ENERGY FACILITY SITE EVALUATION COUNCIL
STATE OF WASHINGTON

In the Matter of: Application No. 2013-01 TESORO SAVAGE, LLC VANCOUVER ENERGY DISTRIBUTION TERMINAL	NO. 15-001 THE COUNSEL FOR THE ENVIRONMENT'S CLOSING BRIEF IN OPPOSITION TO THE PROJECT

I. INTRODUCTION

The proposed Vancouver Energy Distribution Terminal (VEDT) is a unique project to the State of Washington and the Energy Facility Site Evaluation Council (EFSEC). The VEDT creates unprecedented and unacceptable risks to the environment and the people of the State of Washington. Given these risks, the Counsel for the Environment recommends EFSEC recommend denial of the application for the VEDT.

If authorized, the VEDT proposed by Tesoro Savage, LLC (the "Applicant") would be the largest oil by rail transfer facility in the United States. The VEDT is a crude oil transfer facility designed to accept an average of 360,000 barrels per day of crude oil, a volatile and hazardous substance, delivered by miles long trains traveling through the City of Spokane, along the Columbia River Gorge, through the City of Vancouver to the Port of Vancouver. Once at the Port, the oil will be stored in tanks at an industrial facility adjacent to the Clark County Jail Work Center and nearby the Fruit Valley Residential Neighborhood. The crude

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oil will be then loaded onto vessels to travel numerous miles down the Columbia River to the Pacific Ocean where it will be delivered primarily to refineries outside the State of Washington.

After testimony from over 80 witnesses, a record containing hundreds of exhibits, and argument from attorneys for numerous parties, the five-week adjudication established the following key points. First, the evidence showed that the potential consequences associated with the increased transport of crude oil by rail through the State and by vessel on the Columbia River are massive. Regardless of the spill response capabilities of the State and the Applicant's purported commitment to safety, the risks of a spill or other disaster throughout the State of Washington and on the Columbia River would significantly increase as a result of the VEDT's construction. The expert testimony supplied by the witnesses of the Counsel for the Environment and numerous witnesses of the interveners revealed the substantial consequences to the public and the environment from the increased transportation of crude oil through the State and along and on the iconic Columbia River. This evidence combined with the evidence submitted by the City of Spokane, the City of Vancouver, and other parties regarding the limited ability of local jurisdictions to adequately respond to a crude oil train disaster convincingly showed that the potential consequences of the VEDT to public safety and the environment are of an alarming magnitude.

Second, the evidence presented does not demonstrate that Washington and its residents will receive substantial or even minimal benefits from the construction and operation of the VEDT. The Applicant failed to provide any substantial evidence of actual benefits to Washington other than some localized job creation due to the construction and operation of the VEDT, benefits that did not sway the VEDT's host city, the City of Vancouver, from opposing the project. The Applicant further provided no evidence other than speculation that the oil to be transferred through the VEDT would service Washington refineries or provide any substantive benefits to Washington consumers. Rather than demonstrating any benefit

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from, or need for, the facility in Washington, the Applicant's evidence instead focused largely on California's needs despite the risks associated with the VEDT being borne by Washington.

The evidence presented during the adjudication can only support one conclusion. The VEDT's purported benefits to Washington are outweighed by the significant potential risks associated with the construction and operation of the VEDT to the public and the environment. The State of Washington should not bear the increased risks associated with the VEDT given the established lack of need and minimal localized benefits the State would receive. Given the record before EFSEC, the Counsel for the Environment urges EFSEC to recommend denial of the VEDT.

II. THE COUNSEL FOR THE ENVIRONMENT ADVOCATES FOR THE PUBLIC INTEREST

The legislature highlighted the importance of guarding natural resources by requiring that the Attorney General appoint an independent representative of the public, the Counsel for the Environment (CFE), to advocate before EFSEC for the public's interest in the protection of its ecosystems. The CFE has an independent, statutorily created role to represent the public's broad interest in protecting the quality of the environment. *See* RCW 80.50.080. In this capacity the CFE actively participated in all five weeks of the adjudication, reviewed the numerous documents involved, and evaluated the hours and hours of testimony presented by the various parties in this proceeding. The CFE announced his opposition to this project at the close of the Adjudication.

III. EFSEC MUST BALANCE RISKS AND BENEFITS OF THE PROPOSED PROJECT

The legislature charged EFSEC with the responsibility to preserve and guard the quality of Washington's environment during the review of energy facility sitings. RCW 80.50.010. EFSEC's goal in the siting of energy facilities must be "to 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

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cleanliness; and to pursue beneficial changes in the environment." RCW 80.50.010(2). This goal is accomplished through balancing the need for energy facilities, specifically whether a specific proposal would supply the State of Washington with abundant energy at a reasonable cost, with the public's broad interest in protecting and preserving the environment. RCW 80.50.010. These environmental interests go beyond just the obvious preservation of species and habitat and extend to "enhanc[ing] the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promot[ing] air cleanliness; and to pursu[ing] beneficial changes in the environment." RCW 80.50.010(2).

> Further, by rule, EFSEC has set forth the following criteria:
> The council shall use all practicable means, consistent with other considerations of state policy to improve and coordinate plans, functions, programs, and resources to the end 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).

EFSEC's statute and rules recognize that the public has an important interest in protecting and preserving the quality of the environment. Given this recognition, EFSEC's decision must take into account all practical means, up to and including rejection of a proposal, to ensure that the siting of a facility does not result in the degradation of Washington's vital natural resources. EFSEC itself has best described its task as determining

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whether a specific project "will produce a net benefit" after balancing the need for the project with the potential impacts to the environment and the broad interests of the public. *Desert Claim Wind Energy*, EFSEC Order No. 843 at 23 (Nov. 16, 2009).

IV. THE VEDT INCREASES THE RISK OF HARM TO THE ENVIRONMENT AND THE PUBLIC

Evidence regarding risk and risk assessment was a major part of the adjudication. The consensus of the testimony from both the Applicant and the interveners regarding risk was that looking at probability alone, without factoring in the nature of the consequences, did not provide a thorough picture of risk. There is no dispute that risk is measured by evaluating probability and consequences, not just probability alone.

Substantial evidence was submitted from a diverse group of intervening parties, including the Washington State Department of Natural Resources, cities along the rail route, the host city of Vancouver, Clark County, tribal governments, environmental groups, a neighborhood adjacent to the Port of Vancouver, and other concerned parties. The evidence submitted supported the parties' substantial and significant concerns about the risks related to the proposed VEDT, including very real concerns from first responders regarding the ability to respond to a significant disaster associated with the VEDT. The Closing Briefs for each of those parties will further detail their specific concerns and the evidence submitted to support those concerns. The adjudication made clear that the Applicant believes the risks associated with the VEDT are "reasonable and acceptable" and fall within, as one of the Applicant's witnesses testified, "typical industry risk tolerance criteria." However, not a single jurisdiction along the rail route or near the actual facility, nor tribal communities that rely upon the Columbia River, nor the first response agencies that would have to respond to a disaster, believe the risks are "reasonable and acceptable".

While the Applicant may deem these risks as "reasonable and acceptable", that does not mean the risks are or even should be deemed reasonable and acceptable to the people of

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the State of Washington. In fact, as one of the Applicant's own risk experts, Dennis O'Mara, testified "risk acceptance is something that varies." The Applicant is clearly willing to accept these risks because the Applicant will receive the benefits of the VEDT. The State of Washington, however, is not required to tolerate risk at a level that the Applicant is willing to accept. Clearly, the numerous and varied parties, from a state agency to local and tribal governments to environmental groups, are unwilling to accept the risks associated with the operation of the VEDT. Based on the potentially massive consequences that could occur from the operation of this terminal, even an event that could be classified as "low probability" can be determined to be an unacceptable risk due to the consequences of such an event being too large for a society to bear.

The Applicant spent a significant amount of time during the adjudication describing the probability of an oil spill or other related tragedy as extremely low. However, the Applicant's own evidence regarding risk was suspect. For example, the testimony of Dr. Christopher Barken, the expert witness presented by the Applicant to discuss risk probability of an oil train related disaster, used data that did not provide a full picture of the actual risks associated with the transport of oil by rail. Dr. Barken's risk assessment was produced by a model that utilized railroad data from 2005-2009 in order to predict the likelihood of a derailment and a related oil spill. However, Dr. Barken's model ignores the significant increase in hazardous materials rail incidents, due in large part to the substantial increase in crude by rail transport that occurred after 2009. Dr. Barken further completed his risk assessment looking at only trains in-bound to the Port of Vancouver ignoring the return trip, halving the amount of trips through the State. These limitations in assessing the risk of increasing the train traffic through Washington by at least four more unit oil trains per day does not provide enough information to accurately conclude, as the Applicant does, that any risk of an oil train incident is remote.

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In another example, Mr. O'Mara, the expert witness presented by the Applicant to perform a risk assessment regarding the probability of a vessel oil spill, provided two risk models that produced incredibly different outcomes in regard to risk yet Mr. O'Mara found these outcomes similar despite the significant differences. In addition, Mr. O'Mara, despite admitting that the consequences of an oil spill in the Columbia River include the impacts of the spilled oil on the river environment, only evaluated risk by looking solely at the amount of oil spilled, not the actual impacts of an oil spill on the environment. No matter how the Applicant's experts describe the risk, the realities are that as a result of the VEDT there will be an increase of lengthy trains carrying volatile crude oil across our state and an increase of one vessel per day carrying crude oil will travel down the Columbia River. These realities increase the risks to the environment and public safety; risks that could have devastating consequences to the environment and public safety and are directly attributable to the VEDT.

A. The Evidence Reveals a Variety of Substantial Public Safety and Environmental Risks as a Result of this Project

The various parties offered numerous witnesses detailing the potential consequences and harms to the public and the environment that could result from the operation of the VEDT. Witnesses detailed substantial risks associated with a seismic event and the high probability of an oil spill related to such a seismic event. The Washington Department of Natural Resources (DNR) presented evidence of increased wildfire risks along the rail route associated with the increase in oil trains due to the VEDT's operation and provided testimony that DNR's current fire response capabilities would not be sufficient to meet the increased risk of wildfires associated with the increased oil by rail traffic. The City of Vancouver and City of Spokane provided compelling testimony that neither jurisdiction has the training or resources necessary to meet the increased risk of a fire, explosion, or other emergency situation either at the VEDT site or along the rail route due to the known increase in the transportation of crude oil as a result of the VEDT. Both cities further provided evidence of

the potentially disastrous consequences should an oil train explode or spill while traveling through their jurisdiction. The CFE will not attempt to summarize the in-depth testimony presented regarding the risks to public safety and the lack of adequate response capabilities in Washington. However, the evidence presented detailed that the VEDT will increase risk to public safety in such a manner that local jurisdictions along the rail route, as well as the host City of Vancouver, have expressed substantial concern about significant local impacts to public safety.

The parties also presented thorough testimony regarding the potential consequences to the Columbia River and its fish and wildlife as a result of the VEDT. Dr. Zachary Penney and Dr. Stanley Rice provided compelling testimony regarding the potential and likely health impacts to fish as a result of a spill including the substantial risk of sublethal effects to fish as a result of a spill. Numerous witnesses put forth by the Tribes discussed the importance of tribal fishing to their culture and the substantially negative impacts to tribal members' way of life and cultural heritage that would result from an oil spill on the Columbia River. This powerful testimony was entirely unrebutted.

B. The CFE's Expert Witness Testimony Thoroughly Detailed the Negative Impacts to the Columbia River Environment and Fisheries that Would Likely Result from a Major Oil Spill on the Columbia River

In addition to the convincing testimony provided by the interveners, the CFE presented the testimony of two highly qualified expert witnesses, James V. Holmes of Abt Associates and Dr. Eric English of Bear Peak Economics. Mr. Holmes is an environmental scientist with significant experience in natural resource damage assessments (NRDAs), contaminant fate and transport analyses, surface and groundwater assessments, ecological effects assessments, and natural resource planning. See Ex. 1501-000001-ENV. Dr. English is an economist focusing on environmental and natural resource economics and natural resource damages policy and strategy and holds a PhD in Economics from Cornell University. See Ex. 1502-000001-ENV.

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Mr. Holmes' expertise and testimony were largely unchallenged during the adjudication. Mr. Holmes detailed his experience providing natural resource damage analysis for at least a dozen environmental incidents including serving as a project manager evaluating the Deepwater Horizon oil spill in the Gulf of Mexico. Mr. Holmes' testimony also detailed his experience working with natural resource trustees, including tribal trustees.

Mr. Holmes evaluated natural resource injuries and damages to the Columbia River associated with two hypothetical scenarios: a tanker grounding in the Columbia River near Vancouver, Washington, and a train derailment near the Bonneville Dam. The evaluations of these impacts were limited in scope to impacts to the Columbia River and did not include potential impacts in the Pacific Ocean or the Pacific coastline.

In both scenarios, Mr. Holmes testified that such spills would cause catastrophic environmental injuries to salmon and other fish species. Increased mortality and reduced physiological fitness would likely adversely affect successful migration of salmon to spawning grounds. Mr. Holmes testified that due to turbidity, oil would be pushed down into the water and would likely not just float on the surface. The unrebutted scientific evidence submitted showed that spilled oil would have substantial toxic effects on fish including sturgeon and shad. Thousands of birds would be exposed to oil and be negatively affected by either spill including substantial mortality and impacts to egg vitality. Marine mammals would also be negatively affected. Wetland and river habitat would be soiled by oil. Mr. Holmes calculated that over 16,000 acres of wetland habitat and over 91,000 acres of river habitat likely would be contaminated by oil as a result a spill like Scenario #1. In Scenario #2, Mr. Holmes estimated that over 16,500 acres of wetland habitat, primarily in the estuary, and over 110,000 acres of river habitat would be oiled as a result of such a spill. The potentially impacted area includes 850 acres designated as protected white sturgeon spawning habitat.

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Mr. Holmes further estimated potential damage compensation for the impacts of oil exposure to natural resources in both scenarios. Mr. Holmes estimated damages to natural resources focused largely on the cost to restore the injured river habitat and the cost to restore injured floodplain wetland habitat. His testimony estimated that an oil spill of the magnitude caused by the tanker grounding in Scenario #1 could result in significant injuries to river habitat with an estimated cost of $114.4 million. Mr. Holmes estimated the cost to restore riverbank and floodplain habitats at $56.9 million. Mr. Holmes' report further estimated a timeline of between nine and 20 years for the habitats to return to pre-spill conditions depending on the habitat and timing of the restoration work. In addition, the evaluation did not address how the public or Indian Tribes would value the potential losses to natural resources in either hypothetical scenario. Due to these limitations in scope, Mr. Holmes testified that the potential natural resource injuries and damages in both scenarios are likely underestimated in his report. Mr. Holmes also provided a possible range in damages of between $455 million and $1.16 billion based on actual damages resulting from past major spills and $232 million in damages extrapolated from past incidents in the Columbia River.

Mr. Holmes testified that the cost to restore river habitat damaged as the result of the train derailment in Scenario #2 would be an estimated $54.5 million. The estimated cost to restore floodplain wetland habitat is $30.4 million. These habitats could take between nine and 20 years to return to pre-spill conditions depending on the habitat and the timing of restoration work. In addition, Mr. Holmes testified regarding a possible range in damages of between $48 million and $122 million based on a benchmark of damages per barrel spilled from other major oil incidents, including the 1989 *Exxon Valdez* disaster off the Alaska coast and $24 million in damages extrapolated from past incidents in the Columbia River. Mr. Holmes was clear in his testimony that the dollar amounts in Natural Resource Damage Assessments are not intended to reflect the total amount of actual ecological and environmental harm that is likely to occur as a result of an oil spill.

Dr. English detailed his professional background which includes serving as the National Oceanic and Atmospheric Administration's lead economist for damage assessments on the Atlantic coast. Dr. English also testified regarding his experience evaluating impacts to recreation from the 2010 Deepwater Horizon oil spill; impacts to fishing and boating following the 2006 Citgo refinery oil spill in Louisiana; impacts following the 2004 Athos I oil spill on the Delaware River near Philadelphia; impacts to marine recreation in the San Francisco Bay Area from the 2007 Cosco Busan oil spill; and impacts to recreational shell fishing, beach use, and boating following the 2003 Bouchard 120 oil spill in Buzzards Bay, Massachusetts.

Dr. English addressed the economic impacts to commercial and recreational fishing from the tanker spill. Dr. English estimated that a tanker spill in the Lower Columbia River of the size described in Scenario #1 would likely result in at least a six month long closure of the entire lower river to commercial and recreational fishing and a decline in anglers for a period thereafter.

Such a closure is likely to result in three different types of economic fishing losses. All three are detailed below:

> Economic losses to commercial fishermen = $4.7 million. This estimate represents lost revenue to commercial fishermen. The total losses will likely be higher but cannot be estimated due to numerous factors that are difficult to quantify.
>
> Decline in the value of recreational fishing = $17.8 million. This is a monetary quantification of the loss of enjoyment by recreational anglers whose preferred fishing opportunities are degraded or eliminated by the spill and includes the lost value from angler trips that are canceled.
>
> Decline in expenditures by recreational anglers = $14.4 million. This is a measure of the potential disruption to local economic activity, with the most direct impacts on local business, like bait shops and marinas.

Dr. English's testimony revealed that a major oil spill in the Columbia River would likely cause significant economic harm to the commercial and recreational fishing industry. A six-month closure along with decline in anglers for a period of time thereafter could devastate

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the industry. As opposed to testimony supplied by the Applicant's economist, Todd Schatzki, Dr. English further opined that it is highly unlikely that commercial fishermen would be able to move locations or fish later to mitigate economic impacts based on his experience evaluating impacts to fisheries after oil spills. Further, unlike Mr. Schatzki, Dr. English has actual experience evaluating economic impacts to the fishing industry as a result of an oil spill. Unlike Mr. Schatzki's testimony, Dr. English's testimony relied on his substantial experience and revealed that a fishing closure would likely have significant impacts to the commercial and recreational fishing industry that relies on the Columbia River.

Mr. Holmes' and Dr. English's testimony was largely unrebutted. Gregory Challenger, an Applicant-supplied expert witness, testified that Mr. Holmes' analysis was appropriate for planning purposes and the damages estimate was within the range of potential natural resource damages that could result in the scenarios evaluated. Dr. Penney and Dr. Rice buttressed the claims of Mr. Holmes regarding the significant negative impacts to fish from an oil spill in the Columbia River. No witness rebutted Dr. English's testimony in any substantive way. The testimony of the CFE's witnesses in conjunction with the testimony of numerous witnesses presented by the interveners paint a very clear picture: an oil spill on the Columbia River would have significant impacts to the environment, fish and wildlife, and state and tribal fisheries.

C. The Applicant Failed to Minimize Potential Environment Harms

The Applicant's attempts to minimize the potential harms and ecological impacts of an oil spill were not convincing. Mr. Challenger testified at length that an oil spill would likely not cause any "population impacts" to fish or wildlife but apparently defined "population impacts" as complete extirpation (destruction) of a species, something that no other expert witness argued. Mr. Challenger's assertions were contrary to the testimony of Mr. Holmes, Dr. Rice, and Dr. Penney who clearly described the significant impacts to fish and wildlife that would occur in the event of a major spill. Dr. Elliott Taylor, another expert witness

supplied by the Applicant, testified at length that, in his opinion, spilled oil from this facility will not sink despite convincing testimony from Mr. Holmes and Susan Harvey, the oil spill expert supplied by Columbia Riverkeeper, et.al, to the contrary. However, regardless of the Applicant's efforts to downplay the effects of an oil spill, the Applicant's expert witnesses agreed that no oil spill would be the preferred outcome, something that the Applicant admits it cannot guarantee regardless of any mitigation or conditions placed on any approval of the VEDT.

In addition, the Applicant, throughout the adjudication, provided testimony that the costs of an oil spill clean-up, including the potential natural resource damages and economic fishing impacts described in both Mr. Holmes' and Dr. English's testimony, will be adequately covered by insurance obtained by the Applicant. Implicit in the Applicant's argument is that the residents of the State of Washington should not be concerned about the consequences of an oil spill because the Applicant will "pay for it". However, the great weight of the evidence submitted during the adjudication belies this contention. Ernie Niemi, a natural resources economist, testified at length regarding secondary economic impacts that can stem from an oil spill. Mr. Niemi provided further testimony regarding the failure of monetary damages to make local communities whole when the natural resources at risk, like the Columbia River and its fish and wildlife, are economically and culturally important. Mr. Niemi's testimony was buttressed by the in-depth testimony from numerous tribal witnesses who testified that monetary payments will never be able to adequately compensate tribal members for any injuries to the Columbia River environment and the fish and wildlife that will be injured from such a spill.

Mr. Holmes also testified regarding his experience with tribal trustees during the Natural Resource Damage Assessment process and, in particular, the tribes' repeated views during the process that money damages will never be able to replace the impacts to the tribes as a result of a spill. Numerous tribal witnesses further described the importance of the

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Columbia River to the tribes' way of life and culture, emphasizing that money would never be able to replace the importance of the Columbia River to the tribal people.

Regardless of the financial ability of a responsible party to pay for the cost of restoration, the testimony submitted by the CFE's expert witnesses and the witnesses of other parties revealed that the consequences of a worst-case oil spill will negatively affect Columbia River habitats for years after the date of the spill and cause significant harm to Washington's natural resources, the fishing industry, and tribal culture. The dollar amounts cannot, and are not intended to, cure the observable and/or measurable adverse changes to the public's natural resources nor the impairment to natural resource access that will occur while restoration is occurring. Even if the Applicant could guarantee that sufficient insurance or other financial guarantees to compensate the public for its harms, such compensation would never be worth the significant harm of a major oil spill on the Columbia River.

V. THE APPLICANT FAILED TO PROVIDE SUFFICIENT EVIDENCE OF PROJECT NEED AND BENEFITS TO THE STATE OF WASHINGTON

The myriad of risks set forth in the CFE experts' testimony and the expert and fact witness testimony of the interveners must be weighed against the purported need for the project, measured by statute as increased affordable energy for Washington residents, and purported benefits to Washington. However, the weight of the evidence at the adjudication showed that the State of Washington has no need for the project which provides minimal benefit to Washington residents as a whole. While the project will provide some jobs to Washington residents as a result of the construction and operation of the terminal, those benefits alone do not outweigh the significant risks to Washington residents and the environment. Tellingly, the local jurisdiction that would receive the most benefit from any jobs created by the VEDT, the City of Vancouver, does not believe that such purported job creation is a net benefit given the impacts associated with the siting of the VEDT at the Port of Vancouver.

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The most convincing and thorough testimony regarding the lack of need for the facility came from Ian Goodman, an expert economist presented by Columbia Riverkeeper, et al. Mr. Goodman provided compelling testimony that the terminal is not necessary to meet Washington's energy needs and will not provide Washington residents with abundant energy at a reasonable cost. Washington is a net exporter of refined product, exporting almost half of the State's combined refinery output to other states and countries, a fact that was undisputed by the Applicant. As Mr. Goodman explained in detail, the VEDT will largely send oil through Washington to California refineries and will likely not service Washington refineries nor provide any energy benefit to Washington consumers.

The Applicant completely failed to provide any non-speculative testimony as to how the residents of the State of Washington will benefit from the Project outside of some localized job creation discussed below, despite the fact that the Project increases risk to Washington's people and environment. Indeed, the Applicant's own witness on the need for the VEDT, Mr. Roach, was unable to provide any compelling testimony that the crude oil that will be transferred through Washington would ever, in fact, be necessary for Washington refineries or necessary to meet Washington's energy needs. Mr. Roach was only able to testify that, over the life of the project, he could maybe foresee the VEDT servicing Washington refineries depending on the market and world events. However, his testimony was not based on any factual determinations, but rather his speculation that the market "may" create a situation where the VEDT would provide any significant crude oil to Washington refineries. In fact, Mr. Roach was unable to provide any assurances to EFSEC that Washington refineries would receive *any* crude oil from the facility or that the VEDT would be able to meet any of Washington's energy needs. Given the Applicant's argument that any risks associated with the operation of the VEDT, including risks associated with the significantly increased transportation of highly volatile crude oil through the State of Washington and on the Columbia River, are remote and speculative, the Applicant's reliance

almost entirely upon highly speculative testimony from its own employee in an effort to establish any benefit to Washington is problematic.

In contrast to the testimony put forth by the Applicant, Mr. Goodman's testimony convincingly showed that the VEDT is largely not in the public interest of Washington residents. As Mr. Goodman's testimony shows, the operation of the VEDT would substantially increase the transportation of crude oil through Washington for both rail and vessel transports thereby substantially increasing the risks to Washington State. Yet the VEDT will provide little, if any, crude oil to Washington refineries, and little, if any, energy benefits to Washington consumers. Despite this, Washington will bear all the risks of the transportation of crude oil through the State by rail and on the Columbia River by vessel.

In addition, as Mr. Roach testified, it would be economically beneficial for the Applicant to be able to ship crude oil by rail directly to California refineries, rather than through an oil terminal located in Washington. However, Mr. Roach also testified that the Applicant's ability to transport oil by rail directly to California is limited largely due to public sentiment in California resistant to crude-by-rail facilities. Mr. Roach's testimony regarding resistance was also echoed by Mr. Goodman who testified that the State of California is largely resistant to receiving crude oil by rail, hence the reason the Applicant has proposed the VEDT in Washington. The question remains: why should Washington approve a transfer terminal designed to primarily provide California refineries with crude oil when Washington will bear all the risks, particularly when the people of California have, according to the Applicant's own witness, been opposed to the development of crude-by-rail facilities in their own state?

The Applicant was unable to provide any convincing testimony or evidence to answer that question and failed in its burden to show that the VEDT meets Washington energy needs and provides more than limited, localized benefits.

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VI. FEDERAL LAW DOES NOT PREEMPT REJECTION OF THE PROJECT DUE TO RISKS ASSOCIATED WITH INCREASED OIL BY RAIL AND VESSEL TRAFFIC THROUGH THE STATE OF WASHINGTON

The CFE anticipates that the Applicant and the Port of Vancouver will continue to argue that the EFSEC cannot deny the project based, even in small part, on risks associated with the transportation of crude oil by rail through the State or the transportation of crude oil by vessel along the Columbia River. The Applicant and the Port essentially argue that the residents of the State of Washington are compelled by federal law to accept risks associated with the largest crude oil-by-rail terminal in the United States merely because of the Applicant's choice to transport the crude oil by rail across Washington State. EFSEC, however, is not preempted by federal law from evaluating the risks associated with the increased transportation of crude oil by rail and increased oil by vessel traffic on the Columbia River and determining that Washington should not invite such risks into the State by approving the VEDT.

The issue of preemption was thoroughly briefed by the Parties in response to the Motions for Summary Judgment filed by the Applicant and the Port. The CFE adopts the arguments in the briefs filed in response to the Port of Vancouver and the Applicant's Motions for Summary Judgment. Denial of the VEDT in part due to the risks associated with the guaranteed increases in oil-by-rail traffic and in oil being transported on the Columbia River does not create an issue of preemption. Denial of the VEDT due to a determination that the benefits of the VEDT do not outweigh the risks to the state, even when those risks include the transportation of hazardous crude oil through the state by rail, does not constitute state regulation of rail transportation and safety.

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VII. CONCLUSION

The expert testimony submitted by the parties reveals that the public safety and environmental risks associated with the transportation of crude oil by rail across the state and along the Columbia River by vessel are unacceptable. The consequences of an accident in relation to the transportation of crude oil as a result of the VEDT could be catastrophic. These risks and potential environment impacts were thoroughly conveyed in the expert testimony submitted by the CFE, the tribal parties, local jurisdictions along the rail line, the Department of Natural Resources, and the environmental groups. The testimony shows that the VEDT project is not in the interest of locally affected communities or the environmental interest of the people of the State of Washington. The risks associated with the VEDT project outweigh any purported benefits and the Applicant has failed to show sufficient need in Washington State for such a terminal. The State of Washington should not be made to bear the risks associated with the operation of a crude oil transfer facility to largely serve California refineries. For these reasons, EFSEC should recommend denial of the Application.

DATED this 6TH day of SEPTEMBER, 2016.

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