Tribes and Tribal Representation

Table B-5. Tribe-Tribal Representatives

Submission Number	Commenter Name
3213	Coeur d'Alene Tribe
3287	Columbia River Inter-Tribal Fish Commission
3302	Confederated Tribes of the Umatilla Indian Reservation
3227	Cowlitz Indian Tribe
TRANS-LV-M1-00017	Cowlitz Indian Tribe
TRANS-LV-M2-00021	Cowlitz Indian Tribe
TRANS-LV-M1-00044	Cowlitz Indian Tribe
TRANS-PASCO-M1-00015	Crow Nation
3424	Swinomish Indian Tribal Community
3468	Upper Columbia United Tribes
TRANS-PASCO-M1-00053	Walla Walla Tribe
TRANS-PASCO-M2-00023	Yakama Nation
TRANS-PASCO-Q3-00005	Yakama Nation

REFERENCE:

COEUR D'ALENE TRIBE

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

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.

---

[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

COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION
700 NE Multnomah Street, Suite 1200
Portland, Oregon 97232
(503) 238-0667
F (503) 235-4228
www.critfc.org

Filed via webportal and U.S. Mail

June 13, 2016

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

RE: Comments on Draft SEPA Environmental Impact Statement for the Millennium Bulk Terminals - Longview Coal Terminal.

To Whom it May Concern:

Once again, the Pacific Northwest is confronted by a proposal for a large-scale energy project that will use the Columbia River Gorge and her lower river estuary as a transit point to serve energy markets in other parts of the globe. Once again, the greatest risks and burdens of development will be placed on those with the least amount to gain. In all ways this project, as well as similar projects in the region, is an affront to the tribal people who have worked tirelessly to restore their way of life and the river that sustains it. Billions of dollars have been invested throughout the Columbia River Basin for fish recovery. To add projects such as the Millennium Bulk Terminals – Longview, LLC coal distribution terminal (Millenium coal terminal) to the River Basin would be a major setback to these efforts.

The Columbia River Inter-Tribal Fish Commission (CRITFC) requests that Washington state and Cowlitz County use their respective authorities to deny the Millennium coal terminal. Individually the project will result in a significant increases in rail traffic through the Columbia River Gorge and deep draft vessel traffic through the fragile Columbia River estuary. Collectively with other fossil fuel transport projects, notably the Tesoro Savage crude-by-rail project proposed for the Port of Vancouver, the amount of coal train traffic would increase by 400%, oil trains by 180% and deep draft vessel traffic by 80%. The Columbia River Gorge and the Columbia River estuary are not the place for a fossil fuel corridor.

The treaty tribes of the Columbia River have been a part of this region since time immemorial. For the last two centuries, the tribal people have born the greatest burdens from development and resource extraction. The proposed Millennium coal terminal is the latest in a long line of developments where the tribes would unfairly carry the risks associated with energy projects at the cost of the environment, treaty reserved fishing rights, and the Columbia River.

There are hundreds of tribal fishing families' members who use in-lieu and treaty fishing access sites; treaty-protected usual and accustomed fishing places within the rail corridor are extensive. In negotiating and assenting to the Stevens and Palmer treaties, the Columbia River tribes reserved not

only the right to take fish at their usual and accustomed places, but also retained a property right in adjacent lands "to the extent and for the purpose mentioned" in the treaties. *U.S. v. Winans*, 198 U.S. 371, 381 (1905). *Winans* affirms the rights of tribal members to make such use of the land surrounding the usual and accustomed sites as is essential to the full exercise of their treaty fishing right. The *Winans* Court considered the treaty language as a whole, and found that this language, taken together with the social and factual setting of the treaty negotiations, supported the right of access. The contingency of the future ownership of the lands, therefore, was foreseen and provided for -- in other words, the Indians were given a right in the land -- the right of crossing it to the river -- the right to occupy it to the extent and for the purpose mentioned. No other conclusion would give effect to the treaty. *Winans* at 381.

The circumstances of the treaty negotiations and the specific language of the treaties illustrate the dependence of the Indian's way of life on the salmon harvest, and the emphasis they placed on protecting their existing fishing activities on the Columbia River. There are hundreds of gillnet sites in the Columbia River and many of these are accessed by both land and water. Almost all land access in the area requires crossing the railroad tracks. As discussed below, many of the crossings are dangerous.

Coal Dust

The Millennium coal terminal would increase the current weekly average of coal trains from 18 to 55, a nearly 400% increase in coal train traffic. This would result in significant air quality impacts and direct health concerns for tribal people living along the railroads. Coal dust is currently a nuisance and health concern for tribal fishers along the rail line. The nature of the famous Columbia Gorge winds makes dust a significant and predictable problem, even with the application of surfactants. Dr. Daniel Jaffe incredible coal dust study found that coal trains emit *twice* as much respirable particulate matter as other diesel-powered freight trains. In addition, 5.4% of those trains are considered “super dusters”. (Jaffe, et al. 2015). This report quantifies anectodal stories by tribal fishers of coal dust originating from these trains. Coal dust and particulates of various sizes can be found all over the rail line from McNary dam to Vancouver. At the railroad crossing at Horse Thief Butte, one has to merely dip one’s hand into the sediments near the rail to see the amounts of coal residue.

Coal dust found at Columbia Hills State Park (Horsethief Butte) railroad crossing.

Contrary to what the Draft Environmental Impact Statement (DEIS) seems present, coal dust is significant issue that will result in greater than "limited" impacts. To tribal people who live and work along the river, coal dust is an ongoing issue of concern, even with the current low level coal train traffic (14-19 trains each week). Rail companies have admitted in the past that as much as 600 pounds of coal dust is released from each rail car per trip. CRITFC demands that nothing short of total containment of coal and fugitive coal dust during transport, storage, and shipping should be acceptable to Washington state.

Railroad companies, including BNSF, have acknowledged that coal dust can also affect rail safety. Coal dust itself can be combustable and cause fires under certain conditions. It has also been shown to affect the ballast strength and stability of rails leading to train derrailments. Adding more coal dust to the Gorge rail system will add to the unsafe conditions for those living along the river.

Increased Risk of Train Strike

This massive increase in rail traffic will undoubtedly increase the number of people killed by train strike, especially tribal people trying to access treaty fishing sites. The more traffic, the greater the risk of accidents. Over the years, tribal fishers transiting to or from fishing sites have been killed or injured by trains. In addition, a CRITFC Enforcement Officer was also killed by a train while on duty. In many of the areas along the river, when the wind is blowing, one cannot hear a train coming until it is too late. The inability to hear the trains, coupled with difficult lines of site in many places leads to very dangerous areas that tribal fishers encounter on a regular basis. Increasing the numbers of trains through this area will magnify an existing, deadly risk to tribal fisheries as well as CRITFC's enforcement officers and site maintenance staff.

On the Washington side of the Columbia River there are nine In-lieu and Treaty Fishing Access sites with at grade crossings, four more sites adjacent to the railroad tracks, and all other sites within the vicinity of the railroad. On the Oregon side of the Columbia River, there are 10 more in lieu and treaty fishing access sites. These sites provide vital access to the river for treaty fishers, they are key sites for commercial buyers and several of the sites are occupied year round by tribal members and their families. http://www.critfc.org/for-tribal-fishers/in-lieutreaty-fishing-access-sites The ability to cross the railroad to get on these sites or access the River is already encumbered by rail transportation through the corridor. Adding more trains could further reduce access to the sites affecting tribal members' commercial enterprises.

Deep Draft Vessel Impacts to lower Columbia River estuary

The DEIS also minimizes the potential effects of the additional deep draft vessels that this project will require. In the Columbia River, the current annual average of vessel traffic is 1,500 (or 3,000 trips). The Millennium coal project will add 840 deep draft vessels (or 1,680) trips per year, a nearly 60% increase. These ships, primarily "panamax" sized, will be the largest currently in the river. This is not insignificant. More vessels in the river increases risk of grounding as deep draft vessels have to work to avoid collision in the limited navigation channel of the Columbia river. The Tesoro Savage project is proposed to add an additional 365 deep draft oil tankers (730 trips) per year. Cumulatively this would represent an 80% increase in deep draft vessels in the lower Columbia River, crossing a notoriously dangerous bar with highly volatile materials. Interestingly, Washington State is Washington State is currently conducting a vessel safety study to determine the

effect of these projects on the safety of the lower Columbia River. It would be pragmatic for Ecology to delay approving the Millenium coal terminal until this study is complete.

The lower Columbia River estuary provides essential rearing habitat for many stocks of salmonids and other aquatic species. In the Biological Opinion for the Federal Columbia River Hydropower System, the estuary is given great weight for its value in recovering ESA-listed salmonids. There is general concern that high numbers of outmigrating salmonid smolts are lost between the dams and the ocean. Increasing vessel traffic in the estuary could result in moderate to major long-term changes to tidal wetland, shallow water, and tidal flats. It makes no sense to continue degrading estuarine habitat and contributing more mortality by adding more deep-draft vessels to the estuary.

Berthed Vessels Impact Air Quality and Water Quality

As deep draft vessel are berthed to be loaded with product, their deisel auxiliary engines "idle", contributing particulates to the air and requiring cooling water to maintain cool engine temperatures. This thus becomes a major source of air quality concern as well as water quality, since the "warmed" cooling water is then discharged into the waterbody. The lower Columbia River is listed under the Clean Water Act section 303(d) as limited for temperature under both Oregon and Washington's programs (and particularly in summer), therefore point sources, such as these ships, introducing further thermal loading should be prohibited.

In order to remove the impact to air and water quality, best practices now necessitate that deep draft vessels to use "shore power" and tap landside electricity for their power needs at berth. According to estimates, shore power can reduce pollution by 95%. At a minimum, Washington Ecology and Cowlitz County should require the exclusive use of shore power for berthed ships at this project.

Thermal Pollution from Coal Storage Operations

Section 4.5 of the Draft Environmental Impact Statement does not consider the impact of thermal pollution from coal storage operations to water quality. As noted at 4.5-9 the Columbia River faces water quality issues and the vicinity of the project area is currently a candidate for Category 5 restrictions for temperature by Washington State Department of Ecology. As such any waters exiting facility operations that are returned to the natural environment at a higher temperature than ambient water temperature should be modeled and fully considered as a negative impact. Coal storage operations proposed for the site will involve dust suppression of 75 acres of coal stockpiles which together with heated stormwater runoff will be contributing excess thermal pollution to the Columbia River.

Ballast Water Discharge by Deep Draft Vessels

Deep draft vessels must carry ballast water from their origination for safety and navigation. Any analysis must take into consideration the chemical, physical, and biological impacts of dumping millions of cubic meters of foreign water into the Columbia River, as well as the changes in salinity in cases of low river flow that can change hydrology.

In addition to the direct chemical impact of the seawater, there is the high potential for the release and possible colonization of invasive plants, animals and pathogens, including those harmful to human health. Untreated ballast water is responsible for the introductions of numerous invasive species on the Pacific coast, Zebra and Quagga mussels in the Great Lakes, and potential human health risks like typhus. To prevent the potential introduction of foreign plants, animals and pathogens, all ballast water releases must be filtered of all organisms, including pathogens.

The introduction of Quagga and Zebra mussels originated from ballast water releases in the Great Lakes in the late 1980's, and their effects on the invertebrate community has been devastating. Mussels have spread to most areas of the United States except for the Pacific Northwest. If they arrive in this habitat, it could cause billions of dollars in damage to water related industries and municipalities as well as potentially change entire ecosystems.

Ships are required to conduct open water ocean exchange or utilize an onboard ballast water treatment to ensure that foreign low salinity organisms are not transported into the Columbia. However, these treatment options are not always conducted successfully, or, in the case of rough water, the vessel may not be able to release its ballast in the ocean. To address these risks Millennium coal terminal should include a closed-loop water treatment system on the terminal site. The absence of such treatment capability makes the proposal unacceptable.

Wake Stranding by Deep Draft Vessels

Juvenile salmonids and eulachon, some of which are listed under the ESA, may be stranded on the Columbia River shorelines due to the wakes of passing vessels. The fish are then deposited on shore by the wave generated by the vessel wake. Stranding typically result in mortality unless another wave carries the fish back into the water. Generally, a set of interlinked factors act together to produce stranding during ship passage:

- River-surface elevation low tides are generally more likely to result in strandings than high tides;
- Beach slope low-gradient beaches are generally more likely stranding locations than higher gradient ones;
- Wake characteristics, ship wakes that result in both the greatest draw-down and run-up on the beach are generally most likely to result in strandings. Wake characteristics are influenced by a number of dynamics included vessel size and hull form (short and fat vessels have a great displacement effect and generate larger wakes than long and thin vessels).
- Vessel draught – the smaller the under-keel clearance, the larger the wakes, thus loaded vessels are more likely to result in strandings than unloaded vessels;
- Vessel speed – fast moving vessels generate larger wakes than slow vessels;
- Distance between the passing vessel and the beach, where strandings are generally more likely.

There has been at least one study that examined the stranding effects on salmonids by a variety of vessels. Ackerman (2002) found that 21 juvenile Chinook (and 174 other species) were stranded in the lower Columbia River by 35 tug/barges and 56 deep draft vessels. For the Ackerman study, three locations were surveyed on two occasions. Furthermore, it may be inappropriate to draw reader's attention to deep water vessels, while neglecting the effects of smaller vessels. Pearson

and Skalski (2011) report, "At both river and beach scales, no one factor produces stranding; rather interactions among several conditions produce a stranding event and give stranding its episodic nature." Wake stranding also has the potential to result in make fish easier prey for avian predators.

NOAA's estuary recovery module identifies 23 management actions to improve the survival of salmon and steelhead migrating through and rearing in the estuary and plume environments.[1] With regard to ship wakes, the recovery module developed for Endangered Species Act implementation calls for "reduc[ing] the effects of vessel wake stranding in the estuary." In contrast, the proposed project would increase wake stranding in the estuary.

Vessel traffic safety evaluation and assessment for the Columbia River

The Washington Department of Ecology must complete an evaluation and assessment of vessel traffic management and vessel traffic safety within and near the mouth of the Columbia River. This includes an analysis of the amount of new oil being transferred onto vessels as a result of rail traffic. The assessment will help inform risk assessments that will be undertaken during the 2015-17 biennium. Ecology must consult with a number of organizations including tribes, the U.S. Coast Guard, Oregon pilots and public ports. The assessment must include, but is not limited to addressing: (a) the need for tug escorts for oil tankers, articulated tug barges, and other towed waterborne vessels or barges; (b) best achievable protection; and (c) required tug capabilities to ensure safe escort of vessels. Recommendations made to the Legislature must include vessel traffic management and vessel traffic safety measures, including recommendations for tug escort requirements for vessels transporting oil as bulk cargo. Any decisions on approving the Millenium Bulk Terminal should await the conclusion of this study (est. June, 2018) and its careful application to considering the effects of this and other proposals that would increase vessel traffic on the Columbia River.

Shoreline Erosion and Propeller Scour from Deep Draft Vessels

Prop wash from vessels as well as ship wakes breaking on shore could cause increased erosion along the shoreline and re-suspend the eroded material within the water column. Vessel wake and propeller scour could injure or otherwise impact substrate and invertebrates, as well as benthic-based fishes such as white and green sturgeon.

Terminal Operation Impacts: Noise

There is an important distinction between pressure waves and particle motion sound vibration and how they affect salmonids. Current criteria (and monitoring) for minimizing the effects of sound on fish rely solely on measurements of pressure. However, current scientific literature suggests that salmonids are very sensitive to particle motion sound vibration and less so to pressure waves. Consequently, a salmon may be much more sensitive to sounds generated in the water (e.g., piles being driven into substrate).

[1] http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/estuary-mod.pdf.

If the project only measures the effects of pile drivers on salmonids using pressure wave detection devices, a serious deleterious effect may not be detected. Particle motion sound and their effects on adult salmon are currently being studied by the U.S. Corps of Engineers at Lower Granite Dam. In association with the study at Lower Granite, a thorough literature review has been and should be considered in the DEIS (Hawkins).

Terminal Operation Impacts: Predators

The expansion of overwater habitat and trusses creates the potential for roosting habitat of Double Crested cormorants which is a key predator of juvenile salmonids will migrate by the terminal and thereby increase the potential for additional predation impacts. Additionally, an increase in overhead cover and shading by the expansion has the potential to create habitat for a number of predatory fish species and thereby increase predation on out-migrating juvenile salmonids.

Terminal Operation Impacts: Lighting

Similar to overhead cover, the additional lighting resources in the project area projected to be continuous creates permanent predation opportunities for both fish eating birds and piscivorous fishes that prey on juvenile salmonids. Juvenile salmonids migrate more actively at night and that combined with the attractive effect of lights has the potential to increase the predation impacts on listed salmonids.

Work Window for Terminal Construction

The work window of September 1 through December 31 is not consistent with full protection for spawning eulachon (smelt), juvenile sturgeon, and migrating adult salmonids. Eulachon may stage in the lower river weeks prior to spawning and therefore are vulnerable to impacts from the project outside of the work window. Fall runs of Chinook, Coho and Steelhead are fully underway by September 1 and the noise and construction impacts to these runs could be very significant and stressful to these fish, particularly in low flow years. In 2015, more than 1 million adult salmon and steelhead would have passed by the proposed project area between September 1 and November 30. The proposed work window is inconsistent with the work window used by the Corps of Engineers at its dams on the Columbia River. The work window is inconsistent with the policy of the Oregon Department of Fish and wildlife.[2]

Avoiding Pacific Lamprey During Terminal Construction

Adult abundance of Pacific lamprey in the Columbia River Basin has been dramatically reduced in the proposed project area to such low levels that Oregon has designated lamprey a sensitive species. (Pacific lamprey are currently a federal species of concern and are a "monitored" species in Washington). Adult and juvenile lamprey use the area around proposed terminal site as a migration corridor. They may also be present and use the area – or some areas nearby – as rearing habitat and could be negatively affected by pile-driving and turbidity related to the dock construction (Parametrix et al. 2010).

[2] http://www.dfw.state.or.us/lands/inwater/oregon_guidelines_for_timing_of_%20InWater_work2008.pdf.

The Vancouver USFWS Fisheries Assistance Office staff has employed a combination electrofishing/suction apparatus, developed to sample larval lamprey in the Great Lakes, in the Willamette, and the lower Columbia river. (Jolley et al. 2010; Jolley et al. 2011a; Jolley et al. 2011b). These researchers found a juvenile lamprey in bottom sediments while randomly surveying the Columbia River near Portland International Airport, about two miles upstream of the proposed dock construction site, showing that it is possible that juvenile lamprey may be rearing area. At a minimum, the applicant should survey the construction area for Pacific lamprey presence. Such survey would include:

- Conduct seasonal larval lamprey/ammocoete surveys within the entire project footprintbefore, during, and after project completion using a systematic sampling design such as that employed by Jolley et al. (2010), Jolley et al. (2011a) and Jolley et al. (2011b).
- Conduct multiple surveys throughout the year to assist in understanding temporal changes in ammocoete abundance and distribution. This could provide an indication when ammocoetes would be most affected by the proposed project (e.g., in the in-water work period) and help understand hydraulic changes on lamprey distributions within the area post construction.
- Assure that mitigation efforts are designed to provide a variety of habitats for lamprey (e.g., back water, depositional areas for ammocoetes and larval lamprey).
- Obtain other information from these surveys (e.g., lamprey distribution, toxicology loads, and genetics).

We understand that Ecology and Cowlitz County are statutorily required to close the public comment period after 45 days, but we reserve the right to supplement our comments as we investigate the Millennium coal terminal further. In addition, we support and incorporate by reference the comments of the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Cowlitz Indian Tribe, and those of the Columbia Riverkeeper, *et al.*

Finally, it is important to remind the agencies that the propent of the Millennium coal terminal, i.e., Millennium Bulk Terminals – Longview, LLC, has not demonstrated a history of being an honest member of the community. The proponent visited CRITFC and presented information on a project far smaller and very different from the current project. There is still a significant amount of distrust.

In conclusion, the Columbia River Inter-Tribal Fish Commission respectfully requests that Washington state and Cowlitz County use their respective authorities to DENY the Millennium coal terminal. Thank you for your consideration. If you have any concerns or questions, please feel to contact our staff person, Julie Carter, at 503-238-0667.

Sincerely,

Babtist Paul Lumley
Executive Director

ASSOCIATED REFERENCES

Ackerman, NK. "Effects Of Vessel Wake Stranding Of Juvenile Salmonids In The Lower Columbia River, 2002 – A Pilot Study." S. P. Cramer & Associates, Inc.

Hawkins, Anthony. Sound And Vibration Effects On Migrating Adult And Juvenile Salmon At Hydropower Projects, Construction Projects, And In The Natural Environment Lower Granite Dam. Draft Literature Synthesis. June 2015

Pearson, W H, and J R Skalski. "Factors Affecting Stranding Of Juvenile Salmonids By Wakes From Ship Passage In The Lower Columbia River." *River Research And Applications* 27.7 (2011): 926-936.

Coleman, A. M., Diefenderfer, H.L. Ward, D. L., Borde, A. B. 2015. A spatially based area-time inundation index model developed to assess habitat opportunity in tidal-fluvial wetlands and restoration sites. Ecological Engineering 82:624-642.

Diefenderfer HL, et. al. 2012. Evidence Based Assessment of the Cumulative Effects of Tidal Freshwater and Estuarine Ecosystem Restoration; Early Life Stage Habitat Functions for Endangered Salmonids. Unpublish draft prepared for the U.S. Army Corps of Engineers, Portland District, Portland, Oregon, by Pacific Northwest National Laboratory.

Jaffe, D., Putz, J., Hof, G., Hee, J., Lommers-Johnson, D.A., Gabela, F., Fry, J.L., Ayres, B., Kelp, M., Minsk, M. 2015. Diesel particulate matter and coal dust from trains in the Columbia River Gorge, Washington State, USA. Atmospheric Pollution Research 6: 946-952.

McCarthy, S. G., J. Incardona, N. L. Scholz. 2008. Coastal storms, toxic turnoff, and the sustainable conservation of fish and fisheries. American Fisheries Society Symposium, 64:7-27.

McIntyre, J.K., Davis, J.W., Incardona, J.P., Stark, J.D., and Scholz, N.L. 2014. Zebrafish and clean water technology: assessing the protective effects of bioinfiltration as a treatment for toxic urban runoff. Science of the Total Environment, 500-501:173-180.

McIntyre, J. K., J. W. Davis, R. C. Edmunds, J. Incardona, N. L. Scholz, J. Stark. 2015. Soil bioretention protects juvenile salmon and their prey from the toxic impacts of urban stormwater runoff. Chemosphere, 132:213-219.

Stehr, C. M., T. L. Linbo, D. H. Baldwin, N. L. Scholz, J. Incardona. 2009. Evaluating the effects of forestry herbicides on fish development using rapid phenotypic screens. North American Journal of Fisheries Management, 29:975-984.

Confederated Tribes of the Umatilla Indian Reservation (3302)
Confederated Tribes *of the*
Umatilla Indian Reservation
Department of Natural Resources
Administration

46411 Timíne Way
Pendleton, OR 97801

www.ctuir.org ericquaempts@ctuir.org
Phone 541-276-3165 Fax: 541-276-3095

June 13, 2016

Ms. Sally Toteff, sally.toteff@ecy.wa.gov
Ms. Diane Butorac, diane.butorac@ecy.wa.gov
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Elaine Placido, placidoe@co.cowlitz.wa.us
Cowlitz County Building and Planning Department
207 4th Ave. North
Kelso, WA 98626

Re: Millennium Bulk Coal Terminal Draft Environmental Impact Statement

Dear Ms. Toteff, Ms. Butorac, and Ms. Placido:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to comment on the joint Draft Environmental Impact Statement (DEIS) from the Washington Department of Ecology (Ecology) and Cowlitz County (County) for the Millennium Bulk Coal Terminal proposed for Longview, Washington. The DEIS is a generally thorough and effective assessment of the planned Terminal and identifies most of the potential impacts and risks associated with the facility. Some additional impacts could be noted. Some changes in emphasis about the nature or extent of impacts are needed, including a more expansive focus on tribal Treaty Rights and resources. The CTUIR DNR remains concerned regarding the potential impacts of the Millennium Bulk Coal Terminal on Treaty Rights and resources due to coal mining, transport and ultimate burning for energy. Further, there has not been a regional impact analysis done evaluating comprehensively the fossil fuel projects proposed for the northwest as well any risk assessment for spills on the Columbia River. Approval of the Millennium Bulk Terminal should await such an environmental review to ensure all potential cumulative impacts are addressed.

The CTUIR is a federally recognized tribal government with rights and interests in the Columbia River Basin secured under the Treaty of 1855, 12 Stat. 945. That Treaty, between the Cayuse, Umatilla and Walla Walla peoples, reserved the preexisting rights of the Tribes to fish, hunt, gather, and graze in our ancestral territory in exchange for ceding millions of acres of land in what are now the states of Oregon and Washington. The Treaty Rights of the CTUIR and members are threatened by the unprecedented level of fossil fuel shipment that has escalated in recent years and threatens to increase even more if projects such as the Millennium Bulk Coal Terminal are approved and operational. More rail traffic will result in additional air pollution from dust and train exhaust, greater risk of derailments and spills, and magnified dangers to tribal members accessing fishing sites along the river. Dramatic increases in fossil fuel shipments (coal, crude oil, natural gas and others) are already underway without any comprehensive analysis of their effects on the region's citizens, environment and economy.

Individually, the Millennium Bulk Coal Terminal would be a major project with multiple serious consequences, environmental and otherwise. As the DEIS notes, 23 resource areas were analyzed, with "potential significant impacts" identified for 18 areas, and 8 areas with "unavoidable" significant impacts listed.[1] While 30 mitigation measures are proposed "to reduce or offset" impacts, it is not certain how effective many of them will be, or whether they will receive all necessary support or funding to be implemented, both near- and long-term. In our experience, much harm to natural resources has been authorized in the past based on unduly optimistic scenarios and proposals for mitigation that turned out to be either unfunded or woefully insufficient. Mitigation for environmental harm that is not in-kind, in-place often fails its intended purpose.

According to the DEIS, unavoidable significant impacts include pushing certain rail line segments beyond their capacity, diminished rail safety, increased noise along the rail line, additional delays and backups, increased greenhouse gas emissions, and increased risks of vessel spills in the Columbia River and the estuary. Many of these impacts would be annoying, some dangerous, and some possibly catastrophic. And, to emphasize, they "may be ***unavoidable***." See Ecology Powerpoint.

The DEIS purports to find more "limited" impacts related to coal dust and spills, fish, wildlife and vegetation, vessel traffic management, stormwater, and groundwater. We question the use of the qualifier "limited" for many of these impacts, and would argue that from our perspective, effects from these aspects of the facility and on these resources and activities could have serious, cumulative implications for ecological and human health in the Columbia River Basin and its waterways.

The CTUIR DNR believes that the unavoidable, *inescapable* results of increasing ship traffic—including some large Panamax-size vessels—in the lower Columbia River and the estuary may be dire, or, at minimum, counter-productive. The Columbia River estuary is critical to the recovery and restoration of salmon listed under the federal Endangered Species Act (ESA) and others. The CTUIR and other tribes have Treaty Rights to harvest fish that pass through the estuary, going to and from the ocean. The estuary has already been greatly altered by human activity. Now, many efforts are underway to repair some of the damage; substantial resources have already been expended to improve the estuary.[2] Additional expansive ship traffic—840 more vessels per year, 1,680 more transits—cannot but undermine all the recent good work that has occurred in the estuary, and raise the specter of greater risk of accidents. The DEIS should also include in its analysis impacts beyond the river and the estuary—i.e., the Pacific Ocean and west coast.

[1] See attached PowerPoint Millennium Bulk Terminals – Longview: Coal Export Proposal Draft Environmental Impact Statement Department of Ecology/June 2016 (hereinafter Ecology PowerPoint).
[2] *See* June 13, 2016 comments of Columbia Riverkeeper et al.

Potential impacts to tribal resources are identified in the DEIS as:

- Delays or other effects on tribal access to Columbia River fishing sites;
- Vessel traffic impacts to fish habitat; and
- Coal dust from rail and terminal operations.

The CTUIR DNR believes there are many additional potential impacts. The DEIS found that mitigation "may" reduce impacts to tribal resources "***but would not eliminate them***."[3] There is a legal obligation to maintain certain habitat conditions necessary for the survival and health of viable Northwest salmon populations that are the subject of more than 160-year-old treaties with multiple Indian tribes. This legal obligation applies to not just the federal government, but to the individual states as well. Thus it would appear that approval of the Millennium Bulk Coal Terminal, impacting tribal resources—and, consequently, tribal rights—that no mitigation can eliminate, would be questionable and highly problematic, at the very least.

The CTUIR DNR is also concerned about ballast water intake/discharge; we believe it requires further analysis than that provided in the current DEIS. This has been an issue with earlier proposed projects (e.g., Bradwood Landing LNG Terminal), and it would appear that many outstanding questions and uncertainties remain. Questions presented by ballast water include:

- Would vessels traversing the river and using the facility's docks be perpetually discharging and/or withdrawing ballast water?
- What measures would be taken to ensure that no invasive or otherwise unwanted species enter the Columbia River?
- What measures would be taken to ensure salmon or other species would not be entrained in intake water or impinged on screens, if that is an issue?
- Would vessels be foreign-flagged, and if so, how would provisions requiring ballast water measures be monitored or enforced?
- Has the Washington Department of Fish and Wildlife made any findings or recommendations on this subject?

Water temperatures in the mainstem Columbia River frequently exceed applicable water quality criteria—temperature standards are often violated. Water temperatures are critically important to salmon survival and health; excessive temperatures can be devastating to salmon, as we witnessed in 2015 when the overwhelming majority of endangered Snake River sockeye died in-river. Climate change promises to only make matters worse. The CTUIR DNR would like to see further exploration of water temperature aspects of the project—specifically, whether operations at the site and the infrastructure supplying it will result in more water temperature problems and associated threats to tribal resources. Will all water discharged from the site meet water quality criteria, for temperature and all other constituents? Will there be enforceable measures to contain on-site all substances and materials that do not meet environmental standards?

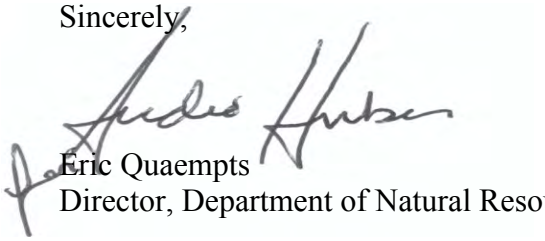
[3] Ecology PowerPoint, slide 9.

The CTUIR DNR also questions the financial soundness and integrity of the project's proponents, who have, in fact, repeatedly changed into different entities or even gone bankrupt, leaving us with little assurance of their execution of their promises and commitments. There have also been legitimate reports of less-than-forthright claims and representations by the proponents in the ongoing process to authorize the project from the earliest days of the project, a fact that cannot be casually disregarded in the overall decision on whether or not to issue an approval.[4]

Finally, as noted above, there are numerous fossil fuel projects proposed across the northwest. To date no regional environmental impact analysis has been conducted to examine cumulative impacts of the projects comprehensively. These projects are being pursued individually and impacts are being done on a case-by-case basis. This approach prevents a cumulative analysis being conducted. Such a review should be conducted, as well as coordination with other regulatory processes and analyses such as the "Vessel Traffic Safety Evaluation and Assessment for the Columbia River," being prepared by the Department of Ecology to comprehensively examine all mainstem shipping activity.[5] The information intended for that risk assessment seems critical for the full and thorough evaluation of the potential impacts of approval of the Millennium Bulk Coal Terminal. Due to the important, relevant information being developed, approval of the Millennium Bulk Coal Terminal should be held in abeyance until such time as it can be informed by the results of a regional environmental analysis and the Columbia River spill risk assessment by Ecology.

The CTUIR DNR again thanks you for soliciting our input and considering our initial comments. In part because our attentions were recently concentrated on a serious train derailment and fire in the Columbia River Gorge (the rail corridor that would be shared by trains supplying the Millennium Terminal), we have had less time than we would have desired to develop our comments by today's deadline. We appreciate you willingness to allow us to supplement them in the future should the need arise. If you have any questions, please contact Audie Huber, Inter-Governmental Affairs Manager, at (541) 429-7228.

Sincerely,



Eric Quaempts
Director, Department of Natural Resources

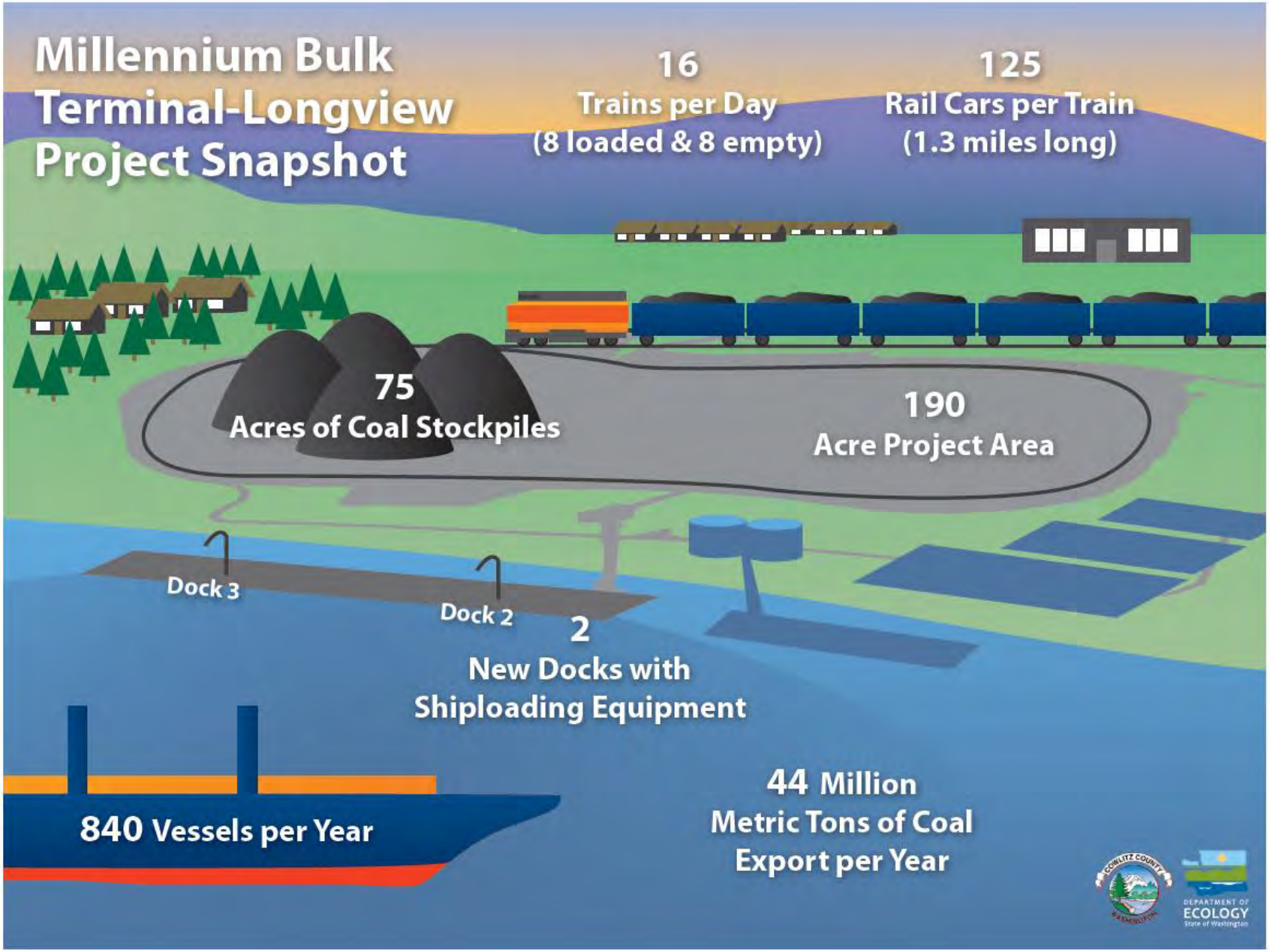
Enclosure: PowerPoint: Millennium Bulk Terminals – Longview: Coal Export Proposal Draft Environmental Impact Statement Department of Ecology/June 2016.

[4] See New York Times, February 14, 2011, In Northwest, A Clash Over a Coal Operation, by William Yardley. Available at: http://www.nytimes.com/2011/02/15/us/15coal.html?_r=0
[5] *See* http://www.ecy.wa.gov/programs/spills/OilMovement/RiskAssessment.html

Millennium Bulk Terminals – Longview: Coal Export Proposal

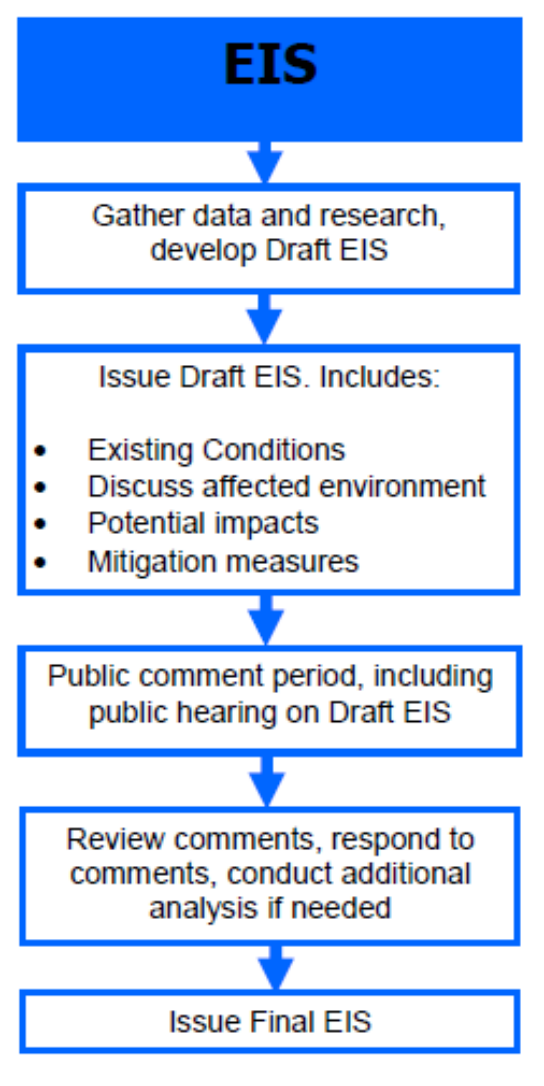
Draft Environmental Impact Statement

Department of Ecology / June 2016


Millennium Bulk Terminal-Longview Project Snapshot
16
Trains per Day
(8 loaded & 8 empty)
125
Rail Cars per Train
(1.3 miles long)
75
Acres of Coal Stockpiles
190
Acre Project Area
Dock 3
Dock 2
2
New Docks with Shiploading Equipment
840 Vessels per Year
44 Million
Metric Tons of Coal
Export per Year
DEPARTMENT OF ECOLOGY
State of Washington

Environmental Impact Statement (EIS)

- Co-lead agencies:
  - SEPA: Cowlitz County and Ecology
  - NEPA: US Corps of Engineers
- EIS is a prerequisite for permits
- Impartial and comprehensive report for agency decision makers to use during their permitting process
- Provides information about the potential effects of a proposal



The Draft SEPA EIS

- Developed following state law and county code
- Scope of study for SEPA different than for NEPA
- Prepared by 3rd party contractor, reviewed by state agencies with expertise
- Not a “Yes” or “No”
- Prerequisite to permitting processes – a factual information source

45-Day Comment Period

April 29 to June 13

- Online 24/7
- By mail
- At 3 public hearings
  - Verbal testimony
  - Extra court reporters
  - Written comments
  - Open House
  - Longview, Spokane, Pasco

Resource Areas

- Analyzed 23 resource areas
  - Potential significant impacts identified for 18 areas
  - 30 mitigation measures proposed to reduce or offset impacts
  - Tribal resource impacts identified
  - 8 areas identified with potential unavoidable and significant impacts

Findings: Significant Impacts

Rail line segments over capacity

Rail safety

Increased noise along rail line in Cowlitz County

Rush hour delays and back ups

Greenhouse gas emissions increase

Vessel spills – low likelihood, significant impacts

Study found these potential impacts may be unavoidable

Findings: Limited impacts

Coal dust and coal spills

Fish, wildlife and vegetation

Vessel traffic system

Stormwater

Groundwater

Tribal Resources

Potential impacts from operations:

- Rail traffic could cause delays or affect access to fishing sites in the Columbia River
- Vessel traffic impacts fish habitat
- Rail and facility operations generate and disperse coal dust

Study found mitigation may reduce impacts to tribal resources but would not eliminate them.

Tribal Resources

Describes fishing and gathering practices for Cowlitz Indian Tribe and CRITFC member tribes

Tribal Resources

- Impacts from coal dust on fish, wildlife and vegetation in separate sections.
  - Proposed mitigation discussed in those sections.
- Corps continues to conduct formal consultation with tribes for the NEPA EIS process.
- The SEPA co-leads seek comments on the Draft EIS to better describe tribal resources

Fish, Plants & Animals

- Construction impacts from pile-driving, dredging, spills, removing piles
  - Removes 202 acres of habitat, including 24 acres of wetlands
  - Loss of 4,312 ft^2 of habitat to install 630 piles for the docks
  - Removes 500,000 cubic yards of sediment from the Columbia River (affecting 48 acres of deepwater habitat) from dredging
  - Loss of 11 acres of aquatic habitat (ditches and ponds) on site
  - Removes 225 feet of creosote-treated piles
- Operations impacts from shading at the docks, ship movements, rail traffic, coal dust, coal spills
- Impacts are similar to existing conditions for ships and rail
- Coal dust would fall within and adjacent to rail line and facility
- Increased risk of ship strikes due to additional vessels

Fish, Plants & Animals

- Permits required for the proposed project:
  - Cowlitz County Shoreline Substantial Development and Conditional Use Permit
  - Local Critical Areas and Construction Permits from Cowlitz County.
  - Notice of Construction from Southwest Clean Air Agency
  - Clean Water Act Section 401 certification Ecology
  - Hydraulic Project Approval from WDFW
  - Clean Water Act Section 404 authorization from Corps
  - Endangered Species Act Consultation with USFWS and NMFS

- Proposed mitigation
  - Bubble curtains or noise reduction technology
  - Monitor fish and wildlife while pile driving and dredging
  - Surveys for smelt, rare plants and aquatic plants
  - Coal dust monitoring at the site and reducing coal dust from rail cars
  - Wetland mitigation plan (developing with Corps)

Water Quality

- Proposal would be required to have NPDES stormwater permits for construction and operations and 401 and 404 certifications
- Proposed site is inside levee area and in diking district
- Construction, dredging, soil compaction, pile driving and pile removal could cause turbidity or spills
- Coal dust from the facility or rail cars could affect surface water but would not be expected to exceed water quality standards
- Ship transits could cause erosion from wakes or propellers but would be similar to current traffic

Rail Traffic and Safety

16 additional trains daily at full operations

1.3 trains a day for construction

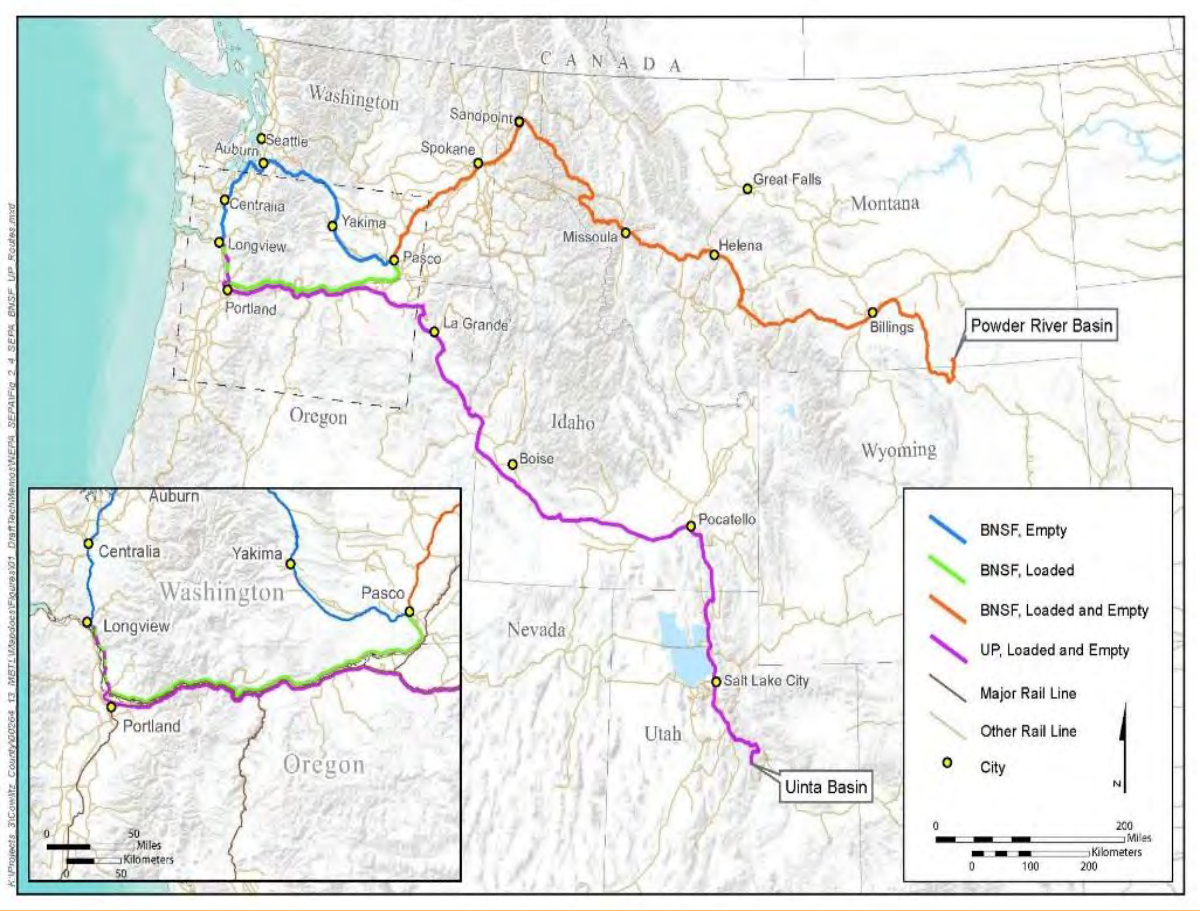
Analysis: with --and without --rail improvements

Improvements are planned but not permitted or funded

Rail Routes

Loaded trains are expected to go through Spokane along Columbia River Gorge to Longview.

Empty trains would likely return via Yakima through Stampede Pass.



Rail Traffic Impacts

Additional trains from the proposal could lead to significant and unavoidable impacts in Cowlitz County and Washington state

Rail Capacity Exceeded:

- Local rail lines into Longview
  - Reynolds Lead and BNSF Spur in Cowlitz County
- Main Line Routes in Cowlitz County
- Main Line Routes in Washington State
  - Idaho/Washington State Line – Spokane
  - Spokane – Pasco
  - Pasco - Vancouver
- Main Line Routes beyond Washington State

Photo: WSDOT

Vessel Traffic

- Proposal would add 840 ships a year
- Vessel traffic study
  - Indicates existing navigation infrastructure capable of managing additional vessel traffic
  - Includes vessel incident analysis
- No significant impacts on vessel traffic system
- While likelihood of an oil spill from a vessel incident is low, if a spill occurred, the impacts would be significant and unavoidable

Coal Dust Control from Rail

Rail cars

- Coal shaped to reduce wind loss
- Topping agent (surfactant) applied at mine
- For BNSF trains, surfactant also applied at Pasco yard

Rail car spray station in Pasco
Photo UTC

Coal Dust Impacts - Rail

- Air monitoring done to gather samples in Cowlitz County on BNSF main line from current coal trains
- Air quality model used this information to predict impacts
- Study found coal dust particles are:
  - Typically large (no human health risk from inhalation)
  - Fall close to the track (decline by 50% within 200 feet of the rail line)
  - Do not exceed air quality standards
  - Nuisance sized particles do deposit at 50 ft and 100 ft
- Consistent with other coal dust studies

Coal Dust – Proposed Mitigation

- Coal dust complaint reporting process in Cowlitz County – operated or funded by Millennium
  - Work with the Southwest Clean Air Agency
  - Coal-dust awareness and investigation system for community members
  - Receive complaints or concerns, investigate, respond, resolve and report findings to the complainant and Southwest Clean Air Agency
  - Annual report on website
- Reduce coal-dust emissions from rail cars. Coal on Burlington Northern Santa Fe trains from Montana and Wyoming must be appropriately shaped and surfactant applied at the mine site and in Pasco, Washington. For Union Pacific trains from Colorado and Utah, surfactant would be applied at the mine site. Options for applying a second coating would be evaluated.

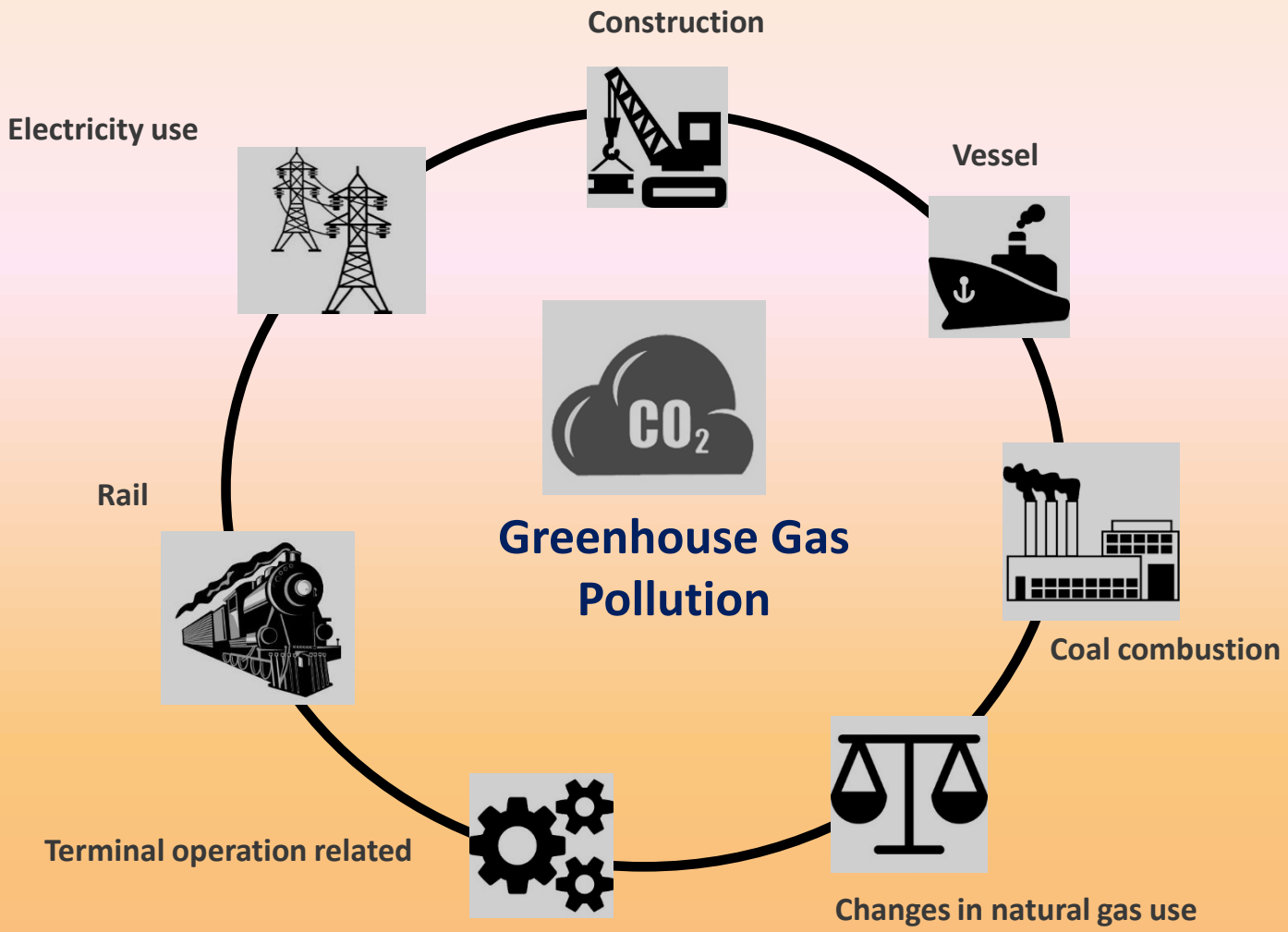
Greenhouse Gases

Key questions analyzed in Draft EIS

- What are the GHG emissions attributable to the proposal?
- What GHG emissions would occur if the project is not built (the "*No Action Alternative*")?
- How do the GHG emissions attributable to the proposal compare to GHG emissions from Washington and the United States?

Several approaches considered for GHG evaluation

What GHGs were Analyzed?



Coal Market Assessment Model

Assumptions

Destination of coal

Displacement

Price elasticity

Energy markets

Natural gas substitution

Pollution control regulations

Heat and pollutant content

Transportation costs

Net Greenhouse Gas Emissions

in million metric tons

Construction

Operations

Rail transportation

Vessel transportation

Changes in natural gas/coal

End use combustion

5 scenarios used. Preferred scenario is 2015 Energy Policy scenario since it most realistic to current conditions

Why GHG Emissions are Considered Significant

Annual emissions for operations exceed federal and state regulations and guidance

Climate change impacts would persist for a long period of time, are considered permanent and would impact Washington

Emissions attributable to the proposal under the 2015 Energy Policy Scenario are considered adverse and significant

GHG – Proposed Mitigation

- Fuel efficiency training for equipment and vehicles
- Anti-idling policy for vessels and locomotives
- Reduce emissions from cars
- Develop a greenhouse gas mitigation plan to mitigate for 50% of emissions identified in the 2015 Energy Policy Scenario.
  - The plan must be approved by Ecology. For mitigation that occurs in Cowlitz County, the plan will be approved by Cowlitz County and Ecology.
  - The plan must be implemented prior to the start of operations.
  - The measures described in the plan may include a range of mitigation options.
  - The measures must achieve emission reductions that are real, permanent, enforceable, verifiable and additional.
  - The emission reductions may occur in Washington or outside of Washington but must meet all five criteria.

The mitigation measure will substantially reduce, but not completely eliminate, the greenhouse gas emissions attributable to the project.

Air Quality

- Air quality model used to evaluate impacts
- Considered emissions from equipment, trains, ships and facility operations
- Increases in CO, NO_2, SO_2, particulate matter (including diesel particulate matter) and volatile organic compounds but none exceeded air quality standards
- A Notice of Construction from Southwest Clean Air Agency will be required
- No state permits for trains or vessels required

Joint website specific to the EIS www.millenniumbulkeiswa.gov

Department of Ecology points of contact:

- Sally Toteff sally.toteff@ecy.wa.gov (360) 407-6307
- Diane Butorac diane.butorac@ecy.wa.gov (360) 407-6594

Cowlitz Indian Tribe

June 13, 2016

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

RE: Comments Regarding the Draft Environmental Impact Statement (Draft EIS) Concerning the Proposed Millennium Bulk Terminals-Longview.

Dear Cowlitz County and the Washington State Department of Ecology (collectively called the Action agencies),

The Cowlitz Indian Tribe is a Federally Acknowledged Tribe located in SW Washington State. Our historic area includes a large portion of the Lower Columbia River Basin that spans on both sides of the Columbia River and into Oregon State. The proposed Millennium Bulk Terminal (also identified further as "Coal terminal") lies clearly within our homeland. We write to you in regards to commenting on the Draft EIS for the proposed Coal Terminal. The impacts that this proposal has would eventually have direct and indirect consequences to our people if it were approved.

We have relied on the once bountiful resources in the region since time immemorial for survival. Our Tribe continues to depend on the precious resources (many of which are in a depressed state) in the region, which carry high significance to our way of life. Our Tribe carries natural resource management authorities, rights, and obligations within the Columbia Basin that would be impacted by the proposed alternative presented in the Draft EIS. The Proposed Coal Terminal is another threat to our way of life, culture, and subsequently our future generations' right to the use and enjoyment of natural resources within our homelands.

Since before and after Federal Acknowledgement, we have taken the "*high road*" in regards to being a good neighbor, establishing positive relations with numerous Federal, State, Tribal, and Local entities. We have numerous activities that are ongoing in the region in regards to addressing concerns associated with the depleted status of our first foods and working on recovery of such significant resources.

A. Draft EIS Lack of Recognition of Past Environmental Degradation and Current Restoration Activities within Potential impact Areas

The proposed action that you present is a threat to our restoration activities and our cultural practice continuity in the region. We have been and continue significant activities in regards to addressing and implementing restoration activities of our traditional first foods within our

PO Box 2547 • Longview, WA 98632-8594 • (360) 577-8140 • Fax (360) 577-7432 • EMAIL cowlitztribe@cowlitz.org

homeland. Several of our traditional resources continue to be listed under the Endangered Species Act (ESA). Substantial areas of our work towards restoration are within the footprint of potential impacts associated with the Coal terminal proposal. There are numerous other entities in the potential impact area that have invested considerable resources regarding restoration within the Columbia River system, especially the Columbia Estuary. The estuary is also an "ecologically critical area," 40 CFR § 1508.27(b)(3), that is essential to the survival of juvenile salmon and steelhead, waterfowl, and many other species. A considerable amount of resources have been invested from Federal and State tax dollars, as well as "rate payer" dollars from utilities in the region. There are significant restoration plans that have been and will be implemented in the region in the foreseeable future. We and many others maintain the goal of restoring habitat and other conditions for natural resources within the Columbia Basin. Much of this work is due to habitat loss, poor water quality, and other factors of which industrial developments have been a significant contributor to.

We believe that activities and future plans toward Environmental Restoration in the potential impact area of the proposed Millennium Bulk Terminal should also be analyzed as "existing conditions and reasonably foreseeable future actions" within the study area and documented within the Draft EIS. Currently, there is little to no characterization in this regard in the Draft EIS. These actions are just as significant, if not more significant to consider as part of your decision. We respectfully request that this component (investment in environmental restoration activities, future plans, and potential impacts) be incorporated into the analysis and documented into a new Draft EIS for the public to review. Just one spill or accident event could likely wipe out several years of investment in this regard. The Draft EIS you present serves to reaffirm our opposition to this proposed development.

We believe that there is no amount of mitigation possible to fully compensate the deleterious impacts the proposed action would have to our community, our natural environment, and future outlook towards restoration. Of considerable note, the Draft EIS fails to acknowledge any of the restoration efforts completed, underway, and future projects to repair the already depressed state of the regions environment due to previous industrial developments and their continued negative impacts to area species that are listed under the Endangered Species Act.

B. Lack of Adequate time to Review Draft EIS

The Cowlitz Indian Tribe is troubled that there is just 45 days to put together meaningful and substantive comments on such a massive Draft Environmental Impact Statement. This is a highly significant proposed development within our homelands that deserves more time to understand and be able to put together meaningful comments. We are troubled to hear from one of the Action Agencies in charge of this proposal that they sought with the Applicants to extend the comment period past 45 days, but Millennium Bulk Terminals would not agree to any additional extension to the comment period.

We are disheartened and question the good faith from the Applicant regarding their proposal. We are troubled that the Action Agencies who are charged to make an informed decision on this proposal are unable to get the Applicant to agree for the public to have more time to review and comment. This shows us that the Applicant is not genuine in regards to positively working with the public in this process.

Chapter 1 captures our concern we have in regards to relationship of comment period timeline with the scoping process and subsequent Draft EIS comment period. As it is stated in section 1.1.1.2 Public Scoping:

> *"The co-lead agencies invited local agencies, state agencies, federal agencies, tribes, organizations, and members of the public to comment on the scope of the SEPA and NEPA EISs during a 95-day scoping period."*

We are very disappointed that you provided 95 days for comments on the scoping process for this proposed development but for the comment period for the subsequent Draft EIS, you are only allowing a 45 day comment period. Given that the scoping process produced a significant number of comments (217,500 comments), it should be obvious to the Applicant of the serious attention and concern that their proposal is having to the region. If they were genuine in regards to their assertions of trying to positively work with the region, they should have at least matched the same comment period length as with the scoping period of 95 days. Scoping processes are normally shorter in length in regards to Draft EIS comment periods because there is normally less documentation to review. **Shame on the Applicant** as their obvious intent in our opinion, of which to our Tribe is interpreting it as trying to limit substantive comments regarding the Draft EIS. It is likely to us that they are doing so as a way to improve their position regarding future potential litigation regarding the adequacy of the Draft EIS and proposed action.

C. <u>The Draft EIS is Biased toward the Applicant's Proposed Action</u>

It is obvious to us that the Draft EIS is biased in support of the proposed project. We believe concerted effort was made to downplay any potentially significant impacts and places the document in context of a major action that would only have minor environmental impacts. We disagree with this assertion and believe the intent is to try and sway the action agencies in their favor as well as to set up as little mitigation as possible towards their development.

The proposed mitigation measures within the document are severely lacking or non-existent. How are we to ascertain if this is good for our community when we can't understand what is proposed to offset ~~potentially~~ significant impacts?

D. <u>The Cowlitz Indian Tribe is not a Public Entity</u>

The Cowlitz Indian Tribe is a Federally Acknowledged Government entity in the region. We believe that we are not confined or bound by the public comment periods under this process. We plan to request additional follow up communications regarding this proposal through government-to-government consultations. We strongly believe that this documentation is highly flawed and contains inaccurate information as well as key omissions in regards to preparing for an informed decision.

The Cowlitz Tribe does not believe that this proposal is good for our environment or for the health and stability of the communities of the Lower Columbia River and threatens our Government and people's "***fundamental and inalienable right to a healthful environment***."

E. Poor Demonstration of the Purpose and Need for the Proposed Action

The summary section of this Draft EIS is a high level look at the proposed action and a brief description of the chapter components, potential impacts, permits needed and potential mitigation measures as well as associated SEPA processes for the Draft EIS. One noticeable area where there is a lack of substantiated information is in regard to the need for the proposed action. Under Washington State SEPA regulations, within WAC 197-11-440 (4):

> *"...The summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding..."*

Although section S3 of this summary gives some information regarding project objectives, it isn't substantiated and doesn't provide any insight regarding State initiatives regarding the ethics toward future developments. One example is in regards to climate change.

- Why would Washington State be open to diversifying its economic base with an industry that contributes to continued global warming concerns when this State has taken one of the leading roles/initiatives in the entire United States to try and curb and/or reduce global warming concerns?

The Cowlitz Tribe disagrees with the following statement in section S3:

> *"The Applicant states further development of western U.S. coalfields and the growth of Asian market demand for U.S. coal is expected to continue, and existing West Coast terminals are unavailable to support this need."*

It is obvious through media and other sources that the demand for coal has considerably declined and also statements from Asian countries has made it obvious of their intent is to reduce coal burning consumption. We request references that substantiate the claim pointed out in the reference indicated of increasing Asian demand. We also request information as to the apparent or assumed analysis that led to the assertion that other West Coast terminals are unavailable to support this need. Was there a specific analysis done in this respect?

We request some clarification in regards the significance of the assertion within the Draft EIS of contributing to reducing unemployment in Cowlitz County. The website: https://fortress.wa.gov should provide some of this insight for you. For the long-term in regards to the employment outlook from this proposed development, we don't believe that there is any significance towards reducing unemployment in Cowlitz County. With a current workforce of around 45,724 (revised in March 2016 noted from fortress.wa.gov) and the outlook of this proposal of adding approximately 135 new long-term jobs; that would only equate to **.29% increase** (less than 1/3 of a percent) in contributing to the current workforce for Cowlitz County in the long-term "if the Applicant hires locally."

We don't believe that the assertion of reducing local unemployment is significant to justify the proposed coal terminal in relationship to the potential environmental impacts we would have to endure. It also doesn't describe the potential of displacement of other potential developments that

may contribute significantly higher employment outlook for the region. If the action agencies and the Port of Longview are serious about creating a better jobs outlook, we are sure that there are other developments that would contribute more employment opportunities for the area; especially developments that may include some sort of manufacturing component of which the proposed Coal terminal falls short.

We believe that there is little justification regarding the need of this development, and we believe it falls short of the intent of SEPA in regards to WAC 197-11-440 (4) given the current Sate policy initiatives around climate change and future sustainable developments for our communities.

Chapter 2 of the Draft EIS tries to validate their objective that we pointed out concerns which we provided in the summary section on purpose and objectives. We believe a very poor substantiation was done and believe that the concerns we presented in regards to the objective in the summary section of the proposed action also equally apply here. We request the same concerns presented in regards to the projects objectives presented in the summary section also be applied to "*2.1 Applicant's Project Objectives*". We believe the Draft EIS does a poor job in regards to justifying the need for this proposed development.

One additional concern we would like to point out is in regard to the unemployment data used in section 2.1.3: The current unemployment rate has now changed from the 8% reported in the Draft EIS to a rate last reported in April 2016 of 7.5%. Looking at the past three years, the unemployment rate for the month reported in the Draft EIS of January has progressively gone down from 2014 (9.1%); 2015 (8.5%); and last January of 2016 (8.0%) (Resource: https://fortress.wa.gov/esd/employmentdata/reports-publications/regional-reports/labor-area-summaries). This shows that Cowlitz County has been progressively improving its economic outlook and we believe the proposed Coal terminal would do little to nothing in regards to this concern based on the few (135) long-term jobs they would bring as it relates to the entire workforce/employment opportunity of Cowlitz County. Actually, the Cowlitz Tribe will likely provide a considerable improved employment outlook for Cowlitz County for the future than what Millennium would ever be able to provide. We also plan to do so in an environmentally friendly manner.

The Applicant's proposal is insufficient in regards to providing any impact towards improving economic conditions for Cowlitz County. We also don't agree with the economic feasibility of the Coal industry given the current issues/relationships around global climate change and the current dilapidated condition of the world Coal marketplace. Also, with the uncertainty of the Coal markets, it is likely that the jobs related to this proposal would be under constant threat of continuous or frequent employment layoff conditions. We request that the Draft EIS is clearly updated to clearly describe the data associated with the volatility of the market of the products they wish to handle at the proposed Coal terminal; and to clearly delineate an appropriate interpretation of the data based on best available science and/or information.

F. Rail Facilities: BNSF - Cowlitz River Bridge is in Poor State for even Current Industrial Rail Traffic

We believe that there is enough concern to currently close industrial rail traffic across the BNSF - Cowlitz River Railroad Bridge. We don't believe that it is designed or intended to handle the Proposed Action's volume of rail traffic in either the short or long-term. Although it may be indicated in the Draft EIS that there are potential ideas of improving the current bridge; there shows to be no plans or commitment to do so at this time. We believe that this is a highly significant situation given that much current public & policy concerns regarding rail safety have been expressed through a variety of media. Appropriate agencies have contacted us recently in regards to their heightened efforts in this regard, including the Washington Department of Ecology (one of the authorities regarding this Draft EIS).

Section 2.2.2.2 gives an indication of the presence of the BNSF - Cowlitz River Bridge. It is also mentioned or provides insinuated concerns in:

- section 3.1.4.2 (page 3.1-11);
- section 5.1.3.2 (page 5.1-6);
- section 5.1.4.2 (page 5.1-10 (indicates a 10 mph speed limit to cross the bridge));
- section 5.1.5.1 (page 5.1-16 and 17 (mentions a possibility of improvements);
- section 5.8.2.5 (page 5.8 – 32 ("*The rail line crosses the Cowlitz River near the confluence with the Columbia River and runs near the rivers for the 5 miles to the project area. Because historical and recent crests have been reported on the Cowlitz River, flood risk from sedimentation is increasing, and future precipitation could increase, flooding of the Reynolds Lead is possible. Cowlitz River flooding at this location would likely disrupt rail and terminal operations, and ballast supporting the rail line could be dislodged. Therefore, Proposed Action-related trains could be affected by a Cowlitz River flood.*"));
- section 5.8.2.5 (page 5.8 – 32 *("In the future, flooding could be of concern, particularly from the Cowlitz River. In August 2014, the U.S. Army Corps of Engineers found that sediment buildup on the Cowlitz River was increasing the potential for flooding. Without further action, the flood risk level on the river (0.6%) would be exceeded by 2018 (U.S. Army Corps of Engineers 2014)"*));
- SEPA RAIL TRANSPORTATION TECHNICAL REPORT section 2.2 (page 2.9 and 10 (nothing in regards to existing condition));
- Section 3.1.1.4 (page 3-3 (mention 10 mph speed limit across the bridge)); and
- SEPA RAIL SAFETY TECHNICAL REPORT section 2.2 (2 – 5 (nominal indication of a Cowlitz River bridge but no analysis as to its condition and safety))

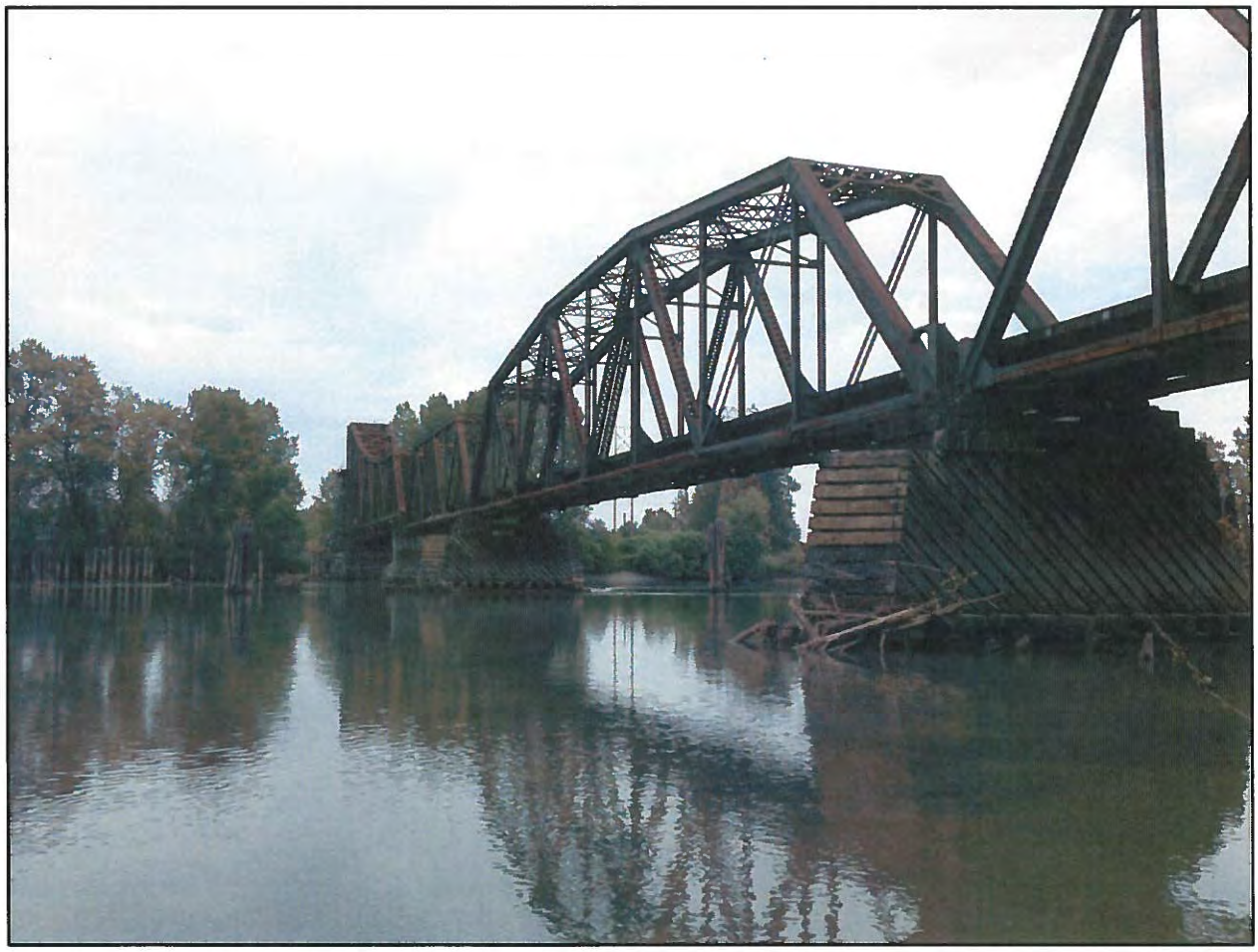
In no chapter, section, or appendices in this Draft EIS are we able find any information as to the current existing condition of the BNSF – Cowlitz River Bridge. It does speak of potential threats in relation to the future potential issues with the bridge and it does mention a "possibility" of improvements to the bridge, but it doesn't mention why?

- **In light of all the National concerns as it relates to rail safety, why is there what seems to be oversight and lack of detailed information regarding the BNSF - Cowlitz River Bridge condition in the Draft EIS?**

The Cowlitz Indian Tribe believes that the Applicant and the Action Agencies is not being forthright in regards to the BNSF – Cowlitz River Bridge condition.

- **Why is there a current 10 mph speed limit across the bridge?**

Upon our own investigation, here is some insight as to its condition which deservedly should have additional engineer details as to its current state and future potential threats. The following picture was taken by our Natural Resources Department on 06/08/2016:



- It looks as though this bridge is old, rusty, with wood railroad ties surrounding the old concrete footings.

We followed up to see if we can find some additional information. We found the following website which gives a little information which is summarized below:

- https://bridgehunter.com/wa/cowlitz/bh38511/#Comments

Overview
Scherzer rolling lift bridge over Cowlitz River on B.N.S.F. Railroad in Longview
Location
Longview, Cowlitz County, Washington

Status
Open to traffic

History
Built 1908 in Long Beach, CA, Moved to Longview 1934

Railroad
- BNSF Railway (BNSF)

Design
The Cowlitz River Railroad Bridge is a four span through truss bridge with a Scherzer rolling bascule lift span. The lift span was originally constructed in 1908 over the San Gabriel River in Long Beach, California. The span was moved to Longview in 1934.

Dimensions
Length of largest span: 200.0 ft.
Total length: 700.0 ft.

Also called
Port of Longview Bridge

Approximate latitude, longitude
+46.10364, -122.89308 (decimal degrees)
46°06'13" N, 122°53'35" W (degrees°minutes'seconds")

Approximate UTM coordinates
10/508263/5105568 (zone/easting/northing)

Quadrangle map:
Rainier

Inventory number
BH 38511 (Bridgehunter.com ID)

- Do you mean to tell us that there are plans to continue utilizing an old 1908 bridge that wasn't even designed for the Cowlitz River for current and future industrial rail traffic?

It is indicated that there might be upgrades to this bridge, but no planning, implementations, or funds have gone into any actions for any bridge work as indicated in section 5.1.5.1 (page 5.1-16 and 17). The Applicant does not discuss the bridge's age, fitness for the 200% increase in rail traffic, or the effect of many heavily loaded coal trains using the bridge daily. As the bridge is located on a spur, the Cowlitz Indian Tribe

requests the Applicant and Action Agencies provide additional information and analysis to detail the current state of the bridge and what impact the bridge would endure in regards to the current use & the proposed action. We are even wondering if this bridge was only meant to be temporary. What happened to the previous bridge before the current one? We believe it is totally justified that a detailed engineer report of existing conditions be presented. **It should have been presented in this Draft EIS**.

- **We request that more analysis and information regarding the BNSF Cowlitz River Bridge and that the Action agencies update the Draft EIS and re-issue another Draft EIS for another comment period before a Final EIS is issued.**

- **We request that the current use, proposed Action and this SEPA process should cease until all issues, concerns, processes, and potential solutions to the BNSF - Cowlitz River Bridge are resolved.**

- **With current conditions of the BNSF - Cowlitz River Bridge and if railroad users obey the rules attached to the bridge; if there is an accident due bridge failure; who would be the responsible party?**

- **What would be the potential impact if a derailment would occur at the Cowlitz River Bridge?**

The Cowlitz River is considered critical habitat by federal officials for the health of Columbia River stocks of federally Endangered Species listed eulachon and salmonids. In regards to eulachon, the Cowlitz River is considered by many as a key environment for their continued existence within the Columbia River system. Any accident/derailment caused by the failure of the BNSF – Cowlitz River Bridge could have irreparable harm to the status of these threatened species. We believe that it is imperative and necessary that the BNSF – Cowlitz River Bridge is adequately addressed and mitigated today (or yesterday) before anymore industrial related rail traffic utilizes this Bridge. The proposed Coal Terminal shouldn't even be considered until the safety and environmental threat associated with the condition of the Bridge's suitability for long-term industrial traffic is adequately addressed.

G. The Draft EIS significantly minimizes earthquake related Geologic hazards

We believe that the Draft EIS does a poor job in characterizing and analyzing the threats of a geologic event that may cause significant damage if the proposed action was allowed to be built. The Applicant bases their risk assessment on regional earthquakes in the 6.8 to 7.1 range, noting that these Puget Sound earthquakes did not cause substantial damage in the Longview area. The cited earthquakes occurred at a distance of approximately 70 miles. (Appendix Volume IIIb, pg. 15) **This is a misinterpretation of data**. The Draft EIS should have characterized - basing their earthquake environmental review on the worst case scenario, a subduction zone earthquake. A subduction zone earthquake can be as powerful as 9.0. A magnitude 9.0 earthquake has 1,000 times greater energy released than a 7.0 earthquake and may last from 3 to 5 minutes.

Liquefaction, a process in which the strength and stiffness of a soil is reduced by earthquake shaking or other rapid loading, could cause settlement of 7 to 16 inches during a major earthquake. (Appendix Volume IIIb, pg. 17) The project area is largely sands and silts. The Cowlitz County Site Class Map notes that the project area soils are the softest soils and have the highest level of potential ground shaking.

- **The Draft EIS does not discuss how liquefaction risks affect coal stockpiles or other infrastructure, including the loading booms.**

We are very concerned as to the potential of significant damage due to the likelihood for a geologic event in the region. If the facility is built, just one major geologic event would be catastrophic for many years to come and would have significant deleterious impacts to our way of life, culture, and environmental restoration efforts, which we believe is irreplaceable.

Sea level rise is discussed in terms of ocean rise. The Draft EIS notes that the project site is 60 miles inland, therefore the project site would be minimally affected by sea level rise. **The Draft EIS fails to discuss the project site's location adjacent to the tidal portion of the Columbia River**, which would be directly affected by sea level rise due to the increased tidal hold-in elevations. Additionally, no discussion is provided related to modified hydrology associated with climate change and the predicted warmer, wetter weather pattern, and the proposed project site's location on a modified floodplain.(Page 4.1-10).

The Draft EIS states there are no earthquake faults in the area. The Draft EIS should be modified to further clarify with references that there are no *known* earthquake faults in the area. (page 4.1-15).

H. The Proposed Action would Negatively Impact Groundwater Quality

The project area is defined by the Cowlitz County Critical Areas Ordinance as a critical aquifer recharge area. However the Draft EIS notes on page 4.3-16 that: 'operation of the Proposed Action would have a negligible impact on groundwater supply.' The project area is also defined by the City of Longview that it is within the Wellhead Protect Area. The Applicant writes that construction would be "unlikely to affect the well-field at the Mint Farm Industrial Park." (page 4.4-5)

The City of Longview documents present conflicting information, noting that "Washington's wellhead protection requirements are designed to prevent contamination of groundwater used for drinking water." Figure 15 in Appendix IIIb clearly shows the project area is within a defined Wellhead Protect Area. Depending on the rate of travel, the wellhead protection area is broken into management zones that correspond to an established time-of-travel rate for water within the aquifer. Each of the management zones represents an interval between the time a particle of water is introduced at the zone boundary and its eventual arrival at the well. These zones create an early warning system that gives a public water system time to respond to a contaminant moving within an aquifer before it arrives at the water supply well. A typical wellhead protection area has four or five management zones.

The project area is within the six-month, 1-year, and 5-year management zones. The Draft EIS states that the study area is not considered a major source of ground water recharge for the deep aquifer and notes only that the construction activities *could* have an impact on the shallow water aquifer. The proposed action include compacting 90% of the site, using wick drains to withdraw ground water, and using surface water to wet down construction dust before treating and pumping to the Columbia River. **These actions, taken together, imply substantial change in ground water recharge capacity**. The Draft EIS admits to a minor point on page 4.4-18, noting that dewatering trenches may result in temporary fluctuations in the shallow groundwater aquifer. (page 4.4-16). We believe that the analysis and characterization of ground water impacts is flawed and that the Draft EIS should further be analyzed based on appropriate references.

The Draft EIS provides a detailed description of soil contaminants, including the proposed coal and how coal leachates may contaminate soils. Although the Draft EIS says they will not encounter or disturb existing groundwater contamination in the project area, the Cowlitz Indian Tribe would like to restate that the Applicant plans to compact 2.1 million cubic yards of material into the project area. The Draft EIS also expressly notes on page 4.5-20 that 'water discharged from the wick drains is not anticipated to be contaminated, thus no impact on water quality is anticipated.' We disagree with this assertion and request additional analysis that substantiates the claims made within the Draft EIS.

I. Surface Water and Floodplains characterization is highly flawed within the Draft EIS.

EO 11988, Floodplain Management requires federal agencies to avoid short and long term impacts associated with floodplain occupancy and modification wherever there is a practical alternative. The Draft EIS states that because the proposed project site does not currently function as a floodplain, the project does not decrease Columbia River's floodplain capacity. **The Draft EIS does not provide any discussion about how the site was selected, or how the Applicant attempted to avoid direct or indirect floodplain development**. The Applicant infers repeatedly that the levee system exempts them from considering the floodplain as a floodplain. However, a levee system is necessary because the site is entirely within a historic floodplain. (Pages 4.2-8, 12, 16).

Additionally, the Draft EIS presents the Columbia River Levee as a permanent structure that protects the project area indefinitely from the Columbia River. No discussion is provided about the existing levee condition, the expected life expectancy of the levee, pump, or ditching system, the project's investment into the CDID #1 utility, how climate change and sea level rise may impact the levee, or any additional information that allows reviewers to evaluate the safety of the levee system. We are disappointed with the Draft EIS's characterization and again it shows the bias of this document in favor of the Applicants proposed action.

J. The Draft EIS contains significant Omissions or Mischaracterizes Wetlands Analysis and Mitigation

Wetlands will likely be evaluated in greater detail in the US Army Corps of Engineer's NEPA document. However, the Cowlitz Indian Tribe would like to note the following **omissions** or **inappropriate characterization** within the Draft EIS document:

- The proposed project will impact 24.10 of 86.95 acres of wetlands within the overall study area. The wetlands in the project area are "primarily supported by high groundwater and direct precipitation." (page 4.3-12)
- The Draft EIS inappropriately classes the wetlands' wildlife and hydraulic functions as 'limited' or 'low' because of the existing heavy industrial land use on the site and in adjacent areas. (page 4.3-16)
- The Draft EIS does not address impacts to buffers; identify buffer widths, or areal buffer impacts. (page 4.3-18)
- The Draft EIS does not provide any information about mitigation proposals, instead noting that the mitigation plan 'will be developed.' (page 4.3-18)
- Tidal wetland habitat is the most impacted habitat type in the Lower Columbia River estuary, with up to 71% loss since 1870.
- Mitigation opportunities are rare and both federal and state regulations require no net loss of wetland habitat.
- The Draft EIS does not evaluate wetland loss as required by Washington State Department of Ecology's matrix of avoid, minimize, mitigate. The Applicant provides no discussion about the first two options, and does not provide a path to mitigate other than "mitigation actions may be implemented at one or several locations."
- The Draft EIS does not appropriately provide a negotiated mitigation ratio, or offer to mitigate on-site which is a preferred option to off-site mitigation.
- The Draft EIS inappropriately states that 24.10 acres of direct wetland fill, plus associated buffer impacts, qualifies as "no unavoidable or significant adverse environmental impact." (page 4.3-18)

K. The Proposed Millennium Bulk Terminal Would only Exacerbate Existing Water Quality Concerns for the Columbia River.

The Draft EIS inappropriately narrowly defines the water quality study area as within 300 feet of the project area, into the Columbia River. The Draft EIS does not recognize any impacts to water quality beyond 1 mile downstream of the project area even within the 'indirect' project effects category. However, it is the opinion of the Cowlitz Tribe that the direct effects on water quality should be considered for the Columbia River downstream of the project area and into the Pacific Ocean within the Columbia River plume. (page 4.5-3) The Cowlitz Indian Tribe would like to point out to the Applicant that water flows downstream.

- The Draft EIS section "*Practices that Degrade Water Quality*" would be more accurately titled: "***Everyone Else Already Screwed It Up, So Our Project Is No Big Deal.***"

Although there are serious water quality issues associated with the main-stem Columbia River, this proposal does not adequately display interest in mitigating the effects associated by the project proposal itself. On page 4.5-27, the Draft EIS writes that the Columbia River is listed as impaired for a number of pollutants, and continued discharge of project area pollutants (arsenic, fecal coliform, and dioxin noted as three such) at existing levels would not cause a measureable impact in water quality. We disagree with this assertion. The proposed action would only exacerbate already dilapidated water quality concerns for the main-stem Columbia River.

The Draft EIS does not adequately describe the expected materials, quantities, or methods that would allow a reviewer to evaluate their proposal to protect water quality. As an example, the Draft EIS states that the "*contractor shall **use tarps** or other containment methods when cutting, drilling, or performing over-water construction that might generate a discharge to prevent debris, sawdust, concrete and asphalt rubble, and other materials from entering the water.*" This information infers that a tarp is adequate protection against concrete rubble entering the Columbia River. (page 4.5-17) We disagree with this approach toward safe-guards toward water quality concerns.

Table 2. Coal Dust Total Suspended Solids Emissions Rates at Maximum Throughput

Operation	Annual Average TSP Emissions Rate (tons per year)
Coal pile wind erosion	1.08
Coal pile development and removal	2.62
Ship transfer and conveyors	5.25
Train unloading	0.91
Total	**9.86**

Notes:
TSP = total suspended particulates

Deposition of coal dust at the 'adjacent' rate into the Columbia River assumes full mixing, which is absurd given that only the surface of the Columbia River would receive coal dust. (page 4.5-24) "The estimated maximum coal dust deposition from coal export terminal operations would be below the trigger level for sensitive areas. The highest estimated monthly deposition amounts would be near Mt. Solo Road, as shown in Figure 5." IIIc Page 24. We disagree with this analysis and request substantiation to this claim.

Table 5. Estimated Maximum Annual and Monthly Coal Dust Deposition—Project Area

Location	Maximum Annual Deposition ($g/m^2/year$)	Maximum Monthly Deposition ($g/m^2/month$)	New Zealand Trigger Level for Sensitive Areas ($g/m^2/month$)
Fence line	1.88	0.31	2.0

Notes:
$g/m^2/year$ = grams per square meter per year; $g/m^2/month$ = grams per square meter per month

L. The Draft EIS Vegetation Analysis is Highly Insufficient

The Draft EIS puts little effort into the vegetation section. Information sources and analysis appear to be cursory. Some elements are outright contradictory. As an example, the Applicant has not yet completed an aquatic vegetation study for the project area's Columbia River shoreline, so they cannot quantify aquatic vegetation impact. However, on page 4.7-10, the Applicant writes that the silty river sand has little organic matter, citing a 2014 Grette Associates report. Why did the Action Agencies release this Draft EIS when there is analysis yet to be completed? We request that all analysis which is the basis for this Draft EIS be completed as well as all draft mitigation measures associated with the proposed Coal terminal be completed prior to public review and comment. This would mean pulling this Draft EIS and re-issuing a new Draft EIS prior to finalizing the EIS.

Fourteen noxious weed species have been identified in the project area. Despite a specific list of noxious weeds, the Draft EIS states that the 'Applicant will coordinate with Cowlitz County Noxious Weed Control Board *if noxious weeds are detected.*' (emphasis added). (pages 4.6-15 4.6-26). Again, we believe that the Applicant did a poor job in adequately addressing vegetation concerns.

The Applicant has not conducted a special status plant survey or a rare plant survey although the Applicant plans to 'ensure that threatened, endangered, or rare plants are not affected.' (page 4.6-21)

The Applicant notes that the impact of coal dust on vegetation can be complex and neither the impact mechanism nor a threshold for potential physical or biological effects of coal dust deposition have been studied relative to the climate and native vegetation of the Pacific Northwest. (page 4.6-26). We believe that the intent of an Environmental Impact Study is supposed to study this and other potential impacts and be presented here in this Draft EIS.

The Applicant does not address vegetation, particularly on the shoreline, and its importance for wildlife migration corridors. The project would permanently impact 0.05 acres of riparian vegetation, including black cottonwood and willow.

M. Impact Analysis of Dredge Spoil Deposition is Severely Lacking in the Draft EIS.

In a major point, dredged materials will be placed in approximately 80 to 110 acres in or adjacent to the shipping channel between River Miles (RM) 60 and 66. This impact area is not discussed in further detail in the Draft EIS and indeed has not yet been identified as a specific area. (page 4.7-22). We request additional analysis in this regard.

N. The Draft EIS Inappropriately Downplays the Importance of Fish Resources.

The Fish study area includes the entire river in width near the project and the indirect effects extend downriver to the Pacific Ocean. The Draft EIS appears to infer that floodplain disconnection, altered or eliminated habitat availability, and degraded habitat

forming processes have resulted in a situation from which no further impact to salmon could possibly further interfere. Additionally, the Draft EIS describes the project area shoreline as highly modified by levees and riprap. While the description is accurate, it underplays the very low habitat availability in the Lower Columbia River and the critical role even substandard habitat plays for Endangered Species Act threatened salmon and steelhead stocks. We are disappointed in that, although there have been considerable degradation done in the past regarding habitat and habitat function in the lower Columbia, there is no recognition that there are efforts to improve current conditions. We are disheartened and state that there needs to be a better analysis of what the proposed action would have toward salmon and steelhead recovery efforts.

The Draft EIS utilizes juvenile salmon studies that are several years old. Several recent studies indicate that salmon may reside in Lower Columbia River and estuarine wetlands for weeks, gaining size. Larger salmon smolts have a higher survival rate than smaller smolts and size is tied with estuarine rearing time for ocean type salmonids. The Draft EIS addresses vessel wakes and fish stranding, noting that estuarine beach stranding makes fish 'susceptible' to stress, suffocation, and predation. The Draft EIS does not address mortality, which is the most common outcome of beach stranding. Beach stranding at Barlow Point, just downstream of the project area currently occurs at 53% of observed passages. Subyearling Chinook salmon appear to compose of 80% of the stranded juvenile salmon. (page 4.7-18). This is alarming to us and further justifies our opposition to this proposed development.

The Draft EIS discusses vessel wakes in terms of erosion and fish stranding but omits the impacts of vessel wake impacts on wetland systems throughout the lower Columbia River. These systems are composed of several features, and erosion and wake energy disrupt and erode fringe habitats that are critical to long term recovery of the Columbia River estuary ecosystem and would have an impact toward habitat restoration efforts which this Draft EIS fails to recognize.

It is proposed to have 610 36-inch steel piles to be driven below Ordinary High Water mark. Each pile will take 20 to 120 minutes to drive. The Draft EIS projects approximately 5000 strikes per day. The Draft EIS writes that noise attenuation models predict that injury and behavior impacts could range from 45 feet to 3.92 miles. Sound pressure levels ranging from 150 to 206 decibels could injure fish or change their behavior. (page 4.7-23) The Columbia River is 3000 feet wide in the project area. The projected injury distance is 1.1 miles, which means that during the pile driving period 100% of the migrating salmon species, either juvenile or adult, could be negatively affected, injured, and fitness reduced. (page 4.7-23)

This is a major impact on two entire salmon runs, as the pile driving is proposed to occur over two construction seasons, September 1 through December 31. Five threatened salmon runs and four threatened steelhead runs are present during the pile driving window (See Table 4.7-7). Actively migrating adult salmon are estimated to be in the project area between 20 and 90 minutes. Hearing loss injuries can reduce fitness, which may increase vulnerability to predators or reduced ability to locate prey, communicate or sense their physical environment. This is alarming to us and justifies non-approval of the proposed project.

The Draft EIS concludes their analysis of sound-injury by stating that injury area would occur only 33 feet from pile driving activities. This appears to relate to the single strike potential injury. Salmon migrating through the area would be subjected to cumulative sound injury. This is estimated by the Applicant to be approximately 20 to 90 minutes. Cumulative sound impacts increases the injury range to 1775 feet with behavioral impacts to 3.92 miles. The Draft EIS notes that adult salmon migrants move through the main-stem Columbia River relatively quickly. A sound attenuation device is proposed, but no backup information on this technology is provided, either in the main document or the technical addendum (page 4.7-26). We request additional detail in this regard.

The Applicant proposes a trestle that is 8 feet above Ordinary High Water Mark and 24 feet wide. 4.86 acres of aquatic habitat would be shaded by the proposed project's trestle and docks, with an additional 4.7 acres of habitat shaded by docking ships. Although elevating the deck reduces the amount of aquatic shading, it still leaves a substantial shaded band. Juvenile fish generally avoid shaded areas rather than crossing them. The trestle shading may cause fish to migrate around the trestle, dock, and any ships at dock. This would place migration corridors into the deep water zone for fish that may otherwise prefer shallow or moderate depth waters during migration. Low levels of underwater light are favorable for predatory fish. The stated 0.8% (9.56 acres) of the study area would be shaded, which is noted should establish an assumption that the predator-prey relationship would change and an increase in predation would be likely (page 4.7-27).

The Draft EIS state that its voluntary measures and mitigation measures will reduce impacts on fish, leaving no unavoidable or significant adverse impacts. It is worth noting that Bonneville Power Administration has been actively working to develop and implement tidal and estuary salmon habitat projects for several years. Limited habitat project availability has been a continual problem despite a large network of project sponsors. The Cowlitz Indian Tribe objects to the Applicant's impact statement, noting that adult and juvenile fish will not be able to avoid impacts or injury and will likely have increase mortality and/or reduced fitness (page 4.7-37)

Additional fish-related comments in brief:

- Eulachon are documented in general project area in both the egg and larval stage. The eulachon migration begins during the proposed two year dredging window (page 4.7-15). Nothing is indicated in regards to appropriately solidifying mitigation for potential impacts.
- The Draft EIS does not address fish screening for hydraulic dredging (page 4.7-20).
- The Applicant fails to account for the direct project impacts to the unidentified 80 to 110 acre dredge spoil deposition area (page 4.7-22)
- Vessel noise may cause potential behavioral disturbance for fish and may cause avoidance.

O. The Draft EIS Analysis of Wildlife and Wildlife Habitat Impacts is Severely Lacking

The Draft EIS identifies wildlife displacement and mortality associated with clearing and construction activities but does not appropriately identify specific species displacement or mortality (page 4.8-16). Twenty-five percent of the permanent terrestrial habitat loss occurs in relatively undisturbed areas (page 4.8-17) The Draft EIS minimizes species mortality by stating that 'species reproduce rapidly and any losses due to mortality would not be expected to affect the viability or fitness of the species at the population scale.' We disagree with this assertion and we believe the proposed action exacerbates current concerns associated with an already depressed state of affairs of wildlife and associated habitat conditions in the Lower Columbia Region. The Draft EIS does not provide further information on if this applies to rabbits, frogs, or endangered Columbian white-tailed deer (page 4.8-17).

Federally Endangered Columbian white tailed deer have been observed on the project site. The project proposal does not address habitat fragmentation or habitat corridor concerns either in the riparian or floodplain areas of the project impact area (page 4.8-10).

Page 4.8-2; The Draft EIS justifies railroads as beneficial for wildlife as corridors for feeding and migration, using the same criteria that contribute to the frequency of wildlife strikes along railroads (page 4.8-26). **This is ridiculous** and we request a do-over in analyzing wildlife resources and subsequent impact concerns.

We believe this proposed development threatens our sacred resource of federally endangered Columbian White-tailed Deer -- as well as many other culturally important resources we hold dear. The Cowlitz Indian Tribe is engaged in planning and implementing several Columbian White-tailed deer restoration projects within the Lower Columbia River. We have partnered with Federal, State, and local entities to implement projects to improve the recovery outlook for this federally-listed Endangered Species and other culturally significant resources.

We were alarmed when we read in the Draft EIS that the proposed Coal terminal would substantially increase shipping traffic in the Columbia River. The significant recovery efforts we have made will be deleteriously impact, including potential for waste of the dollars spent on recovery. This is alarming to us. We have planned additional restoration actions for Columbian White-tailed deer. We would a better assessment of the project's impacts on the federally-listed Endangered Columbian white-tailed deer. The Draft EIS fails to capture Wildlife recovery efforts in the region and what impacts the proposed action would have upon damaging past and future recovery efforts.

Extreme habitat fragmentation is a major contributing factor to Columbian White-tailed deer's historic decline. Habitat fragmentation continues to threaten recovery. Columbian white-tailed deer are cut off of their historic migratory corridor all along the Lower Columbia River lowlands. Industrial developments along their migratory corridor reduce their ability to move freely upstream and downstream. Migration is important for their recovery and sustainability of genetically viable populations. The proposed Coal terminal

is located between two populations, located at Diblee Point and Willow Grove. The proposed coal terminal would further exacerbate an already identified problem undermining their health and welfare.

Columbian white-tailed deer are threatened by this proposal in three ways. First, Columbian white-tailed deer are good swimmers and frequently cross the Columbia River to reach adjacent habitat. The Applicant's proposed order-of-magnitude of increased shipping presents likelihood for significant mortality. Impacts during migratory movements crossing the Columbia River include ship strikes and drowning.

The Draft EIS doesn't address threats to Columbian white-tailed deer through increased vessel traffic in the Columbia River. We believe that addressing this element is well justified. It is alarming to contemplate additional migratory patterns deleteriously impacted by increased shipping traffic.

Second, Columbia white-tailed deer were observed on the project site. The Draft EIS does not discuss the project site's features as existing habitat or as a migration corridor. It does not discuss lost habitat impacts. Mitigation is not addressed in any way.

Third, the Applicant does not discuss or evaluate Columbia white-tailed deer terrestrial or aquatic migration corridors. Our environment is already in a depressed State. Existing developments continue to have deleterious impacts on our environment. Why we would consider any new major developments of this nature while still struggling from past problems? The Draft EIS only recognizes the already depressed environment as a rationalization about why the project's impacts are unimportant. We don't think there is any mitigation that could effectively offset the damages to existing resources. Taken along with the Applicant's fuzzy 'trust us' approach to mitigation, we believe this further justifies our opposition for this proposed development.

P. Cultural Resources Government-to-Government Consultation is needed

The issue of historic and cultural resources is a sensitive issue for the Cowlitz Indian Tribe. In general, we believe that the analysis within the Draft EIS is flawed. The proposed project site lies within the exclusive use and occupancy area of the Cowlitz People as defined through the Federal Government. Cultural concerns are protected under certain laws from public disclosure.

We request follow up government-to-government consultation to clarify our concerns associated with the Draft EIS and proposed action on cultural resources. It is pointed out however that the Draft EIS speaks of developing a Memorandum of Agreement (MOA) with various entities and tribes. To date, we have not been approached at all in regards to any MOA. The Cowlitz Tribe has no plans to entertain or negotiate such an MOA in regards to the Proposed Action.

Q. Conclusion

The Millennium Bulk Terminals Draft SEPA Environmental Impact Statement (EIS) describes a major project as a minor impact. Throughout the document, the Applicant

describes project actions, minimizes project actions, conflates impact relationships, and states the project has minimal to no impact. Throughout the Draft EIS, Millennium Bulk Terminals describes its 'no action alternative' as 'an increase in bulk terminal actions.' This is misleading and doesn't recognize the efforts and actions toward environmental recovery.

The Draft EIS also fails to recognize pending re-negotiation of the Columbia River Treaty between the US and Canada. The Proposed Action is likely to have considerable impact toward negotiation efforts. We request an analysis of the potential impacts that the Proposed Coal terminal would have on this Columbia River water management Treaty as it pertains to ability of increasing river flows for a better ecosystem function of the Columbia River. Also, if a future amended Treaty that increases water flows of the Columbia River happens, what impact would that potentially have on the Proposed Action?

The project is expected to take six years to construct. Dredging operations will be completed in one season, while pile driving will take two in-water work windows. Dredging will be ongoing, up to once per year and impacting 48 acres per dredging period, resulting in up to 500,000 cubic yards of per dredging operation. In water construction will include 610 piles below ordinary high water mark and over five acres of docks and trestles. Over 155,000 tons per day could be shipped out of the terminal.

Despite these huge numbers, the vast construction area, and the physical impacts associated with the rail, shipping, and construction activities, the Draft EIS claims that such things as fuel spills or coal spills would be "relatively small" and "minor." We disagree with these assumed statement made in the Draft EIS. The Draft EIS mingles and conflates data. There are several major ways Millennium Bulk defers project impact responsibility throughout the Draft EIS document. We are providing comment on several major issues which should be addressed before the project is evaluated at any other level and there should be a re-release of another Draft EIS for the public to review and comment on.

Throughout the Draft EIS document, the Applicant has some broad errors and/or omissions. These errors and omissions are significant because the Applicant presents the data as if it were scientific and professionally suitable information. This is not the case. To start with, the Applicant presents only two alternatives; the proposed project and the "No-Action Alternative." The "No-Action" alternative is actually an undefined "expansion" of existing activities. **The Draft EIS does not actually present a 'no action' alternative**.

Secondly, the Draft EIS repeatedly glosses over the risk of fuel spills, as 'unlikely to occur' and 'be relatively small (typically less than 50 gallons).' The Draft EIS repeatedly states that any coal spills associated with the coal export terminal 'would be relatively small' and 'impact minor' because of the contained nature and features of the terminal. The Draft EIS does not provide a rationale for its exclusion of medium, large, or catastrophic coal spills and their short and long term recovery trajectory.

While the Draft EIS's statements in some cases may be statistically accurate, it does not negate the Applicant or the Action Agencies responsibility to evaluate all possible scenarios and provide the public with an accurate description of possible impacts. The project scope is enormous and the potential for major damage is what we believe as inevitably going to happen. Playing the risk off as 'relatively small' is disingenuous and dishonest.

Just to reiterate the magnitude of the project: Eight trains with 125 cars, 122 tons of coal per car, would arrive each day. Coal would be placed on conveyor belts to move it around the site and onto ships. 4900 of 16100 lineal feet of the conveyor belts are proposed to be enclosed. 70 ships would come and go from the docking facilities each month (840 annually). They would on average hold 65,000 tons of coal. They would have to be loaded and refueled (which would occur offsite). We have a huge concern as to the significant jump or increase in shipping traffic in the Columbia River and what it entails in regards to environmental resource conservation and restoration efforts.

During construction, which is projected to last six years, the Applicant proposes using a 'skiff and a net' to retrieve any floating debris generated during construction. (4.5-21) Construction related energy uses is estimated at 500 gallons of gasoline, 50 gallons of oil, and 20,000 gallons of diesel fuel per year. Operational related energy use is estimated at 100 gallons of gasoline, 75 gallons of oil, and 865 gallons of diesel. The facility is expected to draw 4% of the total electricity supply available to the Cowlitz PUD service area.

We totally disagree with this sort of development along a fragile environmental system of which numerous entities are currently and foreseeably are working hard to recover. This development is contradictory to the State of Washington's goals and commitments toward global climate change reduction and local goals of recovery and sustainability within both the economic and environmental arena. We believe it is an ethical responsibility for the Action Agencies to deny any approval for the proposed Millennium Bulk Terminal – Longview; as justified within this comment letter of the Draft EIS associated with this proposal.

Please contact our Natural Resources Department Director, Taylor Aalvik or our Natural Resources Program Assistant, Tiffini Alexander for follow up communications and scheduling. Taylor can be reached at: 360-577-8140, or taylor.a@cowlitz.org, and Tiffini can be reached at: 360-577-8140, or talexander@cowlitz.org,

Sincerely Yours,

William Iyall, P.E
Chairman of the Cowlitz Indian Tribe

Cc: WA Governor Jay Insleee
Maia Bellen, Director of WA Dept. of Ecology
Cowlitz County Commissioners
Craig A. Bill, Executive Director, Governor's Office of Indian Affairs

Submission Number: ***TRANS-LV-M1-00017***

Received: 5/24/2016 12:00:00 AM
Commenter: Mike Iyall
Organization: Cowlitz Indian Tribe
State: Washington

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments

Submission Text

EVENT HOST: And thank you. Calling Mike Iyall, Cowlitz Indian Tribe Council Member. MR. IYALL: My name is Mike Iyall. I'm vice chair of the Tribal Council of Cowlitz Indian Tribe. I'm here to speak about our concerns about the coal terminal. Our tribe and many other tribes have depended on smelt and salmon for literally our survival over the years. We are working hard, diligently, to do restoration efforts. We feel that the EIS does not adequately address protections for the restoration work that we're doing on the river. We've been involved with millions of dollars trying to build a salmon recovery. A critical point is the area of potential effect is the length of the journey of the vessel on the river. It's wider than the port. That vessel is at risk any time. If it fails, if it's -- if there's a spill of oil, coal, or just traffic accident on a vessel, then the area of potential effect is where the ship is. Thank you.

Submission Number: ***TRANS-LV-M2-00021***

Received: 5/24/2016 12:00:00 AM
Commenter: Celine Cloguet
Organization: Cowlitz Indian Tribe, Council
State: Washington

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments
Submission Text
My name is Celine Cloguet. I am an elected Cowlitz Indian Tribe council member. I have come here to express concern on behalf of our tribe about the proposed Millennium Bulk Terminal in Longview, Washington.

We believe this proposal -- this proposed development threatens our sacred resource of federally endangered Columbia Whitetail Deer. The Cowitz Indian Tribe has partnered with federal, state, and local government agencies to implement projects to attempt to recover the federally endangering species.

We were alarmed when we read that the proposed coal terminal would increase shipping traffic in the Columbia River over 200 percent. We would like a complete assessment of the project's impacts on the federally listed endangered Columbia River Whitetail Deer.

Columbia Whitetail Deer are threatened by this proposal in three ways. First, Columbia Whitetail Deer are good swimmers and frequently migrate across the Columbia River to reach adjacent habitat. The applicants proposed ship traffic will likely result in significant mortality including ship strikes and drownings. The Draft EIS doesn't address the threat of the Columbia Whitetail Deer through increased Columbia River vessel traffic.

Second, Columbia Whitetail Deer were observed on the project site. The Draft EIS does not discuss the project site features of the existing habitat or as a terrestrial migration corridor. It does not discuss habitat loss, impacts, or mitigation.

Third, applicant does not discuss or evaluate Columbia Whitetail Deer terrestrial or aquatic migration corridors. Extreme habitat fragmentation is a major contributing factor to Columbia Whitetail Deer's historic decline.

Migration is important for the recovery and sustainability of genetically viable populations. The proposed coal terminal is located between two populations -- we don't support the coal.

Thank you.

Submission Number: ***TRANS-LV-M1-00044***

Received: 5/24/2016 12:00:00 AM
Commenter: Jerry Iyall
Organization: Cowlitz Tribe, Councilman
State: Washington

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments

Submission Text

IYALL: Thank you. My name is Jerry Iyall, I'm an elected council member for the Cowlitz Indian Tribe. I'm here today to express concern on behalf of our tribe about the proposed Millennium Bulk Terminal in Longview. The project represents a significant development within our home lands. The Cowlitz Indian Tribe is troubled by the project's applicant's decision to limit the comment period to 45 days. The required comment provides little time to write meaningful comments. We've learned that an action agency had asked the project applicant to extend the comment period. Millennium Bulk Terminals would not agree to an extended comment period. We're disheartened and question the good faith of the applicant's proposal. It's disappointing that an action agency had to request an extension, it's disappointing that the applicant refused. This shows us that Millennium is not genuinely interested in the public's comments. Instead Millennium is going through the motions towards their own predetermined destination. On initial look it is obvious to us that the Draft EIS is biased towards the applicant. We believe the applicant made a concerted effort to downplay significant impacts. The Draft EIS describes major actions resulting in only minor environmental impacts. We disagree with this assertion and believe that the applicant's indent is to try and sway the action agencies in their favor. The applicant also appears to be working to minimize mitigation requirements. The applicant's proposed mitigation measures are severe and lacking or nonexistent. How are we to decide if this is good for our community when we can't review what actions will offset the project's significant impacts. The Cowlitz Tribe does not believe that this proposal is good for our environment or the health and civility of the communities of lower Columbia River. Thank you to the action agencies for allowing us to testify today. Thank you.

Submission Number: ***TRANS-PASCO-M1-00015***

Received: 6/2/2016 12:00:00 AM
Commenter: Dan Wilson
Organization: Crow Nation, Vice Chairman
State: Montana

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments

Submission Text

Good afternoon. My name is Dan Wilson, and I'm from Crow Nation, Montana. And I am in total support of this project. As vice chairman of Crow Nation, I'm here to talk about the importance of coal to the economy and my people. My reservation consists of 2.2 million acres in southeastern Montana, and I have roughly 14,000 world members. Coal is the most important natural resource of my people. And being able to develop this is critical to the tribe's economic development and long-term efforts to become self-sufficient. I believe the terminal will also bring economic benefits for the state of Washington and the local economy here. Coal production benefits my tribe three fold. Two-thirds of our (phonetic) federal income is generated from the coal sales and provides good paying jobs for our tribal members. I personally worked over a decade and raised a family working as a coal miner. I put my wife through school. I put my children through school, and I did very well there. Every quarter we get an -- every tribal member he have receives a dividend paid to all the tribe from coal sales.

Coal also benefits the region as it will here by tax dollars and coal miners spending their paychecks to boost local economies. The fact is distinction needs to be made when discussing coal and whose coal it is. Indian coal is distinct because Indian coal provides for tribal nations as well as the surrounding counties and the state's economies.

Furthermore, because the coal is mined near or on the reservation or community the reclamation that occurs is more than impressive. When discussing the impacts on the use of coal, it is more apparent when it comes to tribal nations.

Thank you for allowing me to advocate on behalf of my people. And we are in 100 percent support of the Millennium Bulk Terminals.

Thank you.

Submission Number: ***MBTL-SEPA-DEIS-0003424***

Received: 6/14/2016 2:57:28 AM
Commenter: Tom Ehrlichman
Organization: Swinomish Indian Tribal Community
State: Washington

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments

Submission Text

As Special Counsel to the Office of Tribal Attorney for the Swinomish Indian Tribal Community, we submit this card on behalf of Swinomish to create a record of support for the Columbia River Intertribal Fish Commission and its member tribes as they comment upon the Draft EIS for the Millennium Bulk Terminals. Swinomish supports and incorporates by reference CRITFC's comments concerning the impacts of this proposal, especially with respect to impacts to treaty resources. In the near future, Swinomish may follow up with a letter to Director Bellon requesting government-to-government consultation with respect to the impacts of this project on Swinomish treaty fishing rights in the Salish Sea. A separate letter submitted by our firm on our own behalf details some of the impacts to the Salish Sea from the Millennium project. Thank you. Tom Ehrlichman Dykes Ehrlichman PS Special Counsel to the Swinomish Indian Tribal Community

RECEIVED
JUN 10 2016

UCUT
UPPER COLUMBIA UNITED TRIBES

25 W. Main, Suite 434
Spokane, WA 99201
t 509.838.1057
f 509.209.2421
ucut.org

Washington Department of Ecology
c/o Sally Toteff
300 Desmond Drive SE
Lacey, WA 98503

June 10, 2016

Cowlitz County Building and Planning
c/o Elaine Placido
207 4th Avenue North
Kelso, WA 98626

RE: Upper Columbia United Tribes Comments on the Washington State Environmental Policy Act Draft Environmental Impact Statement for the Proposed Millennium Bulk Terminals – Longview Project

Dear Collective "Parties":

The Upper Columbia United Tribes (UCUT) – comprised of the Coeur d'Alene Tribe, the Confederated Tribes of the Colville Reservation, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, and the Spokane Tribe of Indians – unify in a cost-effective and efficient manner on issues of common concern: to protect, preserve, and enhance Treaty and Executive Order tribal rights, sovereignty, culture, fish, water, wildlife, habitat, and other interests and issues for the benefit of all people. The UCUT associate with nearly 20,000 enrolled tribal members with management authority and responsibility of approximately 2 million acres of reservation land, over 14 million acres of aboriginal territories, over 500 miles of navigable waterways, more than 40 interior lakes, and 30 dams and reservoirs (Map Attached).

The UCUT is opposed to the proposed Millennium Bulk Terminals (MBT) Longview, LLC's coal export terminal at Longview, in Cowlitz County, Washington. The UCUT supports the no-action alternative in the DEIS. The UCUT is opposed to all of the "action" alternatives, including the proposed action. The UCUT contends that the DEIS is inadequate and does not address UCUT tribal rights.

The UCUT maintains that the proposed coal export terminal in Longview, Washington would be a violation of the tribal and public trust and constitutes the unwise stewardship of common resources. The proposal to dramatically increase the number of coal trains (currently 2-4 trains per day to more than 16 trains) running through the UCUT aboriginal territory will lead to damages from coal dust, diesel particulates, 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 UCUT and the people of the inland Northwest.

The UCUT is at the forefront of restoring ecosystem-based function throughout the Columbia River Basin, and reconciling past environmental injustices. These actions include restoring fish passage to all historic habitat, and the reintroduction of anadromous fish into habitats blocked by man over the past

150 years. The UCUT oppose the MBT because it thwarts the timely need to reconcile historic environmental and social injustices of the past. The UCUT 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 humankind's ability to restore, replace, or rehabilitate.

The UCUT scoping comments on this proposal, dated November 14, 2013, stated our support of the Affiliated Tribes of Northwest Indians Resolution #12-53 and Resolution #13-47 (Attached) for a comprehensive Programmatic EIS (PEIS) pursuant to the National Environmental Policy Act (NEPA) that deals with the cumulative effects and impacts throughout the entire Northwest and internationally, including direct and indirect impacts on tribal resources, tribal rights, and interests. The Longview DEIS does not adequately respond to the UCUT concerns, and as such does not address broader regional, programmatic, comprehensive issues. The UCUT is concerned that the scope of the study area is limited 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 UCUT. The UCUT concerns were not adequately addressed or analyzed in the DEIS, even at the local level.

The fact sheet on "Social and Community Resources" on the project says that "A separate report, a Health Impact Assessment (HIA), is being prepared for the proposed project. This report will use the analysis in the environmental study to consider impacts on human health." Human health impacts are of deep concern to the UCUT. Human health issues including heart disease, diabetes, and inordinately high rates of premature death are rampant among UCUT members. The ecosystem-based function upon which the UCUT membership rely for spiritual and physical sustenance is further jeopardized by the proposed MBT.

The DEIS is inadequate by not including the impacts to the UCUT. The UCUT tribal rights are jeopardized by this failure. The DEIS fails to consider anadromous fish migrations, which will be of even more importance as we are examining the feasibility of fish passage into blocked habitat in the upper Columbia River. 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. Climate change 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 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.

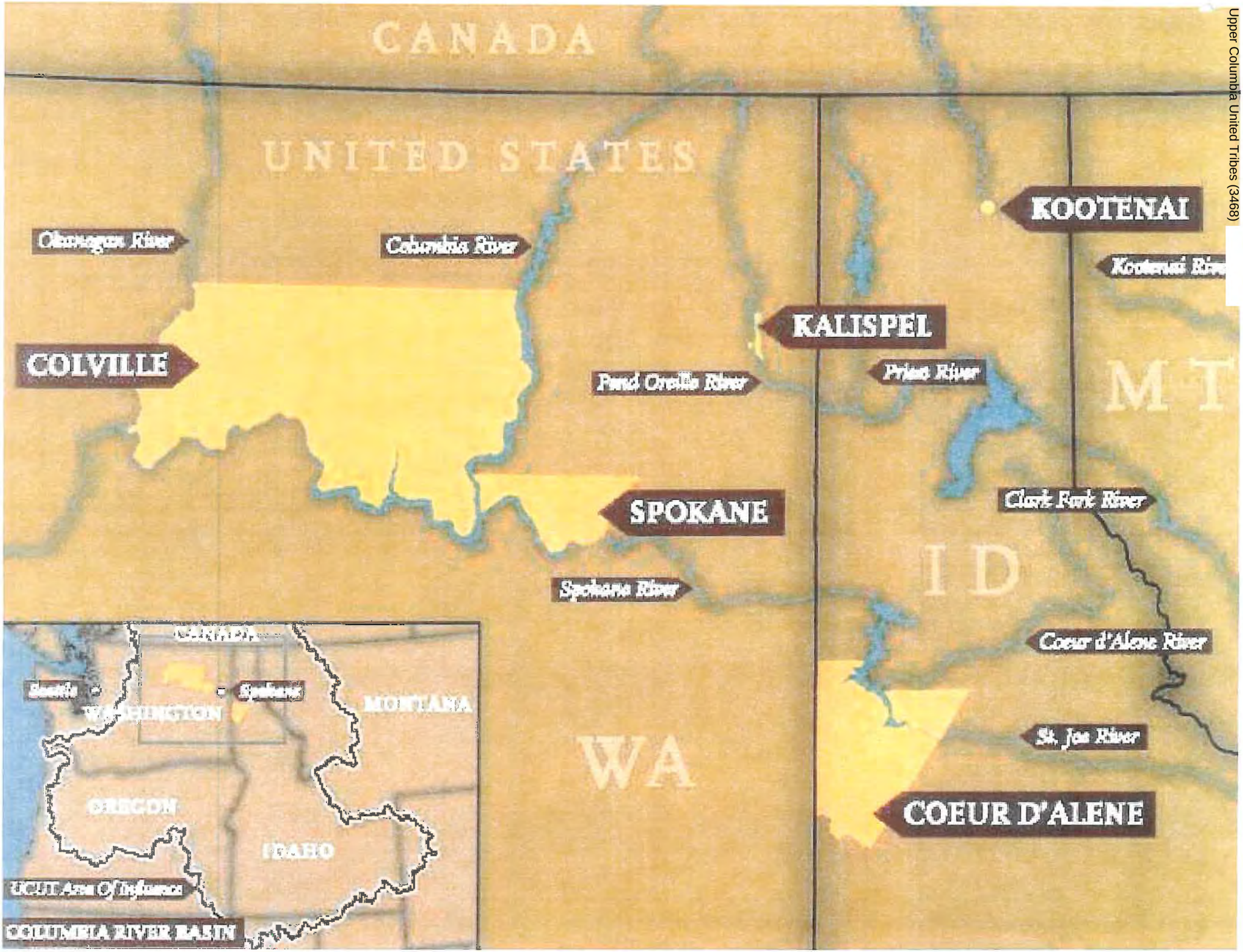
If you would like additional information or to discuss this matter further, please contact me at (509) 954-7631; or by emailing me at dr@ucut-nsn.org.

Sincerely,

D.R. Michel
Executive Director

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

U.S. Army Corps of Engineers
c/o Danette Guy
2108 Grand Blvd.
Vancouver, WA 98661



Upper Columbia United Tribes (3468)

2013 Mid-Year Convention
Airway Heights, Washington

RESOLUTION #13 - 47

"OPPOSE THE PROPOSALS FOR THE TRANSPORTATION AND EXPORT OF FOSSIL FUELS IN THE PACIFIC NORTHWEST"

PREAMBLE

We the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and Constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, since time immemorial, our economy, culture, religion and way of life has centered around our fishing, hunting and gathering resources, and the lands and waters on which they depend, and we have been, and remain, careful and conscientious stewards over them to ensure their continued health and well-being; and

Upper Columbia United Tribes (3468)

WHEREAS, the tribes of ATNI depend on the natural resources of this region to sustain our way of life, rights to fish, hunt and gather, our economies, human health and fulfill our sacred obligation to protect our First Foods and our most precious natural resource, water; and

WHEREAS, the tribes of ATNI have previously adopted Resolution No. 12-53, in September 2012, recognizing the potential impacts of coal export terminal proposals that have come to the Northwest and the action directed to the Army Corp of Engineers to conduct a full regional Environmental Impact Statement (EIS) to address the significant cumulative impacts of these proposals; and

WHEREAS, the Northwest is facing the advancement of more fossil fuel exports, including numerous oil-rail proposals in Oregon and Washington, which would bring 500,000 barrels of oil a day via rail line to and across Northwest waterways as well as expansion of pipeline capacity from Alberta to British Columbia and Washington State; and

WHEREAS, based on review of proposals at these sites these past twelve months, the tribes of ATNI believe these energy transportation and export proposals will diminish our salmon habitat, our fishing, hunting and gathering rights, our treaty, indigenous, and inherent rights and resources, our life way, and will destroy sacred places of the Pacific Northwest tribes; and

WHEREAS, the tribes of ATNI respect and honor our Sacred Places just as we do our natural resources, including the Lummi Sacred Site known as *Xwe'Chi'eXen* where our ancestors are at rest, and the sacred traditional reef net sites at Cherry Point, Washington; and therefore call upon agencies to fulfill their statutory and legal responsibility to fully comply with Section 106 of the Historic Preservation Act; and

WHEREAS, the Northwest Tribes' ancestral industry of fisheries relies on sustainable resources that will face detrimental impacts from the transportation and export of nonrenewable fossil fuel resources; now

THEREFORE BE IT RESOLVED, that ATNI is in opposition of the transportation and export of fossil energy in the Northwest based on infringement and endangerment upon indigenous, inherent, and treaty-protected resources, impacts on human health, economies, sacred places and our traditional way of life; and

BE IT FURTHER RESOLVED, the tribes of ATNI support a strategy to document the impacts of these fossil fuel energy transport and export proposals, which includes baseline studies of science from a local approach, impacts to the economies, as well as legal and policy initiatives.

Upper Columbia United Tribes (3468)

CERTIFICATION

The foregoing resolution was adopted at the 2013 Mid-Year Convention of the Affiliated Tribes of Northwest Indians, held at the Northern Quest Resort and Casino, Airway Heights, Washington on May 13-May 16, 2013 with a quorum present.

Fawn Sharp, President

Norma Jean Louie, Secretary

2012 Annual Convention
Pendleton, Oregon

RESOLUTION #12 - 53

"CALLING FOR FULL, TRANSPARENT ENVIRONMENTAL REVIEW OF THE PORT OF MORROW PROPOSAL, CONSULTATIONS, AND REGIONAL REVIEW OF ALL SIX NW COAL EXPORT PROPOSALS"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, since time immemorial, our economy, culture, religion and way of life have centered around our fishing, hunting and gathering resources, and the lands and waters on which they depend, and we have been, and remain, careful and conscientious stewards over them to ensure their continued health and well-being; and

Upper Columbia United Tribes (3468)

WHEREAS, the tribes of ATNI are sovereign and our people depend on the natural resources of this region; and

WHEREAS, the tribes of ATNI have an obligation to protect our First Foods and our most precious resource, water; and

WHEREAS, there are sweeping proposals for Powder River Basin coal to be shipped by rail and/or barge to West Coast ports: Cherry Point, Washington; Longview, Washington; Grays Harbor, Washington; Port of Morrow, Oregon; St. Helens, Oregon; and Coos Bay, Oregon; and

WHEREAS, the coal will then be shipped through our waters to Asia where it will then be burned in coal-fired power plants, emitting mercury and other toxins that return through the atmosphere to our homes; and

WHEREAS, the estimated coal export volumes from the proposed West Coast ports are unprecedented at over 150 million tons per year; and

WHEREAS, Northwest tribes have strong concerns about the impact of these proposals on tribal rights and resources, including but not limited to the following:

- Intrusions into traditional fishing, hunting and gathering sites;
- Destruction of our cultural and religious areas;
- Degradation of human health, related to fugitive coal dust and mercury poisoning;
- Interference with tribal business enterprises and opportunities, causing a loss of jobs, preventing jobs growth, and reducing tribal income, related to increased coal-train traffic;
- Declining water quality and loss of salmon and lamprey habitat from barging and shipping operations;
- Increases in emergency response times, interference with school functions, and fiscal impacts on other public services due to delays at train crossings;
- Filling of shorelines, wetlands, and streams, during expansion or reconstruction of rail lines along the Columbia River, the Salish Sea, and their tributaries;
- Climate change, sea level rise, and ocean acidification from coal-fired power plants; and
- Overall degradation of our natural resources and culture

; and

WHEREAS, Northwest tribes require transparency and ongoing consultation to ensure that the permitting and Environmental Impact Statements (EIS) for all of the proposed coal ports are consistent, in light of the fact that all of our waterways are connected to one another; and

WHEREAS, that ATNI hereby declares that a mere Environmental Assessment for the Port of Morrow facility, instead of an EIS, is completely unacceptable, based on a number of

Upper Columbia United Tribes (3468)

deficiencies, including but not limited to the lack of Government-to-Government consultation required with all affected tribes in the region; now

THEREFORE BE IT RESOLVED, that ATNI hereby calls upon the White House Council on Environmental Quality to require immediate preparation of a comprehensive Environmental Impact Statement for the Port of Morrow proposed coal export facility; and

BE IT FURTHER RESOLVED, that ATNI hereby calls upon the White House Council on Environmental Quality to direct the U.S. Army Corps of Engineers (USACE) to develop a comprehensive EIS at the USACE Northwestern Division level, on the cumulative effects of all six currently proposed coal export proposals, and any future proposals, together, including analysis of the cumulative impacts of the proposals throughout the entire region and internationally, including their direct and indirect impacts on tribal cultural resources, treaty rights and interests (see attached letter); and

BE IT FURTHER RESOLVED, that ATNI hereby concludes that a separate EIS is also necessary for each of the coal export facilities individually; and

BE IT FINALLY RESOLVED, that ATNI hereby insists that the White House Council on Environmental Quality mandate all federal and state agencies to commence immediate Government-to-Government consultations with all tribes in the region, as our First Foods and resources, treaty rights and human health are directly impacted by the coal industry in the Northwest.

CERTIFICATION

The foregoing resolution was adopted at the 2012 Annual Convention of the Affiliated Tribes of Northwest Indians, held at Wildhorse Resort and Casino, Pendleton, Oregon on September 24 – 27, 2012 with a quorum present.

Fawn Sharp, President

Norma Jean Louie, Secretary

Submission Number: ***TRANS-PASCO-M1-00053***

Received: 6/2/2016 12:00:00 AM
Commenter: Chief Cathy Sampson Cruisey
Organization: Walla Walla Tribe
State:

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments
Submission Text
CHIEF SAMPSON: (Speaking Native American) My father, Peo-Peo-Mox-Mox, headman of the Walla Walla Tribe. In our language, I come from a very strong band of people of the Cayuse, Umatilla, and the Walla Walla peoples that have been on these lands over 10,000 years.

And I'm here to protect the ones that are still unborn, the ones that are here now, my grandchildren, my great grandchildren, the same thing our leaders did seven generations ago when they signed treaties to this country, those treaties which should be honored in 1855. Instead, they were broken.

MS. SAMPSON: My name is Cathy Sampson Cruisey (phonetic). I'm soon to be 62 years old. My grandmother, mother and great grandmother, we have come from a hunter/gatherer culture. We bring you information today so everyone in this room understands we have a culture memory.

That culture memory resides in this part of the world. This part of the world is a sacred place to us. Everything that happens affects everyone around us. I ask for people in blue to keep your hearts open and listen. I ask for the people in red to respect their ways as well.

We know that this corporate greed must stop, even though the newly named Lighthouse Resources also under the name Ambre Energy.

Thank you.

EVENT HOST: Thank you. We can accept the written comments. Thank you, Chief Sampson. Next speaker Peter Cornelison, Hood River City Council.

Submission Number: ***TRANS-PASCO-M2-00023***

Received: 6/2/2016 12:00:00 AM
Commenter: Matthew Tomaskin
Organization: Yakama Nation
State: Washington

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments

Submission Text

(Speaking Native language.) My name is Matthew Tomaskin. I'm going to take as much time as is necessary to deliver my speech. You're giving me two minutes, but I'm going to go beyond if I have to because what you're referring to when you're talking about the coal trains is something that affects the inherent lands that we as the Yakama Nation have received.

I'm here on behalf of the Yakama Nation. My official job title is Legislative Liaison for the Yakama Nation. So, on behalf of the Yakama Nation, I must oppose this proposed terminal.

I'm not here -- this seems like I'm in a gang. There's red and blue. I'm not here for red and blue. I'm here to speak to those who can't speak. I'm here for the fish, I'm here for the game, I'm here for the salmon, I'm here for even the suckers, the frogs, the crickets, what have you, that are here.

I'm three quarters Yakama and one quarter (inaudible). My family successfully stopped this proposal in Longview, Cherry Point. So moving forward with this is detrimental, and I'm going to recite an article to you.

Article 6 of the United States Constitution, it clearly reflects that treaties within the Nation are the supreme law of the land. You are infringing upon the Yakama Nation's treaty. You are bringing something that is foreign to this land, you are carrying it through.

There is no mitigation whatsoever. Millions, billions of dollars that you can put into a place won't replace the salmon that may be lost, the birds, the eagles, the fish, the game, what have you, that may be lost because of this proposed transportation through --

EVENT HOST: Your time is up.

Where you are today, you're on the ancestral homelands of the Yakama Nation. There's a mountain behind me --

EVENT HOST: You have to wrap up, sir.

-- that is there. So, when I look at this, I have to speak and say no on behalf of the Yakama Nation because you are infringing upon the treaty rights of the Yakama Nation.

They turned off my mic.

So, when I look at this Board, I don't see a person that looks like me. How can you make decisions without having somebody that is a true representation of the tribe? How can you move forward without consulting the Yakama Nation? Have you moved forward and approached the Yakama Nation Tribal Council to say what do you think of this proposal? No, I haven't seen you. Because, if you have, you would have gone through me. I work at that position to make sure that we get consultation out of the way.

Executive Order 13175 dictates that your department should work with us, consult with us, to make sure all of our ducks are in a row.

EVENT HOST: We're going to have to enforce the ground rules and take a recess. I would like to call for a ten-minute recess. Thank you, sir.

Please, we appreciate all comments and appreciate your compliance with the ground rules. We are being asked for a ten-minute recess and, in ten minutes, if I could have a time check. We'll resume the hearing at 6:13. Thank you.

Submission Number: ***TRANS-PASCO-Q3-00005***

Received: 6/2/2016 12:00:00 AM
Commenter: Matthew Tomaskin
Organization: Yakama Nation
State:

Agency: Cowlitz County and the Washington Department of Ecology
Initiative: Millennium Bulk-Terminals Longview SEPA DEIS
Attachments: No Attachments
Submission Text
I'm Matthew Tomaskin from Yakama Nation. So, I'm here today on behalf the Yakama Nation because this proposed terminal and proposed transportation through the Columbia River, even where we sit today we're on ancestral lands of the Yakama Nation. So this proposed terminal is going to infringe upon our treaty rights.

We have rights to harvest up to 50 percent of the salmon on the Columbia River. And that's from a case that was brought on by the U.S. Government by the Yakama Nation. So with these coal trains, it's going to create a lot of dust.

I have friends, relatives, families that live along the river. And they're already reporting that these trains are leaving -- you know, you can go to work or go inside your house and you come out and you can wipe your hand and there's visible dust you can see on their hands.

And it's detrimental because the cycle of the salmon is very unique, you know. There's some hatcheries that we have. We raise them and they get about three inches long and then they are released and go out to the ocean for three, four, five years and then they return.

And those that return to the wild spawn naturally. And then after about three months, the little guys -- again, if they spawn wild go out into the ocean and start the cycle over again. But what happens with this dust, is it becomes -- it's a pollutant in the water. And it affects not only the adults, but it attacks the salmonids that go out. Because, you know, it's going to affect them.

And it's going to do some very -- irreparable harm. So we're already dealing with these hydroelectric dams that are there, because some of them were built without fish ladders. Some were built without proper screens or what have you to keep the little guys from getting chewed up in the turbines.

So I hear that this is going to create jobs, this is going to create taxes but yet it's not explained to me how is this going to turn around and protect and save the environment. So the proposal itself is very detrimental because number one, it's crossing the ancestral lands of the Yakama Nation.

Number two, it's going to go along n stem Columbia River and I saw some of it there's a loop that it's going to cross into even Yakima and loop and come next to our reservation -- actually on our reservation. I live three quarters of a mile from where those tracks are -- where they're going to make this big loop.

They're going to drop their load and make a big loop through Yakima. So that's something we find is very detrimental. You know, that big loop starting from here going all the way down to Longview, crossing up and then coming back around this way. You know, I don't see them washing their trains out after they drop their load. There's going to be residue. So it's going to travel with them all the way back to -- with them all the way here.

And I also understand these trains are up to a mile long. And, you know, we deal with this problem in Yakima in the city of Yakima, where they have -- if they're going to be that long, access from one side of the tracks to the other could be very costly and very detrimental because we have emergency vehicles that need to access the other side and that's also on the reservation.

So where we need to cross the roads, if those trains are going to be there for long periods of time, you know, how do we get across because it's going to go through right through, I don't want to say the middle, but more than part of our reservation. So this to me -- the Yakama Nation doesn't support this.

We had this same proposal in Cherry Point up near Bellingham and that was defeated a couple of weeks ago. So we would like to see this defeated and one of the main points that we have is that no consultation. You know, this company, or whoever, the Department of Ecology didn't come and sit down with the Yakama Nation and discuss with us, you know, what may happen, you know, in terms of what's going to happen or, you know, what may happen in the future.

And I just heard that the company itself is bankrupt, the coal company is bankrupt. So I came tonight to speak on behalf of those that can't speak. I came to speak for the salmon, the adults and the juveniles. I came to speak for the eagles, for the birds, for the frogs. I came to speak for all wildlife because this is going to affect them.

And this is something that is not only detrimental to our people -- because we harvest the salmon, we harvest the game, and we harvest some of the birds. But this contamination they're going to receive from this coal is going to affect us.

So it's something that we oppose not on behalf of the people, or behalf of the jobs, or behalf of the tax base that's created. It's just on behalf of life itself as a whole. Because there's some tribes in the country throughout the country they talk about seven generations.

We're here to protect for seven generations yet to come. But in the Yakama belief, it is for those yet unborn. We're here to protect and preserve what we have for those yet unborn, you know, great grandkids, great, great grandkids. Our grandchildren that are not here. That's what we're here to protect. Something sustainable for them. If it's destroyed whether something like this, a proposal like this.

You know, very young I was taught that dollars are just dollars whether it's tax dollars or payroll, what have you, that's material it comes and goes. But yet if one of these trains derail along the Columbia, you know, what is the cost of that? You know especially with the bankrupt company.

How are they going to mitigate the cost of something that may happen in the river, you know? Because it affects the whole ecosystem, the water, you know. We see the cycle maybe rain comes down, it makes rivers and it goes back around and evaporates, it goes back into the clouds. In that cycle is us, me, you, humans, also the wildlife, the vegetation. Plants, animals they are all affected by this.

And if something toxic as this, you know, it affects all of us. You know. We're just a few miles from this facility that created the atomic bomb. And the war has been over. President Obama was there speaking to the people that they dropped the bomb on but yet we're still dealing with the contamination that was left behind by them creating this.

So we're told as a tribe -- as a Yakama Nation we're going to mitigate that, that we're going to take care of this. So instead of doing that what they're doing is they're taking this magic wand that the Department of Energy has and wave it over the land, and they call it clean, and they give it back to the people here in Tri-Cities.

The land's not clean. You know, the Yakama Nation doesn't want the land clean. We want it up to a level that it's sustainable for those yet unborn, for the wildlife, for the vegetation, for everything that's out there that survives on the land. So we're dealing with the effects of that.

So now there's this new toxic -- something toxic that's going to come and affect you. How do we tell our kids, our great grandkids, yes, we just stood by and folded our arms and let them do what they're doing in the name of the mighty dollar. We can't do that.

We have a treaty. The Yakama Nation has a treaty, and it's with the United States. It's not with the Department of Ecology, it's not with the Tri-Cities, it's not with whoever is proposing this coal terminal, it's with the federal government.

By statute that's there to protect us as a tribe, as a people, as citizens of the Yakama Nation. And within that it talks about treaties are the supreme law of the land within Article 6 of the Constitution.

So it's there that they're violating our treaty rights. We should have access to the 50 percent of the harvest of the salmon. We should have access to the game, to the birds, the vegetation. We still utilize that. We still harvest. Right now it's spring.

Our grandmothers, our daughters, our nieces, our moms, our aunts, they're out there harvesting roots that we use. We store them. We put them away. And we do that with our salmon. We take those and we put those away to take care of ourselves throughout the year because the salmons come at certain times in that cycle, the life cycle that they have.

The berries come at a certain cycle, the roots. And we're seeing the effects of climate change because usually those roots aren't ready until spring. And now we're seeing that they're -- it's like February and January we're starting to harvest it because it's already ready.

So, you know, this is something that we feel is changing the earth and as -- you know, as it moves forward because we're raping, we're pillaging, we're taking from the land. But what are we giving back, you know? Are we giving back the dollar? Are we giving back taxes? Are we giving back commodities? What are we giving? We're not giving anything. We're just taking. And it creates this unbalance.

And I even heard tonight that these climate change naysayers are saying this is good for the climate. I don't see how because you're burning coal that goes up into the sky and it creates, you know, this unbalanced ecosystem.

It's there for everybody. We all breathe air. We all drink water in our life. And in the Yakama Nation water is the key element to our lives. If we don't have water we can't live. But yet, you know, this proposal is going to go right next to an already polluted river from the Hanford Reservation and now they're going to add more pollutants to that.

And that goes out into the Pacific Ocean. And we hear stories, you know, that the clam beds, you know, the crabs or what have you, they're getting radiation. Well, where are they getting it? Right here just a few miles up the road. So it become detrimental because that treaty right specifically identifies that we're able to harvest fish, game, wildlife, vegetation from our usual and custom areas and where we're at right now.

And, again, I can't stress this enough. We're in ancestral homelands of the Yakama Nation. We have stories about this land right here. We have stories about White Bluff. We have stories about what we call the Laliik. But it's commonly known as Rattlesnake Ridge.

We have stories about this area, you know, that our elders teach us and talk to us about. And we have stories that go all the way to the mouth of the Columbia on out into the Pacific Ocean. So what we're doing is we're going against -- we have laws, we have unwritten laws, we have law books, what have you, you know, that the common person follows but yet we have these laws that are unwritten given to us by the creator you're not supposed to do this, you're not supposed to do that.

So that's something that we cherish. And this goes against those laws because what we're doing we're taking from the land and we're moving it somewhere else. And when it's moved it creates this toxic pollution that we just can't -- that's something we just can't tolerate. And at what cost? Is it to take that resource and move it from one place to another so it can be burned in China?

So it can be burned to wherever they're taking it. You can't put $1 on it. You can put a price tag of a billion dollars and that's not going to be enough.

Thank you.