UNITED STATES SENATE

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

HEARING ON RAILROAD ISSUES

SENATOR BYRON L. DORGAN PRESIDING

MARCH 27, 2002
STATE CAPITOL BUILDING, BISMARCK, ND

TESTIMONY OF

NORTH DAKOTA GRAIN DEALERS ASSOCIATION
and
ALLIANCE TO KEEP RURAL AMERICA ON TRACK

PRESENTED BY
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Thank you Senator Dorgan, Chairman Hollings and the entire Senate Commerce Committee for holding this hearing on issues so critical to not only this state, but also the region and nation as well.

My name is Steve Strege. I am the Executive Vice President of the North Dakota Grain Dealers Association, a 91-year-old voluntary membership trade association in which approximately 90% of our state's grain elevators hold membership. I've been with the Association since 1976 and have watched railroad matters with keen interest for more than 25 years. The Alliance To Keep Rural America On Track is a much newer organization. It was formed in November 2001. It includes every major farm organization and commodity promotion group in this state, as well as other ag-related organizations, and some groups from other states. A membership list is attached to this testimony. Members of the Alliance recognize the adverse long-term consequences of what the Burlington Northern Santa Fe Railway is doing at the present time in this state and region. The Alliance was formed to alert the public to these dangers, to make a broader appeal to the railroad to change its ways for the betterment of its customers, and to bring local, state and federal elected officials such as yourself into this situation. If prodding the BNSF to change its ways does not work, this group will be forced to consider other measures such as federal legislation or a formal complaint to the Surface Transportation Board, or the courts.

INVERSE RATES

Our primary focus today is on inverse rates, the unusual concept that grain elevators and farmers who ship their grain a shorter distance should pay more than those who ship a longer distance. Inverse rates distort markets and traditional grain flows, period. They cannot be explained away by calling them "differential pricing." The BNSF claims no market distortion. It is hard for us to believe that reversing the normal mileage-based rates, to create a disadvantage for western shippers for westbound movements, doesn't distort markets. It is also hard to believe that changing the cross-country freight differentials between two elevators from five cents per bushel to around 30 cents per bushel over a distance of 40 miles (Edgeley, ND – Jamestown, ND), or from 15 cents to around 35 cents across a distance of 20 miles (Portland, ND – Alton, ND), doesn't distort markets. Adversely affected elevators managers can tell you it definitely does.

The BNSF says these inverse rates from eastern locations are necessary to supply needs of the PNW export market. That is simply not true. According to the Montana Grain Growers Association, quoting the Montana Ag Statistics Service, there were 79 million bushels of spring wheat in Montana on December 1, 2001. Millions more bushels are in western North Dakota. But yet these areas are the very ones disadvantaged by BNSF's inverse rate scheme. If the Pacific Northwest market actually needed more bushels, then let it bid up the price to get them. This BNSF manipulation of rail rates has a price-depressing effect for farmers and elevators normally serving that market.

We believe there is a more sinister motive at BNSF for its inverse rates. That is to artificially promote the building of shuttle train loading facilities in other parts of this state and western Minnesota, with the eventual goal of closing other grain elevators in those areas and abandoning branch lines and short lines. The process goes as follows: Give a super special rate to a selected few shuttle train loaders in eastern North Dakota and western Minnesota, and prioritize their service. This takes grain volume away from existing elevators, jeopardizing their very future. Then when the volume from those elevators goes down, the railroad will say it can no longer operate the branch line, and so it will be abandoned. Some elevators will close, some others may exist as receiving stations for the shuttle train loader. The end result is less competition out in the country for the farmers' grain, longer hauls for everybody, a huge impact on roads and the taxpayers who fund them, and further deterioration in rural communities. Meanwhile the grain in western North Dakota is held hostage to much higher rates.

DISHARMONY WITH CUSTOMERS AND MARKETS

BNSF is being irresponsible to its present customers. BN encouraged investments in unit train facilities of 26/27 or 52/54-car capacity. The larger ones were the cream of the crop. Now they are second-class citizens because BNSF wants to emphasize shuttles. We are not against shuttles, or reasonable and consistent rate spreads between shipment sizes. What we oppose is the artificial manipulation of incentives and rates to benefit a very few at the expense of the very many.

In round numbers, of the 230-some North Dakota grain elevators served by BNSF and its shortline affiliate the Red River Valley and Western Railroad, about 60 load 52/54-car trains and another 50 load 26/27-car trains. Only nine load shuttle trains. Although the details are kept secret, it is commonly understood in the grain trade that only three of the nine have the special inverse shuttle rate. The BNSF caters to a couple percent of its grain elevator customers, to the disadvantage of all others.

Our domestic milling market is primarily for 26-car trains or less. It is not for the shuttle trains

BNSF is pushing. BNSF has said that it will always have single, 26-car and 52-car rates for niche markets. (Niche markets don't take 52-car trains.) But if BNSF continues to push grain to shuttle train loaders through its discriminatory rates and service priorities, these other elevators can't exist on the dribblings.

There is sometimes a misconception that the struggle in our state over inverse rates and shuttle train loading is between modern shuttle loading facilities and small dilapidated elevators that have had their day and are no longer useful. This is not true. Many of the grain elevators being jeopardized by BNSF's new schemes are huge modern facilities that have kept themselves up to date for not only their own efficiency, but also for the railroad's. Millions of farmer dollar investments in their local cooperatives will be lost if these are put out of business.

<u>EFFICIENCIES</u>

BNSF claims great efficiency for its shuttle trains, and says other trains cycle much more slowly from origin to destination and back again. Well, whose fault is that? It is the railroad's! When the railroad lets unit trains and other smaller shipments sit loaded for days or weeks at the elevator or in rail yards, while pushing shuttle trains on through, the cycle time differences are grossly exaggerated. It is nearly all under railroad control. In fact, according to the BNSF's Fleet Performance Report, available on its website, the loader and unloader actually have control of a railcar about two days each, while the railroad has it the other 22 days of, for instance, a 26 day cycle time.

<u>DELAYS AND DEMURRAGE</u>

Another aspect of efficiency is demurrage, a charge to shippers for delaying railroad equipment. We agree with the railroads that there have to be limits on how long a shipper or receiver can hold a railcar. But there should also be responsibility on the railroad to pull the cars in a timely manner once they are released. Elevator managers and employees are all-too-familiar with loading cars on weekends or holidays, sometimes in terrible weather conditions, only to see the loaded cars or train sit for five or seven or 10 days before being pulled away. The BNSF might say these trains or cars are waiting for "matches" of other trains or cars to go off to destination. If more effort was made, and more sophisticated computer technology and management time was applied to this situation, we believe it could be improved significantly. And, if shippers must pay penalties to the railroad for delay, then the opposite should be true also.

CO-LOADING

The BNSF could cooperate with its present elevator system and gain shuttle train efficiencies by allowing co-loading of shuttle trains. This means allowing two or more elevators to contribute loaded cars to that long train. Four of the five railroads operating in North Dakota do co-loading. Only BNSF does not. The Canadian Pacific and its two short line affiliates work with their customers in co-loading. The BNSF has allowed the Red River Valley and Western short line affiliate to co-load for about the past three years. But that ends on June 30, by order of BNSF. We're told there is co-loading of BNSF equipment on the Dakota, Minnesota and Eastern, and the CN-IC. That too may be expiring.

RATES AND PROFITS

Our Association and Alliance favor lower rates. But we think they should be spread around so that everyone can benefit. The BNSF's current plan for elevator industry concentration will result in relatively few farmers, who are close to those remaining facilities, maybe getting a better deal for a short time. Others from farther out will burn up any advantage in trucking costs, time and road maintenance. Then when the other elevator competition is eliminated, the BNSF will have no reason to give preferential rates to anyone. Less competition among buyers will mean less incentive for them to pass on any savings. Farmers and rural America lose out, while BNSF pads its already hefty profit margins on our grain.

Those profit margins are substantial. The revenue to variable cost ratios on many North Dakota grain rail movements are far in excess of the 160% standard of adequate profitability. This is confirmed by the inverse rate scheme. If BNSF can afford to haul farther for less money, then its higher rates for the shorter distance shipping are even more out of line.

INTERIM AG COMMITTEE

One month ago today the Interim Ag Committee of the North Dakota Legislature held a hearing on rail rates and service, much as we are doing today. For the record, I am attaching the minutes of that meeting to my testimony, and also attaching an article from our Association's March Grainmen's Mirror magazine about the hearing. Southwest Grain Cooperative Grain Division Manager Jim Bobb's comments at that hearing about there being few markets for wheat shuttle trains and that the BNSF is shifting the PNW market to eastern shuttle loaders who would otherwise not have sufficient volume, confirm what I said previously about the unspoken BNSF motives with the inverse rates.

An exchange between Senator Bill Bowman and Steve Bobb of BNSF at that hearing confirms that the railroad will charge whatever the market will bear when it has the opportunity.

Not only is BNSF distorting markets here at home, it is also jeopardizing our hard-won markets overseas. North Dakota Wheat Commission Administrator Neal Fisher stated at that Ag Committee hearing the Commission's concern that there be no quality disruptions. Asian buyers are accustomed to certain milling characteristics in wheat from usual sources of supply in western North Dakota and Montana. This is not to say that our eastern wheat is inferior. It is just different, because it is raised under different climate conditions. But buyers notice these things.

SCOOTS

Another discriminatory car supply program being developed by BNSF is called Scoots. They've been called the domestic equivalent of the 110-car shuttle train program. BNSF first indicated these would be 58-car trains. But they are available to only 110-car shuttle loaders. This is a new and higher level of discrimination and manipulation.

Several of us in this room challenged BNSF on this, questioning why 52 and 54-car loaders who could accommodate 58 cars would not be eligible. The latest from BNSF is that Scoots will be in the 65-68-car range, but still available to only 110-car shuttle loaders. This is like requiring a person to drive an 18-wheeler to get a week's worth of groceries. This kind of discrimination should be flat-out illegal.

MARKET FORCES CIRCUMVENTED

Market forces are not at work in creating the inverse rates or the BNSF push for shuttle trains. It is well known in the grain trade that BNSF provides facility-building incentive to some but not others. At the Ag Committee hearing, Mr. Steve Bobb denied putting any upfront capital into new shuttle loading facilities. But that doesn't address the upfront commitments to provide rebates later. BNSF says it is not driving these changes. But that is contradicted by an article from the July 3, 1999 Hillsboro (ND) Banner in regard to the planned construction of the Alton Grain Terminal near Hillsboro, ND, quoting one of the directors of the Halstad, MN elevator, a significant owner in the facility:

> In fact, Lovas said, it was the railroad that was pushing the project. "The railroad is driving this. Without their incentives," he continued, "this would not have happened. They're giving us a hell of a deal." BN-Santa Fe has assured board members that it will "protect" the rates it will give the terminal for a 75-mile stretch of track.

I would also like to submit for the record a copy of the article from the February 3 Bismarck Tribune titled "Alliance claims railroad out to bust rural ND". The article states that Steve Bobb said BNSF has provided incentives to build all ND shuttle loading facilities. I don't know if that is true in every case, but it surely tells the direction BNSF is headed and willing to push for. This is the same article in which Steve Bobb said the elevator in Edgeley is a "victim of its own poor planning" for upgrading to 52/54-car loading a few years ago on the RRVW in order to feed the BNSF more traffic. It could have upgraded on a Canadian Pacific short line.

THE FEAR FACTOR

As the railroad has become bigger, more dominant, and more demanding, shippers and receivers become less willing to speak out in public forums like this one about their problems with railroads. Some will say privately that they disagree with the railroad's direction and the investment requirements. But for fear of reprisals or being left out of the next deal to come along, they decline to speak in public. Maybe some of that silence is breaking. Perhaps the formation and growth of our Alliance To Keep Rural America On Track has given more people a flag to rally around and encouragement to speak out. But many shippers remain apprehensive.

WHAT IS TO BE DONE

You, Senator Dorgan, have been engaged on these issues for a number of years and for that we thank you. You have been in contact with the BNSF on these current problems and arranged for this hearing to shed more light on the topic, provide additional encouragement to BNSF to mend its ways, and establish a record of abuse to document the need for change in regulatory oversight, should the railroad continue to think about only itself. Senator Conrad and Representative Pomeroy have expressed their strong support for our efforts. Governor Hoeven has met with BNSF officials and is forming a coalition of regional Governors to address these issues. Our PSC, Ag Commissioner, Tax

Commissioner, and many state legislators are involved.

Unfortunately, the BNSF's response so far has been to tell us we are simply against change.

You have introduced the Railroad Competition Act of 2001. It provides some needed changes like elimination of the phony revenue adequacy test, and putting into law the elimination of product and geographic competition in the market dominance test. Shippers desperately need an inexpensive and quick way to resolve disputes with railroads. The size of the railroads and their ample number of attorneys tilts the table in their favor. Somehow the interests of shippers and shipper groups must be strengthened when dealing with railroads.

Perhaps there needs to be some restrictions on contracting for rail grain movements, or at least greater public disclosure of the provisions. I've watched the process move from no contracting to contracting with disclosure of terms. Then we went to contracting with hardly any disclosure. Now, what little disclosure there is can come after the movement is completed.

The railroads were instrumental in settling the prairies, and they were compensated for that with generous land grants. Now we see the process unraveling in the other direction as railroads promote what can be called economic UNdevelopment by withdrawing services from many customers. Where effective competition exists then competition can govern. But where competition does not hold railroads in check in their dealings with captive shippers, additional government oversight and relief must be provided.

ALLIANCE TO KEEP RURAL AMERICA ON TRACK MEMBERS 3-25-02

North Dakota Grain Dealers Association

North Dakota Farm Bureau

North Dakota Farmers Union

North Dakota Wheat Commission

North Dakota Barley Council

North Dakota Grain Growers Association

North Dakota Corn Growers Association

North Dakota Soybean Growers Association

Farm Credit Services of North Dakota

North Dakota Professional Insurance Agents

North Dakota Association of Telephone Cooperatives

Oliver-Mercer Electric Cooperative, Inc., Hazen, ND

Dakota Central Telecommunications, Carrington, ND

North Central Bean Dealers Association

North Dakota Association of Rural Electric Cooperatives

Mayco Export, Minneapolis, MN

Nebraska Agri-Business Association

Colorado Grain and Feed Association

North Dakota Mill

NORTH DAKOTA LEGISLATIVE COUNCIL
Minutes of the

AGRICULTURE COMMITTEE

Wednesday, February 27, 2002
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Terry M. Wanzek, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Terry M. Wanzek, Bill Bowman, Duane Mutch, Ronald Nichols, Harvey Tallackson; Representatives James Boehm, Michael Brandenburg, Thomas T. Brusegaard, April Fairfield, Rod Froelich, C. B. Haas, Phillip Mueller, Jon O. Nelson, Dennis J. Renner, Arlo E. Schmidt, Ray Wikenheiser

Members absent: Representatives Joyce Kingsbury, Edward H. Lloyd, Eugene Nicholas, Earl Rennerfeldt

Others present: See Appendix A

It was moved by Senator Bowman, seconded by Representative Nelson, and carried on a voice vote that page 1 of the December 14, 2001, minutes of the Agriculture Committee be amended to provide that 17 percent of all gasoline used in this state contains ethanol and that Minnesota gets back about $10 for every dollar it invests in the ethanol industry.

It was moved by Senator Bowman, seconded by Representative Nelson, and carried on a voice vote that the amended minutes of the previous meeting be approved.

Chairman Wanzek recognized Mr. Stevan Bobb, Group Vice President, Agricultural Products Marketing, Burlington Northern Santa Fe (BNSF), who presented testimony regarding rail transportation of agricultural products. Mr. S. Bobb distributed a document entitled Enabling the Future Through Change. A copy of the document is on file in the Legislative Council office.

Mr. S. Bobb said from the BNSF perspective, the issues being addressed by the committee represent additional steps in a continuing process of change. He said elevators, producers, and multinational corporations had originally opposed many of the initiatives introduced by BNSF over the last 20 years. However, he said, as the individual initiatives played out over time, they proved themselves to add value to the marketplace.

Mr. S. Bobb said the rail industry was deregulated in 1980. He said railroads had been regulated much like utilities are today. He said railroads are not guaranteed a return on invested capital. He said railroads like BNSF make their decisions based on profit motives. He said they have stockholders who expect them to continue in that vein.

Mr. S. Bobb said in the early 1980s, Burlington Northern did a study regarding how it was running its grain business. He said there was serious consideration given to exiting the grain business. He said Burlington Northern was not making money on huge portions of its grain business. He said Burlington Northern decided to make some fundamental changes by moving from long-term contracts to a public transparent pricing environment. He said Burlington Northern stopped using a mileage-based-cost-plus approach for transportation rates and implemented a market-based approach. He said that caused some consternation, especially among the large multinational corporations that had been the beneficial holders of those contract rates.

Mr. S. Bobb said a farmer's cooperative that ships a single car or a shuttle train pays the same transportation rate from point A to point B as does Cargill. He said large shippers are not given favorable positions. He said BNSF gives rate differentials as a function of the efficiency of the product that a shipper elects to ship. He said BNSF does offer different rates for different efficiency programs. He said a single-car shipment is more expensive than a 26-car shipment, which in turn is more expensive than a 52-car shipment. He said a 52-car shipment is likewise more expensive than a shuttle train of 110 cars.

Mr. S. Bobb said in the late 1980s the certificate of transportation program was put in place. He said the program was controversial when introduced. He said the grain industry had sued the railroad over the introduction of the program. He said the railroad wanted to have the marketplace allocate capacity. He said the program provided customers with an opportunity to lock in rates. He said customers can still choose to lock in a rate with a certificate of transportation. He said it provides guaranteed service and a guaranteed car supply. He said despite having sued the company in the late 1980s over the program, most grain companies today view the program as being very beneficial. He said there would probably be a suit if BNSF stopped offering certificates of transportation.

Mr. S. Bobb said other changes were introduced in the 1990s. He said BNSF standardized unit train sizes and started investing in high-capacity cars. He said high-capacity cars allow for the handling of 10 percent more product per car. He said BNSF customers have benefited from having standard size cars. He said the cars are of higher quality and handle more product.

Mr. S. Bobb said during the last decade BNSF invested $600 million in equipment. He said that does not include the $70 million that BNSF spent to maintain its fleet of covered grain hoppers.

Mr. S. Bobb said BNSF believes its customers want BNSF to distinguish itself from its competition. He said the customers do receive benefits from the actions BNSF takes. In the last 10 years, he said, BNSF has made a substantial capital investment in the grain industry. He said no other railroad in the last 10 years has matched the BNSF investment in covered grain hoppers. He said BNSF is very focused on getting a return on its investment. He said BNSF's primary competition in North Dakota is the Canadian Pacific Railroad. He said investment in the Canadian Pacific Railroad is made by the Canadian government.

Mr. S. Bobb said BNSF has downsized its grain fleet since 1988. In 1988, he said, Burlington Northern had 35,000 cars in its grain fleet. He said the current grain fleet is approximately 29,000 cars. He said while taking cars out of the fleet, BNSF has actually increased its carrying capacity. He said the new cars carry 10 percent more product. He said BNSF has broadened its product offering from having only single-car, 26-car, and 52-car opportunities to also offering shuttle train capacity. He said this has created efficiencies in the network. He said in the fall of 2001 approximately 5,500 of BNSF's 29,000 cars were in shuttle service. He said those 5,500 cars were generating nearly 40 percent of BNSF's carrying capacity. He said the cars are high-capacity hoppers and they turn an average of three times a month as opposed to 1.4 times a month for a traditional grain fleet. He said the difference is not in transit time. He said the difference is in the end points. He said the difference comes from the amount of time it takes for customers to load and unload and in the amount of time it takes the railroad to put trains together. He said the other reason there is a faster turnaround is that shuttle trains are 110 cars long. He said for every such train moving throughout the network, more grain is being delivered.

Mr. S. Bobb said overall system performance has improved dramatically. He said the major reason is the company's willingness to invest capital in its operations. He said BNSF spent $11 billion in capital investment over the last six years.

Mr. S. Bobb said there is a disconnect between what their customers say about service and what the recent customer satisfaction survey has concluded.

Mr. S. Bobb said over time BNSF service to the grain shipper has improved, especially with respect to providing capacity to the marketplace. He said when grain is to be moved, that puts a demand on hopper cars. He said it would be impossible for BNSF to buy and maintain a fleet large enough to ensure that everyone who wants access to a grain hopper can have one during harvest. He said by making the investments in capacity and service improvement, BNSF has been able to dramatically shorten the number of days late. He said BNSF has also managed to narrow the gap between its guaranteed products and its tariff products. He said the nature of those two products will never be the same. He said a customer who chooses to buy a guaranteed product is going to get guaranteed service. He said a customer who chooses to buy a tariff product is going to get capacity available service.

Mr. S. Bobb said the shuttle program is a set of symmetrical commitments between BNSF and its shuttle customers. He said BNSF dedicates power, a covered hopper fleet, turn times that provide efficiency payments, and trip incentives to customers who take risks and put on forward freight. He said shuttle customers commit to having an appropriately efficient facility. Instead of having to break up trains, he said, BNSF can drive in with empty trains and drive out with loaded trains. He said shuttle customers commit to loading and unloading the trains within 15 hours at both the origin and destination. He said shuttle customers also commit to providing BNSF with logistical information. He said before BNSF spots a loaded or an empty shuttle train, the owner of the certificate of transportation has indicated where the empties will go next. He said this customer commitment to providing logistical information gives BNSF savings in the form of equipment costs and operating costs because shuttle trains use locomotives optimally. He said 110 cars, each loaded with about 110 tons of product, use about three locomotives over most of the BNSF network. He said shorter trains result in wasted horsepower. From a service perspective, he said, shuttle service has fewer moving parts. He said it is an intact train from origin to destination. He said there is not as much variability or risk of failure. Under the current shuttle network, he said, there are 73 origins and approximately 35 destinations across North America. He said those include destinations in Mexico and both origins and destinations on other railroads--both short line and Class I railroads. He said the BNSF shuttle network is not an BNSF-only product.

With 26- or 52-car service, Mr. S. Bobb said, BNSF has to wait until it gets a bill of lading from the customer indicating where those cars are going. He said the grain desk in Fort Worth, Texas, has to piece together the puzzle. He said BNSF does not run 26- or 52-car trains on rail lines because the economics are not there to do that. He said BNSF instead matches four 26-car trains or two 52-car trains or some other combination thereof. He said the time it takes to do that can average four to four and one-half days. He said shuttle trains get much better cycle time because they are not waiting to be matched up.

Mr. S. Bobb said BNSF had only one nonterminal elevator capable of handling shuttle trains in 1996--South Sioux City. He said in the early 1990s Burlington Northern tried coloading comprehensively across the network. He said under the program, Burlington Northern gave its customers incentives for providing information about coloading in advance. Upon evaluating the program, he said, it was found that customers did not see any service improvement, there was no enhancement of capacity for the network, there was no decrease in cycle time, there were no cost-savings, and there was a loss of market share to the Union Pacific because Union Pacific outperformed Burlington Northern. He said BNSF determined the coloading program was not something that ought to be continued and in its place developed the shuttle program.

Mr. S. Bobb said the Canadian rail network has undergone an even more dramatic change than the American rail network. During the last five years, he said, the Canadians have gone from a wooden car-single crib environment to a steel and concrete 112-car environment. He said the Canadians load a 112-car train more quickly than Americans load 110-car trains. He said the Canadians can load a car in 12 minutes. He said the grain is cleaned, graded, and ready to go before it hits the car.

Mr. S. Bobb said BNSF has had a shuttle product since 1996. He said BNSF still provides single-car service, 26-car service, and 52-car service because the marketplace demands differentiated service. He said one size does not and will not fit all. In 2001, he said, well over 40 percent of

BNSF shipments were below 52 cars in size. He said about five shuttle facilities in North Dakota are presently owned by local cooperatives. He said that is the dominant type of shuttle facility ownership. He said two are owned by regional cooperatives, two are owned by multinationals, and one is a privately owned facility. He said over 20 of the 73 shuttle facilities across the BNSF network are owned by local cooperatives and 20 are owned by regional cooperatives.

Mr. S. Bobb said there are a lot of macroeconomic forces affecting rural America. He said those forces have been playing out for decades. He said BNSF is not driving the change in rural America. He said small elevators have a role and they will continue to have a role. He said there are markets that are not going to ship shuttle train quantities. He said examples are barley, canola, certain varieties of milling wheat, and identity-preserved grains. He said the single-car and 26-car trains provide transportation for these products. He said the 26-car rate is higher than the shuttle rate. He said one would presume that the niche markets provide higher value as well.

Mr. S. Bobb said the shuttle network will take trucks off the highway by reducing long-haul trucking on both outbound grains and inbound fertilizer. He said the highways are competition for BNSF. If it is cheaper to gather grain by truck than by rail, he said, the grain will be gathered by truck. He said that is what is happening on many branch lines. He said if highway economics are the better option, branch lines will disappear.

Mr. S. Bobb said BNSF is not a regulated utility that is guaranteed a return on invested capital. He said BNSF is not earning its cost of capital. He said BNSF can earn its cost of capital by one of three ways. He said BNSF can increase and has increased the volume of product it transports. He said BNSF takes and has taken tremendous cost out of the network. He said the shuttle train program is one such way BNSF has managed to take cost out of the network. He said the third way BNSF can earn its cost of capital is by increasing prices. He said the grain transportation business is tariff-based and the transportation rates therefore move with the market.

Mr. S. Bobb said BNSF has not done a good job of increasing grain transportation rates. He said the North Dakota car rates going to the Pacific Northwest have stayed about the same as they were in 1981. He said if BNSF were a utility or a good cost-plus pricer, it would have passed on the incurred costs of inflation and the rates would be $1.08 per bushel higher. He said if BNSF tries to raise its rates above that which the market will support, the grain will be trucked rather than shipped by rail. He said if BNSF rates are too high, the grain does not move into the destination markets. He said BNSF has managed to raise rates a bit on grain going west but not on grain moving east to the Minneapolis domestic market.

Mr. S. Bobb said there are four parts to the economics of a shuttle train. He said the rate spread between a 52-car wheat train and a shuttle train is $100 to $150 per car. He said in the world of grain, that is a narrow rate spread. He said in some corn markets the rate spread approaches $600 per car. He said the rate spread will probably widen in the future. He said the present rate spread is too narrow to reflect current economic benefits. He said the elevator at the point of origin has the opportunity to earn $100 a car for loading the train in 15 hours or less. He said the elevator gains or loses that loading incentive on every train. He said the destination has an opportunity to earn $100 per car for unloading the train within 15 hours. He said they can also lose it by doing what many of the exporters do with the 26- and 52-car trains, i.e., mix and match them on the way.

Mr. S. Bobb said BNSF offers an additional incentive of $100 per car to customers who take a risk position and commit to running a train 24 consecutive times. He said that way BNSF does not have to take cars in and out of storage. He said BNSF has locomotives and crews available and it knows how long a commitment it has.

Mr. S. Bobb said the data does not support claims of a negative impact on small shippers. He said in 1995 the rate spread for the Pacific Northwest between a single-car and a 26-car train was about $300 per car. He said the rate spread between a 26- and 52-car train was about $300 per car. He said the current rate spread between a 52-car train and a shuttle train is about $50 to $100 per car. He said in 2000 the rate spread between a shuttle train and a single-car shipper was less than the rate spread between the 52-car train and the single-car shipper. He said while claims of impact on single-car shippers amount to interesting rhetoric, the claims are not supported by the facts.

Mr. S. Bobb said inverse pricing is another term for differential pricing. He said this is practiced in every business. He said when the rail industry was deregulated in 1980, it was coded in law as a way of allowing the rail industry to go from bankruptcy to potentially earning a return on invested capital. He said differential pricing is a way of doing business.

Mr. S. Bobb said in 1995 Burlington Northern had the opportunity to capture additional foreign business. He said there are two ways that southeast Asian customers can get corn from the United States. He said they can get it by transport down the river system to the Gulf or by rail to the Pacific Northwest. He said there were changes in ocean freight and barge freight. He said when barge rates went up, Burlington Northern raised its rail rates. He said when barge rates went down, Burlington Northern lowered its rail rates. He said in 1995 barge rates were up, ocean freight differentials moved, and Burlington Northern had an opportunity to take corn transport away from the barge system. To do that, he said, Burlington Northern had to price the corn off the river lower than the corn for the West. He said this is a great example of inverse pricing. He said some thought that Burlington Northern should have lowered all its rates. He said had Burlington Northern lowered all its rates and not engaged in differential pricing, it would have cost Burlington Northern more money than it would have made pursuing the additional traffic.

Mr. S. Bobb said differential pricing involves pricing to the market at every origin and capturing all the business one can. He said different customers pay different prices. In the 1995 scenario, he said, Burlington Northern realized a net benefit of $32 million by getting the additional corn. He said had Burlington Northern lowered all its rates to capture the corn market, it would have cost the company $42 million.

Mr. S. Bobb said the genesis of the westbound contract wheat program was that Montana had a bad crop and the Pacific Northwest export customers were indicating in early 2001 they were worried that they would not be able to source enough grain to backfill their wheat export plans. He said they were also worried that their customers would go to Canada. He said BNSF put in place rates that allowed the Pacific Northwest exporters to reach farther east than they traditionally would have to obtain the product. He said those rates were put in place in March 2001. He said BNSF does not believe that the rates have distorted the market.

Mr. S. Bobb said people said that BNSF flooded the Pacific Northwest with wheat, that the low-quality wheat was going to damage the Pacific Northwest's reputation, and that the low-quality wheat was going to distort the Asian markets. He said this issue is bigger than transportation. He said this is all about alternative markets. He said the domestic market, signified by Minneapolis, and the export market, signified by the Pacific Northwest, tend to move together. He said there is a market price relationship between those two market destinations and it has to do with the differing demands at those two destinations.

Mr. S. Bobb said during 2001 wheat prices in the Pacific Northwest were generally substantially higher than they were in 2000. He said the statistics do not bear out the charge that the Pacific Northwest was flooded with wheat that drove the prices down. He said the claim that there was lower quality wheat going to the Pacific Northwest is facetious as well. He said an exporter would not buy lower quality wheat and risk its customer relationships. He said wheat from western Minnesota and eastern North Dakota has been going to the Pacific Northwest for decades. He said the only difference is who is handling the wheat. He said if a Pacific Northwest exporter cannot go out and get an occasional bit of grain when needed, the exporter would risk losing customers because the customers could not be supplied with wheat.

Mr. S. Bobb said if a Pacific Northwest exporter wants to get grain away from the domestic market, the exporter would have to bid up the price to make it happen. He said bidding up results in more money going into the farmer's pocket. He said even at the closest spread point, Southwest Grain Cooperative has a three-cent advantage over everybody to its east. He said people need to look at more than just transportation rates. He said the grain industry is not that simple.

Mr. S. Bobb said about 4 percent of the wheat shipped out of North Dakota during 2001 moved under differential rates. He said 16 percent moved in shuttles. He said North Dakota's shipments are predominantly to the eastern mills, the western mills, Duluth-Superior, the Pacific Northwest, and Gulf-St. Louis. He said the Pacific Northwest and the Gulf-St. Louis are really the only shuttle destinations. He said even in those wheat shuttle destinations, the predominant shipments of choice are 26- and 52-car trains because that is what the market wants.

Mr. S. Bobb said BNSF has provided rate and efficiency discounts and multiple trip incentives. He said North Dakota shippers are given the same transportation options as are other shippers in North America. He said the shuttle network will continue to expand. He said there are probably about

30 origin and destination projects in the hopper. He said they should end up with approximately 200 origin and destination points on either BNSF or other rail lines.

Mr. S. Bobb said specialty crops and genetically modified organisms will result in more single-car shipments. He said BNSF will continue to offer single-car service to support that segment of the market. However, he said, single-car rates cannot be the same as the shuttle rates because the economics to support that are not available.

Mr. S. Bobb said until there are genetically modified crops with traits that create consumer-perceived value, it is unlikely the consumer will pay more for those crops. To date, he said, most genetic modification has resulted in value for the producer--disease resistance, insect resistance, and herbicide tolerance--through lower production costs. He said when the next wave of genetic modification hits and consumer-perceived value is added, then the consumer will pay more and that higher payment will address the enhanced segregation and transportation costs necessary to move the product. He said government intervention is always a risk. He said capital flight is a risk. He said Wall Street does not get excited when a company spends lots of money on investment and does not get an appropriate return on its invested capital. He said BNSF will be doing whatever it can to increase its return on invested capital.

Mr. S. Bobb said the macroeconomic forces in rural America have been coming for decades and they are going to play themselves out. He said rail service in North Dakota is better than it was 20, 10, and 5 years ago. He said customers can get access to guaranteed service and to guaranteed railcar supplies. He said rates have not gone up. He said BNSF has absorbed a lot of inflationary costs. He said both railroads are getting market share back from trucks. He said the facts are evidenced by statistics from the Upper Great Plains Transportation Institute.

Mr. S. Bobb said the biggest risk is not going for change. He said capital invested 20 years ago or 10 years ago might not be the right capital investment today. He said producers have trucks today. He said they have the ability and the opportunity to bypass the elevator network and go directly to market or to processors themselves. He said while change is uncomfortable, it is necessary for the future.

In response to a question from Senator Nichols, Mr. S. Bobb said the way the rate structure is designed, the Pacific Northwest has to bid up the price of grain slightly over the Minneapolis market. He said the Pacific Northwest's ability to bid up much higher is a function of the world market because of Canadian Wheat Board exports.

In response to a question from Representative Brandenburg, Mr. S. Bobb said BNSF spent a fair amount of time looking at the Edgeley situation in terms of the origin free on board value. He said Edgeley still has a better free on board value going east than Jamestown has going west. He said Edgeley also has elevator facilities on the Canadian Pacific and the area farmers therefore have an option to ship that way as well. He said BNSF has looked at its rates very carefully and it does not believe that its rates have had an impact on the Edgeley facility.

In response to a question from Representative Fairfield, Mr. S. Bobb said BNSF experiences a fair amount of competition across its network. With the trucks on the highway, he said, BNSF has had a lot of competition and has had to respond. He said the rate structure is designed to make wheat available to the Pacific Northwest. He said if a rate is already moving grain to the Pacific Northwest, a company would have no reason to lower the rate. He said the goal is to have a rate structure that puts more wheat into the Pacific Northwest, not a rate structure that degrades BNSF revenue.

In response to a question from Senator Krauter, Mr. S. Bobb said the bushel decrease mathematics is fairly close. He said the exporters did not use the differential rate as much as BNSF had expected them to use it. He said with respect to the three-cent differential rate, one must take into account not only the transportation rate, but also the destination market that French, Minnesota, has in Minneapolis. He said French, Minnesota, gets a net-back by selling to the Minneapolis market and that amount needs to be factored into an equation as well. He said one needs to know how much a Pacific Northwest exporter has to pay in order to pull the grain away from the domestic market.

Mr. S. Bobb said BNSF has very close working relationships with the grain exporters but those relationships do not impact the price of grain. In general, he said, freight is paid by the origin shipper. He said the choices of where to buy the grain and how to transport the grain are generally made by the destination. He said the majority of BNSF's revenue comes from the shipper, not from the receiver.

In response to a question from Representative Mueller, Mr. S. Bobb said BNSF's experience with coloading is that it does not increase capacity or create operational savings or improve service. He said economic and operational experience has caused BNSF to determine that coloading is not a comprehensive answer for the network. He said the reason that BNSF would not want to coload at certain select points along its railroad is that it would have an economic impact on those people who have made an investment in BNSF efficiency. He said BNSF has broadened its product line and given customers more options from which to choose. He said those people who have invested in the shuttle template have in effect earned a lower rate that is based on shared economics.

In response to a question from Representative Mueller, Mr. S. Bobb said there are some branch lines and single-car service issues that are the root cause of many of the comments on the Public Service Commission's customer satisfaction survey. He said other issues within the survey reflect philosophical differences regarding the shuttle program and demurrage.

Mr. S. Bobb said beginning in early 1996 and extending through early 1998, BNSF had a team that worked on designing the shuttle train program. He said the team was composed of people from various disciplines within BNSF and customers. He said people from elevators were on the design team.

Mr. S. Bobb said the issue is about economics. He said BNSF does have tremendous pressure from its investors. He said there are also customer pressures that are imbedded in the decisions that BNSF makes. He said the programs that BNSF puts in place are at the request of customers to meet the customers' opportunities. He said there are always a few people that believe something BNSF did was to their detriment. He said for each person who did not like the decision, there are probably 8 to 10 people who profited from the decision. He said shuttle trains drive up the origin value of grain.

Chairman Wanzek recognized Mr. Bob Stevens, Regional Manager, Southwest Grain Cooperative, Gladstone, who presented testimony regarding grain transportation rates. Mr. Stevens said Southwest Grain Cooperative has a shuttle loading facility between Gladstone and Taylor. He said Southwest Grain Cooperative is also in the process of building another shuttle facility in Lemmon, South Dakota. He said Southwest Grain Cooperative is a cooperative representing about 5,000 people. He said it has facilities in 12 communities.

Mr. Stevens said BNSF has transferred southwest North Dakota spring wheat markets that had been developed over the past 20 years to producers in the eastern Dakotas and western Minnesota by using inverted rate systems. He said BNSF has displaced millions of bushels of spring wheat raised in the western Dakotas. He said even though inverted rates have been in effect since last spring, the effects were not felt until after the 2001 harvest. He said the facility at Boyle is losing about a shuttle train a month to the eastern markets. He said the eastern grain does not have the same milling characteristics as western North Dakota grain. He said Asian markets will be lost to Canadian producers if those types of milling characteristics continue to move to the Asian markets.

Chairman Wanzek recognized Mr. Jim Bobb, Grain Division Manager, Southwest Grain Cooperative, who presented testimony regarding grain transportation rates. Mr. J. Bobb said the shuttle concept with respect to spring wheat is something about which people can get very excited. He said the problem arises when facilities are being built and there is the realization that there are not enough markets. He said the Pacific Northwest is the only real market right now. He said when you start looking at the facilities in the Red River Valley, you have to ask where they are going to ship the grain. He said there is no competition and the grain is held hostage unless the producer decides to move the grain first east and then west. He said the volume at Southwest Grain Cooperative is down about 20 percent at the current rate. He said Southwest Grain Cooperative will be down about 3.5 million to 5 million bushels of spring wheat this year. He said BNSF has not lost that volume. He said a lot of that volume is being loaded east at a lower rate. He said Southwest Grain Cooperative has invested about $6 million in the facility to be able to load shuttles. He said a long-term inverse rate will place Southwest Grain Cooperative in jeopardy.

Mr. J. Bobb said he does not understand why he needs to pay $120,000 more for a wheat train that has the same specifications for loading and unloading into the same marketplace as another product train. He said the Pacific Northwest market is 25 cents lower than it was a year ago. From the middle of November 2001, he said, the Pacific Northwest has lost value against last year. He said the export market is sluggish this year.

Chairman Wanzek recognized Mr. Craig Fisher, farmer-trucker, Richardton, who presented testimony regarding grain transportation rates. Mr. Fisher said he normally hauls all his grain to the southwest corner of the state. He said this year he is hauling 70,000 to 80,000 bushels to Jamestown. He said his credibility with the local elevator will be hurt this year when he goes to buy fertilizer.

In response to a question from Senator Wanzek, Mr. Fisher said the net price per bushel difference that exists when he trucks his grain to Jamestown is 33 cents when contracted. He said that amount gives him a dollar a mile to drive.

In response to a question from Senator Krauter, Mr. Fisher said the road from Bismarck east is terrible. He said the truckers are the ones who are breaking up the roads. He said the truckers are using fuel and wearing out tires. He said he should not have to haul his grain east.

Chairman Wanzek recognized Mr. Vernon Mayer, farmer, Regent, who presented testimony regarding grain shipment rates. He said the majority of his wheat goes to the Southwest Grain Cooperative. He said Mr. S. Bobb presented a lot of overwhelming data regarding the economics of running a railroad. He said the average cost for BNSF to haul freight in the United States last year was approximately $18 a ton per thousand miles. He said BNSF's break-even costs are $15 to $16 per ton per thousand miles. He said that netted BNSF approximately $750 million in profit. He said to haul his wheat from Gladstone to the Pacific Northwest, it costs $26 per ton per thousand miles. He said that is $8 per ton more per thousand miles than the average of everything else that BNSF hauls in the country. He said if BNSF would just haul his wheat the average it costs to haul all other products in this country, the Southwest Grain Cooperative could pay 33 cents per bushel more for his wheat. He said there is a feeling of frustration out there, especially in the southwestern part of North Dakota. He said they feel they are being economically discriminated against by the railroads.

In response to a question from Representative Nelson, Mr. J. Bobb said the freight spread between a shuttle rate and a 52-car rate will vary depending on the barge rate through St. Louis. He said destination markets are very small for spring wheat right now. He said the Pacific Northwest is the primary market. He said he does not understand why all the new facilities are being built if there is no market. He said he is not saying there will not eventually be a market. He said right now they do not have any destination markets that can accommodate a shuttle. He said shuttle service to the Pacific Northwest has been profitable for the Southwest Grain Cooperative. He said the cooperative has loaded 33 shuttle trains since 1999. He said between the 2001 harvest and January 2002, the Southwest Grain Cooperative did not ship any grain to the Pacific Northwest. He said at that time the best market involved smaller trains going to Minneapolis. He said there are economic risks with shuttle trains. He said in order to get the incentives, everything has to click and that does not always happen.

In response to a question from Senator Wanzek, Mr. J. Bobb said it took everyone awhile to figure out why grain was moving the way it was. He said right now there is an unfair shifting of customers. He said everything west of the Southwest Grain Cooperative is a mileage rate and everything east is an inverse rate.

In response to a question from Senator Bowman, Mr. J. Bobb said BNSF holds a farmer's grain hostage until it is ready to ship it. He said BNSF will eventually ship everyone's grain.

In response to a question from Representative Fairfield, Mr. J. Bobb said the Southwest Grain Cooperative was built at Boyle because the two branch lines south had been abandoned, as had one branch line north. He said in 1999 the Southwest Grain Cooperative completed an addition to the facility which expanded it to two million bushels. He said the cooperative also completed an addition to its track to allow loading of the 110-car shuttle trains. He said the cooperative was told that inbound shuttle trains carrying fertilizer would become a reality and the cooperative therefore has a fertilizer plant. He said he has unloaded one such fertilizer train.

In response to a question from Representative Schmidt, Mr. J. Bobb said the elevator consolidation in southwestern North Dakota happened in the late 1980s. He said the Southwest Grain Cooperative also owns eight elevator facilities in the country.

Chairman Wanzek said a representative from the North Dakota Farm Bureau was not able to be present today. However, he said, he was given written testimony compiled by Mr. Eric Aasmundstad, President, North Dakota Farm Bureau. A copy of the testimony is attached as Appendix B.

Chairman Wanzek recognized Mr. Ron Raushenburger, Governor's office, who presented testimony on behalf of Governor Hoeven. He said Governor Hoeven has asked the Governors of neighboring states to join him in working toward a solution for the unfair grain prices. He said BNSF is using its power to offer discounted inverse rates. He said Governor Hoeven is asking BNSF to evaluate its rates and commit to making them equitable. He said BNSF practices are having impacts on the state's roads and the state's smaller elevators.

Chairman Wanzek recognized Mr. Tony Clark, Public Service Commissioner, who presented testimony regarding the role of the Public Service Commission in regulating railroads. A copy of his testimony is attached as Appendix C. Commissioner Clark said BNSF views North Dakota as being resistant to change. He said the problem is that North Dakota has a monopolistic imposition of will upon captive producers and elevators. He said North Dakota is against creating unfair and irrational advantages for a small number of shippers.

Representative Brandenburg said he wonders why there is a $1.08 rate in western North Dakota and lower rates farther east. He said it appears that the western part of the state has no competition; whereas, there is competition in the eastern part of the state and in western Minnesota.

In response to a question from Representative Mueller, Commissioner Clark said a rate complaint case would have to be taken before the Surface Transportation Board in Washington, D.C. Until a few years ago, he said, going before the board was not a realistic option. He said in order to prevail in such a case, one had to prove the rates are unreasonable and the railroad was market dominant. Before the recent rules, he said, the railroads were able to stymie anyone who brought a rate complaint case. He said a rate complaint case brought in Montana was bottled up by the railroads for 17 years, just on the issue of whether the railroad was market dominant. He said they never were able to get to the issue of whether the rates were above what a competitive market would allow. He said in western North Dakota the railroad is clearly market dominant. He said the standard rule of thumb is a 180 percent ratio of revenue to variable cost. He said the Public Service Commission has looked at some shipments and determined that the ratios were in the 200 to 300 percent range.

In response to a question from Senator Wanzek, Commissioner Clark said federal preemption applies to the rail industry. On the federal level, he said, we have seen what has happened to other network providers, such as the telephone industry and the electric industry. He said the competitive changes have not happened in the rail industry and would require federal intervention.

In response to a question from Senator Krauter, Commissioner Clark said the Public Service Commission has intervened in cases before the Surface Transportation Board. He said new rules issued by the board are much more favorable to states like North Dakota and get beyond the initial determination regarding market dominance and move to the issue of the rates themselves. However, he said, the rules are now bottled up in litigation because the railroads apparently challenged the rules. He said during the last legislative session the Public Service Commission asked for an appropriation of $100,000 so it could begin to explore whether filing a rate case was the appropriate thing to do. He said the commission still believes it would be appropriate to pursue such research. However, he said, the commission also understands it will take a lot more money than $100,000 to prevail in a rate complaint case. He said because the new rules are being litigated by the railroads, the new rules are not in effect.

In response to a question from Senator Wanzek, Commissioner Clark said the Public Service Commission would be the entity to pursue a rate complaint case against BNSF.

In response to a question from Representative Schmidt, Commissioner Clark said before implementation of the Staggers Act in 1980, there were difficulties in the rail industry. He said there were a lot of bankruptcies. He said the rail industry was a very insolvent industry. He said the Act gave the railroads more ratemaking freedom and allowed them to streamline their abandonment procedures. He said it may be time to review the provisions of the Act and determine if changes are merited.

In response to a question from Senator Wanzek, Commissioner Clark said the Public Service Commission has the authority to initiate a rail case but without dollars to appropriately staff the effort, it would not be effective. He said rail rate cases are highly specialized. He said there is not the time to get involved in such an effort, given the number of staff employed by the commission and the statutory duties of the commission. He said a rail rate case would require specialized attorneys and specialized expert witnesses. He said such individuals can charge a premium for their services. He said the type of information that would have to be used in litigation would be above that which the commission is able to provide.

Chairman Wanzek recognized Agriculture Commissioner Roger Johnson who presented testimony regarding grain transportation rates. Commissioner Johnson said participants at the national meeting of agriculture commissioners passed a resolution urging all railroads to charge reasonable rates, offer fair and consistent rate spreads and service to all shippers, and treat all shippers equitably. He said the resolution also urged all railroads to offer coloading of trains and to implement reasonable loading policies that hold both shippers and railroads responsible for moving equipment promptly. He said the agriculture commissioners believe the federal government should increase its oversight over railroad issues, including issues pertaining to rates and services in areas where competition is not present. He said this is an issue that is beyond North Dakota. He said some of the states give their agriculture commissioners regulatory authority in this area. He said North Dakota does not do so.

In response to a question from Representative Froelich, Ms. Marcy Dickerson, State Supervisor of Assessments, Tax Department, said only the real property of railroads is subject to taxation in this state. Ms. Dickerson said the personal property of railroads used to be taxed too but the Railroad Revitalization and Regulatory Reform Act precluded discrimination in the way states tax railroads. She said because North Dakota does not tax the personal property of other businesses, it cannot impose a tax on the personal property of railroads.

In response to a question from Representative Froelich, Ms. Dickerson said to determine the taxation of a railroad's real property, the state begins by valuing the entire railroad. She said this is done via the cost, income, and stock and debt approaches to value. She said this is the method used by most states and it is known as unit valuation. She said a portion of that unit value is then allocated or apportioned to North Dakota. She said allocation factors include gross earnings, revenue traffic units, and car and locomotive mileage. She said the North Dakota figure is then taken and divided by the system figure to arrive at a percentage. She said the percentage of the unit value is then allocated to this state. She said the next step is to assign a value per mile of track to each rail line. She said all the value has to be allocated according to miles of track without regard to other factors. She said to arrive at the mile of track value, the Tax Commissioner asks the railroads for statistics on their income and their various activities on their miles of track. She said this enables the Tax Commissioner to determine which are the most valuable lines of track, as opposed to those that are less valuable. She said the Tax Commissioner calculates the relative value of each track. She said the railroads provide the Tax Commissioner with the number of miles in each taxing district.

In response to a question from Representative Brusegaard, Ms. Dickerson said when a railroad spur becomes nonoperating or abandoned, it becomes subject to local assessment. She said at that point it is not subject to the system assessment.

In response to a question from Representative Brandenburg, Ms. Dickerson said the Tax Commissioner does not collect property taxes. She said that is done at the local level.

Representative Brandenburg said elevators pay property taxes, fuel taxes, and other taxes that go to support local communities. He said when the local elevators close, somebody has to make up that shortfall in the local revenue stream.

Chairman Wanzek recognized Mr. Steven D. Strege, Executive Vice President, North Dakota Grain Dealers Association, who presented testimony regarding grain transportation rates. Mr. Strege said the issue of grain shipment rail rates is attracting national attention. He said the association has been accused of being adverse to change. He said in fact the association has a record of opposing changes that are detrimental to North Dakota. He said the inverse rates are in effect secret contract rates that will not be disclosed by BNSF. He said the shuttle packages are sold as 6, 12, or 24 packs. He said it is a large shipper's game. He said there is a discount for the 24 pack of $100 a car. He said the inverse rates go only to large shippers. He said it is not an even playing field. He said recently it became known that 52-car loaders east of Bismarck could also participate in the inverse rate. He said they get less of a rate break and it is only a temporary rate lasting through the end of March 2002. He said this move widens the discriminatory pricing in effect between the 26- and 52-car loads. He said instead of bringing rate levels down across the board, this brings a different fracture level to the program.

Mr. Strege said the shuttle program is claimed to be very efficient. However, he said, shuttle trains are given priority while other trains are left to sit for 7 to 12 days. He said the trains are loaded and ready to go but they are not picked up. He said the inefficiencies in the smaller shipments are created by the railroads. He said if BNSF would put as much effort into coordinating these smaller trains as they do into advancing the shuttle train concept, the efficiencies could be enjoyed by all.

Mr. Strege said BNSF says it had tried coloading and it did not work. He said that was tried in Union Pacific territory. He said all railroads in North Dakota, except BNSF, provide for the coloading of trains. He said BNSF has allowed its Red River Valley and Western Shortline to coload until June 30, 2002. He said the question to be asked is if the other railroads can make coloading work, why cannot BNSF. He said BNSF has made a decision not to coload and to instead push the single-loading shuttle station concept and to let other customers find their own way or simply go out of business.

Mr. Strege said in the eastern part of the state and particularly in the northern part of the state, the shuttle concept amounts to an elevator and branch line abandonment plan. He said if certain elevators are given a preferential rate and if those elevators have a circle of dominance that can extend out for 50 to 60 miles, the reality is that other elevators will close. He said that gives farmers in the area less marketing opportunities and it creates difficulties for rural communities.

Mr. Strege said there will probably always be single-, 26-, and 52-car rates on the books. However, he said, if the volume is pushed into the shuttle facilities, the smaller facilities will not be able to continue to exist. He said the scoots program is another indication that the 52-car loads are destined to be loaded only by the shuttle loaders.

Mr. Strege said Mr. S. Bobb stated that BNSF is not driving the change but rather the market is driving the change. He said the North Dakota Grain Dealers Association is not against efficiency and lower rates. He said the association would simply like to see those lower rates and efficiencies made available to everyone in North Dakota.

Mr. Strege said the eastern part of the state and the western part of the state should not get into a war. He said neither should shippers of different sizes get into a war. He said the common goal is lower rates for everyone. He said the Agriculture Committee could work with the National Conference of State Legislatures to bring attention to this matter. He said the committee could support remedial federal legislation, press BNSF for coloading on its lines, and investigate what it would take to file a rate complaint case. He said those efforts will put pressure on BNSF to be friendlier to all shippers.

In response to a question from Representative Brandenburg, Mr. Strege said a shuttle loading facility needs to have track on each side that can accommodate 110 cars, plus the necessary number of locomotives. He said that is two and one-half miles of track. He said, in the alternative, a facility could have circle tracks. He said the track needs to be able to accommodate 286,000-pound gross weight cars. He said the gross weight on hopper cars used to be 263,000 pounds. He said in the last 10 years, the hopper cars have increased to 286,000 pounds gross weight. He said one of the disadvantages of the increase was that it did create a problem for short line tracks that were not heavy enough to accommodate the heavier cars.

In response to a question from Senator Wanzek, Mr. Strege said there are nine elevators that are shuttle capable. He said some load 110-car trains but not within the 15 hours or they load for shipment to destinations that are not subject to the preferred rates. He said some elevators believe if they do not participate in the shuttle program, another elevator down the road will get the incentives from the railroad. He said it is not accurate to say the railroads are not pushing the shuttle facilities. He said the railroads could do more to work for the current system by encouraging coloading and by matching the 52- and 54-car trains.

In response to a question from Senator Bowman, Mr. Strege said the committee needs to determine whether this discussion is just about the efficiency of railroad transportation or whether it is about the efficiency of the entire food chain, from the elevator to the end consumer. He said the domestic milling market requires mainly 26-car trains or less. He said that market does not take 110-car trains. He said the railroad is creating a system that does not fit the domestic market. He said 52-car trains were serving the export market adequately and people had to spend money on the other end to gear up for 110-car trains. He said because there is the 15-hour unloading requirement, the exporters sometimes have to keep crews on even when they would otherwise not do so, simply so the exporters can be ready for the train and get it unloaded in the time required. He said the exporters also experience logistical problems, especially when they have other trains onsite.

Chairman Wanzek recognized Mr. Neal Fisher, Administrator, North Dakota Wheat Commission, who presented testimony regarding grain shipment rates. Mr. Fisher said most of the shuttle movement is much more applicable or adaptable to commodities other than spring wheat. He said the quality traits in the spring wheat markets do vary. He said there are different milling and baking attributes and performance within the spring wheat production regions. He said Asian customers have certain preferences. He said the commission is concerned about quality disruptions in key markets and the allocation of resources that might in the future dictate where wheat can be produced.

In response to a question from Representative Brusegaard, Mr. Fisher said the rates that do not make sense on a ton-mile basis are what is generating the concern about fairness. If the opportunity exists to lower rates in an area that requires longer shipping to the end market, he said, there must be enough margin to work with and still make a profit.

Chairman Wanzek recognized Mr. Keith Brandt, Manager, Farmers Elevator, Enderlin, who presented testimony regarding grain shipping rates. Mr. Brandt said BNSF seems to be ignoring branch lines that serve entities that have been BNSF customers for many years. He said more grain is being trucked on highways. He said North Dakota will probably lose $27 million in federal highway funds. He said the committee needs to determine who is going to bear the brunt of that. He said because BNSF has done a good job of reducing expenses, it should have the ability to reduce rates.

Chairman Wanzek recognized Mr. Todd Vogel, Manager, Marion Elevator, and a director of the North Dakota Grain Dealers Association, who presented testimony regarding grain shipping rates. Mr. Vogel said in the 1980s the railroad went to the 26-unit cars. He said the elevator incurred the cost and made the required change. He said in 1987 Red River Valley and Western Shortline took over the track from Burlington Northern but Burlington Northern still had a lot of control over the short line. He said in the early 1990s the certificate of transportation program came into existence. He said the North Dakota Grain Dealers Association opposed introduction of the program. He said the association thought it was not a decision that would help North Dakota. He said what Mr. S. Bobb did not explain was that under the certificate of transportation program, BNSF auctions off cars. He said in the auction process, the Marion Elevator had to pay the original $2,000 per car tariff rate and then had to go out and buy cars for $300 to $400 over that rate to get the cars to Marion. He said, as a result, the Marion Elevator started using trucks to move grain. He said in the past seven years there has been flooding in the Marion area. He said track in the area was under water. He said the railroad indicated that because the elevator did not ship cars in the past 5 to 10 years, the railroad would not fix the tracks in the area. He said the railroad blames the elevator for not shipping cars when the reality is that the railroads made it too expensive for the Marion Elevator to ship the cars. He said in 2001 the area tracks became abandoned. He said railcars will never be seen in Marion. He said the farmers in the area are shipping their grain by truck and that has a negative impact on roads. He said farmers are working land that was once owned by the railroads and the railroads therefore have a responsibility to service all the communities in North Dakota, and not to just pull out and say it is the community's fault or the elevator's fault that rail service is not provided or that cars are not loaded to make the rail service work. He said the circumstances are something over which the local residents have no control.

Chairman Wanzek recognized Mr. Dana Brandenburg, who presented testimony regarding his experience with BNSF. Mr. Brandenburg said all he heard today is how the railroad has used people, lied to people, and cheated people. He said in 1997 he had a business that involved picking up railroad ties from BNSF and reselling them to farmers and other entities. He said he had submitted a proposal to the railroad to develop a chipping facility in Mandan so he could chip the scrap ties, take the chips to the Heskett Plant, mix them with coal, and make electricity. He said he was told by the road masters that he would get the contract. He said BNSF had in fact given the contract to another entity. He said there should be an investigation into what BNSF did to him.

Chairman Wanzek recognized Professor Dwight Bauman, Pittsburgh, Pennsylvania, who presented testimony. Professor Bauman said his grandfather was involved in setting up the State Mill and Elevator and the State Bank. He said his grandfather was concerned that people in Minneapolis were trying to run North Dakota. He said that is happening now. He said farm people are driven by yearly cycles and city people are driven by economic cycles. He said in 1970 he convinced Carnegie Mellon University to buy a bankrupt taxi company to study the regulatory process. He said those who do not learn from history live to repeat it. He said the railroad is the model of the reregulation process. He said computer models have determined that 52 cars work and 51 cars do not work. He said the airlines had the same problem. He said the regulatory process does not fit a nice model. He said Oregon and Washington formed a process to take over branch line railroads and run them. He said the main lines are selling to Amtrak and someone should find out how much they will charge to use the track. He said farmers could then ship their own grain. He said the State Mill and Elevator Act included this possibility.

In response to a question from Representative Froelich, Mr. S. Bobb said in 2000, $390,731,000 of revenue was generated by BNSF in North Dakota. He said total taxes paid in North Dakota by BNSF was $7,246,602.

In response to a question from Senator Bowman, Mr. S. Bobb said BNSF sets transportation rates by capturing as much grain as it can at the various origins and by capturing as many destination opportunities as it can. He said in some origins, BNSF can set the rates higher and in some origins, it has to set the rates lower. He said the rate levels set by BNSF are a function of what the markets will bear. He said the question is how else would others suggest that BNSF set the rates. He said looking only at BNSF transportation rate impacts will give an incomplete equation. He said the elevation margins also need to be reviewed as well as export sales. He said during January, February, and March 2002, the wheat export market has gotten a lot softer and there is really only one entity that has exports. He said the question is from whom is that entity choosing to buy wheat and is that decision driving some of the other behaviors. He said is Jamestown simply needing to fulfill a commitment they made to supply bushels and are they therefore bidding flat to negative margins to avoid some sort of penalty. He said there is grain being trucked from the Dickinson area east and then moved west. He said BNSF will do the mathematics. He said if there are enough bushels moving, BNSF will have to do something to offset that. He said it would be a bad business decision for wheat to go from the Dickinson area east by truck to get on a lower rate moving west.

Mr. S. Bobb said BNSF has to make certain that this is a rate issue rather than a customer choosing to manage its elevator margins in this way. He said Minnesota producers have eastern domestic markets to which they are choosing to ship. He said producer marketing is driven by price expectations, tax purposes, and storage situations rather than by shipping rates.

In response to a question from Representative Fairfield, Mr. S. Bobb said testimony was offered about the trucking of grain from Dickinson to Jamestown. He said if people are trucking their grain instead of paying a premium for guaranteed cars, that shows there is competition. He said none of today's presenters has refuted the economic arguments he has made. He said there are opinions about future impacts and philosophical differences about what is right and wrong but no one has disagreed with BNSF's economic explanations. He said a question that needs to be asked is how many John Deere dealerships and Chevrolet dealerships have recently opened in rural North Dakota. He said those macroeconomic forces have nothing to do with BNSF but they are taking place.

Senator Bowman said the problem is that there is no profit left to the farmers. He said the farmers have been squeezed by everyone.

Mr. S. Bobb said farms are getting larger and the fact is that fewer farmers are therefore buying tractors. He said that is why there are fewer dealerships. He said farm income is derived from crop production and crop prices are very low. He said the railroads have not been able to get rail rate increases in part due to the fact that the destination market cannot pay more and still be competitive.

In response to a question from Representative Fairfield, Mr. S. Bobb said BNSF is charting its way through the macroeconomic forces. He said there is a perception that BNSF is causing consolidation in rural America. He said the reality is that BNSF is responding to the changes that are causing consolidation.

In response to a question from Representative Fairfield, Mr. S. Bobb said reprisals and punitive actions would not be acceptable in BNSF's corporate culture. He said if someone has a difference of opinion with what BNSF is doing, that person should express his or her opinion. He said some people have assumed that if the rates are lowered in western North Dakota, the rates will have to be raised in eastern North Dakota. He said the marketplace does not work like that. He said rates are set where the market allows them to be set. He said rates are not set as a result of reprisals.

In response to a question from Representative Renner, Mr. S. Bobb said BNSF is not a cost plus pricer. He said the rate per thousand miles is going to vary across commodity markets and across geographic origins as a function of each commodity's competitive environment. He said he does not know how BNSF agricultural rates compare to BNSF coal rates. He said BNSF agricultural business is 90 percent tariff-based. He said the agricultural rates are published on the web; whereas, coal rates are highly contractual.

In response to a question from Representative Brandenburg, Mr. S. Bobb said BNSF's shuttle program is both international and domestic. He said the largest growth in the shuttle program has been in Mexico and in domestic destinations. He said the scoots program was designed to fit the unique needs of some processors. He said the scoots program has been run primarily out of shuttle locations because they are capable of handling 58-car trains without any additional capital investment. He said because the nature of the domestic marketplace requires BNSF to partner with eastern railroads in offering the scoots program, it has taken a long time to achieve the appropriate design parameters for the program. He said the program started out at 58 cars and it is now at about 65 to 68 cars because that is what the eastern railroads want to run. He said the scoots program is in the developmental stages. He said today there are no wheat scoots running out of North Dakota. He said it looks like the scoots program's loading origination will not be confined only to shuttle elevators but it will be confined to the 286 network.

In response to a question from Representative Mueller, Mr. S. Bobb said he has been responsible for BNSF's agricultural products area for only four years so he does not know who said what to whom or who implied what prior to that time. He said he does not believe anyone could say that the 26-car or the 52-car arrangement is the only way to go. He said over 50 percent of the grain that left North Dakota in 2001 was shipped in 26-car shipments or less. He said in 1980 unit trains were introduced. He said in some markets, a shuttle is the best shipping method. He said shuttle economics is the way to get North Dakota grain to Mexico. He said the same is probably true of the Pacific Northwest. He said those customers who invested in 52-car facilities made that investment because it had an inherent set of capacity-creating and efficiency-creating service opportunities. He said the investment gave them a rate structure different from the single- and 26-car shippers. He said BNSF does not believe it would be fair to allow 26-car shippers to coload on the 52-car rate. He said given the investment made by facilities that have gone to 110-car facilities, it would not be fair to allow the same 110-car rate for 52- or 26-car shippers. He said not too many years ago no one would have been able to predict the kind of locomotive traction and horsepower characteristics in the marketplace today. He said a big new locomotive weighs 435,000 pounds and will literally squash a non-286 line when it rolls onto it. He said BNSF's coal fleet involves 315,000-pound cars. He said the coal trains are 117 to 135 cars. He said coal moves over a very dense network called the central corridor. He said there is less coal moving through North Dakota because the siting infrastructure is not in place to handle the trains. He said the grain network is never going to have the same density. He said if BNSF goes to a 315,000-pound railcar, six inches will be added to every railcar. He said that means that a train hauling grain in 315,000-pound cars with a locomotive consist would be longer than the typical siting infrastructure. He said BNSF therefore chooses to maintain a 286,000-pound grain car.

In response to a question from Senator Wanzek, Mr. S. Bobb said if one local elevator is already a 110-car facility and a second local elevator made the commitment to upgrade to a 110-car facility, BNSF would not discriminate against the second facility. He said both facilities would be offered the same rate. He said a single area might not, however, be able to support both shuttle facilities.

No further business appearing, Chairman Wanzek adjourned the meeting at 3:45 p.m.

L. Anita Thomas
Committee Counsel

LEGISLATIVE COMMITTEE HEARS FROM STEVE BOBB

An article from the ND Grain Dealers Associaton Grainmen's Mirror magazine - March 2002

Tensions were high as the North Dakota Interim Legislative Agriculture Committee met on February 27 at the State Capitol in Bismarck. Sole item on the agenda was the committee's study into railroad rates and practices. Leadoff witness was BNSF Ag Products Vice President Steve Bobb. His presentation promoted shuttle trains and attempted to show there were no adverse effects from BNSF's inverse rates on wheat to the West Coast.

A very revealing point of the hearing came when Richardton area farmer Craig Fisher told of how those inverse rates caused him to truck his wheat 170 miles east to Jamestown for loading on a shuttle train to go back west past his normal delivery point of the Southwest Grain Terminal near Gladstone. Fisher said he didn't want to do that, what with time and wear and tear on his equipment involved, and bypassing his local business, but it gave him the best price on his wheat. Steve Bobb said he would have to look into the matter because he didn't want to be hauling wheat for less from Jamestown than he could haul those same bushels from Gladstone.

Committee member Senator Bill Bowman of Bowman, ND has been an outspoken critic of the inverse rate, which means farmers and elevators in his west end of the state pay more to ship grain to the West Coast than is charged for grain from eastern North Dakota and western Minnesota. He says this has robbed western North Dakota farmers of markets they have developed and traditionally served, and has had a significant depressing effect on wheat prices.

Southwest Grain Cooperative Grain Merchandiser Jim Bobb, a cousin of Steve Bobb, confirmed the market distortion by saying his cooperative's grain volume is down 20% from a similar period a year ago, which he blames on the inverse rate.

Senator Bowman questioned Steve Bobb pointedly about rate-setting by railroads. Bobb said they had to meet the competition. Well, asked Bowman, what about where there is no competition, like western North Dakota. Bobb basically admitted they charge what the traffic will bear.

Steve Bobb had actually set the stage for a high tension hearing when, in his opening remarks, he said North Dakota is simply against change. He said North Dakotans opposed unit train rates 20 years ago, the COT program, and now shuttle trains. Public Service Commissioner Tony Clark rebutted the accusations by stating that a definite pattern was showing, but that it wasn't of resistance to change; instead it is a monopolistic railroad trying to impose its programs on captive producers and elevators.

Grain Dealers Executive Vice President Steve Strege pointed out that on a Fargo area radio talk show the previous Friday, Mr. Bobb had singled out the ND Grain Dealers as opposing change, opposing any innovative concept the railroad had come up with. Strege thanked Mr. Bobb for the recognition of the key role the Grain Dealers Association had played in resisting changes like wholesale abandonment of branchlines and the car auction program that pits one shipper against another while the railroad controls the car supply faucet. He said the BN had more money and more lawyers to outlast the grain industry, including the National Grain and Feed Association and some large grain companies in the COT case, and that after seven years the grain industry just quit.

At one point during the hearing, Bobb said "macroeconomic forces" were driving the conversion to shuttle trains. He denied BNSF had anything to do with it, or that it was putting in any "upfront capital". Committee members seemed unconvinced. Representative April Fairfield of Jamestown asked Bobb if he was "a pawn or a predator" within the "macroeconomic forces." Strege read to the committee from a July 1999 North Dakota newspaper report in which an official with a company building a shuttle facility had stated: "The railroad is driving this. Without their incentives this would not have happened. They're giving us a hell of a deal."

Steve Bobb said that BN had decided back in the 1980's to get away from secret contracts and go to transparent rate-making. His intentions were questioned later in the hearing when someone asked why these inverse rates are in secret contract.

Steve Bobb might have been surprised at the level of discontent these rates have generated. Upper management, half the Board, and a number of other patrons from Southwest Grain were at the hearing. Grain Dealers was there in force with five people. The Governor's office, Public Service Commission, Ag Commissioner, Wheat Commission and others testified in opposition to what BNSF is doing. Public Service Commissioner Tony Clark's testimony is printed elsewhere in this issue.

Southwest Grain Cooperative General Manager Bob Stevens, with a shuttle facility near Gladstone, ND and another going up at Lemmon, SD, said the railroad is transferring markets developed by western North Dakota and Montana, to the east. He said there is a difference in the quality and milling characteristics of the production from these areas and that (by trying to fill markets with something different) we risk losing market share to Canada.

Jim Bobb said the shuttle train concept for spring wheat is a little baby. He warned easterners that there are few destination markets that take shuttle trains of spring wheat. He said the BNSF has used the PNW market to keep the eastern shuttle loaders going, robbing western shippers of their usual markets. If people are building shuttle facilities for spring wheat, they better take a look at destination markets, he said, there are no mill markets in the U.S. that take shuttle trains. He also said that competing non-shuttle elevators in the east are vulnerable to this use of the shuttle concept.

Jim Bobb also brought up the significant but unexplained difference in rates between different crops. Why, he asked, does it cost him $120,000 more to ship a wheat train west than it would for corn or barley. He said the wheat rates are high enough to allow for the inverse rates.

From Governor Hoeven's office, Policy Advisor Ron Rauschenberger said Hoeven has been in contact with other Governors around the region and that a joint letter of concern to the BNSF is being circulated for signatures.

Ag Commissioner Roger Johnson stated that the National Association of State Departments of Agriculture had addressed rail issues at its meeting the previous weekend and had adopted a resolution calling for equitable treatment of all shippers.

Wheat Commission Administrator Neal Fisher reported some Asian market complaints about the milling characteristics of wheat they have been receiving off the PNW Coast. It is not yet confirmed, but Fisher thinks this could be related to eastern North Dakota and western Minnesota wheat moving into those markets, instead of the traditional supply from western North Dakota and Montana. Fisher emphasized that he wasn't saying the eastern wheat was of lower quality, but it is a <u>different</u> quality, and mills differently because of the differences in climates under which the two are raised.

Steve Bobb claimed that the PNW wanted more wheat than was available in Montana or western North Dakota, and so he had to put in lower rates from the east in order to fill the demand. He did not mention the Montana Ag Statistics report showing 79 million bushels of spring wheat stored in Montana in December 2001, or the millions of bushels stored in western North Dakota. State Senator Ron Nichols of Palermo asked if PNW buyers wouldn't have had to bid up to get more grain had the inverse rates not been put in. Bobb said the business would have gone to Canada.

State Representative Mike Brandenburg of Edgeley said he is concerned about BN's new tactics wiping out elevators, jobs and the tax base. He cited a widening spread in the rate between his local elevator, of which he is a director, and a shuttle loader 40 miles away. Bobb said the FOB values are the same and so there had been no impact. Brandenburg cited volume figures that showed otherwise. His elevator invested heavily in its station on the Red River Valley and Western Railroad, that feeds the BNSF. Edgeley could have made these improvements at one of two stations they have on the Dakota, Missouri Valley & Western. Now, said Brandenburg, the BNSF takes grain away from them with discriminatory rates. (Steve Bobb had said in a recent newspaper article that Edgeley was a victim of its own poor planning.)

State Senate Minority Leader Aaron Krauter of Regent accused BNSF of taking over the marketing process and being the exporter and the handler. Bobb said the majority of their revenue comes from the shipper and it is not BNSF's place to get in between the shipper and the exporter.

At one point during the meeting, Steve Bobb said, "We have not been very good at raising rates." This probably didn't score many points with Committee members. Bobb said they had cut costs. This prompted Grain Dealers Association President Keith Brandt to ask why all rates hadn't been going down. Brandt also made reference to the many times Steve Bobb talks about taking care of Wall Street and stockholders. Brandt quoted the new CEO of Ford Motor Co as saying a company should take care of its customers first and then the stock will take care of itself. Grain Dealers Director Todd Vogel said his elevator at Marion had spent money to upgrade for unit loading on BNSF, later becoming an RRVW line, but then couldn't remain competitive with high priced COTs. Lack of volume and serious roadbed problems have since led to the line being abandoned.

Mr. Bobb told the Committee that BNSF was hauling 40% of its grain volume in the 5,500 cars dedicated to shuttle train service. The other 20,000 cars picked up the rest. Strege said that much of this efficiency difference is explained by the railroad's concentration on shuttle service, while leaving other trains and cars sit at the elevators or on sidings or in rail yards so that shuttle trains can be pushed on through. It is the railroad that controls the efficiency. He said if BNSF would spend as much time and effort on working with its current customers, for example co-loading of shuttle trains, as it does on pushing the shuttle concept into areas where it doesn't make sense, by manipulative rate schemes, the railroad could gain efficiencies and much of the current elevator system could be maintained to service farmers.

Bobb said they had tried an extensive program of co-loading in the mid 1990's, but lost market share to the Union Pacific. It was later pointed out that the closest Union Pacific tracks are some distance south of North Dakota and so the comparison is invalid. All other railroads in North Dakota, except BNSF, do co-loading.

The state's authority over railroads doing business in interstate commerce is limited. The Public Service Commission is the designated agency to represent the state in railroad matters such as at the federal Surface Transportation Board. That does not preclude other state officials such as the Governor or Ag Commissioner or Attorney General from becoming involved.

Public Service Commissioner Tony Clark stated in his testimony that in the 2001 legislative session a PSC request for $100,000 to look into bringing a rail rate complaint to the STB was turned down. The railroads had lobbied against it. Sentiment at the Interim Ag Committee seemed to be that the rejection of that funding had been a mistake, and that getting something going like that should be taken up again.

State Representative Rod Froelich of Selfridge asked a number of questions about the amount of property taxes BNSF pays in North Dakota. A representative of the Tax Department was called to the hearing to explain the formulas for assessment.

State Representative Phil Mueller of Wimbledon said the BNSF is certainly not talking fairness when it put programs in place that bypass its own 52-car loaders. He also brought up co-loading. Steve Bobb said he doesn't know what was said by whom about the duration of 52 car trains being "top dog".

Strege urged continued joint action with other states through Governors, Public Service or Utility Commissions, Ag Commissioners, and the Conference of State Legislatures. Support of federal legislation to provide more oversight on the railroads is likely necessary, and should be supported by state government and the Congressional delegation he said.

The Committee plans to meet again in April regarding the railroad issues. It is scheduled to meet again in March to take up one of its other studies, on genetically modified crops.

February 03 , 2002

Alliance claims railroad out to bust rural N.D.
By LAUREN DONOVAN, Bismarck Tribune

Farmers and the railroad are like a couple locked in a bad marriage.

They can't break up and they can't get along either.

The relationship never has been easy. But it has now reached the point where an agriculture coalition in North Dakota is spending big advertising bucks to tell the world how far things have deteriorated.

In thousands of dollars worth of newspaper and radio ads, the Alliance to Keep Rural America on Track claims Burlington Northern Santa Fe is behind a system of super shuttle elevators on its line, giving some of those shuttles better rates than others and ultimately driving smaller elevators right off the map.

Among casualties, the alliance says, will be more small towns, more jobs and more roads and highways beat up bald because they're used like branch lines to fewer elevators.

The alliance says BNSF looks, smells and acts like a monopoly and it can do whatever it wants because it doesn't have any significant competition here, pushing rail rates higher in North Dakota than any other state. They estimate the railroad's gross revenue in the state approaches $340 million.

The railroad answers that the alliance puts emotion ahead of fact.

BNSF says the 110-car super grain shuttles so disliked by the alliance accounted for 16 percent of its grain freight in North Dakota last year and have helped keep rates fairly steady over the last 20 years.

And besides, the market, not the railroad, will decide how many elevator shipping points are viable in the future, BNSF says.

As to charges of monopolistic behavior, the railroad says it isn't regulated like one and the presence of the Canadian Pacific railroad, plus any number of semi trucks in North Dakota, provide a competitive rate atmosphere. Rates are highest here because distance to the market is longest, it says.

BNSF owns or controls 70 percent of all the railroad track in North Dakota and correspondingly has a 70 percent share of all grain moved by rail, according to a study by the Upper Great Plains Transportation Institute at North Dakota State University.

The alliance has the attention of state officials.

An interim Agriculture Committee will investigate BNSF's rates, and railroad representatives were called into Gov. John Hoeven's office Thursday. At that meeting, BNSF agreed to open its books so a third-party analyst can look at the railroad's rates and its economic justification for other shipping practices in dispute.

The North Dakota alliance, arm-in-arm with a national Alliance for Rail Competition, is pushing federal legislation. The proposal, while still a long way from regulating the railroads like they were before the deregulation of the 1980s, would give shippers and producers better avenues for rate complaints and access to rate arbitration.

Jon Mielke, who oversees elevator issues for the state Public Service Commission, agrees with the alliance's position that the future looks very worrisome for many of the state's 420 elevators.

Farmers and elevators on one side and BNSF on the other were rubbing along in their usual fractious way until last summer.

Then, because BNSF wanted to pull grain from eastern North Dakota away from Minneapolis and into the Pacific Northwest markets, the railroad implemented a new inverse rate system that suppressed freight rates for only a few 110-car shuttle elevators east of Bismarck. The further east of the usual market dividing line at Bismarck, the lower the rate.

Mielke said BNSF should give all farmers an equal shot at lower rates.

Because the railroad not only gives better rates to shuttles and then picks and chooses among shuttle elevators which ones get favorable inverse rates, "It's thereby dictating who will live and who will die," Mielke said.

Terry Whiteside of Billings, Mont., heads up the National Alliance for Rail Competition.

He said BNSF's inverse rates in North Dakota were a tactical blunder that could cost the company in the ongoing battle.

"This is not a nice company. This is a war," Whiteside said.

To illustrate, he holds up Monopoly cards that let the players charge eight times the rate when they own all four railroads on the game board.

"The inverse rates were classic market abuse, creating winners and losers," Whiteside said.

Stevan Bobb, a Richardton native, is head of agricultural products for BNSF at Fort Worth, Texas.

He said the railroad had to pull more grain to export markets in the Pacific Northwest this summer, and if it hadn't, both the railroad and North Dakota grain producers would have left money on the table to be snatched up by the Canadian Wheat Board.

"Should we do what the alliance says and let the Canadian Wheat Board make the sale?" Bobb said. He said the inverse rate only pulled 4 percent more wheat onto shuttles.

Steve Strege, head of the North Dakota Grain Dealers Association, says it isn't that simple. He said rates were lowered to less than $1 per bushel at some shuttle elevators, primarily because of competition from Canadian Pacific. But out at Southwest Grain Cooperative, the shuttle elevator in Gladstone, the rate stayed at $1.08 because BNSF is the only game in town, he said.

Today, there are nine elevators that can load the super shuttle trains on BNSF's lines. Bobb said in every case, the railroad provided incentives to encourage the elevator boards and managers to build to that capacity.

Shuttles are the best rates around. They're lower than for unit trains of 52 or 26 cars, pushed by BNSF in the 1980s and 1990s, and far lower than single car shipments.

Strege said shuttles do, for now, offer farmers a better rate.

"But for who and for how long? Once they get rid of the other elevators, the rates will go back up and no one will get a break," Strege said.

As a case in point, he nods to the Edgeley elevator, which two years ago invested $1.5 million to ratchet up to 52-car capacity.

Then, when BNSF lowered the shuttle rates at Jamestown, 40 miles north on the main line, producers were attracted to a 30-cent rate spread. As a consequence, Edgeley saw about 1 million bushels that it normally handles go right up on the highway.

Bobb said Edgeley is victim of its own poor planning.

"If they went to a 52-car system in the last five years, they probably made a bad business decision," Bobb said. "They're welcome to build to shuttle size."

Same thing for elevators that invested in track and equipment to load 26-car unit trains.

"They face nothing (from the shuttles) that they haven't already faced from the 52-car guy. The small shipper, I don't get their story," Bobb said.

Bobb said BNSF invested heavily in the high cubic volume shuttle cars, adding 5,500 of them to its fleet of 29,000 cars to cut operational costs.

The shuttle trains -- a mile long, pulled by three locomotives and as big as grain trains get -- are a response to changes in the market place. They're most profitable on the long-haul runs to the Pacific Northwest export market. BNSF gives shippers incentives to load and unload them in 15 hours, so they can be quickly turned around used again.

"Where else in industry do you have 20 years before a change in technology comes along? Most of them (26- and 52-car unit facilities) were built in the 1980s," Bobb said.

With nine shuttle elevators already in operation and six in various stages of development in eastern North Dakota, it's clear that more and more grain and oil seed in North Dakota will move on shuttles and less and less on single and unit car trains.

It's also a tactic that could increasingly pull grain away from BNSF's competition in eastern North Dakota.

That part of the state has a high concentration of Canadian Pacific rail lines, which doesn't have any shuttle elevators, and semi-trucks can compete in a short-haul to the Minneapolis market.

The summer's experiment with inverse rates proved that BNSF can pull wheat from eastern North Dakota -- traditionally bound to Minneapolis and out -- into the Pacific Northwest export market.

Since that has been a western North Dakota wheat market until now, some say the availability of even more product will only further depress the price.

Bobb said BNSF did not crash the Pacific Northwest market with inverse rates this summer.

"A delivered market is a delivered market," he said.

Research by the Upper Great Plains Transportation Institute shows that the shuttle elevators -- only 2 percent of all elevators in the state -- can already handle one-third of all grain freight in the state and will have to, in order to show a profitable return.

That kind of concentration into so few locations has implications for roads, towns and elevators.

The institute estimates that another 100 elevators will close within the decade, meaning farmers will have to drive further to get to those that remain. The number of farmers who own semi-trucks increased 200 percent since 1995.

"We're fighting for more than a town here and there, an elevator here and there and a bunch of beat-up roads in between," Strege said.

Whiteside, the chairman of the national Alliance for Rail Competition, said there's talk in the industry that shuttle elevators and consequently BNSF are having difficulty filling the super grain trains. They're too big to provide the kind of product consistency and grading required by the end users, he said.

"The jury is still out on whether the shuttle train is going to work or not," Whiteside said.

Some also fear that the shuttles -- huge trains hauling nearly a half million bushels at a crack -- will limit economic development in small niche markets for identity preserved grain and specialty crops.

Ward Uggerud of Otter Tail Power helped organize the national Alliance for Rail Competition.

He's worried about the future of the 250 or so towns it serves that have fewer than 300 people in them.

Uggerud said in the drive to encourage shuttle trains that drive out small elevators, BNSF may be working adverse to its own best future interests in niche markets.

"I think they've lost a certain amount of business acumen," Uggerud said. "They've lost the wisdom that would have allowed them to be more profitable in some of these niche markets."

But Bobb says if the market demands small niche grain shipments, the shipper elevators will be there to respond.

He said there was a 2 to 5 percent increase in single car shipments in the 2001 crop year compared to the year before. However, those were \confined to commodities like dry edible beans, because no one out there is willing to pay a premium for wheat.

He said BNSF does and will continue to service small elevators, but to expect them to get the same favorable rates as the super shuttles is out of line.

One thing BNSF doesn't dispute is that it has 1,000 less track miles in North Dakota than it did 20 years ago -- more than Interstate 94, both directions.

It also doesn't deny that in some instances, it provides incentives for small elevators to use trucks instead of branch lines to move grain to the main line.

It will abandon another 4,000 miles of track through its entire system over the next four years.

Mielke said some of those miles will likely be in places like Zahl and Grenora where BNSF will be able to claim the line isn't being used because it's paying incentives for it not to be.

Bobb said cutting down track maintenance is one way BNSF takes costs out of the equation and keeps rates stable.

"We would raise rates if we could," Bobb said. "It's not like we're nice guys."

Whiteside said North Dakota and regional farmers and shippers who are locked inland are engaged in a critical struggle against BNSF's practices.

"It's a struggle we can't afford to lose," Whiteside said, "or we'll never be able to pull ourselves up by our bootstraps."