



F. E. "Skip" Kalb, Jr.
Director
Strategic Development

BNSF Railway Company
P.O. Box 961051
Fort Worth, TX 76161-0051
2650 Lou Menk Drive, 2nd. Fl.
Fort Worth, TX 76131-2830
817-867-6133 Office
817-352-0376 Fax
817-271-3057 Cell
Email: skip.kalb@bnsf.com

VIA EMAIL AND OVERNIGHT MAIL

November 29, 2016

Millennium Bulk Terminals EIS, c/o ICF International
710 Second Avenue, Suite 550
Seattle, WA 98104

Re: Comments in Response to Publication of National Environmental Policy Act Draft
Environmental Impact Statement; Millennium Bulk Terminals - Longview, Washington

To Whom It May Concern:

BNSF appreciates this opportunity to provide comments on the U.S. Army Corps of Engineers' ("Corps") Draft Environmental Impact Statement ("DEIS") under the National Environmental Policy Act ("NEPA") for the Millennium Bulk Terminals-Longview ("the Project").

The DEIS is comprehensive and robust. The Corps clearly took the "hard look" that NEPA calls for, and as a result no additional analysis needs to be done. Analysis of further rail-related impacts is not warranted under the law.

By way of background, BNSF Railway operates as a common rail carrier in the United States, and is one of North America's leading freight transportation companies operating on over 32,000 route miles of track in 28 states, as well as connections with Mexico via five border gateways, Canada via three border gateways, and direct service to and from British Columbia and Manitoba.

BNSF is one of the top transporters of consumer goods, grain, industrial goods and low-sulfur coal that help feed, clothe, supply, and power American homes and businesses every day. BNSF and its employees have developed one of the most technologically advanced and efficient railroads in the industry. BNSF is working continuously to improve the value of the safety, service, energy, and environmental benefits we provide to our customers and the communities we serve. This is a partnership that BNSF values tremendously, so we seek opportunities to advance our common interests of safety, opportunity, and success.

Transportation by rail provides significant economic benefits to the State of Washington. According to a study commissioned by the Washington Council on International Trade, freight rail contributes more than \$28.5 billion to the state economy, accounting for more than 7.5 percent of Washington's Gross Domestic Product. More than 342,000 workers in this state

depend on freight rail. In Washington alone, BNSF employs nearly 4,000 people, with a combined payroll of more than \$260 million. Additional information regarding BNSF is available on our website at: www.bnsf.com.

I. Overview of NEPA Requirements

This DEIS has the correct scope with respect to rail issues. As discussed further below, it would be speculative to include other rail-related impacts in the DEIS.

NEPA regulations require an analysis of the direct and indirect effects of the proposed action. *See* 40 C.F.R. § 1508.8. However, CEQ regulations expressly limit analysis of indirect impacts to those that are “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Courts applying these regulations have held that “remote” or “speculative” impacts do not require analysis. Specifically, an impact is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.” *See Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir.1992); *see also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005). “Reasonable foreseeability” does not include “highly speculative harms” that “distort the decision making process” by emphasizing consequences beyond those of “greatest concern to the public and of greatest relevance to the agency’s decision.” *See City of Shoreacres*, 420 F.3d at 453.

Although the railroad track that will provide rail service to the proposed Project could experience an increased number of loaded trains, it is speculative and not reasonably foreseeable that construction of the Project will cause train traffic to increase on any particular line in the state. As discussed in greater detail below, the Federal Highway Administration (FHWA) estimates that based on current trends train traffic will increase at a compounded annual growth rate (CAGR) of 13 percent statewide by 2040. This projection already includes any increases associated with commodity shipment to the proposed Project.

BNSF has a diverse customer base and has segmented its business into 4 main groupings: Industrial Products, Consumer Products, Coal, and Agricultural Products. These business groups are further differentiated into 43 forecast groups and 178 sub-forecast groups. These customer demands are subject to the same complex factors as those driving the economy; one segment may experience significant growth while another segment is in decline. This variability in customer demand creates considerable uncertainty with respect to the timing and volume of future transportation of specific commodities.

As discussed in more detail below, the statewide increase in train traffic is not attributable to the Project or any other specific commodity movement. No credible evidence indicates that the proposed Project would cause increased train traffic throughout Washington. State and nationwide train traffic is dynamic and is determined by numerous factors, including but not limited to the following:

- A diverse set of customers each with variable schedules
- Markets driven by global supply and demand factors

- Competing modal choices, which are influenced by factors such as highway congestion
- Population growth and the resultant demand for BNSF's transportation services
- Energy and environmental efficiencies of rail
- Scheduling factors for individual shipments, including seasonality and weather events.

These supply and demand scenarios play out across the entire rail system in the United States, as further explained below.

In addition, BNSF operates a number of rail lines and retains the right to operate over some lines that are owned and/or controlled by other railroads. Possible routes thus include BNSF rail lines and other lines that may provide more convenient transportation options. Which route a train will take on a given day depends not only on convenience or distance, however, but also on the numerous variables listed above. While BNSF strives to provide reliable, exceptional rail transportation services, these diverse and complex factors do not allow for complete certainty or predictability. Therefore, the route a particular train will take or how many trains any route will need to absorb is speculative and not subject to precise prediction.

This letter addresses the following reasons why it is impermissibly speculative to assume that the Project would increase rail traffic along any particular route:

- 1) BNSF rail traffic is complex and variable based on a host of factors beyond our control, which makes likely predictions impossible.
- 2) Several independent, government studies predict that rail traffic will increase over time due to various economic conditions, such as demand for commodities of the type proposed to be shipped at the proposed terminal with or without the proposed Project.
- 3) BNSF already has adequate capacity on its mainline for the proposed Project.
- 4) Commodities will be shipped regardless of the proposed Project, either to existing or potential future terminals on the West Coast by any number of rail routes.

The letter also briefly discusses the concerns expressed regarding the purported impacts of coal dust, demonstrating that best practices sufficiently address controlling coal dust during rail car transit.

II. Rail Capacity in Washington

Although the Project has projected receiving up to eight unit trains per day if the terminal reaches full capacity, depending upon market conditions, it is speculative and not reasonably foreseeable that construction of the Project will cause train traffic to increase on any particular portion of the state's rail system.

As can be seen from the historical rail volume information provided below, the proposed rail volumes that could be associated with the Project, subject to market conditions, fall well below 10-year historical highs.

Historical Data Summary for Rail Volumes in Washington (Trains Per Day) (2007-2016 YTD)				
Subdivision	10 Year Average	Current Average	High	Low
Spokane	51.49	52.30	70.30	39.90
Lakeside	33.86	37.00	48.20	27.00
Fallbridge	33.50	35.40	44.80	25.70
Seattle	58.10	62.10	81.10	49.80
Stampede	4.32	5.90	12.00	0.20
Yakima Valley	5.82	7.30	13.40	1.20

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Also, the Washington Department of Transportation (WSDOT) 2013-2035 State Rail Plan provides information regarding rail capacity in Washington. The plan is available at (<http://www.wsdot.wa.gov/NR/rdonlyres/F67D73E5-2F2D-40F2-9795-736131D98106/0/StateRailPlanFinal201403.pdf>) and provides as follows:

The Federal Railroad Administration requires state rail plans include a rail system capacity analysis. This broad analysis is meant to show what a future rail system would look like with the anticipated freight and passenger rail growth, if no additional capacity or operational improvements were made.

In reality, it is anticipated the Class I railroads (BNSF and UP) and other infrastructure owners will likely address key capacity issues as they emerge. (Emphasis added.) Therefore, the 2035 capacity assessment is included here to illustrate the magnitude of growth anticipated for Washington's rail system. This underscores the need for continued planning and action to address capacity and mobility concerns throughout the system.

Washington's rail system is expected to handle more than 260 million tons of cargo by 2035— more than double the volume carried on the system in 2010. This represents a compound annual growth rate of 3.4 percent for all commodities carried on the rail system. As a result, and as shown in Figure 4.3, several rail segments are expected to require operational changes and/or capital improvements to manage anticipated freight rail volumes.

Additionally, and as stated above, Washington state traffic by rail is predicted to increase steadily, at a CAGR of 13% by the year 2040 (**Source:** Federal Highway Administration). In the 30 years from 2010 to 2040, the State of Washington is expected to grow annual truck volumes by 6.4 million trucks to 15.8 million. This increase in truck traffic will result in additional highway congestion and drive additional freight to the more energy and environmentally efficient rail system.

As noted above, *the proposed rail volumes that could be associated with the Project, subject to market conditions, fall well below the 10-year historical highs as seen above.* By comparison, if and when the Project reaches full capacity, the associated train traffic would represent only a small fraction of the total transportation increase represented by the anticipated natural economic growth for Washington.

To summarize this point, the 2013-2035 Washington State Rail Plan (“SRP”) predicts a 3.4% CAGR in train traffic essentially doubling or a 100% increase by 2035.

Additionally, the FHWA estimates an even faster growth rate, stating that current trends indicate train traffic will realize a Compounded Annual Growth Rate (“CAGR”) of 13% by 2040. This projection already includes any increases associated with commodity shipments to the proposed terminal.

This growth in transportation enables the economies of both the state of Washington and the United States to meet the projected growth expectations of the shipping public. In 2010, freight-dependent businesses represented 44% of Washington state jobs. Likewise, the Washington Council on International Trade (“WCIT”) has stated that 40 percent of all jobs in Washington are tied to international trade.

III. BNSF Capacity Commitments

As the population grows, demand for freight will increase, and BNSF expects rail traffic to continue to grow to support that demand. As such, BNSF will continue to invest in capacity improvements, as we have done in Washington and the rest of our network for years, to accommodate all of the growth in our freight business.

To accomplish this, BNSF routinely performs studies for potential capacity improvement based on the best information available on our customers’ dynamic needs and changing traffic volumes. Rail improvements are made financially possible only by increased volume. This system ensures that the necessary private capital to refresh BNSF’s physical infrastructure and capacity becomes available as necessary to provide adequate levels of service along rail lines.

Therefore, BNSF invests in capacity improvements when actual traffic demand justifies the investment. This includes capital investments that are made on track covered by operating agreements through railroad switching companies, such as Longview Switching Company. BNSF has in the near term and/or will have in the long term adequate capacity to accommodate current and anticipated freight traffic in Washington.

BNSF's history of investment in the Pacific Northwest demonstrates the company's commitment to this important region. During the last nine years alone, BNSF has invested approximately \$1.5 billion in Washington to maintain and improve freight rail capacity. In 2016, BNSF expects to invest \$220 million. The three east-west BNSF routes through Washington have available capacity and offer flexibility in ensuring network fluidity. In fact, to provide more capacity to move goods in and out of Washington, we invested more than \$150 million in the mid-1990s to re-open the Stampede Pass Route.

BNSF has invested more than \$53 billion of our own private capital on our entire network since 2000. In 2015, we invested another \$5.8 billion across our network, with \$1 billion of that capital being invested in expansion and maintenance on the Northern Corridor alone, more than any other part of the network. BNSF has continued to make these improvements to its lines that have resulted in improved system-wide train velocity over the last few years. The attached link provides additional detail for BNSF's 2015 Capital Expenditures: <http://www.bnsfmedia.com/go/doc/7090/2482710/>

IV. Rail Safety and Grade Crossings

Promoting rail safety and grade-crossing safety is an essential part of our operation and culture. Our network includes just over 25,800 grade crossings, including approximately 17,200 public and 8,700 private and pedestrian at-grade crossings.

In addition, BNSF has more than 3,700 public grade separations and 650 private and pedestrian grade separations, including one of the lowest highway-railroad grade crossing collision rates in the rail industry. Since BNSF's merger in 1995, the rate of grade crossing collisions has declined about 68 percent – from 5.3 per million train miles in 1995 to a rate of 1.7 per million train miles in 2013.

For the past several years, BNSF has invested an average of \$95 million annually on grade-crossing maintenance, improvements and safety programs. Our initiatives include community education and awareness, train crew education and testing, crossing closures, new safety technology, vegetation control, and track and signal inspection and maintenance.

To accomplish these educational and program activities, BNSF dedicates 17 grade crossing safety managers and 9 public projects managers. The amount spent on grade-crossing safety includes an annual average of approximately \$20 million to maintain grade-crossing road surfaces.

For more information see the "BNSF Grade Crossing Safety" brochure (Attachment A).

A. Federal and State Roles

The 1973 Highway Rail Safety Act created a partnership to be built between the federal government, state government, local agencies and the railroads. Congress established guidelines for evaluating grade crossings, and the Federal Government would provide a funding mechanism for railroad-highway upgrades. In addition, the federal government created an inventory

database of each crossing within the United States, available at <http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/crossing.aspx>.

There is also an application for mobile devices, located at <https://www.fra.dot.gov/Page/P0703>.

The Highway Rail Safety Act required each state Department of Transportation (“DOT”) to create a ranking system, review that ranking system of all public crossings within the state on an annual basis and provide information to maintain the national inventory that is maintained by the FRA. This Act also placed the responsibility for determining the adequacy of the crossing warning devices on each state DOT, based on the priority of ranking system they created.

The railroads participate in diagnostics requested by the Department of Transportation, provide railroad information and provide a workforce to install, and then maintain the crossing warning devices that the particular state DOT deems to be adequate for that crossing. The Federal government provides the funding to the agencies that can be used for the installation and upgrading of traffic control devices and crossings. This information can be obtained through the Federal Railroad Administration (“FRA”) crossing database mentioned above. All crossing incidents and trespasser incidents on BNSF are sent to the FRA.

B. Grade Separated Crossings

The determination to grade separate a crossing is made by the appropriate road authority using their own calculations or other driving factors. BNSF participates in the process by conducting reviews of construction plans that would impact BNSF’s Right-of-Way. Noise impacts are typically reviewed by the road authority through an environmental study.

Under federal law, there is a formula for cost-sharing between a community and the railroad for providing a grade-separated crossing when the grade separation results in the elimination of an at-grade crossing.

C. At-Grade Crossing Noise

There is no difference in train horn requirements by train type. The use of either train or an automated horn system, known as wayside horns, is determined through a diagnostic conducted by the Road Authority, FRA and BNSF. The installation and use is governed by the FRA Train Horn Rule <https://www.fra.dot.gov/Page/P0105>. Accordingly, BNSF does not determine where or when Wayside horns are installed. Part 9 Subsection 9 of the FRA’s Grade Crossing Safety Handbook (<https://www.fra.dot.gov/Page/P0040>) states that:

A crossing bell is an audible warning device used to supplement other active traffic control devices. A bell is most effective as a warning to pedestrians and bicyclists. When used, the bell is usually mounted on top of one of the signal support masts. The bell is usually activated whenever the flashing light signals are operating. Bell circuitry may be designed so that the bell stops ringing when the lead end of the train reaches the crossing. When gates are used, the bell may be silenced when the gate arms descend to within 10 degrees of the horizontal position. Silencing the bell when the train reaches the crossing or

when the gates are down may be desired to accommodate residents of suburban areas.

D. Quiet Zones

Quiet Zones are established through the FRA Train Horn rule as outlined at the following link: <https://www.fra.dot.gov/Page/P0104>. BNSF participates in the diagnostics and review conducted by the road authority, the state Department of Transportation and the regional FRA representative. Crossing treatments and recommendations are determined through the diagnostic and calculations provided through the Train Horn Rule.

E. Grade-Crossing Consolidation

One of the best ways to address grade crossing safety is to reduce the number of at-grade crossings. BNSF's grade crossing safety program includes an aggressive initiative to close public and private at-grade crossings, working closely with communities and property owners. Good candidates for closure include those that are redundant (other crossings nearby allow access to the same roads or areas), are not designated emergency routes, have low traffic volumes, or are private crossings that are no longer needed or used.

Road crossing gate down times are minimal, especially for the number of trains anticipated by this project. Appropriate BNSF personnel have the ability to "split" a train in case a crossing is blocked and an emergency vehicle needs to pass. BNSF has a team that concentrates on eliminating at-grade crossings and working with communities who show an interest in grade-separating crossings.

F. Inspection/Compliance Records

BNSF maintains inspection reports that the FRA Region 8 routinely audits under their inspection program with a thorough review for completeness. An example of a BNSF track inspection report is attached for reference (Attachment B). This is an example only and BNSF will continue to adhere to federal inspection protocols. See <https://www.fra.dot.gov/Page/P0243> for the FRA Region 8 inspection program.

Additionally, the attached copy of BNSF's Washington Track Inspections flyer, explains in considerable detail how BNSF's track inspection program exceeds federal standards (Attachment C). For example and as discussed in our prior filings, in many instances BNSF inspects its track more frequently than required by the FRA. Most crude oil routes on BNSF are inspected up to four times per week, more than twice the inspection frequency required by the FRA, and portions of the Fallbridge Subdivision can be inspected daily. BNSF also has special detection technology along core routes on our network sending back thousands of messages daily as they monitor for early signs of potential problems that could cause premature equipment wear or failure.

Detectors are placed even more closely together in places like the Columbia River Gorge to ensure potential issues are elevated as quickly as possible. BNSF has also been developing predictive analytics to leverage the combined information received from the multiple types of

detectors to discover potential issues before they arise. Also, while inspectors are looking at the track, they are also observing track conditions that may indicate underlying issues with a bridge structure, providing additional review.

Inspections of all bridge structures are performed a minimum of once per year and are utilized to identify required maintenance and to ensure there are no structural exceptions. One of those inspections is also performed with the presence of a BNSF supervisor. Bridges on BNSF's core routes are typically inspected at least twice per year, exceeding FRA standards. BNSF's bridge inspectors and engineering staff are also supported by consultants and contractors in our efforts to inspect and maintain BNSF bridges. An example of a BNSF rail bridge inspection report is attached as reference (Attachment D).

In 2017, BNSF will be adding new inspection positions (called Engineer -- Bridge Inspection & Maintenance) across the system. These positions will put engineers with degrees in either civil or structural engineering at our Division headquarters, and will provide local technical leadership to our existing bridge inspection teams. These positions are in addition to the team of railroad bridge engineers, structural engineers and bridge supervisors we already have on staff. One of the new engineer positions will be headquartered on the Northwest Division.

BNSF's bridge inspections are both comprehensive in nature, and supervised by a trained BNSF officer. Inspections are made on a periodic basis for underwater components, movable bridge machinery, and other specific contract inspections. Additional inspections are performed when special conditions and events exist, such as high water, vehicle/boat strikes, fire, and other events. The following video provides details on our bridge program:

www.youtube.com/watch?v=VO0altRhtlg.

BNSF continuously invests in new technologies and infrastructure to reduce risk, including, but not limited to remote, high resolution cameras. For example, BNSF is one of only a few companies in the United States – and the first railroad – to use Unmanned Aerial Vehicles (“UAVs”), having been granted authority last spring by the Federal Aviation Administration to operate UAVs under certain conditions to aid in safety inspections. For the bridge inspector, whose job is to review structures that are often difficult to navigate, UAVs add another layer of safety and another set of eyes from a vantage point previously not available.

The UAV program allows BNSF to supplement visual track inspections required by the FRA as well as rail bridge inspections with aerial review, resulting in safer inspection procedures for our employees. This will allow our track inspector to be located on the train and overall provide for a safer and more efficient rail network. BNSF is currently operating UAVs equipped with sensors that can deliver high-definition video and photos and infrared data. The multi-rotor aircraft, which take off and land like a helicopter, can be operated precisely around and underneath the bridge structures.

The multi-rotor aircraft are excellent tools to supplement our bridge inspection processes. Particularly for large bridges, our inspectors and engineers will be able to see what can be the most difficult places to reach on a more frequent basis. Fixed-wing aircraft like UAVs that fly

like a plane can be used to supplement track inspections. These aircraft have a wingspan of more than 10 feet and are technically capable of travel up to 80 mph at altitudes up to 19,500 feet. In the near future, BNSF also expects to begin using similar sensors on the head ends of locomotives, which would provide even more frequent real-time evaluation of our track structure and integrity.

G. Emergency Response Capabilities

As already noted in prior correspondence, *no mode of ground transport surpasses rail when it comes to overall safety, environmental performance, and affordability*. On average, railroads are four times more fuel efficient than trucks, according to an independent study for FRA. BNSF's unrelenting focus on safety is reflected in our excellent safety program and record. BNSF has invested billions of dollars each year to continuously improve our operations, infrastructure and safety efforts. The first line of defense is prevention – policies, training, technologies and preventative maintenance – to make sure accidents don't happen.

For these reasons, BNSF works closely with emergency responders in communities throughout our service area. BNSF has trained thousands of first responders and sponsored many to attend three-day specialized hazmat trainings in Pueblo, Colorado and at Texas A&M. Together with local emergency response agencies, BNSF has developed response plans and staged specialized equipment and hazmat responders across the rail network.

BNSF is committed to the safety of our communities and their first responders. Last year, we trained upward of 10,000 public emergency responders, with nearly 900 of these responders from Washington, on how to safely respond to hazmat incidents. BNSF has specialized equipment and hazmat responders staged across its network to deal with hazmat and crude oil incidents, including for firefighting and spill cleanup. During a hazardous materials incident, our BNSF responders would be responding in unison with public responders so that through our combined efforts the incident can be mitigated safely and effectively.

In Washington, we have resources and equipment staged in Everett, Seattle, Vancouver, Longview, Bingen, Wishram, Pasco and Spokane. In Washington, BNSF has 32 Hazmat Technician Level Responders located in Everett, Pasco, Seattle, Spokane, Vancouver and Wenatchee.

New, advanced technologies are also improving coordination between BNSF and response agencies. Two new technologies – AskRail and SECURETRAK – provide immediate access to real-time data about individual rail cars, cargoes, and location information for first responders. The AskRail mobile app, developed by the rail industry, provides first responders with car-specific data for hazmat contents and railroad contacts during an incident. BNSF's SECURETRAK, which is a real time, web-based Geographic Information System tracking program, is available to Fusion Centers.

V. **Coal Dust**

The potential for coal dust from the rail cars traveling to and from the Project has been raised as an issue of concern for this project. Since 2005, BNSF has extensively researched both the

impacts of coal dust escaping from coal cars loaded at Powder River Basin (PRB) mines and effective methods of preventing the loss of coal dust from loaded trains. Our research and experience had shown coal dust to be an issue near mine-loading points in the PRB in Wyoming and Montana and we currently have in place a coal loading rule that effectively addresses that issue.

The Surface Transportation Board (“STB”), the federal agency with oversight over rail industry practices, upheld BNSF’s coal-loading rule. When we first established our rule, several coal shippers challenged the rule’s validity before the STB. The STB’s approval is consistent with the agency’s past ruling that BNSF could require reasonable measures be taken to reduce coal dust.

Under BNSF’s coal-loading rule, a shipper will be deemed in compliance with our loading requirements if the shipper loads coal cars using our load profile template and also ensures that an acceptable topper agent is properly applied to the loaded car at an effective concentration level and in accordance with the manufacturer’s specifications. BNSF’s required load profile utilizes a “bread loaf” shape that eliminates sharp angles and irregular surfaces in order to reduce the escape of coal dust caused by wind and in-train forces.

In 2013, we announced plans to build a coal re-spray center and this facility is a voluntary measure that is responsive to a request from Canada’s Port of Vancouver as part of its permitting process for coal export facilities located in British Columbia. The re-spray center, which is located in our Pasco, Wash., rail yard, became operational in early 2015. (See the attached link: <https://www.youtube.com/watch?v=EYpYOfMFBAI>, as well as additional background information (Attachment E). This additional effort provides another level of redundancy to an already well-established mitigation process. As we’ve always said, BNSF is committed to addressing coal dust as an issue.

On Nov. 15, 2016, BNSF reached a tentative agreement with Plaintiffs regarding a lawsuit involving coal dust and the federal Clean Water Act. The tentative settlement reflects BNSF’s long-term efforts to address coal dust and allows us to continue that practice without the distraction of a prolonged legal battle. Our settlement reflects the truth that these sweeping allegations were simply unfounded. It is important to note the settlement reflects that BNSF denies any violations of the Clean Water Act and that BNSF has already implemented the best commercially available technology to address coal dust.

For additional information on this issue, please refer to Appendix F, “Coal Dust Facts.”

VI. Tribal Coordination

Across the BNSF system, our right-of-way travels through current tribal reservations and ceded territory. Many tribes, particularly in the Pacific Northwest, reserved hunting, fishing, and gathering rights on lands ceded to the Federal government by treaty. BNSF recognizes the treaty rights that tribes and their members possess to access these usual and accustomed areas for the purpose of exercising the right to hunt, fish, and gather, pursuant to the treaties agreed to by the tribes and the federal government.

BNSF has initiated a policy regarding access across our railroad right-of-way for tribal members seeking access to usual and accustomed fishing and hunting grounds. BNSF's policy includes three essential components:

1. It affirms an authority already granted to cross private property for those seeking treaty-supported fishing grounds;
2. It seeks to better understand this special access; and
3. It seeks to engage the relevant tribal governments and intertribal commissions (i.e., CRITFC) to help ensure the safety of their members

BNSF Railway seeks collaboration with tribes and/or tribal organizations to educate their members about safe practices and procedures when approaching and crossing railroad right of way. This policy is to:

1. Establish, maintain, and promote communication between BNSF and tribes on issues related to access to usual and accustomed sites;
2. Provide a process to assist in the resolution and/or avoidance of conflicts; and
3. Provide a process for implementing a joint outreach initiative to provide training on rail safety to tribal members accessing usual and accustomed sites across the BNSF rights-of-way.

IX. Conclusion

The NEPA DEIS demonstrates that the Project has been very well studied, and no further impacts need to be analyzed. In order for the Corps to fulfill its obligations under NEPA, the Corps is responsible for choosing the issues deemed important for analysis. CEQ and Corps regulations expressly limit the analysis requirements to direct impacts and those potential indirect impacts that are reasonably foreseeable, not those that are remote or speculative.

In this regard, it is clear from the foregoing that rail freight traffic not only in the State of Washington, but nationwide as well, is dynamic and is determined by numerous factors including, but not limited to:

- A diverse set of customers each with variable schedules
- Markets driven by global supply and demand factors
- Currency fluctuations
- Competing modal choices
- Population growth and the resultant demand for BNSF's transportation services
- Energy and environmental efficiencies of rail
- Scheduling factors for individual shipments, including seasonality and weather events.

Thus, it is clear that the predicted trend of growth in rail freight traffic is a result of numerous factors and has long been a nationally recognized issue as documented in several Government studies. Therefore, train traffic is not driven by any single project, including the current proposed Project.

Even with rail shipments bound for the Project, it is not reasonably foreseeable that Project train traffic will measurably impact rail traffic beyond the rate already anticipated for all commodities.

Overall train traffic is predicted to be substantially similar to historical traffic averages, whether or not shipments associated with the Project are taken into account. Accordingly, no factual link exists between the proposed Project and increased train traffic throughout the state of Washington.

Since the Project would not cause direct or indirect rail traffic impacts outside the geographic area of the Project, the Project is not a legal cause of such alleged impacts. As a result of the multiple variables impacting nationwide traffic patterns (shipment demand, weather, and scheduling factors, etc.), analysis of any alleged impacts from the projects would also be infeasible from a practical standpoint. These considerations are acknowledged in CEQ guidance on analysis of greenhouse gas impacts, which states that analysis of speculative impacts is not required, and that the analysis of upstream and downstream effects must be bounded by considerations of feasibility.

Simply stated:

- NEPA & CEQ guidelines are clear that speculative analysis is not required
- Train traffic is dynamic and driven by a wide variety of diverse factors.
- Train traffic on any particular line on BNSF's extensive rail network is impossible to reliably predict
- Train traffic is not driven by any single project
- Train traffic is predicted to grow by both the public and private sector with or without the Project
- BNSF has adequate capacity to handle the potential rail business associated with the Project
- Commodities will continue to be shipped whether or not the Project is ever built

In conclusion, and for all the reasons cited herein, BNSF believes the scope of review for the Project should not expand beyond the geographical region of the Project to review purported effects on statewide train traffic or from coal dust. This important economic development project should be approved swiftly.

BNSF would like to thank the Corps for this opportunity to provide comments and information concerning their DEIS. Please feel free to contact me at the number provided above should you have any questions regarding these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. E. Kalb, Jr.", is written over the typed name.

F. E. Kalb, Jr.

Enclosures