



June 13, 2016

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

To Whom It May Concern:

On behalf of our membership, I am writing to comment on the Draft Environmental Impact Statement (DEIS) for the Millennium Bulk Terminals project currently under review. Thank you for considering our perspective.

It is important to state from the outset that neither WPPA nor any of our individual members has any position on the Millennium proposal. Our interest is limited entirely to the current administration of the state's environmental review law. As frequent SEPA lead agencies, port districts have a vested interest in the appropriate, consistent administration of this important law. Ports take a long view when evaluating changes to Washington's environmental review law that is not bound in any way to the Millennium project itself.

Washington's State Environmental Policy Act (SEPA, RCW 43.21C) is intended to evaluate the environmental effects associated with both public and private development actions in our state. SEPA is informational tool to be used to identify alternative actions and/or mitigation for project-driven consequences. As administered since enactment, this law has been understood to be limited to assessing environmental impacts occurring within the State of Washington. It is commonly understood that project-related impacts outside the state's regulatory authority are not evaluated.

These foundational understandings are challenged by the Millennium DEIS.

Washington Public Ports Association

A Trade Association Representing the 75 Public Port Districts of Washington State

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The DEIS sets a precedent by attempting to evaluate the effect the project will have on overall transportation infrastructure and throughways. While it is not unusual to evaluate a project for its transportation impacts, the Millennium DEIS adds no value in the way it examines this question. Under federal law, common carriers are required to provide service to all customers. How they accomplish this task is up to the utilities themselves. This is as much the case for BNSF as it is for Puget Sound Energy, or a wireless provider. The DEIS adds no value by evaluating an impact outside the state's power to address.

The same reasoning holds for the DEIS analysis of vessel traffic on the Columbia River. A dynamic system will respond to increasing transits to safely accommodate new levels of activity. In any case, management of the system or allocation of capacity lies outside Washington's authority to regulate. As a matter of practice, impacts that lie outside of the state's power to regulate have historically been forestalled from consideration in Washington.

The DEIS sets a second inappropriate precedent in proposed mitigation for greenhouse gases. Without statutory guidance of any kind, the Department of Ecology arbitrarily asserts that the proponent will mitigate for one half of life-cycle carbon dioxide emissions accruing to coal passing through the facility. WPPA is deeply concerned by the notion that a permittee can be administratively compelled to mitigate for impacts in the absence of clear policy guidance from the legislature.

As a matter of law, ports believe that the legislature is the only proper source of a policy with such far reaching consequences. The assertions of agency policy-makers notwithstanding, the people of Washington can have no confidence that this new policy will not be applied to future projects.

Our members provide logistical services for a wide range of products manufactured or grown both inside and outside of Washington. What confidence can ports and our customers maintain that facilities related to importing automobiles, or shipping grain, or exporting aircraft will not be required to meet the fifty percent life-cycle carbon mitigation standard? Where in state law is this made clear?

Whether the Millennium Bulk Terminal is permitted and operated successfully is not our concern. WPPA and our members are troubled that the Department of Ecology has expanded the reach of the state's environmental review by requiring mitigation for impacts outside of the state's jurisdiction, and have created a mitigation standard for carbon dioxide that is not supported by legislative policy.

Thank you for considering our comments.

Sincerely,



Eric D. Johnson
Executive Director