

REQUEST FOR CHAIRMAN'S SIGNATURE

1. Department: Natural Resource Department
2. Program: Environmental Programs Office
3. Description of Correspondence Requiring the Chairman's Signature :  
A comment letter regarding the proposal to expand coal shipments through the Tribe's aboriginal territory and expand a coal shipping terminal in Longview, WA to ship U.S. coal to Asia.
4. Submission Deadline: November 18, 2013
5. If letter is one page include a copy of the contents of this letter.
6. If the letter is longer than one page, include letter reference and brief description of content on this page.
7. Sign Where Applicable:
  - Originator Amy Anderson
  - Program Tiffany Allgood
  - <sup>for</sup> Director Carrie
  - Admin Dir \_\_\_\_\_

Please return this correspondence to:

Originator aa 11/14/13 Program NR-EPO Extension x 68802





## COEUR D'ALENE TRIBE

850 A STREET  
P.O. BOX 408  
PLUMMER, IDAHO 83851  
(208) 686-1800 • Fax (208) 686-1182

Danette Guy  
U.S. Army Corps of Engineers, Seattle District  
Regulatory Branch  
Southwest Washington Field Office  
2108 Grand Boulevard  
Vancouver, WA 98661

Mike Wojtowicz  
Cowlitz County Department of Building and Planning  
207 4<sup>th</sup> Avenue North  
Kelso, WA 98626

Diane Butorac  
Department of Ecology, Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504  
October 31, 2013

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

November 8, 2013

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

Dear Collective "Parties":

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 Coeur d'Alene Tribe (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 even 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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

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<sup>1</sup> Mary Christina Wood, *Natures Trust: Environmental Law for a New Ecological Age*(Cambridge University Press 2013)

<sup>2</sup> 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)

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

government is required to maintain these resources in perpetuity for the public use. 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.<sup>4</sup>

The Coeur d'Alene Tribe is exercising its Tribal co-management authority/co-tenant/co-trustee rights and maintains that the proposed coal export terminals in Longview, Bellingham and Bellevue 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 2-6 trains per day to 18 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.

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<sup>4</sup>*Documents of United States Indian Policy 7* (Francis Paul Prucha ed., 2d ed., U. Neb. Press 1990)

In *Lead Industries Association v Environmental Protection Agency*, the court held that ‘Man’s ability to alter the environment often far outstrips his ability to foresee with any degree of certainty what untoward effects these changes may bring.’<sup>5</sup> Accordingly, when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.

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

A PEIS is a comprehensive review of a series of projects with impacts that are significantly interrelated; programmatically, geographically, or environmentally. NEPA requires agencies to use this comprehensive method to review independent actions that have “cumulative” or “similar” impacts on an interrelated environment.<sup>6</sup> We urge your agency to carefully review what the law mandates regarding the comprehensive analyses required for regional, multifaceted plans of development involving several projects. For example, in *Kleppe v Sierra Club* the court held that “when several proposals for coal related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences *must* be considered together”.<sup>7</sup>

In addition, federal statutes and executive orders recognize Tribal interests in protecting cultural resources and require consultation with Native nations and consideration of Native cultural interests as part of the agency process to undertake actions on federal lands.<sup>8</sup> These statutes and orders should be consulted by federal agencies concerned about the permissible scope of various land management activities.

As a lead federal agency, the U.S. Army Corps of Engineers (Corps) is charged with utilizing its “special competency” to make an informed decision on whether the applications for coal terminals in Longview, Bellingham and Boardman WA are part of a regional plan that is sufficiently programmatically, geographically, and environmentally interrelated to warrant a PEIS. Presently, your agency is reviewing the permits for the three proposed coal export terminals mentioned above and the Coeur d’Alene Tribe believes that these multiple coal

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<sup>5</sup> See *Lead Industries Association v. EPA* 647 F. 2d 1130 (D.C. Cir. 1980)

<sup>6</sup> See 40 Code of Federal Regulations (C.F.R.) § 1508.25

<sup>7</sup> See *Kleppe v. Sierra Club* 427 US 390 1976

<sup>8</sup> Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834*, at 2 (U. Neb Press 1962)

terminals represent an undeniably interrelated plan to transform areas of the Pacific Northwest into a global hub for coal export.

The specific scope of analysis and prescribed contents of a regional PEIS should be determined through a full scoping process that includes public hearings around the region. The Tribe would like to further emphasize the federal government's duty under Executive Order 13175 to respect the "government to government" relationship<sup>9</sup> it has with Indian nations and actively consult with the Pacific Northwest Tribes including the Coeur d'Alene Tribe. The Tribe further requires direct mailings and/or emailings throughout the entire decision making process not only at the federal level but also at local (Cowlitz County) and state (Washington State Department of Ecology) levels.

The Coeur d'Alene Tribe would like the agencies to analyze, examine alternatives and propose mitigation for the projects' negative impacts on the following areas with specific consideration given (but not limited) to the effects coal mining, transport, shipping and burning would have on communities and the environment from 1) mine to rail, 2) rail to port, 3) port to plant and from 4) plant to the greater environment. Specifically the Tribe expects impacts analysis, alternatives and proposed mitigation activities during these four stages at each proposed coal export terminal to include (but not be limited to):

#### **Environmental Justice**

- How will ACOE, Cowlitz County Department of Building and Planning and the Washington State Department of Ecology ensure that area Tribes and other minority groups are not disproportionately impacted by the coal shipping terminal(s), mining, transport and shipping of Powder River Basin coal?

#### **Human Health:**

- What effects will coal dust and diesel fumes from trains, barges and ocean going vessels have on human health?
- After coal is burned what effects will mercury emissions have on Human Health?
- Will coal dust impact the food chain and harm animals (with special focus on fish species), including humans that eat these animals?

#### **Tribal access to sacred and religious sites**

- How will American Indian religious freedoms be ensured as well as impacted by the proposed coal shipping terminals?

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<sup>9</sup> 65 Fed. Reg. 67249 9Nov 6, 2000)

## **Economic Analysis**

- Who specifically benefits from coal shipments financially?
- Will the Pacific Northwest States see any direct tax revenue from these coal companies?
- Does it make sense from a national security perspective to ship American coal stocks out of the country as opposed to reserving this commodity for possible use in the U.S.?
- Does it make sense to provide unimproved and raw energy resources extremely inexpensively to an Asian market?
- With the known and documented drastic fluctuations of global coal prices does it make sense to invest in an unstable resource like coal?
- Historically, railroads have been accorded extraordinary rights in the form of “eminent domain” laws and protections (i.e. exempt from paying more than 10% of the costs related to safety and the mitigation of adverse effects due to rail usage).<sup>10</sup> How will eminent domain laws affect coal companies using public railway systems and will companies such as, Millennium Bulk Terminals (MBTL), SSA Marine (a Carrix Company) and Peabody Energy be given protections historically accorded to railways?
- Will taxpayers see any of the financial burdens as a result of necessary increased railway infrastructure upgrades and or remediation activities that would result from a coal train spill/derailment?
- Is selling coal to Asia cheaply the best way to provide incentive to further develop “clean coal” or will selling an inexpensive energy resource that can be utilized with existing technologies simply perpetuate the consumption of coal as we know it and reduce the incentive to pursue clean energies?
- How will mining, transport, shipping and burning Powder River Basin coal effect American taxpayers, property values, tourism, quality of life and local manufacturers from mine to port?

## **Global Environmental Impacts:**

- Coal is the single largest source of CO2 emissions. How will the mining, transport, shipping and burning of Powder River coal stocks effect global warming, acid rain, mercury emissions, global ocean acidification & global biodiversity?
- The introduction of invasive marine species into new environments by ships’ ballast water has been identified by the United Nations as one of the four greatest threats to the world’s oceans.<sup>11</sup> How will invasive species brought from North America to Asia and vice-versa in cargo vessel ballast tanks be dealt with?

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<sup>10</sup> See <http://www.coaltrainfacts.org/docs/Cornell-Univ-Law-School.pdf>

<sup>11</sup> See [http://www.maritimenorway.no/maritimenorway/vedlegg/OptiMarin\\_Allweiler20100719.pdf](http://www.maritimenorway.no/maritimenorway/vedlegg/OptiMarin_Allweiler20100719.pdf)

- What effects will increased marine traffic have on important marine habitats such as those of mixed microalgae (critical for salmon and herring), kelp, eelgrass beds, shoreline habitats, wetlands, and salt marshes?

### **Air Quality (both before and after burning):**

- What effects will coal dust and diesel fumes (from trains, barges and ocean going tankers) have on local (from mine to port) and global air quality?  
What effects to global air quality will occur after coal is burned in unregulated coal fired power plants in Asia?

### **Fisheries:**

- What effects will coal dust have on local (mine to port) fisheries?
- What effects would a coal spill en route from Montana to port in Washington have on Pacific Northwest fisheries?
- What effects will the burning of coal and the increased acidification of global waters have on fisheries?
- How will coal export facilities effect and mitigate for the increased loss of Columbia River Estuary floodplain lands?  
How will shoreline and near-shore habitats be protected?
- How will increased vessel traffic in the Columbia affect already threatened and endangered species?
- How will the increase in water withdrawal from the Columbia River Basin (a single, modern cargo vessel can carry anywhere from 6-10 million gallons of water in its ballast tank)<sup>12</sup>, which salmon, smelt and other aquatic species rely upon, be addressed?
- What kind/type of emergency environmental clean-up procedures are in place to deal with the effects of a coal spill en route into area waterways?
- How will coal dust, coal spills and increased global warming from the mining, transport, shipping and burning of coal effect Tribal and global fisheries?

### **Surface and Groundwater:**

- How will the mining, transport, shipping and burning of coal from the Powder River area of Montana effect surface and groundwater throughout the entire route from the Powder River Basin to Washington?
- How will the process of strip mining that is used to extract Powder River coal affect area aquifers?
- How will potential contamination of rail corridor and beyond rail right-of-ways from polycyclic aromatic hydrocarbons and other toxics be dealt with?

<sup>12</sup> See [http://water.epa.gov/type/oceb/habitat/invasive\\_species\\_factsheet.cfm](http://water.epa.gov/type/oceb/habitat/invasive_species_factsheet.cfm)

**Noise & Vibration**

- Will the vibration and noise from trains and coal terminal operations cause ground settling, damage buildings and or disrupt households, businesses, schools and wildlife?

**Transportation:**

- How will the coal trains affect local traffic from mine to port especially in large en route cities like Spokane WA, Missoula and Billings MT?
- It has been determined that coal dust poses a serious threat to the stability of the railway track structure. How will track stability and the increased probability of a coal train derailment be dealt with?

**Emergency service access:**

- How will the increased coal train traffic (from mine to port) affect the ability of emergency response crews to carry out their duties and reach sites and individuals speedily?

The Coeur d'Alene Tribe believes that the Corps has a fundamental responsibility to consider *all* the impacts with the utmost attention said coal terminals would have on the Pacific Northwest as the Northwest is interconnected through the families, tribes, resources and waterways that these coal terminals and railway routes would traverse.

In closing, the Tribe is confident that a careful, informed, considerate examination of the regional impacts these proposed coal export terminals would have will illuminate the full costs of exporting coal through the Northwest and it will be determined that the true costs far outweigh the anticipated economic benefits to a few individuals.

Sincerely,



Chief J. Allan  
Chairman

CJA: aa

