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U.S. Army Corps of Engineers, Seattle District

Re: Jacqueline Cameron Comments on the Millennium Bulk Terminal NEPA Draft
Environmental Impact Statement

To Whom It May Concern:

Thank you for this opportunity to comment on the Millennium Bulk Terminal (MBT) DEIS. The inclusion of the public in the governmental decision making is key for engaging local knowledge for better decisions and developing public trust in agencies.

As my comment is influenced by my own background and experiences, I wanted to briefly introduce myself. I grew up in the Portland area, where I learned my love of the Pacific Northwest through my childhood interactions with local forests and the Columbia River Gorge. Currently, I'm a graduate student at the University of Colorado, Boulder, in the Alliance for Technology, Media, and Society (ATLAS) Institute. My work looks at how technology can support greater participation in decision-making or data-driven actions by community members and environmental organizations. I am presently enrolled in Professor Mark Squillace's course on Environmental Decisionmaking, where we have learned about environmental laws, agencies, and means for participation. As the class extends beyond the submission deadline of the MBT DEIS commenting period, I am submitting my comment as is, but will also submit an amended version in two weeks that has had the benefit of being reviewed by a class full of great minds. Thus, I strongly encourage you to use that version in your final considerations.

I. Summary of Comment

Millennium Bulk Terminal is proposing to construct an export terminal in Longview WA for transporting 44 million tons of coal to Asian markets. It has the potential for economic benefits through the creation of jobs and support of industries. However, environmentally, this has wide ranging concerns from expanded mining in the Powder Basin, air pollution from coal dust, impact on tribal fishing rights, and contributions to global warming. I commend the Army Corps for their decision to do an EIS and their engagement thus far of the public through scoping comments, public hearings, and their website.

I will be focusing this comment upon the role of public participation, recommending both substantive changes for the final EIS and procedural changes. While there are many areas to

address, I will limit this comment to what I see as the best means for informed public participation in these efforts. This comment will be divided into three parts:

1. Revisiting public participation processes;
2. Recommendations of the use of technology to support participation;
3. And substantial concerns about the draft EIS.

My goal for this comment is that the Army Corps will make changes for the final EIS including additions to content (specifically expanding the no action alternative and scope of indirect effects) and minor adjustments to the website. I believe the Army Corps should reopen the comment period due to the high amount of public interest. I will also make a recommendation on the long-term considerations for participation, especially the use of technology, for future commenting processes to promote an informed citizenry and deliberative democracy.

II. Revisiting Public Participatory Processes

A. Public participation is an explicit requirement for the Army Corps

The Army Corps has an explicit requirement to engage the public in their environmental decisionmaking. NEPA has a public involvement clause at 40 CFR 1506.6 that requires agencies to “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” This has been reiterated by the courts. In *NRDC v. Morton*, the justice explicitly mentions that the goal of the environmental impact statement is to enhance public enlightenment and help officials make relevant decisions¹. This requirement is also directly applied to the Army Corps regulation in 33 CFR Part 325, Appendix B.

B. Why and how we should have public participation in agency decisionmaking

Public participation has been a requirement because it is a useful tool for agencies to assist in their decisionmaking process. Mark Squillace highlights five social goods of public participation in agency decision making: ensure that real public values are addressed, improve the quality of agency decisions, create a space to resolve conflicting interests, build public trust, and educate non-experts in the issues². I believe that these benefits can be met by agencies pursuing two key aims in public participation: being informative and creating spaces for deliberation with the public.

Agencies should aim to be informative. The provision of information is integral for raising public awareness and supporting effective citizen pathways³. "Effective public comment also entails

¹ *Nat. Res. Def. Council, Inc. v. Morton*, 458 F.2d 827 (D.C. Cir. 1972)

“Congress contemplated that the Impact Statement would constitute the environmental source material for the information of the Congress as well as the Executive, in connection with the making of relevant decisions, and would be available to enhance enlightenment of -- and by -- the public” (Section II)

² Mark Squillace. 2016. *Environmental Decisionmaking for the 21st Century*. Carolina Academic Press. Pp.206 - 208.

³ Rhys Andrews, Richard Cowell, James Downe, Steve Martin, and David Turner. 2008. Supporting Effective Citizenship in Local Government: Engaging, Educating and Empowering Local Citizens. *Local Government Studies* 34, 4: 489–507. <https://doi.org/10.1080/03003930802217462>.

reasoned argumentation" ⁴. To get comments that are useful to agencies, the public needs to be adequately informed. To be informative, the Corps should design proposals to explicitly promote public participation⁵. This may require considerations for greater information or tiering of information to allow for reasonable engagement with the issue. They should also practice modes of in-person participation that give maximum information to participants, such as private consultations.

While the provision of adequate information is necessary, it is not sufficient for useful public participation. Allowing these processes to benefit decisionmaking requires avenues for the public to give their opinion and for agency personnel to take the stance that they have much to learn from the public. "Land management is not merely applied science but a complex public policy debate as well"⁶. Agencies cannot make good decisions with science alone, but are tasked with considering broader values and implications⁷ for which members of the public can provide valuable insight.

The benefits of public participation are best found in the creation of deliberative spaces. Commenting and public hearings are one means for agencies to hear from the public, but these never create a full discussion. "Discourse is an ideal way for citizens to come to understand the positions and frameworks of others"⁸. Spaces where there are discussions can lead to higher quality input and willingness to see understand the complexity of a decision over spaces where members of the public just state their own opinion. To address this, the Corps could aim for public participation practices that create dialogue, such as collective decisions, face-to-face discussions,⁹ and town hall meetings¹⁰.

C. The specific circumstances of the Millennium Bulk Terminal EIS warrant a further look at means for effective public participation

Thus far, the Army Corps has used multiple methods for engaging the public including public hearings, a website, and comments and have met official requirements. However, the results of the public process so far shows that this particular proposal warrants a further consideration of best practices.

⁴ William West. 2005. Administrative Rulemaking: An Old and Emerging Literature. *Public Administration Review* 65, 6: 655–668. <https://doi.org/10.1111/j.1540-6210.2005.00495.x>

⁵ Squillace, pp.215

⁶ Steven E. Daniels and Gregg B. Walker. 1996. Collaborative learning: Improving public deliberation in ecosystem-based management. *Environmental Impact Assessment Review* 16, 2: 71–102. [https://doi.org/10.1016/0195-9255\(96\)00003-0](https://doi.org/10.1016/0195-9255(96)00003-0)

⁷ National Environmental Policy Act of 1969: <http://www.epw.senate.gov/nepa69.pdf>

⁸ Stephen Zavestoski, Stuart Shulman, and David Schlosberg. 2006. Democracy and the Environment on the Internet Electronic Citizen Participation in Regulatory Rulemaking. *Science, Technology & Human Values* 31, 4: 383–408. <https://doi.org/10.1177/0162243906287543> (p. 2)

⁹ Daniel J. Fiorino. 1990. Citizen Participation and Environmental Risk: A Survey of Institutional Mechanisms. *Science, Technology & Human Values* 15, 2: 226–243. <https://doi.org/10.1177/016224399001500204>

¹⁰ Squillace, pp.209-214

First, there is high interest and controversy around the building of the Millennium Bulk Terminal. Thousands have appeared at public hearings both in support and against the proposal¹¹. Not only are people turning out to comment and have their voice heard, but major representative organizations are weighing in. City councils and mayors from Vancouver¹² and Milwaukee have expressed opposition, while labor unions have broadly supported the permit¹³. The controversy in this case is important because the CEQ rules at 1506.6(c) recognize that issues of “substantial environmental controversy” require further engagement (i.e. public hearings and meetings) beyond what is required in other situations.

Second, the current processes have had trouble satisfying the interest of the public to participate. Public hearings have had overwhelming numbers and officials have been unable to hear from everyone who wanted to speak. At one scoping hearing, only 111 or 157 could speak¹⁴. The scoping document states that “because of the many people wishing to make comments before the auditorium audience, speakers were chosen by lottery and allowed two minutes for their comments”¹⁵. The large turnout has increased the time it takes to attend and wait for a turn to speak at public hearings¹⁶. This restricts participation to those who can afford the time and biases these hearings against low-income workers, those with families, and others who may not have the time. There has been specific discontent directed towards the process. For example, the Cowlitz tribe claim that their requests for consultation have not been met¹⁷.

Third, there is a wide geographic region that is relevant, both in terms of interest and for potential environmental impacts. Northern Plains Resource Council¹⁸ highlights how this project could impact places outside of the immediate area through mining and train impacts. Commenters in the scoping process expressed the desire for the public’s concerns to be heard from areas outside of Washington. While their comments were included, requests were additional scoping meetings locations were not granted in locations such as Clark County, within the City of Dalles, Montana, City of Sandpoint, and Bonner County¹⁹, and those areas were left out of the indirect impacts in the draft environmental impact statement.

D. The Corps should reopen the comment period and expand the deliberative forms of participation

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<http://www.seattletimes.com/seattle-news/environment/a-thousand-plus-pack-hearing-on-proposed-longview-coal-terminal/>

¹² <http://www.columbian.com/news/2016/oct/18/vancouver-council-oppose-longview-coal-terminal/>

¹³ <http://thelens.news/2016/07/07/labor-backs-longview-coal-terminal/>

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<http://www.ecowatch.com/coal-export-terminal-draws-resounding-no-at-washington-hearing-1881801433.html>

¹⁵ Scoping document, 2-5

¹⁶ [http://www.spokesman.com/stories/2016/may/26/longview-coal-terminal-plan-draws-hundreds-to-all-/
<http://koin.com/2016/05/24/hundreds-gather-in-longview-to-debate-coal-terminal/>](http://www.spokesman.com/stories/2016/may/26/longview-coal-terminal-plan-draws-hundreds-to-all-/)

¹⁷ <http://www.opb.org/news/series/coal-in-the-nw/cowlitz-tribe-asserts-opposition-to-longview-coal-terminal/>

¹⁸ <https://www.northernplains.org/say-no-millennium-coal-export-terminal/>

¹⁹ Scoping document, 5-44

Given the high interest in this issue and dissatisfaction, I would recommend that the Corps should reopen the comment period to get more input. Public participation can be implemented as an empty ritual and maintain the status quo, or be a means to genuinely improved decisionmaking²⁰. To fully hear from those who believe that they will be impacted by this permitting and make a decision in light of that feedback, the Corps would do well to elicit further feedback. Reopening the comment period would allow for more people to participate.

In addition, it would allow the Corps to expand the forms of participation. Instead of a public hearing, I'd recommend increasing availability for face-to-face meetings or a town-hall style meeting to allow for discussions to develop between the agency and members of the public. It would also be useful to broaden the area in which in-person events are held.

III. Recommendations for Use of Technology to Support Participation

There are many ways for the public to participate in governmental decisionmaking. In-person modes have been effective, but the use of technology could also support for informative and discursive spaces, especially in cases of high and broad interest.

A. While there are no official requirements for the use of technology, the use of technology could promote the goals of public participation in rulemaking

While not specifically required, technology is used by government agencies and promoted as an effective means to engage the public. The internet and mobile technology have been a major means to allow greater accessibility. White House Open Government Directive touts the use of emerging technologies to promote participation²¹.

There are many benefits of technology for information dissemination. 40 CFR 1506.6(f) requires agencies to “make environmental impact statements, the comments received, and any underlying documents available to the public” and “without charge to the extent practicable”. Websites are a free way to make this information widely accessible. Websites have been shown to be a beneficial space for information for all forms of comments (paper and electronic) and have been linked to increased original submissions²².

In addition, there are benefits for the comment process and creation of deliberative spaces. In 1997, the USDA organic program created one of the first websites for comment process, which brought unprecedented public participation at that time²³. Beyond a rise in comment numbers, websites can as deliberative spaces. Posting of comments on website where anyone can see them has been shown to improve the quality of comments and acceptance of the process²⁴. Platforms with forums or that promote discussions between members of the public and

²⁰ Sherry R. Arnstein. 1969. A Ladder Of Citizen Participation. *Journal of the American Institute of Planners* 35, 4: 216–224. <https://doi.org/10.1080/01944366908977225>

²¹ <https://www.whitehouse.gov/open>

²² David Schlosberg, Stephen Zavestoski, and Dr Stuart W. Shulman. 2008. Democracy and E-Rulemaking. *Journal of Information Technology & Politics* 4, 1: 37–55. https://doi.org/10.1300/J516v04n01_04

²³ Zavestoski 2006

²⁴ Ibid

government officials create a more informed dialogue and allow for transparency to build trust between the government and the public²⁵. Novel interfaces have the ability to move from individual emphasis of comments to cultivating communities of interest and expertise who could become a continued resource of input for agencies²⁶.

B. The Millennium Bulk Terminal EIS website is largely commendable

I commend the decision to make a website for this proposal. It has made the EIS documents easily accessible. While not having in-person meetings outside of Washington, it has been a way to broadly disseminate information and engage the public, seen through all the comments from different states. It also allows people to post comments online, where anyone can see and respond to them. I have personally been using this feature to gain a sense of the discussion and issues at hand. However, the use of technology could be improved to meet three key issues: accessibility, mobile technology, and long-term informational and deliberative practices.

C. The Corps should implement further technology features to improve accessibility of the website for blind and visually impaired

While the website contains a couple accessibility features, it could be easily improved. I have done work around accessibility for blind and visually impaired users, which impacts 2.3% of the United States population²⁷. Color blindness impacts even more. While the website uses some ARIA standards in the code and has an email for extra assistance for those with accessibility concerns, it could easily be improved.

I'd like to suggest three tools to evaluate accessibility of the website. First, WAVE Web Accessibility²⁸ allows you to evaluate websites. Using it on the Millennium Bulk Terminal site, it found there to be a number of empty links (links with no corresponding text) that could easily be removed or changed. It also pointed to missing alternative text for images, which I'd recommend be added. Second, there are generally accepted accessibility design principles²⁹. The MBT site could improve the ordering of links in the code, especially making the navigations bar in order. It could also use header tags to allow for easier navigation. These navigational changes would allow for the email to be easier to access. Finally, the color usage in the EIS document, especially for figures and maps, is not consistently colorblind friendly. Colorbrewer³⁰ has a series of online color palettes which would be effective.

D. The Corps should consider how to address the shift from computer to mobile phone use by the public

Beyond accessibility, the Corps should consider mobile technologies, especially in website design. There has been a large shift towards mobile phone use. Many people use mobile to access

²⁵ Ibid

²⁶ Beth Simone Noveck. 2004. The Electronic Revolution in Rulemaking. *Emory Law Journal* 53: 433–522. P. 436

²⁷ National Federation of the Blind: <https://nfb.org/blindness-statistics>

²⁸ WAVE Web Accessibility Tool: <http://wave.webaim.org/>

²⁹ Accessibility Design Principles: <https://webaccess.berkeley.edu/resources/tips/web-accessibility>

³⁰ Colorbrewer website: <http://colorbrewer2.org/#type=sequential&scheme=BuGn&n=3>

information content. There are now more mobile only users than desktop only users³¹ and Google has noted that most searches are from mobile devices³². The use of mobile has changed the way in which people engage with content. There is lower patience for page loading, desire to read chunks over long documents, and increased isolation of viewpoints³³. Thus, the Corps should consider how to adapt its technology for this.

There are minor changes that could be made to make the website responsive to mobile screens. Currently the navbar is cut off and extends far beyond the main text box. Similarly, the text size remains small on a mobile device and requires one to zoom instead of dynamically changing size to fit the screen, which makes the content difficult to read. There are now standard libraries, such as bootstrap, that would allow a programmer to easily make a website responsive to mobile use. Mobile would also benefit from an HTML version of the content in addition to the PDF. PDFs often have to be downloaded, limiting the amount people will choose to access them on a mobile device due to load time and length of reading in that format.

E. In the long-term, the Corps should explore the use of technology to support greater informational and deliberative processes

Most of the accessibility and mobile changes above could be achieved in the short-term. However, the Corps should consider other actions in the long-term. With technology becoming a main form of engaging public participation, the Corps should consider ways to incorporate technologists into the agency, how to adapt the standard EIS format for online dissemination, and exploratory techniques for deliberation.

First, the Corps should consider including their own technical experts in the preparation of these documents. In appendix B, the list of preparers for the document include editors who are skilled at communication, but the technical work was left to a contractor³⁴. Given the close relationship between the technical and participatory practices, it would be beneficial for the Corps to have a technologist working closely with the editors. This would be justified under the NEPA 102(2)(A) requirement to “utilize a systematic, interdisciplinary approach”.

I would recommend against future use of a contractor for technology and comment analysis, such as ICF International. Websites could be a continual space for deliberation and community building. However, contractors do not have a responsibility to maintain a website in the long-term and the agency loses the use of it as a continued space for public information. Additionally, there is a danger in using a contractor to analyze comments. With a contractor summarizing the comments instead of the agency, agency officials may only see the numbers addressing types of content, but miss the bulk of the reasoning by commenters that is key for decisionmaking. It also limits official's ability to

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<https://www.comscore.com/Insights/Blog/Number-of-Mobile-Only-Internet-Users-Now-Exceeds-Desktop-Only-in-the-U.S>

32 <https://adwords.googleblog.com/2015/05/building-for-next-moment.html>

33 <http://shorensteincenter.org/mobile-vs-computer-news-audiences-and-outlets/>

34 http://www.millenniumbulkeiswa.gov/assets/appendix-b_list_of_preparers.pdf

respond as an agency to comments during the comment period to allow for a dialogue between public and agency³⁵.

Second, if the Corps used the full potential of online text, an HTML version of the document rather than a PDF version, it could allow for improved tiering of content through linking. Careful website planning would allow for the EIS to link to different sites, such as the Citizen's Guide to the NEPA³⁶, relevant research, or different parts of the document. Linking could save time and resources for the Corps over many environmental impacts statements as there would be no need to reiterate the generic information in every EIS, but link out to a standard document. It could also improve the educational and information capabilities of the site, allowing for a diversity of participants with different levels of background understanding. Those who need extra information, from basic information on NEPA to details of particular research, would be able to more easily find it. Finally, HTML versions would also improve accessibility (working with screen readers) and mobile use.

Third, the Corps should explore techniques to support deliberative practices by participants. There is room to explore technology as a platform for discursive participation. It would be beneficial to try creating websites where there is commenting on comments, discussion forums, or a clustering of comments based on issues. One could also try a two-track approach for commenting, where some can just show support/dissent and others could give substantive comments³⁷.

F. While technology can one means to improve government-public communication, it should not be the only method

While technology has had a lot of use and potential for improving the public participation process, it should not be the only method used. Not everyone has easy access to technology³⁸, thus we need to keep in-person methods. We need to use a multitude of methods to support diverse participation³⁹. Technology and higher participation could be an increased burden in terms of cost and time. Although some issues of increased comments may be mitigated, such as having programs help separate form letters from original content, it would be wise for to fit the method to the issue when it would produce the greatest benefits for decision-making.

This EIS is particularly situated for a technological presence, given the high interest and the geographical spread of the public.

³⁵ Gene Rowe and Lynn J. Frewer. 2005. A Typology of Public Engagement Mechanisms. *Science, Technology & Human Values* 30, 2: 251–290. <https://doi.org/10.1177/0162243904271724>

³⁶ https://ceq.doe.gov/nepa/Citizens_Guide_Dec07.pdf

³⁷ Daniel Rauch. 2016. Two-Track E-Commenting. *Yale Journal on Regulation* 33.

³⁸ Lalanath de Silva. 2008. Environmental e-Governance. In *Proceedings of the 2Nd International Conference on Theory and Practice of Electronic Governance* (ICEGOV '08), 216–218. <https://doi.org/10.1145/1509096.1509139>

³⁹ Squillace 2016, p.214; Gene Rowe and Lynn J. Frewer. 2000. Public Participation Methods: A Framework for Evaluation. *Science, Technology & Human Values* 25, 1: 3–29. <https://doi.org/10.1177/016224390002500101>

IV. Substantial Concerns about the Draft EIS

Taking seriously the role of this an environmental impact statement to support both an informed citizenry for the best comments⁴⁰ and the best decisionmaking by agency officials, there are substantive expansions that should be added to the final EIS . Two additions that I will focus on are: 1. Expanded treatment of the No Action Alternative; and 2. Expanded scope to include the whole supply chain. I highlight the No Action Alternative and scope because issues related to them were repeatedly brought up during the scoping period, yet they were not adequately addressed in the DEIS.

In addition to these two issues, I believe that there are many other substantive considerations that should be added to the final EIS. While I won't specifically address them, I would like to express support for comments by several classmates. There are serious questions about the purpose and need statement in relation to the need for this particular terminal and the continued market for coal⁴¹; please look at the comment by Simon Vickery. For the issue concerning the scope of fishing impacts and their relation to tribal rights, especially in light of the Cowlitz tribe's dissatisfaction with the public process⁴², please look at the comment by Michelle White. Finally, in relation to consideration of climate change, please look to Mona Ellis' comment.

A. The Corps should expand its treatment of the No Action Alternative in comparison with the other alternatives and within cumulative impacts

The alternatives analysis is the “heart of the environmental impact statement” according to 40 CFR §1502.14. It is meant to act as the “basis for choice among options by the decisionmaker and the public” and is thus the major way for both the agency and public to make an informed decision. Alternatives should be presented in a “comparative form” to make the decisionmaking easier. A predominant feature is the inclusion of the No Action Alternative which should act as a “benchmark” in this decisionmaking process⁴³. While it can include reasonable future actions with no issued permit, it is especially useful in comparison magnitude of actions.

Within the MBT DEIS, the No Action Alternative is primarily treated separately in subsection 3.6. The No Action Alternative includes the expansion by the company on their leased land with increased coal export along with other commodities. While the Corps should consider expansions on the land, the likelihood and requirements for the options are unclear. The Corps highlights these future operations as highly “speculative”. Rather than giving a full analysis of

⁴⁰ Teresa M. Harrison, Santiago Guerrero, G. Brian Burke, Meghan Cook, Anthony Cresswell, Natalie Helbig, Jana Hrdinová, and Theresa Pardo. 2011. Open Government and e-Government: Democratic Challenges from a Public Value Perspective. In *Proceedings of the 12th Annual International Digital Government Research Conference: Digital Government Innovation in Challenging Times* (dg.o '11), 245–253. <https://doi.org/10.1145/2037556.2037597>

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<http://www.seattletimes.com/seattle-news/environment/effects-of-proposed-coal-export-terminal-outlined-in-study/>

⁴² <http://www.opb.org/news/series/coal-in-the-nw/cowlitz-tribe-asserts-opposition-to-longview-coal-terminal/>

⁴³ CEQ 40 FAQ Document: <https://ceq.doe.gov/nepa/regs/40/1-10.HTM#3>

impact, they only make the suggestion that “could be similar to those of the proposed export terminal”.

The Corps needs to expand their treatment of the No Action Alternative. First, the No Action Alternative section should clarify which of the future activities would require further federal permitting and which would not. This would allow for a clearer ability to weigh the likely magnitude differences between the No Action activities and those with the MBT proposal. If there is no significant difference in actions and environmental impacts without the terminal, then the purpose and need for this specific terminal could also come under question.

Second, the Corps should add the No Action Alternative to Table 3-9 in section 3.7 of the final EIS. This table is the primary way to directly compare alternatives, yet only includes the two action alternatives (on-site and off-site). Without including the No Action Alternative, there is no direct way to compare the magnitude of these choices. This also fails to address the CEQ rule by not presenting it in a “comparative form”. The light treatment of the No Action Alternative suggests that the Corps has already decided against the No Action Alternative, which is concerning in light of the high amount of dissent to the project and the role of the EIS to help make agencies make a decision.

Third, the activities considered within the No Action Alternative should also be addressed in Chapter 7 on Cumulative Impacts. The No Action Alternative has some activities that are mutually exclusive with the proposal, but not all and there is reason to believe that the company could expand. The proposed export terminal will only take up 190 acres out of 540 in the area and the No Action Alternative includes expansion onto land that is unused by the proposed terminal, so there is room for expanded activities beyond what is included in the proposal. And we have reason to expect that the company could expand further. The company has lied in the past about intended scale of activities. They originally intended to transport 60 million tons, which is higher than the current EIS evaluation of 44 million tons⁴⁴. The No Action Alternative also lists many other commodities and expansions that could occur in the future. If speculation on expansion is included in the No Action Alternative, then it should also be in the cumulative impacts, especially since these could contribute to cumulative impacts on the immediate area.

B. The Corps should expand the scope of the document to address concerns from the whole supply channel

The goal of scoping, as listed in 40 CFR 1501.7, is to narrow the discussion to a define particular scope or “range of actions, alternatives, and impacts to be considered”. In this case, the Corps has limited the environmental consequences and indirect impacts to only include the local area. For example, in Section 6.1 of the EIS, it states that the indirect impacts of the rail line “only includes up to the Longview Junction”. However, the Corps should expand the scope of the document to consider the whole supply channel. Although the Corps’ permit is limited to the terminal, it has a responsibility under NEPA to “analyze all of the environmental

⁴⁴ http://www.nytimes.com/2011/02/15/us/15coal.html?_r=4&

consequences of a project...it is the impact of the permit on the environment at large that determines the Corps' NEPA responsibility"⁴⁵.

The issuance of this permit has a large impact on environment beyond the Washington area. The consideration of these impacts was requested during the scoping process as a major point of contention⁴⁶. There will be 16 additional trains each day along a specific route. Northern Plains Resource Council has noted the impact of this on Montana towns, such as increased traffic, coal dust, and consequences of derailment⁴⁷. As evidence of these issues, the BNSF rail system is currently under lawsuit for the impacts of these open train cars⁴⁸. Beyond the rail system, this permit is linked to the availability of increased mining activities in the Powder River Basin to supply the coal. In addition, this permit will have impacts on the Columbia River and contribute to the cumulative impacts on climate change through the transport and selling of coal to Asian markets.

In the CEQ definition of scope at 40 CFR 1508.25, it suggests agencies should consider connected actions when determining the scope for an environmental impact state. "Actions are connected if they: (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification." According to the purpose statement of the draft EIS, the transport of coal to the Asian market is only economically viable given the large increase in the scale of coal being shipped. This meets condition (iii) as the terminal relies on the larger action of the full capacity to transport large amounts of coal from the Powder Basin to Asia to justify the expansion. Without the scale of coal production increase and Asian transport, the facility would be unnecessary. MBT could also be seen to meet condition (ii) as it would not be effective without other actions. The terminal is dependent on coal mines, the ability of the rail system to handle increased loads, and shipping. Issues in these other areas may impact the economic and long-term viability of the proposed terminal.

In *Sylvester v. U.S. Army Corps of Engineers*⁴⁹, Justice Sneed used the metaphor of links to distinguish items that should be included in the scope of a project. I agree with him that an "entire pool" need not be considered every time, but is there a sufficient connection between the activities in the case of the MBT. Within this metaphor, he suggests that "each segment stands alone, but each link within each segment does not". Unlike the golf course and resort, where one could exist without the other, the Millennium Bulk Terminal is clearly a link rather than a separate segment. It's justification relies on the greater supply chain. This case is closer in resemblance to *Save Our Sonoran v. Flowers*, where the Army Corps was required to expand their scope. There is a direct causal relation between the creation of the terminal and the increased rail, mining, and shipping. This is emphasized by that fact that denying the permit

⁴⁵ *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113 (9th Cir. 2005)

⁴⁶ MBT DEIS scoping appendix: 5-24

⁴⁷ <https://www.northernplains.org/say-no-millennium-coal-export-terminal/>

⁴⁸ http://www.cascadiaweekly.com/cw/currents/court_says_bnsf_coal_dust_should_go_to_trial

⁴⁹ *Sylvester v. U.S. Army Corps of Engineers*, 882 F.2d 407 (9th Cir. 1989)

would likely halt the possibility of the whole supply chain given the insufficient scale of supply as stated in the purpose statement.

While these extended activities fall within the CEQ definition for connected actions to be considered in the scope, there is a further question of the Army Corps of Engineers regulations at 33 CFR Part 325, Appendix B, Section 7 and whether sufficient “control and responsibility” exists. Given the connectedness of activities addressed above, the “environmental consequences of the larger project are essentially the products of the Corps permit action”. While mining, train traffic, and shipping occur without this project, the large increase in scale and resulting environmental consequences of these activities is dependent on the issuance of this permit.

There are two further judgements for “control and responsibility” that could influence this consideration. One potential to limit scope comes from the extent of federal involvement. While the Corps only has direct jurisdiction, they have not specified whether or not there may be further federal permits required for mining and other aspects of the supply line. A second factor in considering this is whether an activity is “merely a link,” which I would argue this case is not. The regulations give an example of a line crossing a river, where the scope could be limited unless “the Corps permit bears upon the origin and destination as well as the route of the project outside the Corps regulatory boundaries”. If the Corps denies this permit, it would either halt this entire supply pathway and thus bear on origin and destination. The origin, Powder River Basin, would not need to produce additional coal. The specific route between Powder River and Pasco, WA for trains would not receive more trains. Without a terminal, transport of coal to Asia would not be feasible.

If the Corps decides not to expand the scope of its EIS to include the whole supply chain, it needs to give a fuller description of their reasoning for not doing so in their final EIS. In this particular case, the purpose and need of the MBT relies on the larger justification of the functioning of the whole supply chain. If the Corps recommends that this terminal is not essential to the existence of the whole supply chain and thus not to be considered in an EIS, then it puts the purpose and need for this particular terminal into serious question.

V. Conclusion

In light of the length of this comment, I wanted to summarize my recommendations for the Corps.

I made a series of short-term recommendations. First, I made recommendations for the further improvement of the process. The use of technology has been wonderful, but there should be minor technology adjustments for the final EIS, including making the website responsive to mobile and fixing accessibility concerns with the website. I would also recommend that the Army Corps of Engineers reopen the commenting period, including a more discursive format of in-person meetings.

Second, I made a series of requests for changes to be incorporated within the final environmental impact statement to allow for the best decisionmaking. These include:

- Adding the No Action Alternative to Table 3-9;
- Clarifying the No Action Alternative section to specify likelihood of activities and their potential need for further permitting;
- Inclusion of on-site development listed in the No Action Alternative in cumulative impacts;
- And expansion of the scope of indirect impacts to include the whole supply chain.

Beyond the short-term considerations, this comment includes long-term recommendations for participatory practices with technology in future Corps projects in order to better promote education and deliberative democracy. These include:

- Hiring a technologist within the Corps to handle the website;
- Making an HTML version of the EIS instead of only posting a PDF version;
- And exploring ways to create online spaces for discussion between officials and the public or between members of the public.

In closing, I'd also like to reflect on the conflict among the different viewpoints in support or against the terminal. It troubles me that we have a deeply divided political climate where environmental issues are pitted against jobs and economic benefits for communities when these issues are interrelated. A major reason for spending time doing an extensive environmental analysis is to make sure that we aren't doing anything that will negatively impact people's health, especially those working at and living near the terminal, through air and water pollution. We also don't want to trade one set of jobs for another's livelihood that depends on the environment, such as fishermen. For the Millennium Bulk Terminal, I am concerned that environmental issues with the project, in particular changes in the global climate, will negatively impact the future coal market and the ability of this project to create long-term jobs for those in Washington compared to other potential projects⁵⁰ that the Army Corps could consider.

Thus, I urge the Army Corps to include my above recommendations for expanding the final EIS and process in order to make the best decision for the public good.

Thank you,
Jacqueline Cameron

50

<http://www.marketplace.org/2016/10/24/elections/washington-race-puts-spotlight-states-future-coal-or-timber>