



[President's records.](#)
[Northern Pacific Railway](#)
[Company records.](#)

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1757

6-24

OFFICE OF Vice President

FILE NO.

89-8

SUBJECT:

Auburn, Wash =

Drainage ditch on
R/W thru town

Seattle, Wash., March 8, 1935

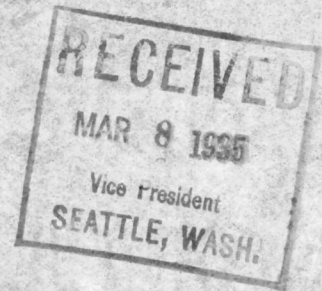
Mr. A. F. Stotler,
Assistant Chief Engineer.

Your letter of March 7th relative to maintenance of ditch on the west side of right of way through the station grounds at Auburn, Washington.

I think we might as well proceed with the filling of the ditch as suggested in your letter.

W. E. Coman

cc- W C Sloan



Seattle, Wash.,
March 7, 1935.

1003-39-2

Mr. W. E. Coman:

Auburn, Tacoma Divn: Maintenance of
drainage ditch on West side of N.P.
right of way thru City.

Please refer to your joint letter of January 22, in regard to maintenance of ditch on the West side of right of way at Auburn, thru the station grounds. You quote a letter from City Attorney Knickerbocker, who states that Mr. Falgreen will call on me to go over this matter again. He was in the office on January 30 and we discussed the entire matter and he advised that the City thought we were obligated to maintain this ditch when we purchased the property from the Hart people but for some reason the purchase did not go thru and it was necessary to condemn, and stipulations did not carry any maintenance obligation.

I advised Mr. Fallgreen, however, that our records have been thoroughly searched and that we have no obligation for the maintenance of this ditch and that the only alternative would be to fill the ditch in, which I understood he agreed to and would so report to City officials.

I am still of the opinion that we should fill the ditch in at intervals so as to prevent water draining from the South to the North in the ditch.

AFS:L

Copy to

Mr. Lowry

A handwritten signature in dark ink, appearing to be "G. B. Smith".

Seattle, Wash., January 22, 1935.

Mr. W. C. Sloan,
General Manager.

Mr. A. F. Stotler,
Asst. Chief Engineer.

For your information I quote below letter dated Auburn, Wash., January 21, from City Attorney Knickerbocker, in reply to mine of the seventeenth, copy of which I sent you, regarding drainage ditch on the west side of our right of way through Auburn:

"Your favor of the 17th instant relating to the matter of a ditch extending in a northerly and southerly direction through this city and on the westerly side of the tracks of the N. P. Railway was duly received.

"Mr. Fallgreen, our City Engineer, and Mr. F. H. McLaskey, Chairman of the Street Committee of the City of Auburn, were in our offices this afternoon. They told me that they together had called to see your Mr. Stotler on two or three occasions but were unable to find him in on either occasion. Mr. Fallgreen further told me that he alone had made other attempts to get in touch with Mr. Stotler but that Mr. Stotler was not in the office at the time and Mr. Fallgreen was busy on other matters and could not wait. It seems that Mr. Fallgreen, on account of his acquaintance with Mr. Stotler, and the fact that they are both engineers, felt more free to talk to Mr. Stotler relative to this matter.

"There is a constant danger that some damage and a lot of inconvenience will be caused by these surface waters overflowing whenever we have excessive rainfalls. Up to the present time we have not suffered as we did something like a year ago. In addition to what I wrote you on December 5 last, particularly relating to the possibility of "C" Street N.W., alongside the N.P. Railway right of way, being paved some time in the future, I have heard that David Hart, Inc., had an agreement with the Northern Pacific Railway by which a ditch extending in a northerly and southerly direction in Section 24 was to be constructed and to be kept open by the Northern Pacific, but I have no personal recollection of such an agreement. I am here mentioning the matter for your consideration.

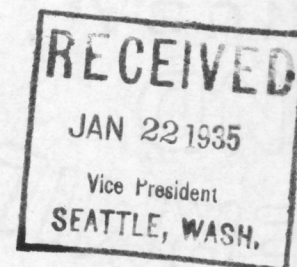
I think within the next two, three or four days Mr. Fallgreen

will make an effort to personally have a talk with your Mr. Stotler and perhaps with you also relative to this matter. Mr. Fallgreen will probably 'phone in to Seattle in advance and make an appointment with Mr. Stotler before going to Seattle."

W. E. Comau

LAW OFFICES OF
KNICKERBOCKER & AGEE
AUBURN NATIONAL BANK BLDG.
AUBURN, WASH.

January 21, 1935



Mr. W. E. Coman, Vice-Pres.
N. P. Railway Co.
Smith Tower
Seattle, Washington

Dear Sir:

Your favor of the 17th instant relating to the matter of a ditch extending in a northerly and southerly direction through this city and on the westerly side of the tracks of the N. P. Railway was duly received.

Mr. Fallgreen, our city engineer, and Mr. F. H. McLaskey, chairman of the street committee of the city of Auburn, were in our offices this afternoon. They told me that they together had called to see your Mr. Stotler on two or three occasions but were unable to find him in on either occasion. Mr. Fallgreen further told me that he alone had made other attempts to get in touch with Mr. Stotler but that Mr. Stotler was not in the office at the time and Mr. Fallgreen was busy on other matters and could not wait. It seems that Mr. Fallgreen, on account of his acquaintance with Mr. Stotler and the fact that they are both engineers, felt more free to talk to Mr. Stotler relative to this matter.

There is a constant danger that some damage and a lot of inconvenience will be caused by these surface waters over-flowing whenever we have excessive rainfalls. Up to the present time we have not suffered as we did something like a year ago. In addition to what I wrote you on December 5 last, particularly relating to the possibility of C Street N. W., alongside the N. P. Railway right-of-way, being paved some time in the future, I have heard that David Hart Inc. had an agreement with the Northern Pacific Railway by which a ditch extending in a northerly and southerly direction in Section 24 was to be constructed and to be kept open by the Northern Pacific, but I have no personal recollection of such an agreement. I am here mentioning the matter for your consideration.

I think within the next two, three or four days Mr. Fallgreen will make an effort to personally have a talk with your Mr. Stotler and perhaps with you also relative to this matter. Mr. Fallgreen will probably phone in to Seattle in advance and make an appointment with Mr. Stotler before going to Seattle. //

Truly yours,

A handwritten signature in dark ink, appearing to read "I. B. Knickerbocker", written in a cursive style.

City Attorney

IBK:MK

January 17, 1935

Mr. I. B. Knickerbocker,
City Attorney,
Auburn, Washington.

Dear Sir:

Referring to your letter of December 5th regarding the drainage ditch on the west side of our right of way through Auburn, in which you state that the Council directed City Engineer Fallgreen to take this matter up further with our company.

So far as I can learn, he has not as yet done so. It is necessary that we take prompt action in order to avoid damages should another flood occur, and in view of the fact that the City is not willing to take over the maintenance of this ditch at its own expense, it will be necessary for us to proceed with the work of filling it.

Yours truly,

W. E. Coman

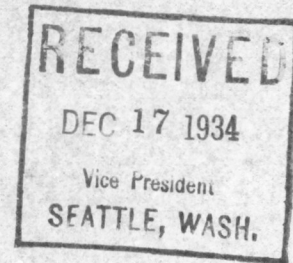
bcc- W.C.Sloan
A.F.Stotler

January 17, 1934

Mr Coman:

Mr Stotler told me a few days ago that we must take action on this ditch at Auburn one way or the other at once in order to avoid damages should a flood occur and said the only thing to do from our standpoint was to tell the City we were going to fill the ditch as they refuse to take over its maintenance. I discussed the matter with Judge Macfarlane this noon and he said we were within our legal rights to do so.

E



Seattle, Wash.,
December 14, 1934.

1003-39-2

Mr. W. E. Coman:

Auburn, Tacoma Divn: Maintenance of
drainage ditch on West side of North-
ern Pacific right of way thru City.

Referring to your letter of December 6, in regard to correspondence we have had about the Northern Pacific maintaining drainage ditch on West side of its right of way thru the City of Auburn. You stated that you had advised the City that the Railway Company preferred to fill the ditch but if the City desired to maintain same, the Railway Company would permit it to do so at its own expense and you attached copies of letters in reply, dated November 26 and December 5, from City Attorney Knickerbocker.

I note that City Engineer Fallgreen was directed to take the matter up with the Railway Company and you wished me to give the matter consideration and advise what the Railway Company's position should be.

In the third paragraph of Mr. Knickerbocker's letter of December 5 he states that Mr. Fallgreen advises that there is some agitation for improvement of "C" Street Southwest, which is just West of the drainage ditch, and that, in connection with the paving, it will be necessary to provide drainage along the highway, which would probably be a storm sewer extending North to Mill Creek, as the present storm sewers in the vicinity of the Depot are overtaxed, and he further says that this paving project, plus the drainage, would be expensive and that if one-half the paving project were assessed to the Northern Pacific it would also add greatly to the amount of the special assessment levied by the City.

There is a question whether there would be any necessity for providing storm sewers for the paving project, but, generally, in carrying out a project of this kind, the drainage is added to it, and, as I recall, the City of Auburn does not have an adequate storm sewer system in the vicinity of the Depot.

In regard to the Railway Company being assessed for one-half of this paving, this could only be accomplished by the Railway Company agreeing to the paving but they have a right to protest and I

Mr. Coman

-2-

Dec. 14, 1934.

assume their frontage ownership would be sufficient protest.

There is also another feature, and that is, that in connection with the abandonment of the Traeger Viaduct I believe there was a deal to be worked out whereby the Railway Company would make a certain contribution by paving the roadway on the West side of the ditch extending South to the Traeger Viaduct and the Algona Road, which is being handled by Mr. Williams.

In Mr. Knickerbocker's fourth paragraph he refers to a possible solution offered by Mr. Fallgreen, viz: for the Northern Pacific to furnish the pipe for replacing the old box drain under the Northern Pacific Passenger Depot at Auburn, as there might be a possibility of the City being able to secure W.E.R.A. funds for the labor of such replacement. However, I am still of the opinion that, in order to protect itself from damages account of this drainage water, the Railway Company should fill the drainage ditch immediately as if there is a heavy runoff we will be subject to damages.

I have not received any word from Mr. Fallgreen but I assume that he is either busy or has overlooked the matter and that he will take the matter up in due course of time.

It is my understanding that Judge Macfarlane is of the opinion that we are within our rights in filling this drainage ditch.

AFS:L

Copy to

Judge Macfarlane
Mr. Sloan
Mr. Williams
Mr. Taylor

A handwritten signature, likely of the sender, is written in dark ink. It is a cursive signature, possibly reading 'D. Williams' or similar, and is located to the right of the distribution list.

Seattle, Wash., December 6, 1934

Mr. A. F. Stotler:

Referring to our correspondence about drainage ditch on the west side of our right of way through Auburn. I wrote the City Attorney at that point on November 20th advising him that we would prefer to fill the ditch but that as a matter of accommodation to the City, if it wishes to keep it in existence, we would be willing to permit the City to maintain it at its own expense, the transaction to be covered by easement or agreement relieving us of all responsibility in the premises.

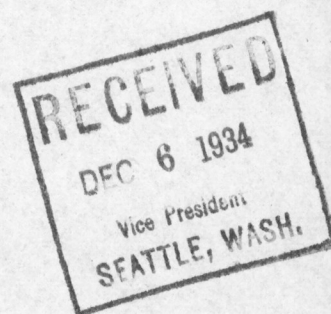
I am enclosing herewith replies received by me from the City Attorney dated November 26th and December 5th. You will note the City Engineer has been directed to take the matter up further with our company and I assume he will get in touch with you. I wish therefore you would give the matters referred to consideration and advise what position we should now take.

I am also sending copies of this correspondence to Judge Macfarlane so that he may express his views.

cc-Robert S. Macfarlane

LAW OFFICES OF
KNICKERBOCKER & AGEE
AUBURN NATIONAL BANK BLDG.
AUBURN, WASH.

December 5, 1934



Mr. W. E. Coman, Vice-Pres.
N. P. Railway Company
Smith Tower
Seattle, Washington

Dear Sir:

This letter is supplemental to my letter to you of the 26th ult., which letter was in reply to your letter of the 20th ult.

The City Council met in regular meeting last evening. A lot of time was taken up in the opening of bids for fire hose, etc. and passing on these bids, which caused the meeting to be drawn out until late. However, before the City Council adjourned, I read your letter to me of the 20th ult. also my letter to you of the 26th ult.

On the 27th ult. I had written a letter to Mr. J. A. Fallgreen, our city engineer, in regard to this matter asking him to give the matter consideration and if he had any objections to make. At the meeting of the City Council held last evening, Mr. Fallgreen raised this question: There has been agitation here for some time for the paving of C Street S. W. in Auburn from the south end of the present paving southerly along the west line of the N. P. right-of-way to connect with the present east and west pavement which extends through Algona. If this street should be paved, it would be necessary, as a part of the paving project, to under drain the road bed and provide a storm sewer. As our present storm sewer pipes to the north could not take care of the extra drainage and storm sewer waters, it would be necessary, in order to complete the paving job, to construct a new storm sewer pipe leading to a suitable outlet, probably Mill Creek, something like a mile from the north end of the street proposed to be paved. This would make the paving project pretty expensive and if one-half of the paving project were assessed to the Northern Pacific it would add greatly to the amount of the special assessment levied by the city.

Mr. Fallgreen also suggested this possible solution: That if the Northern Pacific would furnish the pipe for replacing the old box drain under the N. P. passenger depot at Auburn, there might be a possibility that this city might get the labor of such replacement performed under the WERA. I suppose that if the matter were solved in this manner your company would want the work done under the supervision of an employee of your company.

The up-shot of the matter was that the City Council last evening finally passed a motion directing our city engineer, Mr. Fallgreen, to take this matter up further with your company.

LAW OFFICES OF
KNICKERBOCKER & AGEE
AUBURN NATIONAL BANK BLDG.
AUBURN, WASH.

#2

I might say further that the City of Auburn will not consider your suggestion contained in the third paragraph of your letter of the 20th ult., that the City replace the broken down box drain in Auburn at the expense of the City under an easement suggested by you.

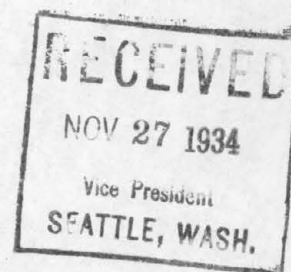
Truly yours,

I. B. Knickerbocker

IBK:MK

I. B. KNICKERBOCKER, City Attorney

LAW OFFICES OF
KNICKERBOCKER & AGEE
AUBURN NATIONAL BANK BLDG.
AUBURN, WASH.



November 26, 1934.

Mr. W. E. Coman, Vice President
Northern Pacific Railway Company
Smith Tower
Seattle, Washington.

Dear Sir:

Your letter to me under date of the 20th instant, relative to maintaining drainage ditch on the west side of your right-of-way through Auburn, was duly received.

The last meeting of the city council of this city was held on the 20th instant, but before I received your letter. The next regular meeting of the city council will be held on December 4 and I will then submit your letter to the city council.

There is no question but that if the ditch is filled and the tile or concrete pipe crossing railroad tracks and streets are securely plugged, the acute situation which has occurred here several times during heavy continued rains will be very much relieved. If this work of plugging up the tile or concrete pipes and filling ditches is done, it would naturally result in more slow seepage in a northwesterly direction through the ground in the southwesterly portion of this city with surface drainage eliminated. Whether such elimination would cause the sub-soil in the Auburn railroad yards to become so soft and mushy that it would cause damage to the company is, of course, a question for the railway company to determine.

At any rate, I will write you promptly what the re-action of the city council is to your letter of the 20th instant.

Truly yours,

I. B. Knickerbocker

IBK:MK

I. B. KNICKERBOCKER, City Attorney

November 20, 1934

Mr. I. B. Knickerbocker,
City Attorney,
Auburn, Washington

Dear Sir:

Referring again to your letter of August 16th relative to the request of the City of Auburn that the Northern Pacific Railway Company maintain the drainage ditch on the west side of our right of way through the city.

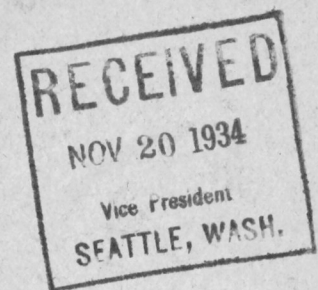
I have delayed writing you further until our people could have an opportunity to make an investigation on the ground. This has now been done and I am advised that there is no obligation resting on our company to maintain the ditch on our right of way for the benefit of the City or adjoining property.

Our Operating Department would much prefer that the ditch be filled but I understand the City would like to have it kept in existence for various reasons and under the circumstances, as a matter of accommodation, we will be willing to permit the City to maintain it at its own expense, the transaction to be covered by easement or agreement relieving us of all responsibility in the premises.

I will appreciate prompt advise as to whether or not this is agreeable to the City for if we are to fill the ditch it should be done immediately.

Yours very truly,

W. E. Comar



Seattle, Wash.,

November 16, 1934.

MR. W. E. COMAN:

Your letter November 5 about drainage ditch on the west side of our right-of-way through Auburn.

The ditch is close to our track and is open except where it passes under the track and in the vicinity of the depot. I dislike to have this ditch discontinued on the right-of-way and agree with Mr. Stotler that it should be filled. However, if necessary, to dispose of this rather awkward situation I have no objection to permitting the city to maintain the ditch at its expense, the transaction to be covered by easement or agreement, relieving us of all responsibility in the premises.

Seattle, November 5, 1934

Mr. W. C. Sloan:

Your letter of October 29th regarding maintenance of the drainage ditch on the west side of our right of way through Auburn.

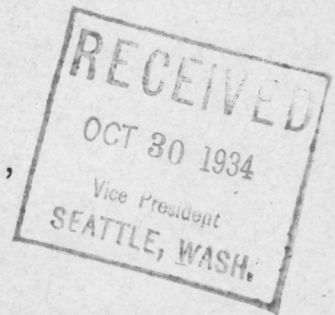
Our Law Department advises that there is no obligation resting on this company to maintain a ditch on our own right of way for the benefit of the City or adjoining property. The City however feels that it is necessary to keep the ditch in existence and under the circumstances it may be good policy to say to the City that we will give it an easement to maintain the ditch at its own expense on the right of way.

If the City is willing to take it over would there be any objection to permitting it to do so?

W. H. Coman

W/14

Seattle, Washington,
October 30, 1934.



Mr. W. E. Coman,
Vice President.

Dear Sir:-

Re:- Auburn Drainage Ditch.

I believe there is no obligation resting on this company to maintain a ditch on our own right of way for the benefit of the city or adjoining property. But before filling up the ditch, I wonder if it would not be a neighborly act if we gave the city an easement to maintain the ditch at its own expense on the right of way? I have in mind that perhaps it would do considerable damage if the drainage ditch were altogether stopped up, and if the city is willing to take it over, perhaps there would be no objection to permitting it to do so.

For your further information, however, I am enclosing herewith copy of a letter sent yesterday to Mr. Stotler on this subject, which is self-explanatory.

The suggestion hereinbefore made as to an easement was made by Mr. daPonte to me, and I am passing it along to you.

Very truly yours,

A handwritten signature in cursive script that reads "Robert S. Macfarlane".

Assistant Western Counsel

rsm-d
enc.

(C O P Y)

Seattle, Washington,
October 29, 1934.

1003-392

Mr. A. F. Stotler,
Assistant Chief Engineer,
Seattle, Washington.

Dear Sir:-

Re:- Auburn: Maintenance of drainage
ditch on West side of Northern
Pacific right of way thru City.

Judge Knickerbocker called on me this morning and stated that the suggestion on our part that we might fill our ditch was not acceptable to the community. He gave as an additional reason the fact that there was under consideration the paving of the road lying immediately west of our yards and right of way so as to connect with the Algona paving. He stated that the ditch now in existence served to drain the highway, and that of course it would be necessary to have drainage before there could be a concrete highway put through.

He also stated that apart from any legal considerations, that in his opinion it would be a matter of good policy and judgment on the part of the railroad to re-establish the flume.

I told Judge Knickerbocker that questions of policy would not be decided by our office, but that if he had any basis for urging that we legally had no right to close the ditch, I would be pleased to have his views.

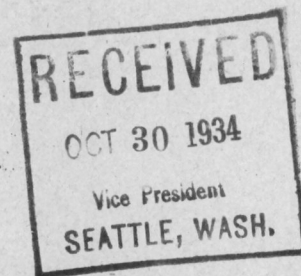
This for your information.

Yours very truly,

ROBERT S. MACFARLANE

Assistant Western Counsel

rsm-d



Seattle, Wash.,

October 29, 1934.

MR. W. E. COMAN:

Mr. Stotler's letter October 25 about
maintenance of drainage ditch on west side of Northern
Pacific right-of-way through Auburn.

When decision is reached, please let me know
whether we shall ^{fill} build the ditch or open up the box.

A handwritten signature in cursive script, appearing to read "W. C. Means".

Seattle, October 27, 1934

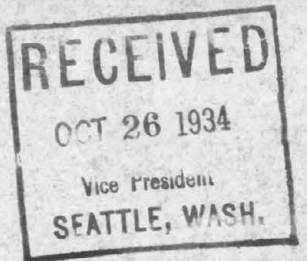
Mr. L.B.daPonte:

Referring to Mr. Stotler's letter to me of October 25th with copy to you regarding the request of the City officials of Auburn that our company keep the ditch on the west side of our right of way through that city open for the purpose of taking care of drainage water.

You will note Mr. Stotler recommends that the ditch be filled but that the City contends that our company having originally installed the ditches and carried them along our right of way through the town, we are under some obligation to maintain them.

Under the circumstances will you please advise if we are in position to fill the ditch as suggested by Mr. Stotler?

W. E. Coman



Seattle, Wash.,
October 25, 1934.

1003-392

Mr. W. E. Coman:

Auburn, Tacoma Divn: Maintenance of
drainage ditch on West side of North-
ern Pacific right of way thru City.

Referring to your letter of August 18 last, attaching Attorney Knickerbocker's letter to you of August 16, which I am returning, in regard to maintenance of drainage ditch on West side of Northern Pacific right of way thru the City of Auburn, and you wish to have the matter investigated and a report made.

I had previously taken the matter up with Mr. da-Ponte and am attaching copy of my letter to him of November 28, 1933 and copy of his reply of December 6, advising that we were not responsible for the maintenance of the drainage ditch, in which case the ditch could be blocked by filling.

After receiving this information, I met City Engineer Falgreen, of Auburn, advising him accordingly. Ditches were not blocked and in the December floods the water reached this ditch from property outside of the railroad right of way and overflowed where the box was blocked, just South of the Depot, which prompted Mr. Knickerbocker's letters.

We again went on the ground with the City Engineer, who stated that he had some new developments which pointed to the Railway Company being responsible for the trouble. After learning what the developments were, however, it was found that they were no different to what we had before.

As Mr. Knickerbocker requested that the Railway Company's Engineering representative meet with the City Chairman of Streets and the City Engineer, to go over the matter again, I thought it best to have Judge Macfarlane with me, to meet Mr. Knickerbocker and the other City representatives of Auburn, which we did on October 24, and went over the ground with them. After reviewing the premises, Judge Macfarlane asked Mr. Knickerbocker for the City's side of the case and he replied that it was his thought that the Railway Company

Oct. 25, 1934.

was responsible, as the ditch also drained the Railway Company's terminals South. We stated, however, that we had no drainage leading to this ditch, with the exception of a culvert at the wye, which can be blocked, as there is very little water to drain from this area where the lettuce house is located and all the drainage water in question comes from the low land a considerable distance South and West of the Depot. It was Judge Macfarlane's position that if this water coming from the South (which the Railway Company is not responsible for) is blocked off by backfilling the ditches, it would prevent any water from reaching the territory complained of by the City of Auburn, and, further, that we would not be responsible for any rainwaters reaching there on account of blocking the ditch.

There was another angle to this situation and that was that the City contended that the Railway Company had originally installed these drainage ditches and carried them along the West side of the right of way thru the town, North of the Depot, a total distance of 8500 feet and that we were under some obligation to maintain same. Judge Macfarlane did not agree, however, as it does not seem fair that the Railway Company should maintain drainage ditches thru the town for practically the City's benefit.

When this ditch was originally constructed there was of course a different situation as at that time the White River ran thru Auburn just East of the terminals and there was some overflow water, during the high water periods, reaching Northern Pacific tracks, for which provision was made by culvert but in 1911 and 1912, when the Railway Company installed the terminals at Auburn, we acquired all the property from our right of way East to "A" Street Southeast, a distance of between 500 and 600 feet, and this land was filled and when the White River was blocked, preventing it from running thru Auburn and the terminal land was then not subject to overflow, the only water being practically all rainwater and there was no provision for any drainage system from the terminals to the ditch in question.

The matter, as left with the City representatives, was that we would recommend filling the ditch.

To make the repairs recommended by Mr. Knickerbocker would cost between \$900. and \$1,000., and we would be confronted not only with this repair work but with the entire future maintenance of the ditch, which will be very expensive if we are to continue providing a drainage system thru Auburn practically for the City.

Mr. Coman

-3-

Oct. 25, 1934.

Inasmuch as this is a legal matter, I suggest that you refer same to Mr. daPonte, and we should have a quick decision as if we are to fill the ditch it should be done immediately.

✓ AFS:L
Encl.

Copy to

Mr. daPonte
Judge Macfarlane
Mr. Lowry
Mr. Newton
Mr. Hayward

Handwritten signature of O. J. Stulen.

(COPY)

Seattle, Wash.,
December 6, 1933.

Mr. A. F. Stotler,
Assistant Chief Engineer,
Seattle,

IN RE: Auburn, Tacoma Divn: Maintenance
of drainage ditch on West side
of N.P. right of way thru the City.

Mr. Jennings has spent a good deal of time looking into the history of the ditch referred to in your letter of November 28. We cannot develop any reason why the Northern Pacific is obligated to maintain it, for drainage of adjoining lands. It is true, however, we cannot collect water in the ditch and then permit it to be stopped up and overflow onto adjoining property, as you very well say.

Your suggestion that we take the matter up with the City and offer to give them an easement to maintain the ditch and to renew the box seems appropriate. If the City wishes to do so, the matter can be referred to the City Attorney and necessary papers can be drawn. Otherwise, you might say that the Northern Pacific will fill up the ditch in such way that the water will not be accumulated and overflow onto other property. If we do that, there may be some contracts to be cancelled, for instance, the one which we have with the Northern Clay Company.

Yours truly,

DAP:EM

(Signed) L. B. DAPONTE.

(COPY)

Seattle, Wash.,
November 28, 1933.

Mr. L. B. daPonte:

Auburn, Tacoma Divn: Maintenance of
drainage ditch on West side of N.P.
right of way thru the City.

The City Officials of Auburn have called on the Railway Company to keep a ditch on the West side of the right of way open for the purpose of taking care of drainage water, but I have taken the position that the Railway Company is not obligated to maintain the drainage ditch in question. An investigation has been made and I am herewith attaching a portion of the station plat of Auburn, showing, in red, the drainage ditch on the right of way at the West side of the track, commencing at point initialed "A", which is the Southerly City limits, and extending North to points "A", "B", "C" and "D." There is also a drainage ditch extending from point "D" North for several thousand feet. The slope of the track in the ditch is towards the North.

It is our opinion that the ditch in question is not an established ditch. On the South, between points "A" and "B" the ditch is located on a 15-ft. strip owned by the Railway Company and we have no record as to just why this ditch was constructed but the owners of the land opposite points "A" and "B" have ditches from their low land draining towards this ditch, and this is where the maximum amount of water drains from, which is taken care of by the ditch. Between points "A", "B" and "C" the ditch is what we consider formed by connecting up old borrow pits in the original days.

At point "C" we have a culvert under the two mains, which is assumed to drain the water from the wye. This was originally put in, I believe, for the purpose of allowing the water to escape when the old White River flowed thru the town during high water periods, but since the water from the White River has been diverted to the Stuck River twenty odd years ago, there has been no water to drain in the Auburn wye.

During the period of construction of the Auburn Terminals, I also recall that the question of the maintenance of ditch, between points "C" and "D", was discussed and I believe that some of the property owners used their influence to have this ditch maintained by the Railway Company, and when the Depot was moved to the new location,

Nov. 28, 1933.

at Main Street, there was a wood box placed about 425 feet South of the Depot, to a point about 310 feet North of the Depot, followed by a culvert pipe crossing under Main Street; and between Second and Third Sts. N.E. there was a wood box culvert placed under the spur track. At Third Street, at point "D", there was also a culvert placed in the location of the ditch under the street approach to the track. From that point on there was assumed to be a connection made to the City sewer but there was also water draining North along the right of way for several thousand feet, which of necessity overflows the ditch and fans out and is disposed of on private property, which, in my opinion, we have no right to do - that is, to collect the water for practically a mile South, and then dispose of it on private property.

The property owners from Third Street Southwest and North, have petitioned the City Council to take up with the Railway Company for maintenance of this ditch, as they claim that having maintained the ditch from the South relieves that territory, and in that the wood box culvert extending North and South of the Depot is blocked, the water overflows the ditch onto their property and they request that the Railway Company renew the wood box referred to, North and South of the Depot, and clean out the ditch North, to take care of the drainage water that enters the ditch from the South.

We are now confronted with an expense for renewal of the wood box, in kind, North and South of the Depot, at a cost of \$385., and if this is carried out, we will be forever maintaining a drainage ditch on the right of way for the benefit of the public, whereas it is our opinion that the drainage should be taken care of by the City. Furthermore, I do not see why we are obligated to take care of the drainage water between points "A" and "B", which comes from low cultivated land, and it is my thought that we should fill in the ditch at several locations and advise the City to arrange to take care of the surface water by installing storm sewers.

I would like to have your legal opinion in regard to the Railway Company's obligation in respect to this drainage ditch.

AFS:L
Encl.

Copy to

Mr. Newton
Mr. Hayward

9/18

Seattle, Wash., August 18, 1934

Mr. A. F. Stotler:

I hand you herewith letter received by me this morning from City Attorney Knickerbocker of Auburn relative to drainage water from the Northern Pacific ditches south of and passing through Auburn. I am also enclosing copy of a letter which he wrote to you under date of December 21st, 1933, to which he has received no reply.

Mr. Knickerbocker called at my office the other day and explained the matter about as outlined in his letter. I wish you would have this matter investigated promptly and advise me what reply I should make to him. If as he states, the clogged up condition of our ditches is the cause of the overflow complained of, it seems to me we should correct the situation without further delay.

Please return the papers with your reply.

W. E. Coman

phones
9/17
Mr. Stotler's Judge Macfarlane
will go to Auburn soon to
determine our liability &
he will then report - 9/24

August 18, 1934

Mr. I. B. Knickerbocker,
City Attorney,
Auburn, Washington

Dear Sir:

This will acknowledge your letter of the 16th instant relative to certain drainage waters flowing through the City of Auburn.

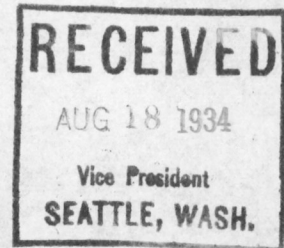
I am asking Mr. Stotler to investigate the matter promptly and will write you further when I hear from him.

Yours truly,

W. E. Coman

LAW OFFICES OF
KNICKERBOCKER & AGEE
AUBURN NATIONAL BANK BLDG.
AUBURN, WASH.

August 16, 1934.



Mr. W. E. Coman, Vice-President
Northern Pacific Railway Company
Smith Tower
Seattle, Washington

Dear Sir:

I am the city attorney of the city of Auburn. I called at your offices yesterday in an effort to see you and have a talk with you relative to certain drainage waters flowing through the city of Auburn. I was then told by a gentleman in your office that you were out of the city, but I had a little talk with him relative to the matter and he suggested that I write you a letter.

I am enclosing herewith a copy of a letter that I wrote Mr. A. F. Stotler last December in regard to this same matter. I think the letter to Mr. Stotler is self-explanatory.

That letter was written at a time when we were having excessive rainfalls in western Washington and the railroads were having considerable trouble with slides and washouts, and I appreciated at that time that the Northern Pacific was very busy with emergency matters. Mr. Stotler, however, never answered my letter, but several weeks ago he stopped me on the street in Seattle and brought up the subject. As I understood Mr. Stotler at that time, he sought to argue that the city of Auburn was trying to get the Northern Pacific to drain this territory, that if the broken-in drain under the Northern Pacific passenger depot was re-built people and farmers to the north of Main Street in Auburn might have a claim against the Northern Pacific and that the Northern Pacific was under no obligations to furnish an outlet for drainage waters from some farmer's berry patch. The berry patch which Mr. Stotler undoubtedly had in mind is a field something over one-half mile south of Main Street in Auburn on the westerly side of the north and south county road which runs along side of and on the west side of the Northern Pacific Seattle-Tacoma right-of-way. The fall or slope of the land in which the berry field or berry fields are situate is toward the northwest and away from the drainage ditch in which the waters complained of accumulate.

I could go into considerable detail relative to this matter, but I assume that your maps and records of Auburn and vicinity show the course of the drainage ditches which discharge drainage waters into a north and south ditch on the westerly side of the Northern Pacific right-of-way, some distance south of the passenger depot at Auburn, and also show the large concrete pipes, which the Northern Pacific installed some years ago for the carrying of these waters, and also show county roads and streets.

LAW OFFICES OF
KNICKERBOCKER & AGEE
AUBURN NATIONAL BANK BLDG.
AUBURN, WASH.

Mr. W. E. Coman - #2

The city council has been pounding me on the back for months to take some action relative to this matter, but I had a sick spell some time ago and have simply delayed the matter. The city council even suggested that I take the matter up direct with the Northern Pacific main office in the city of St. Paul, but it seemed to me that that ought not be necessary, at least at this time.

I do not know just when the railroad box drain south of Main Street in Auburn and extending under the Northern Pacific passenger depot and for some little distance north, ceased to function but for something like two or three years it has not been functioning and waters accumulating in the Northern Pacific yards in Auburn have been overflowing the streets in the southwesterly portion of Auburn and causing water to back up into basements; in other words, last winter was not the first time this same thing occurred, it occurred about a year before.

I reside in the southwesterly portion of Auburn, my house stands high, and I have drainage from my basement to the city's storm sewer and last December the water backed up in my basement to such an extent that it put my oil burner furnace temporarily out of commission.

I have lived in Auburn 45 years and I know that even before the Northern Pacific Palmer cut-off was built all of the waters accumulating along the Northern Pacific right-of-way for a distance of over a mile south of Auburn's main street were conveyed in an open ditch on the westerly side of the Seattle-Tacoma Northern Pacific right-of-way in a northerly direction through Auburn and to the north.

In conclusion, let me urge that the Northern Pacific Railway at once, or some time before the rainy season sets in this coming fall, make provision for the free flow again of these drainage waters, from the point where such flow is now stopped up, under the Northern Pacific passenger depot and to the north. Either Mr. J. A. Fallgreen, city engineer of Auburn, or Mr. F. H. McLaskey, chairman of the street committee of the city of Auburn, will be glad to give the Northern Pacific engineers, on the grounds, information as to the damage and inconvenience which these over flow waters have been recently causing.

I hope that you will give this matter your early attention.

Truly yours,

I. B. Knickerbocker

I. B. Knickerbocker, City Attorney.

IBK:MB
Enc-1

December 21, 1933

Mr. A. F. Stotler, Engineer
Northern Pacific Railway
Smith Tower
Seattle, Washington

Dear Sir:

At the regular meeting of the city council of the City of Auburn held on Tuesday evening of this week, I was instructed to write you relative to drainage water from the Northern Pacific ditches south of and passing through Auburn.

Yesterday, in company with Mr. J. A. Fallgreen, city engineer, and Mr. F. H. McLaskey, chairman of the street committee of the city council, I went over the ground with them in an effort to learn something of the exact situation.

Starting at a point nearly as far south of the viaduct south of Auburn drainage waters are collected in Northern Pacific ditches and have for years been conveyed in a northerly direction, along the company's right-of-way, under the Northern Pacific passenger depot at Auburn and through the city. With the exception of several box or concrete or tile under-crossings, these waters have been conducted in open ditches with the following exception: beginning at a point some distance south of the Northern Pacific passenger depot at Auburn and connecting with the Northern Pacific open ditch on the westerly side of its tracks there is and has been for years a covered box extending northerly under the passenger depot and ending at about the north line of Main Street West in this city, where the box drain again connects with an open ditch. This box drain has become clogged up or broken in and no longer functions to any appreciable extent. The result is that now and for a considerable period last past whenever we have a heavy rain these drainage waters, at a point just south of the south end of the box drain above referred to, over-flow and take a generally northwesterly course, flooding basements, flowing over paved streets and far over-taxing the storm sewers in Main Street West in this city and several connecting storm sewers.

I understand that some time ago the Northern Pacific unloaded some lumber in Auburn for use in constructing the new box drain to take the place of the old box drain above referred to, but for some reason the reconstruction work has never been done.

The City of Auburn is now urgently requesting that the Northern Pacific, without unnecessary delay, construct a new box, tile or concrete covered drain to take the place of the old box drain which now refuses to function.

Mr. A. F. Stotler - #2

I am not here attempting to go into all the details of this matter, and I suggest that anyone representing your office who may come to Auburn to investigate the conditions above referred to get in touch and go over the ground either with Mr. J. A. Fallgreen, our city engineer, or with Mr. F. H. McLaskey, chairman of the Street Committee of the City Council.

I realize that during the last weeks we have had an excessive amount of rainfall and for that reason conditions have lately been worse than usual. However, not one drop of the Northern Pacific drainage waters which have been flooding the westerly part of Auburn is river water. The conditions mentioned above have existed for some time and the extent of the damage and inconvenience resulting therefrom depends, of course, on the volume of water accumulating at the south end of the covered box drain above referred to.

Please give this matter your very early attention. I wish that you could go over the ground at this time and see conditions as they now exist.

Truly yours,



City Attorney

IBK:MB