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ICF International
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RE: Rachael Smith Comments on the Draft Environmental Impact Statement for
Millennium Bulk Terminals Longview

To Whom It May Concern:

My name is Rachael Smith and I am a second year law student at the University of Colorado Law School. I am writing this comment for a course entitled Environmental Decision Making, which address how agencies can make thoughtful decisions.

Additionally, I choose to write this comment because I am very interested in our nation's energy future, as well as the impacts of coal trade on the international economy and environment.

This comment relates to the Draft Environmental Impact Statement (DEIS) for the proposed Millennium Bulk Terminals (MBT). Applicant, Millennium Bulk Terminals – Longview LLC , proposes to construct and operate a coal export terminal off the Columbia River in Longview, WA. The terminal will ultimately have the capacity for 44 million metric tons of coal per year. U.S. ARMY CORPS OF ENGINEERS, *Millennium Bulk Terminals —Longview: National Environmental Policy Act Draft Environmental Impact Statement*, Abstract (Sept. 30, 2016) [hereinafter DEIS]. The export terminal would receive this coal by rail shipments from the Powder River Basin in Wyoming and Montana and the Uinta Basin in Colorado and Utah. *Id.* Applicant has chosen the Longview site because it believes that site provides the best location to competitively

export coal to Asian markets such as Japan, Taiwan, and South Korea. *Id.* at 2-2. Because this terminal will impact the Columbia River, Applicant is required to get authorization to construct the terminal from the U.S. Army Corps of Engineers (Corps) pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. *Id.* at 1-5; *see*, 33 USC § 403 & § 1344. Therefore, the Corps serves as the lead federal agency responsible for compliance with National Environmental Policy Act (NEPA). DEIS at 1.5. Under NEPA, the Corps has the ability to, issue, condition, or deny a permit for activities associated with construction and operation of the proposed export terminal. *Id.* at 1-1.

The DEIS addresses the impacts of the proposed MBT on the built, natural, and operational environments. *See Id.* at 1-1–1-8. The impacts on the built environment focuses on issues of “land use, social and community resources, aesthetics, cultural resources, tribal treaty rights and trust responsibilities, hazardous materials, and energy”, whereas the natural environment addresses “geology and soils, surface water and floodplains, wetlands, water quality, vegetation, fish, and wildlife”, and the operational environment focuses on “rail transportation, rail safety, vehicle transportation, vessel transportation, noise and vibration, air quality, coal dust, and greenhouse gas emissions.” *Id.* at 1-7. Mitigation measures are proposed where feasible and reasonable. In accordance with NEPA the DEIS also reviews the potential impacts of the proposed terminal “when considered in combination with other past, present, and reasonably foreseeable future actions.” *Id.* at 1-8.

I have reviewed the DEIS and believe it contains significant flaws regarding its scope, purpose and need, discussion of alternatives, and assessment of the cumulative impacts on the people of Longview, rail-line communities, the Columbia River and the global environment. The DEIS must be revised to address these significant flaws.

Ultimately, however, correction of these flaws appears likely to demonstrate that the project poses such serious threats to the local and global environment and human health that it should be denied. This comment poses the following arguments:

- The DEIS overstates the purpose and need of the project and fails to adequately address the true competitiveness of U.S. coal to Asian Markets and ignores the projected market conditions in the Asian Market when the project is completed.
- The alternatives analysis is impermissibly limited because it is based on an overstated purpose and need, and if adequately stated, other coal export terminals on the west coast could serve the needed purpose.
- The scope of the DEIS is too narrow to comply with NEPA standards because the DEIS only explores the impacts surrounding the proposed facility and does not address any impacts along the rail lines, vessel lines, or the impacts on the global environment.
- The DEIS violates NEPA standards because it is inaccessible to the general public and does not foster genuine public participation.

I. Corps should deny Applicant's permit to construct the Millennium Bulk Export Terminal because the need for the project does not justify the environmental costs.

NEPA requires that an Environmental Impact Statement (EIS) contain a statement of the proposed project's purpose and need. 40 CFR § 1502.13 (2016). The way in which

the purpose and need of a project is defined determines the alternatives to the discussed. It is the agency's responsibility to define a project's purpose. However, "[a]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." *Nat'l Parks & Conservation Ass'n v. BLM*, 586 F.3d 735, 74 (9th Cir. Cal. 2009) (quoting *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998)(internal quotes omitted). The DEIS relies on an unreasonably narrow definition of the purpose and need of the MBT project that relies solely on current market conditions and does not take into account the future market realities.

A. *Asian Markets are unlikely to support the necessary demand to justify the project once it is at full capacity.*

Within the DEIS, the Crops state that there is a significant need for a west coast based coal export terminal in order to meet the high demand for good quality coal in Asian markets. DEIS at 2-1. Applicant specifically claims that there is an opening in the markets in Japan, South Korea, and Taiwan and an export terminal on the west coast could make American coal competitive with that of Australia and Indonesia. *Id.* Further, the DEIS states that Asia Pacific's energy consumption is forecasted to increase 54% through 2035, with a 27% increase in demand for coal. *Id.* However, these numbers overstate the expected demand for coal in Asian markets. Additionally, these numbers can only forecast the overall demand and do not address how imports and exports of coal will be affected. Finally, the forecasted numbers do not take into account the probable policy changes towards coal within these countries as a result of the Paris Agreement, nor

do they take into account the future changes in technology that will result in lower coal demand.

The DEIS notes that in 2009, for the first time China, which historically exported coal became a coal importer. DEIS at 2-2. In 2012, China imported 318 million tons of coal, approximately 8% of its total coal consumption. *Id.* at figure 2.2. However, this uptick in consumption seems likely to be short lived as demand for coal decreases. In 2015, China imported 204.06 million tons of coal, over 100 million less than in 2012. Clyde Russell, *Coal Price Hopes Fade Amid Reality of Slowing Asia Demand*, REUTERS: COMMODITIES (Apr. 4, 2016), <http://www.reuters.com/article/us-column-russell-coal-asia-idUSKCN0X10WO> [hereinafter Russell, *Coal Prices*]. And 2016 is off to a slow start for imports, which have dropped 10.2 percent in January and February. *Id.* This decrease in the growth of coal consumption in China is related to its new energy and environmental policies. U.S. Energy Info. Admin., *International Energy Outlook 2016: Chapter 4. Coal*, 62 –67 (May 11, 2016), <http://www.eia.gov/outlooks/ieo/pdf/coal.pdf> [hereinafter EIA, *Coal Outlook 2016*]. China plans to shut 60 million tons of domestic coal output in 2016, and 500 million tons in total over the next five years. Russell, *Coal Prices*. However, cuts in coal output does not necessarily lead to a greater number of imports because China still has sufficient domestic coal to meet its demand. Russell, *Coal Prices*. As a result, the Corps' statement in the DEIS that “[t]he increase in imports has been rapid, and dramatic, and suggests a strong market in the Pacific Basin” should not be given weight. Additionally, the Corps have failed to address in the DEIS what impact the Paris Agreement on Climate will have on China’s consumption rates. China is a

signatory to the Paris Agreement, and has thus committed to self-imposed reductions in CO₂ emissions. Bill Spindle, *U.N. Climate Change Conference Turns to Implementing Paris Agreement*, WALL STREET J., Nov. 7, 2016, <http://www.wsj.com/articles/u-n-climate-change-conference-turns-to-implementing-paris-agreement-1478514604>.

The Paris agreement requires a 25 percent reduction in carbon dioxide emissions by 2030. Great Speculations, *Paris Agreement Spells Trouble for Coal*, FORBES: INVESTING (Dec. 17, 2015), <http://www.forbes.com/sites/greatspeculations/2015/12/17/paris-climate-agreement-spells-trouble-for-coal/-46cedb5aea43>. In order to comply with the Paris Agreement China will have to continue to decline its coal use. So while there may be a need for MBT now based on Chinese coal demands, it seems unlikely that there will still be a demand that warrants the project for the useful life of the facility. This is an issue the Corps completely ignores within the DEIS. Further, the Corps fails to address whether this downturn in consumption could possibly lead to an increase in Chinese coal exports to Japan, South Korea and Taiwan. The DEIS only addresses whether U.S. coal would be competitive with exports from Australia and Indonesia, not any other nations in the area with large coal reserves such as China or India. It seems possible that based on its proximity coal from China could be far more cost-efficient than U.S. coal.

The DEIS's analysis of the market within Japan is also overstated. The DEIS discusses Japan's historical coal consumption, stating that in 2012 "Japan imported about 204 million short tons of coal." DEIS at 2-4. While it is accurate that Japan is currently one of the world's largest coal importer, the DEIS fails to discuss predictions for Japan's coal consumption in 2028, when MBT will be at full capacity. Japan's

increase in coal consumption has temporarily increased following the shutdown of nuclear power plants after the Fukushima disaster in 2011. EIA, *Coal Outlook 2016*, 63–64. However, a shift toward renewable energy and natural gas for electricity generation is projected to reduce demand for coal and the country is expected to see a decline in coal consumption beginning in 2020—eight years before MBT is projected to be at full capacity. *Id.*; DEIS at 3-16. In 2015, Japan was one of the three largest solar installation markets globally, with installs estimated to have reached 8 gigawatts. Tim Buckley, *As Japan's Electricity Sector Evolves, Signs Its Coal Dependency Will Wane*, INST. FOR ENERGY ECON. & FIN. ANALYSIS, Feb. 2, 2016, <http://ieefa.org/as-japans-electricity-sector-evolves-signs-its-coal-dependency-will-decline/> [hereinafter Buckley, *Japan's Coal Dependency*]. And Japan continues to invest nearly \$20 billion USD annually in new solar developments. *Id.* Further, Japan is seeing a shift back to the use of nuclear power as over five years have passed since the Fukushima disaster and new safety rules are in place. *Id.* While many of the country's nuclear reactors remain closed, in December 2015 nuclear amounted to 2.2 percent of the nation's energy use, and if “all of the country's nuclear reactors restarted, nuclear could return to supplying 30 percent of Japan's total electricity.” *Id.* Similar to the Corps' assessment of Chinese coal demand, the DEIS only focuses on current coal consumption and does not even try to assess whether future coal demand will be great enough to warrant the MBT project.

Even South Korea, which the Corps claims is one of the top energy importers in the world, is seeing a decline in coal imports. South Korea saw its imports drop 17.6 percent between 2015 and 2016. Russell, *Coal Prices*. Although the nation still

relies heavily on coal for its energy needs, it is uncertain if the current demand for coal that the DEIS states warrants this project will still be sufficient in 2028. Earlier this summer, South Korea announced that it aims to invest 37 billion in renewable energy by 2020. Jane Chung, *South Korea to Shut Ten Aging Coal-Fired Power Plants by 2025*, CNBC: UPDATES (July 5, 2016), <http://www.cnbc.com/2016/07/05/reuters-america-update-1-south-korea-to-shut-10-aging-coal-fired-power-plants-by-2025.html> [hereinafter Chung, *South Korea Coal Plants*]. Additionally, the country has plans to shut down 10 of its coal facilities within the next year switching them to biomass fuel. *Id.* Moreover, at the 2015 UN Framework Convention on Climate Change Conference of the Parties, South Korea pledged to cut emissions by 37 percent by 2030—six percent of which will come from reduced coal use. *Id.* Despite these cuts in coal use, South Korea is still committed to building 20 new coal-fired plants by 2022. *Id.* The future of South Korea's coal use is far from certain, yet the DEIS implies that because there is a demand now, there will be one in the future. This greatly overstates the reality of coal consumption in this market, and the draft EIS should be revised and made available for another round of public comment to reflect a more realistic picture of present and future coal markets.

Taiwan may be the only country of those listed within the DEIS that will still have a large demand for imported coal by 2028. However the DIS does not address the fact that China has been the nation's largest coal supplier. Paul Pryce, *Taiwan's Energy Conundrum*, EAST ASIA FORUM (Feb. 10, 2016), <http://www.eastasiaforum.org/2016/02/10/taiwans-energy-conundrum/>. While

the country's energy future is far less clear than that of the other nation's discussed in the DEIS, the Corps should at least address the potential future of coal in Taiwan within the DEIS.

The DEIS does not discuss the ramifications for the project if the market for coal collapses in any or all of the proposed importer nations, nor does it discuss the impact on the project's need if only some of the markets still demand imported coal in 2028. This is a major oversight because a flawed analysis of the need for this project significantly impacts the alternatives to be addressed.

B. *The DEIS ignores significant factors in determining the competitiveness of U.S. Coal.*

The DEIS states that the project will only be economically viable if it can compete with coal from other international supply regions—specifically Australia and Indonesia. DEIS at 2-8. In order to be competitive with these suppliers, who have a closer proximity, the proposed export terminal “would need to be competitive in coal quality, throughput capacity, and transportation rates.” *Id.* The DEIS suggests that U.S. coal could be competitive with Australia and Indonesia based on these factors, but it fails to consider the possible entry of new suppliers such as China or Russia, which boast have substantial coal reserves. Could these countries undercut U.S. Coal if they choose to enter the export market by 2028? Russia is currently in the process of shifting its focus of coal exports to Asian markets. *Russia Eyes the East*, WORLD COAL (Feb. 18, 2015),

<https://www.worldcoal.com/coal/18022015/russia-eyes-the-east-1910/>. Russia

plans to invest \$123 billion in the country's coal sector through 2030. *Id.* Russia is currently in the process of building export terminals on its eastern regions. *Id.* The country intends for exports to Asian markets to increase from 9.7 percent in 2010 to 15.2 percent by 2030. *Id.* The DEIS fails to even consider how Russian coal exports compare to U.S. coal.

Similarly, the DEIS fails to address the competitiveness of Chinese coal exports. Although Chinese exports only account for a small portion of exports to other Asian markets, a decrease in domestic use may lead to an increase in exports. DEIS at 2-4, figure 2.2. This is something that should have been taken into account by the Corps. The project's economic viability depends on its competitiveness in the market. By only addressing whether U.S. coal is competitive with Australia and Indonesia the Corps allows the need for the project to be severely overstated and potentially risks allowing a project that will never be able to compete with other global producers.

As a result of the overstated market conditions, and the under-analyzed competitiveness of U.S. coal, the DEIS relies on an unreasonably narrow definition of the purpose and need of the project. Additionally, this unreasonably narrow definition impermissibly skews the DEIS to just one alternative.

II. The Corps' current assessment of the alternatives is inadequate and the Corps should issue a revised DEIS with new alternatives and a new round of public comment

The alternatives analysis is characterized as the heart of the environmental impact statement. *Wyoming v. USDA*, 661 F.3d 1209, 1243 (10th Cir. 2011). Further, an agency must perform a "rigorous exploration and objective evaluation of the environmental impacts of *all reasonable* alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects." *Citizens Against Toxic Sprays, Inc. v. Bergland*, 428 F. Supp. 908, 933 (D. Or. 1977) (quoting 40 C.F.R. § 1500.8(a)(4) (1976)) (internal quotes omitted) (emphasis added). The goal when providing an alternatives analysis within an EIS is to "provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1177 (9th Cir. 2011) (quoting 40 C.F.R. § 1502.1). The Ninth Circuit Court of Appeals had held that "[c]onsideration of reasonable alternatives is necessary to ensure that the agency has before it and takes into account all possible approaches to, and potential environmental impacts of, a particular project. NEPA's alternatives requirement, therefore, ensures that the most intelligent, optimally beneficial decision will ultimately be made." *N. Alaska Env'tl. Ctr. v. Kempthorne*, 457 F.3d 969, 978 (9th Cir. 2006)(internal quotes omitted).

Under NEPA, "an agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative." *Id.* However, an agency cannot disregard an alternative

because it does not offer a complete solution to the problem. *Citizens Against Toxic Sprays, Inc.*, 428 F. Supp. at 933 (citing *Nat. Res. Def. Council, Inc. v. Morton*, 458 F.2d 827, 836 (1972)). As a result, courts have required that the discussion of alternatives be undertaken in good faith and it is not to be employed to justify a decision already reached. *See id.*

The MBT DEIS violates NEPA by failing rigorously analyze all reasonable alternatives and merely discussing alternatives in order to justify a decision they've already reached. The MBT DEIS identifies three alternatives, the "On-Site" alternative, the "Off-Site" alternative, and the "No Action" alternative. The On-Site and Off-Site alternatives are nearly identical to one another aside from the location, and that the on-site already has some of the necessary infrastructure in place. DEIS at 3-9-3-46.

The DEIS does not explain the Corps' site screening process that ultimately led them to reject many options. It was a two-tiered process, in which the Applicant developed the framework to screen for potentially suitable export terminals. The first-tier criterion focused on rail and vessel transportation accessibility and cost. *Id.* at 3-2-3-4. Thirty-seven West Coast terminal sites were subjected to this first-tier screening, of which 12 sites were considered to meet the screening requirements and were carried forward to the second-tier screening. *Id.* at 3-4. The second-tier of screening led to just two sites that met the site-specific criteria relating to size, topography, configuration, and rail access. *Id.* at 3-5-3-6. While the screening process seems highly detailed and thorough, the Applicant's screening criteria

seems to specifically define the “On-Site” alternative land, which was leased by MBT in 2011. *Id.* at 3-9. This indicates that the Corps may have merely discussed the proposed but rejected alternatives, to justify an already decided decision to grant a permit for either the “On-Site” or “Off-Site” alternatives.

Further, the alternatives were only screened to determine whether they could compete economically within the current Asian market for coal. *Id.* at 3-1. However as discussed above, this approach is severely flawed because it does not address the true market realities for coal in Asian markets. *Supra*, 9. As a result of this analysis, it appears that many reasonable alternatives were not discussed; thus violated NEPA’s requirement that all reasonable alternatives be rigorously explored.

While the DEIS does discuss the “On-Site”, “Off-Site”, and “No Action” alternatives in detail. It is important to note, as stated before, that the two “Action” alternatives are nearly identical and are located immediately next to one another. DEIS at 3-33. This is not a range of alternatives as required by NEPA. Instead it is two of the same alternatives, with the only difference being that the “Off-Site” alternative would require turning an unused agricultural field into an export terminal. *Id.* at 3-33–3-35. Similarly, there are small differences in the amount of materials that would need to be dredged, the loading docks to be built, and the amount of rail line to be extended. *Id.* at 3-35. Again, this is not a meaningful range of alternatives.

The Ninth Circuit Court of Appeals has held that “the agency must consider those reasonable alternatives that are within the range dictated by the nature and

scope of the proposed action and sufficient to permit a reasoned choice." *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008). Further, Courts have held that the touchstone for this inquiry is whether an EIS's selection and discussion of alternatives fosters informed decision-making by the agency and informed public participation. *See, HonoluluTraffic.com v. Fed. Transit Admin.*, No. 11-00307 AWT, 2012 U.S. Dist. LEXIS 157937, at *59-60 (D. Haw. Nov. 1, 2012).

In *North Alaska*, the Ninth Circuit court of appeals determined that the Bureau of Land Management adequately analyzed all reasonable alternatives when it address the five different possible land use plans. The BLM land use plans in *North Alaska*, discussed a range of alternatives including a middle ground alternative. *N. Alaska Env'tl. Ctr.*, 457 F.3d at 978. There is no middle ground alternative in the MBT DEIS. Nor is there truly an adequate discussion of alternatives that would foster informed decision-making or public participation. As a result, the DEIS discussion of alternatives is insufficient under NEPA and must be addressed within the Final EIS.

III. The scope of the Corps DEIS is impermissibly limited and must be revised within the Final EIS.

In *Sylvester v. U.S. Army Corps of Engineers*, the Ninth Circuit Court of Appeals held that the Corp could determine their own rules regarding how to comply with NEPA. *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 398–400 (9th Cir. 1989). As a result the Corps have the authority to set the scope of an EIS pursuant

to their own rules. *Id.* In the 1980s the Corps set forth the following rules regarding the scope of analysis for an EIS:

The district engineer should establish the scope of the NEPA document . . . to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.

The district engineer is considered to have control and responsibility for portions of the project beyond the limits of Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action.

53 FR 3120 §7(b) (1988). The Corps' regulations also set forth criteria for what factors should be considered in determining whether the Corps has "sufficient control and responsibility." *Id.* Among other things, these factors include whether the project is merely a link in a corridor type project, and the extent of the cumulative Federal control and responsibility. *Id.*; *See Sylvester*, 884 F.2d at 398–99.

In *Sylvester*, the Corps' issued an EIS regarding a proposed golf course. *Sylvester*, 884 F.2d at 384–85. The golf course needed a permit from the Corps because it would require filling in a wetland. *Id.* The golf course was part of a larger resort. *Id.* However, the Corps limited its scope for the EIS just to the impact of the golf course and not the resort as a whole. *Id.* The plaintiff in *Sylvester* argued that the Corps violated NEPA because the scope was limited just to the impacts of the golf course and not the whole resort. *Id.* The Ninth Circuit ultimately ruled that the Corps did not violate NEPA in limiting the scope because the golf course and the resort were not two interconnected projects. *Id.* at 400.

The court in *Sylvester* noted that previous Ninth Circuit precedent held that agencies are not allowed to divide projects in order to avoid their duties under NEPA. *Id.* The court discussed three cases in which the federal and private portions of the project were joined to create a “links in the same bit of chain.” *Id.* These cases include *Port of Astoria, Oregon v. Hodel*, 595 F.2d 467, 480 (9th Cir. 1979) in which the agency’s EIS had to consider the supply of federal power and the construction of a private magnesium plant that used the power and *Thomas v. Peterson*, 753 F.2d 754, 761 (9th Cir. 1985) in which the agency's EIS had to consider both a federal road and the federal timber sales that the road would facilitate. *Sylvester*, 884 F.2d at 400.

The proposed MBT project is far similar to the projects within *Port of Astoria* and *Thomas* than the golf course in *Sylvester*. The Federal involvement necessary for the MBT project is sufficient to turn an essentially private action into a Federal action. As such, the DEIS should have addressed the environmental impacts of the entire project pursuant Corps regulations. Instead the Corps has limited its analysis to the project area, the area that would be dredged, any dredged material disposal sites, any off-site area that might be used for compensatory mitigation, and any other area in or adjacent to the Columbia River that would be affected by, and integral to, the proposed export terminal. DEIS at 4-0-4.2. The limited scope of analysis ignores the effects of the project on the areas along the rail-line from the Powder River Basin and Unita Basin, as well as the impacts it will have on the global environment and climate change.

This project fits within the many “links in the same bit of chain” analysis discussed in *Sylvester* because the project will impact rail-lines and roads, which fall under the purview of the Department of Transportation, the Federal Railroad Administration and then Surface Transportation Board. Similarly, the project is dependent upon mining activities in the Powder River Basin and the Uinta Basin. These activities fall under the jurisdiction of the Office of Surface Mining, within the Department of Interior, and the Mine Safety and Health Administration. *Coal Mining in America*, AMERICAN COAL FOUND. <http://teachcoal.org/coal-mining-in-america> (Last visited Nov. 28, 2016). The MBT project directly impacts the mining because it will impact the quantity and rate of coal being mined from the basins. The MBT project is not a golf course whose impact will be relatively self-sustained to the project area. In contrast, the terminal itself is a link to a series of other federally regulated issues within a much greater chain. As a result, the Corps violated NEPA by impermissibly limiting the scope of the project. The scope of the final EIS must include the entire project from coal extraction to sale, and not just the impacts of the project area surrounding the terminal.

IV. The DEIS violates NEPA because it is inaccessible to the general public and does not foster meaningful and informed public input.

One of the main purposes of NEPA is to encourage public participation in environmental decisions. However, this can only be achieved if a document is designed to foster informed and meaningful participation. While the suggested page limits within the CEQ regulations are infrequently followed, they play an important

part in determining the accessibility of an EIS. CEQ rules state, “the text of final environmental impact statements shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.” 40 CFR 1502.7 (2016). While the rules only apply to the Final EIS, they should be given weight as well in the Draft EIS. The MBT DEIS well exceeds even the upper 300-page limit, and the scope is already limited. This indicates that the DEIS may be unreasonably long. There is a difference between a rigorous analysis of a project, and one that is so far in-depth that its ultimate goal may be to frustrate public participation and not encourage it. The EIS should be revised to better fit within the suggested page limits as to allow members of the project to meaningfully comment on the project and not get lost in the paperwork.

V. Conclusion

While I believe there may be merits to a west coast based coal export terminal the DEIS is both procedurally and substantively inadequate. The Corps must revise the current scope of analysis, alternatives discussed, and the accessibility of the document to encourage public participation. Most importantly, the Corps must review the EIS to address the future market conditions for Coal in Asia. As the DEIS stands now, it is in violation of NEPA because the document is based on an overly narrow definition of the project’s need, which impermissibly skews the alternatives discussion. Similarly, the Corps must revise the scope of the EIS to address the entire project and not just the project area and direct consequences.