

ORIGINAL

NEW APPLICATION



0000129745

RECEIVED

1 FENNEMORE CRAIG
A Professional Corporation
2 Patrick J. Black (No. 017141)
Mark R. Bolton (No. 026204)
3 3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
4 Telephone (602) 916-5000

2011 SEP 21 P 1:24

AZ CORP COMMISSION
DOCKET CONTROL
Arizona Corporation Commission

DOCKETED

SEP 21 2011

5 Attorneys for BNSF Railway Company

DOCKETED BY *mm*

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

RR-02635B-11-0355

9 IN THE MATTER OF THE APPLICATION
10 OF THE BNSF RAILWAY COMPANY
FOR A WAIVER FROM A.A.C. R14-5-
11 104(C)(6)

DOCKET NO. RR-02635B-

**REQUEST FOR WAIVER FROM
A.A.C. R14-5-104(c)(6)(f)**

13 **BACKGROUND**

14 Pursuant to A.A.C. R14-5-104(C)(13), BNSF Railway Company ("BNSF") hereby
15 submits this Request for Waiver in the above-captioned matter. In support of this
16 Application, BNSF states the following:

17 1. On June 24, 2011, a Grade Crossing Maintenance Repair letter was sent by
18 Mr. Chris Watson (Railroad Safety Section) to BNSF listing certain at-grade crossings in
19 need of surface repair. A copy of the letter is attached hereto as Exhibit 1. The letter
20 directs BNSF to make temporary repairs to these at-grade crossings, with permanent
21 repairs due within ninety (90) days as set forth in A.A.C. R14-5-104(C)(6)(f).

22 2. On July 18, 2011, BNSF responded to Mr. Watson's letter providing an
23 update of the repairs that had been completed thus far, with an explanation concerning
24 BNSF's plans to fully rehabilitate the crossing at Enterprise Road in 2012. A copy of the
25 letter is attached hereto as Exhibit 2. The letter also requested a meeting with Railroad
26 Safety staff to discuss and resolve any minor disputes over the need for surface repairs at

1 some of the crossings identified by Staff.

2 3. On August 3, 2011, a letter was sent in response to the July 18, 2011 BNSF
3 letter regarding the status of repairs for the at-grade crossings identified in the June 24,
4 2011 letter. A copy of the letter is attached hereto as Exhibit 3. Staff indicated it was
5 amenable to meeting with BNSF to discuss this issues being addressed.

6 4. On August 24, 2011, a conference call was held between representatives of
7 BNSF and Staff to discuss the status of repairs for the at-grade crossings identified in Mr.
8 Watson's June 24, 2011 letter. Although some of the issues were resolved at that meeting,
9 there exist outstanding issues concerning surface repairs for Enterprise Road and Fanning
10 Boulevard.

11 DISCUSSION

12 BNSF is requesting a waiver from the requirements of A.A.C. R14-2-104(C)(6)(f)
13 for temporary repairs at the Enterprise Road public crossing in Flagstaff, Arizona. BNSF
14 is also seeking a waiver from having to complete permanent at-grade surface repairs
15 (within 90 days of any temporary repairs being made) at the Fanning Boulevard crossing,
16 also located in Flagstaff, Arizona. In support of its request, BNSF provides the following
17 information:

18 BNSF has not observed any significant deterioration at the Enterprise Road
19 crossing over the past 12 months to warrant the need for temporary surface repairs.
20 Furthermore, BNSF has not received any vehicle accident or damage reports to suggest
21 there is a safety hazard at this point in time. By contrast, BNSF has made the temporary
22 repairs requested by Commission staff at the Fanning Boulevard crossing. However, both
23 crossings have been included in BNSF's 2012 budget for permanent repairs and upgrades
24 that will incorporate newer safety standards. For instance, BNSF will be using 11' ties
25 and 18' outside crossing planks. These improvements will last much longer and create
26 less wear and tear on the roadway leading to and from the crossings. Requiring BNSF to

1 make permanent repairs prior to the end of 2011 will deny the company's ability (by
2 limiting funds) to implement these new standards at the two crossings. Additionally,
3 BNSF believes that by coordinating the installation and construction of improvements, it
4 will allow the company and City of Flagstaff to better coordinate road closures and
5 detours; the crossings are heavily used by vehicles and pedestrians.

6 For the reasons set forth herein, BNSF respectfully requests that the Commission
7 grant its request for a waiver from A.A.C. R14-2-104(C)(6)(f) only as it relates to these
8 two crossings at this time.

9 RESPECTFULLY SUBMITTED this 21st day of September, 2011.

10

FENNEMORE CRAIG, P.C.

11

By: 

12

Patrick J. Black
Attorneys for BNSF Railway Company

13

14 **ORIGINAL** and 13 copies filed
this 21st day of September, 2011 with:

15

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

16

17

18 **COPY** hand-delivered
this 21st day of , 2011 to:

19

Charles Hains
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

20

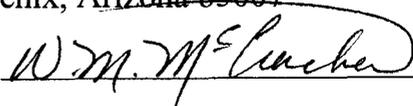
21

22 Brian Lehman, Chief
Railroad Safety Section
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

23

24

25

By: 

26

2493262.1

EXHIBIT 1

COMMISSIONERS
GARY PIERCE - Chairman
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS



ERNEST G. JOHNSON
Executive Director

ARIZONA CORPORATION COMMISSION

RECEIVED P. BLACK

JUN 28 2011

ACTION _____

June 24, 2011

Mr. Matt Kellar
Division Engineer
Burlington Northern Santa Fe
101 East Route 66
Flagstaff AZ 86001

Subject: Grade Crossing Maintenance Notification

Dear Mr. Kellar:

During the course of our routine railroad safety inspections, we have found that the public at-grade crossing(s) listed below are in need of surface repair:

<u>AAR/DOT</u>	<u>RR MP</u>	<u>Street/Road</u>	<u>Location</u>
025-133-N	344.3	Beaver Street	Flagstaff
025-132-G	344.2	San Francisco St.	Flagstaff
025-131-A	342.93	Enterprise Road	Flagstaff
025-099-J	341.2	Steves Blvd	Flagstaff
025-129-Y	340.5	Fanning Dr.	Flagstaff
025-154-G	344	Cottage Ave.	Flagstaff

Corporation Commission Regulation R14-5-104, section C, paragraph 6(f) requires the railroad to make temporary repairs within five (5) working days of the date that the railroad is notified of the defect by the Commission. Permanent repairs shall be completed within ninety (90) days from the date of notification. Paragraph 11 of the same regulation also requires the railroad to notify the Commission, in writing, within 10 days of both the commencement and completion of the project.

We are requesting the Burlington Northern Santa Fe Railway comply with this regulation to avoid having to call for a Railroad Safety hearing.

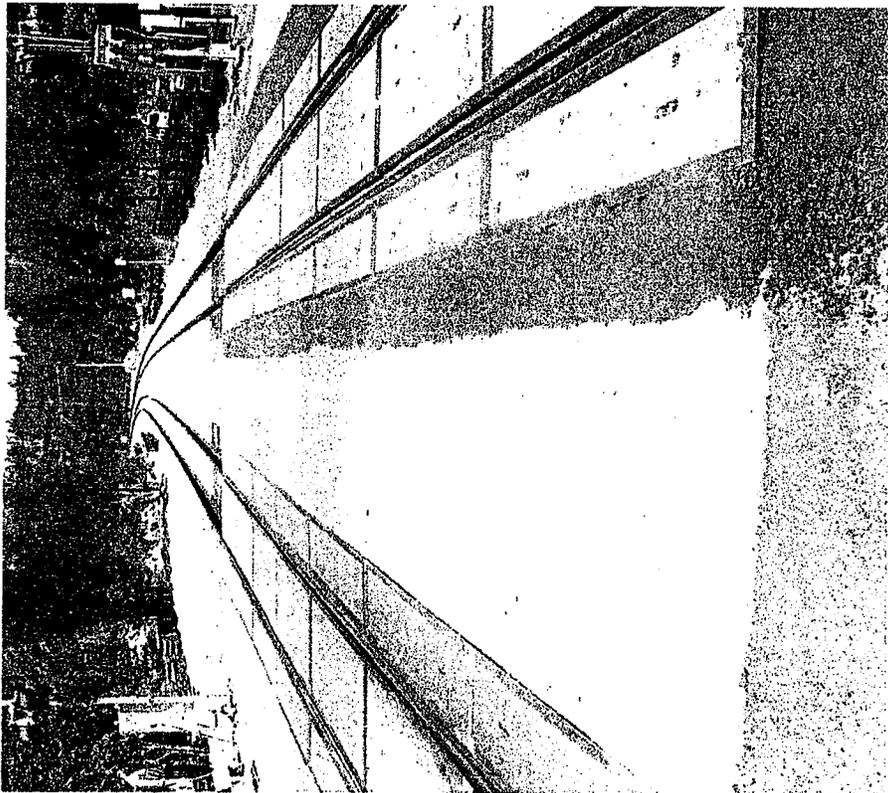
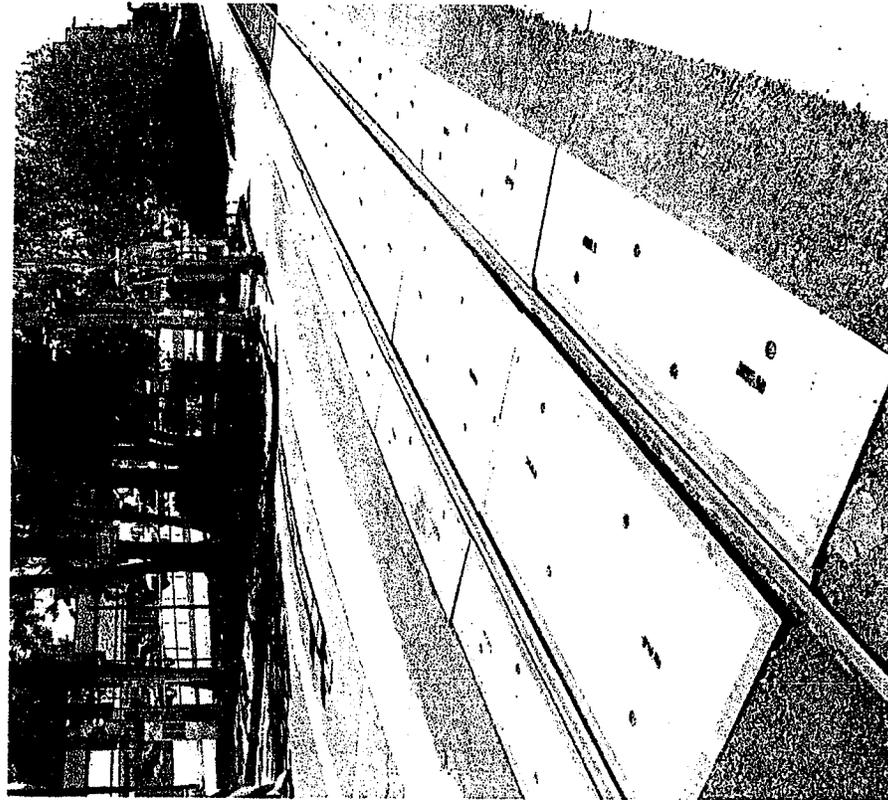
Thank you for your cooperation in this matter. If you need further clarification, please, contact our office at 602-262-5601.

Sincerely,

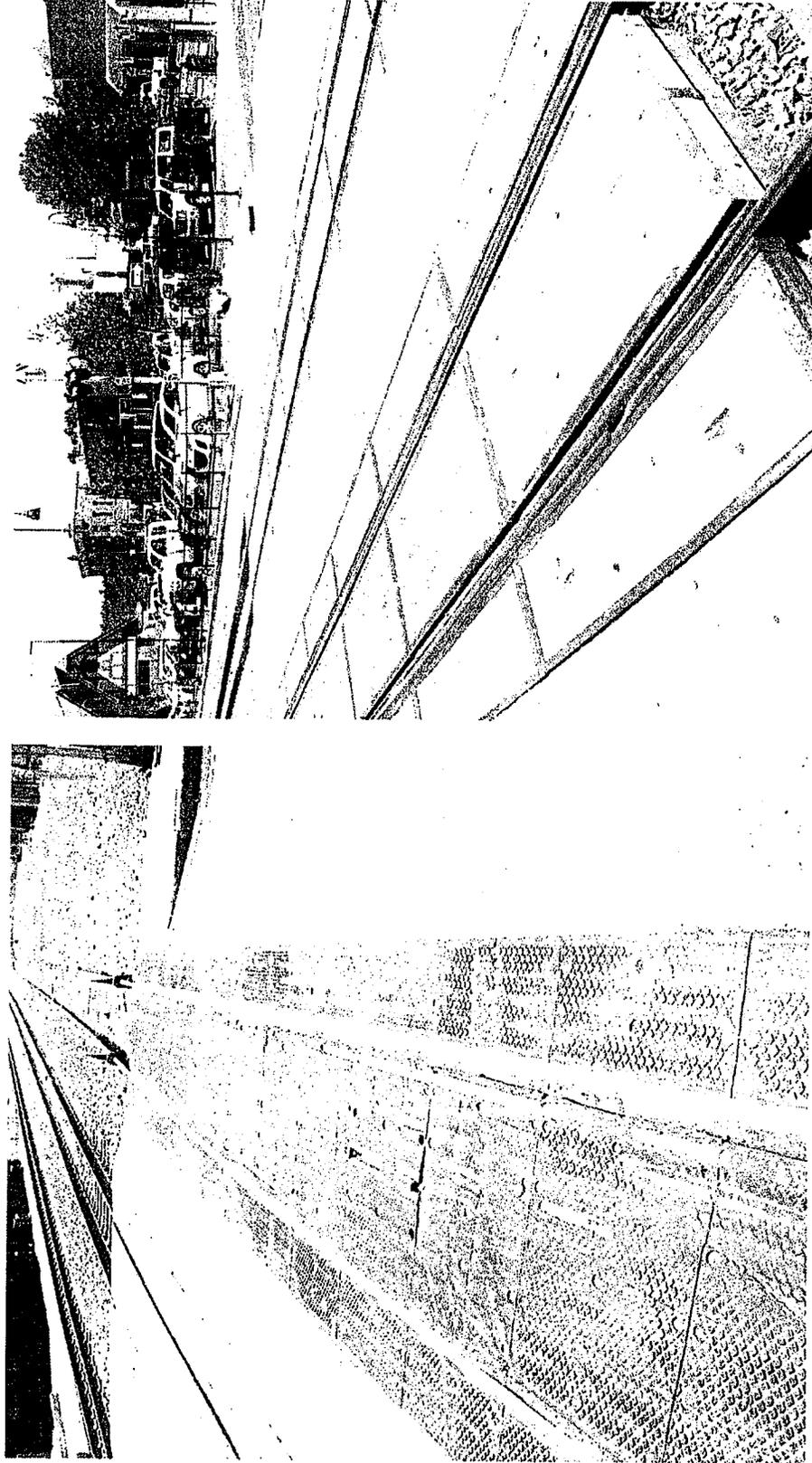
A handwritten signature in black ink, appearing to read "Chris Watson".

Chris Watson
Assistant Supervisor Railroad Safety
Grade Crossing Inspector
Arizona Corporation Commission
602-262-5601 (office)
602-320-6219 (cell)

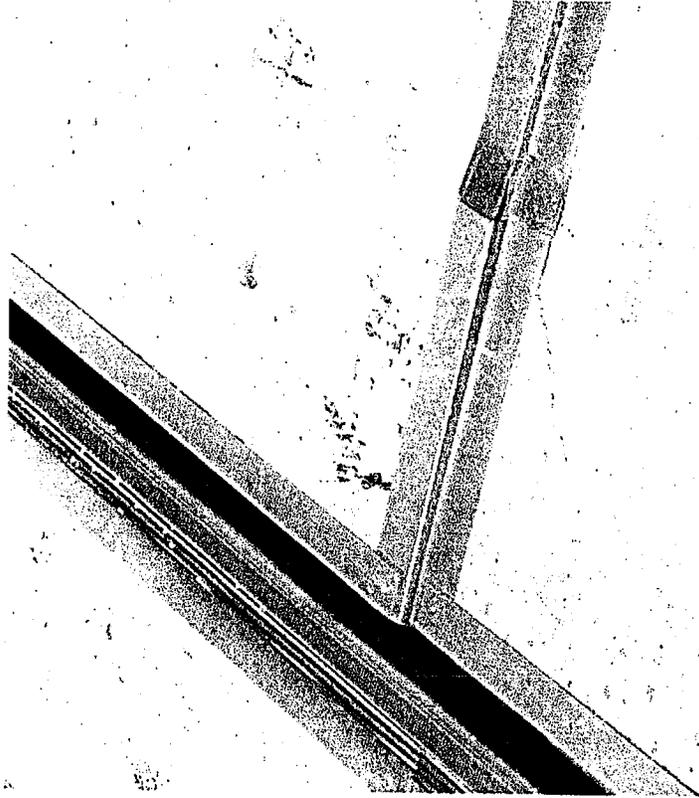
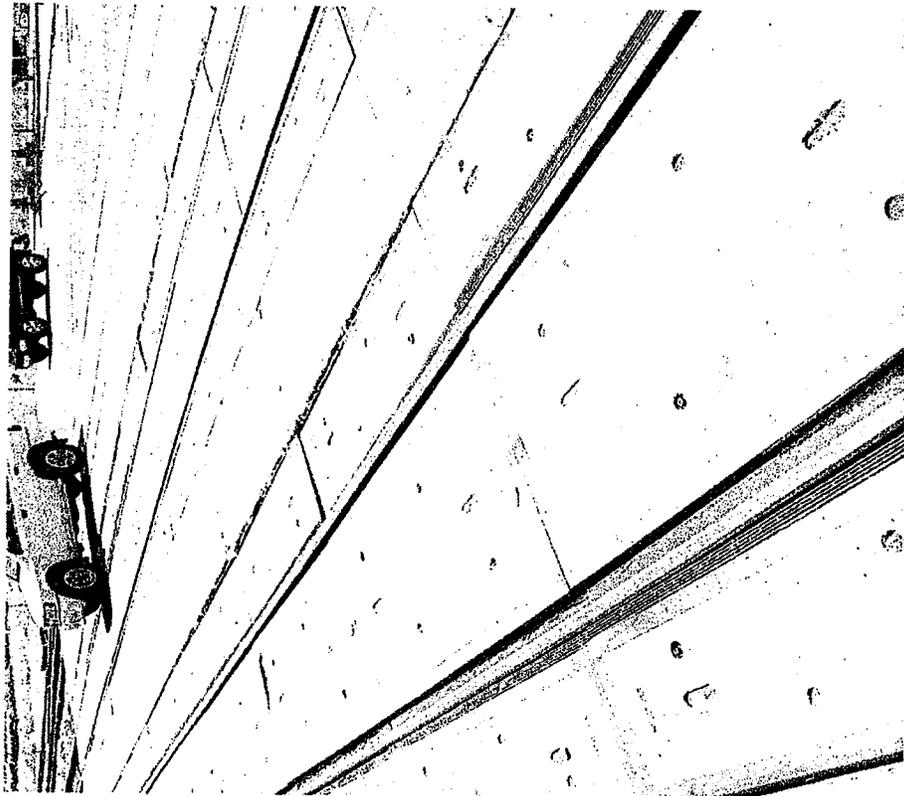
**Beaver ST.
DOT 025-133-N - MP 344.3**



**San Francisco ST.
DOT 025-132-G – MP 344.2
The rubber crossing is need of repair or removal, both main
crossing are a slight low**

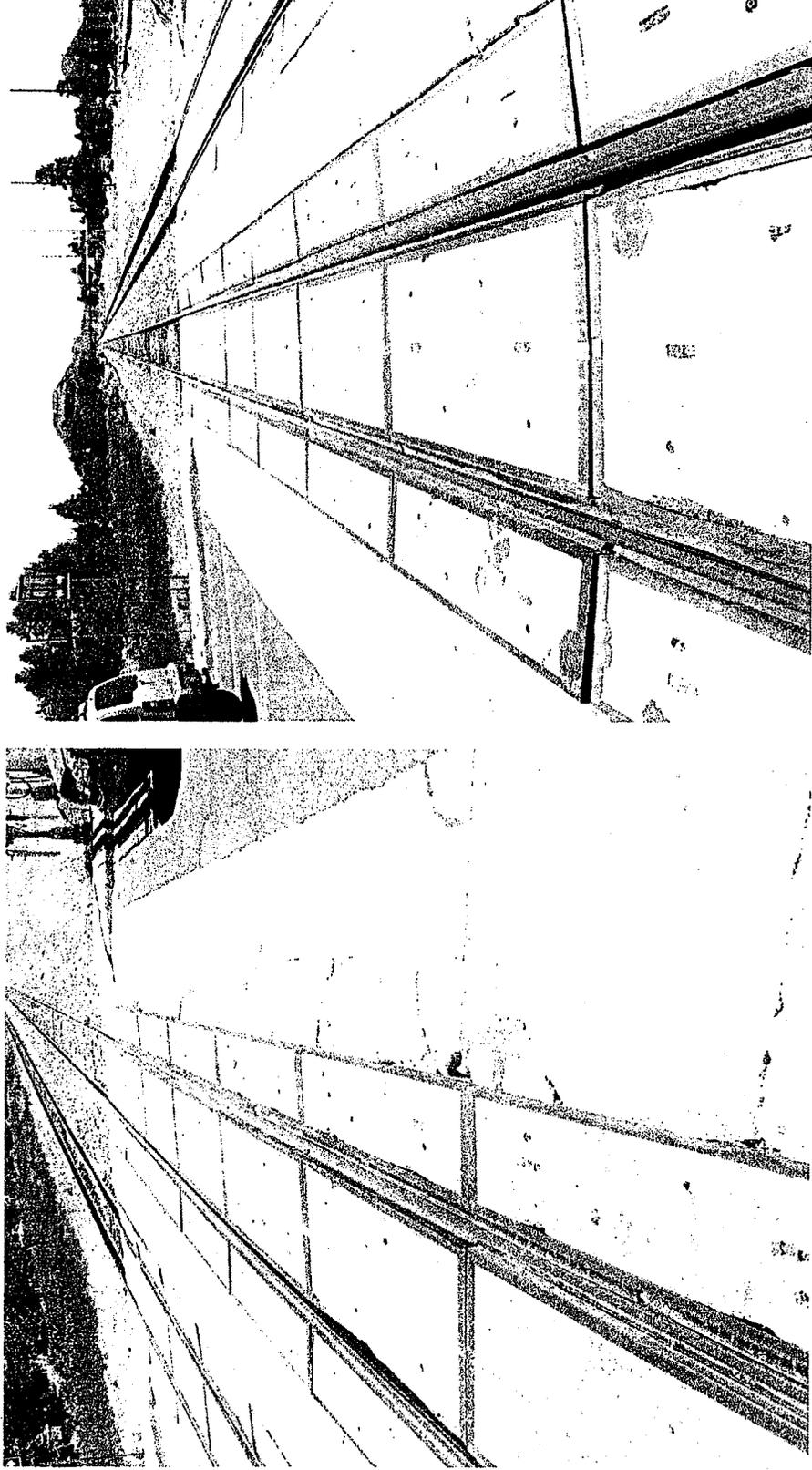


**Enterprise RD
Dot 025-131A – MP 342.93
both main crossing are a slight low and have loose concrete panels main
one has some crack panels.**



**Steves BLVD
DOT 025-099-J – MP 341.2**

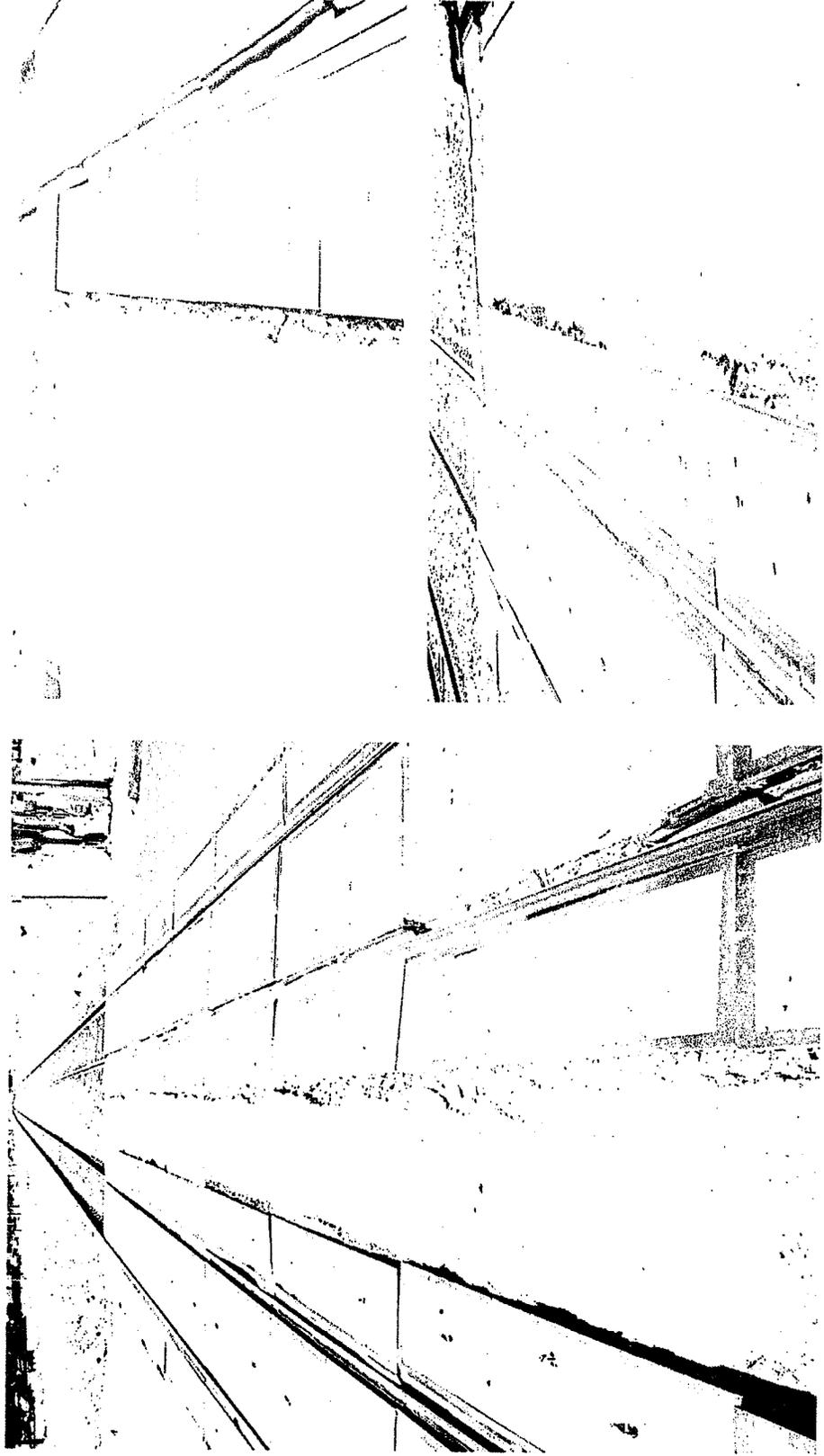
Both main crossing are low and have loose concrete panels.



Fanning DR

DOT 025-129-V - MP340.6

Both main crossing are low and have loose and crack concrete panels approaches to main lines are terrible



Cottage AVE
DOT 025-154-G – 345.15
rough crossing also needs X Buck

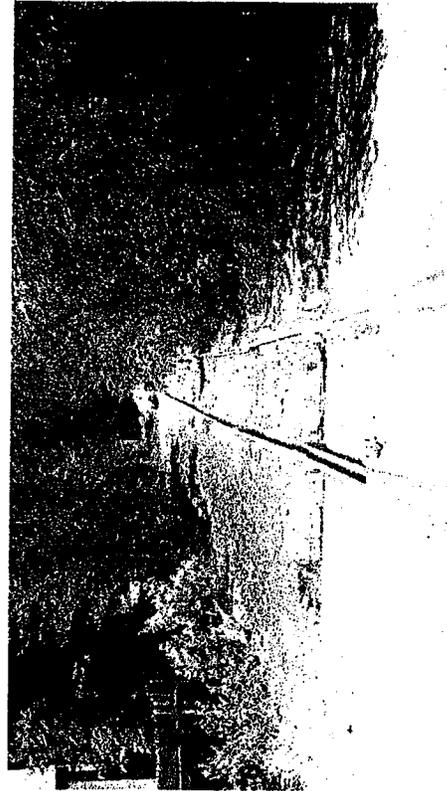
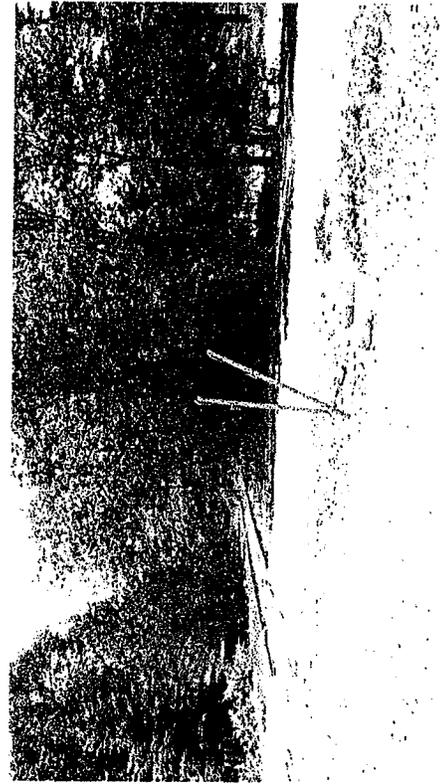


EXHIBIT 2

FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5000

Patrick J. Black
Direct Phone: (602) 916-5400
Direct Fax: (602) 916-5600
pblack@fclaw.com

Law Offices
Phoenix (602) 916-5000
Tucson (520) 879-6800
Nogales (520) 281-3480
Las Vegas (702) 692-8000
Denver (303) 291-3200

July 18, 2011

Mr. Chris Watson
Assistant Supervisor Railroad Safety
Arizona Corporation Commission
2200 N. Central Ave., Suite 300
Phoenix, AZ 85004

Re: Grade Crossing Maintenance Notification – BNSF Railway

Dear Mr. Watson:

I am in receipt of your Grade Crossing Maintenance Notification letter dated June 24, 2011, to Matt Keller at BNSF Railway Company (“BNSF”). BNSF would like to address each of the grade crossings you have identified in need of surface repair as follows:

1. Beaver Street (025-133-N): Crossing rehabilitation (M1 only) was performed by BNSF on April 20, 2011.
2. San Francisco Street (025-132-G): BNSF does not agree that the rubber crossing needs to be repaired or removed based on its current condition. Currently, BNSF does not have any planned maintenance work at this crossing in the foreseeable future.
3. Enterprise Road (025-131-A): BNSF plans to fully rehabilitate the crossing in 2012. BNSF disagrees that temporary repairs are necessary, and given the company’s timeline for fully addressing the crossing in 2012, BNSF believes that providing a temporary ‘fix’ as requested by Staff would not be a prudent use of time and resources.
4. Steves Blvd (025-099-J): Crossing rehabilitation on both tracks was performed by BNSF on July 11, 2011. All new crossing planks have been installed.

FENNEMORE CRAIG, P.C.

Chris Watson

July 18, 2011

Page 2

5. Fanning Drive (025-129-A): BNSF resurfaced the track (M2 only) on June 17, 2011.
6. Cottage Avenue (025-154-G): Please see response to Number 3. Because the requested repairs are similar to those identified by Staff for the Enterprise Road crossing, BNSF contends that the repairs are not needed at this time. However, temporary repairs will be completed within the next 90 days.

BNSF takes seriously its responsibility to ensure that public crossings are operated and maintained to provide safety to the public. To this end, the company believes that a conference call or meeting with you and/or other members of the Railroad Safety division can assist in resolving this minor dispute over surface repair issues outside the context of an evidentiary hearing. As you are aware, crossing surfaces include the overall condition of the area, and several road authorities are choosing not to perform asphalt repair work at these approaches. BNSF believes that this is an issue the company can work with the Railroad Safety division in addressing.

Please let me know if you are amenable to BNSF's request to discuss this matter at your earliest convenience. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick J. Black', with a long horizontal line extending to the right.

Patrick J. Black

- c. Orest Dachniwsky, BNSF
Melvin Thomas, BNSF

EXHIBIT 3

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS



ERNEST G. JOHNSON
Executive Director

ARIZONA CORPORATION COMMISSION

August 3, 2011

RECEIVED R BLACK

AUG 04 2011

ACTION _____

Mr. Patrick J. Black
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 850012-2913

RE: Grade Crossing Maintenance Notification – BNSF Railway

Dear Mr. Black,

Arizona Corporation Commission (“Commission”) Railroad Safety Section Staff (“Staff”) is in receipt of your July 18, 2011 response to Staff’s notification letter to the BNSF Railway Company (“BNSF”). In the response, BNSF indicated that repairs had been made to the Beaver Street (AAR/DOT No. 025-133-N), Steves Blvd (AAR/DOT No. 025-099-J), and Fanning Drive (AAR/025-129-A) crossings that were identified within the Staff notification letter.

With respect to Enterprise Road (AAR/DOT No. 025-131-A) crossing, BNSF indicated that it will perform a full rehabilitation of the crossing in 2012. BNSF explained that it believes temporary repairs are unnecessary and “would not be a prudent use of time and resources.” Staff’s inspection revealed multiple loose concrete panels and that the main concrete panel was cracked due to the condition of the crossing. Staff reiterates that Arizona Administrative Code Rule R14-5-104(C)(6)(f) requires the implementation of temporary repairs within 5 days of notification of defect at a crossing and permanent repairs within 90 days. A timeline for full rehabilitation in 2012 is unacceptable per the rule as it suggests a range between four and sixteen months in the future and is consequently beyond the timeframe set by rule.

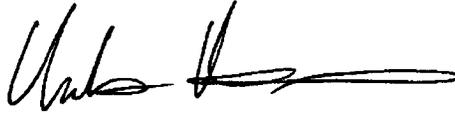
With respect to the San Francisco Street (AAR/DOT No. 025-132-G) and Cottage Avenue (AAR/DOT No. 025-154-G) crossings, BNSF indicated that it does not believe permanent repairs are necessary and temporary repairs are only planned for the Cottage Avenue crossing within 90 days of the BNSF response letter. Staff believes that the rubber crossing at San Francisco Street has deteriorated to the point where it must be repaired or removed. Staff’s inspection noted that the track leading to the rubber crossing at San Francisco Street has been temporarily blocked. If it is BNSF’s intention to permanently discontinue the use of the rubber crossing at San Francisco Street, then it should file an application to abandon and remove the rubber crossing. Otherwise, Staff believes the crossing should be repaired.

Mr. Patrick Black
August 3, 2011
Page 2

With respect to the Cottage Avenue crossing, Staff's inspection indicates that the crossing surface is highly deteriorated and that the crossing is missing appropriate warning cross bucks to notify oncoming traffic that a crossing exists.

Staff notes that in the BNSF response, BNSF requested an opportunity to meet or call and discuss the issues raised within the Staff Notification letter. Staff welcomes an opportunity to meet with representatives of BNSF to discuss these issues. Nonetheless, Staff expects BNSF to comply with the requirements of R14-5-104(C)(6)(f). Please feel free to contact me at (602) 542-3402 to propose a time for a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles H. Hains', with a long horizontal flourish extending to the right.

Charles H. Hains
Attorney, Legal Division

CHH:rbo

cc: Steve Olea, Arizona Corporation Commission, Interim Director Safety Division
Brian Lehman, Arizona Corporation Commission, Manager, Railroad Safety Section
Chris Watson, Arizona Corporation Commission, Manager, Railroad Safety Section
Melvin Thomas, BNSF Railway Company, Manager Public Projects
Matt Keller, BNSF Railway Company, Division Engineer
Mike O'Connor, City of Flagstaff, Public Works Section Head