

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

IN THE MATTER OF:

APPLICATION NO. 2013-01

TESORO SAVAGE, LLC

VANCOUVER ENERGY DISTRIBUTION  
TERMINAL

CASE NO. 15-001

TRIBAL PARTIES' OPPOSITION TO  
TESORO-SAVAGE'S MOTION TO  
DISMISS AND PORT OF VANCOUVER'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

The Columbia River Inter-Tribal Fish Commission ("CRITFC"), the Confederated Tribes of the Umatilla Indian Reservation ("Umatilla Tribes"), and the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") (collectively referred to as the "Tribal Parties") respectfully request that the Energy Facility Site Evaluation Council ("Council") deny Tesoro-Savage's Motion to Dismiss and Motion for Determination and the Port of Vancouver's Motion for Partial Summary Judgment.

The Tribal Parties incorporate by reference Columbia Riverkeeper's Opposition to Tesoro-Savage and Port of Vancouver Motions to Limit Consideration of Rail and Marine Vessel Impacts ("Columbia Riverkeeper's Opposition") and the City of Vancouver's Response to Tesoro-Savage LLC's and Port of Vancouver's Motions to Dismiss and for Summary Judgment ("Vancouver's Response"). The briefs are incorporated in their entirety, but the Tribal Parties specifically adopt the arguments demonstrating that federal law does not preempt the Council's consideration of issues concerning rail transportation.

Briefly, the Tribal Parties would highlight the broad mandates of the Council and the wide range of impacts that the Council is required to consider during the adjudicative proceedings. The Council was created to "balance the increasing demands for energy facility

location and operation in conjunction with the **broad interests of the public.**” RCW 80.50.010 (emphasis added). The State of Washington, while “recogniz[ing] the pressing need for increased energy facilities” tasked the Council with ensuring that the operation of energy facilities “will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.” *Id.*

The Council’s actions are guided by a set of broad statutorily defined premises, including “[t]o assure Washington state citizens that, where applicable, operational safeguards . . . are technically sufficient for their welfare and protection” and “[t]o preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.” *Id.* The Council’s regulations also incorporate these broad guiding principles. WAC 463-14-020.

During the adjudicative proceedings, the Council’s regulations require consideration of a wide variety of subject matters and impacts, including:

- (5) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric.
- (6) On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base.
- (7) Peripheral area impacts (all categories).
- (8) Adverse impacts minimization and consideration of conditions of certification.

WAC 463-30-300. *See also* WAC 463-60-332, -342(5), -362(3), -535(4)(e) (requiring consideration of impacts on aesthetics, habitat, wildlife, and socioeconomic factors).

The Council has an “overriding policy . . . to avoid or mitigate adverse environmental impacts which may result from the council’s decisions.” WAC 463-47-110(1)(a). In complying with this policy, the Council is mandated to use “all practicable means” to ensure that “the state

and its citizens may:”

- (i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (iv) Preserve important historic, cultural, and natural aspects of our national heritage;
- (v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

WAC 463-47-110(1)(b). The Council “recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.” WAC 463-47-110(1)(c). The Council must also “ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.” WAC 463-47-110(1)(d). The Council must “protect state or local governmental or community interests affected by the construction or operation of the energy facility.” WAC 463-64-020.

As examined in detail in Columbia Riverkeeper’s Opposition, the Council has liberally interpreted its adjudicative mandate to consider issues that affect human health and the environment in Washington, considering a wide variety of issues, including greenhouse gas emissions, *see BP Cherry Point Cogeneration Project*, EFSEC Order 803 at 22 (Oct. 26, 2004); *Chehalis Generation Facility*, EFSEC Order 688 at 8 (Aug. 4, 1995); archaeological resources

and tribal treaty rights, *see Trans Mountain Oil*, EFSEC Order 624 (June 8, 1981); financial mitigation in the form of compensation for impacts to property values and the environment, *see Satsop Combustion Turbine Project*, EFSEC Order 686 at 2 (Aug. 3, 1995); and project consistency with the Northwest Power Planning Council's Power Plan, *see Satsop Combustion Turbine Project*, EFSEC Order 686 at 3 (Aug. 3, 1995).

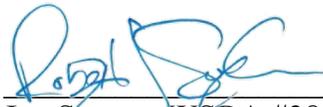
The issues put forth by the Tribal Parties are well within the considerations outlined by the Council's broad mandates, as defined by the State's statutes and regulations. The following issues, as restated by the Council in its February 3, 2015 Order Clarifying EFSEC's Process, Modifying Dispositive Motion Deadline, Summarizing Preliminary Issues, and Setting Hearing Dates ("Order Summarizing Preliminary Issues"), are currently being questioned:

39. Whether the proposed VEDT will impact and, if so, is adequately mitigated as to geology and soils at the proposed VEDT site and along the transport corridor, including, but not limited to, any impact to those lands ceded to the Umatilla Tribe or the Yakama Nation.
45. Whether the proposed VEDT will impact and, if so, is adequately mitigated as to historic and cultural resources, including, but not limited to, tribal cultural properties and sites along the transportation corridor and on the proposed project site.
49. Whether the proposed VEDT will impact and, if so, is adequately mitigated as to public health and safety, including, but not limited to, an increase in rail-crossing related risks for tribal fishers.
50. Whether the proposed VEDT will impact and, if so, is adequately mitigated as to the potential impact of increased traffic at rail crossings and associated delays.
51. Whether the proposed VEDT will impact and, if so, is adequately mitigated as to increased rail traffic, including but not limited to, increased diesel particulate air pollution.
52. Whether the proposed VEDT will impact and, if so, is adequately mitigated as to the rail expansion necessary to meet the increase in rail traffic, including but not limited to, rail expansion in the Gorge.
53. Whether the proposed VEDT will impact and, if so, is adequately mitigated as to an increase in rail traffic, including but not limited to, an increased potential for land subsidence.

Order Summarizing Preliminary Issues, at 8-9. These issues are concerned with the proposed

project's impact on geology, historic and cultural resources, public health and safety, traffic and air pollution. These issues are well within the Council's purview. The Council has been tasked with weighing the "broad interests of the public," including the "welfare and protection" of "Washington state citizens." RCW 80.50.010. The Council considers both "[o]n-site and local impacts" that are physical, "[s]uch as aquatic, terrestrial and atmospheric" and that are societal "[s]uch as housing, services, recreation, economics, transportation, health." WAC 463-30-300. Importantly, it considers "all categories" of "[p]eripheral area impacts." *Id.* Accordingly, the issues, as outlined by the Council, are well within the Council's jurisdiction. Further, the State's statutes and regulations require consideration of these issues. Therefore, the Tribal Parties respectfully request that the Council deny Tesoro-Savage's Motion to Dismiss and the Port of Vancouver's Motion for Partial Summary Judgment.

Dated this 28th day of April, 2016.



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I certify that on the date provided below, I sent a true and correct copy, via e-mail, of the foregoing documents, to all parties or their counsel of record, as listed below:

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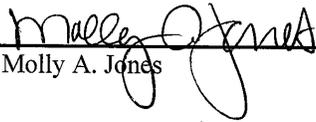
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TRIBAL PARTIES' OPPOSITION TO TESORO-SAVAGE'S  
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 28th day of April 2016, in Seattle, Washington.

  
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