



Docket EF-131590

Confederated Tribes and Bands
of the Yakama Nation

Tesoro Savage CBR
Agency Scoping Comment
#018

Established by the
Treaty of June 9, 1855

December 18, 2013

Stephen Posner
Interim EFSEC Manager
Energy Facility Site Evaluation Council
1300 S Evergreen Park Dr. SW
Olympia, WA 98504-3172

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ENERGY FACILITY SITE
EVALUATION COUNCIL

Re: Comments on the Scope of the EIS for the Tesoro Savage Vancouver Energy Distribution Terminal Project, Application No. 2013-01, Docket No. EF-131590

Dear Mr. Posner:

On behalf of the Yakama Nation, I submit for the record the following comments regarding the scope of environmental analysis required for the proposed Tesoro Savage Vancouver Energy Distribution Terminal Project at the Port of Vancouver, Washington. The Yakama Nation is a federally recognized sovereign Nation created by the Treaty of 1855 with the United States (12 Stat. 951). The Treaty reserves for tribal members certain rights and resources that are necessary to maintain our customary way of life. Among these reserved rights is the right to fish at all usual and accustomed places, including the Columbia River. The proposed unrefined oil facility, dock, and increased transportation activity associated with this project would create direct adverse impacts — far beyond any *de minimis* threshold — to Treaty rights, including, among other things, Treaty-reserved salmon, steelhead, lamprey, and other resources critically important to the Yakama Nation and its People.

First and foremost, because of the significant and irreparable direct and indirect impacts that the proposed Tesoro Savage project would have on the Yakama People and our Treaty-reserved rights and resources, the Yakama Nation requests that the Energy Facility Site Evaluation Council (EFSEC) deny Tesoro Savage Petroleum Terminal LLC's application to construct and operate an unrefined oil export facility in Vancouver, Washington. The Tesoro Savage proposal could violate the Yakama Nation's Treaty rights to fish, hunt and gather traditional foods. It could also potentially result in irreparable harm to the Yakama Nation's cultural resources.

Yakama Nation's Treaty rights in the Columbia River area have been upheld recently in federal court; notably through an injunction imposed to prohibit the shipment of Hawaiian garbage through Yakama ceded lands. In *Confederated Tribes and Bands of the Yakama Nation v. United States Department of Agriculture*, a case concerning the federal agencies' failure to adequately address the Yakama Nation's concerns in permitting a plan to ship garbage from Hawaii through Yakama ceded lands, Judge Shea held that the Yakama Nation was likely to "prevail on [its] NEPA claims that the EA and FONSI failed to adequately analyze the environmental impacts of shipment and receipt of

Hawaiian garbage to the Roosevelt Landfill, **which is located on lands ceded by the Yakama Nation, wherein tribal members enjoy ‘in common’ usufructuary rights ...** Further [the Court found that] there are serious questions about whether Defendants adequately consulted with the Yakama Nation as required by the Yakama Treaty of 1855 and federal Indian trust common law.”¹ The situation before EFSEC is analogous to the 2010 Hawaiian garbage case. There, governmental agencies did not seriously analyze Treaty-protected rights that would be impacted along the route proposed to transport Hawaiian garbage.

To be clear, Yakama Nation will not negotiate nor agree to so-called mitigation for any violations or actions resulting in the diminishment or destruction of its Treaty-reserved rights and Treaty-protected resources. Put simply, there is no mitigation adequate to compensate my Tribe and its People for the continued degradation of our sacred places, the incremental but constantly worsening damages to our natural resources that sustain our culture, and the threats to the livelihoods and cultural practices of many Yakamas.

COMMENTS ON THE SCOPE OF THE TESORO SAVAGE TERMINAL EIS

Yakama Nation recommends that the scope of the Tesoro Savage Environmental Impact Statement (EIS) includes evaluations of all potential impacts to our cultural and Treaty-reserved resources, our environment, public health and safety, and to our economies. We also request that these cumulative impacts be studied on a region-wide level, from the unrefined oil’s origins, through our homelands, to its final destination.

We commend the Washington State Department of Ecology on its recent decision to identify and analyze the full range of impacts associated with the Cherry Point coal export-related proposal, including transportation-related impacts through the state, climate change effects, etc. We not only urge, we request EFSEC here to follow this same leadership and responsible governance, to the extent Tesoro’s permits are not denied outright.

Accordingly, Yakama Nation requests that the Tesoro Savage EIS prepared by EFSEC under the State Environmental Policy Act (SEPA) include, without limitation and in addition to the general scope of issues described above, an analysis of impacts to and a discussion of at least the following:

1. Geology and soils at the proposed project site as well as along transport corridors.
2. Vegetation, including those of particular cultural significance to the Yakama Nation.
3. Fish and wildlife impacted by transport and potential spills
4. , Water quality impacts of spilled unrefined oil, including stormwater runoff and absorption at the storage site
5. Air quality effects in shipment and handling of unrefined oil
6. Potential contributions of burned fuel to climate and climate change.
7. An analysis of the purpose and need for the energy and natural resources,
8. Environmental health impacts, including noise, risk of fire and explosion, and potential releases of toxic or hazardous materials in transit and on the proposed loading site.
9. Land and shoreline use and any required new development..,
10. Potential impacts on local economies, population, housing, and employment.
11. Impacts to historic and cultural resources along the transportation corridor and on site.

¹ *Confederated Tribes and Bands of the Yakama Nation v. United States Department of Agriculture*, 2010 WL 3434091 (E.D. Wash. 2010) (emphasis added).

12. Aesthetics, including impacts to view sheds and access to recreational sites. ,.
13. Effects on regional transportation, including vehicular, waterborne, and rail.
14. Disclosure of any needed infrastructure development, such as additional rail handling capacity or ancillary infrastructure.
15. Potential impacts to the delivery of public services and utilities along the shipment route and in the vicinity of the terminal.

Specific examples include, but are not limited to:

- A safety analysis of the potential impacts at current and projected levels of rail traffic to tribal fishers and their customers along the shipment route through the Columbia Gorge. This analysis should be expanded to include the Yakama Reservation if the transport plan includes backhauling empty rail cars on existing tracks on the reservation. Tribal members are exposed to train-strike risk when crossing rails to access homes, fishing sites, and markets for the sale of harvested fish. A sad history of train-related fatalities at current levels of rail traffic naturally suggests that elevated levels of rail traffic in the Columbia Basin, particularly through the Columbia Gorge, will increase mortalities to tribal members attempting to exercise Treaty-reserved fishing and food gathering rights at usual and accustomed places. The probability of train-strike fatalities, injuries, and property damage can be quantified based on these tragic statistics, and the EIS should analyze the expected additional mortalities to tribal members and others that would be caused by the projected increase in rail traffic associated with the various fossil fuel-related proposals. Similarly, tribal members and others would be exposed to increased health and safety risks created by the empty unit trains transiting the Yakama Reservation and other rail lines in central Washington on their return trips.
- An assessment of track capacity and traffic control measures necessary to handle the projected 4 additional unit trains that would deliver unrefined oil to the Tesoro Savage Terminal each day. It is imperative that this analysis includes other current and proposed rail traffic on these lines and in the greater region. This should include an assessment of vehicle traffic delays and economic costs to communities bisected by rail lines.
- An analysis of the likelihood and frequency of unrefined oil train derailments, shipping spills, and fire and explosion probabilities. This should be accompanied by a detailed examination of the toxicity of spilled unrefined oil in terrestrial and aquatic environments and on the health, safety and wellbeing of our People and others in the region. This risk analysis can and needs to be quantified. The EIS should also include a discussion of how such incidents would be handled, who would respond, and which parties and/or agencies would be responsible for clean-up.
- An analysis of the expected frequency and potential damage to structures and landscape features of wild fires ignited by the projected four additional unit trains delivering unrefined oil to the Tesoro Savage terminal each day. Train-sparked fires are not uncommon in the Columbia Gorge and can be quite destructive.
- An analysis of the emissions from rail and ship traffic, terminal operations. This emissions analysis needs to include types, quantities and effects to human health and the environment. Specific examples include how these emission would exacerbate the currently compromised air quality in the Columbia River Gorge and toxicity to our rivers and fish.

- An analysis of impacts to all cultural resources, including Traditional Cultural Properties. Yakama Nation expects that the Area of Potential Effect (APE) for the Tesoro Savage project shall include the entire transportation route, including impacts from the unrefined oil's origins through our usual and accustomed areas.
- An analysis of all impacts to aquatic and terrestrial species and habitat along the transportation route, at the proposed site of the Tesoro Savage Terminal, and adjacent to the shipping channel westward of the terminal. The proposed Tesoro Savage Terminal is located adjacent to the Lower Columbia River. This section of river is designated as Critical Habitat for Endangered Species Act (ESA)-listed salmon and steelhead populations and is so designated because every single salmon originating above this point migrates through this section of river as a juvenile and as a returning adult. The construction and operation of this facility poses threats to populations of salmon, steelhead and other aquatic species of cultural importance such as the Pacific Lamprey. Further, the operation of marine vessels is certain to increase the incidence of wake-stranding juvenile salmonids and lamprey in the lower Columbia adjacent to the shipping channel. The EIS should assess the potential magnitude of additional wake stranding mortality associated with the project proposal.

Thank you for your time and consideration. Yakama Nation stands prepared to help provide any information you may need in developing the EIS. If you have any questions, please contact Philip Rigdon, Deputy Director of Yakama Nation Department of Natural Resources at (509) 865-5121 extension 4655.

Sincerely,



For Harry Smiskin, Chairman
Yakama Nation Tribal Council