REFERENCE:

COEUR D'ALENE TRIBE

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June 10, 2016

RE: Coeur d'Alene Tribe's DEIS Comments on Millennium Bulk Terminals (MBTL) Longview, LLC's coal export terminal at Longview, in Cowlitz County, Washington Proposal

Dear Collective "Parties":

As this letter is being written, the Coeur d'Alene Tribe (Tribe) is participating in the "Upper Columbia Canoe Journey to Historic Kettle Falls." This canoe journey is being undertaken to highlight the importance of salmon reintroduction to the Upper Columbia River. Without clean water for the salmon, reintroduction will not be possible. Also, on June 18th, the Coeur d'Alene Tribe will celebrate the 15th anniversary of the U.S. Supreme Court decision affirming that ownership of the bed and banks of portions of Coeur d'Alene Lake and the St. Joe River is held in trust for the Coeur d'Alene Tribe (IDAHO V. UNITED STATES (00-189) 533 U.S. 262 (2001) 210 F.3d 1067, affirmed.)

The goals of the Coeur d'Alene Tribe are clear and documented in many places including the Tribe's Integrated Resource Management Plan, the Coeur d'Alene Lake Management Plan and others located on the Tribe's website http://www.cdatribe-nsn.gov/tribaldepts/publicnotices.aspx. It is the Coeur d'Alene Tribe's duty to oppose activities that could cause irreparable harm to the health of the people, all lifeforms, the land and water in the Tribe's aboriginal territory. The Coeur d'Alene Tribe opposes the appropriation of common resources such as land, water and air that are relied upon by all for survival in order to provide monetary profit for a very small number of people or corporations.

The Coeur d'Alene Tribe stands with the Affiliated Tribes of Northwest Indians (ATNI), The Confederated Tribes and Bands of the Yakama Nation, The Upper Columbia United Tribes, The Northern Cheyenne Tribe, The Nez Perce Tribe, The Confederated Tribes of the Umatilla Indian Reservation, The Lummi Nation, the National Congress of American Indians, the Columbia River Inter-Tribal Fish Commission and others and is unequivocally opposed to the proposed Millennium Bulk Terminals (MBTL) Longview, LLC's coal export terminal at Longview, in Cowlitz County, Washington. The Tribe supports the no-action

alternative in the DEIS. The Tribe is opposed to all of the "action" alternatives, including the proposed action.

The Coeur d'Alene Tribe resides on the Coeur d'Alene Reservation in the panhandle of Northern Idaho. The Coeur d'Alene Reservation covers approximately 345,000 acres and spans the rich farming country of the Palouse to the western edge of the Northern Rocky Mountains. The Reservation encompasses the beautiful Coeur d'Alene and St. Joe Rivers and the lower half of Coeur d'Alene Lake itself. The Reservation is home to a vast number of native flora and fauna species that exist and thrive in the abundant habitat types found throughout the Reservation. The Tribe's aboriginal territory extends north to encompass the entirety of Pend Oreille Lake and east to the amazing mixed conifer woodlands of the Clark Fork River and the Bitterroot Range and as far south as the Clearwater mountains of north central Idaho.

The Coeur d'Alene Tribe is a sovereign nation and the sovereignty of Indian Tribes is *inherent* and has existed since time immemorial. Tribes were here many thousands of years before there was a United States or an Idaho, Washington or Oregon. The sovereignty of Indian Tribes is recognized in the Constitution of the United States and Tribes have equal legal and constitutional status in their dealings with the U.S. federal government.

As such, Indian Tribes are considered collective owners, co-tenants of the public commons and are required in concert with the federal government to look after and uphold the public trust.[1] The Coeur d'Alene Tribe was entrusted by the Creator to be the caretaker of the Tribe's Reservation and aboriginal territory of over 5 million acres. Native peoples are considered "stakeholders" in the debate over the fate of public lands; indeed it is a fact that these federal "public lands" are the same lands that were appropriated from Native people by military force during the "Indian Wars" of the nineteenth century.[2] The public trust obligation represents the encompassing obligation of the government to government relationship that the Tribes entered into with the federal government when they originally ceded their lands into the public trust and were relegated to designated reservation lands.[3]

The trust framework is a promise by the federal government that the vast acres of ceded lands would always be protected and it is the principal of the public trust that the federal government is required to maintain these resources in perpetuity for the public use.

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[1] Mary Christina Wood, *Natures Trust: Environmental Law for a New Ecological Age*(Cambridge University Press 2013)

[2] Rebecca T. Tsosie, *Conflict between the Public Trust and the Indian Trust Doctrines: Federal Public Land Policy and Native Indians*, 39 Tulsa L. Rev. 271 (2003)

[3] Mary Christina Wood, *Indian Land and the Promise of native Sovereignty: The Trust Doctrine Revisited, 1994 Utah L. Rev. 1471, 1504.*

Further, the trust equates to a legal obligation that where a project harms Indian and or public lands the federal government *must* protect these lands. This moral and contractual obligation is supported by indisputable legal and constitutional authority.[4]

The Coeur d'Alene Tribe is exercising its Tribal co-management authority/co-tenant/co-trustee rights and maintains that the proposed coal export terminal in Longview, Washington would be a violation of the public trust and constitute the unwise stewardship of common resources. The proposals to dramatically increase the number of coal trains (currently 2-4 trains per day to 16 plus) running through the Tribe's aboriginal territory will lead to damages from coal dust and potential train derailments with the consequential ill effects on human health, as well as contamination of the natural, environmental and cultural resources of the Coeur d'Alene Tribe and the people of the inland Northwest. The Coeur d'Alene Tribe retains rights on federal lands within the Tribe's aboriginal territory.

The Coeur d'Alene Tribe has witnessed the devastation of the legacy of mining impacts on the Coeur d'Alene Basin from irresponsible mining activities for over a century. Historic mining activities have left area ecosystems tattered and native wildlife populations poisoned and in decline. In an effort to restore these critical ecosystems and wildlife populations the Tribe is heavily involved in the Basin-wide clean-up of historic mining related contamination. The Tribe, as co-Trustee to natural resources, is also at the forefront of developing a basin wide Restoration Plan to restore those natural resources that were found injured due to the release of mining related heavy metals. As the original stewards of Coeur d'Alene Lake the Tribe understands and realizes that any more contamination to area ecosystems from the mining, transport and potential coal train derailment and spill of coal would imperil native ecosystems and wildlife potentially beyond human kind's ability to restore, replace, or rehabilitate.

Indeed, according to The International Union for Conservation of Nature (IUCN), more than a third (38%) of all species on the planet currently face possible extinction, natural ecosystems have declined by 33% and one-third of the planet's natural resources have been consumed. The Tribe understands the imminent threat to the very web of life that has sustained the Coeur d'Alene people for thousands of years is at risk and the best way to prevent possible ecological collapse is to prevent the increase in coal shipments through the Tribe's aboriginal territory.

In our scoping comments on this proposal, dated November 8, 2013 the Tribe asked: If said proposal(s) is to be considered, the Coeur d'Alene Tribe calls for a *regional* Programmatic Environmental Impact Statement (PEIS) pursuant to the National Environmental Policy Act

[4] *Documents of United States Indian Policy 7* (Francis Paul Prucha ed., 2d ed., U. Neb. Press 1990)

(NEPA) for all of the proposed export terminal applications in Longview, Bellingham and Belleview Washington. Stand-alone, disconnected studies at each site are not acceptable.

Longview is the facility left on the table, but the DEIS does not adequately respond to our concerns as a Tribal nation, and as such, is not regional. It does not make sense to limit the study area to the terminal; the study area should include all rail routes to and from the places where the trains would originate and all potential impacts. The DEIS is not adequate in its analysis of the impacts on tribes in the region, especially in terms of Tribal resources such as fish, wildlife, water and health impacts specific to tribes.

Environmental Justice:
Our concerns were not adequately addressed or analyzed except at the local level, and even then that was minimal. Often low income and persons of color communities live near tracks all along the rail lines from mine to terminal. Many of these communities cannot financially afford to move from the track areas or they do not want to. Tribal nations' members live on their ancestral homelands and they are stewards of their lands and have been for thousands of years. Moving is not even considered an option to get away from the impacts of coal dust, diesel particulate matter, and noise, long waits at at-grade crossings, accidents at crossings, potential derailments, and fires started by trains, and so forth. These conditions already exist and will be compounded with more trains that this facility, if built, will bring.

Human Health:
The fact sheet on "Social and Community Resources" on the project says that "A separate report, a Health Impact Assessment, is being prepared for the proposed project. This report will use the analysis in the environmental study to consider impacts on human health." The HIA should have been done by the time the DEIS was released. Human health impacts are of deep concern to the Tribe.

Children, the elderly, pregnant women, persons with health conditions like chronic obstructive pulmonary disease, asthma, diabetes and heart disease, and women over 50 are particularly susceptible to the negative health impacts of coal. Health impacts are greater on children because they drink, eat and breathe more than adults do. Please see the work of Oregon and Washington Physicians for Social Responsibility via their websites that provide many scientific studies on health concerns and studies.

We request that the HIA, when completed, thoroughly looks at the following impacts and includes a public comment process:

1. Please show a pollution contours map (isopleths) that will look at the Diesel Particulate Matter (DPM) and other toxins that people will be exposed to up to two miles from the track at various distances, that is, 50 feet, 100 feet, 200 feet etc.

2. Please show how many people live within the above feet distances along the entire transportation routes, and have that analysis also include projected populations. How many of them are children, the elderly, people of color, and have underlying diseases, and live in poverty?
3. List the number of schools, hospitals, assisted living facilities, libraries, and other places that people congregate on a daily basis within two miles of the tracks along the transportation routes.
4. Show the increased risks for heart attacks, strokes, COPD exacerbations, pulmonary and cardiovascular disease, cancer, asthma, ER visits, etc. from increased DPM on current and projected populations. Who pays for the costs and what are the economic costs?

Coal dust is spread along our rail communities via uncovered hoppers. Depending on weather conditions, it can be spread across the landscape into water, farmland, towns, playgrounds, parks, etc. at varying distances. Coal dust has microscopic pollutants that are harmful to health. Chronic bronchitis, emphysema and difficulty breathing can result from inhalation of coal dust. Eating food and fish contaminated with coal dust can introduce these toxins to your body as well. Coal dust can also contain lead, mercury and arsenic. The Washington Department of Health's letter on the Gateway Terminal proposal at Bellingham stated the above.

Diesel Particulate Matter combined with coal dust has significant special health problems. Please see the Daniel Jaffe study done on coal trains in the Columbia River Gorge in November of 2015. Dr. Jaffe is a professor of atmospheric and environmental chemistry at the University of Washington. His study was published in the journal *Atmospheric Pollution Research.*

The 16 trains generated by the proposed MBT in uncovered cars could have real consequences for health along the rail routes. In just over 400 miles of rail travel the average 125-car coal trains would emit 12,125 pound of coal dust, even under good conditions. We request the HIA to show:

1. The effects of coal dust and spills along the rail routes, especially on farmland, waters, and grazing animals used for human consumption.
2. How many children, elderly, those with health problems, etc. will be exposed to coal dust?
3. The life of the MBT terminal is 50 years. The study should look at the cumulative effects of coal dust and health during the operation life of the terminal along the rail ways.
4. Will the coal dust need to be cleaned up? If so, how much will it cost and who pays for it?

5. Look at the return cars on the way back to the mines. Carryback coal is in the hoppers since they are not completely emptied at the terminal. Please analyze the loss of the residual dust from the carryback coal.

Noise pollution is a known contributor to health problems. According to Oregon Physicians for Social Responsibility it can cause sleep disturbance, cardiovascular disease, stroke and ischemic heart disease, cognitive impairment in children, hypertension, arrhythmia and increased rate of accidents and injuries along with an exacerbation of mental health disorders.

It is difficult to get a Federal Railroad Administration (FRA) approved quiet zone in train neighborhoods. The HIA should:

1. Determine which rail cities are at greater risk for noise and vibration, and who lives in those communities. Please use noise isopleths.
2. Look at squeaking wheels, train engines horn blasts within 50, 100 feet and so on for up to two miles along the entire transportation routes.
3. At grade crossings have horns blowing. How many at grade crossings are there on the rail routes? How many trains go through, of all kinds, are on the tracks. At what times? How many are during the typical sleeping hours?
4. Interviews should be conducted in higher risk communities for noise about sleeping patterns, concerns, and disturbances. Please also look at the research on noise pollution and especially train noise pollution.
5. What if train noise can't be mitigated who pays for health care increases that may result from increased noise pollution?

Emergency Services: At grade crossings block vehicular traffic irritating drivers but sometimes causing delays in emergency services for fires, and most especially medical emergencies.

1. Look at at-grade crossings in all rail communities and determine the most vulnerable by calculating the number of all trains crossing the tracks.
2. Look at all the unprotected rail crossings that exist on the rail lines. Only 44 were studied in Washington State but there are hundreds on the rail lines.
3. Consider in the study that emergency vehicles have to often cross twice at at-grade crossings coming and going to an emergency. Some of the rail lines are double-tracked. That presents a situation that increases train traffic, even if one train has passed, another may stop a vehicle on the way back through the crossing. Double and triple train track crossings need to be inventoried.
4. Look at alternative crossings that emergency vehicles could use, and how long it would take them.
5. What are the anticipated coal train derailments along the routes?

6. Is there a system available for EMS vehicles to be notified of trains crossing at – grade? If so how much is it and who pays for it?
7. What are some of the foreseeable consequences if a fire burns down a building before first responders can get to it or someone dies enroute to hospital because trains are blocking the way?
8. What is the psychology of community members and first responders worried about at grade crossings and trains blocking it in emergencies?

Drinking Water: Communities can't live without drinking water. Often our drinking water also is a part of water use in our activities of daily living.

1. Identify all sources of drinking water, domestic and municipal, for rail communities in the HIA.
2. How many people are served by the drinking water systems?
3. If drinking water is harmed due to derailments or pollutants, who pays for alternative sources of drinking water?
4. Who will pay for the monitoring and clean up of the drinking water?
5. Identify all EPA sole source drinking aquifers. What are the consequences for a contaminated aquifer especially within the context of the EPA designation?
6. What would contamination of water do to recreation and fishing especially with water used for drinking, wildlife and recreating?

Health Impacts of Climate Change: The DEIS says that about 37.6 million metric tons of greenhouse gas emissions would occur over a 20 year period, if the terminal is built. This includes construction. The fact sheet states that possible impacts from greenhouse gas emissions are global. They could increase forest fires, melt more snow and ice, cause risks to forests, fish, wildlife, agriculture, freshwater supplies, tourism, irrigation and so forth. These all have health risks. The HIA should:

1. Consider the impacts of increased forest, field and brush fires on rail communities.
2. Consider the impacts of increased heat on urban communities. Heat waves cause more deaths in the world than cold streaks.
3. What populations are most vulnerable to global climate change and why?
4. Will severe weather due to global climate change cause problems such as heavy winds and rain, landslides, etc. Who will pay for the deaths, injuries and the relocations of those who suffer from any of the above?
5. Will we see an increase of West Nile Virus or Lyme diseases or others as the climate warms?
6. What about impacts that is disproportionate on low income communities and communities of color? They need to be studied.

Surfactants: Coal is uncovered and at the mines it is applied to keep coal dust down. But we know little about it. The HIA should consider

1. Which surfactants will be used?
2. What are the hazards to humans who apply it, and who breathe it in during transit?
3. Have any of the surfactants been tested for chronic toxicity?
4. What are the longer term human and environmental health impacts?
5. Can it leach out of cars during rainstorms?

Other concerns beyond the completion of the HIA.

Economic Analysis:
Coal has been called a dead man walking by Kevin Parker of Deutsche Bank. It's an old technology being replaced by clean, renewable energies. The Asian market for coal has collapsed. Wood MacKenzie, coal industry consultant. and a former big champion for coal exports has now recently said "building new Pacific Northwest coal ports is now viewed as nothing more than a risky long-term bet." Feb. 2016.

US coal production in the last five years has been reduced by 40% or more. Utilities are moving to cleaner and cheaper energy sources. The market cap for the four largest coal producers combined is now less than $150 million. It was $34 billion in 2011. Three of the four companies are now in bankruptcy, including Arch. Arch used to own 38% of the proposed MBT but they relinquished it to Lighthouse Resources, formerly Ambre Energy on May 26, 2016.

A private equity fund called Resource Capital Funds, based in the Cayman Islands owns Lighthouse Resources. They have no history or resources to build such a major project like the proposal. It would cost about $650 million according to their own estimates. Do they have this capital to build the facility without massive public subsidies? They can't financially account for the negative impacts in the DEIS that they would have to mitigate.

In Japan, where some of this coal is projected to go, a study was done by Oxford University that shows a very high level of uncertainty for coal-fired power. Over-capacity in these markets makes for a risk of stranded assets. That can come from government policy changes as we are seeing in China or technology changes or both.

In China and Japan there is competition from renewables and nuclear energy. And since coal-fired energy is the biggest source of air pollution, carbon emissions and water pollution of all the energy types that favors the capital market flows to renewables.

Even so-called clean coal technology is expensive and not so clean. Carbon capture technology in coal burning plants is 30-40% of the cost. It can't compete with other forms of energies according to Richard Martin in *TechnologyReview.com.*

What doesn't come out of the emission stacks ends up in the coal ash. Coal ash is well known as a very nasty toxin to humans. Where is the coal ash going to go from these coal burning plants? How well is it regulated? Does Japan have the land capacity to store coal ash? Will it be shipped to other countries that may have lax regulations? Is U.S. coal-burning and coal ash poisoning non-Americans? The DEIS doesn't even address coal burning emissions coming back to the Pacific Northwest on the jet stream full of mercury and many other toxic substances.

Bankrupt coal companies don't have to pay for cleanup of their mines. Tax payers do. The economic impacts of mined coal to burned coal are not worth the expenses of this proposal. Will MBT revenue-share with all the communities along the rail lines? Will BNSF or UP?

And what of the supposed taxes generated from the terminal if built that will benefit Washington State? Will it benefit the other states and Tribal Nations that are subject to coal and its problems rolling through their communities?

In the Heavy Traffic Still Ahead (HTSA) study done in 2014 by Terry Whiteside and G. W. Fauth, who have a combined over 60 years of transportation expertise, it is stated that it's the communities along the rail routes who will pick up the tab for rail upgrades. Because the upgrades will likely need to occur in hundreds of communities and many of the upgrades will be serious as in over and underpasses it could cost in the hundreds of millions of dollars. The upgrades figures don't include health impacts. The costs could easily be above the projected 45 million dollars or so in tax revenues.

It is extremely likely many rail communities can't afford major upgrades and won't be able to get federal Transportation Investment Generating Economic Recovery (TIGER) funding.

Plus BNSF which dominates the N. route through Montana, Idaho and WA has received nearly $800 million (pg. 15 of HTSA) from the federal government through the 2009 American Recovery and Reinvestment Act for rail related projects in Washington. Yes they would improve Amtrak service but they would also "significantly help BNSF facilitate the movement of coal to the proposed PNW export terminals, and could help BNSF and the other involved companies reap billions of dollars and profits," Pg. 16 of HTSA.

In the DEIS in chapter 5 on Operations the rail traffic increases relative to capacity the Idaho/Washington State Line-Spokane says that "All Proposed Action-related BNSF trains to and from the Powder River basin would move over this segment. This segment has two main tracks with CTC. Projected 2028 capacity without improvements if 76 trains per day.

The capacity concerns for this segment extend beyond Washington State to Sandpoint, Idaho. This potential constraint is identified in the Washington State Rail Plan as a key potential chokepoint.

The projected volume in 2028 is 122 trains per day, including Proposed Action-related trains. The proposed action could add 16 trains to a segment that would exceed capacity under 2028 baseline conditions. Without improvements or operating changes, Proposed Action-related trains would contribute to congestion or delays on this segment, or the inability of BNSF to handle its rail traffic. It is expected that BNSF would make the necessary investments or operating changes to accommodate the growth in rail traffic, but it is unknown when these actions would be taken or permitted."

The above is the only mentioned specific segment of rail lines outside of Washington State in the DEIS. In the fact sheet on rail transportation: "Main line routes beyond Washington state: Without improvements, the added trains could exceed capacity for some segments"

Capacity issues will contribute to:

1. The sheer number of trains that will add more traffic to at-grade crossings for rail communities.
2. It will increase exposure to DPM and coal dust and thus, increase potential negative health impacts.
3. It will create more havoc for first responders and commuters.
4. It will create more noise for residents.
5. It will increase the chances for more derailments. Coal dust is a "pernicious ballast foulant" according to USDOT. It can weaken and destabilize tracks. Again read the Dr. Dan Jaffe study on coal dust. The surfactants that are sprayed on it at the mine and put on again at Pasco still don't keep all the coal dust off the roads and out of fields, rivers, lakes, communities, etc. And a huge swath of rail exists between the mines and Pasco. Friends of the Columbia Gorge have documented coal in the Columbia River and other places. They have photos of a company, called Hulcher, hired by BNSF, vacuuming coal dust off the banks of the Columbia River. BNSF has a new spray station at their yard in Pasco to spray coal trains, but they have sprayed coal trains since 2015 and the surfactant used still does not prevent all coal from leaving the hoppers. Neither does shaping the coal in a special position in the hopper. This has to be examined more carefully in the FEIS.
6. It's not just coal traffic, it's also traffic from oil trains to refineries and any facilities that may be built in the future, that may exceed the capacity. Plus Amtrak, grain trains, intermodal and other trains also run on these tracks. All of this traffic will increase the chance for a train derailment. It puts extra stress on tracks. Coal and Oil trains are the heaviest on the tracks.

7. Global warming is likely to add to increased track stress according to a study by the University of Birmingham published in May, 2016.
8. Wildlife is virtually not talked about at all. Increased train traffic will negatively impact wildlife that need to cross tracks, drink or swim in water and eat food that may be contaminated with coal dust, and noise also negatively impacts many species of wildlife.
9. The increase Co2 from coal and other train traffic and the facilities also increases the global warming in the world.

The DEIS is inadequate by not having a Heath Impact Assessment and in not looking at rail communities beyond Washington State and the many negative problems they face. Global warming impacts and impacts to the cultures of Tribal Nations have not been adequately addressed. If all impacts were adequately addressed in the DEIS, then the decision to be made would be clear: There are too many risks to too many people and resources to allow a major increase of trains hauling hazardous materials through hundreds of miles in order for a very few stakeholders to make a profit.

If you would like additional information or to discuss this matter further, please contact my office at (208) 686-1009.

Sincerely,

Chief J. Allan

Chief J. Allan
Chairman