad component of this ambitious project comes with a price.

The addition by BNSF of a 15-mile long third track through Pico Rivera and neighboring cities has raised many new concerns about pollution, congestion, noise and safety. By the year 2010, when the Alameda Corridor is fully operational, rail traffic is expected to triple.

In our case, that will mean more than 300 trains a day through the very heart of our city.

The triple track project and the pending construction of the Passons Grade separation, have served to refocus awareness on our tenuous relationship with railroads – a relationship that began with the community's very birth in the 1850's.

Three major railroads now slice through our city, bringing with them over 100 trains a day. Thousands of vehicles and pedestrians are forced to cross any one of four at-grade crossings every single day. The majority of those pedestrians are students on their way to and from school.

The lives of all Pico Rivera residents are affected by trains every day, and the potential for catastrophe is extreme.

In Pico Rivera, when we talk about the prospects of railroad disaster, we don't talk in terms of "if," but rather in terms of 'when."

In fact, much of the city's emergency preparedness training is centered around the scenario of a railroad disaster.

And we have already come close.

In just the past four years, two close calls have placed our community in jeopardy. In the first incident, a runaway train careened through the city before being deliberately derailed in Commerce. In the second, a train derailment on the eastern approach to the city damaged houses and property.

Thankfully, nobody was injured. But in other incidents, we have not been so fortunate. Over the past six years, we have lost four residents in railroad crossing accidents – one of them a 15-year old high school student.

That is four too many.

But train derailments and collisions are not the only railroad-related concerns that are a daily fact of life in Pico Rivera.

The railroads continue to cause other health-related and quality of life problems that adversely impact our residents.

It is not unusual for trains to idle for hours, sometimes blocking at-grade crossings. As incredulous as this may sound, some of these blockages have occurred when train engineers have slipped into the local 7-Eleven for a cup of coffee. In one documented incident, engineers actually left a train to have lunch at a local restaurant.

While the trains idle with their engines running, tons of pollutants and diesel and exhaust fumes pour into nearby neighborhoods. Vehicular traffic comes to a standstill. Emergency response vehicles are severely hampered from reaching critical destinations.

And, of course, any time of the day or night, there is always the incessant whistle.

Another major concern for the City is access to railroad rights-of-way.

Over the past few years, we have spent millions of dollars on public safety enhancements, community infrastructure and beautification improvements. We also launched a campaign to rid our community of the scourge of graffiti – a campaign so successful that it has resulted in a 60 per cent reduction in graffiti.

Our residents take great pride in their neighborhoods and like the changes they've seen.

Our city looks good.

Yet, railroad rights-of-way remain eyesores. Despite all of our positive efforts and improvements, the railroad rights-of-way remain graffiti-ridden, trash-infested dumping grounds that only serve as a sanctuary for vandals, criminals and transients.

Access to these rights-of-way on a case-by-case basis by City personnel is imperative if we are to be fully successful in our efforts to enhance the quality of life of our residents.

At town hall meetings and in resident satisfaction surveys, railroad safety, noise and pollution issues constantly rate among the highest concerns and complaints from residents.

These concerns and complaints are well-founded, and a constant cause of frustration for elected officials due to the railroad companies' reluctance or outright refusal to respond to safety, health and rights-of-way issues in a timely manner.

Despite these setbacks, the City of Pico Rivera continues to take a proactive, leadership stance in improving railroad safety and, in some cases, has met with limited success and support from the railroads.

In 2000, we developed Railroad Safety Awareness Week, an innovative partnership between the railroad companies, the Los Angeles County Sheriff's Department, the El Rancho Unified School District, and Operation Lifesaver.

The week included school presentations, first-responder training for safety personnel, school bus drivers and City works crews, and "Officer on the Train" ride-alongs to enforce railroad crossing laws for pedestrians and motorists.

In 2005, Pico Rivera was instrumental in the formation of a coalition of municipalities and agency stakeholders affected by the BNSF triple track project. The goal of the coalition is to appropriate sufficient funding for all vital grade separation projects associated with the project and to work together to mitigate ongoing railroad health and safety issues.

Pico Rivera has already begun the acquisition process for the long-awaited Passons Grade Separation Project. Passons Boulevard is one of the busiest thoroughfares in the city. When completed, the grade separation project will have a major positive impact on the Pico Rivera community.

But with rail traffic expected to triple within the nest three years, and with three at-grade crossings remaining in our city, it will not be the end of community concerns relating to safety, noise, pollution and traffic delays.

We have been working with the railroads for several years now and have met with some limited success. However, the biggest issue we face is that we are just one, small community while the railroads are national entities.

We are very proactive while the railroads continue to be reactive at best.

In the near term, we strongly urge Congress to assist local communities by mandating a more aggressive and responsive role for the railroads to play in this era of massive railroad expansion throughout our cities and communities, particularly as this expansion relates to health and safety issues.

Additionally, we ask that railroads be mandated to grant access to their rights-of-way by cities and communities on a case-by-case basis in order to mitigate safety, trash, graffiti and vandalism concerns in a timely fashion.

Congress also needs to address the most significant issue of transportation appropriations for the most impacted grade crossings that will eliminate, or at least reduce, the incidence of fatalities and property damage suffered by local communities in major railroad corridors.

I would be happy to answer any questions that you may have and, on behalf of the City of Pico Rivera and the Gateway Cities Council of Governments, I thank you for your time.

Ron Beilke
Mayor, City of Pico Rivera
Board Member, Gateway Cities Council of Governments

Statement of:

Richard W. Clark

Statement of Richard Clark
before the House Committee on Transportation & Infrastructure Railroads Subcommittee
on "Current Issues in Rail Transportation of Hazardous Materials"
August 9, 2007, 3 p.m..

Madam Chairwoman, Congresswoman Napolitano and the other distinguished Members of the Subcommittee:

My name is Richard Clark. I am Director of the Consumer Protection and Safety Division of the California Public Utilities Commission ("Commission"), a position that I have held for the last seven years. I have also served as Chief Deputy Labor Commissioner of the State of California and have owned my own private investigative business – specializing in the investigation and prosecution of employer frauds.

Thank you for the opportunity to submit this testimony reinforcing that of the Commission's former Executive Director Steve Larson, which was submitted to the subcommittee on January 30, 2007. Today I endorse the testimony of Mr. Larson, and expand upon the State of California's need and desire for Congress to amend the Federal Railroad Safety Act of 1970 ("FRSA").

The FRSA, as currently written, contains an express preemption provision (49 U.S.C. § 20106, subsection 3) which federal judges have interpreted to preempt state law in virtually all railroad safety matters. Consequently, the end desired by the railroads, maintaining a uniform national regulatory scheme, has replaced the original intent of the law, increasing railroad safety by allowing states to fill gaps in federal railroad safety regulations.

The California Public Utilities Commission, the California Legislature, the National Association of Regulatory Utility Commissioners, the National Conference of State Transportation Specialists and the Association of State Railroad Safety Program Managers have all endorsed removing subsection 3 from 49 U.S.C. § 20106, such that state railroad safety regulations will be lawful so long as they don't conflict with federal law and/or they don't establish an undue burden on interstate commerce.

We at the CPUC have been in the railroad safety regulatory business since our creation, as the California Railroad Commission in 1911. The State of California has regulated railroads operating in our state since 1876. We know a thing or two about railroads and railroad safety – which is precisely why we are so committed to rebalancing the authority of the state and federal governments in the railroad safety arena. A uniform regulatory scheme for railroad safety works very well in some, but not all circumstances. Those who allege that we are engaged in this fight as a power grab, or because we are dissatisfied with the FRA are, at best, being disingenuous. We have a very big dog in this fight – the People of the State of California. We are the most populous state in the nation. We have the nations largest port – the combined ports of Los Angeles and Long Beach - and the nation's 9th largest – the Port of Oakland. We love our railroads. We love their contributions to the efficient movement of freight and passengers, we love their contributions to reducing green house gas emissions, we love the good jobs they provide, and we love their contributions to reducing traffic congestion – but we do not want them in our rivers and streams, our back yards, our homes, our swimming pools, our businesses, colliding with vehicles and pedestrians, closing our streets and highways, or running

uncontrolled through crossing, after crossing, after crossing, after crossing on a collision course with Union Station in Los Angeles, on tracks shared with commuter trains.

Ten years ago the California Public Utilities Commission issued rules to "provide for mitigation of local rail safety hazards within California" in our decision number D-97-09-045. It took us four years of very hard work to develop those rules. We worked long and hard, employed both binomial and multinomial statistical analyses, took round after round of comments from the railroads and many other interested parties, and thoughtfully developed rules that were designed to improve railroad safety in 19 local safety hazard sites in California – sites where the grade and curvature were extreme (operational) and sites where significant numbers of derailments had occurred (statistically significant). Nineteen sites may sound like a lot, but as you can see from the map I've attached as exhibit 1 to my testimony, and present to you here today, local safety hazard sites comprise a total of 4.2% of all the railroad tracks in California, and require the application of only six types of rules:

- Track-Train Dynamics rules changes
- Training
- Track Standards
- Dynamic Braking
- End of Train Devices
- Defect Detectors

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The California Public Utilities Commission has spent the last ten years in court fighting back against the railroads' preemption arguments. All the while, the railroads have been implementing (albeit frequently after catastrophic events) the very rules that we attempted to put in place ten years ago. We desire to be in a better position to prevent accidents, rather than continuing to be in a position that responds to accidents.

We, like other states, have experienced significant numbers of unacceptable major railroad crashes, such as:

- May 12, 1989, near San Bernardino, California, at the bottom of the Cajon Pass, a runaway SP train derailed into the Muscoy neighborhood destroying seven homes and seriously damaging four others. Two crewmembers and two neighborhood children, aged seven and nine, were killed. Within days after the derailment, the natural gas pipeline laid in the railroad's right-of-way exploded and ignited (because of damage resulting from the derailment), killing two adults and destroying eleven more homes.[1]
- On July 28, 1991, a Southern Pacific train was involved in a derailment near Seacliff, California. The release of toxic materials led to evacuations, the closing of a highway for approximately five days, and medical treatment for many.
- On December 14, 1994, a runaway train owned and operated by The Atchison, Topeka and Santa Fe Railway Company, collided with a stationary UP train at the Cajon Pass resulting in two injuries and over $4 million damage to railroad property.
- On February 1, 1996, two BNSF crewmembers were killed as a result of another runaway train at the Cajon Pass. In this accident, a toxic cloud of burning chemicals injured over

[1] See "Devastation," *The New Yorker*, Oct. 22, 1990.

20 emergency response personnel and forced the closing of Interstate 15 and State Route 138 for over two days. According to one estimate, the total loss for this accident, including economic losses, at $250 million.[2]

- On January 12, 1997, on the Cima grade near Kelso, California, a UP train with a speed limit of 20 miles per hour lost braking effectiveness and ran uncontrolled at over 70 MPH down the grade derailing 68 of its 75 cars.
- On September 8, 2002, at Colfax, California, a UP freight train derailed 21 cars 3 miles east of Colfax.
- On March 21, 2003, at Cliff, California, a northbound UP freight train was descending a 2.2% grade from Tehachapi towards Bakersfield when eight cars derailed onto their sides. The derailment was a result of a malfunction with the distributed power, which was at the rear of the train, which stopped communicating with the head-end.
- On June 20, 2003 at Montclair, California, 37 cars rolled out of a siding in Montclair onto the main track and continued rolling for 33 miles as a runaway before they were derailed in the City of Commerce. There was substantial property damage to area residents.
- On October 16, 2004, at Pico Rivera, California, an eastward UP freight train operating at 57 mph derailed 11 cars. A precautionary evacuation was ordered as three of the containers indicated that they contained some hazardous materials. Additionally, one residence was destroyed by rail cars that fell onto the house.
- On December 10, 2004 at Niland, California, a UP eastward freight train, operating at 30 mph, collided head-on with a westward freight train operating at 10 mph. As a result of the collision, 1 crewmember was killed and 4 were injured.
- On April 4, 2005, in Slover, California, a northbound UP train was proceeding from the siding to Main Track when 13 cars, including nine Hazardous Materials derailed. During the rerailing process, a leak developed causing the evacuation of approximately 200 citizens from a nearby trailer park near the tracks.
- On May 28, 2006, a UPRR freight train derailed and collided into another UPRR freight train on a siding. Cause-Mechanical failure, resulting in more than $1/2 million in damage.
- On June 14, 2006, a BNSF freight train collided head-on into a standing train on the siding at Kismet. The collision was caused by human error when a train crew accidentally left the main line switch lined into the siding. Over $5 million in damage, and injuries to two crew members.
- On November 9, 2006 a rail grinding train owned and operated by a contractor, ran-away in an uncontrolled movement west of the Donner summit on the Union Pacific main track over the Sierra Nevada Mountains east of Sacramento. The train derailed at Baxter, fatally injuring two on the contractor employees aboard as a result of the contractors failure to mechanically maintain and inspect the equipment resulting in a total brake failure, and the failure to adequately train the employees operating the train. FRA has no regulatory requirements for inspecting this equipment, or for the training of the contractor employees.

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[2] Journal of Commerce, (Feb. 22, 1996).

Let me close by quoting from the Commission's 1997 local safety hazard regulation decision. That which was said then is still true today:

"Following repeated catastrophic rail accidents and upon direction provided by the California Legislature, we have availed ourselves of the authority provided by Congress to impose the safety precautions necessary to eliminate or reduce essentially local safety hazards. In doing so we have taken great pains to ensure that this Commission has done nothing to weaken or conflict with the rightful and valuable exercise of federal jurisdiction. The Commission has also carefully and thoroughly considered every safety measure to ensure that these measures do not "unduly" or "unreasonably" burden interstate commerce. We implement these regulations not out of any sense of competition or dissatisfaction with the FRA, but, rather, out of sheer necessity to protect California's people, its environment and its commerce against the disastrous consequences of recent rail accidents and toxic spills. In issuing this decision, we intend to complement the FRA's efforts and hope that both the Railroads and the FRA will join us in securing greater safety and fewer accidents in railroad operations in this state."

Members of the Committee, the FRA has always joined with us in attempting to prevent accidents, it is unfortunate that the railroads have chosen instead to concentrate their efforts on the uniformity of regulations and the denial of states' authority to prevent catastrophies in our back yards. Trains are getting longer (some are approaching two miles long) and more frequent. The states must be in a position to keep pace with change and prevent accidents in our constituent communities. Please strike subsection 3 of 49 U.S.C. § 20106, so that the states can reclaim their rightful role in railroad safety.

Thank you.

Written Statement of
Clifford Eby
Deputy Administrator
Federal Railroad Administration
U.S. Department of Transportation

before the
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives

August 9, 2007
Norwalk, California

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Written Statement of Clifford Eby,
Deputy Administrator,
Federal Railroad Administration,
U.S. Department of Transportation,
before the
Subcommittee on Railroads, Pipelines, and Hazardous Materials,
Committee on Transportation and Infrastructure,
U.S. House of Representatives

August 9, 2007
Norwalk, California

Chairwoman Brown, Ranking Member Shuster, and other members of the Subcommittee, I am very pleased to be here today, representing Secretary of Transportation Mary E. Peters and Federal Railroad Administrator Joseph H. Boardman, to discuss Federal, State, and local roles in railroad safety. The Federal Railroad Administration's (FRA) statutory mission and primary focus is to promote the safety of America's freight and passenger railroads. FRA sincerely values and appreciates the important and multifaceted contributions of States and localities toward that shared goal—making sure that railroads, wherever they operate in our country, do so safely.

Federal authority over railroad safety is extensive, as 49 U.S.C. § 20103 authorizes the Secretary of Transportation to "prescribe regulations and issue orders for every area of railroad safety . . . ." However, States and local communities also play a vital role in assuring railroad safety in many ways, including participation in the enforcement and development of Federal regulations, State regulation of relevant subjects not covered by Federal regulations, State and local enforcement of State and local statutes and regulations, and joint nonregulatory efforts.

My testimony today first provides an overview of FRA's railroad safety program and addresses the railroad industry's safety record. In light of the August 1st disaster in Minneapolis involving the collapse of an interstate highway bridge, I will then address the issue of railroad bridge safety. Finally, I will describe the respective roles of State and local governments and of joint Federal, State, and local government partnerships in advancing all aspects of railroad safety.

I. FRA's Railroad Safety Program

FRA is the agency within the U.S. Department of Transportation (DOT) charged with carrying out the Federal railroad safety laws. These laws provide FRA, as the Secretary's delegate, with very broad authority over every area of railroad safety. In exercising that authority, the agency has issued and enforces a wide range of safety regulations covering a railroad network that employs more than 232,000 workers, moves

more than 42 percent of all intercity freight, and provides passenger rail service to about 550 million persons each year.

FRA's regulations address such topics as track, passenger equipment, locomotives, freight cars, power brakes, locomotive event recorders, signal and train control systems, maintenance of active warning devices at highway-rail grade crossings, accident reporting, alcohol and drug testing, protection of roadway workers, operating rules and practices, locomotive engineer certification, positive train control, the use of locomotive horns at grade crossings, and many other subject areas. This body of regulations is based upon knowledge and experience acquired over more than a century railroading in America. The regulations specify and stipulate minimum safety standards that railroads must satisfy, and typically exceed. FRA currently has active rulemaking projects on a number of important safety topics, and is continually examining existing regulations to ascertain whether updates or amendments are necessary or desirable. FRA also enforces the Hazardous Materials Regulations, promulgated by DOT's Pipeline and Hazardous Materials Safety Administration, especially as they pertain to rail transportation.

FRA has an authorized inspection staff of about 400 persons Nation-wide, distributed across its eight regions. In addition, 165 inspectors are employed by 28 States that participate in FRA's State participation program who are authorized to perform inspections for compliance with the Federal rail safety laws. Each inspector is an expert in one of five safety disciplines: Track; Signal and Train Control; Motive Power and Equipment; Operating Practices; or Hazardous Materials. FRA also has 18 full-time highway-rail grade crossing safety and trespass prevention specialist positions in the field; these specialists focus on these critically important issues, which account for the overwhelming number of railroad-related deaths. Every year FRA's inspectors conduct tens of thousands of inspections, investigate hundreds of complaints of specific alleged violations of safety laws and regulations, develop recommendations for thousands of enforcement actions, perform full investigations of more than 100 of the most serious railroad accidents, and engage in a range of educational outreach activities on railroad safety issues, including educating the public about highway-rail grade crossing safety and the dangers of trespassing on railroad property. FRA also works closely with DOT's Federal Highway Administration (FHWA) and Federal Motor Carrier Safety Administration (FMCSA) to improve highway-rail crossing safety and with DOT's Federal Transit Administration (FTA) to improve commuter rail safety.

FRA carefully monitors the railroad industry's safety performance, and the agency uses the extensive data gathered through routine oversight to guide its accident prevention efforts. FRA strives to continually make better use of the wealth of available data to achieve the agency's strategic goals. FRA, often in coordination with DOT's Research and Innovative Technology Administration (RITA), also sponsors collaborative research with the railroad industry to develop and introduce innovative technologies to improve railroad safety. Finally, under the leadership of the U.S. Department of

Homeland Security, FRA plays an active role in supporting Federal efforts to secure the Nation's railroad transportation system.

II. The Railroad Industry's Safety Record

The railroad industry's overall safety record is generally positive, and most safety trends are moving in the right direction. While not even a single death or injury is acceptable, progress is continually being made in the effort to improve railroad safety. An analysis of FRA's database of railroad reports of accidents and incidents that have occurred over the nearly three decades from 1978 through 2006 dramatically demonstrates this improvement. See 49 C.F.R. Part 225. (The worst year for rail safety in recent decades was 1978, and 2006 is the last complete year for which preliminary data are available.) Between 1978 and 2006, the total number of rail-related accidents and incidents has fallen from 90,653 to 13,171, an all-time low representing a decline of 85 percent. Between 1978 and 2006, total rail-related fatalities have declined from 1,646 to 911, a reduction of 45 percent. From 1978 to 2006, total employee cases (fatal and nonfatal) have dropped from 65,193 to 5,174, a decline of 92 percent; the record low was 5,065. In the same period, total employee deaths have fallen from 122 in 1978 to 16 in 2006, a decrease of 87 percent.

Contributing to this generally improving safety record has been a 74-percent decline in train accidents since 1978 (a total of 2,903 train accidents in 2006, compared to 10,991 in 1978), even though rail traffic has increased. (From 1978 to 2006, overall train-miles (including passenger and smaller freight carriers) were up by 7.8 percent, but train-miles for Class I railroads have increased 29.9 percent. Additionally, Class I railroad ton-miles were up by 106.5 percent.) Further, the year 2006 saw only 28 train accidents out of the 2,903 reported in which a hazardous material was released, with a total of only 69 hazardous material cars releasing some amount of product, despite about 1.7 million shipments of hazardous materials by rail.

In other words, over the last almost three decades, the number and rate of train accidents, total deaths arising from rail operations, employee fatalities and injuries, and hazardous materials releases all have fallen dramatically. In most categories, these improvements have been most rapid in the 1980s, and tapered off in the late 1990s. Causes of the improvements have included a much more profitable economic climate for freight railroads following deregulation in 1980 under the Staggers Act (which led to substantially greater investment in plant and equipment), enhanced safety awareness and safety program implementation on the part of railroads and their employees, and FRA's safety monitoring and standard setting. (Most of FRA's safety rules were issued during this period.)

In addition, rail remains an extremely safe mode of transportation for passengers. Since 1978, more than 11.2 billion passengers have traveled by rail, based on reports filed with FRA each month. The number of rail passengers has steadily increased over the years, and since 2000 has averaged more than 500 million per year. Although 12 passengers died in train collisions and derailments in 2005, none did in 2006. On a

passenger-mile basis, with an average about 15.5 billion passenger-miles per year since the year 2000, rail travel is about as safe as scheduled airlines and intercity bus transportation and is far safer than private motor vehicle travel. Rail passenger accidents–while always to be avoided–have a very high passenger survival rate.

As indicated previously, not all of the major safety indicators are positive. Grade crossing collisions and railroad trespassing cause virtually all of the deaths associated with railroading. Taken together, grade crossing and rail trespassing deaths accounted for 97 percent of the 911 total rail-related deaths in 2006. In recent years, grade crossing deaths were the greatest single group of rail-related deaths; in 1978, for example, 1,064 people died in grade crossing accidents, compared to 403 who died in rail trespass incidents. Since 1997, rail trespasser deaths have replaced grade crossing fatalities as the largest category of rail-related deaths; in 2006, 368 persons lost their lives in grade crossing accidents, and 520 persons died while on railroad property without authorization. Further, significant train accidents continue to occur, and the train accident rate per million train-miles has not declined at an acceptable pace in recent years. After increasing to 4.39 in 2004, the train accident rate declined to 4.11 in 2005 and 3.58 in 2006. The latter is near the all-time low despite significant increases in the volume of train traffic.

The causes of train accidents (e.g., derailments and train-to-train collisions) are generally grouped into five categories: human factors; track and structures; equipment; signal and train control; and miscellaneous. The great majority of train accidents are caused by human factors and track. In recent years, most of the serious events involving train collisions or derailments resulting in release of hazardous material, or harm to rail passengers, have resulted from human factor or track causes. Accordingly, FRA's National Rail Safety Action Plan, initiated in May 2005, focuses heavily on human factors and track as the major target areas for improving the train accident rate.

III. Railroad Bridges

A railroad bridge is a bridge that carries one or more railroad tracks. There are approximately 100,000 railroad bridges across the country. Nearly all of these bridges are owned and maintained by the individual railroads, and a significant number of them were constructed in the 1930s or before. The aging of the railroad bridge infrastructure, combined with a record-level of rail traffic and heavier carloads, will require major commitments from the railroads to increase their levels of bridge inspection and maintenance. FRA has recognized the immediate and long-term implications of that situation, and is increasing the focus of its safety resources to ensure the protection of railroad passengers and employees, and the public. The primary objective is to minimize or eliminate the possibility of bridge failure accidents. FRA is also developing a strategy to ensure the long-term viability of bridges and other structures as vital links in the Nation's transportation network.

FRA has issued a statement of agency policy on bridge safety, with guidelines included as part of the Federal Track Safety Standards. While FRA's track, signal, bridge worker safety, and other safety regulations apply to railroad bridges and train operations over those bridges, no Federal rail safety regulations apply to the structure of railroad bridges themselves. FRA does not plan to issue bridge regulations, given the excellent safety record of railroad bridges and the fact that most railroads already exceed the minimum safety standards that FRA could incorporate in a regulation. However, we plan to closely monitor the need for bridge regulation moving forward.

In May 2007, FRA's Administrator traveled to Charlotte, North Carolina, to attend a meeting of the American Railway Engineering and Maintenance of Way Association Committee on Steel Structures, which serves as a highly technical organization for the rail industry. As a result of that meeting, the Administrator organized a Bridge Roundtable as part of a meeting of FRA's Railroad Safety Advisory Committee in Washington, D.C., on June 26.

The Bridge Roundtable looked at the following four main areas:

- long-term bridge safety strategy, a strategic look ahead for 30 years on the questions of what will be demanded of railroad bridges and whether the industry can generate the funds needed to maintain and replace them;
- immediate bridge safety concerns, such as whether existing personnel, equipment, and other resources are available today to provide appropriate maintenance and inspection needs;
- the future of research and technology to better identify potential problems in existing bridges and develop advanced engineering solutions; and
- the issues of how FRA might best serve its role to protect the public, rail passengers, and rail employees from bridge failures and whether there should be a role for DOT to assist in avoiding a potential future transportation crisis.

We are developing policies and programs in each of those subject areas, with substantial agreement and support from all of the affected groups.

IV. The Roles of State and Local Governments and of Joint Federal, State, and Local Partnerships in Railroad Safety

A. Preemption of State Rail Safety and Security Standards under 49 U.S.C. § 20106 (Section 20106)

In establishing a rail safety preemption provision in 1970, and in subsequent amendments to that provision, including the amendment contained in enrolled bill H.R. 1, which the President signed into law on August 3 of this year, Congress has struck a delicate balance, favoring National uniformity of railroad safety and security regulations, while preserving an appropriate role for the States. FRA believes that balance was correctly achieved.

Under Section 20106, States are free to regulate until the Secretary of Transportation (with respect to railroad safety matters) and the Secretary of Homeland Security (with respect to railroad security matters) has issued a regulation or order covering the subject matters. California and other States have availed themselves of this option. Once there are Federal requirements covering a particular subject, a State may adopt or continue in effect an additional or more stringent law, regulation or order only if it is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with Federal law, and does not unreasonably burden interstate commerce. California and other States have employed the "local safety or security hazard" exception. State-wide regulation under the guise of an essentially local safety or security hazard is not permitted, as Congress also made clear in the legislative history of Section 20106 that an essentially local safety hazard would not be State-wide in nature and would not result in State-wide standards superimposed on National standards covering the same subject matter.

The existing provision works well to allow States to address subjects not encompassed within Federal regulations, or conditions that are truly local in nature, and this has worked specifically to the benefit of California as the following example illustrates. FRA has a regulation, codified at 49 C.F.R. Part 217 (Part 217), which, among other things, requires each railroad that operates trains or other rolling equipment on standard gage track that is part of the general railroad system of transportation in the United States to have operating rules, to file those operating rules with FRA or to keep a copy of those rules and make it available at the railroad's system headquarters for FRA inspection, and to test the railroad's employees on its operating rules. A court held that FRA regulations did not preempt a California regulation that required each of certain railroads in the State to comply substantively with the railroad's own operating rules concerning the proper make-up of trains that traverse steep grades. The court found that there is no FRA train make-up rule for trains that travel steep grades and while railroads' internal rules govern their trains' configurations, FRA takes no compliance-related action should the railroads fail to comply with these rules. (The two purposes of Part 217 are to collect information necessary for the formulation of uniform operating rules and to inform the railroads' employees of the meaning and application of the companies' operating rules so as to reduce noncompliance with the railroads' operating rules. FRA has relatively few rules that require a railroad to comply with its own operating rules; e.g., FRA's alcohol and drug regulations (49 C.F.R. Part 219), which, among other things, "Federalize" a provision of railroads' "Rule G" barring the use or possession of alcohol while on duty and prohibiting the reporting for duty under the influence of alcohol.)

B. State and Local Enforcement of State and Local Laws Governing Subjects Not Covered by Federal Regulations

There are a number of enforcement issues left to the control of State and local governments that are important to railroad safety, especially to many aspects of crossing

safety. In May 2005, FRA issued Safety Advisory 2005-03, which describes the respective roles of the Federal and State governments and of the railroads in highway-rail grade crossing safety. The advisory specifically reminds railroads of their responsibilities, among other things, to cooperate fully with local law enforcement authorities during their investigations of highway-rail grade crossing collisions, which are, in fact, traffic accidents. The advisory also offers FRA's technical assistance to local authorities in the investigation of such accidents where information or expertise within FRA's control is required to conduct or complete such investigations. FRA has distributed this advisory extensively through National law enforcement organizations, including direct contacts with local agencies.

Issues such as the selection of appropriate traffic control devices, licensing of motor vehicle drivers, and enforcement of State regulations, if any, regarding appropriate sight distances at grade crossings, are matters of State law that are important to highway-rail grade crossing safety. FRA has committed to developing and disseminating model State legislation regarding sight distances, as recommended by DOT's Office of the Inspector General.

Likewise, the prohibition of trespass on railroad property and of vandalism of railroad property and other property that affects railroad safety is primarily a matter of State law that has a significant impact on railroad safety. As noted above, trespassing is the leading cause of death associated with the railroad industry, so this is an area where States can (and need to) make a tremendous contribution to railroad safety. In 1997, in consultation with State and local governments, FRA developed and distributed model State legislation to assist States in defining and addressing these issues. To further assist the States in reducing the incidence of trespassing on railroad property, FRA expects to complete and release a trespasser demographic study before the end of the current calendar year.

C. State Participation in Enforcement of Federal Railroad Safety Laws and Regulations

Another statutory provision, originally enacted in 1970 and now found at 49 U.S.C. § 20105, provides a mechanism for States to participate in investigative activities under the Federal railroad safety laws and to recommend enforcement action under those laws. Accordingly, every State has the opportunity to employ rail safety inspectors in all of the railroad safety disciplines in which FRA has inspectors and, through its inspectors, to participate directly in inspection activity and enforcement of the Federal railroad safety regulations. In addition, participating States that recommend that FRA seek injunctive relief or impose civil penalties for specific violations of the safety laws, may seek those remedies themselves if FRA has not taken action within specified periods. However, States that are not certified participants in the Federal program for State participation may not cite a railroad or shipper for violations of Federal regulations. There are currently 28 States actively participating in FRA's program, including California, and, as previously mentioned, 165 State inspectors Nation-wide involved in the enforcement of the Federal

railroad safety laws and regulations. (Please see Appendix A for a breakdown of State inspectors by State and railroad safety discipline.) California is one of the most active States in enforcing Federal regulations. In 2006, FRA transmitted civil penalty cases containing 634 violation reports written by State inspectors from all over the country.

In most ways, an FRA-certified State inspector has the same role and authority as a certified Federal inspector. In the area of their certification, a State inspector may inspect railroads for compliance, issue FRA inspection reports noting defects, and recommend the assessment of civil penalties for violations. If the State inspector's area of certification covers enforcement of the Hazardous Materials Regulations, and if the inspector is authorized by State law to inspect shippers of hazardous materials by rail for compliance, the inspector may also conduct such inspections, issue notices of defects, and recommend civil penalties for violations. A State inspector may cite violations of the railroad safety regulations using the same forms as an FRA inspector, submit those violation reports for technical and legal review in the same manner, and participate in civil penalty negotiating sessions led by FRA attorneys (or, in the event of litigation, serve as witnesses) just as an FRA inspector does. FRA has regulations in 49 C.F.R. Part 212 establishing the procedures for State participation in the enforcement program, and setting the minimum qualifications for certified State inspectors in each of the disciplines.

A State's authority to certify inspectors to participate in each of the railroad safety disciplines is governed and limited only by applicable State law, as State inspectors may only participate in areas assigned by State law to the State agency that employs them. State inspectors are employed by, and funded entirely by, their respective State governments, and may be given other duties and assignments that their agencies deem necessary, including enforcement of State laws that are not preempted by Federal law.

D. Opportunities for State Participation in the Federal Regulatory Process

In addition to the States' role in enforcing Federal and State railroad safety laws and regulations, as discussed above, States also have opportunities for input into FRA's railroad safety regulatory agenda, and a role in the development of Federal regulations.

First, States may, like any other party, petition for rulemaking pursuant to 49 C.F.R. Part 211, to request that FRA adopt regulations on a particular subject and to propose what the regulations should say. If a State does not believe that FRA's regulations adequately or appropriately address a particular safety issue, or if a State believes that it has a good idea for addressing an issue more effectively, this would provide the means for requesting the rules that State believes are necessary, rather than attempting to regulate the issue at the State level by claiming the existence of an essentially local safety hazard.

States also have the opportunity to participate in the development of Federal regulations once a decision is made to address a particular issue, through FRA's Railroad Safety Advisory Committee (RSAC). State interests are represented in the RSAC by the

American Association of State Highway and Transportation Officials and by the Association of State Rail Safety Managers, which represents all of the States currently involved in FRA's State participation program. In addition, some States participate directly in working groups charged with crafting recommendations to the Administrator concerning certain regulations.

Taken together, these approaches mean that States have ample opportunity to get their ideas included in uniform National railroad safety regulations and do not need any ability to regulate independently beyond that which they already enjoy. Railroad conditions are substantially similar throughout the Nation. A good idea to improve railroad safety in California is almost always a good idea for improving railroad safety Nation-wide. States like California that want to play a larger role in regulating railroad safety should do so through the National regulatory process that Congress has established, and not independently. Balkanizing regulation of railroad safety would likely roll back many of the safety gains attained in the last 30 years, while costing more than the present regulatory regime. That would ill serve the National interest.

E. Joint Federal, State, and Local Nonregulatory Activities to Enhance Railroad Safety

Outside the sphere of day-to-day enforcement and rulemaking, FRA, its sister agencies in DOT, the States, and local authorities have worked together, and continue to work together, in many ways to save lives and prevent injuries arising from railroad operations. FRA, FHWA, FMCSA, and the States have a long history of coordinated, cooperative action to prevent highway-rail and other crossing accidents, which can pose a risk not only to motorists but also to railroad operations. A prominent example of such action is FHWA's "Section 130" grant program for crossing hazard elimination and crossing warning device upgrades. Let me describe more instances of such joint, nonregulatory activities.

First, FRA is working with several States that have suffered the highest toll of grade crossing collisions to develop State-specific crossing safety plans. FRA, FHWA, and the State of Louisiana have already developed and put in place, a State-specific crossing safety plan for Louisiana. FRA and FHWA are currently working with the State of Texas to develop a crossing safety plan for that State, which should be completed by the end of fiscal year (FY) 2007. FRA has had initial discussions with the Illinois Commerce Commission, which has agreed to participate in the development of a plan for that State. Formal planning meetings with Illinois agencies will begin before the end of FY 2007. Based on experiences with the previous plans, it is anticipated that the Illinois plan will be completed by the end of FY 2008. FRA will approach the appropriate State agencies in California and Ohio no later than the second quarter in FY 2008 to solicit support for the development of plans in these States. The State agency in Indiana will be approached when the State plan for Illinois is completed, which should be toward the end of FY 2008 or the beginning of FY 2009.

Second, under DOT's Grade Crossing Safety Action Plan issued in June 2004, FRA is working with the States and rail transit operators to develop, publish, and make available a compilation of pedestrian warning devices in use at grade crossings of all types, including pedestrian-only crossings over railroad tracks. FRA's activities in this area are intended not to establish safety standards, but instead to provide a tool to be used by local authorities when addressing pedestrian safety issues at crossings, as local authorities are best placed to make the decisions necessary to enhance safety. FRA has worked to gather information on any signs, signals, pavement markings, or other devices used to enhance the safety of pedestrians at grade crossings. State DOTs and rail transit operators have made several submissions, which have included background information and illustrations. These are presented in the draft compilation so that the larger grade crossing safety community might benefit from the work of others in this important area. A draft of the compilation of pedestrian warning devices has been completed and been fully reviewed within FRA. The compilation should be published and available before the end of FY 2007.

Joint nonregulatory activities take place not only to promote crossing safety, but also to promote commuter rail safety. In the wake of the Glendale, California, incident on January 26, 2005, which resulted in 11 passenger train fatalities, FRA, along with DOT's FTA, worked with the Southern California Regional Rail Authority (Metrolink) and the American Public Transportation Association to facilitate the incorporation of crash energy management features in rail equipment to be purchased by Metrolink. FRA and FTA formed the ad hoc Crash Energy Management Working Group in May 2005, which included government engineers from DOT's Volpe National Transportation Systems Center (part of RITA), passenger railroads, rail labor organizations, and equipment suppliers. The Working Group produced a detailed technical specification for crush zones in passenger cars for Metrolink to include in its procurement specification, as well as for other passenger railroads to include in future procurements of their own. Development of the new Metrolink equipment is now underway.

Further, FTA and FRA also work together to ensure the safety of new passenger railroads (new starts) and projects involving the modernization and extension of existing passenger railroads in States and localities across the Nation. Each year, FTA alone provides hundreds of millions of dollars in funding for commuter rail projects and the procurement of new commuter rail vehicles. Current projects include the new Northstar passenger railroad in Minneapolis, the East Side Access project that will connect the Long Island Rail Road's (LIRR) Main and Port Washington lines in Queens to a new LIRR terminal beneath Grand Central Terminal in Manhattan, and new vehicle procurements at the Southeastern Pennsylvania Transportation Authority. FTA, in partnership with FRA, monitors and oversees project design, construction, testing, start-up, and acceptance.

CONCLUSION

FRA's approach to enhancing the safety of rail transportation is multifaceted.

FRA personnel strive daily to implement comprehensive initiatives for safety assurance and hazard mitigation in order to make rail operations safer for the public and the rail transportation industry. FRA works cooperatively with State and local governments to advance railroad safety and is committed to doing so in the future. We look forward to further discussions with the Subcommittee on reauthorization of the Federal railroad safety program, to bringing about the enactment of the Administration's railroad safety bill, and to ensuring that any modification of the preemption provision appropriately preserves the National uniformity necessary to make our Nation's railroad system even safer. Thank you.

Attachment

Appendix A

State Rail Safety Inspector Counts*
July 31, 2007

STATE	FRA REGION	TRACK	MP&E	OP	HM	S&TC	XING	TOTAL
AL	3	1	2	0	0	0	0	3
AZ	7	1	1	1	1	1	0	5
CA	7	9	7	11	3	3	0	33
FL	3	2	1	2	1	1	0	7
IA	6	2	0	0	0	0	0	2
ID	8	0	0	0	2	0	0	2
IL	4	2	0	1	2	3	0	8
MD	2	1	2	1	0	0	0	4
ME	1	2	0	0	0	0	0	2
MO	6	2	0	1	0	0	2	5
MT	8	0	2	0	0	0	0	2
NC	3	1	1	0	0	1	0	3
NE	6	1	1	0	0	0	0	2
NH	1	1	0	0	0	0	0	1
NJ	2	0	0	0	1	0	0	1
NM	5	0	0	1	0	0	1	2
NV	7	1	1	1	1	0	0	4
NY	1	3	4	0	0	0	0	7
OH	2	3	2	4	3	1	2	15
OR	8	2	2	1	1	0	1	7
PA	2	3	2	1	1	0	0	7
SC	3	1	1	0	0	0	0	2
TN	3	3	1	2	1	1	0	8
TX	5	3	2	5	2	1	0	13
UT	7	1	0	0	0	0	0	1
VA	2	2	2	1	0	0	0	5
WA	8	1	0	1	1	0	1	4
WV	2	2	2	2	1	3	0	10
TOTAL		50	36	36	21	15	7	165

* Mississippi has not had an inspector for about two years, but plans to reenter the program.

Abbreviations:

MP&E—Motive Power and Equipment
OP—Operating Practices
HM—Hazardous Materials
S&TC—Signal and Train Control
XING—Crossing Safety and Trespass Prevention

**Federal Railroad Administration's Responses
to Questions for Mr. Clifford Eby,
Deputy Administrator,
Federal Railroad Administration,
from the Subcommittee on Railroads, Pipelines,
and Hazardous Materials,
Committee on Transportation and Infrastructure,
U.S. House of Representatives
August 9, 2007 Field Hearing on
Federal, State and Local Roles in Rail Safety**

CONGRESSWOMAN GRACE F. NAPOLITANO

Ms. NAPOLITANO: Administrator Eby, for reasons discussed below, no Federal Court of Appeals has ever upheld the existence of "a local safety hazard" under Section 20106, subsection (1). However, the Ninth Circuit Court of Appeals did find one area in which the FRA had not issued a regulation or order "covering" a particular area of railroad safety. That single area concerned track-train dynamics, i.e., train make-up. Aside from the areas noted by you in section IV. B. of your statement, i.e., highway-rail crossings, crossing warning devices, clear sight distances such as vegetation blocking sight lines, and State participation in FRA activities through provision of State-paid FRA-certified inspectors applying FRA regulations and orders, the States have been consistently prohibited from areas of railroad safety procedures. Crossing safety is regulated by the States; all other areas of railroad safety, other than train make-up, are regulated by the FRA. The reason California was permitted to regulate train make-up was: 1) the FRA admittedly refused to enter the field of train make-up, leaving this area to the railroads themselves, and 2) because California simply required the railroads to comply with the railroads' own safety regulations concerning train make-up.

Train make-up is the only area of railroad safety procedures, outside of crossing safety procedures, which a State has been allowed to address. Mr. Eby, would you agree that the reason for this is that the FRA and federal courts have broadly interpreted "covering the subject matter" to encompass the entire field of railroad operations safety procedures? For example, although California was permitted to require railroads to comply with their own train make-up procedures because the FRA had none, California was not

permitted to require training in train make-up procedures on the grounds that the FRA required railroads to train their employees on the railroads' operating rules and, thus, had "covered the subject matter" of railroad safety training. In your statement, you say that Section 20106 "works well to allow States to address subjects not encompassed within Federal regulations." Would you agree that train make-up and crossing safety are the only areas of railroad operational safety procedures that federal courts and FRA contend can be regulated by States?

Mr. EBY: Let me paraphrase your questions. You are asking if I would agree that train make-up and crossing safety are the only areas of railroad operational safety procedures that federal courts and FRA contend may be regulated by States, and second, if I would agree that the reason for this is that the FRA and federal courts have broadly interpreted "covering the subject matter" to encompass the entire field of railroad operations safety procedures.

FRA does not contend that train make-up and crossing safety are the only areas of railroad safety that may be regulated by States. Indeed, States are permitted to regulate and do regulate other subjects not covered by Federal regulations. FRA does not believe that it has covered the entire field of railroad safety, nor does FRA believe most courts have interpreted the scope of FRA's regulations in this way. One example is the issue of "track centers," the distance between the centers of parallel tracks. Although FRA has comprehensive track safety standards, those standards do not specify how far apart tracks must be, and State regulation of this subject has been found to be permitted. *Tyrrell v. Norfolk Southern Ry. Co.*, 248 F.3d 517 (6th Cir. 2001). FRA and the courts look at the subject matter of a State requirement, and determine whether existing Federal regulations cover that particular subject.

Section 20106 of title 49, U.S. Code, provides that laws, regulations and orders related to railroad safety and security shall be nationally uniform to the extent practicable. To that end, FRA has promulgated detailed, comprehensive regulations addressing a wide variety of issues related to railroad safety, many of which were not yet in existence when section 20106 was enacted. FRA will often be found to have covered the subject matter of a State requirement, because the specific subject matter that the State seeks to address is covered by a Federal requirement.

FRA does not have to cover the subject matter of a State requirement in the same way that the State requirement does for preemption to occur. The same subject matter may be addressed in a different way, and the fact that a State does not agree with the manner in which FRA has chosen to cover a particular subject matter

does not mean that subject matter has not been covered. As I explained in my testimony, States have the opportunity to help to shape Federal regulations, through participation in the Railroad Safety Advisory Committee (RSAC) or by petitioning FRA for further rulemaking on a given subject. If any State has a proposal as to how to better address a subject than is currently achieved by Federal regulations, FRA welcomes its input toward improved uniform national regulations.

Ms. NAPOLITANO: Would you agree that the U.S. Courts of Appeals in the 3rd, 6th, and 9th Circuits have essentially ruled that "local safety hazards" cannot exist?

Mr. EBY: No. With the exception of the Ninth Circuit decision in *Union Pacific RR. Co. et al. v. California Pub. Util. Comm'n* (*Union Pacific*) it is difficult to determine to which decisions the question refers. However, in any appellate decision, including *Union Pacific*, the court considers the record and the specific situation before it. Thus, in *Union Pacific*, the Ninth Circuit found that conditions existing at the location at issue in that case did not constitute an essentially local safety hazard. The court certainly did not say in that case that an essentially local safety hazard could never exist, or that it would not find that one existed on a different set of facts.

Ms. NAPOLITANO: Do you believe that Section 20106(1) has been interpreted to significantly limit the States powers to regulate railroad safety rather than broaden it, as originally intended?

Mr. EBY: Section 20106(1) allows States to address essentially local safety hazards. The legislative history of section 20106 makes clear that this savings clause was never intended to allow State-wide regulation. Every condition that exists is "local" in the sense that it occurs somewhere. However, most hazards are not "essentially local" as there is nothing about the nature of the hazard itself that is particular to that location. Section 20106(1) is intended to allow regulation specifically addressed to a particular location at which hazardous conditions exist that are related to that location and not common throughout the State or elsewhere in the Nation.

Section 20106(1) is not intended to allow States to substitute their own judgment at the local level when they do not agree with the regulation with which FRA has covered a particular subject matter or when they believe that it is inadequate. Again, as I discussed in my testimony, States have the opportunity to influence the

content of Federal regulations, by taking part in the RSAC or by filing a petition for rulemaking with FRA. If a State has thoughts as to how to make existing Federal regulations better, FRA is glad to consider them. Absent the existence of an essentially local hazard, if a State has a better idea for improving railroad safety, it is a better idea for all states and should be embodied in uniform, national regulations.

Ms. NAPOLITANO: Do you feel that the "local safety hazard" exception to Federal preemption of state laws has hamstrung the States from participating in railroad safety regulation because of the courts interpretation of "local safety hazard"?

Mr. EBY: **No.** As was discussed above, courts addressing the question of essentially local safety hazards base their decisions on the specific situations before them. It is true that in most cases courts have found that no essentially local safety hazard was present in cases that have been decided. However, a fairly narrow interpretation of this provision is consistent with both the stated purpose and legislative history of section 20106. If a State were allowed to regulate as a local safety hazard any condition that it believed would be better served by a different regulation than the existing Federal requirement, the national uniformity of regulation, which Congress so carefully crafted, would be destroyed, and railroad safety would be substantially compromised as railroads struggled to comply with a myriad of ever-changing standards in each State or community through which they passed. Nevertheless, States retain the authority to address essentially local safety hazards where they truly exist, as well as to address those subjects not covered by Federal regulations.

Furthermore, as was discussed in my testimony, the State role in railroad safety regulation is not limited to the authorities that States have to adopt their own railroad safety laws and regulations. Every State has the opportunity to employ railroad safety inspectors to participate in the enforcement of Federal regulations. There are 28 States currently participating in this way, employing 165 inspectors. In addition, States may contribute significantly to the development of Federal regulations, through participation in the RSAC process, or petitioning FRA for rulemaking if they believe existing regulations are inadequate or they would like to suggest a better way to address an issue. FRA values the contributions of its State partners and welcomes such input from any State. Because the Administrative Procedure Act requires agencies to make rational decisions based on the administrative record before them, any State which can show through facts and reasoning that its regulatory proposal is the best way to address a safety problem should be able to get that proposal embodied in the Federal railroad

safety regulations to the benefit of the entire Nation.

ADDITIONAL QUESTIONS FROM CONGRESSWOMAN NAPOLITANO

#1) Southeast Los Angeles has some of the heaviest railroad traffic moving through a densely populated community. Should the FRA make stronger regulations for rail inspection, maintenance, and hazmat cars as large volumes of rail cargo travel through highly populated areas?

Mr. EBY: Last December, in consultation with FRA and the Department of Homeland Security's Transportation Security Administration (TSA), the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (NPRM) to revise current requirements for the safety and security of hazardous materials (hazmat) transported by rail. See 71 Fed. Reg. 76833. Specifically, the proposal would require railroads to compile annualized data on specified shipments of hazmat, use such data to objectively analyze potential safety and security risks along rail transportation routes where the hazmat is transported, assess the feasibility of alternative routing options, and make routing decisions based on those assessments. The comment period for this NPRM closed on February 20, 2007. The Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. No. 110-53; August 3, 2007) directs DOT to issue a final rule based on the NPRM, comments received on the NPRM, and the requirements of the Act. PHMSA and FRA, in coordination with TSA, are in the process of drafting the final rule.

#2) This community is subject to major air quality problems caused by the railroad yards and locomotives. How is the FRA working with the railroad companies to invest in clean locomotives?

Mr. EBY: FRA is part of a concerted effort involving other DOT modal administrations and the Environmental Protection Agency (EPA) to address air pollution resulting from marine, highway, and rail transportation in the Los Angeles Basin. The Department has formed a task force to address these problems and is working with the State, cities, ports and other local authorities and stakeholders, such as the Alameda Corridor East, to develop cooperative solutions.

FRA has no discretionary grant funding available to directly invest in reduced-emission locomotives, nor does it have the authority to order railroads to procure or operate such equipment. FRA encourages railroads to pursue improved locomotive performance in terms of reduced fuel consumption and diesel emissions. Railroads are introducing low-emission switching locomotives, and as

they replace other, older locomotives with new equipment additional reductions in air pollution emissions will be achieved. FRA expects the railroads to continue this progress by looking at new technologies that might permit further improvements, such as the use of hostler tractors that run on liquefied natural gas (to move intermodal containers in yards).

It should be noted that EPA has taken several recent steps to improve air quality. Although locomotive engines being produced today must meet EPA emission requirements set in 1997, in May 2004, as part of the Clean Air Nonroad Diesel Rule, EPA finalized new requirements for nonroad diesel fuel that will decrease the allowable levels of sulfur in fuel used in locomotives by 99 percent. These fuel improvements will create immediate and significant environmental and public health benefits by reducing particulate matter (PM) from existing engines. In addition, in March 2007, EPA proposed a three-part program that could further reduce emissions of pollutants from diesel locomotives of all types; line-haul, switch, and passenger rail. The proposed rule aims to cut PM emissions from these engines by 90 percent and nitrogen oxide (NOx) emissions by 80 percent. The proposal would set new, Tier 3 exhaust emissions standards and idle reduction requirements for locomotives, beginning in 2009. The proposal would also tighten emission standards for existing locomotives when they are remanufactured—to take effect as soon as certified systems are available (as early as 2008) but no later than 2010. Finally, the proposal would set long-term, Tier 4 standards for newly-built engines based on the application of high-efficiency catalytic after-treatment technology, beginning in 2015 for locomotives. FRA is working with EPA as it develops a final rule.

In addition, on September 4, 2007, FRA published an NPRM to create incentives for the use of Electronically Controlled Pneumatic (ECP) brakes. Unlike conventional brakes, ECP brakes permit gradual release of the train air brakes and are not susceptible to depletion of the brake pipe when multiple reductions (to apply the brakes) are made. ECP brakes permit operation of heavy trains over substantial grades, such as the Cajon Pass, with reduced use of diesel fuel and thus reduced emissions. FRA already granted a waiver to BNSF Railway to use this technology and is encouraging railroads operating unit trains (such as intermodal trains) and car owners to equip cars and locomotives with ECP brakes.

FRA's Railroad Rehabilitation and Improvement Financing (RRIF) loan program could be used by railroads or other eligible borrowers for making these improvements.

#3) A major issue that has been raised in our community is the implementation of quiet zones. Residents who live near railroad tracks are

tired of the constant noise of railroad horns. They want their local governments to implement the additional signs, gates, and infrastructure needed to create quiet zones. Others are concerned that quiet zones will reduce safety around railroad tracks. What is your view on the implementation of quiet zones? Do quiet zones decrease safety?

Mr. EBY: FRA believes that quiet zones can be safely implemented as long as appropriate steps are taken to compensate for the loss of the audible warnings provided by locomotive horns. FRA's final rule on the Use of Locomotive Horns at Public Highway-Rail Grade Crossings (49 C.F.R. Part 222) requires the sounding of horns in advance of all public highway-rail grade crossings, and also provides communities a number of options that permit the establishment of quiet zones, consistent with the statutory mandate requiring issuance of the rule.

Existing data do not currently suggest that quiet zones have an adverse effect on safety at highway-rail grade crossings. From the official start date for the establishment of new quiet zones in June 2005 through December 2006, 66 collisions occurred at crossings where new quiet zones had been established or in locations with pre-rule quiet zones that had been continued under the regulation. Twenty-four of these collisions occurred in 2005, and 42 in 2006. All together, these events resulted in 2 fatalities and 19 injuries. By comparison, accident data for the same crossings in the years 2000 through 2004 indicate an annual average of 50.8 collisions, 5.6 fatalities, and 12.2 injuries.

#4) Do railroad companies report all of their accidents? Accidents in rail yards and along tracks that injure both employees and bystanders? Or are there certain types of accidents that they do not report? Do they report these accidents to the FRA and CPUC?

Mr. EBY: Railroads are required to report to FRA a wide number of events that occur in the course of their operations. Events that meet criteria specified under FRA's accident/incident reporting regulations, 49 C.F.R. Part 225, must be reported to FRA within specified timeframes and by specified means. Failure to report as required is a violation for which FRA may cite the railroad for a civil penalty. FRA assesses civil penalties for such accident reporting violations regularly.

In general, events arising from railroad operations that injure and result in the medical treatment of any person, including a member of the public, are required to be reported, see 49 C.F.R. § 225.19(d)(3), and other reporting requirements apply if an employee is involved. However, minor events, such as low-speed impacts between rail cars that result in little monetary damage and no injuries, do not have

to be reported. In addition, a railroad is not required to report: casualties which occur at highway-rail grade crossings that do not involve the presence or operation of on-track equipment, or the presence of railroad employees then engaged in the operation of a railroad; casualties in or about living quarters not arising from the operation of a railroad; suicides as determined by a coroner or other public authority; or attempted suicides. See 49 C.F.R. § 225.15.

Under FRA's regulations, any State may require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA, for covered events that occur in that State. See 49 C.F.R. § 225.1. Whether a railroad operating in California is providing copies of these reports to the State is a question best directed to the California Public Utilities Commission.

#5) In Los Angeles County, how many cars does each train have on average? How many containers are on each train on average?

Mr. EBY: Railroads assemble trains of different lengths based on commercial routing considerations, traffic demands, and operational logistics such as siding lengths, grades, the availability of locomotive power, and other factors. Average train length in the western U.S. in 2005 was reported as 73 cars. However, railroads do not report average train lengths for specific areas such as Los Angeles County.

Trains involved in local switching activities are generally shorter than 73 cars, but intermodal trains leaving port locations bound for Chicago or similar rail hubs are generally longer. These intermodal trains may be up to approximately 8,000 feet long and could have up to approximately 280 containers (each 40 feet long) on them, in a double-stacked configuration.

"Federal, State and Local Roles in Rail Safety"
Hearing of the House Subcommitee
On Railroads, Pipelines and Hazardous Materials

Statement of Jesus Ojeda
California Operation Lifesaver
4830 Mendocino
Sacramento, California 95820
916-669-8431

August 9, 2007
Norwalk, California

Madam Chairwoman:

Thank you for including Operation Lifesaver in today's hearing on the respective roles of federal, state and local officials in addressing rail safety issues. My name is Jesus Ojeda, and I am a presenter-trainer for California Operation Lifesaver. That means that I am certified to offer presentations to the public about the importance of practicing safe behavior around railroad tracks. I am also certified to train others to do the same. Operation Lifesaver is unique in that its public awareness and education campaigns are offered by trained and certified speakers who provide free safety presentations to a wide range of audiences in order to increase public safety around railroad tracks.

As California is a member of Operation Lifesaver, Inc., I will explain the roles of our national support center, which receives funding from the federal government and share with the committee the very important work of California Operation Lifesaver.

History

Operation Lifesaver is a national non-profit education and awareness program dedicated to eliminating tragic fatalities and injuries at America's highway-rail grade crossings and along railroad rights-of-way. Operation Lifesaver programs have sprung up in other countries, including Canada, Mexico, Argentina, the United Kingdom and Estonia. Today Operation Lifesaver is an international organization whose mission is to save lives.

Thirty-five years ago Operation Lifesaver began in Idaho. At that time, the Federal Railroad Administration reported over 12,000 collisions annually between vehicles and trains, tragically resulting in the deaths of 1,200 Americans at the crossing. Inspired by Idaho's success, the program expanded to other states – a true grassroots, bottom-up organization, made up largely of volunteers who share a passion for preventing deaths and injuries on or around railroad tracks. Last year's preliminary FRA statistics report that collisions have fallen to under 3000, with 362 fatalities.

In 1986 these grassroots volunteer programs led to the incorporation of a national, non-

profit education organization. By 1989, a national support center was created in Alexandria, Virginia. Along with private funding, Operation Lifesaver, Inc. receives federal financial support from the Federal Highway Administration, the Federal Railroad Administration, and more recently the Federal Transit Administration.

The Key to Operation Lifesaver's Success

In one word, Operation Lifesaver's success is attributed to its volunteers. These are individuals – approximately 3000 in number—who dedicate their time and energies toward educating the public to the dangers that are present on or around railroad tracks. Many of these volunteers agree to become certified presenters, trained to go into our schools and other community venues offering free safety presentations. Our state coordinators reach out to law enforcement, school bus drivers, drivers education programs, commercial drivers, emergency responders and others. They always seek to drive home the message that great care needs to be exercised around rail property. Along with raising awareness of these dangers, our volunteers provide proven safety tips to help prevent tragic incidents.

Operation Lifesaver, Inc.'s national support center assists our state-based programs by providing the latest in educational information and techniques to keep our message current and relevant to today's audiences. OLI serves as the national voice on highway-rail safety issues, implements national public awareness campaigns, develops and coordinates distribution of public service announcements, videos, and literature. OLI challenges the advertising community when advertisers naively or foolishly choose to use images of dangerous activity around rail property to sell their products.

Operation Lifesaver is the education component of the three E's of traffic safety strategy: education, enforcement and engineering. The three must work in tandem; Operation Lifesaver's programs bring these elements together in a way the public understands.

California's Operation Lifesaver Program

Here in California we have worked diligently to educate various communities across our state, from schools that are adjacent to railroad tracks to commercial drivers that cross railroad tracks frequently.

California Operation Lifesaver's safety presentations reach approximately 50,000 individuals each year, with another 250,000 being reached by our volunteers at community events. Many of those we reach are school children.

California Operation Lifesaver is also leading the way in outreach to non-English speaking populations. I am one of 14 bilingual presenters here in California, and am one of three bilingual presenter trainers who prepare individuals to go out into our communities to teach about the importance of practicing safe behavior around railroad tracks. We are the first state to train farm worker educators about Operation Lifesaver. Three California presenters and I have just returned from the National Conference of La Raza where we were part of the Latino Expo. We are already making plans for next

year's conference in San Diego.

Because of our large geographic area, we have two Rail Safety teams that cover Southern and Northern California. We team up with our rail partners to combine efforts and resources to reach communities where there is a specific need. As one example, I refer to the Pico-Rivera community. Besides offering Operation Lifesaver presentations to the schools, we have also worked with city officials to host Officer-on-the-Train events, where we team up with law enforcement officials to drive home the importance of rail safety.

Challenges

On behalf of all of the Operation Lifesaver state programs and our national office, let me share the challenges that continue to face OL's work.

In some respects, Operation Lifesaver is a victim of its success. Vehicle-train collisions, fatality and injury numbers have been reduced substantially and in the minds of some, are far less threatening than the loss of life we see on the nation's highways. We need to disabuse policymakers, the media and others of that notion.

The consequences of a vehicle-train collision carry far beyond those of a single individual, their family and friends. A vehicle-train collision can disrupt a highway-rail crossing for hours – gridlocking communities, impairing emergency response capabilities, and sometimes leading to derailments. As trains carry hazardous materials, the consequences can be even more deadly.

While the collision numbers at grade crossings continue to decline, we are also noticing a disturbing increase in the number of collisions, fatalities and injuries occurring when people choose to walk on or near railroad tracks. Needless to say, Operation Lifesaver must step up its awareness and education programs in the area of pedestrian safety. Our work carries new urgency when you hear that many people do not realize that walking on tracks is trespassing on private property and is illegal. Unfortunately, California leads the nation in the number of pedestrian rail trespass deaths, with 89 Californians killed last year alone. An additional 59 people in California were injured in trespass incidents last year, second only to Texas.

Operation Lifesaver also faces the challenge of developing and implementing our programs to reach audiences for whom English is a second language. Our traditional training techniques – while remaining the core of what we do – must also expand to include use of new technologies to reach a public bombarded with information, and especially reach the Generation Y group who respond to public awareness and education messages far differently than their parents and grandparents. Traditional venues for OL presentations – classrooms, community centers, and business locations—may need to expand to include new outlets ranging from migrant worker camps and low-income housing projects , to Facebook, MySpace and YouTube.

Recommendations

1. Operation Lifesaver has enjoyed solid congressional support for many years – both financially and through the many expressions of public support we receive. Please never lose sight of the fact that highway-rail safety is an on-going message that must be delivered day- in and day-out, beginning at a very early age, running through adulthood.

2. Please continue to fund Operation Lifesaver's national program. Much of that funding works its way to our financially strapped state programs. In this regard, Operation Lifesaver commends the efforts of Congresswoman Napolitano whose amendment to the Rail Safety Bill includes authorization for Operation Lifesaver to continue its public awareness programs. It helps solidify the partnership that our organization maintains with the Federal Railroad Administration.

3. Congresswoman Napolitano's efforts would enable Operation Lifesaver to launch a new pilot program whereby we could offer targeted, sustained outreach to communities where risk is greatest in terms of the number of crashes or population density near the tracks. If Congress approves this program, Operation Lifesaver would work with community leaders, school districts, and public/private partners to develop and implement programs on a sustained basis to reduce collisions.

Conclusions

On behalf of California Operation Lifesaver and our national support center, thank you and members of the subcommittee for coming here to learn first-hand about the challenges of rail safety in one of the busiest corridors in the country. Those of us in California, and our national office, look forward to working with you to assure that the public never loses sight of the dangers around railroad tracks. We appreciate your support of our goal to spare any family or community the tragedy of losing a life because of an ill-fated decision or lapse of judgment.

Thank you.

TESTIMONY OF

Rick Richmond

Chief Executive Officer

Alameda Corridor-East Construction Authority

4900 Rivergrade Road, Suite a120, Irwindale, CA 91706

626/962-9292

BEFORE THE

Subcommittee on Railroads, Pipelines, and Hazardous Materials

House Committee on Transportation and Infrastructure

HEARING ON

"Federal, State and Local Roles in Rail Safety"

August 9, 2007

3:00 p.m.

Norwalk City Council Chambers

12700 Norwalk Boulevard

Norwalk, CA

Thank you, Chairwoman Brown, Ranking Member Shuster, and members of the Subcommittee for inviting me to participate in today's hearing on Federal, State, and Local Roles in Rail Safety. My name is Rick Richmond and I am the Chief Executive Officer of the Alameda Corridor-East Construction Authority (ACE). It is an honor to appear before this panel, which has been appropriately convened in the District of our own Congresswoman Grace Napolitano where rail safety issues are so critically important. I would also like to thank the Members of this Subcommittee -- as well Members of the full Committee -- for your strong support of the Alameda Corridor-East (ACE) Project over the years.

I would also like to take this opportunity to thank our San Gabriel Valley-area Congressional delegation for recognizing that improving rail safety, emission and congestion reduction and efficient goods movement in the San Gabriel Valley are essential and inextricably linked. They have long been supporters of the ACE-San Gabriel Valley Project, including Congresswoman Napolitano - a Member of this Subcommittee, Congresswoman Solis, Congressmen Dreier, Schiff and Miller-a member of your full Committee, and Senators Boxer and Feinstein.

I believe that the ACE Project can be considered a national model of how local, state and federal officials have worked together to improve rail safety, reduce congestion, air pollution, preserve local businesses, and, at the same time, support the flow of goods to the rest of the nation along a major rail freight corridor.

The ACE Construction Authority was created in 1999 by the San Gabriel Valley Council of Governments to facilitate the development of the ACE-San Gabriel Valley Project -- a plan aimed at mitigating the impact of freight traffic over 54 rail/highway crossings covering 70 miles of freight main lines through the San Gabriel Valley. I am proud to say that the ACE-San Gabriel Valley Project is one of the most comprehensive and successful rail/highway crossing safety programs in the Nation. This success is directly attributable to the strong financial and policy-related support the ACE Project has received from Federal, State, and local government since its inception.

In keeping with this hearing's stated objective, I would like to briefly discuss with you the major challenges that we are facing, what the ACE-San Gabriel Valley Project has accomplished in terms of rail safety and goods movement, and suggestions for future deliberation by the Subcommittee.

For those of you who are unfamiliar with the San Gabriel Valley region of Los Angeles County, the region includes 31 cities, about two million residents, 750,000 jobs and 66,000 employers. The ACE-San Gabriel Valley Project area is located immediately to the east of the Alameda Corridor and the I-710 freeway, which together carry the majority of the container traffic going to and from the Ports of Los Angeles and Long Beach. The ACE Project links the Ports of Los Angeles and Long Beach to the rest of the Nation and was expanded in SAFETEA-LU to cover 130 grade crossings and 282 miles of mainline freight and three adjacent counties (San Bernardino, Riverside and Orange).

US ports together generate 13 million jobs, contribute $743 billion to the GDP and supply $200 billion in federal, state and local taxes. Within our area, more than $256 billion in trade, or 40% of the nation's goods, made their way to or from the rest of the nation through LA and Long Beach ports in 2005. Economists have determined that 3.3 million jobs are created nationally (600,000 locally) by trade through LA and Long Beach ports.

Goods come and go through our ports on ships, the newest generation of which carries 5,000 containers. The preferred mode of landside transportation for these containers in our case is about evenly split between truck and rail as dictated by distance to their ultimate destination. Generally speaking, goods coming or going within about 500 miles are most efficiently moved by truck,

the rest rail. However, far more than 50% of the containers start their trip from the piers by truck since there simply aren't enough on or near-dock facilities to make up trains at the ports, and some containers go through trans-loading before leaving the metropolitan area in any event. So the goods movement system, even working at its optimum efficiency, is dependent on all components of the transportation system—roads, bridges, freeways, and rail.

The diversion of substantial container traffic onto trains is an effective part of the solution to our region's capacity and efficiency problems, but it is critically important that we concurrently address the impact of increased train traffic on areas beyond the Alameda Corridor where no advance preparation was made for the influx of train traffic. The ACE-San Gabriel Valley Project was established to ensure that this traffic reaches its ultimate destinations throughout the U.S., while minimizing the residual impact on safety, mobility and the environment in the San Gabriel Valley.

In this context, the ACE Construction Authority - now joined by the leading transportation agencies in San Bernardino, Riverside, and Orange Counties - is implementing an improvement plan covering 282 miles of freight mainline intersecting with 130 major arterials delivering goods to market locally. Jointly, we work together to reduce congestion, improve safety and air quality, and

balance the movement of goods to markets nationwide with local economic viability.

The San Gabriel Valley project area that I oversee has 54 at-grade crossings along 70 miles of mainline. We currently are experiencing as many as 80-90 trains a day (projected to increase to 160/day by 2020). Some at-grade crossings have up to 30 minute delays now, which will only get worse. That is why the local elected officials in our area adopted a $1.4 billion multi-faceted, constrained program to address the safety, pollution, and congestion problems created by rapid freight train growth. The ACE Project consists of three main elements:

- Safety improvements to 39 at-grade crossings has been completed. This work included: improved signage, striping, updated signal preemption, installation of active warning devices signals, median barriers to prevent gate drive-around, regrading and repair of vehicle crossings, pedestrian crosswalks and other measures designed to improve rail and traffic safety.
- Use of advanced technology to optimally route traffic around blocked crossings (trial application at five crossings is in acceptance testing);
- 21 grade separations (two completed, seven in construction, one funded and in property acquisition, and eleven need funding).

The ACE Construction Authority is very appreciative of the substantial funding that we have received in the last Federal transportation authorizations- - TEA-21 and SAFETEA-LU - as well as from annual Federal appropriations. To date, the Project has received over $229 million in Federal funding, which has firmly established the viability of our Project's mission, dovetailing with the tremendous support we have received from the State of California and our local Los Angeles County Metropolitan Transportation Authority.

Successful completion of the ACE Project is predicated on a continued federal partnership with the re-authorization of SAFETEA-LU. ACE is hopeful that, with this Subcommittee's leadership, Congress will consider a dedicated freight trust fund (firewalled) that would address funding for projects like ACE and other goods movement projects of National and Regional Significance in the forthcoming reauthorization of SAFETEA-LU. The US Chamber of Commerce, DOT and Coalition for America's Gateways and Trade Corridors have documented the national revenue benefits of goods movement. It is reasonable that a portion of those revenues be captured and used for essential goods movement infrastructure improvements. All potential funding mechanisms and funding sources should be considered based on benefit and should be predictable, dedicated and sustained. Potential financing options could include:

- a share of the growth in custom fees,

- a container fee,
- a Cargo Facility Charge (CFC), (i. e. authorities would be empowered to impose user fees for the purpose of funding cargo-related infrastructure similar to Passenger Facility Charge (PFC) program administered by the Federal Aviation Administration (FAA). Imposition of the fee is tied to the funding of specific projects and eliminated once a project's costs are paid.).

The ACE Construction Authority is a founding member of the Coalition for America's Gateways and Trade Corridors, whose goal is to work with Congress to generate support for enhancing our Nation's goods movement infrastructure. The Coalition is working with Congress and the Department of Transportation to develop a national freight system policy to accommodate and be competitive with the sharp increase in foreign trade. The Coalition is also working with other key stakeholders to identify potential financing options for the Committee's consideration as work continues on the SAFETEA-LU reauthorization.

Sustaining the movement of goods is obviously key to securing the nation's economic future and maintaining our competitiveness in world markets. ACE recommends that Congress and the Executive Branch give consideration to the establishment of a permanent, dedicated, and substantial source of Federal funding for projects like ours that are focused on implementing comprehensive solutions to goods movements solutions around the country and we will continue to work on the financing options noted above with the Trade Corridor Coalition and the Committee.

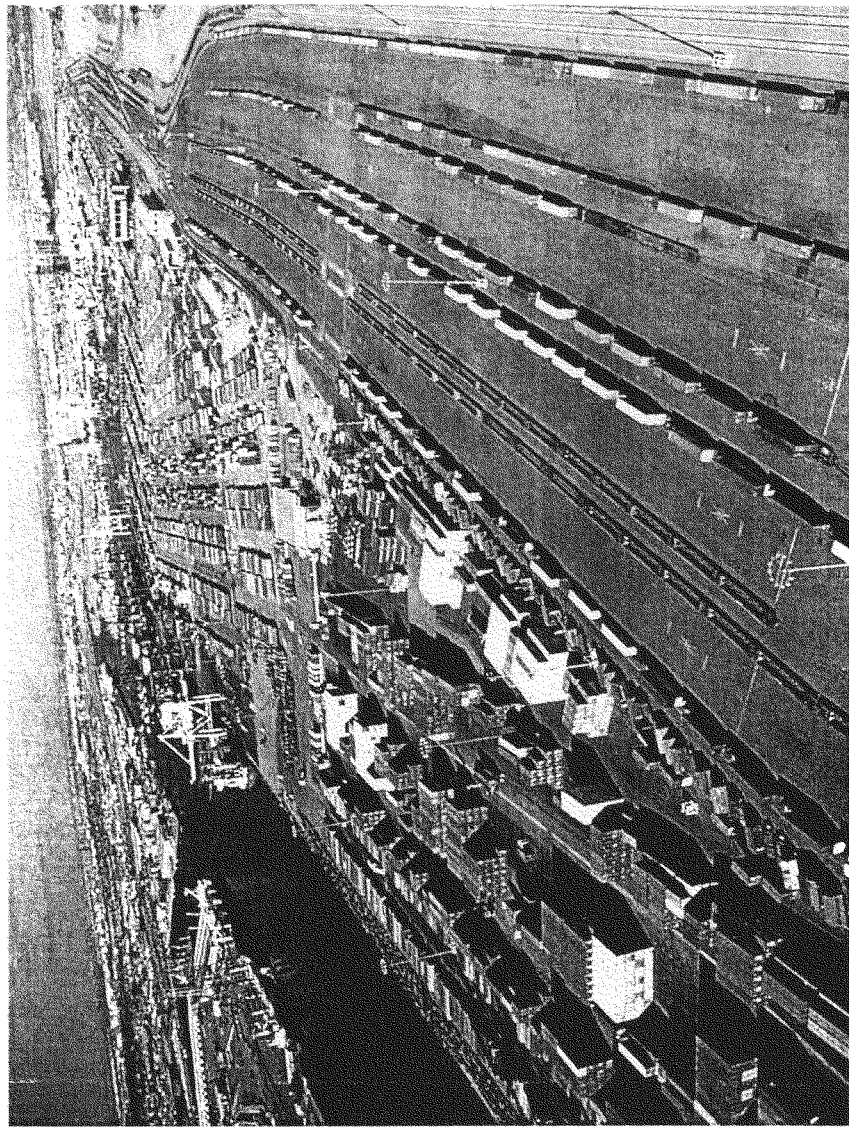
ACE's commitment to improving rail safety in our region simultaneously facilitates the more efficient movement of goods through our region. We look forward to working closely with the Committee on this very important issue as the process of reauthorizing SAFETEA-LU begins to unfold.

Thank you for giving me this opportunity to appear before you today to the ACE Project and suggestions for future deliberation by the Committee. ACE staff is always available to assist you in your efforts on this important effort.

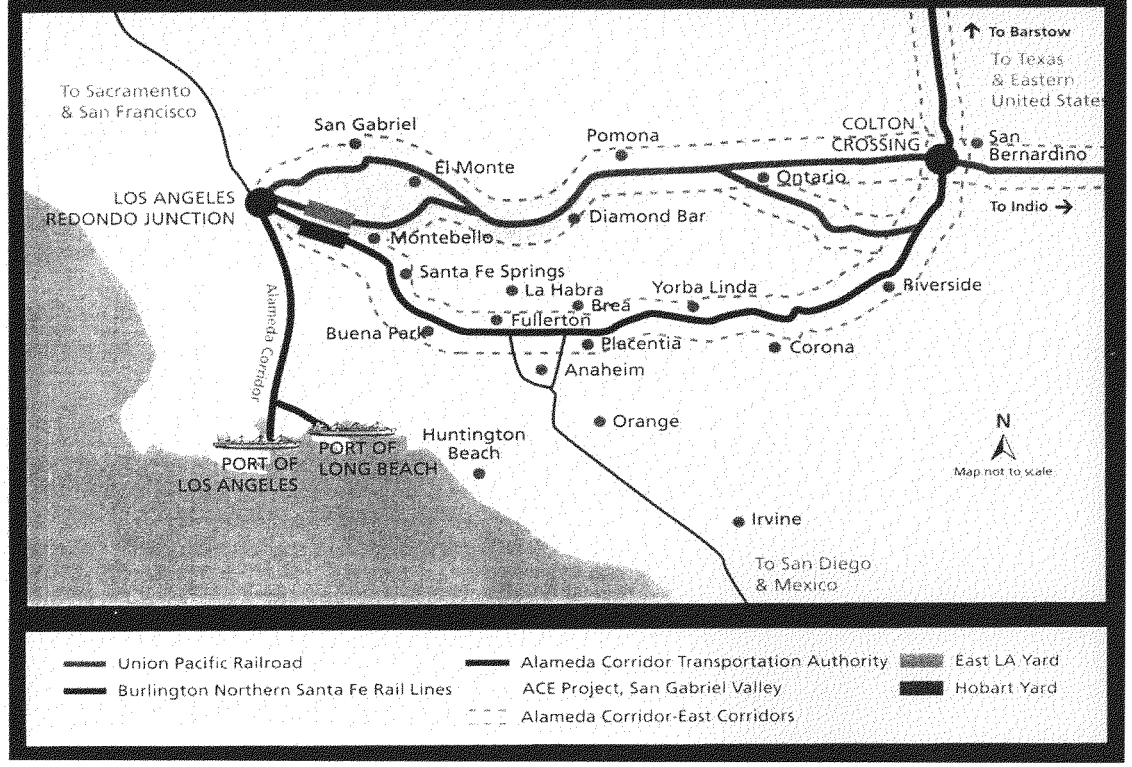
ACE Construction Authority

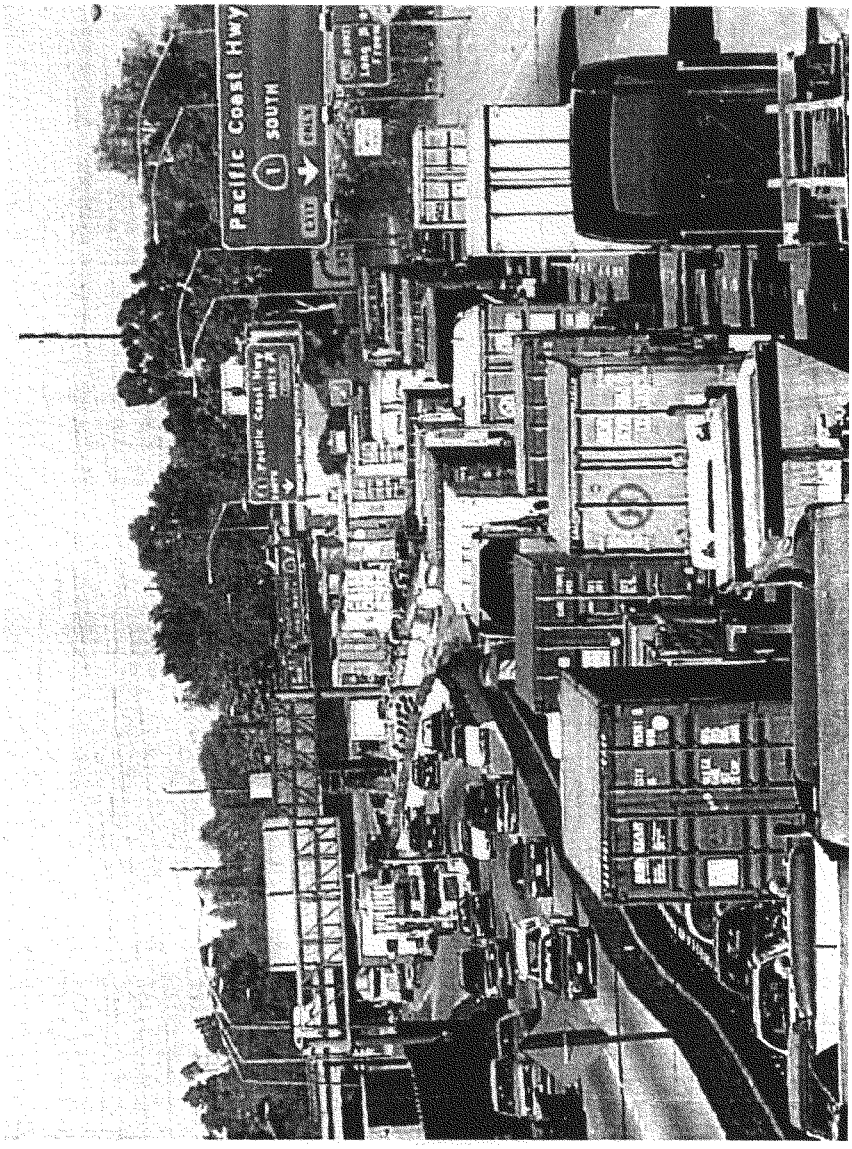
Railroads, Pipelines, and Hazardous Materials Subcommittee Hearing

August 9, 2007



Alameda Corridor-East Corridors




Pacific Coast Hwy
1
SOUTH
ONLY
Pacific Coast Hwy
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ONLY

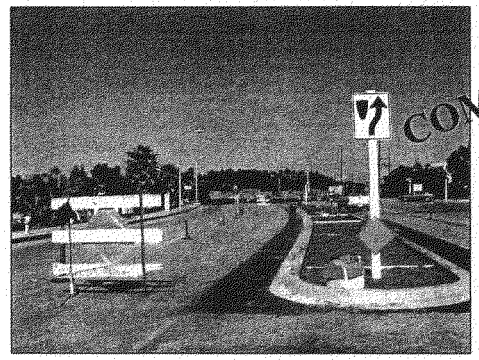
ACE TRADE CORRIDOR BENEFITS

- Reduces congestion - - 13,000 daily vehicle hours of delay at 130 crossings
- Improves air quality
- Eliminates horn blowing at 130 crossings
- Preserves 400,000 jobs
- Eliminates grade crossing accidents

SAN GABRIEL VALLEY ACE PROJECT

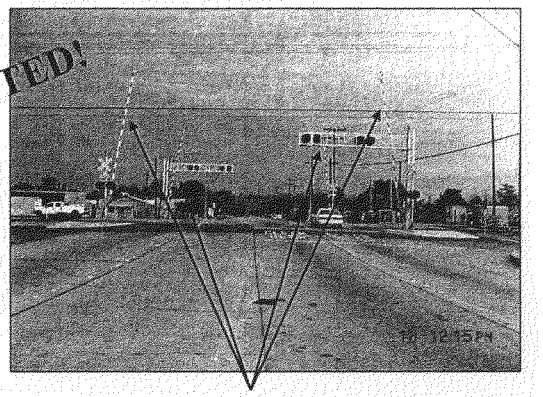
- Twenty-one grade separations, safety improvements at 39 crossings, pilot signal synchronization program
- 70 route miles
- Serves area of 2 million residents
- $1.4 billion project
- First half funded

JUMP START PROGRAM



New center medians prevent drive-arounds.

COMPLETED!



Quad gates prevent motorist drive-arounds

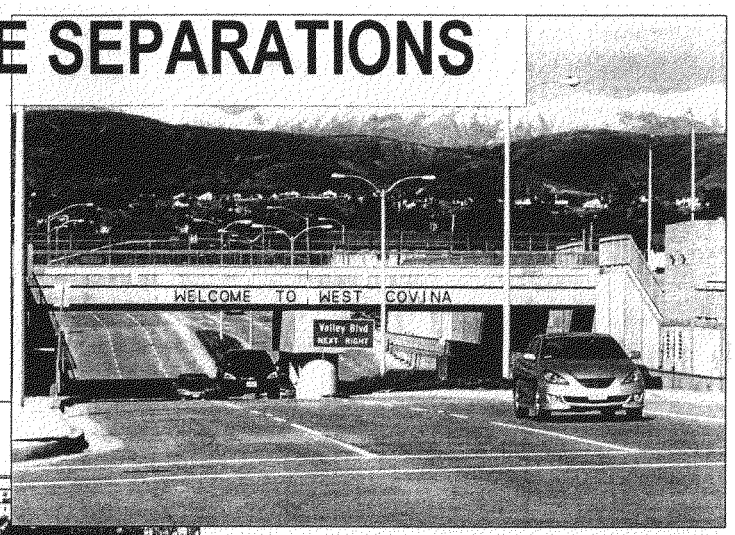
Re-aligned crossing improves motorist and pedestrian safety.

- Safety improvements completed at 39 crossings

GRADE SEPARATIONS

Nogales St./ Valley Blvd.

Cities of West Covina & Industry



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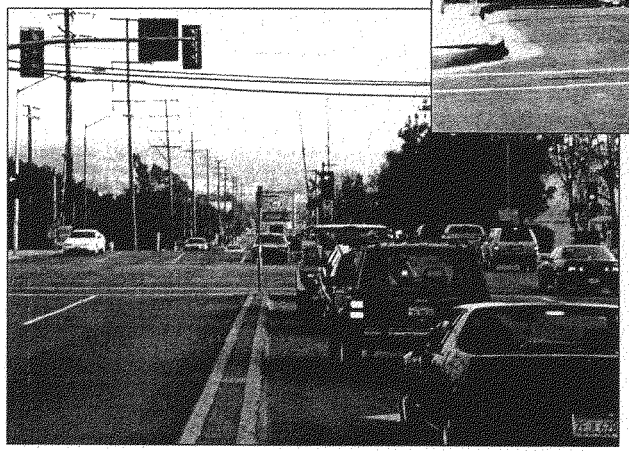
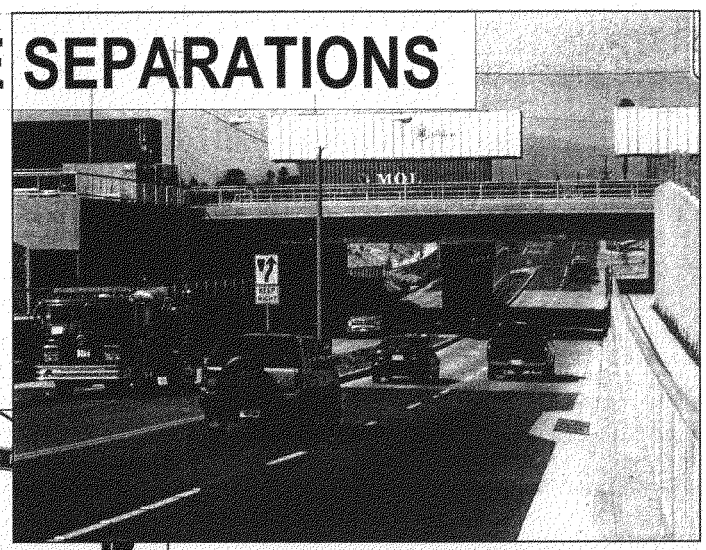


BEFORE

GRADE SEPARATIONS

Reservoir Street

City of Pomona



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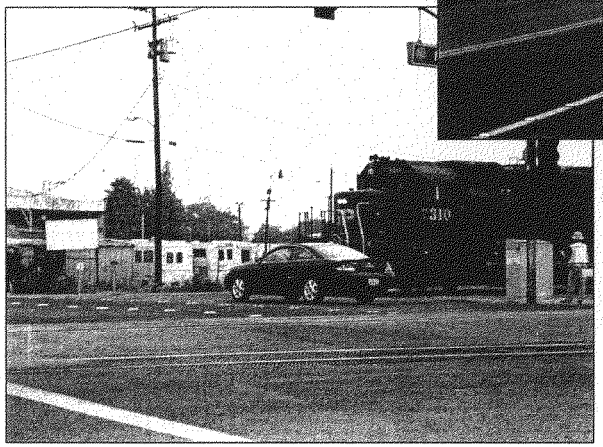

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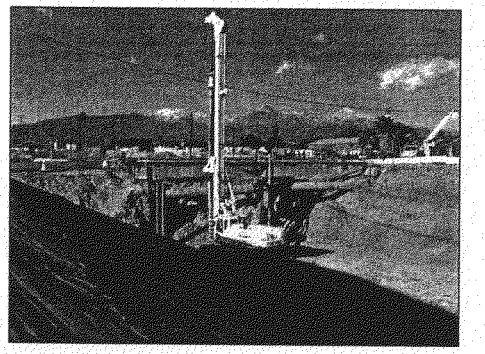
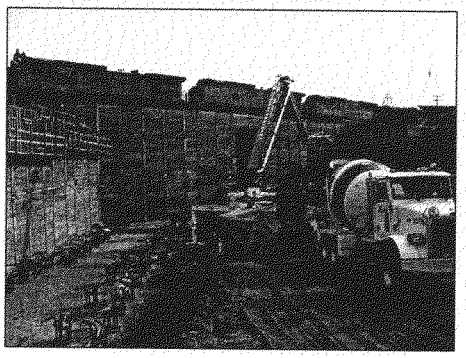
GRADE SEPARATIONS





UNDER CONSTRUCTION

- ✓ East End Ave. (Pomona) – 50% complete
- ✓ Ramona Blvd. (El Monte) – 75% complete
- ✓ Temple Ave. Train Diversion (Pomona) – 90% complete
- ✓ Brea Canyon Rd. (Industry/Diamond Bar) – 50% complete
- ✓ Sunset Ave. (Industry/ La Puente) – 20% complete
- ✓ Baldwin Ave. (El Monte) – right-of-way acquisition underway

NEXT STEPS

- Seek $918 M for completion of remaining grade separations
- Work with Congress to seek permanent 'dedicated' funding for goods movement intermodal projects
- Work with California legislators/business/other stakeholders for release of $2 billion goods movement funds and $250 million grade separation funds from Prop 1B approved in November 2006.

•Seek State enactment of container fee to support goods movement air quality, and infrastructure improvements

Written Testimony of Chris Roberts

Regional Vice President, South Operations

BNSF Railway Company

Before the House Committee on Transportation and Infrastructure's

Subcommittee on Railroads, Pipelines and Hazardous Materials

For a Hearing on "Federal, State, and Local Roles in Rail Safety"

Thursday, August 9, 2007
Norwalk, CA

Introduction

Chairwoman Brown, Congresswoman Napolitano, distinguished Members of the Subcommittee – thank you for the opportunity to appear here today to discuss the important issue of railroad safety. My name is Chris Roberts and I am Regional Vice President, South Operations for BNSF Railway Company. In this capacity, I have responsibility for all rail operations in California and the South Region which encompasses BNSF's transcontinental main line from California to Chicago and the route from Chicago to the Gulf of Mexico.

I have been in the railroad business for 32 years, starting as a switchman/brakeman in 1975 and moving through a series of operating positions including engine foreman, power distributor, trainmaster and terminal superintendent. I have witnessed first hand the importance of safe rail operations and the tremendous advances in rail safety over the past several decades. At BNSF, we strive to instill a "culture of safety" focused on risk-based analysis and collaborative, corrective action to prevent injuries and accidents caused by behavior as well as those caused by surrounding conditions.

Safety is our highest priority. Because safe operations are critical to ensuring the well being of BNSF employees and the general public, we promote an aggressive safety vision across all departments in our company. It's not only the right thing to do for your constituents and our employees, but it also pays dividends by reducing costs and increasing efficiency. I know you are aware that volumes on the railroad are increasing. As an operator, I can tell you that an outage for an accident, even a minor derailment, can

hurt system velocity and service to our customers. Thus, safety is everybody's business on our railroad.

You are probably familiar with BNSF – it operates one of the largest freight rail systems in North America with approximately 32,000 route miles of track in 28 states and two Canadian Provinces. What you may not know is that BNSF is the leading intermodal rail carrier. Intermodal freight transportation is now the majority of all the freight units that we carry. These are shipments that could go by truck but are shipped on our railroad. We serve all major ports on the West Coast and Gulf of Mexico, with key routes between Southern California and Chicago and the Pacific Northwest and Chicago. BNSF is also the largest grain-hauling railroad in the country and has major coal and industrial products franchises as well. BNSF currently employs more than 41,000 people.

Given BNSF's strong intermodal franchise, California is extremely important to us. We transport more than half the international shipments that go by rail out of the ports of Long Beach and Los Angeles and our domestic intermodal business in California, which is the shipment of goods that originate here to markets across the country, is growing much like our international business. We operate six major intermodal facilities in the state in addition to loading record shipments on dock at the ports. Last year we exceeded one million on-dock lifts for the first time ever. The volume of on-dock growth has more than tripled since 2002 and comes with significantly improved train productivity and maximization of the Alameda Corridor.

In addition to BNSF's on-dock operations, Hobart Yard in Los Angeles, the largest intermodal facility in the world, finished 2006 with a record breaking 1.4 million

lifts. You may be aware of our planned Southern California International Gateway near-dock facility, which is intended to handle increasing international volumes. SCIG will eliminate millions of truck miles annually on the I-710 and other freeways, reduce traffic congestion and optimize use of the Alameda Corridor by transferring cargo on rail closer to port. It will also operate with the newest, greenest rail yard technology in the country.

San Bernardino has been one of our fastest growing intermodal facilities; it handled over half a million domestic lifts in 2006. In addition, BNSF operates a number of freight car classification yards in California. BNSF lands three Midwest "Ethanol Express" trains a week at Watson Yard to serve nearby BP and Exxon refineries. This was the first unit train for ethanol in the country. BNSF brings feed stocks to the chemical industry located in the LA basin and building materials, plastics, paper and cardboard products and other industrial inputs from around the country to nearby La Mirada, Watson and Pico Rivera yards. Between these merchandise trains and intermodal, BNSF handled over two million car loadings in the state in 2006.

According to the Port of Los Angeles and Long Beach National Economic Impact Study done in March 2007, the San Pedro Bay ports handle more than 40 percent of the nation's total import traffic and 24 percent of its total exports. Since 1994, the growth in the national impact of trade for goods being transported through these ports has increased 246 percent, from $74 billion to $256 billion. State and local taxes generated throughout the nation from this trade activity grew from an estimated $6 billion in 1994 to more than $28 billion in 2005. The number of direct and indirect jobs associated with the trade activity generated by the San Pedro Bay ports increased by 200 percent, from 1.1 million jobs nationally in 1994 to 3.3 million jobs in 2005.

For BNSF's part, over the past five years we have made capital investments of $233 million in California. For 2007, we plan to invest an additional $95.8 million. This capital spending is in addition to the significant dollars we spend every year simply to maintain our system. We also employ more than 4,000 people in the state (representing a payroll of close to $250 million) and will likely hire many more in the coming years to handle California's freight demand.

BNSF and the entire rail industry have experienced a tremendous increase in freight transportation demand in recent years. Between 1996 and 2006, the annual number of units (containers, trailers, freight cars) moving across the BNSF network grew from 6.99 million to 10.65 million, a 52 percent increase in just over a decade. In fact, the seven Class I Railroads grew over one million units in 2006 alone, with BNSF handling more than half that growth. Many factors account for this increasing demand: increased coal production; growing domestic and international demand for U.S. agricultural goods; and highway transportation-related challenges including truck driver shortages, increased fuel costs and traffic congestion.

From a public policy perspective, the railroad is the best place for this freight to go. Freight rail is almost three times more fuel efficient than trucks per ton mile of freight moved, it emits less CO2 and nitrogen oxides and fewer particulates than trucks, it reduces highway congestion and is one of the safest ways to transport freight with lower employee injury rates than any other transportation mode.

Freight Railroads Have a Solid Safety Record

Since 1980, the rail industry has reduced accident rates by 70 percent and employee injury rates by 81 percent. Over that same time, the grade crossing collision rate has fallen 76 percent. This trend continued in 2006 with the nation's railroads experiencing one of their safest years in history. According to Federal Railroad Administration (FRA) data, railroads had 402 fewer train accidents in 2006 than 2005, a reduction of 12.4 percent. Last year was also the safest year on record in terms of employee injury and fatality numbers and rates, and human error-caused accidents also declined by 20.2 percent.

BNSF's safety statistics mirror the trend across the industry as our record in California indicates. In 2006, we had 207 FRA reportable accidents/incidents in the state, down from 290 in 2002. During this same time period, we experienced a 45 percent decrease in on-duty employee injuries. Importantly, these improvements occurred at a time when train miles increased on our California division from 13.8 million in 2002 to 15.7 million in 2006.[1]

Nationally, fatalities involving grade crossings and trespassers increased last year for the industry with ninety-seven percent of all 2006 rail-related fatalities falling into these two categories. However, BNSF's numbers in California actually improved for reportable grade crossing accidents/incidents between 2002 and 2006, down from 44 to 31. This can in part be attributed to our continuing efforts to promote highway-rail grade

[1] BNSF's system-wide rail accident numbers continue to improve in 2007, with accidents down seven percent through the first half of the year compared to the same time period in 2006. Our current ratio is 2.57 reportable rail accidents per million train miles, down six percent vs. 2.72 for the same period last year. Our combined reportable and non-reportable human factor accidents decreased by 11 percent through June 30 compared to 2006. Rail/highway grade crossing accidents on our rights-of-way are at an all-time low with a ratio of 1.67 per million train miles – this continues a five year trend ranking BNSF as best in class for crossing accidents among the Class I carriers.

crossing safety through a number of community education initiatives. These include Officer on the Train programs which afford local law enforcement the opportunity to ride our trains to better understand grade crossing safety laws for motorists and pedestrians. They are able to witness crossing behavior firsthand with traffic citations or warnings often issued as part of the OOT experience. In addition, BNSF sponsored more than 4,900 network-wide Operation Lifesaver classes on grade crossing safety in 2005. More than a quarter of those courses were presented at drivers' education classes with hundreds more held for truck and school bus drivers. We also work with communities to identify crossings that can be closed to vehicular and pedestrian traffic and have closed 304 highway-rail grade crossings in California since 2002.

The tremendous freight volume increases of recent years, along with anticipated future growth in demand, certainly add to the responsibility of safely operating a 32,000 mile freight rail network. However, we believe we have the necessary programs and processes in place to ensure we continue to run a sound railroad. Our safety plan is founded on a risk based approach, which means that in many cases our own practices exceed safety guidelines. Our safety plan is supported by investment in the newest detection and inspection technology for our rights of way, locomotives, cars and equipment, and the daily discipline of executing safe operating practices.

To begin, BNSF has a world class maintenance program which involves track inspections utilizing highly trained employees and the latest technology. All BNSF track is regularly inspected with most key corridors covered at least four times a week by our own track inspectors. The busiest main line routes are inspected daily.

Track measurement vehicles provide precise laser measurements of track geometry, including surface, cross level, elevation, alignment and gage. Over 80,000 miles of track are tested each year with particular focus paid to high tonnage main lines. BNSF employs hy-rail vehicles equipped with similar laser technology in confined areas such as yards, sidings and industry tracks. We also use rail flaw detection equipment to ultrasonically inspect the rail for internal defects with resulting measurements loaded into a central database. Prediction models utilizing this information cause our inspection programs to automatically adjust track maintenance schedules and test frequencies to prevent service failures.

In addition to ensuring the integrity of our track, BNSF has an extensive network of on-line detectors utilizing ten different technologies which measure the condition of each passing freight car. For example, we have 700 warm bearing detectors across our network along with truck performance detectors, wheel impact load detectors and acoustic bearing detectors. This technology has contributed significantly to a 32 percent decrease in mechanical-related derailments on our system between 2002 and 2006.

With respect to hazardous materials transportation, BNSF will continue to build upon its solid safety record by focusing on "reducing the probability" and "minimizing the consequences" of an accidental release. In addition to the track and equipment monitoring technology described above, BNSF employs other specific practices to reduce the risk of hazmat accidents including increased hazmat route inspections and speed restrictions. To minimize the consequences of a hazmat release, BNSF hazmat responders go through intensive training, including an initial 80-hour course with an additional 32 to 40 hours of annual refresher training. We also assist in local first

responder training and share as much information as is practicable with neighboring communities to facilitate release response efforts. This may include information on hazmat traffic flows through certain areas and access to a geographic database which maps critical information needed by local responders.

Finally, BNSF has also made significant investment in developing a positive train control-type technology called Electronic Train Management System (ETMS). ETMS is an overlay technology which works with existing train operating systems, rules and practices and connects an onboard locomotive computer to wayside monitoring devices and our operations dispatch center. Using location information provided via satellite (GPS), ETMS protects against the consequences of human error by enforcing compliance if the crew does not take appropriate action in response to train movement authorities, speed limits or work zones. ETMS also detects misaligned switches and broken rail failures, and warns the crew about those conditions. BNSF has tested the technology on its railroad and was the first railroad in the country to receive limited approval from the FRA to begin implementation on our system. It is expensive – $500 million or more to fully deploy on BNSF's network. However, over time and as long as revenues and returns are adequate to support an expanded capital budget, BNSF plans to implement this system across portions of the network.

Finally, in the area of human factors such as fatigue among train and engine employees, BNSF is proud of the innovative and progressive work/rest agreements that have been reached between management and labor. Today, more than 97 percent of our 17,000 train and engine employees are covered by some type of work/rest agreement and efforts continue to bring the remainder into the fold.

The Importance of National Uniformity in Railroad Safety Law

We believe that one of the reasons the rail industry has been able to improve its safety record while volumes are increasing is that the current regulatory framework requires railroads to comply with uniform safety regulations. When Congress deliberated on the Federal Railroad Safety Act in 1970, it found that the railroad industry

> "...has a truly interstate character calling for a uniform body of regulation and enforcement. . . .The integral operating parts of these companies cross many state lines. In addition to the obvious areas of rolling stock and employees, such elements as operating rules, signal systems, power supply systems, and communication systems of a single company normally cross numerous state lines. To subject a carrier to enforcement before a number of different state administrative and judicial systems in several areas of operation could well result in an undue burden on interstate commerce." (H.R. Report No. 91-1194 (1970))

Congress, therefore, gave the Secretary of Transportation authority over rail safety and expressly preempted state law wherever the Secretary has issued a regulation or order covering a particular subject matter. Since 1970, the U.S. Department of Transportation has issued numerous regulations and orders governing many aspects of rail safety – regulations that are periodically reviewed and updated by experienced professionals as circumstances and experience dictate (including advances in technology). Congress has also seen fit on occasion to change or add to the body of railroad safety law through enactment of safety legislation. In fact, a railroad safety bill is currently pending in the 110th Congress. This uniform approach to rail safety regulation has worked.

While federal rules enable the nation's freight railroads to maintain safe and efficient network operations, this should not be construed to mean that state and local

interests have no influence over rail operations. California provides a good example of this. The Public Utilities Commission's (CPUC) partnership with the FRA (authorized by federal law) empowers state inspectors to enforce compliance with federal track standards and equipment specifications as well as operating rules and other federal regulations. The CPUC currently has 30 certified inspectors to perform these tasks with a pending FY 2007-08 budget request for an additional six. In addition, even where no statutory provisions provide for state and local authority, BNSF is always willing to engage in dialogue with those representing the communities through which we operate.

BNSF has worked closely with the CPUC and other federal and state agencies on matters related to security. We have taken proactive steps to assess and mitigate potential risk around high threat urban areas and critical infrastructure and work closely with local law enforcement and others to ensure our security plans are coordinated and seamless. In fact, several PUC members and representatives of other state agencies recently visited our headquarters in Fort Worth, Texas for a detailed review of our security plans. BNSF's Resource Protection Solutions Team (railroad police) also originated the Citizens for Rail Security program, which promotes public involvement in rail security. In coming weeks, we will roll out a broad distribution of security-related DVDs in California so local citizens become stakeholders and learn how to take part in securing their communities against potential threats.

In sum, BNSF believes that the facts show that the fundamental framework of the federal rail safety program succeeds in providing an increasing level of safety, while allowing railroads, local communities and state PUCs to work together to address issues

of concern related to operations through communities we serve. This concludes my written testimony and I would be happy to answer any questions.

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS

HEARING ON

FEDERAL, STATE AND LOCAL ROLES IN RAIL SAFETY

AUGUST 9, 2007

TESTIMONY OF

TIMOTHY L. SMITH, CHAIRMAN
CALIFORNIA STATE LEGISLATIVE BOARD
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN,
A DIVISION OF THE RAIL CONFERENCE
OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Before the United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Hearing on Federal, State and Local Roles in Rail Safety
August 9, 2007

Testimony of
Timothy L. Smith, Chairman
California State Legislative Board
Brotherhood of Locomotive Engineers and Trainmen,
A Division of the Teamsters Rail Conference

Thank you and good afternoon, Madame Chairwoman, Mr. Ranking Member, and Members of the Subcommittee. My name is Tim Smith, and I am Chairman of the California State Legislative Board of the Brotherhood of Locomotive Engineers and Trainmen, which is a division of the Teamsters Rail Conference. I also am Vice Chairman of the BLET's National Association of State Legislative Board Chairmen. On behalf of BLET National President Hahs, who is unable to be here today, as well as more than 33,000 active BLET members and over 70,000 active members of the Teamsters Rail Conference, I want to thank you for the opportunity to provide you with our views on federal, state and local roles in rail safety.

I also would like to congratulate you on your choice of venue for this hearing. Norwalk is Congresswoman Grace Napolitano country, and the decision to hold the hearing in this great city is a testament to Representative Napolitano's tenacity on behalf of her constituents concerning matters over which the Subcommittee has jurisdiction. Thank you, Representative Napolitano, for all you do for the BLET and Rail Conference members — and their families — who live in this district.

The subject matter of today's hearing is of particular importance to me, personally. I am fortunate to serve as a BLET official in a state whose economy is so large that if California was an independent nation, it would have the 5th largest economy in the world. This means that issues of rail safety at the state and local level are handled in California on a scale significantly larger than the vast majority of states. Inevitably, this produces tensions and occasional disagreements. Nonetheless, I am convinced that California is a trail-blazer when it comes to rail safety.

My testimony today will focus on three aspects of what we believe are the appropriate federal, state and local roles in rail safety. First, I will address statutory and regulatory responsibilities. Then, I will turn to safety and security of hazardous materials shipments. Finally, I will close with some thoughts concerning pedestrian and highway grade crossings.

With respect to rail safety regulation at the federal, state, and local levels, I want to begin by stating that I am not anti-preemption. Public safety in California is enhanced because of the national uniformity of Federal Railroad Administration ("FRA") regulations. Californians need not worry, for example, that braking systems on trains arriving from other States may pose a safety hazard, because braking systems on all trains throughout the nation must be maintained to a level that assures safety.

Furthermore, my membership would face a nightmare if each State had full authority to regulate every aspect of rail safety within its borders. Although I am Chairman of the BLET's California State Legislative Board, a significant percentage of the men and women I represent operate trains beyond the State's borders. Compliance with numerous different State standards would be so complex as to reduce overall safety. Conversely, uniformity of rail safety regulation enhances safety here in California, as well as throughout the nation.

That being said, the manner in which preemption is currently being enforced is unacceptable. Section 20106 of Title 49 of the United States Code, which is the federal rail safety preemption provision, allows a State to adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety only when it: (1) is necessary to eliminate or reduce an essentially local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonably burden interstate commerce.

The final two conditions in the statute — incompatibility with federal laws and regulations, and burden on interstate commerce — are thresholds that are almost never exceeded by a proposed State or local law or regulation. However, federal judge after federal judge has preempted State and local attempts to regulate rail safety by repeatedly finding that the proposal is not "necessary to eliminate or reduce an essentially local safety hazard."

In other words, the federal judiciary is imposing its own judgment as to whether a local safety hazard exists, irrespective of the judgment of the State and/or local officials elected or appointed to make such determinations. Indeed, in

one case, a federal judge went so far as to use preemption to deny residents of Minot, North Dakota, a cause of action to recover damages against the Canadian Pacific Railway for its negligence in causing a derailment and toxic hazardous materials release. Perhaps even worse, some courts have ruled that a lack of federal regulation concerning a specific subject also preempts State and local action on that subject.

In response to this increasing judicial activism, the National Association of Regulatory Utility Commissions has adopted a resolution recommending that Congress eliminate the "local safety hazard" clause of Section 20106. We support this change because it restores an appropriate balance among the statutory and regulatory roles of federal, state, and local governments. Eliminating the clause would enable States and localities to regulate rail safety in the interests of their citizens, provided those regulations do not conflict with FRA regulations or impose an undue burden on interstate commerce.

Action to reform preemption is all the more important in our post-911 world. It is true that safety in the railroad industry has increased dramatically in recent years. The industry has set records for the number of train miles operated in each of the past two years. In 2006, the rate for human factor accidents on main track was the lowest recorded since FRA began keeping data in 1975. Similarly, last year's rate for human factor accidents on yard track was the lowest it has been since 1997.

Nonetheless, as tragedies in Minot, North Dakota, Macdona, Texas, and Graniteville, South Carolina, remind us, even a single accident can have catastrophic consequences. In fact, if the Graniteville accident and chlorine gas release would have occurred 12 hours earlier or later, when the nearby school was filled with children and local businesses were open, an already unacceptable death toll of nine could have been significantly — and horrifyingly — larger.

Moreover — and this is the prospect which haunts us all — such tragedies are no longer solely caused by accidents, as the terrorist attacks on rail and transit facilities in Spain and England in recent years have shown. The Chlorine Institute has reported that a 90-ton tank car, if targeted by an explosive device, could create a toxic cloud 40 miles long and 10 miles wide. Such a toxic plume, according to the U.S. Naval Research Lab, could kill 100,000 people in 30 minutes in a major metropolitan area.

To be frank, our efforts to have rail security addressed at the federal level were ignored or stonewalled by the Republican leadership that controlled Congress until this year. This made it all the more important that we go from state to state, and everywhere we went state officials were more than pleased to sit down with us to fill the gap created by the "do-nothing" leadership of the 108th and 109th Congresses.

Because of the leadership of this Subcommittee, the full Committee and its Chairman, Jim Oberstar, as well as the Homeland Security Committee, under the leadership of Chairman Bennie Thompson, the ball is now rolling on a federal legislative response concerning rail security. In addition, the Pipeline and Hazardous Materials Safety Administration and the Transportation Security Administration have proposed rules to enhance the safety and security of shipment of the most hazardous materials.

We support requiring risk and route analyses on a regular basis, and the development of primary and alternative routes for these materials, as a matter of transportation planning strategy. We further believe that Federal, State and local governments should be in possession of sufficient information concerning times and amounts of shipments so that they all may fulfill public safety obligations better. Coordination is an absolute necessity in times of crisis, as officials of Graniteville, South Carolina, learned when the nearest hazardous materials fire official available during its 2005 crisis was in Augusta, Georgia.

That having been said, we do not believe it is appropriate for States and localities to play a role in routing decisions. Current conditions in the railroad industry would make it difficult to re-route hazardous materials on a significant scale. In many parts of the country during the 19th Century, population growth followed railroad construction; therefore, rail lines, and particularly the older yards and terminals, tend to cluster around major urban areas.

Much of the infrastructure in the industry is at or near capacity, and there are both labor and equipment shortages in many areas. Furthermore, given the nature of train operations and FRA requirements, locomotive engineers and conductors cannot be shifted from route to route in the way that a truck can be diverted from one Interstate highway to another; qualification requirements are territory-specific and exacting. Simply put — there is not enough slack in the system to re-route hazardous materials on a large scale without the system experiencing significant delays and disruption.

The very nature of the system would make it difficult to re-route on such a scale. Due to the limited areas in which railroad tracks run — and depending upon what part of the country is involved — re-routing could add hundreds of miles to a trip. Re-routing on a large scale also could have the unintended consequence of making us less safe, because hazardous materials shipments would be gathered into a small number of designated corridors — creating a security problem by making each of those corridors a more attractive target for a terrorist attack.

Despite those reservations, we do believe there is a role for all three levels of government to play in supporting technologies that assist in tracking shipments, and developing procedures to minimize — to the greatest extent possible — the length of time dangerous shipments may sit unmonitored or in an unattended facility. States perform a vital function in coordinating emergency response to serious incidents, and localities need to tap into available resources to ensure that first responders are appropriately trained and prepared to deal with what is likely to face them, including drilling with train crews with whom they would interact in an emergency.

The final area I want to address today is crossing safety, which has a significant impact on our members. Combined, the state, local and federal governments play a huge role in grade crossing safety. As locomotive engineers and trainmen, grade crossing and pedestrian accidents take a heavy toll on our membership, both physically and emotionally. As you may know, last summer the FRA initiated a safety inquiry concerning the safety of private highway-rail grade crossings. The BLET believes that the complete absence of federal regulation over private railroad grade crossings in the United States endangers both the public and railroad workers.

While accidents and injuries at public highway-rail grade crossings have declined by between one-third and one-half in the past decade, accidents at private crossings have declined by only 10 percent, and the number of injuries in private crossing accidents has actually increased by one percent. This increase is an unfortunate side effect of both the government and the railroads failing to pay appropriate attention to this issue. We are fortunate, however, that to date no catastrophic accidents or incidents have occurred at such crossings. Nonetheless, the risk remains unacceptable. The risks of collision and of derailment mean that train crews and the public may be exposed to injury or death caused by derailing equipment or hazardous materials releases.

The boundaries between public and private crossings are often blurred. There are over 94,000 private highway-rail grade crossings in the United States, many of which are used by more than one individual. A private crossing should be defined as one used by a sole land owner or lessee. Once any other individuals routinely use the crossing, it should no longer be considered a private crossing, but should be deemed a public crossing. We believe it is imperative that any private crossing that serves an industry should be held to the same standards that apply to highway-rail grade crossing signal system requirements. Due to the types and sizes of trucks, and the materials that they carry, the severity of an accident at these crossings would be greater than an accident between an automobile and a train.

The BLET feels that, at a minimum, all crossings should be required to have active warning devices that comply with the Manual for Uniform Traffic Control Devices. Active warning devices can significantly improve the level of safety at these grade crossings. However, we would prefer that FRA prohibit the creation of new private crossings and work toward eliminating as many existing private crossings as possible and we have made that position known to the FRA. If the FRA determines that it wants to allow the creation of new private crossings, then the new private crossings should have active warning devices installed prior to use. If necessary, FRA should request enactment of legislation to address private crossings. Late last month FRA held a public meeting in New York State, where it unveiled a pair of action plans to address the subject of private crossings, and we testified to our preference for the plan that most closely resembled our original comments.

We also want to congratulate the Subcommittee, as well as the full Committee, in taking giant strides regarding grade crossing safety, generally, in H.R. 2095. Crossing safety will, finally, be guided by a comprehensive national strategy and we will support full appropriations to carry out the plan laid out in H.R. 2095. However, there is one more area that needs to be addressed, which is Critical Incident Stress Debriefing ("CISD") for crews involved in a grade crossing accident.

You cannot imagine the terror a train's crew experience when their train comes roaring around a curve at full speed and a truck, car, or pedestrian is just ahead. You can't blow the whistle long enough or loud enough, and your heart creeps up further in your throat with each passing yard as your closing distance races to zero. There are two absolute truisms when it comes to motor vehicles trying to beat trains at a grade crossing: number one is that the train is going to

take much longer to stop than the driver can even imagine, and number two, sadly, is that all ties go to the train.

The crew of a train bearing down on an obstruction on the track has almost no ability to influence the outcome. After the train finally bumps and screeches to a halt, and while the engineer is attempting to come to grips with what has just happened, the train's conductor will be told to go back to the wreckage and report back on the severity of the accident. The emotional toll that is exacted on our members — who are unable to stop these incidents — is often life-altering.

On some railroads, crews who are involved in such an accident — no matter how serious — are "expected" to ignore the trauma they have just suffered and continue operating the train, in some cases after waiting for hours for the coroner to remove the deceased. On other railroads, crews are given the "option" whether to continue or not, although we don't believe the crew is in a position at that moment to make a rational decision.

A handful of railroads have taken a very progressive approach to CISD, while a few are completely uninterested. The majority in the middle deal with the subject to varying degrees. We believe that requiring — or, for that matter, allowing — a crew who has been traumatized by being involved in a fatal grade crossing or pedestrian accident to continue operating their train presents a public safety hazard. A momentary lapse later on down the road caused by a recollection of the accident impact could produce catastrophic results. It is in everyone's interest that these crews receive timely and appropriate relief and treatment, and we are pushing hard for a CISD standard in every forum that is available to us.

As you know, such incidents often result in some form of post-traumatic stress disorder ("PTSD"). PTSD can be prevented or mitigated if individuals receive the counseling and help they need. I would like to take the opportunity today to advocate for the inclusion of CISD in any legislation that deals with highway-rail grade crossing safety. This program should be available to all railroad workers involved in traumatic incidents while on the job.

Legislation that addresses CISD should: (1) require the Secretary of Transportation to issue regulations requiring railroads to implement an approved critical incident stress debriefing plan that includes counseling, guidance, and appropriate support services, (2) provide that an operating crew involved in a critical incident be relieved of duties immediately, and (3) provide that an employee witnessing a critical incident be relieved of duties as soon as feasible,

and upon request — as outlined in S. 1889. The BLET has long advocated such programs and has been a priority for our Vice President and National Legislative Representative, John Tolman. Legislation addressing CISD was first introduced at the state level in the mid-1990s, and was enacted in Rhode Island. The BLET is pleased that the Senate addressed the issue in their rail safety legislation, because it benefits all BLET members and does not require us to go from State House to State House.

In our view, the State and local role in crossing safety is relatively simple, especially for a State like California. Full compliance and cooperation with the federal program will result in significant improvement in crossing safety. We also would ask States and localities to take two other steps.

One is to get tough — and I mean really tough — on enforcement against motor vehicle operators who violate laws governing motor vehicle operation over highway-railroad grade crossings. Commercially-licensed drivers are governed by a complex set of regulations with respect to grade crossings, which include the type of cargo being trucked and the sort of crossing involved. The first time a CDL driver violates one of these regulations, he or she loses their driving privilege for a minimum of 60 days; a second violation within a 3-year period results in a 120-day disqualification, and three or more violations within a 3-year period each produce a 1-year disqualification. We believe the frequency of motor vehicle drivers trying to "beat the train" would decline dramatically if similarly harsh punishment was handed out to drivers not covered by these CDL penalties.

The other step is to work even closer with educational projects such as Operation Lifesaver ("OL"). OL has a proven record of effectiveness, not only with respect to grade crossing safety, but also concerning trespasser issues. Every school kid and every driver should know what our members have to face when someone tries to beat a train or uses the railroad for a shortcut, and States and localities can help spread the word by working as closely as possible with OL.

Rail safety is a full-time effort, and there never are too few hands. When government at the federal, state, and local levels fulfill their respective roles, and coordinate their activities so that the whole is greater than the sum of the parts, safety in enhanced for all of our members and all of your constituents. Once again, congratulations for taking the show on the road, and thanks for the opportunity to present you with our views. I will be happy to take any questions you may have at the appropriate time.

TESTIMONY OF

David Spence

President, San Gabriel Council of Governments

Mayor, La Canada Flintridge

BEFORE THE

Subcommittee on Railroads, Pipelines, and Hazardous Materials

House Committee on Transportation and Infrastructure

HEARING ON

"Federal, State and Local Roles in Rail Safety"

August 9, 2007

3:00 p.m.

Norwalk City Council Chambers

12700 Norwalk Boulevard

Norwalk, CA

Thank you, Chairwoman Brown, Ranking Member Shuster, and members of the Subcommittee for the honor of asking me to participate in today's hearing on Federal, State, and Local Roles in Rail Safety. My name is David Spence and I am Mayor of La Canada Flintridge and President of the San Gabriel Council of Governments. Our organization, which represents more than 2 million Los Angeles County and California residents living in the 31 incorporated cities and unincorporated communities in the San Gabriel Valley is appreciative that you have conducted a field hearing in our area where railroad safety issues are so critically important. I would also like to thank the Members of this Subcommittee -- as well Members of the full Committee -- for your interest in this matter.

I would also like to take this opportunity to thank our San Gabriel Valley Congressional delegation for recognizing that improving rail safety, emission reduction, congestion reduction and goods movement in the San Gabriel Valley are essential-- including Congresswoman Grace Napolitano - a Member of this Subcommittee, Congresswoman Hilda Solis, Congressmen Dreier, Schiff and Miller (also am member of the Committee), and Senators Boxer and Feinstein.

International trade impacts and benefits may continue to be debated in Washington, but for our residents, cities and businesses here it is a fact of life. We both benefit and suffer from it. It has been the largest source of job growth in our regional economy--more than 600,000 jobs in Southern California. We,

like the rest of the nation, benefit from access to the world's markets. But our 2 million residents are also experiencing worsening congestion, safety, and air pollution — especially in our freight corridor area.

Over 11 years ago, the San Gabriel Valley Council of Governments (COG) conducted an extensive analysis of the impacts of the movement of goods through our area to the rest of the country on San Gabriel Valley cities, businesses and residents. After extensive collaboration with the cities on project criteria and phasing, a constrained action plan was approved by the cities to ameliorate the rail safety issues, congestion, air pollution and economic impacts to San Gabriel Valley businesses. The COG developed an action plan and created the ACE Construction Authority in 1999 to implement the approved mitigation measures. Rick Richmond, Chief Executive Officer will provide more detail on the status of the implementation plan and improving rail safety under separate testimony.

In keeping with this hearing's stated objective, I would like to briefly discuss with you the significant financing challenges that the COG officials have faced while the Committee considers local, state, and federal roles in improving rail safety. When the COG adopted the ACE Project and created the ACE Construction in 1999, there was only $15 million dedicated and available annually statewide to finance grade separations. Keep in mind that the cost of constructing a single grade separation can be upwards of $20 million. The COG

determined that implementing the ACE Project without dedicated funding sources at the state and federal level would delay the schedule for completing the project. The COG and ACE have actively worked with Congress and the State legislature since 1999 and has been grateful to receive over $560 million funds to complete the $1.4 billion ACE project. $229 million of those funds have been through the federal partnership--which we gratefully thank congress for recognizing the importance of completing the project. The COG believes that we have put the funds received to date to good use and the ACE Project is a national model project of agencies at the local, state and federal level working together.

The COG has also worked with State of California to recognize the urgent need for investment in rail safety and goods movement infrastructure. The state has recently completed a State Goods Movement Action Plan identifying four trade corridors in the state with a list of over 200 short term and medium term actions to improve the flow of goods. We believe the State Plan is the first in the nation to define the economic impacts of national flow of goods to the rest of the states as well as a state role for goods movement. In fact, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by California voters as Proposition 1B on November 7, 2006, includes a $2 billion goods movement program element of the total $19.7 billion bond intended to provide demonstrable congestion relief, enhanced mobility,

improved safety, and stronger connectivity. The bond also includes $250 million for grade separations.

Unfortunately, the need for goods movement infrastructure investment is so great that these funding commitments are a mere down payment to the need. As a result, our officials have actively supported for the last two years the passage of container fee legislation which could generate revenue to complete critically needed projects. We believe that these combined actions indicate the level of support to facilitate goods movement but at the same time mitigate impacts to residents who live within high trade corridor volume areas (such as our 2 million residents). Clearly, local agencies and the state do not have sufficient resources to facilitate national trade corridors without a stronger federal role and partnership. We recommend that the Committee consider a more defined federal role for goods movement and consider a dedicated firewalled freight trust fund for making those improvements when discussing the re-authorization of SAFETEA-LU.

We believe consideration of a dedicated freight funding source is in the nation's interest because of the significant national financial impacts. Today, more than $200 billion in trade, or 40% of the nation's goods, make their way to or from the rest of the nation through Los Angeles and Long Beach ports and the metropolitan area (experts predict that by 2020 more that $315 billion in trade will flow through this region to the rest of the country). Economists have

determined that two million jobs are created nationally (600,000 locally) by trade through these ports. Goods come and go through our ports on ships, the newest generation of which carries 5,000 containers. The containers not trucked to their final destination are moved to the rest of the US by two competing railroads, over routes carrying 80-100 trains per day through our communities with resulting safety issues. Experts predict daily trains through our San Gabriel communities to increase to 160 trains per day by 2020. Experts predict there will be a tripling of containers moved from the ports to rest of the nation, even assuming that our sister west coast ports double their capacity. The COG is aware that Congress and the Department of Transportation are developing a national freight system policy to address the sharp increase in foreign trade to a $10 trillion commodity flow. Sustaining the movement of goods is obviously key to securing the nation's economic future and maintaining our competitiveness in world markets.

In conclusion, the COG looks forward to working closely with the Committee on this very important issue as the process of reauthorizing SAFETEA-LU begins to unfold. We believe that ACE is a national model of how local, state and federal agencies can work together to improve rail safety, congestion, and emission reductions triggered by the ever-increasing surge of goods flowing into California through our ports and out to the rest of the country.
Thank you for giving me this opportunity to appear before you today to discuss this important matter!

Testimony
of

Dave Wickersham
Chief Engineer – Western Region
Union Pacific Railroad
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Roseville, California 95747
916-789-6141

August 9, 2007

Before the

U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Good afternoon, my name is Dave Wickersham, and I am the Chief Engineer of Union Pacific Railroad's Western Region. I am pleased to be here today, and I thank you for the opportunity to testify about federal, state, and local roles in rail safety.

The first thing I want to say is Union Pacific is fully committed to safety. The safety of our employees, our operations, and the communities through which we operate is our number one priority. This includes employing safe practices in the transportation of hazardous materials and implementation of a comprehensive program for homeland security. Union Pacific is also actively engaged in efforts to reduce emissions associated with our operations and to improve air quality and quality of life for communities located along our rail lines and near rail yards.

Union Pacific's safety record continues to improve. We have made, and continue to make, steady progress in all three primary safety categories. Since 2001, we have seen a 47% reduction in reportable employee injuries per 200,000 work-hours; a 29% reduction in crossing accidents per million train miles; and a 26% reduction in rail equipment reportables per million train miles. These gains are the result of a concerted focus on safety. We have improved the training and communication process with our employees; enhanced our mechanical and track inspections with technology and training;

and on grade crossings, we have implemented a new strategy that centers on high risk corridors and a partnership with local communities to eliminate redundant crossings and increased enforcement of traffic laws.

Union Pacific is also actively involved with safety regulators at the federal, state, and local levels. An example of this is found here in the Los Angeles Basin. In addition to the significant investments we have made in our rail network with the installation of premium rail, improved track components, concrete ties, new locomotives, and improved and expanded employee training, we interact on a daily basis with inspectors from the Federal Railroad Administration and the California Public Utilities Commission (CPUC) who are certified by the FRA under the State Participation Program. Under this program, CPUC inspectors are able to perform inspections for compliance with federal track standards, motive power and equipment requirements, rules for the safe transportation of hazardous materials, operating practices, signals, and other rail safety requirements. We have also devoted extra resources to address local concerns by increasing both the ultrasonic testing and the on-the-ground inspections of non-insulated joint bars on both the Los Angeles and Alhambra Subdivisions, between Los Angeles and Riverside. This additional testing is not required by FRA and was done in response to local concerns.

Working with the Departments of Homeland Security and Transportation, and in accordance with federal law, Union Pacific has also developed and implemented a hazardous material/critical infrastructure security program. Here in California we are cooperating with CPUC, the Office of Emergency Services (OES), and the Office of Homeland Security (OHS) to enable them to review sensitive security information relating to security assessments, identification of critical infrastructure, and infrastructure protection plans on a "need to know" basis. We are also involved with FRA, CPUC, OES, OHS, Caltrans, and local planners and emergency response agencies in a one year Special Railroad Safety Task force. This Task Force is to evaluate our ability to respond to threats from vandalism and terrorism, identify deficiencies in current land use planning affecting rail safety, and to make recommendations for changes to improve coordination among all levels of government, railroads, and local communities in effectuating emergency response. The final report to the State Legislature is due next March.

We are also actively engaged throughout Southern California in addressing air quality and public health concerns. In 1998, under the auspices of an EPA rulemaking, the railroads entered into an enforceable fleet average agreement with the Air Resources Board that will effect reductions of oxides of nitrogen (NOx) emissions from all locomotives in the South Coast on average by 67% and diesel particulate matter (PM) emissions by approximately 47%. PM emissions will be reduced further, by about 20%, as a result of another MOU with the Air Resources Board to provide for the early introduction of low sulfur diesel fuel, a new program for reducing idling emissions, and a program of health risk assessments at 9 designated UP yards, 6 of which are in the Basin. Communities adjacent to rail yards are informed of the results and invited to participate in evaluating mitigation strategies. In addition, Union Pacific is introducing over 70 ultra-low emissions switch locomotives (ULELs) into the LA Basin. These units cut emissions by 80% compared to the units they replace. All together, these ULEL's reduce NOx emissions by an estimated 1400 tons per year - which is equivalent to about 10% of all rail emissions in the basin.

Uniformity of regulatory requirements for railroad safety is both necessary and critical to avoid a patchwork of different state and local programs that will disrupt rail movement of interstate commerce. By far, the safest railroad is one that operates with a consistent and integrated set of safety rules, practices, employee training, and efficiency testing. Our trains and employees cross state lines on a daily basis and subjecting them to different rules would create a confusing, and unworkable operating environment. Federal safety rules take into account the broad range of variability in railroading and provide for these contingencies. The public benefits of rail taking traffic off the highways are particularly important in Southern California. A single doublestack train can move the equivalent of up to 280 trucks. Trains are not only safer, but are also 2-4 times more fuel efficient and 2-3 times cleaner than trucks. However, railroads can not meet the increasing demands for goods movement if they are hampered by inconsistent regulations from different levels of government or across state lines or local municipalities or air districts.

We are currently making very substantial investments in our routes serving Southern California and within the Basin to increase capacity which in turn will enhance

our efficiency, improve safety and lessen some of the adverse impacts of congested rail lines on local communities. Unless we can continue to harmonize state and local interests with the needs of our interstate rail system, we will not be able to meet the increasing demands for goods movement in this area or elsewhere.

This concludes my testimony. Thank you again for giving us the opportunity to testify today, and I would be happy to answer any questions you may have.

UNION PACIFIC RAILROAD COMPANY
ENGINEERING DEPARTMENT
WESTERN REGION

D. T. WICKERSHAM
Chief Engineer – West

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August 30, 2007

The Honorable Corrine Brown
Chairwoman
Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
Washington, DC 20515

Dear Chairwoman Brown:

Thank you for the opportunity to appear before your Subcommittee on August 9, 2007 as well as the opportunity to provide additional information to respond to follow-up questions. Attached are our answers to the questions you sent me via your letter of August 23, 2007.

Sincerely,

Dave Wickersham
Chief Engineer – Western Region
Union Pacific Railroad
10031 Foothills Blvd. Suite 400
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What actions are rail companies in Los Angeles taking to curb diesel emissions?

Union Pacific has multiple initiatives underway. The more significant ones include the following:

1. Union Pacific is aggressively implementing a program to ensure compliance with the 1998 memorandum of understanding with the California Air Resources Board (CARB) to achieve a Tier 2 fleet average emissions level by 2010. This will result in a 67% reduction in oxides of nitrogen NOx emissions and a 47% reduction in diesel particulate matter (PM) emissions from all locomotives operating in the Los Angeles Basin.

2. Union Pacific is beginning the third year of implementation of a 2005 memorandum of understanding with CARB to perform a variety of actions that will reduce particulate matter emissions by an additional estimated 20%.

3. Union Pacific is working to develop new switch engine technologies to reduce emissions in yard locomotives. In addition, Union Pacific is introducing over 70 ultra low emitting locomotives for operations in the LA Basin. These units reduce emissions by about 80% compared to their predecessors. Altogether, these ultra low emitting locomotives reduce NOx emissions by an estimated 1400 tons per year – which is equivalent to about 10% of all rail emissions in the Basin.

4. Union Pacific has developed a plan to modernize our near dock container facility (ICTF) that would increase capacity from 700,000 lifts per year to 1,500,000 while at the same time reducing emissions by more than 75%. We are currently focused on obtaining the required approvals and permits for this important project.

5. Union Pacific is working with CARB to develop three new health risk assessments at our facilities at LATC, Commerce, and Mira Loma. These assessments will utilize detailed emissions inventory data and will accurately depict the significant reductions of emissions that will occur in the coming ten plus years. In addition, these assessments will help to identify potential areas where we can achieve additional reductions in emissions.

6. Union Pacific is dispensing ultra low sulfur diesel fuel into all locomotives fueled in the Los Angeles area and California as a whole. More than 99% of all the fuel used by Union Pacific is low sulfur where federal regulations do not require use of low sulfur fuel on a nationwide basis until 2012.

7. Union Pacific will continue to acquire the cleanest locomotives manufactured. Our fleet of locomotives is the youngest and "greenest" of any in North America, with nearly 50% meeting Tier 0, 1, or 2 standards.

Recent studies point to a link between increased cases of cancer and other illnesses i.e., asthma, etc. in neighborhoods in close proximity to rail yards. Is there a universal policy by rail companies governing how long locomotives can idle in rail yards?

Yes, Union Pacific has a policy that governs how long locomotives can idle in rail yards. This policy is embodied by an operating rule that has existed for decades, and continues to be updated annually. The policy applies to all areas of operations across the Union Pacific system – not just rail yards.

Both Union Pacific policy and the 1998 California memorandum of understanding require locomotives engaged in nonessential idling to be manually shutdown to prevent idling in excess of 60 consecutive minutes. Locomotives fitted with automatic idle control devices will be shutdown after 15 minutes. Today, 3100 locomotives in the Union Pacific fleet (about 40%) have idle control devices. In California, over 80% of the intrastate locomotives currently have these devices, and all remaining intrastate locomotives will have idle control devices installed by mid 2008.

In addition, training programs are required to inform and educate train crews and other railroad operational employees about the idling reduction program. To date, nearly 4,000 of our employees in California have been trained on the idling reduction policy since mid-2005. Finally, we continue to provide a community reporting process to report idling locomotives, and we aggressively track every idling locomotive complaint to ensure nonessential idling is eliminated, and to ensure such incidents do not reoccur.

An example of the success of the railroads' efforts to eliminate nonessential idling is summarized in the July 18, 2007, CARB staff report titled "Update on the Implementation of the 2005 CARB/Railroad Statewide Agreement". Inspection of over 960 individual locomotives at 31 Union Pacific and BNSF rail yards in the spring of 2007 by the CARB Enforcement Division indicated that over 97% complied with idling limitations. The 31 yard visits in calendar year 2006 resulted in observation of 1,320 locomotives and a 98% compliance rate.

UNION PACIFIC RAILROAD COMPANY
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September 18, 2007

The Honorable Corrine Brown
Chairwoman
Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
Washington, DC 20515

Dear Chairwoman Brown:

Thank you for the opportunity to appear before your Subcommittee on August 9, 2007 as well as the opportunity to provide additional information to respond to follow-up questions. Attached are our answers to the questions you sent me via your letter of August 23, 2007.

Sincerely,

D.T. Wickersham

Dave Wickersham
Chief Engineer – Western Region
Union Pacific Railroad
10031 Foothills Blvd. Suite 400
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UP has recently spent $60 million on infrastructure improvements in this area. Can you explain what infrastructure improvements UP has made and how this will improve safety along the railroad?

1. During 2006 and 2007, Union Pacific replaced 82 miles of wood tie track with concrete tie track in this area. These projects replaced the existing wood ties and rail with new concrete ties, new continuously welded rail and new ballast.

2. Safety is improved as a result of the materials used in this project. Concrete ties are stronger than wood ties and the quality of rail in the manufacturing process continues to improve year over year.

Many cities have expressed concerns about getting access to your right of way in order to clean up graffiti. What are your current policies for allowing city workers to access your right of way to clean up graffiti?

1. Union Pacific is pleased to work with cities and other local municipalities to facilitate local efforts to address public nuisances and public safety concerns. This includes granting cities a right of entry to enter our right of way to allow city workers to address graffiti issues in areas away from live tracks.

2. Any individuals working in close proximity to our tracks must be protected by qualified flag persons who are in direct contact with the dispatcher and can provide timely warnings of approaching trains. Union Pacific would be willing to provide qualified flag persons to ensure the safety of city workers, where appropriate.

3. Arrangements for rights of entry and flag protection must be made in advance.

Do you have concerns with the District Attorneys office not aggressively pursuing trespassing cases along your right of way?

1. Union Pacific has sent letters to law enforcement officers throughout the state allowing them to come onto our railroad right of way for the purpose of enforcing criminal trespass statutes or ordinance and the towing of illegally parked vehicles. In Southern California and elsewhere in the state, the cooperation between Union Pacific and local law enforcement and the various district attorneys has improved over the years.

2. Due to the number of courts and District Attorneys that Union Pacific has to deal with, there are still those who do not pursue trespass related cases as aggressively as we would like. Union Pacific continually tries to educate them on the dangers that trespassing poses, not only to the individual, but also to the railroad and the community by various acts of vandalism.

3. Due to the volume of crime in some of the communities, trespass related offenses are not given the level of priority that we would always like.

Union Pacific has plans to upgrade their near dock loading facility. What is the status of these plans? Will this new facility reduce pollution and congestion? What do the local communities think of your renovation plans?

1. Union Pacific currently operates a near dock facility called the Intermodal Container Transfer Facility (ICTF) located less than five miles from the San Pedro Bay Port Complex. ICTF was constructed in the 1980's through a Joint Powers Authority (JPA) made up of both the Ports of Los Angeles and Long Beach. ICTF is reaching its maximum lift capacity and it is imperative the capacity of this facility be expanded in some form in the near future. There is a limit to how much capacity can be realized at the on-dock loading facilities of the San Pedro Bay ports. Such on-dock loadings have increased significantly in recent years, but when both on-dock and near-dock capacity is consumed, goods will have to move up the congested 710 freeway to an off-dock rail facility instead of moving by train up the Alameda Corridor. A more extreme scenario is also possible. Goods presently going to Los Angeles could be diverted to other ports in the US stalling the economic engine of international trade that is so important to the economy of the LA Basin.

2. Union Pacific has submitted a plan to the governing JPA to modernize ICTF. This modernization plan will "grow" the facility by doubling capacity but at the same time make the facility "greener" by decreasing the emissions of the facility by 75%. In addition to growing the facility in such a green way the proposal will enhance traffic flow in and out of the facility thereby having a beneficial impact to the motoring public in the area. Additionally, the modernization plan will decrease noise coming from the facility, decrease the footprint of the facility, and decrease the impact lighting has on the adjacent community.

3. As Union Pacific progresses the proposal to modernize the ICTF through the process with the JPA we will be working closely with the impacted community. UP believes the private investment we are willing to make to modernize ICTF will be a great benefit to the nation and the region but will also have benefits to the local community, thus creating a win-win scenario for all those involved.

How does your railroad company interact with local law enforcement and fire departments to teach them about grade crossing safety laws and hazardous materials? In eastern Los Angeles County, we have many police and fire departments. Some cities contract to the county for these first responder services and some cities have their own first responders. Do you coordinate with and train all of these law enforcement and fire departments?

1. Each year, Union Pacific trains approximately 3,000 law enforcement officers in how to investigate grade crossing collisions. This course gives officers a good understanding of the grade crossing laws in the state. During 2007, we have trained over 500 officers in the Southern California area. In conjunction with this training, we also conduct joint operations with local law enforcement, targeting problem locations along our route. These Crossing Accident Reduction Enforcement (CARE) operations have resulted in over 800 drivers being cited for various crossing violations thus far in 2007. The intent of these operations is to keep the motoring public safe by impacting driver behavior and reducing crossing accidents.

2. Union Pacific provides and will continue to provide Hazardous Materials training to any Fire Department, full time or volunteer, upon request in communities through which we operate.

(1) When a derailment occurs, how does your company find out about it and how do you react? (2) Is there technology on the trains to notify a central office of a derailment? (3) How do safety inspectors interact with first responders to assess and react to derailments?

(1) In most cases, the first report of a derailment comes from our own employees. Our employees are trained to immediately report incidents to their supervisor – a manager, yardmaster, or a train dispatcher. That supervisor knows to call our Response Management Communications Center (RMCC) toll-free number. (1-888-UPRR-COP) The RMCC specialists have the necessary tools and training to quickly make all necessary notifications to emergency responders as well as to the appropriate state and federal agencies. Some reports come in from citizens or local law enforcement. Our toll-free RMCC number is widely distributed, and local emergency responder dispatch centers are familiar with how to use it to contact us.

(2) Yes, there is technology on board trains to enable the train crews to notify a central office of a derailment. Our locomotives are equipped with radio equipment that allows immediate contact with the train dispatcher to report incidents. Some systems have a dispatcher emergency call button; some have a keypad that will alert the dispatcher when 911 is dialed.

(3) Union Pacific managers respond in person to all derailments of any significance. The types of managers that respond include transportation, mechanical, engineering, haz-mat and environmental. Among the duties of any employee is to cooperate with local emergency responders and to help facilitate communications.

In your testimony, you mention having 6 rail yards in this basin? Where are they? What are you dong to reduce emissions at these rail yards?

1. Union Pacific's 6 major rail yards in the LA Basin are at West Colton, City of Industry, Los Angeles Transportation Center, Commerce, Dolores and our International Container Transfer Facility.

2. Union Pacific is continually assessing all phases of its operations in order to optimize efficiencies and minimize fuel consumption, thus ensuring that overall emissions from rail remain significantly lower than any other overland mode of freight transport. A key aspect in the optimization process is assigning the best type of locomotive for each train type to attain the desired horsepower per trailing ton.

3. Union Pacific has the "youngest" and the cleanest/lowest emitting locomotive fleet in North America. This is due to Union Pacific's aggressive acquisition and rebuild of line haul locomotives and acquisition of new switcher locomotives. Since 2000, Union Pacific has annually acquired on average 340 new line haul locomotives and rebuilt/upgraded another 240 locomotives.

4. Union Pacific continues to extensively utilize idle control devices for automatic locomotive shutdown. All new locomotives have these devices installed at the factory and older units are retrofitted with after market technology. By mid 2008, all intrastate locomotives in California will have idle control devices.

5. Union Pacific is working to develop new switch engine technologies to reduce emissions in yard locomotives. In addition, Union Pacific is introducing over 70 ultra low emitting locomotives for operations in the LA Basin. These units reduce emissions by about 80% compared to their predecessors. Altogether, these ultra low emitting locomotives reduce NOx emissions by an estimated 1400 tons per year – which is equivalent to about 10% of all rail emissions in the Basin.

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